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# CONSTITUTIONALITY OF ANTI-CONVERSION LAWS: A BRIEF INTROSPECTION

-Ashish Arun Shukla<sup>1</sup>

Shefali Nilesh Kshirsagar<sup>2</sup>

## INTRODUCTION

India is a highly diverse country whose very secular fabric is dictated by the multiplicity of religions. It is not only the birthplace of religions but has also sheltered and preserved religions from the far beyond. Conversion is a sharp fragment in the broken glass of often hostile religious interplays. Historically, conversion in India was a more fluid process of changing religious affiliations. In the pursuit of demarcating religious boundaries, conversion became a spectrum of rituals to enlighten the unbeliever.<sup>3</sup>

However, as time passed, the notion of ‘conversion’ quickly shifted to a sectarian outlook. The process was perceived as an inherent and a blasphemous attempt to defile religions. With a post-colonial fervor, the vision of a secular India was enshrined in the Constitution with Articles 25 to 28 which promote “right to freedom of religion”.<sup>4</sup>

## APEX COURT’S INTERPRETATION OF “FREEDOM OF RELIGION”

Thus, it stands that concern for conversion outweighs concern for religious freedom. Yet, it's not that simple, for within the Articles of Fundamental Rights of the Constitution there is no option of comparing to the right to conversion. The Supreme Court merely needed to distinguish between the right to propagate and the right to convert, as one is a motive force right and the other is illegal when "exercised forcefully." In *Ratilal Panachand Gandhi v. State of Bombay* [1954], the Apex Court’s remarks on Article 25 revealed that under our Constitution not only does every individual has a Fundamental Right to possess a religion sanctioned by his conscience or judgment or unintentionally avoid possession of a religion; but he is obligated to manifest his convictions and

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<sup>1</sup> 2<sup>nd</sup> Year of BA.LLB. (2023-2028), KES’ Shri Jayantilal H. Patel Law College

<sup>2</sup> 1<sup>st</sup> Year of BA.LLB. (2024-2029) Pravin Gandhi College of Law

<sup>3</sup> Robinson, R. (2005). Sociology of Christianity, Conversion and Secularism in India: Some Reflections. Sociological Bulletin, 54(3), 473–495. <http://www.jstor.org/stable/23620621>

<sup>4</sup> M.P Jain, Outlines of Indian Legal History, N.M Tripathi Pvt. Ltd., 1<sup>st</sup> Edition, 1952

beliefs in acts of religion proscribed or directed in public, and he has the right to propagate his religion for enlightening others.

However, in another judgment in the case of *Digiyadarsan Rajendra Ramdassji v. State of Andhra Pradesh*<sup>5</sup>, the Supreme Court held that "the right to propagate one's religion includes the right to communicate one's beliefs to another person or to explain the tenets of that belief, but does not include the right to 'convert' another person to one's faith." Therefore, it has been held by the courts that while propagating one's religion is constitutionally protected under the right to freedom of religion, conversion is not.

The Supreme Court also declared that Article 25 gives a person the right to transmit their religion through the exposition of their tenets and is not right to convert people, especially through fraudulent and alluring means.<sup>6</sup> However, the judgement is sternly criticized for its ignorance of legislative history, as Article 25 was drafted as a provision to promote communal understanding and religious fraternity, and not legalize forced conversions.<sup>7</sup>

## **AMBIT OF ANTI- CONVERSION LAWS**

This right is, however, not absolute, and confers power on the Central and State governments to legislate regulations and restrictions on religious practices and activities.<sup>8</sup> In this exercise of power, various states have legislated "Freedom of Religions Act" which is supposedly a strong check on prohibiting forced conversions to provide for a greater freedom of religion.<sup>9</sup>

Anti-conversion laws: laws that seek to prevent people from changing their religions, and their constitutionality, have sparked some debate not only in India but also in other countries that have similar laws. Such policies have a colonial, demographic and contemporary political history. This policy space is populated by interest groups that include clerics, academics and politicians who articulate and affect policy. The issue of anti-conversion laws is fundamentally that of balancing the need to guarantee the rights of individuals – religious freedom and the prevention of abuse of that freedom through violent coercion – the conversion of non-believers or adherents of other faiths into someone's religion in this particular case.

Orissa was among the first states to pass the Freedom of Religion Act in 1967. The Orissa Act, 1967 describes its item as "an Act to limit conversion from one faith to some other through

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<sup>5</sup> *Digiyadarsan Rajendra Ramdassji v. State of Andhra Pradesh* 1970 AIR 181

<sup>6</sup> *Rev. Stainislaus v. State of MP*, AIR 1977 SC 908: (1997) 1 SCC 677

<sup>7</sup> Constitutional Debates – 3<sup>rd</sup> December, 1948

<sup>8</sup> Indian Const.art.25

<sup>9</sup> The Gujarat Freedom of Religion Act, 2003 (Preamble)

pressure or inducement or through fraudulent method and for subjects incidental thereto". The punishment for changing someone through evil method prescribed within the Orissa Act, 1967 changed into imprisonment for three hundred and sixty five days and a high-quality of Rs.5,000. Interestingly, the punishment for changing a minor, a lady or a member of a Scheduled Caste or Tribe changed into years imprisonment and a high-quality of Rs.10,000 or both. Apparently, those extra consequences had been covered within the regulation to shield what the authorities taken into consideration the "weaker sections of society". The better high-quality for changing a minor, a lady or a member of the Scheduled Tribes or Castes changed into primarily based totally at the concept that individuals who convert people from those agencies take advantage of their "poverty, simplicity and ignorance.

In 1968, the State of Madhya Pradesh enacted its own anti-conversion law, known as the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968, the language used within the Adhiniyam is remarkably much like that of the Orissa Act, 1967. Moreover, the scope of punishment, along with the high penalty for conversion procured via wrong method, changed into additionally identical.

The laws against forced conversion of vulnerable majorities, iteration in particular, tribal and poor individuals, occupying positions of sovereignty is, according to proponents, necessary for these reasons. Cases in Point, it is convicted by the Hindu nationalist leaders that the laws are there for institutions to determine the conversions are only with the people's wise course of action, so no interference to the tranquility of the order of the society takes place. Such organizations like the RSS or the VHP have been lobbying for the policies most of the times associating their lobbies with the basic welfare of the people in terms of transformation. They claim the right not to alter an existing composition, by seeking remedies available in laws within the jurisdiction so as to defend minority against oppression.

## **DISSENTING VIEWS TO THE ANTI-CONVERSION LAWS**

Conversely, however, the opponents point out that these anti-conversion laws violate the constitutional right of the people of India, which is the right to religion as covered under Article 25 that permits the citizen to practice, preach as well as propagate religion.

One thing notable here is that such key figures in the legal field, including constitutional scholars and human rights campaigners, have argued that these laws lead to social stigmatization of people wanting to change their faith. The requirement for state approval undermines personal autonomy because one has to tread through bureaucratic hoops in order not to go against the spirit. More

seriously, this selective enforcement is manifested in targeting particular religious minorities, further nurturing suspicion and fear.

Beyond individual rights, anti-conversion laws affect social attitude and inter-community relations. Anti-conversion laws, by terming conversion as a contentious act, perpetuate the us-versus-them kind of narrative which can lead to inter-religious tensions. Most reports by human rights groups have testimony of violence against converts. The laws embolden fundamentalist elements in society. Another chilling effect is the possible legal consequence on interfaith dialogue and marriages, when a family may feel restrained in its expression of religious devotion.

There would probably continue to be protracted contention over anti-conversion laws with change- if not even a full abolition-through efforts in increasing discourses on human rights and an attempt to globalize standards. Legal challenges from civil rights organizations could serve as judgments through courts to determine whether the laws actually breach the constitutional guarantee. Simultaneously, more populism may give confidence to politicians to stick with the laws as expressions of community identity and protection.

## **CONCLUSION**

The constitutional validity of anti-conversion laws continues to be a contentious and intricate issue, particularly for the advocates, protection of vulnerable communities from coercive conversions is the *raison d'être* to protect their individual liberties and constitutional rights. Much deeper societal currents are underlying the debate on religious identity, demographic dynamics, and human rights, current stakeholders in the discourse may well see an evolving landscape produce huge legal changes and shifts in public attitudes regarding religious conversion in the future.