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An Analysis of State Anti-Conversion Laws in India

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ABSTRACT

Indian constitution stands on the base of secularism. Indian political circuit, in recent times has seen the dishonest forms of politico-religious swamp. With many states of the Indian Union making laws regulating religious conversions, though the anti-conversion laws is not a new phenomenon and has become more politicized and negatively publicized after strings of new state legislations they were very much in existence even before the Independence.

The Anti-Conversion are laws which is introduced mainly by state to prohibit the conversion by force, allurement, gratuity, and other method by which one man repudiate his religion and convert into another religion. All the provisions of anti-conversion laws of numerous states and their implications on Constitution have been examined and significant cases where the constitutional validity of some of these laws has been challenged are discussed.

In spite of the criticism of India's anti-conversion laws, many human rights bodies have recognized that these laws have follow in several arrests and no convictions. The conversion is seen as a major mean to expand population. Anti-conversion laws are seen as an alternative measure to the problem of conversion. The statistical analysis is supplemented with a case study of some states where the law is implemented. A detailed study of the legislations showcases that the language used is often extraordinarily broad and vague, posing some serious challenges to religious freedom as guaranteed by the Indian Constitution and embodied in international human rights instruments.

I. INTRODUCTION

Religion is the very basis of mankind and plays a vital role in people's lives. It is quite evident that law and religion are co-dependent on each other because even before the concept of democracy and state, religion is use to bound people to follow their religious duties and claim their religious rights. It paths the way of living for the followers of a particular religion to follow a definite kind of livelihood with their moral duty bounded by certain rules of the religion.

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India is home to a diversity of religious beliefs and practices. The Indian subcontinent is the birthplace of four major world religions—Hinduism, Buddhism, Sikhism, and Jainism. According to reported 2011 census data, 79.80% of the population of India is Hindu, 14.23% Muslim, 2.30% Christian, 1.72% Sikh, 0.70% Buddhist, and 0.37% Jain.

The Constitution of India states that India is a secular state and it strengthened the concept of secularism by granting Freedom of Religion as a fundamental right to its citizens under Article 25-28 of the Constitution.

In spite of a rich tradition and legal & constitutional framework supportive of freedom of conscience and the right to practice the religion of one's choice, religious minorities in India find themselves frequent victims of religiously motivated violence. Despite the liberty granted by the Constitution there have been several incidents of religious intolerance which resulted in riots and violence, notably, the 1984 Anti-Sikh riots in Delhi, 1990 Anti-Hindu riots in Kashmir, 2002 Gujarat riots and the 2008 Anti-Christian riots

The Freedom of Religion Acts or the 'anti-conversion' laws in India are state-level statutes that have been established to regulate religious conversions. This legislation regulate conversions that are not purely voluntary. Out of the 28 states, 10 states have these laws in force; namely, Arunachal Pradesh, Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Uttarakhand, Uttar Pradesh and Tamil Nadu. With only a very slight variation between the state laws, they are very similar in structure and context.

These laws seek to limit any person from converting or attempting to convert, either directly or otherwise, another person through 'forcible' or 'fraudulent' means, or by 'allurement' or 'inducement'. Fines and penalties for breaching the laws can vary from monetary fines of about 5,000 to 50,000 INR to imprisonment of one to three years. Some states provide for rigorous punishments and penalties if women, children or members of SC/ST community are being converted³. Such laws were first introduced in the 1960s after failed attempts to enact these laws at the central level.⁴

II. HISTORY OF THE ANTI-CONVERSION LAWS

India has sufficiently great Muslim, Sikh, Christian, Buddhist, Jain and Zoroastrian populations.

³ Testimony of Katrina Lantos Swett, Vice Chair USCIRF, Before the Lantos Human Rights Commission on the Plight of Religious Minorities in India 5 (Apr. 4, 2014), [https://www.uscirf.gov/sites/default/files/India testimony TLHRC April 2014 FINAL.pdf](https://www.uscirf.gov/sites/default/files/India%20testimony%20TLHRC%20April%202014%20FINAL.pdf).

⁴ 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).

Laws restricting religious conversions were originally introduced by Hindu princely states during the British Colonial period—mainly “during the latter half of the 1930s and 1940s.”⁵ These states enabled the laws “in an attempt to preserve Hindu religious identity in the face of British missionaries.”⁶ Some of the laws from that period include the Raigarh State Conversion Act, 1936; the Surguja State Apostasy Act, 1942; and the Udaipur State Anti-Conversion Act, 1946.

Post-Independence, a string of anti-conversion bills were introduced in the parliament, but could see the light of the day. The first bill introduced was the Indian Conversion (Regulation and Registration) Bill in 1954. Its major focus was ‘licensing of missionaries and the registration of the conversion with government officials’.⁷ This bill failed to get majority support in the Lok Sabha and was thus rejected. This followed the introduction of the Backward Communities (Religious Protection) Bill in 1960, which sought to check the conversion of Hindus to ‘non-Indian religions’ which as per the bill included, Islam, Christianity, Judaism and Zoroastrianism.⁸ This bill was also not passed due to lack of parliamentary support.

Ministers of the current government have vocalized their support for the adoption of an anti-conversion law at the national level, which some critics see as a menace to the secular values of the Constitution.⁹ However, the government’s plan to implement a national legislation received some setback from the Ministry of Law and Justice, which stated that it is ‘purely a state subject’¹⁰ – i.e., a matter that lies purely under the constitutional domain of the states under the state list in the Schedule Seven of the Constitution.¹¹ Thus the Freedom of Religion acts were enacted at the state level to regulate religious conversions carried out by force, fraud or other inducements. In the 1980s, the target of anti-conversion legislation was hugely Muslims seeking to convert non-Muslims, while in the 1990s Christianity received more attention because of its western style colonialism.¹²

⁵Jennifer R. Coleman, Authoring (In)Authenticity, Regulating Religious Tolerance: The Legal and Political Implications of Anti-Conversion Legislation for Indian Secularism 23 (Paper Presented to Penn Program on Democracy, Citizenship, and Constitutionalism Graduate Workshop, Sept. 13, 2007–08).

⁶ James, *supra* note 3.

⁷ Dr. Iqtidar Karamat Cheema, U.S. Commission on International Religious Freedom, Constitutional and Legal Challenges Faced by Religious Minorities in India 4 (Feb. 2017), [https://www.uscirf.gov/sites/default/files/Constitutional and Legal Challenges Faced by Religious Minorities in India.pdf](https://www.uscirf.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf).

⁸ Indian Law Institute, A Study of Compatibility of Anti-Conversion Laws with Right to Freedom of Religion in India 31 (2007) (submitted to India’s National Commission for Minorities).

⁹ Saurav Datta, *India’s Mass Conversion Problem*, Al Jazeera (Jan. 4, 2015), <http://www.aljazeera.com/indepth/opinion/2015/01/india-mass-conversion-problem-20151274531627294.html>.

¹⁰ *National Anti-conversion Law Not Tenable: Law Ministry*, Deccan Chronicle (Apr. 15, 2015), <http://www.deccanherald.com/content/471944/national-anti-conversion-law-not.html>.

¹¹ INDIA CONST. SCHEDULE 7.

¹² Jennifer, *supra* note 4.

III. IMPLEMENTATION AND ENFORCEMENT OF THE ANTI-CONVERSION LAWS

(A) Human Rights Violations

Over the years, Human rights organizations and institutions have showed concerns about the rights implications of, and lack of equitable solution under, these state anti-conversion laws. According to the US Commission on International Religious Freedom (USCIRF), these laws, based on concerns about unethical conversion tactics, generally require government officials to assess the legality of conversions out of Hinduism only, and provide for fines and prison term for anyone who uses force, fraud, or ‘inducement’ to convert another.”¹³

A report released by the USCIRF stated that although India emphasizes “complete legal equality” and prohibits faith-based discrimination, “there are constitutional provisions, State and national laws that do not confer with international standards of freedom of religion or belief, including Article 18 of the UN Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights.” The report also stated that “the anti-conversion laws both by their design and implementation violates upon the individual’s right to convert, favor Hinduism over minority religions, and represent a significant challenge to Indian secularism”. Further, these laws have resulted in “inequitable practices against minorities.”¹⁴

(B) Convictions

Asma Jahangir, the UN Special Reporter on Freedom of Religion or Belief, noted in her report on India in 2011 that: ‘Even in the Indian states which have adopted laws on religious conversion there seem to be only few—if any—convictions for conversion by the use of force, inducement, or fraudulent means. In Orissa, for example, not a single violation over the past ten years of the Orissa Freedom of Religion Act 1967 could be cited by district officials and senior officials in the State Secretariat.’¹⁵

IV. SUPREME COURT ON THE ANTI CONVERSION LAWS

In the landmark judgment of *S.R. Bommai v. Union of India*¹⁶, the Supreme Court of India decided that, ‘India was already a secular state ever since the origin of the constitution. The constitution of India gives to its citizens the right to practice, profess and propagate their

¹³ USCIRF, Annual Report 2016: India 162.

¹⁴ Karamat Cheema, USCIRF, *supra* note 6, at 11.

¹⁵ UN Human Rights Council, *Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir : addendum : mission to India*, 26 January 2009, A/HRC/10/8/Add.3, <http://www.refworld.org/docid/498ae8032.html>, accessed 12 April 2016.

¹⁶ 1994 SCC (3) 1.

religion peacefully. However, despite the liberty granted by our constitution, there have been various incidents of religious intolerance which resulted in riots and violence, notable, the 1984 Anti-Sikh Riots in Delhi, 990 Anti-Hindu riots in Kashmir, 202 Gujarat Riots and the 2008 Anti-Christian Riots.

The Constitution of India guarantees the freedom to profess, practice, and propagate one's religion under article 25. The Supreme Court in the case of *Ratilal Panachand Gandhi v. State of Bombay*¹⁷, held that, 'every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for edification of others.

The Supreme Court in *Rev Stainislaus v. State of Madhya Pradesh*¹⁸ examined whether the right to practice and propagate one's religion also included the right to convert. The Court upheld the validity of the earliest anti-conversion statutes: the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, and the Orissa Freedom of Religion Act, 1967. It was held that, 'It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one specific religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.....It has to be appreciated that the freedom of religion enshrined in the Article [25] is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one's own religion.¹⁹ Because article 25(1) stipulates that the right is subject to "public order," the Court also found that the acts "clearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States," and that "the expression 'Public order' is of wide connotation."²⁰

¹⁷ 1954 SCR 1035.

¹⁸ (1977) 1 SCC 677.

¹⁹ *Id.* At 21.

²⁰ *Id.* At 24.

V. DEMERITS OF THE ANTI-CONVERSION LAWS

(A) Incidents Of Communal Violence

Some observers have noted that these ‘anti-conversion’ laws create a hostile or aggressive and on occasion violent environment for religiously minor communities because they do not require any evidence to support allegations of wrongdoings. In spite of a rich tradition and legal framework supportive of freedom of conscience and the right to profess, practice and propagate the religion of one’s choice, religious minorities in India have frequently been found to be victims of religiously motivated violence.

According to Human Rights groups, in 2015 over 160 incidents were reported where Christians were targeted for their faith, with the highest number of incidents coming from Madhya Pradesh, followed by Tamil Nadu, Uttar Pradesh and Chhattisgarh. The cases included physical assault, threats and intimidation. In some cases, women reported being sexually assaulted and threatened.²¹

According to the Ministry of Home Affairs, over 630 communal incidents were reported in January to October 2015. Communal violence in India registered a rise in incidents by 24% and related deaths by 65% from January to May 2015.

In its annual report for 2015, the United States Commission on International Religious Freedom (USCIRF) noted that since the 2014 general elections, religiously minor communities have been subjected to ‘derogatory comments by politicians linked to the ruling government’ and ‘numerous violent attacks and forced conversions by Hindu Nationalist Groups such as Rashtriya Swayamsevak Sangh (RSS) and the Vishva Hindu Parishad (VHP).²²

(B) In Conflict With Various Judgments And The Special Marriage Act.

The recent Uttar Pradesh Ordinance is no seen as in conflict with the Allahabad High Court’s recent Judgment in the case of *Sufiya Sultana V. State of U.P.*²³, which done away requirements of mandatory publication of notice and inviting objection under section 5, 6 and 7 of the Special Marriage Act, 1954 by declaring those provisions as declaratory and not mandatory being in violation of right to privacy of citizens, which is declared as a fundamental right in the landmark judgment of *K.S Puttaswamy*.²⁴

²¹ Data collated from cowever, section 26(3) of the CC www.SpeakOutAgainstHate.Org.

²² <https://www.uscirf.gov/sites/default/files/India%202015.pdf>.

²³ 2021 SCC 19.

²⁴ (2017) 10 SCC 1.

The Supreme Court in Landmark Judgments of Lily Thomas V. Union of India²⁵ and Sarla Mudgal V. Union of India²⁶ has confirmed that religious conversions carried out without a *bona fide* belief and for the sole purpose of deriving some legal benefit are illegal and do not hold water. These cases concerned religious conversions by Hindu men to Islam in order to conclude bigamous marriages.

The legal principle enshrined in these cases is applicable to incidents of religious conversion carried out purely for the sake of marriage. The Special Marriage Act, 1954 already permits an interfaith marriage which is a legal right that the Uttar Pradesh government cannot meddle with since it places tangible consequences for the parties to such a marriage in terms of succession. Thus for a Hindu, the law automatically enforces a partition from the individual's undivided family which deprives them of any potential accrual to such property subsequent to the marriage whereas for a Muslim, the law states inheritance to be conducted through the Indian Succession Act, 1925 rather than under Muslim personal laws following an interfaith marriage; the latter being more advantageous to a Muslim man.

Hence, the act of converting solely for the purpose of marriage so as to avoid the impact of the Special Marriage Act provides discernible legal benefits and can arguably be struck down by the *dicta* in Lily Thomas and Sarla Mudgal.

VI. CONCLUSION

A comprehensive analysis and examination of the Act primarily showcases that these act have served to undermine the religious freedom guarantees in India and globally, and are far from promoting and protecting religious freedom and their followers.

This legislation restricts religious freedom to more than 200 million Indian population and it may further limits the rights of many more as it gets further implementation in other Indian states following the suit. These laws have also been emulated to our bordering nations Nepal and Bhutan and considered by Sri Lanka.

Primarily influenced by a religious beliefs, the anti- conversions laws fail to achieve the very purpose for which they have been validated. Instead, they provide an opportunity to divisive forces within the nation to target and strike the constitutionally protected rights of minority groups and pose a serious threat to the free practice and propagation of religious ideologies and duties.

²⁵ 2000 (6) SCC 224.

²⁶ 1995 (3) SCC 635.

India's legislature, as well as the international community, need to work towards the abrogating or striking down of such laws as they impose serious threats to not only the Indian character of tolerance and communal harmony but also set a menacing precedence for other nations in the area and expanse of religious freedom.
