
ANALYSIS OF THE CONSTITUTIONALITY OF ‘PROTECTION OF RIGHT TO FREEDOM OF RELIGION ACT’

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ABSTRACT

Protection of Right to Freedom of Religion Act or widely known as the Anti Conversion Law which is introduced by about 10 states in India. The primary intention of law is to prevent conversion of a person from fraud, allurement, misrepresentation, coercion etc and any conversion for such a purpose is considered as forceful and conversion for the purpose of marriage is invalid. The law also provides for a certain period during which the person intending to convert has to notify the District magistrate. The Freedom of Religion Act believes that there is force involved from the other person. It views the right to convert as a right of a person to convert another person to a religion which is different from one's original religion. This process is considered as 'forceful' by the supporters of the act. However, the law argues on the basis that the right to convert will lead to a right where one person can forcefully convert the other person to his/her religion. The whole research revolves around considering as to if imposing restrictions on the rights of the people can be termed as constitutionally valid law. The researcher has analyzed various scholarly articles and judicial precedents to substantiate the claims. The objective of the paper is to analyze the constitutionality of the Anti Conversion laws. The researcher claims that the provisions of the act have changed the basic structure of the constitution by providing restrictions on the enjoyment of Article 14, Article 21 and Article 25 of the constitution of India.

Keywords: Anti Conversion, Fundamental rights, District Magistrate, Constitutionality, Forceful conversion

INTRODUCTION

Freedom of Religion in the constitution of India provides for the protection of the religious practices and the beliefs of people. The Freedom of Religion Act which is called as the Anti Conversion Law. The law has laid down certain restrictions upon the fundamental rights of the people in the name of religion. The provisions of the law conflict with Article 14, Article 21 and Article 25 of the Constitution of India. Article 14 guarantees to all persons equality before law and equal protection of law. All the people of the country irrespective of their religion, caste, gender are treated equally in the eyes of law and the law is not biased¹. Article 21 provides for the right to protection of life and personal liberty. It also includes right to privacy and freedom of choice². Article 25 guarantees freedom of conscience, right to profess, practice and propagate one's belief. These rights were enacted to ensure liberty and individual freedom against the influence of the state³.

The Preamble has included the concept of secularism through the 42nd Amendment Act, 1976⁴. With the amendment the preamble of the constitution identifies or has recognized the religious rights and beliefs of people from the interference of the state. Hence the state is given the duty to protect all the religion but no right to interfere in any of the matters concerning the religion. However the state has the right to exercise the powers and restrict the activities of religion only if it is violative of public order. The fundamental rights that are challenged in the provisions of the anti-conversion law have been laid to restriction on the individual liberty at large. Article 14 which guarantees equality before law and equal protection of law, article 21 that focuses on the right to privacy and right to choose, article 25, right of a person to choose the religion of one's choice are restricted in the provision section 3 and 6 of the Protection of right to freedom of religion act. Section 3 (Prohibits conversion from one religion to another by force, fraud, misrepresentation)⁵ and Section 6 (Conversion for the purpose of marriage becomes null and void)⁶. As per the provisions of the law, if a person intends to convert has to provide a notice in advance to the authorities, later the documents are given for public scrutiny, and the purpose is to raise objections if any and conversion will be withheld. While looking at the provisions of the act, it states that conversion is forceful and the voluntary conversion is to be proved by

¹ INDIA CONST.

² INDIA CONST.

³ INDIA CONST.

⁴ INDIA CONST.

⁵ Protection of Right to Freedom of Religion Act, Sec 6, Acts of the Parliament (India)

⁶ Protection of Right to Freedom of Religion Act, Sec 8, Acts of the Parliament (India)

providing proper documentation 60 days prior to the District Magistrate. The authorities have to be convinced that the conversion is reasonable.

The fundamental rights of the constitution provides for individual liberty which also includes freedom of religion. It upholds the concept of 'Sarva Dharma Sambhava'. However the anti conversion law has laid down certain restrictions on these rights. The fundamental rights governing religious freedom in India are not absolute and can be subject to restrictions for the matters concerning the welfare of the society. Article 25 of the constitution provides for certain rights but also provides restrictions. These restrictions are claimed to be within the ambit of 'freedom of religion'. A state is given the power to intervene in the matters of one's religion, if it is against public order, morality and health of the society. However it is nowhere in the constitution it states that a right to choose the religion of one's choice and convert and follow the same violates public order and morality. The anti- conversion has laid down conversion to be due to fraud, misrepresentation, coercion etc and the right to convert for the purpose of marriage is criminalized and the marriage itself becomes void in the eyes of law. The constitution has provided certain rights such as article 14, article 21 and article 25 but the Protection of Freedom of Religion Act has laid down restrictions on the laws in the name of 'protection of one's religion', public peace, morality etc. However the anti-conversion law does not identify instances of violation of public order in the country which has led the state to intervene and restrict one's freedom of choice.

RELATING TO ANTI-CONVERSION LAW TO THE TRANSFORMATIVE THEORY

The provisions of Anti- conversion law can be analyzed with the 'Transformative Theory' of Corey Brettschender. This theory by Corey states that religious freedom must be protected from the influence of the state that leads to changes and violations of religious freedom and personal choice. Theorists such as Martha Nussbaum and Michael M C Connel have also upheld that transformation brought about by the states through the laws must protect the religious freedom as the society is primarily based on the value of religion itself and any intentional or unintentional act by the state can transform the religious rights and cause threat to the Right to freedom of religion of people.

The Freedom of Religion Act or the Anti Conversion Law criminalizes forceful conversion.

The law as stated by Corey Brettschnelder in his ‘transformative Theory’ of religious freedom has caused a transformation in the religious choice, rights and beliefs of the people. Citizens, if they wish to convert to the religion of their choice, cannot do so freely and must seek approval. This new rule has not only restricted freedom of religion but has violated the right to choose the religion. The restriction on conversion is because the anti conversion law considers both voluntary and involuntary conversion to any other religion involves force, fraud or misrepresentation hence mandates to provide valid documentation and notice of conversion to the state. As stated by Martha Nussbaum and Michael M C Connell, the anti conversion law implemented in the states has caused an impact in the society. Not just the religious freedom of people is restricted, but also certain groups of people belonging to a particular religion are targeted by people under alleged ‘conversion’ and this transformation has caused a threat to the rights of citizens. This theory of transformation has contributed to understanding the effects of transforming the freedom of religion of citizens in the Indian context. Article 25 of the Indian Constitution which guarantees freedom of conscience and free profession, practice and propagation of religion is being violated. As held by the Supreme Court in the case of *Stainslaws V. State of Madhya Pradesh*⁷, it was held that Article 25 does not guarantee a right to convert. This transformation in the interpretation of the apex court has led to the legal interpretations that restricts the interpretation of the word ‘propagation’ and it does not include right to convert. However, the anti conversion law is not clear as to what constitutes conversion by force, fraud or misrepresentation. The law does not recognize voluntary conversion and requires a person wanting to convert to provide a valid evidence by giving a notice to the authorities of the state. It is not clear as to if there is a misinterpretation of the articles itself for such a long time or the law misinterprets the articles. This transformation is being explained by Corey in his transformative theory and the transformation in the rights of freedom of religion of people, by the implementation of ‘Freedom of Religion Act’ has led to transformation in the rights of citizens.

JUDGEMENTS THAT UPHELD THE BASIC STRUCTURE OF INDIAN CONSTITUTION

Basic structure of the constitution of India is derived from various supreme court judgements. The whole idea of basic structure is to preserve the democracy and protect the rights of the

⁷ 1977 SCR (2) 611

people from new laws and regulations.

a) S R Bommai V. Union of India⁸

This is one of the landmark case which deals with the fundamental rights of the individual. The court upheld secularism as the basic structure of Indian Constitution.

b) Keshavananda Bharti V State of Kerala⁹

This is also one of the cases which held that India is a secular country where every person has the right and freedom to choose and practice the religion of their choice and the state cannot interfere in the matters of religion. However it is provided power under reasonable restrictions. The state is separate from that of a religion.

c) Shakti Vahini V. Union of India¹⁰

Shakti Vahini case focused on the ‘right to choose’, the right guaranteed to each and every citizen. The court in this case held that preventing two consenting individuals from marrying is absolutely illegal and it is against their personal choice.

d) Shafin Johan V. Ashokan K M¹¹

The supreme court in this case recognized the right to marry a person of one’s choice as an important facet of the right to life and personal dignity under Article 21 of the constitution.

The above S.R Bommai and Keshavananda Bharti case focus on the restrictions on the freedom of religion and the decision of the courts in upholding the concept of secularism as the basic structure of the Constitution of India. The case on right to choose is claimed to be restricted in the anti-conversion law as the law considers conversion on the basis of marriage as void and is always forceful. The research is developed by analyzing the scholarly articles of the various authors.

⁸ 1994 AIR 1918

⁹ (1973) 4 SCC 225

¹⁰ 2018 7 SCC 192

¹¹ Criminal Appeal No. 366 of 2018

RESEARCH PROBLEM

The author contends that Section 3 and Section 6 of the Protection of Right to Freedom of Religion Act is arbitrary and violative of the fundamental rights because the restriction imposed through the act does not meet the requirement as to whether it is reasonable or not and gives absolute authority to the state.

LITERATURE REVIEW OF THE SCHOLARLY ARTICLES

The article by the South Asia Human Rights documentation Centre who specifically work for human rights have argued on the constitutionality of the anti-conversion law. The state's law on conversion and what is forceful conversion is not justified. Author argues that a law which violates the fundamental rights of people causes challenges to secularism. Secularism in India is a right of every citizen and it is the basic structure doctrine and any act that is against secularism the law violates the provisions of the constitution and there is no right identified here. Laura Dudley Jenkins, a professor and the author with various publications of articles and books claims about the incidents of conversion taking place in parts of the country. The author argues that voluntary conversion is to be allowed. They are people capable of making rational decisions¹². Poorvi Sharma and Purusharth Dixit have focused on the base of secularism and how the law poses some serious threat to religious freedom¹³. The study conducted by the Indian Law Institute, Delhi claims that the law is arbitrary and poses some serious threat to the rights of people¹⁴. All the above articles have helped the researcher in supporting the claims raised by the researcher. The essential elements as to what type of conversion becomes forceful within the ambit of anti- conversion law is one of the claims raised by all the researchers for which no clarity is given in the law itself.

RESEARCH QUESTIONS

How is the aspect of conversion in the Protection of Right to Freedom of Religion Act contradicting Article 14, Article 21 and Article 25 of the Constitution of India?

¹² Laura Dudley Jenkins, “*Legal limits on Religious Conversion in India*”, jstor, Duke University, School of Law

¹³ Poorvi Sharma, Purusharth Dixit, “*An Analysis of state Anti Conversion laws in India*”, International Law journal of Management and Humanities, Vol 4, Issue 3, ISSN 2581-5369

¹⁴ Indian Law Institute (Deemed to be university) New Delhi, “*A Study of Compatibility of Anti Conversion laws with Right to Freedom of Religion in India*”.

METHODOLOGY

The research focuses on the constitutionality of anti conversion laws. A law meets the constitutionality when the government and the laws will have limited interference in the lives of the people. The objective of the research is to analyze the constitutionality of the provisions of Freedom of Religion Act or the Anti Conversion law. The research is developed by analysing the scholarly articles. Hence the methodology adopted throughout the study is doctrinal because the study includes analysing the scholarly articles of the authors, gathering judicial precedents. Qualitative method of analysing data is adapted because the study is based on the constitutional validity of the law hence the source of data is mainly relied on the online sources such as jstor, SCC Online for the case laws, west law, Hein Online, Constitutional debates, law journals etc.

RESULTS

The issue of forceful conversion as claimed to be addressed by the act limits the rights of the people. The state has the powers to restrict the rights as the state is a part of basic structure. Parliament is supreme and enjoys boundless power to amend the constitution however the state cannot interfere in the matters of the religion. Article 21 which guarantees right to life and personal liberty also includes a right to choice. The anti-conversion law considers marriage before or after conversion which is done for the purpose of marriage to be void. This is because the law claims that any conversion that was taken place for the purpose of marriage is not made by a rational person and does not involve rational choice of the converted person. However the supreme court cases analysed above, states and considers individuals as rational beings with the ability to decide on the matters of their choice.

CONCLUSION

Anti Conversion law is not a central law but the states are given the authority to implement the law in the country hence the state does have the powers to amend laws. However the amendments made should be such that it should not change the basic structure of the constitution. It is the opinion of the majority public that the anti conversion laws will lead to a situation where a person will not have a freedom to choose the religion of their choice and must follow the procedure established by the state where it requires the person converting to get the approval from the state authorities thereby restricting their right. Another aspect that includes

the process of conversion is through marriage. The person intending to convert to the religion of another partner cannot do so even if it is done willingly or voluntarily. This restriction considers it as void and includes the element of force in the process of conversion. The case laws discussed above have upheld the liberty of the individual and considers them as individuals capable of making choices which is being challenged in the anti-conversion law.

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