
THE ANTI-CONVERSION LAWS AND FREEDOM OF RELIGION IN INDIA: A CRITICAL ANALYSIS

Ms Uma Singh, BA LLB (Hons.), Amity Law School, Noida

ABSTRACT

India's socio-political landscape is marked by a delicate interplay between religious pluralism and state regulation. At the heart of this dynamic lies the contentious issue of anti-conversion laws, which ostensibly aim to safeguard religious identity and communal harmony but often raise concerns regarding the freedom of religion enshrined in the Constitution. This abstract critically analyses the implications of anti-conversion laws on religious freedom in India, examining legal frameworks, historical precedents, and socio-cultural dynamics. Anti-conversion laws, enacted by several Indian states, seek to regulate religious conversions by requiring individuals or religious organizations to obtain prior approval from state authorities. Proponents argue that these laws prevent coerced or fraudulent conversions and preserve religious harmony. However, critics contend that such legislation disproportionately targets religious minorities and infringes upon the fundamental right to freedom of religion.

Introduction

The right of religious freedom is not something that has been provided to a person by some law, but it is something that has been endowed by nature. Every person has a “right to religion/faith and freedom of conscience” and a “right to select a religion of one’s “choosing”. It is not because of law that a human being has it, but it is a right that a human being has and that there is a need that this right is to be protected and affirmed and ensured by law. Both the freedoms, i.e., the “freedom of conscience” and “the freedom of religion”, have been recognised by municipal law and international law. It is provided in the Indian Constitution that “the right to freedom of religion as a fundamental right” in its Part III. It provides that this right encompasses the right to practice one’s religion without any interference and in a peaceful manner, without hurting his fellow citizens’ religious sentiments. As a result, India has been known around the world for her “Unity in Diversity”. In India, one of the characteristics of “freedom of conscience” that has been the centre of controversies and debates is “the right to propagate” or “the right to proselytize”¹. Keeping in view the proselytising nature of certain religions, wherein it is an essential feature of the religion that a person is duty-bound to propagate his faith/ belief, the question of whether the “right to propagate” a person’s faith amounts to a display of his religion or faith. It is thereby included within the ambit of freedom of conscience of a person, needs to be answered.

Freedom of Religion under the Indian Constitution

The freedom to profess, practise, and spread one’s religion is guaranteed by the Indian Constitution. Cases that are decided by the courts on religious freedom have a bearing on secularism and modernity besides sensitive contests between litigants’ policy-perspectives. In the cases involving the determination of religious freedom, the Supreme Court has with time evolved a standard of adjudication which restricts freedom of religion to practices forming an indispensable part of a religion or sanctioned or enjoined by religion. This standard confines judicial inquiry for the determination of the nature of the religious practice.²

¹ Convert or attempt to convert (someone) from one religion, belief, or opinion to another. An individual can convert without having been proselytized; proselytizing, however, is „a natural accompaniment to conversion“. available at <https://www.google.com/search?q=proselytising+oxford+english+dictionary&oq=proselytise> accessed on April 2023.

² Ghouse, M. “Freedom of Religion and Judicial Review: A Critique of the Canon of Adjudication”. *Minorities and the Law*, 278-292. (1972)

In “*Ratilal’s case*”³, the Supreme Court elucidated that “every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others.”

Right to propagate religion.

The word “propagate” refers to the act of widely disseminating and promoting an idea, theory, or other concepts. In propagation, only encouragement and elucidation are used rather than force or coercion. It refers to the freedom to act in accordance with one’s religious beliefs without impediment, but subject to other people’s equal rights and the preservation of society’s public order. Offensive methods to convert or to make aggressive proselytising speeches, vilifying the other man’s religion, coercing to convert, do not come under the category of “to propagate”, and such rights are not at all protected and guaranteed by the State. The guarantee is not to do propaganda vilifying the other man’s belief but only to propagate one’s belief. In propagation, an individual shares his own belief or faith, or spiritual experiences with others in an attempt to convert others to his religion. The most prevalent techniques of religious propagation include the publication, distribution, and dissemination of religious materials. However, such actions frequently create “law and order problems” in society. Thus questions have arisen as to whether the State could impose taxes on the sale of religious literature or regulate its publication, sale, or distribution.

India is a multi-religious country, the right to propagate religion has a special significance, as some of the religions expressly emphasise the need for conversion. Under the “freedom of conscience clause” provided in the Constitution, there is the freedom to repudiate one’s religion or replace it with another religion. Under Muslim Law, a Muslim is free to follow Islam throughout his life or abandon Islam and embrace another religion despite the Islamic law on apostasy. Likewise, any non-muslim can freely accept Islam though his birth religion may regard Islam as a false religion or regard the Muslims as *Mallich* (Infidels according to Hindu faith). In this case, the state cannot legitimately utilise its authority to carry out a religion’s demands on apostasy or conversion. It can only recognise an individual’s claim of being or not being the follower of a particular religion without declaring or enforcing any religion as

³ 1954 AIR 388, 1954 SCR 1035

official.⁴

While the fundamental right of profession and practice of religion has been the subject matter in numerous cases which the High Courts and Supreme Court have decided since 1950, however Constitutional right of propagation of religion has got very little until now by way of judicial interpretation. On this aspect of Article 25, the Supreme Court decisions have so far been reported; although most involve Christians, however, their *ratio-decidenti* being general applies to the Muslims as well.

To start with the interpretation of Article 25 of the Constitution in two different cases⁴¹, the Supreme Court held that Article 25 secured to every person's the right to propagate or disseminate his views for the illumination of others but subject to possible restrictions specified in it. Whether the dissemination of religious beliefs takes place in a church or monastery, a temple, or a parlour meeting, the right to propagate religious beliefs is guaranteed. In these cases, the Court did not dwell on the Constitutionality of the right to convert others.

The issue of whether the right of propagation of an individual includes the right to convert others was raised before the Supreme Court in "*Rev Stanislaus v. State of Madhya Pradesh*"⁵. The Court held that "restrictions on efforts to convert are constitutional because such efforts impinge on the freedom of conscience of the proposed converttee/s and public order".⁴³ The case has been discussed in detail in the latter part of this chapter.

Article 25(1) protects and guarantees freedom of conscience to citizens irrespective of type and nature of the religion he follows. The guarantee provided to freedom of religion in Article 25 is not restricted to a particular religious community only but treats all the religions equally. The Article can be duly enjoyed by an individual if he enjoys the freedom in such a manner that the same is not in violation of the freedom of the followers of other religions. It is a universal principle of equality that what is freedom for one is freedom for all in equal measure, and it cannot be stated that an individual does not have the fundamental right to convert others to his religion.⁶

The right to freedom of religion provided in Article 25(1) is subject to "public order". The

⁴ *Commissioner H.R.E v. L.T Swamiar (Shirur Mutt Case)*; 1954 AIR 282, 1954 SCR 1005

⁵ 1975 AIR M.P 163.

⁶ Jenkins, L. D. "Legal limits on religious conversion in India". *Law and contemporary problems*, 71(2), 109-127. (2008)

Court further observed that “the Acts provide for the maintenance of public order for, if the forcible conversion had not been prohibited, that would have created public disorder in the States,” and that “the expression „Public order“ is of wide connotation.”⁴⁵ In terms of competence, the Court determined that the Acts fall under Entry I (Public Order) of List II of the Seventh Schedule, which is within the purview of states and is not governed as a religious matter, and thus falls under the parliament's “residuary power”.

Right to conversion connotes the right of an individual to accept, embrace and follow another religion and renounce his existing one. However, this religious conversion should be out of the individual's own will and volition. Besides, the conversion should be with this belief that the religion which he is following has not come up to his expectations, whether rational or spiritual. Sometimes rigidity of the tenets, practices, rites, ceremonies, and customs of a particular religion may make an individual rescind his faith in religion and adopt another religion. Sometimes an individual decides not to follow any religion and categorically denies the existence of God and thus becomes an atheist. Such religious change due to the above and like reasons falls in the domain of the “Right to Conversion”.⁴⁷

Limitations on freedom of religion

—The Fact is, all constitutional rights are regulated, always have been, and need to be. No right can be absolute. Even the fundamental rights are not absolute and reasonable restrictions can be placed by the State on the exercise of such rights. The rationale behind the imposition of restrictions on the right to freedom of religion is to discard the concept of absoluteness. If the right to freedom of religion is made absolute, then the same would amount to the denial of the said freedom. It can be found with no exception that in all democratic countries, there is no concept of absolute right, and the states do place reasonable restrictions on the enjoyment of the said right. However, it is pertinent to mention that in —The U.S.A. and Australia, absolute religious freedom has been conferred, but still, many limitations/ restrictions can be placed by way of judicial intervention. So it can be said that even in these countries, the right is not absolute. On the contrary, in India, it is the Constitution itself that makes the imposition of reasonable restrictions on religious freedom necessary.⁷

Apex court has discussed the restrictions on the right to freedom of religion in case of —*The*

⁷ Viswanathan, G., Needham, A. D., & Rajan, R. S. “Literacy and conversion in the discourse of Hindu nationalism”. *The crisis of secularism in India*, 333-55. (2007).

Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar”;

Religion is certainly a matter of faith with individuals or communities, and it is not necessarily theistic. Both in the American as well as in the Australian Constitution, the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on the grounds of morality, order and social protection. Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not.⁸

Courts have held that State cannot interfere in religious matters of individuals, but the interference of the State can be in matters incidental to religion. In —*Ratilal Panachand Gandhi v. State of Bombay*—, it was stated;

What the State can regulate under article 25(2) (a) are the activities that are really of an economic, commercial or political character though these may be associated with religious practices.⁹

As already discussed that the freedom of religion cannot be absolute like other fundamental rights. Reasonable restrictions are necessary as absoluteness of rights will result in disorder in society. Besides, there are some objectionable practices, rituals, ceremonies associated with a particular region that need regulation by the State in the large social interest. The right to freedom of religion granted by Articles 25 and 26 of the Constitution is subject to significant limitations. Thus like other rights, the freedom of religion is conditional and regulated by the State. The Constitution establishes the parameters within which individuals in India can exercise their right to freedom of religion. The State can put reasonable constraints on the given right, keeping in mind the need to maintain peace, public order, and morality. The State has been thus allowed to curb, restrict or regulate these religious activities, which militate against social peace and morality. The Constitution has further laid down that these freedoms will not prevent the State from reforming Hindu religious institutions. It is in this context that the State has abolished untouchability has enabled all the Hindus to have access to all religious

⁸ AIR 1954 SC 282

⁹ AIR 1954 SC 388

institutions.

Conversion of Religion in India

Religious conversions in India are a controversial subject due to the constant communal tension and a long history of communal disharmony between the majority and minorities. Conversion of Religious nature are seen with suspicion as it is presumed that the conversions are induced due to coercion, manipulation or force.

India is a secular nation and freedom of religion is enjoyed by the citizens under Article 25 of the constitution. Article 25 promotes propagation of religion. The term propagation of religion was added by Constitution makers with the view to protect the rights of minorities so that they may promote their religion. Thus the term propagation of religion was often associated with conversion of religion. However, in the landmark judgement of **Rev. Stainislaus vs State Of Madhya Pradesh & Ors**¹⁰, SC held that the right to freedom of propagation of ones religion does not amount to the right to conversion of religion of other. Rev Stainislaus a christian missionary converting individuals to Christianity alleged that the missionary was exercising their right of propagation of religion under Article 25. Thus, the missionary claimed that conversions were valid and the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 was unconstitutional as it was infringing their right to freedom of religion.

SC held that the freedom of religion enjoyed under article 25 has some reasonable restrictions. If an action disturbs 'public order' or restricts 'freedom of conscience' of an individual than such action will amount to infringement of freedom of religion of the individual. It was concluded that a conversion is valid when it is not obtained out of fear or any malicious conduct but is out of free will.

Court held the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 is constitutional and stressed upon the need for a law checking and regulating religious conversions to maintain 'public order'. Further it was stated the law to be valid as public order is a state subject under list 2. Thus, states can formulate Anti-Conversion laws for maintenance of public order and social harmony.

A doctrine evolved that a religious conversion in consensus with the persons conscience is a

¹⁰ 1977 AIR 908

conversion expressing freedom of religion under the Indian constitution. Thus, freedom of conscience is an essential element of valid conversions. Freedom of conscience refers to freedom thoughts, belief, ideas and faith which and individual can develop without any interference out of free will.

Anti-Conversion Laws: Analysis

India's anti-conversion regulations are designed to prevent conversions under conditions that extend past coercion, using broad terminology that could potentially be utilized to challenge voluntary religious changes. Taking the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021 as an example, its Section three stipulates that conversion or the attempt to convert another person through misrepresentation, force, undue influence, coercion, allurement, or by fraudulent means is prohibited. Offenders could face imprisonment ranging from one to five years and a minimum fine of 15,000 Indian rupees. The penalties increase for conversions or attempted conversions involving minors, women, or individuals from Scheduled Castes or Tribes, or in cases of mass, conversion contravening section three, with imprisonment ranging from two to ten years and fines starting at 25,000 rupees, escalating to three to ten years in prison and a minimum fine of 50,000 rupees for mass conversions.

Anti-conversion laws are formulated to prevent or stop religious conversions which are induced out of malicious means such as force, allurement, coercion or manipulation and not out of freedom of conscience. Religious conversions are famously know to take place due to caste or marriage related reasons. A lot of lower caste people are found converting as they are stuck in the caste with is oppressed for generations. Some are known to convert as other religion provides opportunity of polygamy. Similar other forms of conversion are famous in which fear of god or some allurement is used to covert. Mostly lower caste individuals are targeted by minorities in such conversions. The concept of Love Jihad is also popular. Proponents of anti conversion laws argue that these laws protect women from the traps of 'false love' by the man belonging to minority. Currently 12 states have formulated these laws. Historically, Hindu Princely states started the enactment of anti conversion laws during colonial era to protect Hindu identify against the conversions by Christian missionaries.

In the post colonial era Odisha and Madhya Pradesh initiated the enactment of anti conversion laws. The Orissa Freedom of Religion Act 1967 was the first anti-conversion law enacted. The act provided punishment and fines for fraudulent conversions. There were special provisions

for minors, women, and SC/st. As per the act any conversion amounting out of threat of injury, social exclusion, offer of any gift or manipulation would amount to fraudulent conversion. The offence under the act was the cognizable offence. As per the rules of the act, any priest doing conversions should inform the District Magistrate 15 days before the ceremony with the personal information of such individual who is converting along with details of the day of the ceremony. Orissa High Court in *Yulitha Hyde v. State of Orissa*¹¹ declared the act to be ultra vires on the ground that state legislature lacked the jurisdiction. However, the decision was reversed by Supreme Court in *Rev. Stainislaus vs State Of Madhya Pradesh & Ors* judgement.¹²

Madhya Pradesh Freedom of Religion Act, 1968 was the second anti-conversion act passed against conversion out of allurement which means any conversion induced out of temptation for gift or any material benefit. Provisions of the act are similar to those of the Orissa Freedom of Religion Act. Later the anti-conversion laws were implemented in Andhra Pradesh, Tamil Nadu and Arunachal Pradesh similar to that of Orissa and Madhya Pradesh. Rajasthan has enacted the law but it did not get the assent of the governor. A most recent development is Uttar Pradesh's Prohibition of Unlawful Conversion of Religion Act, 2021 which provides the most stringent punishments.

Proponents of these provisions support the idea of prevention of induced religious conversion so that every individual can enjoy freedom of conscience. However those who criticize claim that these laws restrict freedom of religion and violate International Human Rights.

State-level anti-conversion laws in India now commonly include clauses aimed at halting what is referred to as "Love Jihad," an offensive term referring to conversions that happen within the context of interfaith marriages. For instance, the Prevention of Unlawful Conversion of Religion Act, 2022 of Haryana prohibits conversion or attempts at conversion through marriage or for the purpose of marriage, as well as hiding one's religion with the intention to marry. The punishments for the former include one to five years of imprisonment and a fine of at least one lakh rupees, while the latter could lead to three to ten years of imprisonment and a fine of at least three lakh rupees. Harsher penalties apply when the conversion involves a minor, woman, or someone from a Scheduled Caste or Tribe, with imprisonment from four to ten years and a fine of at least three lakh rupees.

¹¹ *Yulitha Hyde v. State of Orissa*, AIR 1973 Ori 116

¹² 1977 AIR 908

These laws contravene international human rights standards which assert that individuals have the right to change their religious beliefs. The United Nations Human Rights Committee's General Comment 22 on ICCPR Article 18 underscores that there should be no limitations on the freedom to adopt a religion or belief of one's choice. The existence of criminal penalties for converting to a different faith or belief, as seen in these state-level anti-conversion laws, restricts this freedom and may deter individuals from converting to their preferred religion, especially if those aiding the conversion face legal consequences. Moreover, these laws infringe upon the rights of those who wish to help others convert voluntarily, contradicting the UN Special Rapporteur on Freedom of Religion or Belief's interpretation of ICCPR Article 18, which protects non-coercive attempts to persuade others to convert, and Article 19(2), safeguarding freedom of expression, including religious discourse.

While international human rights law does forbid forced conversions, the UN Human Rights Committee clarifies in General Comment 22 that coercion can take many forms beyond physical force or legal penalties, such as restrictions on education, healthcare, employment, or other rights, which can compel individuals to change their beliefs. The application of anti-conversion laws in India appears to aim at preventing conversions to certain religions, like Christianity and Islam, rather than safeguarding against coercion.

Additionally, ten states in India mandate that individuals planning to convert or involved in someone else's conversion must notify the government. For example, the Jharkhand Freedom of Religion Act, 2017 requires those participating in a conversion ceremony or the individual converting to seek approval from and notify the local District Magistrate. Non-compliance is subject to penalties, including up to one year in prison, a fine of up to five thousand rupees, or both.

Some state laws, including the 2022 Karnataka Protection of Right to Freedom of Religion Act, go a step further by requiring the District Magistrate to invite public objections to the proposed conversion after it has been officially notified. This procedure adds an extra layer of scrutiny and could potentially act as a deterrent to the conversion process.

International human rights standards stipulate that individuals cannot be forced by governments to disclose or change their religious beliefs through mandatory notification. As outlined in General Comment 22 in relation to Article 18 of the ICCPR, it's emphasized that individuals are protected from being compelled to disclose their religious beliefs. Moreover,

such laws that require notification are considered to coercively infringe upon a person's right to change their religion. Article 18(2) of the ICCPR specifically protects individuals from coercion that would interfere with their freedom to adopt a religion or belief of their choice. General Comment 22 also interprets penal repercussions for not informing authorities about a religious conversion as a form of coercion that infringes on these freedoms. Additionally, when public officials call for objections to someone's conversion, it further violates this right, a situation notably pertinent in India where minority religious followers might face hostility.

In certain Indian states, namely Gujarat, Haryana, Himachal Pradesh, Karnataka, Madhya Pradesh, Uttarakhand, and Uttar Pradesh, the legal framework shifts the burden of proof onto individuals accused under anti-conversion laws, requiring them to demonstrate their innocence. For instance, Madhya Pradesh's Freedom of Religion Act, 2021, mandates that the accused must prove that any conversion did not involve deceit, coercion, or other unlawful means.

This approach contrasts with international norms on the presumption of innocence, as enshrined in the UDHR and ICCPR, which assert that the prosecution must prove the guilt of the accused, rather than the accused having to prove their innocence.

The Indian Supreme Court has been approached with requests to assess the constitutionality of these state-level anti-conversion statutes. Challenges have been raised against various states, with demands for the Supreme Court to consider consolidating these challenges. Despite legal scrutiny, some states are contemplating the introduction of similar laws.

Notably, Uttarakhand and Uttar Pradesh have enacted laws aimed at curbing conversions by force or deceit, particularly targeting conversions for marriage, and introduced a requirement for prior notification of intent to convert. These laws have been contested for violating fundamental rights to liberty, privacy, and personal choice, particularly in the context of interfaith marriages and the controversial concept of 'love jihad'. Legal challenges, including one by the Citizens for Justice and Peace, cite significant Supreme Court rulings that affirm the fundamental right to choose one's religion, highlighting the importance of privacy, choice, and belief in upholding personal dignity.

The concept of 'love jihad' is often used to describe situations where a Muslim man is alleged to persuade a Hindu woman to convert to Islam, particularly within the context of interfaith marriages. This term has garnered attention from political figures across several Indian states,

including Uttarakhand, Uttar Pradesh, Madhya Pradesh, Himachal Pradesh, Gujarat, and Karnataka, all of which have announced intentions to enact legislation to counteract 'love jihad'. The Citizens for Justice and Peace (CJP) petition utilized notable legal precedents such as *Shafin Jahan v. Asokan K.M.* (2018) to argue that changing one's religion is a fundamental right. They also cited cases like *KS Puttaswamy v Union of India* (2017), and *Shakti Vahini v. Union of India* (2018), emphasizing the importance of privacy, autonomy, and religious freedom in upholding dignity. The Supreme Court, led by Chief Justice S.A. Bobde and Justices V. Ramasubramanian and A.S. Bopanna, has taken notice of this petition.

Furthermore, Himachal Pradesh and Madhya Pradesh have already implemented anti-conversion laws with provisions similar to those proposed in Uttarakhand and Uttar Pradesh. In an update to their ongoing petition, the CJP has sought to include these laws, a move that was permitted by Chief Justice Bobde's bench. As of January 16th, 2023, a new bench under Chief Justice D.Y. Chandrachud began hearings on the matter. Meanwhile, Gujarat, Haryana, and Karnataka have introduced their own anti-conversion laws, although the Gujarat High Court has temporarily halted certain sections of Gujarat's legislation. The Madhya Pradesh High Court has invalidated a key clause in its state's law, prompting appeals to the Supreme Court. Challenges against Karnataka's ordinance are still pending in the state high court. Additionally, the Jamiat-Ulama-i-Hind has filed a Supreme Court petition challenging the anti-conversion statutes of five states.