

INTERNATIONAL JOURNAL OF INTEGRATED LAW REVIEW

Volume 2 | Issue 1

2021

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An Analysis of Anti-Conversion Laws in India

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ABSTRACT

Anti-Conversion law is one of the most debated topics in India. India has a long history of anti-conversion laws which can be dated back to pre-independence era were some of the princely states enacted anti conversion laws to restrict the missionary activity. Fear of change I demography is one of the prominent fears for all the majority community all over the world, India is not an exception the majority Hindu community has a fear losing their majority status. The conversion is seen as a major mean to increase population. Anti-conversion laws are seen as a remedial measure to the problem of conversion.

The constitution of India gives person not only to practice and profess once belief but also to propagate it in this context this law seems to be inappropriate. But the anti-conversion laws are not bought to stop the conversion but to stop the conversion by force or coercion. Thus, present paper tries to look India's anti conversion laws with reference to right to freedom of practice profess and propagate once religion

Keywords: Religion, conversion, christians, anti-conversion legislation, violence, persecution.

I. INTRODUCTION

India has a long history of repeated invasions of foreign invaders; India's indigenous population has seen the conversion by way of force which has given rise to fear in the minds of majority Hindu community in India. India's new right-wing nationalists consider the issue of conversion as a major agenda. Some of them also see it as a foreign conspiracy to destabilize India². Hence, anti-conversion laws are seen as the solution to the 'problem' of conversion.

India has a long history of Anti conversion laws. Perhaps anti- conversion laws can even be found during the British era where Hindu princely states enforced these anti-conversion laws

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² Manmohan Rai, *Bjp Mp Yogi Adityanath Accuses Mother Teresa Of Religious Conversion*, Economic Times, (Dec. 2, 2020), <https://economictimes.indiatimes.com/news/politics-and-nation/bjp-mp-yogi-adityanath-accuses-mother-teresa-of-religious-conversion/articleshow/52842431.cms>

to preserve their Hindu religious identity from the influence of Christian missionaries³.

The Constitution of India has recognized the propagation of religion as a fundamental right, but even after the Constitution came into force, anti-conversion laws were made in India⁴, the constitutionality of these laws were challenged in various courts and the courts have also upheld the constitutionality of these laws⁵.

II. HISTORY OF ANTI-CONVERSION LAWS IN INDIA

As discussed earlier, initially these anti-conversion laws were introduced by Hindu Princely states during the 1930s and 1940s to preserve their religious identity from the influence of the Christian missionaries. The Raigarh State Conversion Act 1936, the Patna Freedom of Religion Act of 1942, the Sarguja State Apostasy Act 1945, the Udaipur State Anti-Conversion Act 1946 and many other such examples can be found all over India⁶.

Surprisingly, parliament in number of occasions has tried to introduce a law for regulation of conversion in India but none of those laws were enacted. The first attempt was made in the year 1954 when Indian Conversion (Regulation and Registration) Bill was introduced which was for the object of 'licensing of missionaries and the registration of conversion'⁷, the bill failed in lower house of parliament. In 1960, after six years of old bill a new bill called Backward Communities (Religious Protection) Bill was introduced with the object to check conversion of Hindus to non-Indian religion. The bill defined non-Indian religion as Christianity, Islam, Zoroastrianism and Judaism. However, it is quite significant to mention here that this bill had nothing to do with conversion of Hindus into Buddhism but the data suggests that there were considerable number of Hindus who were converting themselves into Buddhism as both of them were Indic religion, subsequently, this bill also failed in parliament⁸. One more private member bill was introduced by Jan Sangh MP O.P. Tyagi in 1979 called freedom of religion bill. This bill also failed due to lack of parliamentary

³ James Andrew Huff, Note, *Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws*, 10(2) Rutgers J. L. & Religion 1, 4 (2009), <http://www.lawandreligion.com/sites/lawandreligion.com/files/A10S-6Huff.pdf>, archived at <https://perma.cc/7Z7Y-9U8Q>

⁴ Rajshree Chandra, *Converting Religion, Converting Law: Rajshree Chandra*, Kafila (Dec. 24, 2014), <https://kafila.online/2014/12/24/converting-religion-converting-law-rajshree-chandra/>,

⁵ Rev. Stainislaus vs. State of Madhya Pradesh & Ors., 1977 A.I.R. 908

⁶ Dr. Monika Jain, *Anti-Conversion Law: Critical Analysis in India*, JOURNAL OF HUMAN RIGHTS LAW AND PRACTICE[STM Journal] (2019)

⁷ Dr. Iqtidar Karamat Cheema, *Constitutional and Legal Challenges Faced by Religious Minorities in India*, (Dec. 2, 2020), <https://www.uscirf.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf>

⁸ Indian Law Institute, *A Study of Compatibility of Anti-Conversion Laws with Right to Freedom of Religion in India* (2007), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2359250

support⁹. This was the time when anti-conversion law was included in the agenda of the Jana Sangh, which later transformed itself into the BJP. Surprisingly, BJP-ruled states such as Himachal Pradesh and Madhya Pradesh have similar bills that have names related to freedom of religion¹⁰.

III. SOME SIGNIFICANT HIGHLIGHTS FROM THE CONSTITUENT ASSEMBLY OF INDIA DEBATES

Most important incident related to anti-conversion laws is of 1st May, 1947 when Sardar Vallabh Bhai Patel introduced a clause in constitution of India which provides "Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law."¹¹ However, Sardar Patel suggested several amendments to Clause 13 which now is Article 25 and nowhere in the debate had Sardar Patel opposed the right to propagate religion. His only concern was about forceful conversion which later turned out as the moral base of anti-conversion laws in India.

Another member Ananthasayanam Ayyangar had gone a step further and proposed that conversion should be banned and conversion only on oath before a judge should be permitted.

In another debate on 6th December 1948, Mr. Loknath Mishra proposed to remove the word 'propaganda' in freedom of religion, he argued that the right to propagate religion is not recognized in any constitution whereas in contrast many constitutions of the world recognize the right against religious propaganda¹².

However, K.M. Munshi came forward to defend the phrase 'propagate' he argued that in spite of forceful conversion and conversion by coercion there are peaceful conversions too. He further argued that "Not because they wanted to aggressively convert people, but because the conversion was a fundamental part of their doctrine."

T.T. Krishnamchari argued that even when he had studied in Christian institutions for nearly

⁹ George Menezes & Arul B. Louis, *Bill introduced in Lok Sabha by former Janata Party MP O.P. Tyagi creates a scare among minorities*, India Today, (Dec. 3, 2020), <https://www.indiatoday.in/magazine/indiascope/story/19790430-bill-introduced-in-lok-sabha-by-former-janata-party-mp-o.p.-tyagi-creates-a-scare-among-minorities-821980-2014-03-06>

¹⁰ *Madhya Pradesh to bring Dharma Swatantrya (Religious Freedom) Bill 2020; Haryana to set up panel to draft similar law*, Zee News (Dec. 3, 2020), <https://zeenews.india.com/india/madhya-pradesh-to-bring-dharma-swatantrya-religious-freedom-bill-2020-haryana-to-set-up-panel-to-draft-similar-law-2325223.html>

¹¹ CONSTITUTION OF INDIA CAD, (Feb. 10, 2021), https://www.constitutionofindia.net/constitution_assembly_debates/volume/3/1947-05-01

¹² CONSTITUENT ASSEMBLY DEBATES (Lok Sabha Secretariat) (1966)

14 years no attempt has been made for his conversion¹³. He also described the sociological and historical context in which Hindus converted into Christianity.

IV. EFFECT OF ANTI-CONVERSION LAWS

Several states have implemented the Anti Conversion Laws which bans conversions by fraud, force, allurements or inducement, while Himachal Pradesh, Uttarakhand and Uttar Pradesh laws even place ban on conversion for marriage¹⁴.

Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance, 2020 even imposes the reverse presumption which is generally used in the cases of very severe and grave offences. Government has justified the position by saying that only accused can have a special knowledge of facts and circumstances and reverse presumption is justified in case of 'social evil'¹⁵.

Data of United States Commission on International Religious Freedom (USCIRF) of 2016 and 2018 provides that there are very rare instances of prosecution or arrest under anti conversion laws but they create the atmosphere of fear amongst the couples willing to do inter-faith marriages¹⁶.

Year 2017 report by USCIRF shows some incidents of arrest, for instance it provides an incident where some religious minority leaders faced arrest under these anti conversion laws.

In addition to that Pastor of the temple of God, Church was killed due to suspicion of Conversion. The incident came in limelight when Christians of Punjab started protesting against the incident¹⁷.

V. SCOPE OF FREEDOM OF RELIGION, ANTI-CONVERSION LAW AND CONSTITUTION OF INDIA

Constitution provides wide scope to freedom of religion however it rejects the French model of secularism which makes a clear separation between state and religion. The Indian constitution does not provide for separation of state and religion but it provides that state

¹³ Abhishek Sudhir, *A debate in the Constituent Assembly shows why we don't need an anti-conversion law*, Scroll.in, (Feb. 11, 2021), <https://scroll.in/article/697023/a-debate-in-the-constituent-assembly-shows-why-we-dont-need-an-anti-conversion-law>

¹⁴ Aneesha Mathur, *Anti-conversion laws in India: How states deal with religious conversion*, INDIA Today, (Feb. 12, 2021), <https://www.indiatoday.in/news-analysis/story/anti-conversion-laws-in-india-states-religious-conversion-1752402-2020-12-23>

¹⁵ Utkarsh Anand, *'For collective good': UP defends 'love jihad'*, Hindustan Times, (Feb. 13, 2021), <https://www.hindustantimes.com/india-news/for-collective-good-up-defends-love-jihad/story-O4J7iBG0SsbTEKuX3m1hRO.html>

¹⁶ *New USCIRF Report: Anti-Conversion Laws on the Rise in South Asia*, USCIRF, (Feb. 13, 2021), <https://www.uscifr.gov/news-room/releases-statements/new-uscifr-report-anti-conversion-laws-rise-south-asia>

¹⁷ Supra 13

shall not have any religion nor it will favor any religion.

The Constitution of India embodies both the passive and positive content of secularism. The secularism word was included in constitution by 42nd Constitution Amendment Act but even before that the Indian Constitution had embodiment of principle of secularism in articles 25, 26, 27 and 28¹⁸.

Concept of Freedom of religion is deep rooted in human civilization. In 539 BCE, when Cyrus, the great king of Persia, conquered Babylon, he freed the slaves and gave everyone the right to freedom of religion. Cyrus' proclamation inscribed in the Cyrus Cylinder is considered the first declaration of human rights.

Ancient Indian texts show that principles of universal toleration and acceptance were embodied in ancient society.

Human desire for a better world has led him to the concept of salvation which may be the origin of religion. Religion or spirituality is the most integral part of human nature and thus any undue ban on it can be a gross violation of human rights. The word religion does not find its place in preamble but preamble does guarantee Liberty of thought and expression hence right to freedom of religion, flow of the idea expressed in preamble.¹⁹

Several important international documents recognize the concept of freedom of religion like Article 18 of the Universal declaration of human rights, Article 1 of the Declaration on Elimination Based on Religion or Belief, Article 18 of the International Covenant on Cultural and Political Rights (ICCPR), Article 9 of the European Convention on Human Rights (ECHR), Article 12 of American Convention on Human Rights, Article 8 of the African Charter of Human and Peoples Rights.

Article 25 (1) of the Indian Constitution gives men right to both freedom of 'conscience' professes", 'practice' and 'propagate' religion. Conscience is the deepest thought or sense of moral correctness that governs the action of individual²⁰, conscience refers to one's belief of right or wrong. The word conscience has wider ambit than other words like practice, profession etc. Any right or freedom involving the conscience must get a wider interpretation²¹

¹⁸. Furquan Ahmad, *A Study of Compatibility of Anti-Conversion Laws with Right to Freedom of Religion in India*, SSRN ELECTRONIC JOURNAL (2008), DOI: 10.2139/ssrn.2359250

¹⁹. S.P. Mittal Etc. vs. Union of India And Others [1983 SCR (1) 729]

²⁰. South Asia Human Rights Documentation Centre(2008), *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights*, Economic and Political Weekly, (Mar. 8, 2021), 43(2), 63-73, <http://www.jstor.org/stable/40276904>

²¹. Supra 19

Religious performance or practice of acts in pursuance of religious belief is as much a part of religion as faith or belief in particular principles²².

The words that stand out noticeable are 'freedom of conscience' which are used distinguish than the words right to 'freely profess, practice and propagate religion'. This Article, therefore, is the most fragrant in the bouquet of fundamental rights, being foundational to an individual liberty²³.

Right guaranteed under article 25 is subjected to several restrictions and is not absolute.

However, we do not find any kind of restriction on freedom of conscience because no restriction can be imposed on man's internal thoughts, beliefs, moral consciousness or his faith towards God, as it is a gift of nature to man which cannot be taken by any force or by coercion or by power. It is not at all possible to put restriction on this right. One cannot be forced to trust or doubt or to believe or to disbelieve something or someone. Human intellect is a mystery. It is hard to read and nearly impossible to understand. It is impossible for any individual, or State or government to curb or to put restraints on human thought, these are the intrinsic ability and unrestricted right of men. Even an attempt to restrict this right could be a gross violation of human rights.

Most debated part of article 25 is "freedom of propagation" of religion. Propagation generally means to spread or transmit one's religion by an exposition of its tenets.²⁴ Constitution has guaranteed the right to every person to promote one's religious views in front of others. As discussed, earlier propagation was one of the most firmly debated topics in Constituent Assembly. The prime reason for the whole controversy was propagation is seen/ linked with conversion.

The concept of propaganda can be traced to the underlying philosophy that the general trend was found among communities craving a desire that more people should join their family of believers and none of them from members should leave the family.

The close reading of the debates shows that Constitution makers were aware of this and some members even opposed and questioned the intention of word propagation. After a detailed analysis, constituent assembly came to the conclusion that conversion is not only done with the will. Constitution only recognizes the conversion which is not done with inducement or threat.

²² Dilawar Singh vs. State of Haryana on 16 March, 2016, CWP-9013-2015

²³ Dalip Kumar Jha vs State of Punjab & Ors. [L.P.A. No.2043 of 2014]

²⁴ Rev Stanislaus vs. State of Madhya Pradesh, AIR 1978 SC 908

VI. RIGHT TO CONVERSION INTO ANOTHER RELIGION IS DERIVED FROM RIGHT TO FREEDOM OF THOUGHT

“A person cannot choose anything if he doesn’t know what choices are open to him”²⁵. Right to choose religion is not same as forming political opinion as choosing religion is about man's idea of right and wrong and also about his desire for salvation. However, in India people have often changed religion to get equal social status like conversion of Dalits into Buddhist in leadership of Dr. B.R. Ambedkar²⁶.

As human beings, we are born with the natural right of choice; still, many of us are not able to exercise this right openly due to various causes. It can be a compelling environment or lack of availability of free and fair opportunity.²⁷

VII. JUDICIAL RESPONSE

From very earlier decisions Hon’ble Supreme Court has taken very strong stand in protecting inter caste and inter-religion marriages. *Lata Singh vs. State of Uttar Pradesh*²⁸ is one of the initial cases of violence. In cases of inter caste and inter faith marriages, Hon’ble Supreme Court has held that India is a democratic country, and once a person becomes major, he/she may marry whomsoever he/she wants. If the parents or relatives of the boy or girl do not approve of such inter-caste or inter-religious marriages, maximum they can do is they may cutoff the social ties with them they had no right to interfere in couple’s life beyond that. In *Arumugam Servai vs. State of Tamil Nadu*²⁹ and *Bhagwan Dass vs. State (NCT of Delhi)*³⁰. Hon’ble Supreme Court again considered the issue of brutality caused by “khappanchayat” or relatives against the couples solemnizing marriage with their own choice. The Court citing case of *Lata Singh* strongly condemned and criticized such atrocities and directed the State government to take immediate steps in all such cases.

Hon’ble Supreme Court in *Re: Indian Woman Says Gang-Raped on Orders of Village Court*³¹ declared that the right of freedom of choice in marriage to be an inherent aspect of Article 21 of the Constitution of India.

²⁵ H M Seervai, Constitutional Law of India

²⁶ Malavika Balasubramanian & Vishnu Gopinath, *Decoding Dr. B.R. Ambedkar's Conversion to Buddhism*, The Quint, (Mar. 26, 2021), <https://www.thequint.com/news/india/br-ambedkar-conversion-to-buddhism>

²⁷ Sujoy Chatterjee, *Krishna Kumar II: laying re-promulgations to rest?* 1 Indian Law Review, 327–338 (2017)

²⁸ (2006) 5 SCC 475

²⁹ (2011) 6 SCC 405

³⁰ (2011) 6 SCC 396

³¹ (2014) 4 SCC 786, Published in Business and Financial News on 23-1-2014

In Ratilal Panachand Gandhi vs. The State of Bombay and others³², it was held 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 edification of others.

Rev Stainislaus vs. State of Madhya Pradesh³³ has examined the earliest anti-conversion statutes viz. Madhya Pradesh Dharma Swatantrata Adhiniyam, 1968 and Orissa Freedom of Religion Act, 1968 and court upheld the constitutionality of both the Acts on the ground that these efforts to restrain the conversion are for securing freedom of conscience and public order.

Sufiya Sultana vs. State of U.P.³⁴ which done away requirement of mandatory publication of notice and inviting objection under section 5, 6 and 7 of the Special Marriage Act, 1954 by declaring those provisions as declaratory and not mandatory being in violation of right to privacy of citizens, which is declared as fundamental right by a 9 Judge Bench of the Hon'ble Supreme Court in the case of K.S. Puttuswamy³⁵.

VIII. CONCLUSION

India and its culture have always accepted and respected all the beliefs and religion and always welcomed it which is also one of the basic principles of its secular nature. Anti-conversion laws had always been a debated topic in India which aims to stop conversion by coercion and force thereby giving stronger right to freedom of religion. However, it's beyond understanding that how the conscience of the person can be influenced by the coercion or force. The law is widely being used for crabbing missionaries and other religious institution.

³² 1954 AIR 388, 1954 SCR 1035

³³ 1977 AIR 908

³⁴ Allahabad High court HABEAS CORPUS No. - 16907 of 2020

³⁵ (2017) 10 SCC 1