Anti-Conversion Law

Researcher
Arshad Khan
Law Student, JMI

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Introduction

The last few years have seen a proliferation of anti-conversion laws in India, with many states adopting new legislation or making their existing statutes more stringent. This is happening despite the fact that the right to freedom of religion or belief is explicitly acknowledged in Article 25 of the Constitution of India. India has also ratified the *International Covenant on Civil and Political Rights* (ICCPR), pledging to uphold the treaty's international human rights standards which explicitly include protection of the freedom of conscience and belief. Nonetheless, these assurances prove insufficient in a context of heightened intolerance towards religious minorities, and especially towards practices involving public profession of faith of minority groups. The volatile political discourse around the issue of religious conversion is part of this larger milieu, where the majority is constantly instigated to be in a state of anxiety with regards to the maintenance of its numerical dominance. One of the clearest victims of this majoritarian anxiety has been the fundamental human freedom to practice and profess one's religious belief.

In this brief study, we will discuss the idea of Anti-Conversion Law, its legislation and implementation in India and the ways in which it works to constrain the freedom of conscience and religious belief.

Anti-Conversion Law

The History of Anti-Conversion law can be traced back to British colonial rule in India. Anti-conversion legislation such as *the Raigarh State Conversion Act of 1936* and *The State Conversion Act of Udaipur 1946* were adopted in a few princely states during British rule. Post-Indepedence, when the Madhya Pradesh state government in 1954 was the first to take initiative in this regard, when it established the *Niyogi Committee* to suggest methods for dealing with forced conversions under Justice Bhawani Shankar Niyogi.

This committee found that there was a trend towards religious conversion via incitement, and in particular it singled out Christian missionaries for supposedly employing philanthropic works such as setting up hospitals and libraries as a cover for carrying out religious conversions.

Around the same time a number of anti-conversion measures were presented in Parliament, none of which were passed. First, in 1954, the Indian Conversion (Regulation and Registration) Bill was introduced, which required missionaries to be licenced and conversions to be registered with government officials. This measure was rejected after failing to get majority support in the Lok Sabha.

This was followed by the passage of the Backward Communities (Religious Protection) Bill in 1960, which aimed at suppressing conversion of Hindus to 'non-Indian religions,' which, according to the Bill's definition, comprised Islam, Christianity, Judaism, and

Zoroastrianism. Next was the Freedom of Religion Act of 1979, which sought official restraints on inter-religious conversion. However, none of these measures could find adequate support in Parliament.

Legislation regulating religious conversion

While such legislation never found much support in Parliament, several states in India did pass laws to regulate the practice of conversion :

Before Independence

- Raigarh State Conversion Act, 1936
- Surguja State Apostasy Act, 1942
- Udaipur State Anti-Conversion Act, 1946

After Independence

- Orissa Freedom of Religion Act, 1967
- Madhya Pradesh Freedom of Religion Act, 1968
- Arunachal Pradesh Freedom of Religion Act, 1978
- Gujarat Freedom of Religion Act, 2003
- Himachal Pradesh Freedom of Religion Act, 2006
- Uttarakhand Freedom of Religion Act, 2018
- The Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance, 2020
- Haryana Prevention of Unlawful Conversion of Religion Act, 2022
- Karnataka Protection of Right to Freedom of Religion Act, 2022

States with Anti-Conversion law

Odisha was the first state to enact a legislation against forced conversion, passing the Orissa Freedom of Religion Act in 1967. Similar legislation was passed in Madhya Pradesh in 1968 and Arunachal Pradesh in 1978. Sections of Muslims and Catholics objected to these restrictions, claiming that spreading their beliefs was a key component of their religion and the right guaranteed to them under Article 25 of the Constitution. Chhattisgarh inherited the law from Madhya Pradesh, becoming the third state to have Anti-conversion law and Gujarat enacted a law in 2003 prohibiting forced or money induced conversions. Due to a lack of ancillary rules, the law in Arunachal Pradesh has not been applied.

While there are minor differences amongst the state statutes, they are quite similar in text and form. In each draft bill, the goal has been essentially the same: to limit the ability of communities and individuals to convert “from the religion of one's forefathers” often in the name of protecting those in society who are "weaker" or more easily "influenced," namely women, children, backward castes, and untouchables.”

All of these regulations purportedly attempt to "prohibit conversions carried out by 'forcible or 'fraudulent' means or by 'allurement' or 'inducement'. Such conversions are made punishable by fines and imprisonment. Many of these laws place the burden of proven that a conversion was free from inducement upon the accused, and the act of conversion itself is stalled by many roadblocks requiring official permissions and the subjective satisfaction of administrative officials. The cumulative effect of the law is to weaponise the anxiety around conversions, and create a legislative mechanism by which people engaged in even legitimate acts of preaching can be harassed or intimidated.

Summary of State' Anti-Conversion Law

Odisha (Formely Orrisa)

The Orissa Freedom of Religion Act, 1967, was the first state to implement anti-conversion law.

According to Section 3 of the Act, "no one shall convert or seek to convert, either directly or indirectly, any person from one religious faith to another by the use of force, enticement, or any fraudulent methods, nor shall any person aid or abet any such conversion."
Similar clauses may be found in every contemporary anti-conversion legislation.

The offence of "forcible conversion" is punished by imprisonment for up to one year, a fine of up to 5,000 rupees, or both. If the offence is committed against a juvenile, a woman, or a member of a SC/ST, the sentence may be enhanced to a maximum of two years in jail and the fine increased to 10,000 rupees.

Conversion is defined in the Act as "renouncing one faith and accepting another." It goes on to define "orce"as "ny display of force or threat of damage of any kind, including the threat of divine wrath or social excommunication."

The Act defines "inducement"as "the offer of any gift or gratification, whether in cash or in kind, and shall also include the award of any advantage, whether pecuniary or otherwise."and the term "fraud" is defined as "misrepresentation or any other dishonest contrivance."

In 1989, the Orissa Freedom of Religion Rules were promulgated, which required "the priest executing the process of conversion to inform the relevant District Magistrate about the conversion fifteen
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days before the said ceremony. Failure to do so would result in a fine of 1,000 rupees. This law was found to be "extra vires" by the High Court of Orissa in 1973.

The Court held that article 25(1) of the Constitution "guarantees propagation of religion and conversion is a part of the Christian religion" and "the restriction in Article 25(1) cannot be said to cover the wide definition" and that state legislature lacked the competence to enact such legislation. However, the Supreme Court in *Stainislaus v. State of Madhya Pradesh*, which is addressed in greater depth below, reversed this judgement.

Madhya Pradesh

Madhya Pradesh was the second state to pass a law against conversion, the Madhya Pradesh Freedom of Religion Act, 1968. According to section 2(a), the Act defines "allurement" as a "offer of any temptation, whether in the shape of a gift, pleasure, or any other substantial advantage." No one shall convert or seek to convert, directly or indirectly, any individual from one religious faith to another by the use of force or by allurement or by any deceptive methods. A fine of up to 5,000 rupees or both may be levied for the offence.

A juvenile, a woman or a person belonging to a SC/ST community can be punished with up to two years in prison and a fine of up to 10,000 rupees.

In accordance with section 5 of the Act, the religious priest or the person who converts a person shall notify the District Magistrate "within seven days from the date of such ceremony."

Oddly enough, the Madhya Pradesh High Court upheld the Madhya Pradesh Freedom of Religion Act in 1977. The court ruled that the

relevant sections "establish the equality of religious freedom for all citizens by prohibiting conversion through objectionable activities such as conversion by force or fraud or by allurement."

Madhya Pradesh unsuccessfully sought to amend its law in 2006 to require the priest to also notify the District Magistrate one month prior to such conversions. It would have been punished by up to a year in prison, a fine of up to 5,000 rupees, or both. Furthermore, the amendment would have required a person wishing to convert to another religion to declare his or her intent to change religions in front of a District Magistrate or in front of the Executive Magistrate specially authorised by a District Magistrate, that he wishes to change his religion on his own and at his will and pleasure. Failure to declare before the Magistrate would have resulted in a fine of 1,000 rupees. Upon receiving the information, the District Magistrate was to forward it to the Police Superintendent, who would then examine the issue to verify that no objections to the conversion were raised and then submitted his or her findings to the District Magistrate. However, Madhya Pradesh Governor Balram Jakhar forwarded the amended law to the President, who refused to give it assent because it violated the freedom of religion provided in the Constitution by insisting on prior permission.

In August 2013, the Madhya Pradesh Legislative Assembly passed a similar modification to the state's 1968 anti-conversion statute, making the law more stringent.

The 2013 amendment would have increase jail terms and fines for forced conversions (up to three years imprisonment and a fine of up to 50,000 rupees, and up to four years and a fine of up to 100,000 rupees in the case of a minor, a woman, or a person belonging to a SC/ST, and up to four years and a fine of up to

100,000 rupees in the case of a person belonging to a SC/ST) and make it mandatory for priests to take prior permission before any conversions. However, the amendment never received the Governor's assent.

Arunachal Pradesh

Following the decisions of the High Courts in Orissa and Madhya Pradesh, anti-conversion legislation was enacted in the states of Andra Pradesh, Tamil Nadu, and Arunachal Pradesh in 1978.
The anti-conversion laws in Arunachal Pradesh are found in the Arunachal Pradesh Freedom of Religion Act, 1978, and are identical to those passed in Orissa and Madhya Pradesh. The legislation was enacted in light of the perceived threat to indigenous cultures from religious conversions.

On October 25, 1978, it obtained Presidential approval. According to Section 3 of the Act, "no one shall convert or seek to convert, either directly or indirectly, any person from one religious faith to any other religious faith by the use of force, enticement, or other fraudulent methods, nor shall any person abet any such conversion."Conversion "means renunciation of one religious religion and acceptance of another religious faith, and the term 'convert' must be defined appropriately. Religious faith, as defined by the law, includes indigenous faith:

"religions, beliefs and practices including rites, rituals, festivals, observances, performances, abstinence, customs as have been found sanctioned, approved, performed by the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism as prevalent among Monpas, Menbas, Sherdukpens, Khambas, Khamtis and Singaphoos, Vaishnavism as

practised by Noctes, Akas, and Nature worships including worships of Donyi-Polo, as prevalent among other indigenous communities of Arunachal Pradesh."

Some accounts appear to interpret the law's definition of "conversion" in a way that precludes reconversions to native faiths, but it is unclear if this is a mistake or the consequence of an amendment that could not be found.

Some human rights groups and legal academics have challenged this part of the legislation since its true aim is to prohibit or control conversions to religions such as Christianity and Islam, while exempting "econversions," raising the issue of equal protection and treatment under the law.

In the law, the phrase "force" refers to a "display of force or a threat of damage of any sort, including a threat of divine displeasure or social excommunication." The term "fraud" is defined as "misrepresentation or any other dishonest scheme." and "nducement"implies "he offer of any present or gratification, whether monetary or in kind, as well as the giving of any advantage, whether pecuniary or otherwise." Forcible conversion is a felony punishable by up to two years in jail and a fine of up to 10,000 rupees.

Chhattisgarh

The state of Chhattisgarh was formed in November 2000 as a result of the splitting of Madhya Pradesh's southeastern regions. Chhattisgarh retained Madhya Pradesh's anti-conversion statute and renamed it the Chhattisgarh Freedom of Religion Act, 1968.

The Act's secondary rules for execution were also preserved. In 2006, the state legislature, which was dominated by the BJP,

amended the 1968 Act along the lines of the amendments in Madhya Pradesh, but the measure never recieved the Governor's approval.

The amendment would redefine the term "conversion" to state that "any person's return in ancestor's original faith or his own original religion shall not be interpreted as 'conversion.'" The bill would also toughen the penalties and fines for forced conversion, require prior permission from a district magistrate before a conversion can take place, stipulate that notice must be given to the magistrate thirty days before the conversion, and authorise the magistrate after an inquiry order to "permit or refuse to permit any person to convert from one religious faith to another, and such permission shall be valid for two months from the date of its issuance." This injunction may be appealed only to a district court, "whose decision shall be final."

According to the law, anybody found guilty of converting someone in violation of a district magistrate's order commits a cognizable crime punishable by imprisonment for up to three years.

Gujrat

Gujarat's anti-conversion law, known as the Gujarat Freedom of Religion Act, was passed in 2003. The Act's goal is to make it illegal to convert from one faith to another via coercion, allurement, or deception.

Individuals wishing to change their faith must apply to the district administration 60 days in advance, according to the legislation.
Religious leaders that facilitate religious conversions must also notify the district government 60 days ahead of time.
If the provisions of the legislation are not fulfilled, offenders may face three to five years in prison and a monetary penalty of 50,000 rupees.

The law also makes forcible religious conversions a crime, punishable by three to 10 years in prison and a fine of 500,000 rupees.

Himachal Pradesh

The Himachal Pradesh Freedom of Religion Act, 2006 [95] went into force on February 18, 2007, and is "odelled on existing anti-conversion legislation in other Indian states."

According to the South Asia Human Rights Documentation Centre, "ts acceptance is especially hilarious given that the state administration is governed by the Congress Party, which has repeatedly attempted to promote its 'ecular' credentials."

The Himachal Pradesh High Court, in a historic judgement, knocked down Section 4 of the Act as well as Rules 3 and 5 of the Himachal Pradesh Freedom of Religion Rules 2007.

The Court ruled that these clauses violated Article 14 of the Constitution, which states that " person not only has a freedom of conscience, a right of belief, a right to alter his opinion, but also a right to keep his views secret."

After reviewing the anti-conversion legislation of Madhya Pradesh and Orissa, the Court concluded that "he Himachal Act had gone beyond the other two Acts and had infringed on the basic rights of the convertees."

Rajasthan

Rajasthan State's legislature approved an anti-conversion measure in 2006 , but the governor never signed it.
According to one source, the governor "did not sign the law due to religious minorities' concerns."

The bill defined “onversion”as “enouncing one's own faith and accepting another,”and “wn religion”as “the] religion of one's forefathers.”

Conversion carries a two-year jail sentence, which can be increased to five years, as well as penalties of up to 50,000 rupees. The offence is “ognizable and non-bailable, and shall not be investigated by an official lower than the level of Deputy Superintendant.”

Tamil Nadu

The Tamil Nadu Prohibition of Forcible Conversion of Religion Ordinance 2002 was enacted, however it was quickly superseded by the Tamil Nadu Prohibition of Forcible Conversion of Religion Act 2002 the following year.

The Act, which has since been abolished, was enacted at the initiative of the right-wing administration of former Tamil Nadu Chief Minister Jayaram Jayalalithaa.

The Act followed the broad structure established by the Orissa Freedom of Religion Act 1967.

Section 3 declared that “o one shall convert or seek to convert any person, directly or indirectly, from one faith to another, either by use of force, allurement, or other fraudulent means.” Anyone who “onverts any individual from one religion to another, either by executing any ceremony for such conversion by himself as a religious priest or by taking part directly or indirectly in such ceremony shall”be required to notify the District Magistrate within the stipulated period. Anyone found guilty of coercing religious conversions faced a fine of up to 50,000 rupees and three years in jail under the Act. A punishment of 1,000,000 rupees and four years in prison were

imposed if the conversions included women, juveniles, or members of the SC/ST. In protest of the new anti-conversion legislation, thousands of Dalits switched to Christianity and Buddhism without the permission of the local magistrate.

The Tamil Nadu Prohibition of Forcible Conversion of Religion Act was abolished by the state government on May 21, 2004, owing to electoral consequences and opposition from minorities to the anti-conversion clauses.

The Supreme Court's treatment

Article 25 of the Indian Constitution provides the freedom to profess, practice and promote one's religion.

In the case of *Ratilal Panachand Gandhi v. State of Bombay* the Supreme Court defined this clause by ruling that under the Constitution, every person has a fundamental right not only to entertain such religious beliefs as may be approved of by his judgement or conscience, but also to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion, and to propagate his religious views for the edification of others.

In *Rev Stainislaus v. State of Madhya Pradesh*, the Supreme Court considered whether the freedom to profess and spread one's religion included the right to convert.

The Court affirmed the constitutionality of the first anti-conversion laws, the Madhya Pradesh Dharma Swatantraya Adhiniyam of 1968 and the Orissa Freedom of Religion Act of 1967.

The Court determined that "restrictions on conversion attempts are constitutional since such activities infringe on freedom of conscience and public order.'"

The Court ruled in one of its conclusions that propagation simply meant persuasion/exposition without coercion and that the freedom to propagate did not include the right to convert anybody.

The Court summarised its decision as follows:

"It should be noted that Article 25(1) guarantees freedom of conscience to all citizens, not just followers of one religion, and that this, in turn, implies that there is no fundamental right to convert another person to one's own religion because if a person purposefully undertakes the conversion of another person to his religion, as opposed to his effort to convert himself, he is violating Article 25(1)."

"It has to be appreciated that the freedom of religion enshrined in the Article [25] is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one' s own religion."

Because article 25(1) states that the right is subject to public order, the Court also determined that the Acts clearly provides for the maintenance of public order for, if 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.

On the issue of competency, the Court determined that the Acts come under the scope of the states under Entry I Public Order of List II of the Seventh Schedule and are not controlled as a matter of religion, which is subject to the residuary authority of the central government.

The Supreme Court's decision in this case has proved to be a landmark ruling, as it effectively paved the way for laws that could restrict the freedom of conscience - which includes the freedom to choose one's religion - that is an essential component of the freedom of religion.

Hadiya Case (Shafin Jahan v. Asokan K.M)

Facts and background of the Case

Hadiya was a homeopathic medical student from Vaikom, Kerala, at the time of the case.

Her father, Asokan K.M, reported her missing in early 2016, and filed a police complaint followed by a habeas corpus suit in the Kerala High Court to find her; Hadiya has characterized the circumstances of her departure as her father preventing her from practicing Islam.

On January 6, she dressed in a headscarf and left for college. She was living with A.S. Zainaba, president of the National Women's Front, the women's branch of the Popular Front of India (PFI) (NWF).

She had converted to Islam and married a Muslim Man Jehan who was an active member of the Social Democratic Party of India, which was associated with the PFI (SDPI).
Her family said she was indoctrinated and compelled to marry, while Hadiya claims she did it of her own free will.

In May 2017, the High Court of Kerala annulled Hadiya's marriage based on a report submitted by the National Investigation Agency (NIA) to the Supreme Court of India (SC), which stated that Hadiya was a victim of indoctrination and psychological kidnapping, and that their claims that their marriage was arranged through a matrimony website were "bogus."

The Kerala High Court then granted Hadiya's father, Ashokan, custody, saying that "as per Indian custom, the custody of an unmarried girl belongs with the parents till she is suitably married." Jahan filed an appeal against the Kerala High Court's decision and petitioned the Supreme Court.

In November 2017, the Supreme Court of India ordered Hadiya to resume her internship and to meet with whoever she pleased.

Ten months after the Kerala High Court dissolved Hadiya's marriage, the Supreme Court in delivered judgement reinstated it in March 2018.

Supreme Court

The Issue before the SC was Whether order of High Court justifiable
Facts:
The Respondent(Hadiya' Father) had a habeas corpus petition before the High Court with the apprehension that his daughter was likely to be transported out of the country. Meanwhile, the High Court was informed that she (daughter-ninth Respondent) had married the Appellant. The High Court allowed the petition for habeas corpus declaring the marriage as null and void and further directed that the daughter of the Respondent should be escorted to the house of her father. Aggrieved by present appeal was preferred. Held, while allowing appeal: Dipak Misra, C.J.I. and A.M. Khanwilkar, J.:

(I) The expression of choice in accord with law is acceptance of individual identity. Curtailment of that expression and the ultimate action emanating there from on the conceptual structuralism of obeisance to the societal will destroy the individualistic entity of a person. The social values and morals have their space but they are not

above the constitutionally guaranteed freedom. The said freedom is both a constitutional and a human right. Deprivation of that freedom which is ingrained in choice on the plea of faith is impermissible. Faith of a person is intrinsic to his/her meaningful existence.

(ii) The present Court noted that in the case at hand, the father in his own stand and perception may feel that there has been enormous transgression of his right to protect the interest of his daughter but his view point or position cannot be allowed to curtail the fundamental rights of his daughter who, out of her own volition, married the Appellant. Therefore, the High Court has completely erred by taking upon itself the burden of annulling the marriage between the Appellant and the ninth Respondent when both stood embedded to their vow of matrimony.

Dr. D.Y. Chandrachud, J.-Concurring View:

(iii) The exercise of the jurisdiction to declare the marriage null and void, while entertaining a petition for habeas corpus, is plainly in excess of judicial power. The High Court has transgressed the limits on its jurisdiction in a habeas corpus petition. In the process, there has been a serious transgression of constitutional rights.

(iv) A marriage can be dissolved at the behest of parties to it, by a competent court of law. Marital status is conferred through legislation or, as the case may be, custom. Deprivation of marital status is a matter of serious import and must be strictly in accordance with law. The High Court in the exercise of its jurisdiction ought not to have embarked on the course of annulling the marriage. The Constitution recognizes the liberty and autonomy which inheres in each individual. This includes the ability to take decisions on aspects which define

one's personhood and identity. The choice of a partner within or outside marriage lies within the exclusive domain of each individual. Intimacies of marriage lie within a core zone of privacy, which is inviolable.

International Organisations on India

Anti-Conversion Law

Over the years, human rights groups and institutions have voiced concerns about the rights implications of these laws, as well as the lack of fair treatment under them.

According to the US Commission on International Religious Freedom (USCIRF), these laws, based on concerns about unethical conversion tactics, generally require government officials to assess the legality of conversions out of Hinduism only, and provide for fines and imprisonment for anyone who uses force, fraud, or ‘nducement' to convert another.

According to a USCIRF report, while India emphasizes "complete legal equality" and prohibits faith-based discrimination, "there are

constitutional provisions, State and national laws that do not comply with international standards of freedom of religion or belief, including Article 18 of the UN Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights."

Both by design and practice, anti-conversion laws infringe on the individual's freedom to convert, favor Hinduism over other religions, and pose a serious threat to Indian secularism. In addition, these laws have resulted in inequitable practices against minorities. They create a hostile, and on occasion violent, environment for religious minority communities because they do not require any evidence to support accusations of wrongdoing. For example, in January 2016, police detained 15 Christians in Karnataka state after members of two Hindu nationalists groups, Bajrang Sal and VHP, alleged that the church leaders were forcibly converting Hindus; they were released later without charge. In December 2015, eight Christians were acquitted of forced conversion in Puttar town, in Dakshina Kannada district, Karnataka state. They originally were charged in 2007, and were released until the hearing.

Conclusion

Laws against religious conversion in India have been in existence since before independence. The broader framework for placing restrictions on the freedom of conscience flows from the Supreme Court's own decision in the landmark *Stanislaus* case. However, in recent years as the general political discourse has tended to attack religious minorities with more impunity, demands to completely prohibit religious conversions have began to be made with greater vehemence. This has emboldened many states to pass laws that make all conversions illegal and punishable unless they secure the prior approval of the District Magistrate. This is not only contrary to the very spirit of exercising one's freedom of belief by making it contingent upon the subjective satisfaction of a public administrator, but the very process of giving prior information and the subsequent official inquiry exposes the person to potential harm and harassment from a variety of state and non-state actors. The anxiety animating these laws becomes very evident in their treatment of women, SCs and STs, who are infantilized by being singled out as especially gullible to the 'inducement' of preachers and missionaries. In effect, the majoritarian anxiety over maintaining demographic domination plays out in the scheme of these laws, which work only to deny a fundamental human instinct by exposing a person to penalties for exercising the freedom of their belief and conscience.