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RELIGIOUS CONVERSION, CONSENT AND CRIMINAL PROCESS IN INDIA: A COMPARATIVE STUDY

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ABSTRACT

Religious conversion is simultaneously an exercise of conscience and a field in which coercion, fraud and exploitation may occur. Indian constitutional law therefore faces a difficult task: it must preserve the State's authority to punish conversion secured by wrongful means without converting voluntary changes of faith into licensed administrative events. This paper examines that difficulty through the linked concepts of consent, causal nexus and criminal process. It argues that the first generation of state freedom-of-religion laws was directed principally at force, fraud and inducement, whereas several recent statutes regulate the entire process of conversion through prior declarations, public notice, police inquiry, broad definitions of allurement, marriage-linked provisions, reverse burdens, wide complainant standing, stringent bail rules and institutional liability. The paper analyses the constitutional position after Rev. Stainislaus, Puttaswamy and Shafin Jahan, and incorporates the Uttar Pradesh 2024 amendment, the Rajasthan Act of 2025, the status of Uttarakhand's 2025 bill, and the Supreme Court's 2025 decision in Rajendra Bihari Lal. Comparative study of Nepal and South Africa demonstrates two contrasting models: criminal prohibition extending into persuasion, and rights-based protection grounded in voluntariness and equality. The paper proposes a consent-nexus-harm test under which liability arises only when a specifically prohibited means has a demonstrable causal relationship with conversion, while the confidential statement of a competent adult receives presumptive weight. This model protects vulnerable persons more effectively than a regime of generalized suspicion because it focuses investigation on provable wrongdoing rather than on the social acceptability of religious change.

Keywords: religious conversion; freedom of conscience; Article 25; anti-conversion laws; consent; privacy; public order; criminal process; inter-faith marriage; comparative constitutional law.

1. INTRODUCTION

Religious conversion is often described as a conflict between the right to propagate religion and the power of the State to preserve public order. That description is incomplete. At the centre of every conversion dispute is an individual whose beliefs, affiliations and relationships may be changing. The constitutional question is therefore not only what one person may preach to another, but also who is legally entitled to decide whether a change of faith is genuine, voluntary or impermissibly procured. Articles 14, 19, 21 and 25 together require the law to respect equal citizenship, expression, dignity, privacy and freedom of conscience.¹

The subject also contains a real protective concern. A person may be threatened, deceived, confined, trafficked, financially dominated or subjected to abuse of a position of trust. The State need not remain passive in such circumstances. Article 18 of the International Covenant on Civil and Political Rights itself combines a positive freedom to have or adopt a religion with an absolute protection against coercion impairing that choice.² The central problem is how to identify legally relevant coercion without treating religious persuasion, charitable association, family dissent or an inter-faith relationship as proof of crime.

Indian law has moved through three broad stages. The earliest statutes in Odisha and Madhya Pradesh prohibited conversion by force, fraud or inducement. Later enactments added notices, declarations and official inquiries. The newest laws combine those procedures with marriage-related offences, broadened allurements, reverse burdens, non-bailable classifications, enhanced punishments and expanded complainant standing. The result is a shift from punishing an unlawful method to supervising the event of conversion itself.

This paper advances a limited thesis. The State may criminalise conversion obtained by force, fraud, coercion, trafficking, impersonation, confinement or a direct material quid pro quo. It may also provide heightened protection where a person lacks legal capacity or is under proven custodial domination. It should not, however, presume that an adult's conversion is unlawful merely because it follows religious teaching, charity, emotional attachment or marriage. Nor should the adult be required to justify the spiritual sincerity of the decision before the executive. The legal issue is voluntary consent, not theological correctness.

¹ The Constitution of India, arts. 14, 19(1)(a), 21, 25 and 26.

² International Covenant on Civil and Political Rights, 1966, art. 18; Human Rights Committee, General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion, CCPR/C/21/Rev.1/Add.4 (July 30, 1993), paras 1-5.

The argument is developed through doctrinal and comparative methods. Part II clarifies the constitutional concepts of conscience, propagation and conversion. Part III maps the evolution of Indian state legislation, including developments through July 2026. Parts IV and V analyse consent and criminal process. Part VI studies the judicial response, particularly the Supreme Court's decision in *Rajendra Bihari Lal*. Part VII compares Nepal's prohibition-oriented model with South Africa's voluntariness-oriented constitutional model. The final parts formulate a consent-nexus-harm test and propose legislative and procedural reforms.

1.1 Research Questions and Method

The paper addresses four questions. First, what is the constitutional difference between propagation, persuasion and unlawful conversion? Secondly, can prior notice, police inquiry and public disclosure be justified when the person converting is a competent adult? Thirdly, what evidentiary and criminal-process safeguards are necessary when relatives or third parties allege coercion but the adult asserts free choice? Fourthly, what lessons can India draw from foreign systems that either criminalise conversion-related persuasion or protect religious choice through general constitutional norms?

The method is primarily doctrinal. It relies on constitutional provisions, enacted state statutes, official gazettes, Supreme Court and High Court judgments, and international instruments. Legislative proposals are distinguished from operative law. Thus, the paper treats the Rajasthan statute as an enacted and commenced law, but describes Uttarakhand's 2025 proposal as a returned bill rather than an amendment in force. It also separates facial constitutional challenges, which remain pending, from decisions resolving particular prosecutions. This distinction is necessary because a research paper should not report political announcements as law or interim observations as final holdings.

2. CONVERSION AS CONSCIENCE, SPEECH AND STATUS

The constitutional text begins with the freedom of conscience. Article 25 protects the inward domain of belief before it protects public profession, practice and propagation. Early Supreme Court decisions recognised that religion includes beliefs and acts regarded by a community as integral to its faith, while also affirming that every person is free to profess and disseminate religious views.^{3,4} Conversion occupies both domains. It is an internal

³ *Commr., Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, 1954 SCR 1005.

⁴ *Ratilal Panachand Gandhi v. State of Bombay*, 1954 SCR 1055.

reorientation of conviction and, frequently, an external change of name, worship, community affiliation or personal-law status.

Conscience necessarily contains a negative as well as a positive freedom. A person may adhere to a religion, reject it, adopt another religion, move between traditions, or decline to declare a religion. *Bijoe Emmanuel* is significant beyond its facts because it shows that constitutional conscience protects a minority position even when public authorities or a majority consider that position mistaken or disloyal.⁵ A conversion law must therefore protect both the person resisting conversion and the person resisting pressure not to convert.

Propagation is communicative. It includes explaining doctrine, inviting participation, distributing literature and attempting through reason or testimony to persuade another. Conversion is the recipient's decision. Coercive conversion is different because the recipient's apparent decision is produced by a legally prohibited means. A sound statute must keep these categories separate. If propagation is equated with conversion, Article 25's express guarantee becomes empty. If every material benefit associated with a religious institution is treated as allurement, ordinary education, health care and relief work become potential evidence of crime.

Rev. Stainislaus remains the controlling starting point. The Supreme Court upheld the old Madhya Pradesh and Orissa laws, held that the right to propagate does not include a fundamental right to convert another person, and accepted the State's public-order competence to prohibit conversion by force, fraud or allurement.⁶ The judgment did not hold that the State may prohibit a person from changing his or her own religion. Nor did it consider modern requirements of advance disclosure, public objections, marriage scrutiny, reverse burdens or restrictive bail. Its ratio must therefore be applied to the wrongful means before it, not transformed into a general licence to supervise conscience.

3. THE CONSTITUTIONAL FRAME AFTER PRIVACY AND AUTONOMY

The constitutional landscape after *Stainislaus* is materially different. *Puttaswamy* recognised privacy as including decisional autonomy, identity, dignity and choices central to

⁵ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

⁶ *Rev. Stainislaus v. State of Madhya Pradesh*, (1977) 1 SCC 677.

the development of personality.⁷ Religious belief is among the most intimate forms of self-definition. Requiring an adult to disclose a proposed conversion to the District Magistrate, undergo police inquiry and face objections from neighbours or relatives is consequently not a minor administrative formality. It alters the conditions under which the right can be exercised.

Privacy does not make conversion immune from investigation. It changes the burden of justification. State action intruding into a protected decision must have a legitimate aim, a rational connection with that aim, a necessity-based design and a proportionate balance between public interest and individual harm.⁸ A confidential inquiry triggered by credible evidence of confinement may satisfy that standard. Automatic public notice for every adult conversion is much harder to defend because it exposes the right-holder before any unlawful conduct is shown.

The adult-choice cases reinforce this conclusion. In *Shafin Jahan*, the Supreme Court restored Hadiya's marriage and emphasised that the choice of a partner and faith belongs to the individual, not to parents or courts.⁹ *Lata Singh* and *Shakti Vahini* similarly reject family and community control over adult relationships.^{10, 11} When a conversion is connected with an inter-faith relationship, the law must investigate coercion without reproducing the very familial control from which the adult seeks protection.

Equality also matters. Several statutes prescribe enhanced punishment when the person converted is a woman, grouping every adult woman with minors and persons lacking capacity. A legislature may respond to documented patterns of gendered exploitation. Yet a blanket classification may also embody the stereotype that women are unusually incapable of religious or marital choice. Modern equality jurisprudence rejects protection that is built on denial of agency.¹² The constitutionally safer approach is to aggravate punishment when vulnerability is proved through age, disability, custody, dependency, trafficking or abuse of authority, rather than through sex alone.

⁷ Justice K.S. Puttaswamy (Retd.) v. Union of India, (2017) 10 SCC 1.

⁸ Modern Dental College & Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353.

⁹ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

¹⁰ *Lata Singh v. State of Uttar Pradesh*, (2006) 5 SCC 475.

¹¹ *Shakti Vahini v. Union of India*, (2018) 7 SCC 192.

¹² *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1; *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

4. EVOLUTION AND PRESENT LANDSCAPE OF STATE LEGISLATION

4.1 From Wrongful Means to Regulatory Procedure

The Orissa Freedom of Religion Act, 1967 and the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 formed the first generation. Their central offence was conversion by force, fraud or inducement, supported by comparatively modest penalties and reporting requirements.¹³ Arunachal Pradesh legislated in 1978, while Chhattisgarh later continued the Madhya Pradesh model. These laws were controversial, but their conceptual centre was the means used to obtain conversion.

A second generation expanded administrative control. Gujarat's 2003 legislation and later amendment, Uttarakhand's 2018 Act, Himachal Pradesh's 2019 Act and Madhya Pradesh's 2021 Act introduced combinations of prior declarations, official inquiry, marriage provisions, aggravated punishments and reversed evidentiary burdens.^{14, 15, 16, 17} Karnataka and Haryana enacted detailed statutes in 2022, both regulating the procedure of voluntary conversion as well as criminalising conversion by prohibited means.^{18, 19}

As of 18 July 2026, twelve States have enacted freedom-of-religion or unlawful-conversion statutes. They are not uniform. Some require only notice by a religious functionary; others require declarations by the convert before and after the event. Some provide public display and objections; some do not. Definitions of allurement range from direct material benefit to a promise of a better lifestyle or divine pleasure. The divergence reflects federal experimentation, but fundamental rights require a common constitutional floor.²⁰

4.2 Uttar Pradesh: The 2024 Amendment

The Uttar Pradesh Act of 2021 prohibits conversion through misrepresentation, force, fraud, undue influence, coercion or allurement; regulates declarations before and after conversion; makes offences cognizable and non-bailable; and contains institutional liability

¹³ The Orissa Freedom of Religion Act, 1967 (Orissa Act 2 of 1968), ss. 2-5; The Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (M.P. Act 27 of 1968), ss. 2-5.

¹⁴ The Gujarat Freedom of Religion Act, 2003 (Gujarat Act 22 of 2003), as amended by the Gujarat Freedom of Religion (Amendment) Act, 2021 (Gujarat Act 17 of 2021).

¹⁵ The Uttarakhand Freedom of Religion Act, 2018 (Uttarakhand Act 28 of 2018), as amended by Uttarakhand Act 13 of 2022, ss. 3-9.

¹⁶ The Himachal Pradesh Freedom of Religion Act, 2019 (H.P. Act 13 of 2019), ss. 3, 7 and 8.

¹⁷ The Madhya Pradesh Freedom of Religion Act, 2021 (M.P. Act 5 of 2021), ss. 3, 5, 6, 10, 12 and 13.

¹⁸ The Karnataka Protection of Right to Freedom of Religion Act, 2022 (Karnataka Act 25 of 2022), ss. 3-12.

¹⁹ The Haryana Prevention of Unlawful Conversion of Religion Act, 2022 (Haryana Act 16 of 2022), ss. 3-11.

²⁰ See generally PRS Legislative Research, "The Rajasthan Prohibition of Unlawful Conversion of Religion Bill, 2025: State Legislative Brief", available at: <https://prsindia.org/bills/state-legislative-briefs/the-rajasthan-prohibition-of-unlawful-conversion-of-religion-bill-2025> (last visited on July 18, 2026). The twelve States with enacted legislation are Odisha, Madhya Pradesh, Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Uttarakhand, Uttar Pradesh, Karnataka, Haryana and Rajasthan.

and a burden-of-proof provision.²¹ The 2024 amendment significantly increased punishment, inserted aggravated forms, widened section 4 so that information may be furnished by any person, and introduced demanding bail conditions.²²

The breadth of standing is especially consequential. A stranger may sincerely suspect wrongdoing, but may also be unable to assess a private adult's volition. The amended provision permits the criminal process to begin without the convert's complaint and without a close relative asserting incapacity or coercion. That legislative choice must now be read against the Supreme Court's later analysis in *Rajendra Bihari Lal*, even though that case interpreted the unamended section 4.

4.3 Rajasthan: The 2025 Act

Rajasthan enacted the most far-reaching statute presently in force. Act 21 of 2025 commenced on 29 October 2025. It uses broad categories including misinformation, convincing, propaganda and online solicitation; permits information by any person; prescribes high minimum sentences and fines; makes offences cognizable, non-bailable and triable by a Court of Session; authorises forfeiture-related consequences; and places the burden of proving lawful conversion on the person causing or facilitating it.²³

Its conversion procedure is particularly intrusive. A person proposing to convert must declare the intention at least ninety days in advance, while the religious convertor or priest must give two months' notice. The proposal may be displayed at multiple local offices for objections and inquiry into the genuine intention, purpose and cause of the proposed conversion. Non-compliance can render the conversion illegal and expose the participants to substantial punishment. The statute therefore treats even an assertedly voluntary adult conversion as a public regulatory event before any allegation of force or fraud arises.

The Rajasthan law sharpens three constitutional questions. First, can the State punish mere failure to notify when the conversion itself is voluntary? Secondly, can a public objection procedure be reconciled with privacy and physical safety? Thirdly, can broad notions such as glorifying one religion over another be separated from protected propagation and comparative theological speech? These questions are not answered by invoking *Stainislaus* in the abstract;

²¹ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 (U.P. Act 3 of 2021), ss. 2-12, as amended by the Uttar Pradesh Prohibition of Unlawful Conversion of Religion (Amendment) Act, 2024 (U.P. Act 7 of 2024).

²² The Uttar Pradesh Prohibition of Unlawful Conversion of Religion (Amendment) Act, 2024 (U.P. Act 7 of 2024), published in the Uttar Pradesh Extraordinary Gazette on Aug. 6, 2024, ss. 2-5.

²³ The Rajasthan Prohibition of Unlawful Conversion of Religion Act, 2025 (Rajasthan Act 21 of 2025), ss. 2-15; brought into force on Oct. 29, 2025 by S.O. 44, Home (Group-5) Department, Government of Rajasthan.

each device requires proportionality review.

4.4 Legislative Status Must Be Reported Accurately

Contemporary legal writing must distinguish bills from Acts. Uttarakhand's Legislative Assembly passed a stringent Freedom of Religion (Amendment) Bill in August 2025, but the Governor returned it for reconsideration in December 2025. No later enactment was verified by the cut-off date of this paper. The operative position is therefore the 2018 Act as amended in 2022, not the proposed 2025 penalties.²⁴

5. CONSENT AS THE CENTRAL LEGAL STANDARD

5.1 Consent Is More Than the Absence of Physical Force

A conversion may be non-voluntary even without physical violence. Threats to employment, family safety, immigration status, shelter or access to essential treatment can overpower choice. Fraud may concern identity, the nature of a ceremony or a direct misrepresentation made to procure conversion. Undue influence may arise where a person exercises custodial, fiduciary or spiritual authority over someone who is dependent and unable to make a free decision. The law is justified in addressing these situations.

At the same time, religious decisions are frequently shaped by relationships, emotion, community, hope, fear of divine consequences and expectations of moral transformation. These influences are not easily evaluated through ordinary contractual analogies. Every religion makes claims about truth, salvation, suffering or ethical life. If theological warnings are automatically classified as force or allurement, religious teaching itself becomes an offence. The correct legal inquiry is whether the influence destroyed practical freedom of choice, not whether belief was formed without influence.

Consent should therefore be assessed through capacity, information, voluntariness and causal nexus. Capacity asks whether the person can understand the nature and consequences of the decision. Information asks whether a material fact was deliberately concealed or falsified. Voluntariness asks whether a threat, dependency or domination overcame choice. Causal nexus asks whether the prohibited means actually produced the conversion. A wrongful act unrelated to the eventual change of faith should not satisfy the offence.

²⁴ The Uttarakhand Freedom of Religion (Amendment) Bill, 2025 was passed by the Legislative Assembly in Aug. 2025 but returned by the Governor for reconsideration in Dec. 2025. The operative statute, as verified on July 18, 2026, remains the 2018 Act as amended by Uttarakhand Act 13 of 2022. See High Court of Uttarakhand, "Uttarakhand Acts", available at: <https://highcourtofuttarakhand.gov.in/uttarakhand-act/> (last visited on July 18, 2026).

5.2 Allurement, Charity and the Quid Pro Quo Problem

Allurement is the most difficult statutory category because material welfare and religious association often coexist. Hospitals, schools, relief organisations and congregations may provide services from religious motivation. A beneficiary may later join the faith. Sequence alone does not establish procurement. The prosecution should show a direct or clearly implied bargain: the benefit was offered on condition that the recipient convert, or threatened to be withheld unless conversion occurred.

Broad phrases such as better lifestyle, free education or divine pleasure lack a stable criminal meaning. A promise that religious practice will improve a person's life is common to spiritual advocacy. Free education provided to all eligible students is charity, not conversion purchase. Even targeted aid to a member of a congregation is not necessarily a quid pro quo. The distinction should turn on conditionality, intent and causal proof.

Rajendra Bihari Lal is important here because the Supreme Court refused to treat receipt of foreign aid and charitable work in the name of religion as offences by themselves.²⁵ Financial records may be relevant where money is channelled to procure conversions, but lawful funding and welfare activity cannot substitute for proof of statutory ingredients. This approach directs investigation toward transactions and representations rather than toward the religious identity of a service provider.

5.3 Adult Women, Scheduled Communities and Contextual Vulnerability

Protective legislation may recognise that social and economic vulnerability affects consent. Minors and persons unable to understand the decision require special safeguards. Members of marginalised communities may face exploitation linked to poverty, discrimination or dependence. The difficulty is converting contextual risk into a conclusive presumption about entire groups.

The automatic treatment of every adult woman as a specially vulnerable convert is particularly problematic. It may increase punishment for genuine exploitation, but it also signals that female religious choice is inherently doubtful. Where the alleged convert appears before a court, understands the proceedings and clearly affirms her decision, the law should not privilege the objections of relatives merely because she is a woman. Protection must not become substituted decision-making.

²⁵ Rajendra Bihari Lal v. State of Uttar Pradesh, 2025 INSC 1249 : 2025 SCC OnLine SC 2265.

6. CRIMINAL PROCESS: WHEN PROCEDURE BECOMES PUNISHMENT

6.1 Complainant Standing and the Adult Convert

Standing rules determine who may activate the coercive power of the State. A complaint by the person converted is ordinarily the strongest evidence that consent was absent. A parent or guardian must be able to act for a minor or a person lacking capacity. Close relatives may also possess relevant information where the adult is missing, confined or unable to communicate. The difficulty arises when an unrelated person initiates proceedings despite the adult's express assertion of free choice.

Rajendra Bihari Lal interpreted the unamended Uttar Pradesh section 4, which limited the competent informant to the aggrieved person and specified relatives. The Supreme Court held that strangers could not initiate prosecution under that provision and connected the restriction to the private character of belief and the danger of motivated litigation.²⁶ The 2024 amendment now permits information by any person, but the constitutional concern identified by the Court does not disappear. It shifts from statutory interpretation to proportionality and abuse-prevention.

A workable compromise is judicially screened standing. A stranger should be able to provide information about confinement, trafficking, violence or organised fraud, but registration of a conversion offence against identified adults should require prompt confidential verification from the alleged converts. If they affirm consent and no independent evidence of prohibited means exists, the case should not proceed merely because a third party disapproves.

6.2 Prior Declarations, Public Notice and Police Inquiry

Prior declaration is often defended as a means of verifying free consent. Yet mandatory advance disclosure can defeat the right it purports to protect. A person changing religion may face violence, eviction, forced confinement or loss of livelihood if family or local groups learn of the decision. Public display and invitations to object transfer control from the right-holder to the surrounding community.

The Himachal Pradesh High Court in Evangelical Fellowship struck down a prior-notice requirement under the earlier 2006 law, reasoning that compelled disclosure of an intended conversion invaded privacy and exposed the person to pressure.²⁷ The principle remains

²⁶ Rajendra Bihari Lal v. State of Uttar Pradesh, 2025 INSC 1249; 2025 SCC OnLine SC 2265.

²⁷ Evangelical Fellowship of India v. State of Himachal Pradesh, 2012 SCC OnLine HP 5554.

relevant even where a later legislature modifies the procedure. Consent verification should be confidential, risk-based and separated from public permission.

The analogy with inter-faith marriage is instructive. In *Safiya Sultana*, the Allahabad High Court read the Special Marriage Act notice provisions in light of privacy and adult choice, holding that publication should not operate automatically against couples who do not seek it.²⁸ ²⁹ If public notice is constitutionally troublesome for marriage, it is equally troublesome for a decision about faith, especially when the two are socially connected.

Police inquiry into the real intention or purpose of conversion is also overbroad unless confined to prohibited means. Officials can investigate threats, payments, impersonation or confinement. They are not institutionally competent to determine whether a spiritual experience is authentic. A statutory question about genuine faith invites subjective judgments and selective enforcement.

6.3 Reverse Burdens and the Presumption of Innocence

Several modern statutes place the burden on the person who caused or facilitated conversion to prove that it was not unlawful. Reverse burdens are not unknown to Indian criminal law, but they are constitutionally sensitive. The prosecution must ordinarily establish foundational facts before any special-knowledge burden arises.³⁰

Conversion cases make a broad reverse burden especially harsh. The accused may have to prove the absence of private influence, theological persuasion or an undefined allurement. Negative facts are difficult to establish, and the evidence may consist of conversations known primarily to the adult convert. If that adult affirms voluntariness, a presumption against the alleged convertor becomes artificial. If the adult alleges coercion, the prosecution still should identify the specific threat, deception or bargain before the burden shifts.

The better rule is a limited evidentiary presumption only after the State proves three foundational elements: participation of the accused in the conversion, a specifically identified prohibited means, and material connecting that means to the decision. Even then, the ultimate burden of proving guilt beyond reasonable doubt should remain with the prosecution.

²⁸ *Smt. Safiya Sultana through Husband Abhishek Kumar Pandey v. State of Uttar Pradesh*, 2021 (2) ALJ 363 : MANU/UP/0011/2021.

²⁹ The Special Marriage Act, 1954, ss. 5-7; *Smt. Safiya Sultana through Husband Abhishek Kumar Pandey v. State of Uttar Pradesh*, 2021 (2) ALJ 363.

³⁰ *The Bharatiya Sakshya Adhiniyam*, 2023, ss. 104-109. See also *Noor Aga v. State of Punjab*, (2008) 16 SCC 417, on the need for the prosecution to establish foundational facts before a reverse burden operates.

6.4 Arrest, Bail and Institutional Liability

When offences are cognizable and non-bailable, the process can become the punishment. Arrest may disrupt employment, family life and reputation even if the case is later quashed. Statutes with twin-condition bail clauses intensify this effect by requiring the court to form an early view that the accused is probably not guilty. Such conditions are particularly severe where the offence itself is defined through broad concepts.

General arrest jurisprudence requires necessity rather than mechanical detention.³¹ Under the Bharatiya Nagarik Suraksha Sanhita, police powers must still be exercised for legitimate investigative purposes and subject to judicial supervision.³² In an adult conversion case, arrest should normally require independent evidence of violence, trafficking, confinement, destruction of evidence, intimidation of witnesses or deliberate evasion. A mere allegation by a stranger should not suffice.

7. JUDICIAL DEVELOPMENT: FROM PUBLIC ORDER TO EVIDENTIARY DISCIPLINE

7.1 High Courts and Adult Choice

High Courts have repeatedly encountered conversion allegations through habeas corpus petitions, inter-faith relationships and quashing applications. In *Salamat Ansari*, the Allahabad High Court treated the decision of two adults to live together as an aspect of personal liberty and rejected the use of criminal proceedings merely because of religious difference.³³ Such cases do not immunise fraud; they establish that family displeasure is not evidence of it.

The Gujarat High Court's interim order in *Jamiat Ulama-E-Hind Gujarat* stayed important parts of the 2021 amendment to the extent that they treated inter-faith marriage between consenting adults as unlawful conversion without force, allurement or fraud.³⁴ The order preserves the anti-coercion core while resisting a statutory inference from marriage alone. It reflects a crucial principle: association between conversion and marriage may justify careful inquiry, but cannot replace proof of prohibited means.

³¹ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273; *Satender Kumar Antil v. Central Bureau of Investigation*, (2022) 10 SCC 51.

³² The Bharatiya Nagarik Suraksha Sanhita, 2023, ss. 35, 173, 175, 193 and 528.

³³ *Salamat Ansari v. State of Uttar Pradesh*, 2020 SCC OnLine All 1382.

³⁴ *Jamiat Ulama-E-Hind Gujarat v. State of Gujarat*, R/Special Civil Application No. 10304 of 2021, interim order dated Aug. 19, 2021 (Guj. H.C.).

7.2 Rajendra Bihari Lal: The Leading 2025 Decision

Rajendra Bihari Lal is the most important recent Supreme Court decision on the operation of a state conversion statute. The case arose from multiple FIRs concerning alleged mass conversion in Uttar Pradesh. The Court examined complainant competence under the unamended section 4, the repetition of allegations, the absence of statutory ingredients and the use of criminal process against numerous accused.³⁵

The judgment contains three propositions of wider relevance. First, belief is personal and private, so persons with no nexus to the alleged convert are poorly placed to determine voluntariness. Secondly, charitable activity and foreign assistance do not, without more, establish unlawful conversion. Thirdly, criminal law cannot be used as a tool of harassment on the basis of inherently unreliable material. The Court accordingly quashed the impugned proceedings.

The decision does not invalidate the Uttar Pradesh Act or decide the facial constitutionality of the 2024 amendment. Its force is nevertheless substantial. It requires courts to scrutinise locus, ingredients, causation and duplication instead of assuming that allegations concerning religion justify exceptional deference to investigation. It also places the adult convert, rather than the ideological complainant, near the centre of the inquiry.

The amended section 4 creates a future constitutional conflict because it deliberately widens the category of informants beyond the class interpreted in Rajendra Bihari Lal. A court reviewing the amendment will need to decide whether prompt adult verification and other safeguards can save broad standing, or whether the provision creates a disproportionate risk of intrusion and motivated prosecution.

7.3 Mustafa and the Boundary of Propagation

In Mustafa v. State of Karnataka, the Karnataka High Court quashed proceedings initiated by an unrelated complainant where the allegations did not disclose that any person had actually been converted or that an attempt satisfying the statutory ingredients had occurred.³⁶ Distribution of religious material and propagation could not, by themselves, be treated as an offence.

Mustafa is doctrinally valuable because it prevents the offence of attempt from swallowing constitutionally protected speech. An attempt requires conduct sufficiently proximate to a prohibited conversion by unlawful means. A sermon, pamphlet or invitation may be evidence

³⁵ Rajendra Bihari Lal v. State of Uttar Pradesh, 2025 INSC 1249 : 2025 SCC OnLine SC 2265.

³⁶ Mustafa v. State of Karnataka, 2025 SCC OnLine Kar 12650 : 2025:KHC-D:8877, decided on July 17, 2025.

in a larger case, but cannot automatically establish force, fraud or allurement. The decision therefore complements *Stainislaus*: the State may prohibit improper conversion, but must leave space for propagation.

Together, *Rajendra Bihari Lal* and *Mustafa* indicate a movement toward evidentiary discipline. Courts are not rejecting the legitimacy of anti-coercion laws. They are insisting that the State identify a competent complainant, an actual or attempted conversion, a prohibited means and a factual nexus among them.

7.4 Pending Constitutional Questions

The principal facial questions remain unresolved. The Supreme Court is yet to pronounce finally on the compatibility of modern prior-notice regimes, public disclosure, broad allurement, marriage provisions, reverse burdens and universal complainant standing with Articles 14, 19, 21 and 25. The pending petitions include a direct challenge to the Uttar Pradesh Act as amended in 2024.³⁷

8. COMPARATIVE CONSTITUTIONAL PERSPECTIVES

8.1 Nepal: A Prohibition-Oriented Model

Nepal provides a nearby example of a more explicit constitutional prohibition. Article 26(3) of the 2015 Constitution states that no person shall convert another person from one religion to another or engage in conduct jeopardising the religion of another.³⁸ Section 158 of the National Penal Code criminalises causing, attempting or abetting conversion and extends to propagation undertaken with the intention of conversion.³⁹

The Nepalese model has the advantage of textual clarity about the State's objective. It also demonstrates the danger of collapsing persuasion into coercion. If propagation intended to persuade is itself criminal, the freedom to manifest and teach religion becomes narrow. The line between explaining a faith and attempting conversion is difficult to administer because effective propagation ordinarily hopes to influence belief.

For India, Nepal is therefore a caution rather than a template. The Indian Constitution expressly uses the word propagate, and *Stainislaus* permits explanation and dissemination even while denying a right to convert another by improper means. Indian legislation should not use

³⁷ *Roop Rekha Verma v. State of Uttar Pradesh*, W.P. (C) No. 399 of 2025, tagged with Citizens for Justice and Peace v. State of Uttar Pradesh, W.P. (Crl.) No. 428 of 2020 (pending before the Supreme Court as verified from the Court's office report dated Apr. 29, 2025).

³⁸ Constitution of Nepal, 2015, art. 26(3).

³⁹ National Penal (Code) Act, 2017 (Nepal), s. 158.

concepts such as convincing or solicitation in a way that reproduces a general ban on persuasive religious speech.

8.2 South Africa: Voluntariness, Equality and General Law

South Africa represents a different constitutional orientation. Section 15 guarantees freedom of conscience, religion, thought, belief and opinion; sections 9, 10 and 14 add equality, dignity and privacy; and section 16 protects the receipt and imparting of ideas.⁴⁰ The Constitution emphasises that religious observance in state or state-aided institutions must be free and voluntary.

South African constitutional decisions treat religious freedom as intrinsically connected with voluntariness and equal citizenship. *S v. Lawrence* and *Christian Education* recognise both the importance of belief and the State's authority to impose general, proportionate laws protecting others.⁴¹ *Madrasah Taleemuddeen* further confirms that protection extends to observance, manifestation, teaching and dissemination.⁴²

South Africa does not depend on a general prior-permission system for changing religion. Coercion, assault, fraud, trafficking, undue influence and discrimination are addressed through ordinary law and constitutional limitations. This does not mean that every religious practice is protected; it means that legal control is organised around demonstrable harm rather than an administrative licence to change faith.

8.3 International Law and the Right to Change Belief

International law expressly protects the freedom to have or adopt a religion or belief of one's choice and prohibits coercion impairing that freedom.⁴³ The Universal Declaration also refers to freedom to change religion or belief.⁴⁴ Restrictions may apply to manifestation, but the inner freedom to choose is accorded especially strong protection.

⁴⁰ Constitution of the Republic of South Africa, 1996, ss. 9, 10, 14, 15 and 16.

⁴¹ *S v. Lawrence*; *S v. Negal*; *S v. Solberg*, 1997 (4) SA 1176 (CC); *Christian Education South Africa v. Minister of Education*, 2000 (4) SA 757 (CC).

⁴² *Madrasah Taleemuddeen Islamic Institute v. Chandra Giri Ellaurie*, 2023 (2) SA 143 (SCA): [2022] ZASCA 160.

⁴³ International Covenant on Civil and Political Rights, 1966, art. 18; Human Rights Committee, General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion, CCPR/C/21/Rev.1/Add.4 (July 30, 1993), paras 1-5.

⁴⁴ Universal Declaration of Human Rights, 1948, art. 18; Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, G.A. Res. 36/55, Nov. 25, 1981.

9. A CONSENT-NEXUS-HARM TEST

The preceding analysis supports a five-stage test for investigation and adjudication. The test is designed to preserve the legitimate anti-coercion purpose of state laws while preventing conscience from becoming presumptively criminal.

First, the complaint must identify a legally prohibited means. The allegation should specify force, threat, confinement, impersonation, material deception, trafficking, abuse of custody or a direct conditional benefit. General assertions that the accused preached, prayed, distributed literature, offered unconditional charity or discussed marriage should not satisfy this stage.

Secondly, there must be a direct causal nexus between the prohibited means and the conversion or attempted conversion. The prosecution must show that the threat, fraud or bargain was used for the purpose of procuring the change of faith and materially influenced the decision. Mere temporal association is insufficient.

Thirdly, the statement of a competent adult must receive presumptive weight. It should be recorded confidentially, away from the accused, family members, religious organisations and activist complainants. If the adult clearly affirms free choice and demonstrates capacity, investigation should continue only where independent evidence indicates trafficking, confinement, serious fraud, impersonation or intimidation. The presumption is rebuttable because victims may be controlled, but it cannot be ignored merely because officials distrust the choice.

Fourthly, the State must establish foundational facts before any burden shifts. The prosecution should prove the occurrence or attempted occurrence of conversion, the accused's participation and material indicating a prohibited means. A broad statutory reverse burden should be read subject to this constitutional minimum.

Fifthly, procedural intensity must correspond to demonstrated harm. Confidential verification may be justified on credible information. Public notice, universal objections, routine arrest, attachment of property and restrictive bail should require a far stronger threshold. The graver the procedural consequence, the more specific the evidence must be.

10. CONCLUSION

The constitutional legitimacy of conversion regulation depends on what the law targets. A law directed at violence, fraud, confinement, trafficking, impersonation or a direct material bargain protects conscience because it preserves the freedom of the person being approached. A law that automatically publicises an adult's decision, invites community objections, presumes marriage to be suspicious, reverses the burden without foundational proof or permits strangers to launch punitive proceedings may instead suppress conscience.

Stainislaus remains authoritative, but it answers a narrower question than the modern statutes present. Its anti-coercion principle must be reconciled with Puttaswamy's privacy, Shafin Jahan's adult autonomy and Rajendra Bihari Lal's insistence on competent complainants and statutory ingredients. That reconciliation does not require abolition of all state laws. It requires constitutional discipline in their definitions, procedures and enforcement.

The comparative experience confirms the point. Nepal shows how a prohibition on converting another can expand toward the criminalisation of persuasive propagation. South Africa shows that voluntariness, equality and general law can protect both religious communities and individual choice without a licensing regime. International law supplies the symmetrical principle that no person should be coerced either to adopt or to retain a religion.

The proposed consent-nexus-harm test offers a workable middle path. It asks what prohibited means was used, whether it caused the conversion, what the adult says in a confidential setting, what foundational facts the State can prove, and whether the procedural response is proportionate to demonstrated harm. Such a test is not hostile to religion or to regulation. It makes the protection of conscience the object of both. In a secular democracy, the State's task is to punish the destruction of choice, not the choice itself.

RECOMMENDATIONS

- 1. Define allurement narrowly.** Limit allurement to a direct material benefit offered or withheld as consideration for conversion. Exclude bona fide charity, open-access education, medical aid, hospitality and general promises of spiritual improvement unless a specific conditional bargain is proved.

2. **Remove prior permission and public notice.** A competent adult should not need executive permission to change religion. If a declaration system is retained, it should be voluntary or confidential, and should not involve public display or routine objections.
3. **Make adult verification confidential and prompt.** Where a credible complaint is received, a magistrate should record the adult's statement in a safe setting within a short statutory period. The adult must have access to independent legal aid and protection from family as well as organisational pressure.
4. **Restrict complainant-triggered prosecution.** The converted person, a guardian for a minor or incapacitated person, and specified close relatives with concrete facts should have ordinary standing. Information from strangers should trigger preliminary verification, not automatic arrest or prosecution.
5. **Restore the prosecution's primary burden.** The State should prove foundational facts and guilt beyond reasonable doubt. Any presumption must be limited, rebuttable and confined to facts genuinely within the accused's special knowledge.
6. **De-link marriage from presumption.** Marriage or an inter-faith relationship should not itself constitute unlawful conversion. Conversion and matrimonial validity should be assessed under their respective laws, with criminal liability requiring independent proof of prohibited means.
7. **Replace group stereotypes with contextual vulnerability.** Enhanced punishment should turn on minority, incapacity, disability affecting consent, custody, trafficking, dependency or abuse of authority. Adult women and Scheduled Caste or Scheduled Tribe persons should not be presumed incapable of autonomous choice.
8. **Apply strict arrest safeguards.** Police should record reasons showing necessity, independent material and the risk addressed by arrest. In cases resting only on a third-party complaint contradicted by the adult convert, arrest should be exceptional.
9. **Protect propagation and bona fide institutions.** Every statute should expressly state that sermons, comparative theology, distribution of literature, voluntary prayer meetings and non-conditional welfare activity are not offences without proof of a prohibited means.
10. **Publish anonymised enforcement data.** States should report FIRs, arrests, charge-sheets, convictions, acquittals, quashing orders and complaints closed after adult verification. Data would permit evaluation of both genuine coercion and misuse.