

THE ROLE OF THE JUDICIARY IN SHAPING THE DEBATE ON ANTI- CONVERSION LAWS

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Abstract

In India, one of the most discussed issues is the anti-conversion regulation. Anti-conversion laws have long existed in India; they date back to the royal realms' establishment of such laws to restrict the exercises of ministers before the nation acquired freedom. abhorrence for transform One of the principal worries of the greater part networks all over the planet is socioeconomics; this is likewise evident in India, where the larger part Hindu gathering fears losing its greater part status. The conversion is believed to be a vital procedure for populace development. Anti-conversion regulation is believed to be a remedial activity for the conversion issue. The argumentative subject of India's anti-conversion laws is analyzed in this paper. It investigates the foundation of these laws and how pre-autonomy stresses over religious conversion prompted the production of these guidelines.

Keywords: *Anti-conversion laws, Freedom of religion, Secularism, Religious freedom, Forced conversion*

1. INTRODUCTION

We are aware that the Constitution serves as the yardstick for all legislation, and that "secularism" is one of its fundamental tenets. This makes one question if laws governing conversions are

constitutional. We will briefly go over some historical context before talking about the validity of these seven statutes, which are euphemistically referred to as "Freedom of Religion laws." For ease of reference, I will refer to these Acts as anti-conversion laws; however, it is submitted here that the general public's understanding of these laws as outright prohibitions on conversions is, in fact, false, as all of them seek to regulate conversions rather than outright forbid religious conversions.

A number of princely nations had anti-conversion legislation in place prior to independence, but British India did not. This discrepancy most likely results from the British claiming to be evangelizing while the predominantly Hindu princely princes demonstrated opposition to religious conversion. Conversions obtained through deception, fraud, coercion, threats, undue influence, or similar tactics were criminalized. Minors could not be converted because offspring of converts were not instantly deemed to be under the authority of their parents' new faith.

Conversion was one of the most hotly contested topics in the Constituent Assembly. Although opinions on the merits of the case regarding whether or not forcible conversion should be recognized by law were unanimous, there was a strong feeling that the Constitution shouldn't contain explicit provisions for every possible situation that could be handled by regular legislation.

Numerous fruitless endeavors were made after autonomy to pass public laws overseeing religious conversions. Regardless, there have been irregular endeavors to pass comparable laws at the state level. Madhya Pradesh Dharma Swatantraya Adhiniyam, 1967 was taken on by the province of Madhya Pradesh in light of the suggestions of the Bhawani Sankar Niyogi board. The Province of Orissa had previously sanctioned an equivalent regulation known as the Orissa Freedom of Religion Act, 1967, when the Madhya Pradesh Act was passed.

India has a lengthy history of foreign invasions; the indigenous population has witnessed forced conversion, which has instilled terror in the hearts of the country's majority Hindu community. One of the main agenda items for India's emerging right-wing nationalists is the conversion issue. Additionally, some of them believe it to be a foreign plot to topple India. Anti-conversion legislation is therefore considered to be the answer to the "problem" of conversion.

India has had anti-conversion laws for a very long time. Anti-conversion legislation may have even been in place during the British era, when Hindu princely states used them to protect their religious identity against Christian missionaries.

The propagation of religion is acknowledged as a fundamental right in the Indian Constitution; however, anti-conversion laws were passed in India even after the Constitution went into effect. These laws' constitutionality was contested in a number of courts, and the courts upheld the laws' validity.

1.1.History of Anti-Conversion Laws In India

As was previously mentioned, Hindu princely states first enacted these anti-conversion laws in the 1930s and 1940s in order to protect their religious identity from Christian missionaries. India is home to various instances of this sort of regulation, including the Raigarh State Conversion Demonstration of 1936, the Patna Freedom of Religion Demonstration of 1942, the Sarguja State Heresy Demonstration of 1945, the Udaipur State Anti-Conversion Demonstration of 1946, and various others.

Unexpectedly, the parliament has attempted several times to pass legislation governing conversion in India, but none of those attempts have resulted in actual legislation. The Indian Conversion (Regulation and Registration) law, which sought to "license missionaries and the registration of conversion," was the first attempt to accomplish this goal in 1954. However, the law was defeated in the lower house of parliament. The goal of the Backward Communities (Religious Protection) Bill, which was adopted in 1960, was to prevent Hindus from converting to other religions once it had been in effect for six years. The bill listed Christianity, Islam, Zoroastrianism, and Judaism as examples of non-Indian religions. But it's important to note that this bill had nothing to do with Hindus turning Buddhist; rather, the data indicates that a sizable portion of Hindus were converting to Buddhism because both religions were Indic. As a result, the bill failed in parliament as well. In 1979, Jan Sangh MP O.P. Tyagi introduced the "freedom of religion bill," another private member's bill. The absence of legislative support for this bill was another reason it failed. At this time, the Jana Sangh, which subsequently changed its name to the BJP, had anti-conversion

legislation on its agenda. Surprisingly, laws with names connected to religious freedom are identical in BJP-ruled states like Madhya Pradesh and Himachal Pradesh.

1.2. Research Objectives

- To examine the differences in the clauses, definitions of conversion, and enforcement strategies of anti-conversion laws in various states as you analyze the legal foundation of these laws.
- To examine the larger social and political forces that support these claims, such as the influence of historical conflicts, religious nationalism, and cultural fears.

2. LITERATURE REVIEW

Furquan Ahmad (2008) lays the foundation for the verifiable setting by following the beginnings of these guidelines back to pre-autonomy stresses over religious conversion. In particular, he suggests the crucial conversation starter of whether these guidelines, which are intended to defend weak gatherings, can coincide with the constitutional right to freedom of religion. All through the whole of the survey, this contention among freedom and security fills in as a common topic.

Aneesha Mathur (2021) takes us off the hypothetical plane and onto the ground, showing the numerous manners by which anti-conversion laws are applied across the few states in India. This epitomizes the blended effect that the Demonstration has had, especially concerning weddings between individuals of various beliefs and individual religious inclinations. The danger of one-sided requirement brings up issues about the functional consequences of these guidelines that go past the reason for which they were made.

Parashar & Gupta (2023) look at the philosophical and legal grounds both for and against anti-conversion laws, and go further into the subject. They examine thoughts like the independence of the individual, the freedom of religion, and the congruity of society, convincing us to think about the more noteworthy cultural texture that these laws affect. The examination that they have given fills in as a significant wakeup call that the contention stretches out past unambiguous cases and envelops more broad contemplations in regards to how we characterize and find some kind of harmony between central rights in India.

Jamshed, Karim & Banu (2023) the gendered parts of anti-conversion laws are a lacking part that ought to be presented. Through "othering" and requirements on their religious organization, they shed light on the manners by which Muslim ladies, especially the individuals who are hitched to individuals of various beliefs, are exposed to the most extreme outcomes of these laws. This adds an essential layer of understanding, drawing out into the open the way that the impacts of these guidelines are not knowledgeable about similar way by all people, which further convolutes the conversation.

Kumar (2023) expands the extent of the examination by researching the impacts that anti-conversion regulation have had on ancestral populaces in India. He raises significant inquiries in regards to the particular weaknesses that these gatherings face as well as the potential accidental ramifications that these laws might have inside these networks. With this more thorough perspective, the significance of nuanced approaches that consider the numerous financial real factors that exist across India is brought into center.

3. THE ANALYSIS OF ANTI- CONVERSION LAWS

Anti- conversion Laws is also termed as Freedom of Religious Acts or Laws and it has been enacted by numerous States in India a study of these laws expose that the language which have been use is extremely broad and vague which leads for the challenge of the constitutionality of these laws. As of today, several Acts have been enacted in many states, including Orissa, Chattisgarh, Himachal Pradesh, Arunachal Pradesh, Gujarat, and Madhya Pradesh, and each of these laws prohibits the practice of forceful conversion.

The Freedom of Religion Act of 1968 was passed in Madhya Pradesh in response to allegations that Christian missionaries were attempting to convert people to their religion through the use of coercion and psychological manipulation. Christian missionaries were accused of building "a State within State" by the Niyogi Committee, which was established in the year 1954 in Madhya Pradesh by the Congress administration. The committee also made the observation that the charity acts of Christian missionaries are a disguise to encourage someone to convert to one's own faith.

The Madhya Pradesh Gathering didn't endorse the Religious Freedom Bills that were proposed in 1958 and 1963. Notwithstanding, in 1968, the Religious Freedom Bill was supported, and it is at

present alluded to as the Freedom of Religion Act. As per this Demonstration, an individual who wishes to switch over completely to an alternate religion is expected to introduce a legal sworn statement expressing that the conversion was made willingly subsequent to doing a proper assessment of the religion, and not through compulsion or allurements. As per this Demonstration, any individual who composes, talks, or sings of "divine dismay" with the aim to incite constrained conversion through danger will be rebuffed by detainment for a time of as long as one year, and they will likewise be at risk to a fine of up to 5,000 rupees. This punishment is in addition to the fact that they will be subject to all of the aforementioned penalties.

It was in the year 1968 that the territory of Orissa passed similar Go about as the Madhya Pradesh Freedom of Religions Act. The name of the Orissa Act is the Orissa Freedom of Religions Demonstration of 1968, and it was expressed in this Act that it is taboo for any person to change over or endeavor to change over any individual, whether it be straightforwardly or by implication, starting with one religious confidence then onto the next using power, affectation, or any deceitful means. A similar forbiddance applies to an in such individual conversion. In the event that any individual disregards this regulation, they will be rebuffed with detainment for as long as one year, a fine of up to 5,000 rupees, or both. In the event that the offense is committed by a minor, a lady, or an individual who has a place with a Timetable Position or Timetable Clan, the discipline is expanded to remember a limit of two years for jail, and the greatest worth of the fine is expanded to 10,000 rupees. Despite this, the Orissa Freedom of Religion Rules were sanctioned in the year 1989. These standards specify that the Cleric who is playing out the service of conversion is expected to illuminate the concerned Justice regarding the date, time, and area of the function. Moreover, the Minister is expected to give the names and addresses of the people who are to be changed over. This notice should be given in the span of fifteen days of the service. The individuals who neglect to conform to these principles will be dependent upon a fine of 1,000 rupees.

The territory of Madhya Pradesh following the Orissa Freedom of Religion Rules and established the Freedom of Religion Act in the year 2006 in which in this Change Act it has been notice that it is fundamental for a cleric to give a notification to the Region Justice before one month for such conversion and assuming that he neglect to do so he will be culpable for a detainment as long as one year or a fine up to rupees 5,000 or with both and an individual who need to change over he

ought to proclaim that he has changed over from his own will and delight and in the event that he neglect to uncover he will be fine for a rupees of 1,000.

In 1978, the Arunachal Pradesh Freedom of Religion Act was passed into regulation. The reason for this Act was to forestall the native people groups of Arunachal Pradesh from changing their religious convictions and rehearsing different religions. Through this Act, the practice of forcible conversion was made illegal, and any individual who violated the provisions of this Act will be subject to a penalty.

Both the Tamil Nadu Anti-Conversion Act and the other state freedom of religion Act, which prohibits forced conversion, were passed into law in the year 2002. Both of these acts prohibit conversion by force. The immediate frustration with this Act was evidently reflected in the arrest of ten individuals on December 6, 2002, by the police. These individuals were planning to convert a large number of people in order to protest the new anti-conversion law. Additionally, approximately three thousand Dalits were converted to Buddhism and Christianity without the approval of the new law for their conversion. According to the Dalits, they viewed this new law as a violation of their fundamental rights, and they perceived it as such. Ashok Chowgule, the president of the Maharashtra chapter of the Vishwa Hindu Parishad (VHP), expressed his admiration for the Tamil Nadu ordinance's statement that conversion is a source of societal conflicts. The State Council of the All India Women's Association was also against the law, arguing that it violated the rights of Dalits and other minority groups, which are guaranteed by the Constitution of India. They believed that the bill was unfair toward these groups.

On May 7, 2004, the Preclusion of Conversion Act Dissent Board of trustees made a request to the electorate, encouraging them to decide in favor of the Popularity based Moderate Partnership (DPA), which was driven by Dravida Munnetra Kazhaga. A proposal to remove the anti-conversion statute was reportedly included in the manifesto of the Dravida Munnetra Kazhagam, according to reports. A great number of Hindu fundamentalists and nationalists were dismayed when the law was repealed in June by the Tamil Nadu government, which was led by Jayalalitha. Nevertheless, in 2006, the state of Tamil Nadu decided to remove it for good.

The Freedom of Religion Act of Gujarat was passed into law in the year 2003. It was also known as the Dharam Awatantrata Vidheya, which is another name for the Freedom of Religion Act. Similar to the other Acts of states, this Act forbade conversion via the use of force or persuasion.

A bill that was quite similar to this one was enacted by the legislature of Rajasthan in the year 2006, but the Governor of the state did not sign it because of the objection that was brought forth by the religious minorities. The state of Himachal Pradesh passed a law that was quite similar to this one, although it imposed harsher punishments and required that advance notice be given for the conversion attempt.

The purpose of these anti-conversion legislation was to protect individuals from being converted through fraudulent means, as well as through the use of coercion and inducement. As an illustration, there are a number of instances in which the courts have handed down sentences to priests for converting, even after the converts themselves have produced statements indicating that they converted voluntarily. The Indian authorities' unconstrained judgment has been increased as a result of these regulations, which have provided a definition of forceful conversion. In addition, the laws describe inducement and allurement as any gift or gratification or any advantage, whether it be monetary or otherwise, and this definition, which is provided by state laws, would embrace even an intangible benefit such as invoking the blessings of the Lord or asking God to pardon sins.

4. ANTI-CONVERSION LAWS' JUDICIAL INTERPRETATION IN INDIA

I'll be talking about how the courts interpreted these anti-conversion statutes that the Indian states passed in this section. This section's primary goal is to examine the constitutionality of India's anti-conversion laws by citing pertinent court decisions and case law.

Albeit the Indian Constitution ensures the freedom of religion, as we definitely know, a rising number of states have passed anti-conversion laws, otherwise called the Freedom of Religion Act, which safeguards constrained conversion and recommends discipline for the people who use force, intimidation, charm, or fake means to change someone else over completely to an alternate religion. The same punishment is meted out to those who assist in such conversions. The majority of Indians have criticized and opposed the laws that have been passed into law in the majority of the country's states. Some of these laws, also known as Acts, have even been challenged by the

populace on the grounds that, since they were passed, some have been abused, while others have been argued to be unconstitutional and to have violated the right to freedom of religion, which is guaranteed by the Indian Constitution. In order to address this, I must look at how anti-conversion laws have been interpreted by the courts and what rulings they have made in various cases pertaining to these laws.

The Supreme Court construed the scope of Article 25 of the Constitution, which deals with religious freedom, to include the ability to spread one's religious beliefs for the instruction of others in the case of *Ratilal v. State of Bombay*.

In this instance, it was decided that one's freedom of conscience includes the ability to consider ideas and doctrine that pertain to subjects that he feels will benefit his spiritual health.

All Indian people are allowed under the Constitution to practice any religion within any community. It has been noted that religious practices involve carrying out deeds in support of one's faith or conviction in specific doctrines. Thus, while Article 25 of the Indian Constitution grants the freedom to practice one's religion and to declare one's own, it does not grant the freedom to have faith or belief in any religious theory of any segment of society. As a result, the freedom to spread one's faith should not be interpreted to include the freedom to convert others to it. As a result, Article 25 of the Constitution is not violated by the law that forbids converting someone using coercion, fraud, or other deceptive tactics.

Two arguments were made in the case of *Yilitha and others v. State of Orissa* about the Orissa Act's challenge. First, the Orissa Act violated the fundamental right protected by Article 25 of the Constitution. Secondly, the State Legislature lacks the legislative authority to enact laws on topics covered by the Act. In the end, the Court determined that the Act went beyond what the Constitution allowed.

The debates over propagation and conversion are the interesting and pertinent parts for our purposes. Judge R. N. Misra noted in his ruling that the petitioners—both Catholic and Protestant—admitted to a variety of reasons for their conversion, including the satisfaction of basic physical needs, the admirable life that Christians lead, the allure of Christian beliefs, the desire to escape a miserable social class, and subliminal warnings such as divine displeasure. Propagation

was viewed as a crucial component of Christianity by Christians. That is, Christians felt obligated to share the gift of salvation with others, and Christ had granted them authority to practice discipline. The proponents of the Orissan government acknowledged that this spreading was a component of the Christian religious obligation.

However, Justice Misra goes beyond this, citing the ruling in *Durgah Committee v. Hussain* as support for her argument that Christian propagation is a part of their religious obligation and is thus a right protected by the Indian Constitution.

Judge Misra made the following suggestion on one section of the Act: the threat of divine disapproval and the menace. Nonetheless, the Orissa Act's definition of incentive was deemed overly expansive, as it may include merely praising God or saying that one's soul will be raised through his grace.

Consequently, the Orissa Act has ultimately been ruled to be illegal for three reasons. First, conversion to Christianity is guaranteed by Article 25. Thirdly, because the Act deals with religion and not public order, the State lacks the authority to adopt the legislation that it envisions. Fourthly, the concept of inducement is too ambiguous.

On account of *Stanislaus v. Province of Madhya Pradesh*, the Madhya Pradesh High Court challenged the constitutional legality of the *Dharma Swatantrayan Adhiniyam, 1968*, and the Orissa High Court questioned the constitutional validity of the 1967 Freedom of Religion Act.

The option to change over is likewise safeguarded by Article 25 of the Indian Constitution, as per the Orissa High Court, which additionally held that the expression "induration" was vague and could disregard the option to participate in sensible endeavors to convince somebody to switch over completely to one's own religious confidence, which is safeguarded by Article 25. Accordingly, the term could be pronounced unconstitutional.

The Madhya Pradesh High Court rejected the Orissa High Court's argument that conversion is a necessary part of Article 25 and made a distinction between the two rights—propagation being a fundamental right and conversion not being considered a part of a fundamental right. It was decided that it is against Article 25 of the Constitution to stop someone from becoming a convert.

The rationale is that forced conversion might be prohibited because it could upset the peace in society. A thing is considered to be disruptive to the public order if it alters the way that society functions as a whole rather than just affecting one person. In order to maintain public order, a religious practice that not only has an impact on a single person but also upsets the foundations of society as a whole may be outlawed.

The Stanislaus Case upset the Orissa High Court's decision in the Yulitha Hyde case, where it was concluded that the Orissa Freedom of Religion Act's equivocal meaning of affectation encroached upon legal techniques for convincing somebody to embrace one's own religion.

As of late, the Himachal Pradesh Freedom of Religion Act, 2006 and the Himachal Freedom of Religion Rules, 2007 were tested in court by the solicitors, who are an enlisted society and trust. They commended that specific arrangements of the previously mentioned Act and Rules are ultra vires the Indian Constitution. The case is Evangelic Cooperation of India and Act Now for Amicability and A majority rules government V. Territory of Himachal Pradesh.

On August 30, 2012, the court gave over its decision, nullifying area 4 of the Himachal Pradesh Freedom of Religion Act, which required anybody wishing to switch starting with one religion over completely then onto the next to advise the locale judge thirty days ahead of the conversion. The seat has noticed that an individual not just has the freedom of still, small voice, the freedom to hold convictions, and the freedom to adjust those convictions, yet in addition the freedom to keep up with those convictions in private. The Court's decision is imagined as an exact move toward granting religious freedom in India.

5. CONCLUSION

One of the principal fundamentals of India's common nature is that the nation and its way of life have consistently invited and valued all religions and beliefs. Anti-conversion laws, which try to end constrained conversion and reinforce the right to religious freedom, have for quite some time been a combative issue in India. Then again, it is tremendous what compulsion or power could mean for somebody's heart. The law is oftentimes applied to religious organizations and teachers the same. In this study, it ought to be noticed that anti-conversion regulation in India are a disagreeable and muddled point that is firmly connected to the major right to religious freedom

ensured by the Constitution. These laws, which try to protect weak populaces from coercive conversion, are habitually censured for their loose definitions, penchant for misuse, and infringement of individual flexibility.

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