

**DE JURE NEXUS LAW JOURNAL**

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3<sup>rd</sup> Year, BBA LL.B. (Hons.)**HUMAN RIGHTS IN LAWS TARGETING RELIGIOUS MINORITIES****Abstract**

*Following Article 16 and 18 of the Universal Declaration of human Rights, it is known that the following of any religion should not be a criterion for discrimination or torture towards an individual or a group of individuals. There are currently multiple practices in not only in India but also globally that are a depravity of Human Rights on the basis of religion. This article focuses on these issues, but mainly where this hits harder to home in the Asian continent. The practices in China, Pakistan and recent Indian legislations will be examined in this article.*

**Introduction**

There have been recent legal developments in the Indian system that seems to have targeted religious minorities to create a further divide in the present Asian scenario. The echoes of religious divide are still heard especially with legislations that have recently been drafted in the case against religious minorities. The fear of humanitarian backlash is inevitable in this case that seems to notice a trend not unlike that of Uyghurs and Rohingya refugees. The consecutive power of current Asian leaders be it in Myanmar, Pakistan, the Chinese Communist Regime or India has published a series of actions such as the persecution of the Rohingya community, The CAA Bill or the Love Jihad ordinance in Uttar Pradesh in India, The incarceration of the Chinese religious minorities or even the mistreatment of non-Islamic communities in Pakistan. There has been a detention of religious minorities on the pretext of protection of the country or saving the nation over numerous occasions that amounts to foiled lies. The reasons for the creation of such crisis also stems from previous crisis such as the mass flow of illegal immigrants from East Pakistan to India or Bangladesh to India. However irrespective of the reasoning behind a law, the sizable detention of the personnel it is a

violation of Human rights. Further, the targeting of a religion is a violation as well as per the Universal Declaration of Human Rights. In India post the checking of citizens in Assam under the CAA, some unregistered Assam residents have since been detained in temporary camps set up in the state's correctional facilities. They have a right to appeal, although it's an expensive process. And no one knows where those awaiting deportation are meant to be sent, as Bangladesh isn't taking them. But, as of mid-December, those non-Muslim people left off the register have been saved, because the government passed new legislation that protects certain illegal immigrants from neighbouring Islamic countries. And it provides them with a fast-tracked path to citizenship.

### **Human Rights Violations**

The Universal Declaration of Human Rights is a landmark and historical important document pregnant with the core values of rights of individuals of the world. The Universal Declaration of Human Rights is applicable to all nations that are signatories of the same, India being one such nation. It was established in it was established in 1948 at the United Nations General Assembly in Paris on 10 December under the under the General Assembly Resolution 217A and is applicable to maintain a certain standard of living for citizens by providing and abiding the fundamental rights to said citizens. The Indian Laws mostly are in correlation and in consonance with the Provision under the Declaration for Human Rights. However in case legislations are made that are against the same, it acts as a violation of the jurisprudence behind Human Rights. The provisions to be followed are:

#### **Article 2**

*“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”*

#### **Article 16.**

- (1) *“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
- (2) *Marriage shall be entered into only with the free and full consent of the intending*

*spouses.*

*(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”*

### **Article 18.**

*“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”*

### **Mass Incarceration in China**

China is Asia’s biggest power and a leader in world economy. Its Communist regime believes in secularism which entails the lack of any religion being professed or acknowledged by the state. Despite of being a superpower, there has been a turmoil experienced in the Xingang Uyghur Autonomous Region. In the Xingang Uyghur Autonomous Region, Chinese Communist Party (CCP) has detained over a million Uyghurs who are an Asian Muslim Minority along with others of the same type. These detained zones have been called political re-education camps where detainment has taken place without any criminal implications on the religious minority individuals. The far West region in China is also known as East Turkistan. This occupied area further has no dispute as to its occupation by the Uyghur people living there but instead the locals of the Xingang Uyghur Autonomous Region question the governance of the area by Beijing. This has caused the central governmental propaganda that has been undergoing with the establishment of new detention camps (political re-education camps).<sup>1</sup>

The capital of Xinjiang that is Urumqi was stormed by the Chinese troops in 1949 by the Chinese Army under the Chinese Communist Party. Much like Tibet, the CCP passed multitudinous laws by applying force and brute strength to decimate in a gradual fashion, a complete deconstruction of the Uyghur culture. This was due to Beijing’s tense occupation of the area.

In 2009 the tensions in the region rose due to the massive Uyghur protests and demonstrations in both Urumqi and Beijing. These protests further turned into a civil unrest that was then the cause for it being followed by massive irruptions and a number of violent

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<sup>1</sup> (Gregorie, 2018)

retaliations that was led by the citizens from the Uyghur region in local areas of Uyghur as well as in other major regions and metropolises in China that expanded over the years 2013 and 2014.

The secretary of the Chinese Communist Party, Chen Quanguo had implemented major surveillance and security measures and various similar programmes in the Urumqi he had acquired initial practice or experience when monitoring the Tibetan Activities. This was then informed to practicing criminal Lawyers in Sydney by the President of the World Uyghur Congress Dolkun Isa who told the lawyers in March of 2017.

These actions of incarceration in China are a violation of Article 2, Article 16 and Article 9<sup>2</sup> of the Universal Declaration of Human Rights. Recently the reports of this mass incarceration on the basis of religion (Muslim Minorities) started being published and reported globally where there was a denial of such action by the leaders in Beijing with the rhetoric that they were merely training camps and centres. The New York Times however leaked the documents they had available of the same that they had obtained that revealed the actions and intentions of the operation in November of 2019.<sup>3</sup>

### **Discrimination in Pakistan**

The population of registered religious minorities in the year 2012 were Hindus: 1,414,527, Christians: 1,270,051, Ahmadis: 125,681, Sikhs: 6,146 according to the Government of Pakistan's National Database and Registration Authority (NDRA) However a major issue faced by the religious minorities is that of forced conversions which if not abided by led to religious violence which has in turn contributed to the steady fall of the population of minorities in Pakistan. A pendant in the present scenario of the situation of these Pakistani minorities lies to be forced marriages and conversions of young girls are one of the major threats to the rights of religious minorities. The Pakistani legal system has also failed to take any action regarding these blatant Human rights violations as per Article 16 of the Universal Declaration of Human Rights.

According to the Human Rights Commission of Pakistan (HRCP) stated that religious minorities in Pakistan such as the Hindu and Christian communities continued to undergo forced conversion and persecution under blasphemy laws.<sup>4</sup> This has led to a massive issue of

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<sup>2</sup> Universal Declaration of Human Rights, Articles 2, 9, 16, 1948

<sup>3</sup> (Ramzy & Buckley, 2019)

<sup>4</sup> Human Rights Commission of Pakistan, <http://hrcp-web.org/hrcpweb/> q

unconstitutionality of articles 5, 20, 25 and 33 of the Constitution of Pakistan. It prevents religious minorities from benefiting the freedom of religion and face problems of forced conversion to Islam which is a complete violation of Article 2 and 18 of the Universal Declaration of Independence.

### **Rohingya Refugee Crisis**

There are clear similarities between the incarcerated people of the Uyghur Province in China to that of the Muslim minority problem seen In Myanmar. The incarceration of religious minorities- Muslims is not a new concept in certain Asian regions. The same has also been noted in areas of Northern India with the deportation practice being deliberated by the Indian government in relation to the Rohingya refugee crisis. This comes along with a two sided coin so as to say that even though illegal and undocumented people in the country can pose as a major issue for the citizens of the particular country, it is the tackling of the issue that matters.

The Rakhine District in Myanmar is one of the most poverty struck regions of Myanmar that has had a huge exodus in the recent years. This exodus has been hat of the fleeing of almost 2500 Rohingya community members who left their homeland in 2015 via the Indo-Burma Delta. Many of these refugees were stranded at sea and many perished in the violence that forced them to flee their lands. Further the lack of refuge provided by other nations was a huge factor for the same.

Not unlike an actual communal refugee camp, the whole population of rohingya refugees – 140000 in number- were in an internally displaced members camps until 2012. In 2012 there were religious riots that took place in Myanmar where the Buddhist population of Myanmar in the Rakhine area attacked and took and tore down the Muslim villages. Following that in 2017, the security forces in Myanmar started a massive squelching on the Rohingya a Muslim Minority Community in Myanmar who had been residing there for decades post fleeing Bangladesh pre its independence for the fear of persecution due to the then West Pakistan, denied them citizenship. This was excused by stating it was in retaliation to attacks made on police Posts by the Rohingya Community. The attack that has been deemed disproportionate in many nations was cause for nearly 740000 Rohingya locals to flee the border. At present majority of the Rohingya community is residing in government-run refugee camps in Southern Bangladesh. This refugee camp is considered to be one of the biggest refugee

camps for the Rohingya Community however the possibility of returning to Myanmar seems lean and the community stays to be a despondent and landless one.

This practice has not only been a violation of the Article 2 of the Universal Declaration of Human Rights<sup>5</sup> that entails the prevention of discrimination on the basis of religion or class and creed but also a violation of the principle of brotherhood as stated in Article 1 of the Universal Declaration of Human Rights. The same fear has further amounted in India post the Introduction of the Citizenship Amendment Act however the exact provisions are not blatantly on the basis of religion.

### **Citizenship Amendment Act**

On the 10<sup>th</sup> of January in 2020, the Indian Citizenship (Amendment) Act of 2019 came into force that amended the Act by the same name- Citizenship Act- of 1955. The Act provided for the citizenship of members of the Hindu religion along with other religious minorities such as Buddhist, Sikh, Parsi, Jain, Christian and Judaism. However the citizenship has been provided for these minorities on the basis that they have been forced to flee their respective countries such as Pakistan due to persecution on the basis of their religion. This focuses on neighbouring countries such as Pakistan, Bangladesh, Afghanistan and China to a certain extent. These refugees must have fled before 2014. The laws for the same have been laid down as follows:

The amendment declared that the cut-off date for Indian Citizenship as 31st December 2014. The Citizenship (Amendment) Act, 2019 lays down that:

- a. Persons shall be deemed to be Indian Citizens from the date of their entry into India that may be on or before 31<sup>st</sup> December 2014;
- b. Any legal proceeding against illegal immigration shall be closed pertaining to illegal immigration.
- c. The benefit of Indian Citizenship shall be only to illegal migrants of tribal areas of Assam, Meghalaya, Mizoram, and Tripura.
- d. Provided these illegal migrants of must have stayed at least 6 years in India prior to being lodging application for naturalization.

There is a clear distinction on the basis of religion in the formulation of the Bill. The major criticism faced by the same is also pertaining to religion as the bias created to keep the

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<sup>5</sup> Supra 2



religions as minorities and assist the persecution of the Muslim Minorities in India. Assam as well as West Bengal faces one of the biggest illegal Muslim Minority issues that will only be aggravated by this inhumane treatment of all Muslim migrants to India. The classification on the basis of religion is also against the Secular nature of the Constitution of India as it means the complete absence of a religion in the State. The Muslim population in India is the second largest Muslim diaspora in the world. The Islamic community covers nearly 15 percent of the 1,3 billion population in India and hence it being ostracized is a massive issue for a huge population in India itself. However this practice promotes the “*Hindutva*” anthem preached by the center. There have been wide ranges protests against the enforcement of the bill especially in Assam for it goes against the Fundamental Right to Equality under Article 14 of the Constitution of India.<sup>6</sup> On a higher legal Human Rights aspect by the Office of United Nations High Commissioner for Human Rights (UNHRC) who have termed the Bill as discriminatory and unconstitutional. The other issue is a Lacuna from this bill for asylum seekers from Myanmar and Sri-Lanka being left out of the arena of ones permitted to get citizenship.

### **Love Jihad Ordinance**

India has an odd practice of conversion of religion by marriage. This conversion takes place with certain religions where conversion is of practice, such as Islam, Christianity and Judaism. This practice however is a personal choice that is practiced by pre or post conversion declarations. However interfering in these matters is an intrusive aspect by the government in the lives of the citizens of India and a violation under Article 21 of the Indian Constitution. Uttar Pradesh passed the state **Prohibition of Unlawful Conversion of Religion Ordinance** in 2020. This legislation prevents the enjoyment to religion or marital practice by individuals as well as ones right to choice, privacy and freedom of religion. It is also an awry and sensitive subject that can be applied to violence and riots in case of interfaith couples. The ordinance however focuses on the conversion of Hindu women from Hinduism to Islam by marriage to Muslim men. Hence not only making this a religious but also a gender biased act.

The Ordinance is popularly known as the ‘Love Jihad’ law. On the 24<sup>th</sup> of November 2020 the ordinance was approved by the Uttar Pradesh State cabinet by the Governor’s assent that was given on the 28<sup>th</sup> of November 2020 that made it enforceable. Section 3 of the Ordinance

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<sup>6</sup> Constitution of India, Article 14, 1950

states that no person shall convert or attempt to convert directly or otherwise any person from one religion to another by use or any practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage, nor should any person abet convince or conspire such conversion.

As per the Bill the offences of conversion of religion post marriage or pre marriage a cognizable-non-bailable offence. Further the offence has set out punitive measures of a punishment upto 10 year's imprisonment and or fine. There are nearly 8 other states in India that have similar anti-conversion laws of a similar nature those being Arunachal Pradesh, Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, and Uttarakhand. There have been nearly 35 arrests and multiple FIRs filed for the same<sup>7</sup> under the Prohibition of Unlawful Conversion of Religion Ordinance in 2020 out of which majority of the conversions were consensual.

There has been a negative connotation applied to the term Love Jihad. The term Love Jihad is not of a negative nature independently. The dark shadow has been cast on the same via Islamic Terrorist Groups as the term 'Love Jihad' in actuality has the meaning that there can be a marriage between two people with the sole purpose and intention to convert the other to a different religion. In India however the Chief Minister of the Indian State of Uttar Pradesh is the one to cause this issue. The ordinance is not explicitly one of a negative connotation from it doesn't specify 'Love Jihad' Per se. However present Chief Minister Yogi Adityanath has mentioned that the conversions done have been religion specific and has been Love Jihad. The statements he made stated that under his regiment there was hard work being done to curb illegal acts of Love Jihad for forceful conversion. It was said to be used as political propaganda where this was being used to please the Hindu vote banks. The history of conversion laws in India have shown that anti-conversion laws were primarily established to protect Hinduism since the British Raj.<sup>8</sup> There were "over a dozen princely states, including Kota, Bikaner, Jodhpur, Raigarh, Patna, Surguja, Udaipur, and Kalahandi,"<sup>9</sup> which practices similar laws. Some of the laws from that period include the Raigarh State Conversion Act,

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<sup>7</sup> (PTI, 2020)

<sup>8</sup> James Andrew Huff, Note, *Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws*, 10(2) Rutgers J. L. & Religion 1, 4 (2009), <http://www.lawandreligion.com/sites/lawandreligion.com/files/A10S-6Huff.pdf>, archived at <https://perma.cc/7Z7Y-9U8Q>.

<sup>9</sup> Laura Dudley Jenkins, *Legal Limits on Religious Conversion in India*, 71 Law & Contemp. Probs. 109, 113 (2008), <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1469&context=lcp>, archived at <https://perma.cc/7BYA-UNDW>.



1936; the Surguja State Apostasy Act, 1942; and the Udaipur State Anti-Conversion Act, 1946. Hence this particular Uttar Pradesh Ordinance has been criticized for being one to please the Hindu population and to being discriminatory towards the Muslim minority community, leaving them at a disadvantage.

Article 16 of the Universal Declaration of Human Rights, which India is a signatory of states:

- (1) *“Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.*
- (2) *Marriage shall be entered into only with the free and full consent of the intending spouses.*
- (3) *The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”*

This indicates that the Universal Declaration of Human Rights recognises interfaith marriages as long as it was with consent and is a part of Human Rights. Further the India Constitution, under Article 25 and Article 28 also provides and Guarantee the freedom of professing and practicing ones religion of choice. On studying a report by the Indian Human Development Survey (IHDS) and the National Council of Applied Economic Research (NCAER) in 2005, it was observed that only 2.21% of all women between the ages of 15-49 were involved in inter-faith marriages.<sup>10</sup> What this data proves is that the number is not too significant so as to create a social norm that could influence and prevent the enjoyment of one's own right to choice. The laws rather than prevention of inter religion marriage and conversion should focus on the changing and enlightenment of the Indian Society where inter caste marriages and intern faith marriages lead to fatal repercussions such as social boycotting, violence and honour killings.

The right to choose a partner is quintessential aspect one human rights and is fundamental in nature. The right to marriage is also one that should not be affected by the differences in faith and caste and religion. The Indian Courts have repeatedly attempted at the same to establish it. In *Lata Singh v. State of Uttar Pradesh*,<sup>11</sup> the Supreme Court of India held that the right to marry as a component of the right to life mentioned under article 21 of Indian Constitution.

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<sup>10</sup> (Research, 2015)

<sup>11</sup> (*Lata Singh v State of Uttar Pradesh*, 2004)

Further, in the case of *Shakti Vahini v. Union of India*,<sup>12</sup> the Supreme Court reiterated that a person's right to marry, regardless of their religion, is part and parcel of their fundamental right under Article 21 of the Constitution. In *Trishla Rai And Another v. the State of U.P.*,<sup>13</sup> the Allahabad High Court held that individual autonomy in such cases shall be given supreme importance and as later defined by *K.S. Puttaswamy v. Union of India*<sup>14</sup> judgement the autonomy of an individual is the ability to make decisions in vital matters of concern to life. The case further states:

*"While recognising the diversity and plurality of our culture, privacy ensures an individual's ability to have control over vital aspects of their lives like marriage, the sanctity of family life and preservation of personal intimacies."*

Additionally, the Supreme Court, in the *Shafin Jahan's case*,<sup>15</sup> upheld the right to choose a life partner as an absolute right irrespective of the religion or faith. The case further held:

*"Absolute right of an individual to choose a life partner is not in the least affected by matters of faith. Choices of faith and belief as indeed choices in matters of marriage lie within an area where individual autonomy is supreme."*

Hence, it can be argued that any law that deprives anyone of these rights shall be deemed to be unconstitutional. The test of constitutional scrutiny has failed to pass under the ordinance. Section 3 of the Ordinance prohibits any kind of religious conversions through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage. However, this provision shall not be applicable in cases if the person re-converts to their previous religion. Further the Law has provisions to prevent exploitation of females including ones of religious conversion. The couples are required to approach the District Magistrate prior to their wedding by 2 months. This is an unnecessary approach as well and has been provided for under sections 8 and section 9 of the Anti-Conversion Ordinance. This will be followed by a complete breach of privacy by a police investigation conducted mandatorily on the pretext of checking the validity and free will involving the conversion of religion pre or post marriage. This is patently unconstitutional and violates the right to religion and other rights stemming from the right to life, along with international conventions such as UDHR ratified by India, which upholds the right to marry as a human right. This is a

<sup>12</sup> (*Shakti Vahini v Union of India* , 2010)

<sup>13</sup> (*Trishla Rai And Another vs State Of U.P.*, 2019)

<sup>14</sup> (*KS Puttaswamy v Union of India*, 2017)

<sup>15</sup> (*Shafin Jahan v Union of India*, 2018)

violation of the privacy of the couple so as to choose the partner of their choice with a religion of their choice and hence is a violation not only of the Fundamental Rights but also Human Rights of the Individuals.

Section 3 of the Act prohibits the religious conversion of one person by another through any means, including by marriage. To successfully convert by marriage, an individual must notify the state 60 days prior to their intention to convert, along with a notice issued by the priest. The state's interference does not stop here; after these steps, the police will conduct an inquiry to ensure that the individual is converting willingly. This is patently unconstitutional and violates the right to religion and other rights stemming from the right to life, along with international conventions such as UDHR ratified by India, which upholds the right to marry as a human right.

This ordinance is antithetical to the Supreme Court's judgement in Shafin Jahan's<sup>16</sup> case where it was held that the right to convert one's religion is part of the fundamental right of choice, stating:

*"Policing powers bestowed upon the state of UP to monitor individuals' choice of partners or their religion violate the right to privacy, autonomy, personal liberty and the right to live with dignity."*

Further due to the stigma behind the concept of interfaith marriages in India which aren't accepted couples face backlash and are often ostracised from their communities. Therefore, couples could prefer religious conversion over getting married under the Special Marriage Act, which is an Act under which individuals from different faiths can marry whilst retaining their religious beliefs. However the act violates this Act as well. Section 4 of the Ordinance will subject them to even more scrutiny and harassment by giving powers to relatives by blood and marriage to object to their union by lodging a police complaint.

*"This completely violates the Apex Court's ruling that consent of the family or community is not necessary when entering into wedlock by two consenting adults."*<sup>17</sup>

Apart from the above mentioned provisions the placement of Liability acts as a massive issue to prevent the conversion of Hindu Women to Islam by Muslim Men. Section 12 the UP law makes it even worse because the burden of proof that conversion was 'lawful' lies on the

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<sup>16</sup> Supra 14

<sup>17</sup> Supra 14

person who has 'caused' the conversion. The opinion of the person who has converted is not taken into account at all leading to a misogynistic treatment of women as property. In a situation where the wife is being asked to convert, such a law can be used by the parents of the bride to threaten the inter-faith couple ultimately leading to forcing the convertor to prove that the conversion wasn't a forceful one hence violating multiple efforts and precedents set by the Supreme Court of India.

### **Conclusion**

Acts such as marriage, education, immigration and choice are all aspects that unite and mend communities together. Placing these aspects under the banner of forced religion or prevention of marriage or conversion that then moves a step forward to violate basic principles of Human rights is worse and damaging to the community and to the basic life provisions of a person. Hence the targeting of religious minorities to damage the community by distinction is a gross violation of Human Rights and must be amended either domestically or by taking cognizance on an international platform.



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