

State Legislative Brief

KARNATAKA

The Karnataka Protection of Right to Freedom of Religion Ordinance, 2022

Key Features

- The Ordinance prohibits religious conversions through misrepresentation, coercion, allurement, fraud, or promise of marriage. The burden of proof to show that a religious conversion was not carried out by these measures will lie on the person who causes or abets such conversion.
- The Ordinance specifies the procedure for a person wanting to wilfully convert their religion. It allows a converted person, any associated person, or a colleague to lodge a complaint against an unlawful conversion.

Key Issues and Analysis

- The requirement of a public notice for a wilful religious conversion may be violative of the right to privacy.
- The Ordinance allows reconversion to a person's immediate previous religion. This may violate the principle of equality before laws, under Article 14 of the Constitution.
- It is not clear as to who is allowed to file a complaint against an unlawful conversion. There is also no appeal mechanism for an aggrieved person to appeal against the order of a DM.

The Ordinance was promulgated on May 17, 2022. A Bill with the same provisions was passed by the Legislative Assembly in December 2021. Since then, the Bill has been pending consideration in the Legislative Council. As per the Constitution, if more than three months lapse from when the Bill is laid before the Council, the Legislative Assembly may pass the Bill again in the same or subsequent session.

PART A: HIGHLIGHTS OF THE ORDINANCE

Context

The Constitution guarantees all persons the right to profess, propagate, and practise religion, subject to public order, morality, and health. The Supreme Court (1977) has held that a person has a fundamental right to change their own religion wilfully. However, a person does not have the fundamental right to convert anyone else coercively.¹

Over the years, several states have enacted laws prohibiting forced religious conversions. Laws in Madhya Pradesh (1968) and Odisha (1967) prohibit religious conversions by fraud, force, or inducement.^{2,3} The Supreme Court (1977) has upheld the constitutional validity of these laws. It acknowledged the competence of state legislatures to regulate forced religious conversions, for preserving public order.¹ Recently, Jharkhand (2017), Uttarakhand (2018), Himachal Pradesh (2019), Uttar Pradesh (2021) and Madhya Pradesh (2021) have passed laws to regulate religious conversions.^{4,5,6,7,8} For a detailed inter-state comparison of such laws refer to Table 2 in the Annexure.

Noting the growing instances of religious conversions in Karnataka, the Law Commission of Karnataka (2013) had recommended a law to protect an individual's right to freedom of religion. It noted that forcible conversions lead to a breach of peace, and give rise to conflicts.⁹

Key Features

- **Prohibition on forced conversion:** A person will not force someone else to convert their religion by misrepresentation, allurement, fraud, or promise of marriage. However, the conversion of a person back to their immediate previous religion is permitted. Marriage for the sole purpose of unlawful conversion and any unlawful conversion for the sole purpose of marriage, are prohibited. Marriages in which a party wishes to change their religion will be solemnised after following the process of a wilful religious conversion.
- **Complaints against forced conversions:** Any converted person, any person associated to such person (by blood, marriage, or adoption), or their colleague may lodge a complaint against an unlawful conversion.
- **Burden of proof:** The burden of proof to show that a conversion was not forced or unlawful will lie on the person who has caused the conversion, and on the person who aids or abets such conversion.
- **Procedure for undergoing conversion:** A person who wants to wilfully convert his religion has to declare it to the District Magistrate (DM). A similar declaration will be given by the religious converter who performs the conversion ceremony. The DM will invite public objections to the proposed conversion twice – once before the conversion, and once afterwards. Objections are invited for the second time only if no objections were raised

earlier. Upon receiving an objection, the DM will make an inquiry on the intention and purpose of the conversion. If the conversion is found to be unlawful, the DM may initiate criminal action. For more details on the process of conversion under the Ordinance, refer to Figure 1 on page four.

- **Offences and Penalties:** Table 1 highlights the penalties with respect to unlawful conversions. Every offence under the Ordinance is cognizable and non-bailable. If an institution violates the provisions of the Ordinance, the person or persons in charge of the institution will be punished as per the provisions in Table 1.

Table 1: Penalties prescribed under the 2022 Ordinance

Conversion of	Imprisonment	Fine (in Rs)
Any person	3-5 years	25,000
Minors, persons of unsound mind, women, or persons belonging to SC/ST communities	3-10 years	50,000
Two or more people (mass conversion)	3-10 years	1,00,000

PART B: KEY ISSUES AND ANALYSIS

Existing principles on religious conversion

The first laws prohibiting forced religious conversions were the Orissa Freedom of Religion Act, 1967 and the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968.^{2,3} These laws prohibited religious conversions by force, fraud or inducement. The constitutional validity of these laws was challenged before the Supreme Court on the grounds that: (i) the laws violate the fundamental right to 'propagate' religion, and (ii) the laws regulate religion (a Union List subject matter) and not public order (a State List subject matter).

The Supreme Court (1977) held that the right to propagate religion does not include the right to convert anyone else.¹ It includes spreading one's religion by explaining the tenets of that religion. The Court also held that these laws regulate public order, and not religion. The laws are meant to preserve public order by prohibiting forced religious conversions.¹

Notice requirements under the Ordinance

Requirement of a public notice to convert one's religion may violate privacy

Ordinance: As per the Ordinance, a person's intention to convert their religion is notified on the notice boards of the DM and Tehsildar's offices. This notice is open to public objections both before and after a conversion ceremony, for 30 days each. Requiring public notice of wilful religious conversions may violate an individual's right to privacy. (Refer to Figure 1 in the Annexure for the detailed procedure prescribed under the Ordinance.)

In recognising an individual's right to privacy, the Supreme Court (2017) had noted that personal choices governing a way of life are intrinsic to privacy. This may include a person's choice of faith. When examining the essential nature of privacy, the Court had noted that the right to freedom of religion includes the freedom of an individual to choose a faith and express or not express such choices publicly.¹⁰ The Special Marriage Act, 1954 has a similar requirement of a public notice. In a case regarding a woman's decision to stay with her husband after marriage, the Allahabad High Court took cognizance regarding the public notice in that Act.¹¹ Noting that marriage is a personal affair, the Court interpreted this requirement as voluntary, and not mandatory.

However, the right to privacy may be restricted by law if it meets three conditions: (i) a legitimate public purpose, (ii) rational nexus of the law with such purpose, and (iii) the infringement of privacy must be necessary and proportionate to the purpose.¹⁰ The requirement of public notice for religious conversion may fail the second and third tests. The Ordinance seeks to regulate religious conversions to ensure public order. However, public declaration of an individual's change of religion may affect public order adversely instead of preserving it as such disclosures may lead to communal clashes. The Himachal Pradesh High Court had made similar observations when examining the Himachal Pradesh Freedom of Religion Act, 2006, which also required a public notice to convert one's religion.¹² Subsequently, the Himachal Pradesh Freedom of Religion Act, 2019 repealed the 2006 Act, and the new Act does not require a public notice for religious conversions.¹³

The proportionality test requires public notice of conversions be the least intrusive way for the state to maintain public order. Barring Karnataka and Haryana, all other states which regulate religious conversions for maintaining public order do not require public declaration of such conversions. Laws in these states require individuals to send an advance notice to the DM, after which the DM conducts an enquiry into the cause, intent, and purpose of the conversion.

Rationale for notifying employers and educational institutions is unclear

After a person has followed the procedure to convert their religion, the DM notifies concerned authorities of the conversion. Concerned authorities include employer of an individual, officials of the revenue department, and principals of education institutions. It is unclear why employers or heads of educational institutions need to be notified of a person's change of religion.

Exempting conversion to immediate previous religion may violate equality

Ordinance: The Ordinance prohibits forced religious conversions. However, it allows conversions where the person is re-converting to their immediate previous religion. This provision may violate the right to equality. Under the right to equality, a law may differentiate between groups of people if the basis for such classification is reasonable.^{14,15} To protect people from forced religious conversions, the Ordinance creates a special category of people who are converting back to their immediate previous religion, and exempts them from its ambit. The question is whether such classification is reasonable, to achieve the objective of public order.

The Himachal Pradesh Freedom of Religion Act, 2006 exempted people who reconvert to their original religion from giving a public notice of such conversion. The Himachal Pradesh High Court had struck down this provision as discriminatory and violative of the right to equality.¹²

The burden of proof on the abettor without adequate safeguards

Ordinance: If an objection or complaint is filed against a religious conversion, the religious convertor and the abettor will be required to prove that they did not force, misrepresent information, or allure the person to convert their religion. Typically, in criminal cases, the prosecution has to prove the guilt of the accused beyond all reasonable doubt. The Ordinance reverses this burden of proof. By placing the burden of proof on the accused, and without any safeguards, the Ordinance may be violating Article 21. Courts have interpreted Article 21 to state that law and procedures must be fair and reasonable.

The Supreme Court has held that a law with a reverse burden of proof may be constitutionally valid if it meets the following conditions: (i) the prosecution establishes foundational facts constituting the crime, (ii) the accused does not have to prove negative facts, (iii) the accused has knowledge of special facts, and (iv) the burden of proving innocence should not cause the hardship to the accused.^{16,17,18} The Ordinance does not specify any such safeguards.

Several other laws such as the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) and the Protection of Children from Sexual Offences, 2012 also reverse the burden of proof, but they provide certain safeguards.^{19,20} For instance, in the NDPS Act, possession of any narcotic substance must first be proven by the prosecution, after which the burden of proof shifts on the accused.

There is no clarity on who all can complain about a religious conversion

Ordinance: The Ordinance allows any converted individual, as well as certain other specified persons to complain about an unlawful conversion. These include: (i) persons related to the converted individual by blood, marriage, or adoption, and (ii) persons associated with the converted individual (or colleagues). The Ordinance does not define the term ‘associated’, which leads to a lack of clarity on who all can complain about such conversions. We illustrate this below.

An individual P wants to convert from religion A to religion B. There exist three individuals – X, Y, and Z. X is a college classmate of person P. Y stays in the same village as P. Z was P’s neighbour, two years ago. In the absence of a definition, all three persons seem to have some association with P. This also raises the question on who all the Ordinance intends to allow to complain about an unlawful conversion.

Note that in Uttarakhand, Uttar Pradesh, Madhya Pradesh, and Haryana, only people related to the converting individual through blood, marriage, adoption, or custodianship are allowed to complain.^{5,7,8,21}

Different penalty for women and people from SC/ST communities

Ordinance: The Ordinance prescribes a higher penalty for those who convert or attempt to convert a: (i) minor, (ii) person of unsound mind, (iii) woman, or (iv) person belonging to Scheduled Castes (SCs) or Scheduled Tribes (STs). This is similar to laws prohibiting forced religious conversions in other states (Table 2), except Arunachal Pradesh. It may be argued that minors and persons of unsound mind require a higher degree of protection, as all legal decisions are made on their behalf by their guardians. The question is whether women and people belonging to Scheduled Castes and Scheduled Tribes, who are capable of making their own decisions, also need a higher level of protection.

The Ordinance does not have an appeal mechanism

Ordinance: A person converting their religion is required to send a declaration to the DM. The DM conducts an enquiry and decides whether the conversion is valid and legal. The Ordinance does not provide for an appeal mechanism for parties aggrieved by the DM’s decision. Additionally, there is no time limit prescribed for the DM to make a decision regarding a religious conversion. In other states too, where religious conversions are regulated (except Haryana), there is no provision for an appeal mechanism.

The convertor has to pay compensation along with fine and imprisonment

Ordinance: Under the Ordinance, the person conducting the forced conversion is required to pay compensation to the victim, along with fine and imprisonment. As per the CrPC, a court can order compensation to be paid in four specific instances: (i) covering legal expenses, (ii) for any loss or injury, (iii) for loss of life, and (iv) for loss of property due to theft or cheating.²² It is not clear what this tangible loss would be in the case of a forced religious conversion. Similar provisions to pay compensation exist in Haryana, Uttar Pradesh, and Uttarakhand. For a detailed inter-state comparison of such laws refer to Table 2 in the Annexure.

Notices for intended conversion may go to different DMs

Ordinance: As per the procedure for conversion under the Ordinance, the person converting and the religious convertor have to send declarations to the DM (See Figure 1). The person converting may send the declaration to a DM in the district he resides or was born in. The religious convertor sends the declaration to a DM in the district he hails from. It is unclear what hails from implies. If it means place of birth, then persons born outside Karnataka may not be able to carry out religious conversions in Karnataka. Additionally, notices of an intended conversion may go to different DMs within the state if the person converting and the religious convertor are from different districts.

Annexure

Figure 1: Conversion process under the Karnataka Protection of Right to Freedom of Religion Ordinance, 2022

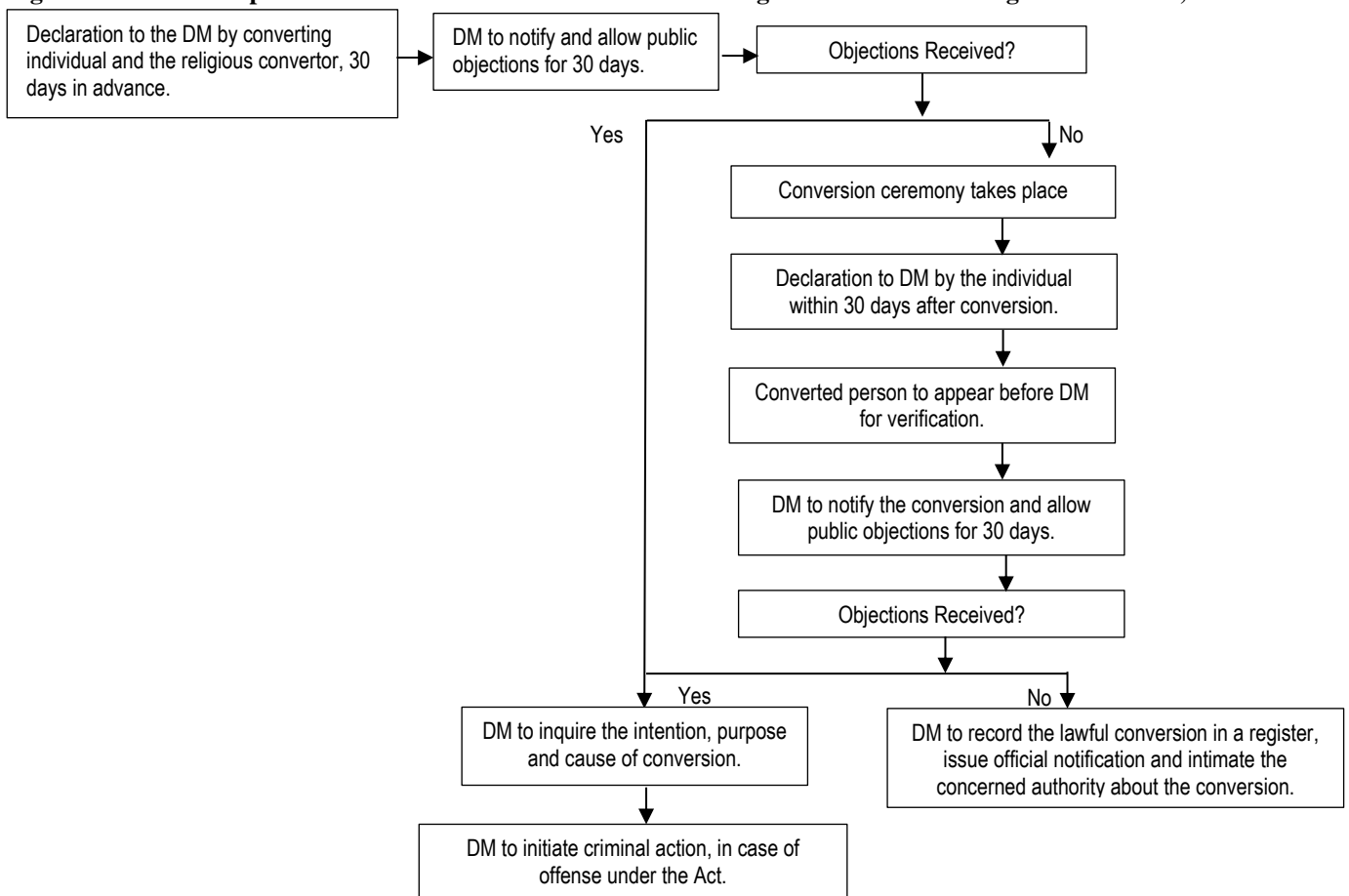


Table 2: Inter-comparison of anti-conversion laws

State	Year	Burden of proof on convertor	Prohibition on conversion by marriage	Enquiry by DM	Public notice, open to objections	Exemptions on reconversion	Penalties	Enhanced penalties for converting women, minors, SC/ST persons, and persons of unsound mind
Karnataka (Ordinance)	2022	Yes	Allowed, subject to following specified procedure.	Subject to objections.	Yes	Yes, to the immediate previous religion	Imprisonment: 3-5 years Fine: Rs 25,000	Yes
Haryana ²¹	2022	Yes	Allowed, subject to following specified procedure.	Subject to objections; inquiry manner to be prescribed in Rules; however, satisfaction of DM is required explicitly for issuing certificate.	Yes	Not specified	Imprisonment: 1-5 years Fine: At least Rs 1,00,000	None
Madhya Pradesh ⁸	2021	Yes	Yes	No provision	No	Not specified	Imprisonment: 1-5 years Fine: At least Rs 25,000	Yes
Uttar Pradesh ⁷	2021	Yes	Allowed, subject to following specified procedure.	Required	No	Yes, to the immediate previous religion	Imprisonment: 1-5 years Fine: At least Rs 15,000	Yes
Himachal Pradesh ⁶	2019	Converted person and facilitator (if applicable)	Yes	Required	No	Yes, to the parent religion	Imprisonment: 1-5 years Fine (amount not specified)	Yes
Uttarakhand ⁵	2018	Converted person and facilitator (if applicable)	Yes	Required	No	Yes, to the ancestral religion	Imprisonment: 1-5 years Fine (amount not specified)	Yes
Jharkhand ⁴	2017	Not specified	Not specified	As per Rules, DM may do enquiry by any agency. Any other person likely to be prejudicially affected can associate himself with the enquiry.	No	Not specified	Imprisonment: Up to 3 years Fine: Up to Rs 50,000	Yes
Chhattisgarh ²³	2006	Not specified	Not specified	Required	No	Yes, to the ancestral or original religion	Imprisonment: Up to 3 years Fine: Up to Rs 20,000	Yes
Gujarat ²⁴	2003	Yes	Yes	No provision for enquiry.	No	Not specified	Imprisonment: Up to 3 years Fine: Up to Rs 50,000	Yes
Arunachal Pradesh ²⁵	1978	Not specified	Not specified	No provision for enquiry.	No	Not specified	Imprisonment: Up to 2 years Fine: Up to Rs 10,000	No
Odisha ³	1967	Not specified	Not specified	DM must do a police enquiry for objections.	No	Not specified	Imprisonment: Up to 1 year Fine: Up to Rs 5,000	Yes
Rajasthan ^{*,26}	2017	Not specified	Yes, if a complaint is filed by the party	DM must take appropriate action as per law.	Public notice; no mention of objections	Not specified	Not specified	Not specified

*In *Chirag Singhvi v. State of Rajasthan*, the Rajasthan High Court framed guidelines to regulate religious conversions in the state. Sources: Refer to endnotes marked in the 'State' column; PRS.

1. [Rev. Stainislaus vs State Of Madhya Pradesh & Others](#), 1977 AIR 908, Supreme Court of India, January 17, 1977.
2. [Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968](#).
3. [Orissa Freedom of Religion Act, 1967](#).
4. [Jharkhand Freedom of Religion Act, 2017](#).
5. [Uttarakhand Freedom of Religion Act, 2018](#).
6. [Himachal Pradesh Freedom of Religion Act, 2019](#).
7. [Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021](#).
8. [Madhya Pradesh Freedom of Religion Act, 2021](#).
9. “30th Report: [Enacting a suitable law for protection of right to freedom of religion](#)”, Law Commission of Karnataka, September 21, 2013.
10. [Justice K.S. Puttaswamy \(Retd\) vs. Union of India](#), W.P. (Civil) No 494 of 2012, Supreme Court of India, August 24, 2017.
11. [Safiya Sultana v. State of Uttar Pradesh](#), W.P. (Civil) No 16907 of 2020, High Court of Allahabad, January 12, 2021.
12. [Evangelical Fellowship v. State of Himachal Pradesh](#), W.P. (Civil) No. 438 of 2011, High Court of Himachal Pradesh, August 30, 2012.
13. [Himachal Pradesh Freedom of Religion Act, 2019](#).
14. [Gauri Shanker and Others vs. Union of India and Others](#), W.P. (Civil) No. 1089 of 1987, Supreme Court of India, September 8, 1994.
15. [State of Karnataka and Others vs. B.Suvarna Malini and Others](#), Appeal (Civil) 27 of 2001, Supreme Court of India, January 4, 2001.
16. [Shaikh Zahid Mukhtar v. State of Maharashtra](#), W.P. (Civil) No. 5731 of 2015, May 6, 2016.
17. [Noor Aga v. State of Punjab & Anr.](#), Criminal Appeal No. 1034 of 2008, Supreme Court of India, July, 2008.
18. [Hanif Khan and Annu Khan v. State of Madhya Pradesh](#), Criminal Appeal No. 1206 of 2013, August 20, 2019.
19. [The Narcotic Drugs and Psychotropic Substances Act, 1985](#).
20. [The Protection of Children from Sexual Offences Act, 2012](#).
21. [Haryana Prevention of Unlawful Conversion of Religion Act, 2022](#).
22. [Section 357](#), Code of Criminal Procedure, 1973.
23. [Chapter VIII](#), Eighth Report of VII State Law Commission, on Freedom of Religion.
24. [Gujarat Freedom of Religion \(Amendment\) Bill, 2021](#).
25. [Arunachal Pradesh Freedom of Religion Act, 1978](#).
26. [Chirag Singhvi v. State of Rajasthan](#), Habeas Corpus No. 149 / 2017, High Court of Rajasthan, December 15, 2017.

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