



## An ill-conceived, overbroad and vague ordinance

### Constitution on Ordinance

Under Article 213 (1) of the Constitution of India provides three pre-conditions to be satisfied before the Governor promulgates an ordinance: first, the State Legislature should not be in session; circumstances should exist for promulgating an ordinance and importantly, those circumstances must warrant immediate action.

### Circumstances, urgency

There is no established practice requiring the Governor (or the President under Article 123 of the Constitution) to state the circumstances for immediate action. A healthy convention should develop and the preamble to any ordinance should state the immediacy for promulgating it when the Legislature is not in session. This would greatly enhance transparency in legislation, but, more importantly, enable legislators to understand why they are, in a sense, by-passed and why a debate and discussion in the Legislature could not be awaited.

### The U.P. ordinance

The preamble to the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, commonly called the anti-love jihad ordinance, did not provide circumstances that forced its legislation. If one fraudulent or coercive inter-faith marriage is taking place, the police can certainly prevent it, as they supposedly do in child marriages. An ordinance is not required for it.

### Provisions of the law and Issues

1. Section 3 prohibits conversion or attempt to convert any person from one religion to another by coercion or fraud etc. or by marriage.
2. Nobody gets converted by marriage. One can understand conversion for marriage, but if an adult person desires to get converted to the religion of the other before marriage, nobody should have any objection as Allahabad HC recently declared.
3. Section 7 provides that upon receiving information (it may be fake news) that religious conversion is designed to take place, a police officer is authorised under the Criminal Procedure Code without orders from a Magistrate and without a warrant, to arrest the person so designing, if it appears that the commission of the offence cannot be otherwise prevented.



4. Should someone genuinely desire to convert but not get married, that person would have to inform the District Magistrate (DM) two months in advance of the plan through a declaration, under Section 8.
5. The DM requires the police to inquire about the real purpose of conversion and file a report (in a sealed cover) with the DM. Assuming conversion is not objected to, even thereafter the DM must be informed by the converted through a declaration under Section 9.
6. Interestingly, the DM is expected to exhibit the declaration on the notice board of the office till the contents of the declaration are confirmed. Meanwhile, the ubiquitous aggrieved person has an opportunity to object to the conversion.
7. Finally, the burden of proof — Section 12 provides that the burden to prove the conversion was not on account of coercion, fraud, etc. or by marriage will be on the person who has caused the conversion. It is only the person converted who can answer that question and nobody else, as in Hadiya's case.
8. All this is too much interference in an individual's freedom of Conscience and outrightly unconstitutional.

### Conclusion:

The ordinance is prone to abuse and we have seen its consequences — of intimidation, bullying and arbitrary arrests. It is ill-conceived, overbroad and vague in many respects. It vilifies all inter-faith marriages and places unreasonable obstacles on consenting adults in exercising their personal choice of a partner, mocks the right to privacy and violates the right to life, liberty and dignity. In short, it is unconstitutional.

### Taking note of farmer welfare, the Kerala way

In his tirade, the Prime Minister pointed a finger against agricultural policies of the Left-led government in Kerala.

### The situation in Kerala

1. All the allegations levelled against the Kerala government are unfounded, and far from truth. As per allegation there are no Agricultural Produce Market Committees (APMCs) and mandis in Kerala, and the concept of the Minimum Support Price is not prevalent in the State.



2. It is true that mandis regulated by an APMC are not in existence in Kerala. But it does not mean that the interests of farmers are not taken care of in the State.
3. In fact, Kerala is the State where farmers' rights are being protected by the government itself, and much more effectively than any other Indian State.
4. While the government of India has fixed the procurement rate for rice at ₹18 a kg, the Left Democratic Front government in Kerala is procuring rice from cultivators at ₹27.48 a kg.
5. In the same manner copra (dried coconut) is also procured at a much higher rate in Kerala than the price announced by the central government. Kerala is the State where increased basic price is ensured not only for paddy but also vegetables and fruits.
6. Apart from crop insurance, paddy cultivators will get the royalty in Kerala at the rate of ₹2,000 per hectare. They have a pension too, which is something unique in India.

### Impact of Farm Laws

1. In Bihar where mandis were abolished in 2006, the plight of farmers only worsened after this measure was initiated.
2. After the three farm ordinances of June 2020, 40% of mandis in Madhya Pradesh have registered only zero transactions.
3. When Ministers continue to assure the continuance of mandis they are practically pushed out of the scene, as it happened in Madhya Pradesh and elsewhere.