



## The legal and social implications of anti-conversion laws in India: Religious freedom and analysis of the constitutionality of Anti-conversion law

Prerna Kumari<sup>1</sup>, Lynette Thabor<sup>1</sup>, Dr. Mitali Srivastava<sup>2</sup>

<sup>1</sup> Department of Law, CHRIST Deemed to be University, Delhi-NCR, India

<sup>2</sup> Assistant Professor, Department of Law, CHRIST Deemed to be University, Delhi-NCR, India

### Abstract

Religious conversions, particularly those purportedly involving coercive or deceptive practices, have historically been constituted as a highly contentious matter among the administrative authorities of Indian states, a phenomenon that extends back to the pre-independence era. At present, anti-conversion legislations have been implemented in twelve out of India's twenty-eight states, which include Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Uttarakhand, and Uttar Pradesh. A salient contemporary concern pertains to religious apostasy in relation to marriage, wherein legal and societal discourses concentrate on the legitimacy of conversions undertaken primarily to satisfy matrimonial requisites.

This paper investigates the historical evolution of religious freedom in India, accentuating the contemporary revival of religious zeal and the intricacies surrounding conversions, particularly those linked to matrimonial contexts. It scrutinizes the socio-legal dilemmas posed by conversions for the purpose of marriage, assessing how India's constitutional tenets and post-colonial judicial rulings have shaped its legal landscape. Furthermore, it also explores the intricate interplay between religious authority and state power, emphasizing endeavors to harmonize constitutional obligations with the principle of secularism. Central to this examination is the analysis of anti-conversion statutes across various Indian states and their ramifications for religious liberty and the secular character of the Indian state. Through this research, the authors aim to provide a comprehensive understanding of the legal and social implications of anti-conversion laws in India, while offering insights into how the law can better align with constitutional ideals of religious freedom and secularism.

**Keywords:** Religious conversion, anti-conversion laws, religious freedom, secularism, marriage conversions, constitutional law, judicial rulings

### Introduction

The notion of religion in India encompasses social, political, and economic factors, embodying a unique emotional aspect that is distinct from the rest of the world<sup>[1]</sup>. India stands as a cradle and symbol of various forms of diversity arising out of religion and culture. The religion has been valued as a belief system; it has cultivated culture, practices, teachings, and expression. Religion has shown two contrasting facets: dividing and uniting. Despite the prescribed formations of many religious sects and region-specific religious practices, unity in diversity forms the very foundation upon which India is built. The idea of secularism in India has made the Indian Constitution classify it as a secular state, and that is engaged as the preamble. As per the Constitution's 42nd Amendment of 1976 and acting under the landmark judgment of S.R. Bommai, secularism is considered to form one of the basic structures of the Constitution. Even with great deal of freedom articulated, intolerant incidence manifested such as, Anti-Sikh riots in Delhi in 1984, Anti-Hindu riots in Kashmir in 1990, 2002 Gujarat riots and the Anti-Christian riots turned anti-religion conversion by force or allurements to mention but a few<sup>[2]</sup>.

Article 25 of the Constitution of India guarantees the freedom of conscience, right to profess, practice, and propagate one's religion. It thereby directly allows a person to adopt a different religion of his appeal to his conscience with the right to change religion. However, it is really a conundrum to determine whether the conversion was from love or something approached through inducement. According to this issue, the term 'propagate' has been

discussed widely in the assembly of the Constitution and current issues due to the thin line of distinction in propagating the religion from proselytism. Conversion of religion for marriage purposes in India has turned into a vexed question. Many states across the length and breadth of the country are now dealing with cases whereby a boy or a girl is forcefully converted to some other religion for marriage; thus, these conversions cannot be treated as legitimate. These types of crimes have not yet had central laws formed to address them in India, although states are giving it a good hearing and formulating stringent laws to rein these types of crimes. It is now seen that many people are converting their religions purely for the sake of marriage-it can be accepted fully only when it is when compliance is mutually assented to and not in case it is forced upon. Administered religion is prevalent among individuals who find their faith aligning with religion other than theirs, or they convert themselves just because they want to marry some other religion. The main question is that if citizens have their fundamental rights about their right to propagate any religion, then why does this arise as a crime and that could be because conversions were made not on the basis of choice but driven by coercion. In various states, anti-conversion laws are now being looked upon with suspicions, as they really do not clarify the prosecution of freedom with an understood intent. The existence of anti-conversion laws is now witnessed in 12 of the 28 states Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Uttarakhand, and Uttar Pradesh. The

states' object in drafting this bill is to deny the capacity of communities and individuals to convert 'from the faith of one's forefathers,' often in the name of protecting those who make up the weaker or more easily 'influenced' sectors of society, including girls, boys, backward castes and untouchables.

### **The Interplay of Anti-Conversion Laws and Fundamental Rights in India**

Secular was not an inherent term originally included in the Preamble of the Indian Constitution; it was added with the 42nd Amendment in 1976. Article 25 deals with the fundamental right to religious freedom, allowing people to profess, practice, and propagate their respective religions in a free manner, subject only to the grounds of public order, morality, or health. The right ensures that people can freely profess any religion without state interference. Article 19(1)(a) protecting freedom of speech complements the right to religious conscience whereas Article 26 vests religious denominations with the power to regulate their own affairs albeit under some measure of state regulation. However, there have been concerns expressed about the scope of some anti-conversion legislation, albeit that such legislation is designed to prevent forced conversions being seen as too wide-reaching. Such enactments incorporate ambiguous nomenclature such as "force," encompassing threats of divine retribution or social ostracism, hence violating the right to convert without coercion and introducing judicial vagueness. The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance 2020 enacted to prevent conversion by force and safeguard the dignity of women has been criticized as an infringement on the rights of women. Critics argue that such laws restrict the freedom of choice of women and undermine the authenticity of true love relationships. However, opposition to such laws frequently draws inordinately little attention in public discourse, thus complicating the larger discourse on religious conversions and individual liberties in India. Judicial intervention over the years has ensured protection of religious freedoms, but cases like *Sarla Mudgal v. Union of India* <sup>[3]</sup> have raised a concern about the abuse of the process of conversion to avoid legal marriages and bigamy <sup>[4]</sup>, especially while bigamy was in effect as a law. The Supreme Court concluded that conversion to Islam does not nullify a Hindu marriage and subsequent marriages entered into after the conversion are bigamous. So, such a ruling again raises questions about religious conversion as an escape from legal obligations and reflects the complex problems posed by regulation over religious conversion in India <sup>[5]</sup>.

### **Statement of Problem**

The anti-conversion laws of India, promulgated to eradicate forced conversions, are an issue of debate in some contexts concerning legal permissibility and social economic impact. These laws have surfaced with altercations over the actualities of state interventionism and what's put at stake for guaranteeing religious freedom as per Article 25 of the Constitution, which allows religious practice and only restricts freedom for the reasons of public order, morality, or health. The Supreme Court has stated that the right to convert is not considered part of religious practice <sup>[6]</sup>. Anti-conversion laws may also influence inter-religious relations and spark communal tensions. While eight Indian states

have passed such laws, existing literature mainly discusses religious liberty and does not counterpoise how exactly these laws repress freedom of religion or if they maintain constitutional politics of secularism, justice, and equity <sup>[7]</sup>.

### **Research Objectives**

- To evaluate the constitutional validity of anti-conversion laws in India, focusing on their alignment with the right to religious freedom under Article 25 of the Indian Constitution.
- To evaluate anti-conversion legislation in India's various states, noting differences in the rules' wording and how they're put into practice.
- To find out whether those limitations on religious freedom are designed to keep people from engaging in religious practice.

### **Hypothesis**

- Anti-conversion laws are imperative for safeguarding individuals against coerced conversions, thereby ensuring that such conversions are motivated by authentic religious belief rather than compulsion or ulterior motives.
- The constitutionality of anti-conversion laws can be substantiated as a mechanism to uphold religious liberty by preventing conversions that are pursued for material advantage or as a consequence of undue influence.
- Anti-conversion laws function to preserve social cohesion by protecting the religious convictions of individuals and deterring conversions driven by financial gain or other non-spiritual motivations.
- The protection of religious liberty is significantly enhanced through the enactment of anti-conversion laws, which prohibit conversions that are precipitated by coercion, fraud, or deceptive practices.
- The imperative for anti-conversion laws resides in their capacity to avert the exploitation of vulnerable populations through conversion strategies that take advantage of economic or social frailties for ulterior objectives.

### **Research Questions**

1. What are the key provisions and variations of anti-conversion laws across different states in India?
2. What are the issues and problems arising because of this religious conversion for marriage?
3. What are the legal justifications that the state has provided to enact anti-conversion laws, and what is its constitutionally valid position?
4. What empirical data exists regarding the enforcement of anti-conversion statutes, and what implications does it hold for the relationship between societal order and an individual's freedom of religion?

### **Scope and Limitation**

This report will serve to analyze data supporting governmental restrictions on freedom to propagate religion in India concerning anti-conversion legislation. This study shall serve the purpose of exploring how anti-conversion laws affect restrictions on fundamental rights that might lead to an infringement of their guaranteed freedom. This research is going to check the assertions denying these laws to be unconstitutional and not restrictive.

Yet this shall not cover the social restrictions contained in India. The probability that the anti-conversion laws would be misused and perhaps escalate social hostilities in India is not considered as this study deals more with Government restrictions on the law that may be forced, but does not include the social restrictions that it may cause in its wake. Just government restrictions would have some measure of admissibility if they infringe on fundamental rights, while as for the social restrictions, should there arise a recourse to them, only mere tolerance should be exhibited.

### Methodology

The study will be analytical and will examine the legal principles, theories and jurisprudences surrounding anti-conversion laws as well as religious freedom. The study shall be fundamentally devoted to doctrinal methodology that uses primary sources for discussion, such as the Indian Constitution, some state anti-conversion laws, and court rulings. A few secondary sources are academic texts, law journals, commentaries, and reports from various organizations. The analysis of the constitutional validity will consist of content analysis, statutory interpretation, case law, and comparative analysis. The legal studies online database, SCC Online, Manupatra, etc., besides extensive library use for literature review on socio-legal impacts vis-a-vis religious liberty, would be used.

### Tracing the development of Indian anti-conversion laws

The anti-conversion laws derive from the long history of religious activity in India<sup>[8]</sup>. Such laws against religious conversion were first introduced by the Hindu princely states during the British colonial period-in particular, "the latter half of the 1930s and the 1940s. Though the government had not promulgated any anti-conversion laws during the British colonial period, some Hindu princely states enacted these laws during the British colonial era, in an attempt to preserve Hindu religious identity against British missionaries. Thereafter, after Independence, a spate of anti-conversion bills came up in Parliament, but none saw the light of day. The Indian Conversion (Regulation and Registration) Bill, introduced at its inception in 1954, primarily focused on," licensing of missionaries and registering conversion with government officials. This bill failed to get majority support in the Lok Sabha and was thus rejected. After six years, in 1960, the Backward Communities (Religious Protection) Bill was inserted, aimed at checking conversion to faiths of Islam, Christianity, Judaism, or Zoroastrianism<sup>[9]</sup>. In 1979, Jan Sangh MP O.P. Tyagi introduced the Freedom of Religion Bill as a private member bill. This, too, failed because of lack of parliamentary support. The ruling party has expressed an interest in adopting an Anti-conversion law at the national level, which some critics see as a menace to the secular values of the Constitution. The proposal by the government to enact national legislation stands still because the Ministry of Law and Justice warned that it is "not tenable," since Freedom of religion law is strictly a state subject, hence a matter entrenched in the constitutional domain of the states, lying under the state list in the Schedule Seven of the Constitution. Thus, the Freedom of Religion acts were passed at state level to govern religious conversions made through force, fraud or other inducements. In the 1980s, anti-conversion legislation targeted Muslims in their efforts to convert non-Muslims,

while in the 1990s Christianity was given more notice in light of western style colonialism.

### Examining Anti-Conversion Legislation: Insights from Nine Prominent States

The Freedom of Religion Acts or "anti-conversion" laws established in various states of India have been in place to regulate conversion from one religion to another. As of February 2023, only 12 out of 28 states of India impose anti-conversion laws: Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Uttarakhand, and Uttar Pradesh. However, the extent to which these laws are enforced differs across states<sup>[10]</sup>. Among their similarities are prohibitions on conversions, notice requirements, and burden-shifting provisions. India's anti-conversion laws prohibit conversions under circumstances that can be very broadly interpreted, expanding beyond that of coercion, to target voluntary religious conversions.

This following review examines the state-level anti-conversion laws enacted across India, focusing on eight prominent states analyzing their legal frameworks, implementation and implications.

#### 1. Odisha (Formerly Orissa)

The Freedom of Religion Acts or 'anti-conversion' laws implemented in several states of India serve to monitor and manage changes in religion by an individual. As of February 2023, out of the 28 states of India, only 12 states have enacted anti-conversion laws and they include: Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Uttarakhand, and Uttar Pradesh. Still, the level of observance of these laws differs from one state to another. Contain prohibited purpose conversion, notice periods, and shift of burden clauses among other attributes. India's state based anti-conversion laws do allow for the conversion, but only under very specific postures which can be widely construed to go much farther than that of compulsion so as to encompass voluntary name changes<sup>[11]</sup>. The Orissa Freedom of Religion Act, 1967 gives that no individual might convert or endeavor to convert, either specifically or something else, any person from one religious confidence to another by the utilization of force or by inducement or by any false means<sup>[12]</sup>. Infringement of the law is punishable by one-year imprisonment and a fine or INR 5,000, or both<sup>[13]</sup>. It became a model for other states<sup>[14]</sup>.

#### 2. Madhya Pradesh

The State of Madhya Pradesh was the second state to enact an anti-conversion law, it passed its Dharma Swatantrya Adhinyam (Religious Freedom Act) in 1968 enforcing "prohibition of conversion from one religion to another by use of force or allurement, or by fraudulent means, and matters incidental thereto. Punishment for offence was either one-year incarceration or a fine of INR 1,000, or both<sup>[15]</sup>. The term "inducement" is not used in the Act; instead, the term used is "allurement" according to the Madhya Pradesh Freedom of Religion Ordinance 2020 which came into effect in 2021, where offence is created with a punishment of imprisonment up to one year and also the fine of INR 5,000. In case a minor, woman or a member of scheduled caste or scheduled tribe, imprisonment can be up to two years imprisonment, and a fine INR 10,000<sup>[16]</sup>. Even

the punishment prescribed was similar to Orissa Act 1967. The Act states that this legislation establishes the equality of religious freedom amongst all citizens while prohibiting any form of conversion undertaken by objectionable activities such as coercion, force, fraud and allurement<sup>[17]</sup>.

### 3. Arunachal Pradesh

The first anti-conversion law after the High Court's judgment in Orissa and Madhya Pradesh was introduced in the state of Arunachal Pradesh in 1978. The anti-conversion provisions of the state of Arunachal Pradesh are found in the Arunachal Pradesh Freedom of Religion Act of 1978 and follow a similar pattern with those found in Orissa and Madhya Pradesh. The objective of the legislation in question is to curb the religious conversion of vulnerable sections of society with special emphasis on the indigenous people of Arunachal Pradesh who tend to be the target of converting unscrupulous elements<sup>[18]</sup>. In order for the conversion to be recognized as lawful, the individual who performed it, has to notify 'the authority in charge' (in this case the deputy commissioner of the district in which the converted person resides), regarding such conversion, within a certain period and in the manner specified by certain legislation. The law was not enforced as the government had not drawn up the subordinate legislation that was necessary, even though it was granted presidential assent on 25 October 1978.

### 4. Chhattisgarh

On 1st November 2000, Chhattisgarh state was created by carving out the southeastern regions of Madhya Pradesh state. Under the title Chhattisgarh Freedom of Religion Act, 1968 it is understood that Chhattisgarh adopted the anti-conversion law of Madhya Pradesh. The subsidiary rules for implementation of the Act were also retained-guidelines for the practical enforcement of the Act were also retained. The Democratic Party (BJP) controlled majority of the state legislature in 2006 enabled it to pass A stricter amendment to the 1968 Act, by amendment proposed that 30 days' notice be given by any individual intending to convert to any other religion. Any person found guilty of violating the district magistrate's order by converting any person is considered to have committed a contempt of court and is liable to be imprisoned for a period of three years and fine of twenty thousand rupees<sup>[19]</sup>.

### 5. Gujarat

Freedom of Religion Act, 2003 enacted in 2003 amended thrice in 2021 by the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance Amended Gujarat Freedom of Religion (Amendment) Bill (Prev. Then Gujarat CM Narendra Modi considered this as one of their biggest achievements. This Act was known as the "Dharam Swatantrata Vidheya"<sup>[20]</sup>, a formal legislation which laid down that nobody could be converted by force or inducement. Offenders can be imprisoned for three years with a fine of up to INR 50,000. Offenders belonging to minor, scheduled caste or scheduled tribe or a woman can be fined up to INR 100,000. The 2021 amendment specifies inter-religious marriage as a form of forced conversion. However, the Gujarat High Court withheld the clause<sup>[21]</sup>.

### 6. Himachal Pradesh

The Himachal Pradesh Freedom of Religion Act was enacted in the year 2006 and was amended recently in the

year 2022 for the purpose of checking coercive conversions<sup>[22]</sup>. Special safeguards have been provided for women, minors, SC/ST communities, and other vulnerable sections. It was passed by a Congress-led government and required an advance approval from the district magistrate before any conversion. Later amendments by the BJP government made the offense of forced conversions, especially marriages through force, can attract imprisonment up to seven years based on facts. Marriages after religious conversion are also illegal<sup>[23]</sup>.

### 7. Uttarakhand

The Uttarakhand Freedom of Religion Act, 2018, was enacted after an order by the High Court of Uttarakhand ordered the legislation to enact an anti-conversion law on the order of similar laws in Madhya Pradesh and Himachal Pradesh. The proposal came in cases of inter-religious marriages where conversion was used as a means for marriage. The law was enacted by the state government in April 2018, where under it a parent or sibling can also lodge complaints if they feel the conversion was not rightful or against due process. The Act prescribes imprisonment for one to five years by punishment for forced conversions; two to seven years if minors, women, or SC/ST individuals are concerned<sup>[24]</sup>.

### 8. Karnataka

The Karnataka Protection of Right to Freedom of Religion Act, 2021<sup>[25]</sup>, enacted in 2022 prohibits "inter-religious marriage without permission from the concerned authority", they refer their findings to police authorities "to initiate criminal action." Any conversion "made without prior notice" is "illegal and void". Forced conversion: three to five years imprisonment along with a fine of INR 25,000. In case of juvenile, woman or scheduled caste and scheduled tribe convicts, then the punishment of three to ten years imprisonment along with a fine of INR 50,000 shall be given. Mass conversion will attract imprisonment for the term of three to ten years and fine of INR 100,000<sup>[26]</sup>.

### 9. Uttar Pradesh

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Law, 2020, was passed within the year 2021. The UP forbiddance of unlawful conversion of religion law was authorized on 8th November 2020<sup>[27]</sup>, underneath it possesses state government. The sanctioning made the offense cognizable and non-bailable; the punishment extended up to 10 a long time and Rs 50,000 fine or more. It is considered one of the first flawed sanctions in afterward times<sup>[28]</sup>.

### The Need to Understand International and Indian Legal Framework

There is usually quite a lot of interaction between International law and any relevant type of Domestic law. International law creates several Schema in the form of Conventions, Declarations and Resolutions to acknowledge and safeguard Human Rights<sup>[29]</sup>. India has made a specific commitment in its Constitution to international law, particularly with respect to Human Rights. Article 51 of the Indian Constitution prescribes that India shall "endeavor to formulate international law for securing Human Rights". The US Commission on International Religious Freedom (USCIRF) observes these laws, born from 'fear of

aggressive conversion tactics, in general obligate government officials investigate the validity only of conversions away from Hinduism and subject any person who employs 'force', fraud or 'inducement' to convert another to fines and imprisonment. The Supreme Court of India stated, "Our Constitution embodies all universally accepted fundamental and basic rights contained in the Universal Declaration of Human Rights 1948, to which our country is a signatory."

The 'Magna Carta' of human rights, for that matter the Universal Declaration of Human Rights ('UDHR'), has recognized different rights which fall under universal human rights<sup>[30]</sup>. And among them is the right to freedom of thought, conscience and religious belief, thereby the right to an individual's conversion. Meaning thereby an individual is free to change or convert his or her faith or religion according to his or her will and pleasure. Article 18 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance<sup>[31]</sup>."

General Comment No. 22 issued by the UN Human Rights Committee of the United Nations had elaborated an authoritative exposition of Article 18 ICCPR underlining absolute character of this freedom and categorically pointing out that coercion in matters of religion or belief in any form is prohibited. States must ensure no one is compelled to adopt a particular religion or beliefs or to abstain from such adoption by threats, for example, of physical violence, penal sanctions or threats of social ostracism. The coercion may be apparent as when someone under the threat of death forces another person to adopt particular beliefs. Coercion, however, can be much subtler and indirect, in the sense of placing pressure upon others through psychological persuasion or forms of inducement-for instance bribery-and either community or family pressure or other kinds of manipulative practices<sup>[32]</sup>.

Under the International Covenant on Civil and Political Right ('ICCPR'), Article 18 recognizes the interpretation of ICCPR by the United Nations Human Rights Committee such that the state can't compel an individual to reveal his adherence to a belief<sup>[33]</sup> and international human rights law prohibits the state from interfering in an individual's right to convert and requiring the issuing of notifications regarding the same<sup>[34]</sup>. The ICCPR places an obligation on all State Parties to ensure that the rights administered under this Convention are respected and not violated. Any form of disagreement or violation of rights by a State, its agent or any private individual results in impairing the enjoyment of the right and therefore, not permitted. Any form of coercion, monetary inducement or material inducement to an end for an unsafe or doubtful objective is forbidden under international law.

In this report, the Special Rapporteur on freedom of religion or belief, Nazila Ghanea, looks into incitement to hatred based on religion or belief. The report addresses the many forms of such hatred, its various legal implications, and how it weighs on individuals and society as a whole. The Special Rapporteur also reflects on State and civil society responses and transformative responses to counter the incitement to hatred based on religion or belief.

## Supreme Court and High Court on The Anti Conversion Laws

The above sections have laid a foundation with which to analyze Indian Supreme and High Court cases that interpret Article 25 of the Indian Constitution. To begin with, one needs to look at what the freedom of propagation entails. Then one needs to look at the interpretation of the breadth of the public order exception to the freedom to propagate. Then only will it be possible to properly evaluate the constitutionality of these Indian anti-conversion laws.

The leading case that dealt with the interpretation of the freedom to propagate religion under Article 25 is the case *Rev. Stainislaus vs. the State of Madhya Pradesh*<sup>[35]</sup>, also tested if the right to practice and propagate an individual's religion includes the right to convert him. Both states Madhya Pradesh as well as Orissa scrutinized the constitutionality of their respective anti-conversion laws, which were functionally identical. As already founded in Part II, the court confirmed the authenticity of the first Freedom of Religion laws, i.e. the Orissa Freedom of Religion Act 1968 and Madhya Pradesh Dharma Swatantrata Adhiniyam, 1968. In *Stainislaus*, a Catholic priest Father Stainislaus challenged the Madhya Pradesh anti-conversion law asserting its unconstitutionality on account of lack of competence of the state legislature to pass the law and he was convicted of forcible conversion. In Orissa, a group of eight petitioners challenged their state's law, based on civil violations, and the High Court of Madhya Pradesh ruled that the anti-conversion law was constitutional while the Orissa High Court ruled to the contrary. The Indian Supreme Court agreed with the Madhya Pradesh High Court., The court summed up saying, "It has to be remembered that Article 25 guarantees 'freedom of conscience' and the right to profess, practice and propagate religion". It was held that the issue that arises under Article 25 is whether it covers the right to convert or not. Dissemination of one's religious faith or exposition of the tenets of one's religion is meant by forceful conversion against the Article 25 which violates "freedom of conscience". Conversion is not a fundamental right and shall be regulated by the State.

The Constitution of India provides for every citizen freedom of professing, practicing, and propagating any religion, according to article 25. In *Ratilal Panachand Gandhi v. the State of Bombay*<sup>[36]</sup> The Supreme Court has held that every person has a fundamental right under our Constitution to do not only what his belief may allow him but also to exhibit his beliefs and ideas in all overt acts which are allowed or sanctioned by that religion and propagate his views for the good of others.

In a different case, *Ramji Lal Modi v. State of Uttar Pradesh*<sup>[37]</sup>, the issue of the constitutionality of the anti-conversion laws is discussed. In the case, the High Court described that a person is free to be criminally punished constitutionally for marauding the right of freedom of religion of another person. It has also been pointed out that free speech can be restricted for the maintenance of public order. The conviction of the editor of a magazine under Section 295A of the Indian Criminal Code was confirmed because the editor "deliberately and maliciously" outraged the religious feeling of a particular religious class, in this case, Muslims. This might as well affect the person preaching this person's religion while incidentally becoming a source of discontent for others.

Another case with important implications for this issue is *In Commissioner of Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar* <sup>[38]</sup>, where the Supreme Court of India stated "freedom of religion in our Constitution is not confined to religious belief only; it extends to religious practices as well, subject to the restrictions which the Constitution itself has laid down. One such restriction delineated by the Constitution is that restrictions by the State upon free exercise of religion are permitted both under articles 25 and 26 on grounds of public order, morality, and health. Thus, the state may regulate or restrict any economic, financial, political and other secular activities related to religious practice; in addition, can legislate for social welfare and reform even though by doing so it might interfere with religious practices <sup>[39]</sup>."

According to one of the cases i.e *Lily Thomas, Etc. Etc. vs Union of India & Ors* <sup>[40]</sup>. It was held that a person who becomes a Muslim and joins some other woman marrying her is an invalid and punishable act under bigamy laws.

Furthermore, in one of the cases of *Noor Jahan Begum*, the Apex court held that conversion was criticized on the basis that the conversion just for the purpose of marriage, someone cannot become a Muslim and marry another woman. Here in this case the petition was filed by the petitioners seeking the directions to provide security who married a Muslim boy after converting herself from Hindu religion to the Muslim. In this case the court declined to provide any security to the petitioners and reasoned that the conversion of a girl by her own without any knowledge of that religion may be a real conversion or in simple terms the conversion is done just to marry someone, is nothing but illegal <sup>[41]</sup>.

### Constitutional Validity of Anti-Conversion Laws

While the Constitution gives a wide scope to Freedom of religion, however, it does not provide for the separation of state and religion, but it provides that state shall not have any religion, nor it will Favor any religion <sup>[42]</sup>. For a very long time, the higher Hindus discriminated and dominated against the Dalits. This discrimination was so serious in nature that the framers of the Constitution of India incorporated Article 17 and abolished untouchability. In spite of several laws, discrimination still exists in society. This discrimination and bad economic and social condition of Dalits gave an opportunity to the people of other religions to make them convert in their own religion and this led to Anti- conversion laws in India. Indian constitution in its Part III provides endorsement to freedom of religion in India. It is simply amplified by the words of article 25 states that, subject to public order, Article 25 ensures Freedom of conscience, the practice and conversion of religion of one's choice including not following any religion. Article 21 of the constitution which guarantees individuals the right to marry a person of one's choice.

Basically, The Indian Constitution encompasses the provision of freedom of religion. The campaigners for anti-conversion law therefore believe that they can enhance religious freedom by protecting people from being forcefully converted. However, those who oppose anti-conversion law believe and argue that the anti-conversion laws violate the fundamental right of freedom of religion by converting their religion of their own free will. For instance, the High Court of Allahabad opined that Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021,

"has the potential to disturb the basic structure of the Constitution." Likewise, Madhya Pradesh High Court has observed that the state's anti-conversion law "may be vulnerable to challenge" under Article 21. Constitutionality of these laws have been assailed before the court multiple times and the Supreme Court of India declared the majority of them to be valid within the purview of Entry I of List II as they were enacted with a view to avoid disturbances to the public order by prohibiting conversion from one's religion to another in a manner reprehensible to the conscience of the community.

Yet the settled fact remains that the judgment of the Supreme Court in the case of *Stanislaus v. State of Madhya Pradesh*, "where the constitutional validity of the anti-conversion enactments of Madhya Pradesh and Orissa was upheld, has been the landmark judgment on the issue of the legality of such legislative provisions. It was contended before the Supreme Court that these enactments are barriers to the 'propagation' of a person's religion, as they are linked with the prohibition of religious conversions." <sup>[43]</sup>.

Anti-conversion laws within states can be said to gain a justification in some verdicts delivered by high courts in respect of such enactments. For instance, the recently enacted Prohibition of Unlawful Conversion of Religion Act in Uttar Pradesh found an important basis in the judgment of Allahabad High Court passed in September 2020. Here, it held that conversions made solely for marriage are invalid. The Uttarakhand High Court declared in November 2017 that conversion for marriage is shameful and begged the government to enact laws against such conversions, which led to the enactment of the Uttarakhand Freedom of Religion Act, 2018. Similarly, the Rajasthan High Court issued guidelines in December 2017 in respect of which the state was supposed to have made laws to prevent forced conversions by itself.

Chief Justice A.N. Ray, who sat in this bench, construed the term "propagate" as "to transmit or spread one's religion by an exposition of its tenets," but not to convey the right to convert somebody to one's religion. It has been said: "It has to be remembered that Article 25(1) guarantees freedom of conscience' to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the freedom of conscience 'guaranteed to all the citizens of the country alike <sup>[44]</sup>."

H.M. Seervai <sup>[45]</sup> Commenting on the judgment of *Stanislaus*, he observed: "to propagate religion is not to impart knowledge and to spread it more widely, but to produce intellectual and moral conviction leading to action, namely, the adoption of that religion. Successful propagation of religion would result in conversion.

### Justifications for Conversion Law Implementation

Anti-conversion laws step into controlling the unethical religious conversion that may occur in the religious propagation process. Such law provisions aim to discontinue the denial of conversions, as well as attempted conversion through fraud, force and inducement. On such an argument, laws that do criminalize such a procedure would be used here for exercising such activities; these laws, therefore act

as a vital armor when upholding religious freedom-guaranteed both intrinsically through Constitution and international instruments for human rights.

A committee formed by the chief justice of Nagpur concluded that religious conversions were not "wholly voluntary". Forceful conversion of religion would include many crimes such as wrongful confinement (Section 342 IPC and 127 of BNS), intimidation (Section 506 IPC and 351 of BNS), kidnapping (Section 359-369 IPC and 137 of BNS), the threat of divine displeasure (Section 508 IPC and 354 of BNS) and assault (Section 352 IPC and 130 of BNS).

#### **a. Protection of Vulnerable Communities**

Anti-conversion laws are often justified as a protective measure for vulnerable or marginalized communities who may be at risk of coercion or manipulation in matters of religion. Supporters argue that these laws prevent the exploitation of individuals' economic, social, or emotional vulnerabilities, which can sometimes be targeted to induce religious conversions. Anti-conversion laws assure that any change in religion is voluntary and based upon a genuine personal conviction when it regulates or prohibits those conversions obtained through material benefits, inducements, or social pressure. For this reason, protection of economically disadvantaged groups is crucial as they may be more liable to be influenced externally by others for attaining mere basic needs or promises for a better life.

The Uttarakhand High Court in its judgment quoted that the anti-conversion law does not prevent conversion merely for the purpose of marriage. Instead, it prevents marriages undertaken "solely for the purpose of conversion". These legislations do not stop interfaith marriages. The Government passing these legislations claims that these laws do not stop conversion but focus on keeping a check on deceitful conversions done under pressure. These laws would prevent exploitation of girls of impressionable age who may get "allured" easily under the pretext of marriage<sup>[46]</sup>. The law would put a check on those outfits who have maleficent intentions to entrench and disrupt the social harmony of the society under garb of marriage. Many organizations have, however, reported that most condemnation of anti-conversion legislations resulted in only a few prosecutions and no conviction at all.

#### **b. Maintenance of Social Harmony Through Anti-Conversion Laws**

Anti-conversion laws are most frequently cited as a significant means of maintaining social harmony, especially in pluralistic societies like India, in which religious and communal identities are deeply intertwined with social and political life. India has a large number of religious communities, and intergroup tensions have led historically to communal violence or social disharmony. Such a setting, large-scale conversions-in this case, especially those suspected of being forced or orchestrated-will further ignite any communal sensitivity. The logic is that such laws help prevent this risk as they make religious conversions voluntary, free from any coercion from external parties, thereby diminishing the chances of intercommunal conflict. In most cases, forcible conversions or those thought to have been under undue influence create cause for suspicion and mistrust or even hostility among religious groups at a cost to social harmony.

This is made impossible by anti-conversion laws. These laws ensure that religious conversion is a transparent, regulated process. In most states where these laws exist, intending converts are often expected to notify the authorities concerned, and sometimes, an inquiry process precedes this conversion to ensure that there is no force behind the conversion. This mechanism safeguards against any kind of conversion, which might be wrongly used politically or socially for the disturbance of communal peace.

#### **c. Religious Demographic Balance**

Anti-conversion laws are therefore seen as a way to maintain religious demographic balance in a region, especially when religious identity is closely aligned with political power and social cohesion. The demographic nature of a community can profoundly affect electoral politics, governance, and resource allocation in those regions. The justification of such laws is found in the argument that through regulation of the process of religious conversion, they obviate sudden shifts in religious demography that would result in upsets to otherwise intact social structures and relationships. The other factor is that of societies in which communal identity is readily politicized and maintaining stable religious demography is necessary for social coexistence and prevention of sectarian violence. These laws thus aimed at creating a more predictable social environment where communities would live together and not fear sudden demographic shifts that could vitiate their way of life or provoke competition for resources and influence.

#### **Arguments Against Anti-Conversion Law**

The Anti-Conversion law does not allow conversion to the religion of one's choice and the practice, propagation, and promotion of that religion in violation of the right of privacy of people. In addition, it severely punishes those who convert from the weaker groups in society with the false notion that they have not received any explicit or implicit permission to do so. The need that a religious conversion ceremony be approved by the District Magistrate before conversion also impedes peoples' right to privacy<sup>[47]</sup>. According to some observers, these 'anti-conversion' laws make a hostile or aggressive and at times violent environment for religiously minor communities since they don't require any proof to support allegations of wrongdoing. The rich tradition and legal framework supportive of freedom of conscience and the right to profess, practice, and propagate the religion of one's choice regardless, religious minorities in India have regularly been the victims of religiously spurred violence.

A report from USCIRF noted that even though India emphasizes 'full legal justice' and bans discrimination based on religion, its state and national laws do not align with global norms for religious freedom, such as Article 18 of the UN Declaration of Human Rights and Article 18 of the Universal Covenant on Civil and Political Rights. The report also mentioned that anti-conversion laws, when created and enforced, violate an individual's right to change their religion, show bias towards Hinduism, and are a significant threat to the secularism of India. Anti-conversion legislation unfairly targets minority groups.

## Conclusion

The legitimacy of anti-conversion laws in India continues to be a considerable legal and social debate. Although these laws are intended to combat coercive conversions, they raise concerns of vague and ambiguous definitions which may facilitate misuse and breach of fundamental rights. Court decisions, such as *Stanislaus v. State of Madhya Pradesh*, upheld such laws; yet recent decisions from High Courts may indicate a limitation in considering Articles 21 and 25 of the Constitution. Given the precarious balance between religious freedom and government oversight, there emerges an urgent need for a more precise and rights-based framework to provide solace for individual choice while addressing concerns related to coercion. It is essential that lawmakers provide context and clarity to legal terms and definitions while respecting the values of the Constitution in order to preserve secularism in India and better respect personal liberties.

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