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Anti-Conversion Laws: Is it a Challenge to Secularism of the Indian Constitution

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ABSTRACT

Religion is the key to success for shaping human conduct and the state must maintain the degree of sensitivity between individual interest and community interest but today's world faced a religious war due to which government has made a regulation on anti-conversion law. The chapter is divided into many parts. The first chapter is Introductory, second chapter namely, the history as it depicts how this law evolved and why it is necessary to introduce this Act. The third chapter is important as it depicts the state level legislation in many states in a given order of introduction. The fourth chapter discusses the constitutional framework of anti-conversion law in India as well as at International aspect. The next fifth chapter discusses the important judgment in the field of anti-conversion concerning which case was upheld by the Hon'ble court. The sixth chapter deals with the judgment that is a conflict with the Special Marriage Act. The seventh chapter is all about the appraisal and critics as is this law bane or boon. The last chapter concludes the entire chapter in one segment. This study is based on how the Anti-conversion law is being introduced with its constitutional and International framework. This study is predicated on doctrinal research.

I. INTRODUCTION

India's notion of religion not only covers social, political, and economic but also embraces an emotionally distinct from India's worldview. Religion is a value and system of belief, which inculcate culture, practices, teaching, and expression. Religion has two faces one side divides the world another side unite the globe². Religion plays an important factor in terms of politics and made an influence in the electoral battle. India is a nation of culturally vast with diversification in religious beliefs and practices. The Indian subcontinent acts like a home from which four major world religions comes out-Hinduism, Buddhism, Sikhism, and Jainism³ and as per 2011 census data, 79.80% of population of India is Hindu, 14.23% Muslim, 2.30% Christian, 1.72% sikh, 0.70 % Buddhist and 0.37% Jain. Islam, which is the largest minority

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² Dr. Abhishek Atrey, Anti-Conversion Laws and their Constitutionality (July 4, 2021, 6:10 PM), <http://www.Indialegalive.com/top-news-of-the-day/news-anti-conversion-laws-and-their-constitutionality/>.

³ Kalhan Safaya, State Anti-conversion Laws in India, I pleader (July 3, 2021, 3:31 PM), <http://blogpleader.in/state-anti-conversion-laws-india/>.

religion, stood in third largest population in the world, which figure up to 14% of the nation population. The birth of human being is a credit to a specific race, caste regardless of whether it fits for modification or not. Conversion to different religion attracts secularism. Our Indian Constitution states that India is a secular country and every citizen has a right to profess, practice, and propagate his or her religion peacefully⁴. This secular word is not inserted in the inception of the constitution but later it was included in the Preamble as a part of the basic structure by way of amendment 42nd, 1976. Nevertheless, some intolerant incident took place, despite this freedom notably, in 1984 the Anti-Sikh Massacre in Delhi, 1990 Anti-Hindu riots in Kashmir, 2002 Gujarat riots and the Anti-Christian riots which turned into anti-religion conversion out of force or allurement.

II. HISTORY

The religion concept in India is very different from what the world perceives it to be. Anti-conversion is not a new concept in today's era but its inception from the British period. Anti-conversion laws are the oldest tradition recognized in the Indian subcontinent. This laws was brought up by the Hindu princely state during the British colonial period from 1930s-1940s before the independence. After Independence, nobody saw the light of the day after so many bills passed in the parliament. The First bill that was introduced in 1954 "The Indian Conversion Regulation and Registration Bill" regarding enforcing the licensing of missionaries and registration with the government for any conversion however this bill not gather the support from the lower house and was thus rejected. The Second bill which was introduced in 1960 is the Backward communities (Religious Protection) Bill regarding checking the Hindu's conversion to 'non-Indian religions' also rejected. The freedom of religion bills was also introduced in 1979 which sought "Official curbs on inter-religious conversion" also not passed due to lack of

Parliamentary support. According to **Numerous Humanitarian Organization in 2015**, a nationwide anti-conversion regulation was called for in India⁵"but at the same time administration ministers backed the national approval which is against the secular ideals. The current administration proposal to adopt and enact a law on Anti-conversion but at the same stalled by Ministry of Law and justice stating that the subject matter covered under state list falls under Entry 1 i.e. Public order of State List of seventh schedule of Indian Constitution.

⁴ Indian Constitution. Art.25.

⁵. Sanjana bishnoi, Anti-Conversion laws: a threat to the Indian Constitution (July 10, 2021, 4:00PM), <http://lexlife-in.cdn.ampproject.org/v/s/lexlife.in/2021/07/09/anti-conversion-laws-a-threat-to-the-indian-constitution/amp/>.

Reports and Instances of Conversion

India was already a secular country not from today but from the inception and origin of the constitution⁶. Despite so many contributions from the side of government from rich heritage to freedom for conscience and the ability to practice, profess but religious minority groups have suddenly been subjected to religious violence. In 2015 reports from Human Rights Organization that women sexually attacked and physical attacks, threats, and intimidation were there and more than 160 Christian were targeted in Madhya Pradesh followed by Tamil Nadu, Uttar Pradesh, and Chhattisgarh. Number of occurrences was 24% and associated death raised to 65%.

An Annual report from The United States Commission for International Religious Freedom (USSIRF) in 2015 noted that since the general election in India in 2014 derogatory remark from Bhartiya Janata Party(BJP) and violent assaults and forced conversion of Hindu Nationalist groups' have been made by Religious minorities, including Rashtriya swa⁷.'''

III. ANTI-CONVERSION LAWS: STATE LEVEL

Anti-conversion laws are state level enacted statute which can be said Freedom of Religion Acts which mainly concern with the regulation of conversion which is not purely voluntary after so many attempts at the national level. Madhya Pradesh and Orissa are the state, which followed this law. State law is variant in some way but quite similar to its content and structure. This law constrains the ability of communities to convert from the religion of ancestor mainly happen in weaker section of society or more easily be influenced and to prevent conversion, which is out of force or by fraudulent means. Initially, the target of anti-conversion in 1980 was seeking legislation by Muslim to convert into non-Muslim but slowly and gradually even Christian began to receive more attention in 1990s as they were associated with western-style colonial and the role active proselytizing that plays in the course of being a good Christian⁸.

State- level legislations:

1. Orissa

Freedom of Religion Act ,1967 in Orissa which states that no person shall convert from one faith to another by use of fraud, force, allurement, or inducement nor shall any person abet any such conversion. If any person contravenes the provision of the said Act the person shall be

⁶ S.R.Bomma v. Union of India, A.I.R.1994 SC 1918

⁷ Sanjana bishnoi, Anti-Conversion laws: a threat to the Indian Constitution (July10, 2021,4:00PM),<http://lexlife-in.cdn.ampproject.org/v/s/lexlife.in/2021/07/09/anti-conversion-laws-a-threat-to-the-indian-constitution/amp/>.

⁸ Dr.Abhishek Atrey, Anti-Conversion Laws and their Constitutionality (July 4, 2021, 6:10 PM), <http://www.Indialegalive.com/top-news-of-the-day/news-anti-conversion-laws-and-their-constitutionality/>.

liable used for imprisonment up to Rs.5, 000. If it case is related to a minor, a person or women belonging to schedule caste or tribe, then the punishment attracts to two years imprisonment and fine can be up to 10,000⁹.But in 1973 the Orissa High Court declare this act as unconstitutional on the ground that state assembly has no power to legislate on religious subject¹⁰.

2. Madhya Pradesh¹¹

In 1967, however the Madhya Pradesh government has adopted Dharm Swatantraya Adhiniyam and Madhya Pradesh constitutional court opined that the Orissa High court was not right with their decision related to the 1967 Act and were disagreed. The constitutional court invalidated the claim of Christian that Article 25 infringes two basic rights.

In the case of Rev. Stanislaus v. Madhya Pradesh¹², the hon'ble Supreme Court reversed it order and retained the Orissa Freedom of Religion Act, 1967 and Madhya Pradesh Dhardesh Act.

3. Arunachal Pradesh¹³

In 1978 Arunachal Pradesh Freedom of Religion Act, 1978 was enacted to perceived threat to aboriginal religions followed the Orissa and Madhya Pradesh anti-conversion legislation and it is similar to laws of Orissa and Madhya Pradesh .This law is not only implemented in Arunachal Pradesh but Andhra Pradesh and Tamil Nadu also implement it. The Act received the consent of president on October 25, 1978 but this act is not enforced until date government has not framed any rules needed to implement it.

4. Chhattisgarh¹⁴

The state of Chhattisgarh had separated from Madhya Pradesh and was established in November 2000 however, this state has retained the anti-conversion law of Madhya Pradesh and subsidiary rules but in different title namely Chhattisgarh Freedom of Religion Act,1968.Later on, in 2006 the state legislature makes it more stringent by amending the Act.

5. Tamil Nadu¹⁵

In 2002, Tamil Nadu prohibition of Forcible Conversion of religion Act has been enacted. As

⁹ Orissa Freedom of Religion Act, 1967.

¹⁰ Yulitha Hyde &ors. v. State of Orissa &ors.A.I.R.1973 116 (ORL).

¹¹ Madhya Pradesh Freedom of Religion Act, 1968.

¹² A.I.R. 1977 908

¹³ Arunachal Pradesh Freedom of Religion Act, 1978.

¹⁴ Chhattisgarh Freedom of Religion Act, 1968.

¹⁵ Tamil Nadu prohibition of Forcible Conversion of Faith Act, 2002.

per this law, no one shall attempt by any force, allurements or by misleading tactics to change from faith to other (compelling conversion) and if anyone is found guilty then the person shall be punished with a fine up to 50,000 and three years imprisonment but the said Act as quashed by the Tamil Nadu group headed by Jayalalithaa as the Bhartiya Janata Dal-secular alliance in 2004, was dissolved.

6. Gujarat¹⁶

Gujarat's government enacted in 2003, The freedom of Religion Act also referred to as Dharam Swatantra Vidheya-Free Religion Act. The then Chief Minister, now the Prime Minister, Mr. Narendra Modi, called this Act as one of the most significant accomplishment in the previous Year. This act deals with to prohibit the conversion of one faith to other through force, inducement, or fraudulent means. Later on, in 2001, The Gujarat Freedom of Religion Act, 2021 was passed mainly deals with anti-conversion by prohibiting that marriage whose sole purpose is to converting religion out of fraudulent, allurements as a guarantee of a superior way of life. In any case, provision that is not followed shall be punished with imprisonment for three to five years and a monetary compensation of 50,000 rupees.

7. Uttarakhand

On November 20, 2017, habeas corpus petition filed in the High Court of Uttarakhand asked state government to enact the legislation as it to Madhya Pradesh an anti-conversion law. The court noted that this was not the first case involving inter religious matter but so many cases of conversion were involved to facilitated the process of marriage through simulation. The state regulates the passing of the Freedom from Religion Act, analogy with Madhya Pradesh Freedom of Religion Act, 1968 and Himanchal Pradesh Freedom from Religion Act (2006). The provincial government submitted measure to the state legislature after four months of High Court order on March 21, 2018. The bill was passed by State Assembly and signed by the Governor on April 18, 2018, and came in existence as the Uttarakhand Freedom of Religion Act 2018.

8. Himanchal Pradesh¹⁷

As with any other state law on anti-conversion, in 2006 The Himachal Pradesh Freedom of Religion Act was enacted and came into existence on February 18, 2007. This act focused on announced conversion done by Preacher in the slope state.

¹⁶ Gujarat Act, 2003 (Act 22 of 2003)

¹⁷ The Himanchal Pradesh freedom of Religion bill, 2006

9. Rajasthan¹⁸

Rajasthan state assembly also passed an anti-conversion Bill, 2006 by the name Rajasthan Dharma Swatantraya Bill, 2008 additionally however it never gets it to assent by the State Governor and the main reason was grumbling by the minorities¹⁹.

Bill has defined 'conversion' as "disavowing one's own religion" and give the definition of 'own religion' as "one's forefather religion". If any person is found guilty then liable for punishment for Conversion up to two years which may extend to five years and a fine up to 50,000.

10. Jharkhand

On August 12,2017,The Jharkhand Legislative Assembly enacted the Dharm Swatantra Jharkhand Freedom Bill namely as The Jharkhand Freedom of Religion Bill focused on anti-conversion, and whoever contravenes the provision be liable for three years detainment and fine of rs.50,000 or both²⁰. Moreover, if the person who had the religion converted is below 18 years be it a women or individual from schedule caste or schedule tribe attract the punishment for long term detainment and fine of rs.1 lakh or both.

11. Uttar Pradesh

Uttar Pradesh government has approved a much recent discussed topic against Love Jihad on 28 November 2020, Uttar Pradesh Conversion of Religion Regulation, 2020. This ordinance mainly focused on two grounds. Firstly, Religious Conversion through deception, misrepresentation, or coercion and Secondly, Conversion "made only for marriage". Penal provision is provided ten years. Section 6 of ordinances provides for declaration of invalid marriage made only for illegal conversion. This is full of debate.

IV. ANTI-RELIGION LAW AND THE INDIAN CONSTITUTION

Indian aspect:-Preamble of our Indian constitution initially did not contain a word 'secular' but it was added later on by the 42nd amendment, 1976.

Article 25-28²¹ implying that State will not discriminate in the profession of any Religion and it protects religious right as Fundamental Rights.

Article 25 states that with regard to public order, morality, and health all people have right to

¹⁸ Rajasthan Freedom of Religion bill, 2006 (Act of 2006)

¹⁹ Sanjana bishnoi, Anti-Conversion laws: a threat to the Indian Constitution (July10, 2021,4:00PM),<http://lexlife.in.cdn.ampproject.org/v/s/lexlife.in/2021/07/09/anti-conversion-laws-a-threat-to-the-indian-constitution/amp/>.

²⁰ ibid

²¹J.N Pandey, Constitutional law of India 339-355(48th ed. 2015).

freely profess, practice, and propagate religion. It implies that person is free to have any belief or preaching²². State cannot investigate the religious or moral views of any person. Freedom of conscience, freedom to carry out exterior activity is unique and it comes through the Article 19(1) (a) which provides for right to freedom of expression granted to all people.

Article 26 states that all denomination can manage their own affairs in matter of religion and these are been subjected to regulate by the state²³. Moreover, the compulsory provision of data on conversion required under the law violates Article 19(1) (b) and (c) which deals with to allow any person to gather peacefully. If there were exclusion of “reconversion” then it would breach the principle of equal rights before law under Article 14²⁴.

International aspect

There were numerous international covenants, which also deal with the law of conversion. Reflection of religious liberty in international documents as shown in the UNHRD, the declaration on spiritual or believing Elimination, the International African charter Rights, the American Convention against Torture with Universal Declaration of Human Rights (UDHR), World Summit on the Reduction of Statelessness in which India has cooperated with several treaties that are opposed to converting law addition to International Covenant on Civil and Political Rights (ICCPR).

Article 18 of UDHR mainly deals with rights to protect with the ability to change religion and faith in addition to the freedom of thought, mind, and religious belief.

Article 18 of the ICCPR, gives the right of free speech, conscience, and worship about the public security, order, health, and morale of others, and basic rights state parties may thus impose the limitation. The human rights committee at the 48th session when considering paragraph 3 of Art.189 of ICCPR, stipulated that Art.18, which talks about freethinking, was different from the liberty of religion. As per Article 1892) and 17 no one can be obliged to disclose one’s ideas of religion or belief. There is no restriction on freethinking but liberty is safeguard under Art.19 (1) as the right not to interfere. Furthermore, as per Art.4 (2) of the ICCPR and Art.27 (2) of the American Convention in any circumstances including war freedom of religion cannot be a halt at any time. Today’s in this modern and industrialized world Spirituality and thought is the basic element of Humanity and for any democratic country, freedom of religion considered as vital and if there is any restriction in their free

²² *ibid*

²³ *ibid*

²⁴ Sanjana bishnoi, Anti-Conversion laws: a threat to the Indian Constitution (July10, 2021, 4:00PM), <http://lexlife-in.cdn.ampproject.org/v/s/lexlife.in/2021/07/09/anti-conversion-laws-a-threat-to-the-indian-constitution/amp/>.

practice would be serious Infringement of civil liberties.

V. JUDICIAL INTERPRETATION

1. Stanislaus judgment²⁵

In this case, the hon'ble Supreme court upheld the anti-conversion law as constitutional valid of Madhya Pradesh and Odisha by overruling the previous judgment of the High Court by stating right to practice and propagate one's religion cannot impinge on the freedom of conscience of other citizen and it does not grant the right to convert another religion persons to one's religion.

2. Lata Singh judgment²⁶

An unwavering support was there with women who have been offered the right to choice and Supreme Court stated that uniqueness and multiplicity of our culture could make the constitution strong. Crucial time for the nation through transition.

3. K.S. Puttaswamy judgment²⁷

In this case, Court held that law prescribes an autonomy related to an individual regarding the capacity to take decisions on life related issues.

4. Hadiya case²⁸

On 9 April 2018, the Supreme Court conveyed judgment on two separate points, which are coinciding. On one side, it turns around Kerala High Court judgment, where it annulled Hadiya marriage to Shafin Jahan.

VI. JUDGMENT CONFLICTS WITH SPECIAL MARRIAGE ACT

1. Sarla Mudgal v. Union of India²⁹ and Lily Thomas v. Union of India³⁰ in both these cases court held that if there is any religious conversion without any bona fide intention to derive benefit are illegal and do not hold water. Moreover, the court removes the requirement of mandatory notice of intended marriage, which has to publish and inviting objection under section 5, 6 and 7 of the Special Marriage Act, 1954 declare the provision declaratory and not mandatory as it violates the privacy of citizens, which is a fundamental right as it declared in the case of K.S. Puttaswamy case.

²⁵ Rev.Stainislaus v.State of Madhya Pradesh 1977(1) SCC 677

²⁶ Lata Singh v.State of U.P.& Anr (2006) 5 SCC 475

²⁷ Justice K.S. Puttaswamy (Retd.) and Anr. v. Union of India 2017(10) SCC 1

²⁸ Shafin Jahan v. Ashokan K.M (2018) 16 SCC 408

²⁹ A.I.R.1995 (3) SCC 635.

³⁰ A.I.R. 2000 (6) SCC 224.

The above case enshrined the legal principle that religious conversion solely made marriage is illegal although Special Marriage Act allowed interfaith marriage and the UP government cannot meddle it with but it deprives a Hindu through law a potential accrual to property whereas the Indian Succession Act, 1925 would succeed in terms of Muslim for the inheritance of property rather than Muslim personal laws. Thus, the impact of the Special Marriage Act provides discernible legal benefits in case of converting into different faith only marriage and it is difficult to argue that UP legislation is unconstitutional for curtailing religious conversion³¹.

VII. WELCOME STEP AND CRITICAL APPRAISAL

The judiciary is a pillar of the nation and has always been protective in its decision and it is through the law that always empowers every person to exercise his or her rights. However, things are now very critical where non-Muslim men are exploiting the route of spiritual conversion for defying their laws to enjoy polygamy.

In 2009, the Law Commission of India submitted its report regarding “Preventing Bigamy via conversion to Islam. There was a demand to give statutory effect to the religious conversion. Supreme Court after this had changed the rule of a non-Muslim man who had converted to Islam to indulge in Bigamy from the landmark judgment of the Sarla Mudgal case.

The court stated that change to different religion does not dissolve the marriage performed under Hindu Marriage Act between two Hindus and second Marriage is considered as an offense and if any person renounces his religion will be a ground for divorce. There was blackmailing, coercion, and intimidation with women that are used in religious conversion commonly known as “Love Jihad”. Therefore, the laws give an equal right of marital to all sects of women to defeat exploitation through conversion as the constitution laid down the fundamental rights. On the other hand, the ordinance, called Uttar Pradesh Prohibition of Unlawful Conversion of Religion 2020 is somewhere negating the rights of women as it controls from right to their choice. Although it is a welcome step taken by the government to protect the freedom of religion with special reference to protecting women from the conversion of religion but somewhere their spouse into legitimizing polygamous relationship hoodwinks it. The critics describe this Act as an “uncivil proposal³²”. These people find no space in national dailies because in their view this Act is turning a blind eye and where romantic relationships are being

³¹ Dr. Abhishek Atrey, Anti-Conversion Laws and their Constitutionality (July 4, 2021, 6:10 PM), <http://www.Indialegalive.com/top-news-of-the-day/news-anti-conversion-laws-and-their-constitutionality/>.

³² Dr. Geeta Bhatt, what critics of Anti-conversion Laws Overlook (July 18, 2021, 12:30 PM), <http://www.ndtv.com.cdn.ampproject.org/v/s/www.ndtv.com/opinion/what-critics-of-anti-conversion-laws-overlook>.

used as bait. Therefore, even if they find their space it will be in a small corner of the pages.

VIII. CONCLUSION

Religious war, a burning topic in today's era as several crises are facing by the world in name of religion through war. A state has to maintain religious freedom with a degree of sensitivity. For shaping, conduct religious thought and beliefs play an important factor. The state must maintain the balance between community interest and individual freedom.

If we analyze the whole, we find that the freedom of conscience to choose, propagate their religion under article 25 of the Indian constitution with a high level of Human Rights in Article 18 of UDHR and ICCPR. No person could be susceptible to extreme persuasion that had to impinge on his ability to preserve his preferred religious faith as per Art.18 (2). Restriction can be put under Art.25(1) of the Indian Constitution to regulate the right of conversion as per freedom of religion although in some religions propagation to convert is there but that does not mean that right is absolute. It is a state's responsibility to protect the individual interest and if any individual converts his faith to different religion then it is the state's obligation to check and ensure that it does not become the cause for disruption of the society.

Freedom of Religion is key to the success and quintessential of men's minds however, this is not only the criteria still a question is whether the anti-conversion law is legal or not is yet have to make clear by the administration.
