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Constitutionality of Anti-Conversion Laws in India: An Overview

HARSHITH K.H.¹

ABSTRACT

Anti-conversion laws are legal provisions that aim to prevent or regulate the conversion of one religion to another. These laws have been enacted by several states in India, including the states of Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, and Karnataka. with varying degrees of scope and severity. The paper examines the history of the anti-conversion law and its evolution from before independence until the present year. The paper also discusses the rationale and impact of these laws, which are examined in this paper. The paper also explains important provisions of the anti-conversion laws with special reference to THE KARNATAKA PROTECTION OF RIGHT TO FREEDOM OF RELIGION ACT, 2022. The paper also talks about the different views people have on these laws. Some section of people argue that these laws violate their constitutional right to freedom of religion enshrined in Article 25 and pose a threat to the secular and pluralistic fabric of India. However, some argue that these laws are essential to safeguard the citizen's religious identity and protect people from forceful conversions. The paper examines the arguments made by both sides. The paper also analyses the judicial pronouncements on the issue of religious conversion by the Supreme Court in different cases. The paper also analyses the important international conventions about religious freedom and the convention to which India has been a signatory. The paper also explains the signatory. The paper also explains the United States Commission on International Religious Freedom report on Anti-conversion laws in India. The paper is concluded by giving suggestions from the author's point of view.

Keywords: *Anti-conversion, fraud, coercion, freedom of religion.*

I. INTRODUCTION

Anti-conversion laws are laws that are intended to restrict or ban conversion from one religion to another. These laws can be used to stop people from converting to another religion or to stop religious organizations from promoting or taking part in conversion to other religions. These laws are meant to stop people from being forced to convert to a different faith, and breaching them can result in fines and/or imprisonment. Anti-conversion laws exist in many countries,

¹ Author is a student at school of law, Christ (Deemed to be University), India.

like Algeria, Bhutan, Nepal, and Myanmar. In India, there are no federal anti-conversion laws. Still, there is anti-conversion legislation in 9 states, which are Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Uttarakhand, and Uttar Pradesh. These anti-conversion laws have been contested in court on the grounds that they violate the Constitution's Article 25 guarantee of religious freedom. They argue that these laws are ambiguous, arbitrary, and discriminatory, as well as are used as a tool for instilling a sense of fear and intolerance in the hearts of interfaith couples and religious minorities.² It is also argued that anti-conversion laws are in violation of the preamble of the Constitution, which talks about secularism. These laws' proponents contend that they are essential to safeguard the citizen's religious identity and culture and to stop groups or outside forces from converting people against their will or by force.

II. EVOLUTION OF ANTI-CONVERSION LAWS

The anti-conversion laws were introduced by Hindu Princely states during the 1930s and 1940s to preserve their religious identity from the influence of Christian missionaries. The Raigarh State Conversion Act of 1936 was enforced by the Raigarh Chief, Chakradhar Singh, to protect lower castes and tribes of the Hindu community from conversion by missionaries. Other anti-conversion laws are the Patna Freedom of Religion Act of 1942, the Sarguja State Apostasy Act of 1945, the Udaipur State Anti-Conversion Act of 1946, and many other such laws were enacted by the princely states and can be found all over India³. These laws were made as the princely states wanted to protect their citizens from the rapid conversions by the Christian missionaries.⁴ Following independence, several Bills were introduced in the Parliament, like the Indian Conversion (Regulation and Registration) Bill in 1954, which failed to gather majority support in the lower house. The main aim of this bill was to make the licensing of missionaries and compulsory registration of conversion. Later, similar anti-conversion bills were brought in 1960, known as the Backward Communities (Religious Protection) Bill 1960, which Prakash Vir Shastri proposed⁵. The bill aimed to prevent Hindus' conversion to non-Indian religion. The definition of non-Hindu religion includes Islam, Christianity, Judaism, and Zoroastrianism. In 1979, the Freedom of Religion Bill was brought forward by Janata Party MP O.P. Tyagi. People argued that the act mainly targeted Christians. O.P. Tyagi argued that the

² Poorvi Sharma; Purusharth Dixit, "An Analysis of State Anti-Conversion Laws in India," *International Journal of Law Management & Humanities* 4 .6229(2021)

³ Laura Dudley Jenkins, *Legal Limits on Religious Conversion in India*, 71 *L. & CONTEMP. PROBS.* 109, 113 (2008).

⁴ Akshay Ravi & K. V. Muthu Kumar, *Legal History of Anti-Conversion Laws in India*, *LAWBEAT* (Oct. 21, 2021),

⁵ Tariq Ahmad, *State Anti-Conversion Laws in India*, *Law Library of Congress* (Oct. 2018)

main aim of the bill was to protect minorities and to restrict conversion by force and fraud. The bill did not get the support of the majority of members of the Parliament.

The first anti-conversion law enacted by an independent Indian state was the Madhya Pradesh Dharma Swathantraniya Adhiniyam of 1967. It made conversion by coercion, deception, or enticement illegal and mandated that any conversion must be reported in advance to the district magistrate. A breach of the law might result in a fine of up to five thousand rupees, a year in jail, or both. The penalty was doubled if a woman, a juvenile, or a member of one of the Scheduled Castes or Scheduled Tribes converted.

Based on the Madhya Pradesh law, the Orissa Freedom of Religion Act 1968 contained comparable provisions. Additionally, it forbade conversion via coercion, deception, or enticement and mandated that any conversion be announced in advance to the district magistrate. A violation of the legislation might result in a fine of up to five thousand rupees, a year in jail, or both. Two years and ten thousand rupees is the new penalty for conversion of a minor, a woman, or a member of the Scheduled Castes or Scheduled Tribes. These statutes were challenged before the Indian Supreme Court because they infringed against Article 25 of the Indian Constitution, which guarantees the fundamental right to freedom of religion. In the case of *Rev. Stainislaus v. State of Madhya Pradesh (1977)*⁶, the Supreme Court, however, affirmed the legitimacy of these laws, ruling that Article 25 only safeguards the freedom of conscience and the free profession, practice, and propagation of religion and does not confer the right to convert another person to one's religion. The court further decided that as these rules solely prohibit conversion through illegal means, they do not violate an individual's freedom to preach their faith.

The Union Law Ministry stated in 2015 that legislation pertaining to fraudulent religious conversions cannot be implemented nationally. According to the Indian constitution, states are permitted to pass state anti-conversion legislation because these issues come under the state's purview as per Schedule 7.

III. IMPORTANT PROVISIONS OF ANTI-CONVERSION LAW (WITH SPECIAL REFERENCE TO THE KARNATAKA PROTECTION OF RIGHT TO FREEDOM OF RELIGION ACT, 2022)⁷

This act was enacted in the year 2022. It was enacted on suggestions and recommendations

⁶ *Rev. Stainislaus v. State of M.P.*, (1977) 1 SCC 677

⁷ Karnataka Protection of Right to Freedom of Religion Act, 2022, Karnataka Act No. 25 of 2022.

given by the^h Law Commission of Karnataka's 30th report⁸, which recommended the enactment of suitable laws for protecting the freedom of religion. The Law Commission report also contained the bill's recommendations and draft for the bill.

Section 3 forbids converting someone to another religion by misrepresentation, force, fraud, undue influence, coercion, allurement, or promise. Additionally, it makes it illegal to conspire, aid, or abet in such conversion. A fine of Rs. 25,000 and a sentence of three to five years in jail are the penalties for this offense. If the person converted is a juvenile, a woman, a member of a Scheduled Caste or Tribe, or a person of unsound mind, the punishment is five to 10 years in jail and a fine of Rs. 50,000.

Section 4: This section empowers only the person converted, his/her parents or siblings, or any other person related by blood, marriage, or adoption to complain about the accused. It also gives the police power to investigate cases without warrants.

Section 6: This section declares any marriage done for the sole purpose of unlawful conversion or vice versa to be null and void. It also provides for the annulment of such marriage by a family court on a petition by either party to the marriage.

Section 8 requires any person who intends to convert his/her religion and any person who performs the conversion ceremony to give a declaration to the District Magistrate (DM) at least 30 days before the conversion date. The DM is then supposed to display such notices. If a person has already converted, he should inform the DM, who will verify if the conversion was done with free will as per section 9.

Section 12 places the burden of proof to prove there was no coercion or fraud on the accused person.

IV. INTERNATIONAL CONVENTIONS

Article 18 of the Universal Declaration of Human Rights⁹ states that everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.

Religious Conversion and International Human Rights Law: The freedom to change to a different religion or belief is safeguarded by international human rights law.

⁸ LAW COMMISSION OF KARNATAKA THIRTIETH REPORT 21/09/2013

⁹ Article 18 Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III), at 71 (Dec. 10, 1948).

The freedom to convert and the right not to be coerced into doing so are recognized under the International Covenant on Civil and Political Rights (ICCPR).¹⁰ Everyone has the right to freedom of conscience, religion, and thinking, according to Article 18(1). He has the freedom to follow whatever religion or set of beliefs he so desires. Article 18(2) states that no one should be the victim of compulsion that would restrict their ability to practice or follow any religion or belief of their choice. The state cannot take this immediately; even in an emergency, the state must uphold it.

Article 1 of the 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief¹¹ states that: -

1. The freedom of conscience, religion, and thought shall belong to everyone.

This right should include the freedom to practice whatever religion or belief he chooses and to express his religion or belief in worship, observance, practice, and teaching, publicly or privately, alone or in a community with others.

2. No one is allowed to be forced to adopt a religion or set of beliefs that they wouldn't choose.

3. The freedom to express one's religion or beliefs may only be restricted in ways that are allowed by law and required to maintain morality, public safety, order, health, or other people's basic rights and freedoms.¹²

V. CONSTITUTIONAL PROVISIONS

The word secular was added to the preamble by the 42nd Amendment in 1976. In India, the idea of secularism is defined as the state treating all religions equally and without interfering in religious affairs. It also implies that people are free to profess, follow, and spread any religion they want or no religion at all. Indian secularism differs from the secularism of the West, which fully splits religion and state¹³. In India, the state has the authority to intervene in religious affairs in order to promote social change and defend the rights of religious minorities. The Supreme Court, in the case of *Kesavananda Bharati v. State of Kerala*¹⁴, held that secularism is part of the basic structure of the Constitution. The Supreme Court ruled in *Ahmedabad St.*

¹⁰ International Covenant on Civil and Political Rights art. 18, Dec. 16, 1966, 999 U.N.T.S. 171, UN Treaty Collection.

¹¹ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief art. 1, Nov. 25, 1981, 14668 U.N.T.S., UN Treaty Collection.

¹² Grizzle Fischer, M. (2018) 'Anti-Conversion Laws and the International Response', *ADF International White Paper*, 6 PENN ST. J. LAW&INT'L AFF. 1 (2018).

¹³ Udupa, S. 'ANTI- CONVERSION LAWS: A THREAT TO SECULARISM?', *LEXFORTI LEGAL JOURNAL*, 2(4).

¹⁴ *Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225 (India).

Xavier's College v. State of Gujarat¹⁵ that secularism is neither pro- nor anti-god. It only makes sure that no one is treated differently because of their faith, eliminating the idea of God in questions of the state. The Supreme Court elaborated on the notion of "secularism" in S.R. Bommai v. Union of India¹⁶, stating that, as per the Constitution, secularism does not imply an atheist society but rather a diverse society that provides equal standing to every religion without favouring or prejudice against any particular one.

These laws infringe upon an individual's right to choose their faith freely, as guaranteed by Article 25 of the Indian Constitution. Article 25 guarantees the freedom of conscience and the freedom to profess, practice, and propagate religion to all citizens. Although freedom of religion protects religious conversion, government intervention is permitted in certain instances. These freedoms are subject to public order, health, and morality. ¹⁷The Supreme Court of India delivered an important judgment in the matter of S. Pushpabai v. C.T. Selvaraj ¹⁸regarding the topic of religious conversion. S Pushpabai, a Hindu woman who converted to Christianity after marrying C.T. Selvaraj, a Christian. Her father, on the other hand, claimed in a petition filed in the Madras High Court that her husband forced her conversion and was not sincere. The High Court ruled that the conversion was lawful and voluntary and rejected the petition. The father subsequently filed an appeal with the Supreme Court, which upheld the ruling of the High Court and maintained a person's freedom to convert to any other faith. The Indian Supreme Court held that any coercion or fraud related to religious conversion violates the right to freedom of religion, protected by Article 25 of the Indian Constitution. The court further noted that the conversion must be sincere and done with an honest belief. Shafin Jahan v. Asokan K.M¹⁹. In this case, a Hindu woman married a Muslim man against her parents' desires after converting to Islam. Her parents claimed in a habeas corpus case to the High Court that she was taken hostage by a radical Islamic organization, brainwashed, and forced to convert. Her marriage was declared void by the High Court, and her parents were given custody of her. The High Court's ruling was overturned by the Supreme Court, regaining her freedom and marriage. The Court held that she was an adult who had chosen to marry the person of her choosing and convert to Islam by her free will.

VI. SUPREME COURT'S DECISION ON ANTI-CONVERSION LAW

¹⁵ Ahmedabad St. Xavier's College v. State of Gujarat, (1974) 1 SCC 71

¹⁶ S.R. Bommai v. Union of India, (1994) 3 SCC 1 (India).

¹⁷ South Asia Human Rights Documentation Centre, Anti-Conversion Laws: Challenges and Fundamental Rights, 43 Econ. & Pol. Wkly. 63 (2008).

¹⁸ S. Pushpabai v. C.T. Selvaraj, AIR 1971 SC 1180 (India).

¹⁹ Shafin Jahan v. Asokan K.M., (2018) 16 SCC 368 (India).

Madhya Pradesh Dharma Swathanthraniya Adhiniyam of 1967 and Orissa Freedom of Religion Act, 1968 were challenged in the case of *Rev Stanislaus vs. State of Madhya Pradesh*.²⁰ The court further said that the provisions do not infringe on the Constitution's Articles 14 (equality before the law), 15 (prohibition of discrimination), 19 (freedom of speech and expression), or 26 (right to govern religion matters). The court ruled that the regulations do not discriminate against any one religion or group and are justifiable limitations on the freedom to propagate religion to maintain public order.

The court also dismissed the claim that the rules violate Christian laws, which permits baptismal conversion. The court ruled that the Constitution constrains personal law and cannot supersede another person's fundamental rights.¹⁹⁷⁷ The lawsuit questioned the constitutionality of two state statutes prohibiting conversion via force, fraud, or allure. A Christian missionary challenged the restrictions, arguing that they infringed upon his constitutionally guaranteed freedom to spread his belief (Article 25 (1)). The freedom to spread one's religion does not entail the right to convert someone else to it, the Supreme Court said, upholding the legitimacy of both legislations. The court defined the word "propagate" as conveying or spreading one's faith by explaining its principles, not as compelling or persuading others to adopt it. The court further found that item 1 of List II of the Seventh Schedule, which deals with public order, grants the state the authority to pass such legislation. The court noted that forced, fraudulent, or alluring conversions may upset the religious beliefs and sensibilities of a society, therefore upsetting public order.

Many cases are pending in the courts questioning the constitutionality of these laws, and certain High Courts have ruled that the law violates the fundamental rights of the citizens. A stay was imposed on several portions of the Gujarat Freedom of Religion (Amendment) Act on August 19, 2021, by the Gujarat High Court. The Madhya Pradesh High Court invalidated the Madhya Pradesh Freedom of Religion Act's declaration clause on November 14, 2022. Madhya Pradesh and the State of Gujarat have appealed to the Supreme Court. The Karnataka High Court is now considering a suit that challenges the Karnataka Protection of Right to Freedom of Religion Ordinance, 2022. The Supreme Court also received a petition from the Jamiat-Ulama-i-Hind, contesting the constitutionality of the anti-conversion legislation of Gujarat, Uttarakhand, Himachal Pradesh, Madhya Pradesh, and Uttar Pradesh. The Supreme Court heard all the petitions relating to anti-conversion laws.

²⁰ *Rev. Stainislaus v. State of M.P.*, (1977) 1 SCC 677

VII. THE USIRF REPORT

The USIRF, or the United States Commission on International Religious Freedom, is an independent, bipartisan federal government entity that monitors and reports on religious freedom around the world. A study on state-level anti-conversion laws in India, which make religious conversions illegal under specific conditions, was published by the USIRF²¹. The study explores the similarities between these laws and demonstrates how they infringe upon both the freedom of religion or belief and international human rights law.

These laws ban changing one's religion or belief by using coercion, deception, temptation, or influence. However, these terms are often unclear and undefined, leaving room for subjective interpretation and application. For example, some laws regard offering education or humanitarian aid as an influence. These laws require individuals who plan to change or have changed their religion or belief to inform the government authorities before or after the change. This creates a bureaucratic obstacle and exposes the converts to harassment and intimidation by the authorities or other groups. These laws assume that any change of religion or belief is done in violation of the law unless the individual can prove otherwise. This shifts the burden of proof from the accuser to the accused and violates the presumption of innocence¹. The report states that these features of India's anti-conversion laws are incompatible with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which protect the right of individuals to choose or adopt a religion or belief of their choice without coercion or interference. The report also observes that these laws have worsened the religious freedom conditions in India, where religious minorities face discrimination, violence, and persecution¹. The report suggests that India repeal its state-level anti-conversion laws and respect its international human rights obligations.

(A) Opposition to anti-conversion laws

On the other hand, a sizable number of individuals reject anti-conversion legislation on the grounds that it infringes upon the internationally recognized right to freedom of religion or belief. They argue that laws prohibiting conversion restrict people's freedom to choose and follow their own religion or set of beliefs. They also bring out the fact that anti-conversion legislation is frequently employed as a means of intimidating and punishing religious minorities and mixed-faith couples who decide to convert or marry outside of their faith. In a secular and democratic nation like India, where the constitution protects the fundamental freedom to

²¹ United States Commission on International Religious Freedom, *India's State-Level Anti-Conversion Laws (2023)*, USCIRF

profess, practice, and promote one's religion, they may also contest the necessity and constitutionality of anti-conversion legislation. The anti-conversion laws also violate a person's right to privacy, as the Supreme Court held in *K.S Puttaswamy v. Union of India* case²². The right to privacy encompasses the freedom to make personal choices and judgments without interference from the state or others²³. Anti-conversion legislation that mandates notification and verification processes or requires prior state approval may violate this freedom by encroaching on a personal space used for relationships and religion. Furthermore, these regulations can also go against the secularist ideal, which states that the government should not support or discriminate against any religion and should instead preserve neutrality and respect for all of them. The relationship between anti-conversion legislation and the right to privacy is a complicated and divisive topic that requires striking a careful balance between the rights and interests of people, communities, and the government. it violates people's freedom of religion and private rights if they decide to change their religion of their own free will. It also causes bureaucratic headaches and procedural obstacles for people seeking a peaceful, lawful conversion of their religion

Terms like "force," "fraud," "inducement," and "allurement" have vague definitions in anti-conversion legislation that are open to interpretation, making it illegal to convert someone into any kind of conversion, whether it is voluntarily or not. Anti-conversion laws are discriminatory against religious minorities since they are sometimes applied selectively against Christians and Muslims while disregarding Hindu reconversion ceremonies. Anti-conversion laws encourage hate crimes and false allegations against minority religious groups by state authorities and majority groups, which in turn promotes hatred and persecution against these communities.

These laws infringe upon an individual's right to choose their faith freely, as guaranteed by Article 25 of the Indian Constitution.

(B) Need for anti-conversion laws.

Anti-conversion laws, according to some, are essential for preserving the social and cultural identity of a certain group of people or culture. They argue that rules prohibiting conversion are necessary to avoid disputes and splits within the community that might arise when people convert from one religion to another. Some people see anti-conversion legislation as a means of defending a certain religion's customs and principles and preventing the decline of its status or influence. They also claim that anti-conversion legislation is necessary to shield people

²² 45 Justice (Retd.) K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, ¶ 261

²³ Gautam Bhatia, *The Indian Constitutional Law and Philosophy Blog*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Jan. 3, 2021),

from religious organizations that use fraudulent, manipulative, or unethical practices in order to force or mislead people into changing their religion.

VIII. CONCLUSION

Anti-conversion laws are not against secularism and also do not violate Article 25 of the Indian Constitution. These laws apply to people of all religions and are not limited to a particular religion. The laws do not favour any religion. The state implements anti-conversion laws to protect the minorities who are forced to convert to other religions. The law does not stop people from converting to other religion. These laws are in line with international conventions and allow the state to make laws so there are no forced conversions. Although freedom of religion, as per Article 25, protects religious conversion, government intervention is permitted in certain instances. These freedoms are subject to public order, health, and morality. Hence, Anti-conversion laws do not violate Article 25. These laws aim to prevent force conversion, which is nothing but better public order. Even the Supreme Court, in its previous judgments regarding anti-conversion laws, had upheld the validity of anti-conversion laws as these laws were necessary for the protection of the rights of the citizens. Force conversions are also against the Freedom of religion of the person who is being forced to convert. Anti-conversion laws do not violate an individual's freedom of religion but protect this right. There are specific problems with the current laws. For example, the burden of proof is on the accused to prove that it was not a forced conversion, which leads to misuse of the law. It is also crucial for the state to punish people who provide false information or those who do it with malice. But some of these provisions won't make the whole law unconstitutional. The states must rectify these controversial provisions. Anti-conversion laws are constitutionally valid.

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