

ANTI CONVERSION LAWS AND RELIGIOUS FREEDOM IN INDIA

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DECLARATION

I, LEKH RAJ, pursuing Master of Laws (LL.M.) from National Law University and Judicial Academy, Assam, do hereby declare that the present dissertation titled “ANTI CONVERSION LAWS AND RELIGIOUS FREEDOM IN INDIA” is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

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Date: 11 JULY, 2022

LEKH RAJ (SM0221017)

LL.M., SEMESTER- II

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42.	<i>The Commissioner, Hindu Religious Endowment, Madras v. Shri Lakshmindra Tirtha Swamiyar of Shri Shirur Mutt</i>
43.	<i>Torcaso v. Watkins</i>
44.	<i>United States v. Seeger</i>

45.	<i>Welsh v. United States</i>
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1942	The Patna Freedom of Religion Act
1945	Sarguja State Apostasy Act
1946	Udaipur State Anti- Conversion Act
1948	The Universal Declaration of Human Rights
1950	The Constitution of India
1954	Special Marriage Act
1967	The Orissa Freedom of Religion Act
1968	The Madhya Pradesh Dharma Swatantrya Adhiniyam
1969	The Madhya Pradesh Dharma Swantantrya Rules
1976	The International Covenant on Civil and Political Rights
1989	Orissa Freedom of Religion Rules
2003	Gujarat Freedom of Religion Act
2007	Himachal Pradesh Freedom of Religion Rules
2008	Gujarat Freedom of Religion Rules
2017	Jharkhand Freedom of Religion Act
2018	The Uttarakhand Freedom of Religion Act
2019	Himachal Pradesh Freedom of Religion Act

2021	Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act
2021	Madhya Pradesh Freedom of Religion Act
2022	Karnataka Protection of Right to Freedom of Religion Ordinance

Table of Abbreviations

Serial No.	Abbreviation	Explanation
1.	&	And
2.	AIR	All India Reporter
3.	art	Article
4.	Chap.	Chapter
5.	etc.	Etcetera
6.	Ibid	Ibidem
7.	ICCPR	International Covenant on Civil and Political Rights
8.	p.	Page
9.	Rev.	Reverend
10.	RSS	Rashtriya Swayamsevak Sangh
11.	s	Section
12.	SC	Supreme Court
13.	SCC	Supreme Court Cases
14.	SCR	Supreme Court Reporter
15.	UDHR	Universal Declaration of Human Rights
16.	USCIRF	United States Commission on International Religious Freedom
17.	v.	Versus
18.	VHP	Vishwa Hindu Parishad
19.	WP (C)	Writ Petition (Civil)

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CHAPTER I

INTRODUCTION

1.1 INTRODUCTION

Anti conversion laws are state level laws in India which are enacted to regulate religious conversions which are done through force or other fraudulent means such as coercion, allurements, undue influence etc.

Origin of anti conversion laws date back to early 20th century when in the face of Christian Missionary such laws were enacted to prevent the influence of Christianity on the Hindu religious identity and other Indic religions.¹ Currently, various states in India for example Odisha, Madhya Pradesh and Uttar Pradesh etc. have promulgated such laws which regulate religious conversion and there are certain states which has tabled similar bill in their respective state legislature.² Though there are few variations in these state level laws but more or less they have been designed on the similar lines.

Proponents and opponents of these laws advances various arguments to support their side viz. rise in case of fraudulent marriage or absence of right to convert within the concept of right to propagate from the proponents' side of these laws whereas antithetical to concept of secularism or a tool against religious minority or usage of wide and vague terms in the statutes to unnecessarily impinging upon religious rights from the opponents' side and hence to arrive to a logical conclusion as to whether these laws are genuinely a requirement in the society today or it is merely a tool to harass the religious minorities or whether these laws can stand the test of constitutional validity, this dissertation will trace the genesis of these laws in detail and will put emphasis on the reasons behind promulgation of such laws.

Since these laws directly affect the right to freedom of religion, the dissertation will discuss the concept of religion in the context of Indian Constitution and will also evaluate the scope and concept of right to religion. Further, deliberations regarding

¹ James Andrew Huff, 'Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws' (2009) 4 Rutgers Journal of Law and Religion
<<http://www.lawandreligion.com/sites/lawandreligion.com/files/A10S-6Huff.pdf>> accessed 02 April 2022.

² Virendra Bhatia, 'Haryana govt's anti-conversion Bill' (05 March 2022)
<<https://indianexpress.com/article/explained/explained-haryana-govts-anti-conversion-bill-its-provisions-and-oppositions-objections-7801281/>> accessed 02 April 2022.

inclusion of religious rights in the Constituent Assemble debates shall also be discussed.

Going by the case laws, *Rev. Stanislaus*³ is one of the leading judgments on anti conversion law which is still cited by the state governments to enact such statute. The judgment in this case not only upheld the validity of the statute but also decided in the favour of legislative competency of the states to enact such laws on the grounds of public order which falls in List II of Seventh Schedule. Though this judgment is yet not overruled on the contrary similar provisions present in another statute is being diluted on the grounds of right to privacy and liberty. In the case of *Safiya Sultana*⁴, the provision of Special Marriage Act, 1954 which required the details of person marrying under the impugned law to be published and open for public inspection was made advisory instead of mandatory. Since similar provisions are present in anti conversion laws which invite administrative interference in the matter of conversion which is a private affair it creates a conflict with the recent development of jurisprudence around privacy and liberty.

Another issue which is spreading its wings in the society is reconversion or popularly known as *Ghar Wapsi*. The very notion behind reconversion few theorists give is that every person in India is a Hindu and hence non Hindus should be brought back to their original religion i.e., Hinduism. To add to that few Acts have absolutely kept reconversion out of the ambit of conversion and the whole statute altogether which is giving certain extremist religious group to organize mass reconversion events. Though a judgment struck down the provision which saved reconversion from any penalization yet after few years the state government came up with similar laws and similar such provisions. Hence it becomes imperative to discuss and evaluate the presence of such provisions in the statutes.

There are other provisions too in various state level statutes which are in conflict with fundamental rights as well as guarantees of international instruments which this paper will evaluate. Further, this dissertation will also discuss the implications of such statutes on the society and will also discuss the current status of Acts of various states. Further, recommendations are provided by the researcher so that these laws can be

³ *Rev. Stanislaus v. State of Madhya Pradesh*, 1977 SCR (2) 611.

⁴ *Safiya Sultana v. State of Uttar Pradesh*, (Habeas Corpus No.16907 of 2020).

harmonized with the rights of the people and these laws can achieve their set objective.

1.2 STATEMENT OF PROBLEM

Anti conversion laws of various states are statutes which provides for prohibition and penalize forced religious conversion. However, these laws have always been under criticism for hampering the rights of the people especially privacy and liberty to decide for the matters which are very private in nature. Thus, understanding the reasons behind enactment of such laws and their effect on the society it is essential to put out some suggestions so that these laws may fall in line with the rights of the people. Through this paper, the in- depth analysis of provisions and judgments and through recommendations in the end, this paper aims to address the conflict between the anti conversion laws and religious rights guaranteed by the Indian Constitution.

1.3 DETAILED LITERATURE REVIEW

BOOKS

Durga Das Basu, *Commentary on the Constitution of India* (9thedn, Lexis Nexis, 2008).

This commentary is a pioneering work on the Indian Constitution. First published in 1950, this work has enjoyed the reputation of being one of the most comprehensive publications on the subject. It is the first authoritative work on the Constitution of India that adopted an interdisciplinary approach, examining this great document from the philosophical, sociological, political as well as legal perspectives. This particular volume discusses the right to freedom of religion in great details. The author has analysed Article 25 and meanings of religion, conscience and propagation in the light of Supreme Court judgments as well as by the other authorities. Position of United States with respect to religion and propagation has also been explained in this book.

V.N. Shukla, *Constitution of India* (12thedn, Eastern Book Company, 2013).

One of the finest and most elucidate books on the Constitution of India clearly explains each and every article serial wise. Especially for this dissertation its explanation about Article 25 was very helpful. Further, this book also refers case laws and other secondary materials to explain the current interpretation of the Articles.

B.Shiva Rao, *The Framing of India's Constitution* (2nd edn, Universal Law Publishing Company, 2012).

One of the leading and authoritative books on Constituent Assembly debates, this work gives an insight behind adoption of each and every Article in the Constitution of India. The nitty-gritty of deliberations and the intentions of members behind adopting or rejecting any clause or amendment have been clearly explained in this book. The current form of the Indian Constitution can be easily understood by reading the Constituent Assembly debates. The researcher has specifically referred to the debates around secularism and adoption of the word propagation and adoption of right to freedom of religion in general.

C.N. Shankara Rao, *Principles of Sociology with an Introduction to Social Thought* (7th edn, S. Chand, 2019).

This textbook has been comprehensively written to acquaint the readers with the fundamental concepts of sociology as well as provide an introduction to the diverse field of sociology. This book introduced to the researcher the origins of sociology as a discipline and acquainted with relevant topics such as inequality, institutions, control, religion & problems in the society. Topics such as applied sociology and social thought have also been provided to give a complete overview of the subject. With regards to this dissertation, the researcher understood the sociological meaning of religion which eventually broadened the scope of research and also allowed to delve deeper into the meaning and motivation behind conversion, the central theme of the investigation.

Robinson Rowena and Clark Sathianathan, *Religious Conversion in India- Modes, Motivations and Meaning* (1st edn, Oxford University Press India, 2003).

This book deals in detail about the history of conversion in India. The modes of conversion in ancient India as well as motivation behind the conversion have been explained in detail. The researcher in the dissertation has included the modes and motivation behind conversion after extensively reading this book.

Dr. Amrit Parmar, *Right to Religion under the Indian Constitution* (1st edn, Cyber Tech Publications, 2016).

The book does a comparative study of secularism and freedom of religion under various constitutional frameworks. It also discusses the concept of secularism in the Indian context right from the ancient period to present day. It traces the changes in philosophy of secularism since independence and reports the existing condition of the concept of secularism. This book also examined various judicial decisions given by High Courts and Supreme Court relating to challenges before secularism.

Laura Dudley Jenkins, *Religious Freedom and Mass Conversion in India* (1st edn, University of Pennsylvania Press, 2019).

This book extensively deals with religious freedom and the right to convert. Chapter in this book deals separately with legislations limiting forcible and induced conversions and how people from lower social strata are induced to convert their religion. This book also discusses how the assumption that women, Dalits and Adivasis lack agency or autonomy to decide to convert has been ingrained in the consciousness of the society.

ARTICLES

Yashasvini Rajeshwar and Amore C. Roy, ‘Coming Home (*Ghar Wapsi*) and Going Away: Politics and the Mass Conversion Controversy in India’ (2019) MPDI Journal.

This article explains the meaning of the Hindi term *Ghar Wapsi* and explains the logic behind mass popularization of this word in the contemporary India. The politics behind *Ghar Wapsi* and its interplay with religious rights at the backdrop of anti conversion Laws in India has been extensively studied in this article. The Hindutva politics which has been on the rise today and how the loopholes in the anti conversion Laws have been exploited to further the politics of *Ghar Wapsi* has been explained here.

Michael Hertzberg, ‘the Gifts of Allurement: Anti Conversion Legislation, Gift Giving and Political Allegiance in South Asia’ (2020) Journal of Contemporary Religion.

The last decade has seen an escalation of enactment of various Acts of anti conversion nature in different states in India. These Acts or statute criminalizes improperly performed religious conversions such as by force, fraud and allurement. Since allurement has not been defined in the penal provisions, specific definition has been provided in the anti conversion Act itself. These definitions comes in conflict with the normal religious activities of proselytizing religious groups and unnecessarily brings them within the ambit of these laws, this article explains the concept of allurement, gifts and its political result in the backdrop of such kind of statutes.

Meghan Grizzle Fischer, ‘Anti Conversion Laws and the International Response’ (2018) Future Publication Pennsylvania.

This article provides the international law background with regards to religious rights and anti conversion statutes. It discusses the scope of religious rights as the right to convert and the right not to be forced to convert. Along with it the major bone of contention which is right to a person to convert another person to his/ her own religion has been addressed in this article. Further, how the international bodies and organizations have given their response to these statutes has been addressed by this article.

Sarah Claerhout and Jakob De Roover, ‘Religious Freedom and the Limits of Propagation: Conversion in the Constituent Assembly of India’ (2019) MPDI Journal.

There’s always a dispute in the backdrop of anti conversion Laws regarding the meaning of the right “to propagate” and its relation with the freedom to convert. This article discusses the Constituent Assembly debate where the deliberations regarding adoption of the term ‘propagate’ were happening. The interplay of propagation and conversion in the debates was discussed and how inclusion or exclusion this term might affect a particular religion was the main agenda. Contentions of each member

have been highlighted in this article and whether right to convert is enshrined within right to propagate has been explained.

REPORTS

India Law Commission, *Conversion/ reversion to another religion- mode of proof* (Law Com No. 235, 2010).

This report discusses the advantages and disadvantages of having a documentary proof of religious conversion. Though the report suggests that in religious conversion embracing the religion is most important than any paperwork but for the sake of evidentiary proof a document can be considered. Further it recommended that such documents should not be made the sole and obligatory instrument of proof of conversion but should only be made optional so that converted people can establish the factum of conversion.

Uttar Pradesh Law Commission, *Freedom of Religion* (Law Com No 8, 2019).

Submitted by Justice Aditya Nath Mittal, Chairman of the State Law Commission, this report was the basis on which the Uttar Pradesh Freedom of Religion Bill and subsequently the Act was passed. The report extensively discussed various instances of forced conversion happening around the state of Uttar Pradesh, cited catena of judgments where matter of conversion was adjudged and at the end recommended the government to enact such laws which keeps a check on forced conversion in the state.

NIYOGI (Report of the Christian Missionary Activities Enquiry Committee, Madhya Pradesh) 1956.

The report made a few adverse remarks against the Christian proselytizing activities such as accusing them of converting people in the name of philanthropic activities. The report in the end recommended limiting conversions through enactment of laws. This report was the basis for enactment of Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968.

1.4 AIMS AND OBJECTIVES

1. To understand the meaning of religion, propagation of religion and the extent of right to freedom of religion provided in the Constitution.
2. To understand the constitutional objective of right to freedom of religion and the rationale behind adoption of this right in the Constitution.
3. To evaluate the objective of anti conversion Laws.
4. To examine the implication of anti conversion laws in the society.

1.5 SCOPE AND LIMITATIONS

The scope of the study is to understand the meaning and concept of religion, scope of religious rights, validity of anti conversion laws and its implication on the society. The study is limited to India and the states where these statutes are enacted. The paper studies all the provisions of the statutes under the lens of Indian Constitution as well as international guarantees. Origin and current status of various states' law has been separately dealt with. In the light of the findings of the doctrinal study the dissertation in the end provide few recommendations so as to bring these statutes in line with the rights of the people.

Two major components of this study is constitutional law and anti conversion law. Though there are enough materials both online and offline for the constitutional law part but with regards to anti conversion law the researcher has been constrained to refer online sources which has inherent limitations in the nature of lack of comprehensive material and discourse on the subject matter of research online.

1.6 HYPOTHESIS

Though the anti conversion laws have been passed by various states in the country to prevent forced conversion but there is a gross misuse in implementation of the statutes and they could not achieve their set objectives.

1.7 RESEARCH QUESTIONS

1. What is the meaning of religion and the scope of Article 25?
2. Are anti conversion laws in conflict with the fundamental right of right to religion?
3. Could anti conversion laws meet their objectives?

1.8 RESEARCH METHODOLOGY

The research methodology used in the present investigation is doctrinal. The study is analytical and descriptive in nature. Primary as well as secondary sources have been used in this research work. Primary sources comprises of anti conversion laws of various states and the Constitution of India. Subsequently, such laws of other countries have also been discussed and international documents have also been referred. Both national and international judicial pronouncements revolving around religious freedom has also been referred to.

Secondary sources like books, journals and articles both print and online have been made use in the research study. Extensive use of internet resources has also been undertaken. It includes various articles and journals which are available online, copies of books that are available online as well as various other websites including news publication websites have been referred to for the successful completion of the report.

Mode of citation: OSCOLA (4th edition) mode of citation has been used for this study.

1.9 CHAPTERIZATION AND RESEARCH DESIGN

The dissertation has been divided into six chapters and the design of research has been summarized below:

Chapter I- INTRODUCTION

This chapter provides a general introduction to the subject matter under study in the present dissertation in the form of scope and limitations, objectives, research questions, research methodology, etc.

1.1 INTRODUCTION

1.2 STATEMENT OF PROBLEM

1.3 DETAILED LITERATURE REVIEW

1.4 AIMS AND OBJECTIVES

1.5 SCOPE AND LIMITATIONS

1.6 HYPOTHESIS

1.7 RESEARCH QUESTIONS

1.8 RESEARCH METHODOLOGY

1.9 CHAPTERIZATION AND RESEARCH DESIGN

Chapter II- RIGHT TO FREEDOM OF RELIGION UNDER THE CONSTITUTION OF INDIA

This chapter will introduce the concept of religion and its meaning especially within the ambit of Constitution of India. It is only then, when the meaning of religion is clear, the dissertation will further delve into understanding the meaning of propagation of religion as adopted in the constitution and whether the concept of conversion is enshrined within the concept of propagation or not. Lastly the extent of right to freedom of religion vis-à-vis voluntary conversion will be understood. This chapter will also discuss constituent assembly debates regarding adoption of right to religion.

2.1 INTRODUCTION

2.2 CONCEPT OF RELIGION

2.3 MEANING OF PROPAGATION OF RELIGION

2.4 CONCEPT OF CONVERSION IN THE CONTEXT OF PROPAGATION OF RELIGION

2.5 CONCLUSION

Chapter III-EXISTENCE OF ANTI CONVERSION LAWS IN INDIA

This chapter will focus on reasons behind conversions and forced conversions in India since ancient times and the reasons behind adoption of anti conversion laws.

3.1 INTRODUCTION

3.2 MEANING OF CONVERSION

3.2.1 HISTORICAL ASPECT

3.2.2 MOTIVES BEHIND CONVERSION

3.3 ANTI CONVERSION LAWS IN INDIA

3.3.1 HISTORICAL ASPECT

3.3.2 REASONS FOR PROMULGATION

3.4 CONCLUSION

Chapter IV-IMPLICATIONS OF ANTI CONVERSION LAWS ADOPTED BY THE INDIAN STATES

This chapter will evaluate various provisions present in the Acts of various states and will study the implications of such provisions on the society. This chapter will also study about the current status of laws around various states in India.

4.1 INTRODUCTION

4.2 LEGISLATIVE PROVISIONS RELATED TO CONVERSION

4.3 IMPLICATIONS OF SUCH LAW ON THE SOCIETY

4.4 CURRENT STATUS OF THESE LAWS

4.5 CONCLUSION

Chapter V-TEST OF ANTI CONVERSION LAWS UNDER THE LENS OF CONSTITUTIONAL PROVISIONS

The objective of this chapter is to discuss the effect of anti conversion laws on the rights of people vis-à-vis right to freedom of religion and the right to life and personal liberty. It will also discuss how these state legislatures affect the doctrine of basic structure in the context of secularism.

5.1 INTRODUCTION

5.2 CONCEPT OF SECULARISM AND THE EFFECTS OF ANTI CONVERSION LAWS ON IT

5.3 EFFECT OF ANTI CONVERSION LAWS ON FREEDOM OF RELIGION

5.4 EFFECT OF ANTI CONVERSION LAWS ON RIGHT TO EQUALITY

5.5 EFFECT OF ANTI CONVERSION LAWS ON RIGHT TO LIFE AND LIBERTY

5.6 CONCLUSION

Chapter VI- CONCLUSION AND RECOMMENDATIONS

This chapter concludes the dissertation by concisely dealing with all the previous chapters and will also provide some recommendations so that the implication of these Acts can be in sync with the rights of the people.

6.1 CONCLUSION

6.2 RECOMMENDATIONS

CHAPTER II

RIGHT TO FREEDOM OF RELIGION UNDER THE CONSTITUTION OF INDIA

2.1 INTRODUCTION

‘Religion’, a concept on which there still needs a consensus to reach to its meaning has been an important part of people’s life for the time immemorial. Though, there is not a single widely accepted definition of it, yet it influences life’s of people in many ways be it their food habit, clothing habit, their lifestyle and their approach towards life. Different philosophers and jurists have tried to explain religion in their own ways. From a holy and sacred concept to a relation between man and the divine, from sacred practices to finding God in one’s soul, philosophers have tried to explain religion in every way possible. The Constitution of India also does not define this term but the apex court through catena of judgments has defined the meaning of religion. The judiciary through its careful interpretation has tried to accommodate all the religions co-existing in India. From calling it a matter of faith and recognizing system of beliefs and rituals to negating the idea of Intelligent First Cause, the courts have recognized all the religions and their way of life and in this way religious right are also ensured to everyone.

Further, propagation of religion, an explicit fundamental right in the Constitution of India has been an integral part of religious debates even before India was independent. Already considered as a threat to Hinduism by many Constituent Assembly members, after much deliberation, when this right was finally added to the Constitution it led to many court cases where right to propagate vis-à-vis right to convert was the moot point. The court not only decided the extent of right to propagation under the Constitutional scheme in India but also differentiated between proselytism and right to convert oneself. Freedom of conscience and its interplay with the right to propagate was also deliberated in the courts. International position and judgments have also been discussed to arrive to a definite position of right to propagation.

2.2 CONCEPT OF RELIGION

In the words of Britannica encyclopedia, the religion has been described as the one which the human beings consider as “holy, sacred, spiritual, absolute, divine or worthy of special reverence”.⁵ From the philosophical point of view it is understood as a relation between man and the divine and the believers of respective religions join together to perform devotional or contemplative practices known as rituals. Religion is made up of two primary components: one is its philosophy, which consists of its teachings on morality, ethics, universality and metaphysics, and the other is its rituals or practises, which determine how society is organised and how the philosophy is actually practised. Other ingredients of religion include:

1. The assumption of a superior order of existence or life superior to our earthly existence and mundane affairs.
2. The concept of a creator or Supreme Being: There is a conflicting opinion between the courts of America and India with regards to this particular belief. While early American decisions⁶ consider such belief to be essential to religion, the Supreme Court of India has recognized religions which do not believe in the existence of a creator.⁷ Subsequently, even the American courts in the recent times came to a conclusion that such belief cannot be taken as a necessary element of religion.⁸
3. Belief in certain ethical rules of conduct for the upliftment of a human being to a higher stratum.
4. Some methods of salvation: every religion have its own explanation regarding salvation. It is regarded as the ultimate goal of the devotee. The process of becoming one with the God and release from the chain of birth and death is the goal of a believer of a religion.⁹

⁵ ‘Religion’, *Britannica*, <<https://www.britannica.com/topic/religion>> accessed 25 April 2022.

⁶ *Davies v. Beason*, (1890) 133 US 333 (342); *United States. v. Macintosh*, (1931) 238 US 605.

⁷ *Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Tirtha Swamiar of Shirur Mutt*, AIR 1954 SC 282.

⁸ *United States. v. Seeger*, (1965) 380 US 163 (176, 186); *Torcaso v. Watkins*, (1961) 367 US 488; *Welsh v. United States*, (1970) 398 US 333 (340-1).

⁹ C.N. Shankara Rao, *Principles of Sociology with an Introduction to Social Thought* (7th edn, S. Chand, 2019), 413.

In the words of Swami Vivekananda, the great philosopher, religion means realization of God in the soul.¹⁰ He further explained that it is not the dogma which we believe is religion but religion is what we believe. Swami further elaborated that every religion has three parts; first part philosophy which sets the whole scope of the religion, its fundamentals, goals and the way to achieve that goal. Second part is mythology which is the concrete form of philosophy. It animates the philosophical part of the religion. The third part is ritual which is the actual manifestation of a religion and the most concrete of all parts of the religion.

From the legal point of view, the Indian judiciary, apart from various stances it has taken regarding explanation of the term religion, has always maintained that it is a matter of faith but is not necessarily theistic.¹¹ The apex court has acknowledged well-known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause and hence believers of these religions are atheist.¹² Religion is founded on ‘a system of beliefs or doctrines that persons who profess that religion perceive as helpful to their spiritual well-being,’ however it would be incorrect to suggest that religion is nothing more than a theory or belief. A religion may specify rituals and observances, ceremonies and modes of worship that are viewed as important parts of religion, and these forms and observances may extend to matters of food and attire.

In furtherance, Chinnappa Reddy, J., in his dissenting opinion in the case of *S.P. Mittal* opined that “religion is a matter of belief and doctrine concerning human spirit expressed overtly in the form of ritual and worship.”¹³ In *P.M.A. Metropolitan* case, the apex court observed that “religion is the belief which binds spiritual nature of man to supernatural being. It includes worship, belief, faith, devotion, etc. and extends to rituals.”¹⁴

The concern over the need to define the term ‘religion’ used in Article 25 was first raised by Dr. B.R. Ambedkar in the Constituent Assembly debate.¹⁵ He elucidated the

¹⁰ Iti Chattopadhyay, ‘Universal Religion of Vivekananda: A Way out of Religious Dissension’ (2010) *Journal of East West Thought* 73.

¹¹ *Narayana v. State of Andhra Pradesh*, AIR 1996 SC 1765.

¹² *Ibid* 14.

¹³ *S.P. Mittal v. Union of India*, AIR 1983 SC 1.

¹⁴ *P.M.A. Metropolitan v. Moran Mar Marthoma*, AIR 1995 SC 2001.

¹⁵ Dr. Amrit Parmar, *The freedom of religion under the Indian Constitution* (1st edn, Cyber Tech Publishers, 2016), 143.

vastness of religious conception in India which covers every aspect of life from birth to death. He further commented, “there is nothing which is not religion and if personal law is to be saved I am sure about it that in social matters we will come to a standstill; there is nothing extra ordinary in saying that we ought to strive to limit the definition of religion in such a manner that it should not be given vast expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field.”¹⁶

What constitutes a ‘religion’ or ‘matters of religion’ is to be ascertained by limiting to religious beliefs and ceremonials, which are held as essentially religious in a particular religion, which is under judicial review. Since the Constitution of India does not explicitly define this term, it becomes the prerogative of the Supreme Court, the final interpreter of the Indian Constitution, in a bid to impart constitutional remedy to decide upon such terms and meanings.

The very first case revolving around the meaning of ‘religion’ in independent India before the Supreme Court was the *Shirur Mutt* case in the year 1954.¹⁷ B.K. Mukhejea, J., to come up with the definition of religion drew examples from the American and Australian cases. He rejected the definition of religion established by the U.S. Supreme Court in the case of *Davis v. Beason*¹⁸ on the ground that the definition was inadequate in the Indian context since quite a few recognized religions in India do not believe in God or any Intelligent First Cause. Opined in the case of *Davis* was “the term religion has reference to one’s views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with *cultus* of form or worship of a particular sect, but is distinguishable from the latter”.¹⁹

Mukherjea, J., relied on the Australian case where the High Court opined the “constitution not only protected ‘liberty of opinion’ but also ‘acts done in pursuance of religious belief as part of religion.’”²⁰ Indian court taking notes from the instant Australian case held that a ‘religion’ clearly has its foundation in a set of beliefs or doctrines that adherents believe are beneficial to their spiritual well-being but it would

¹⁶ CA Deb 18 November 1948, vol 7, 781.

¹⁷ *Ibid* 14.

¹⁸ *Davis v. Beason*, 133 U.S. 333.

¹⁹ *Davis v. Beason*, 133 U.S. 333 [342].

²⁰ *Adelaide Company v. Commonwealth*, (1943) HCA 12.

be incorrect to state that religion is nothing more than a set of beliefs or doctrines. A religion may specify rituals and observances, ceremonies, and ways of worship that are considered important aspects of religion, in addition to a code of ethical rules for its followers to embrace.

In another case before the apex court the judicial applicability of the terms 'religion' and 'religious affairs' as implicit in the right to practise religion protected by Articles 25 and 26 of the Constitution was adjudicated.²¹ This definition restricted religion to its purely spiritual and moral dimensions and excluded secular activities from the protection afforded by the Constitution such as the acquisition of property and financial expenses related to religious practises. The judgment further stated that the term 'religion' as employed in Articles 25 and 26 must be interpreted strictly and etymologically. Even if a religion does not believe in a Creator, it must believe in a conscience and ethical and moral principles. Therefore, only what connects a man to his own conscience and what moral and ethical values govern men's lives may be considered religion as defined by the Constitution.

In conclusion, religion is a belief in and worship of a supernatural force that ordains, governs, and controls the fate of human species. Every person has an inherent right to religious belief, conscience freedom, and the freedom to follow or reject any religion of his or her choosing. In this sense freedom of conscience and freedom of religion in general both are essential rights constitutionally as well as conventionally.

2.3 MEANING OF PROPAGATION OF RELIGION

The term propagation in literal sense means telling your ideas or opinions to a lot of people in order to make them agree with whatever you are saying. According to the Oxford dictionary, it would mean "disseminate or spread a statement, belief, theory etc".²² The freedom to act in the exercise of one's religious belief includes the freedom to propagate that belief for the education of others.²³ Such propagation should not be hindered by any other individual or state except it must not transgress the limits imposed by the state for public order, morals or safety. The right to

²¹ *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 ILR Bombay 1187.

²² 'Propagation', *Oxford Learners Dictionary*, <<https://www.oxfordlearnersdictionaries.com/definition/english/propagation?q=propagation>> accessed 25 April 2022.

²³ *Ibid* 17.

propagate as enshrined in the Constitution is not given to any particular religion or community alone and can be exercised by all persons subject to public order, morality and health and to the other provisions of part III.²⁴

Unlike the Constitutions of many countries, Article 25 of the Indian Constitution specifically provides the right to propagate religion.²⁵ However, the original draft of this article did not mention it explicitly as it is now and is read as, “All citizens are equally entitled to freedom of conscience and to the right freely to profess and practice religion in a manner compatible with public order, morality or health: provided that the economic, financial or political activities associated with religious worship shall not be deemed to be included in the right to profess or practice religion”.²⁶ Further, Article 19 of the draft constitution explicitly mentioned the term “propagation” and it conferred on all person the right to profess, practise and propagate any religion they like but this right has been circumscribed by certain conditions which the state would be free to impose in the interests of public morality, public order and public health and also in so far as the right conferred here does not conflict in any way with the other provisions elaborated under part III of the Constitution.

Since the draft article provided for the propagation of religion, during the Constituent Assembly debate this article was described as a charter for Hindu enslavement by Loknath Misra, who provocatively argued that by making the right to propagate a fundamental right, he believed that the Assembly was paving the way for the annihilation of Hindu culture.²⁷ Misra received support from Tajamul Hussain, another member of the assembly who in a bid to let people attain salvation in their own way advocated against “right to propagation” and hoped people should attain salvation through their own religion. On the contrary, KM Munshi, explained the significance of “propagation” to the Christian community and why the inclusion of that word in the Constitution would not invite any bad consequences as suggested by the opponents of inclusion of the term. He debated, “I know it was on this word that the Indian Christian community laid the greatest emphasis, not because they wanted

²⁴ The Constitution of India (1950), art 25.

²⁵ Dr. Amrit Parmar, *The freedom of religion under the Indian Constitution* (1st edn, Cyber Tech Publishers, 2016), 166.

²⁶ B.Shiva“Rao, *The Framing of India’s Constitution* (2nd edn, Universal Law Publishing Company, 2012), 76.

²⁷ CA Deb 6 December 1948, vol 7.

to convert people aggressively, but because the word ‘propagate’ was a fundamental part of their tenet.”

TT Krishnamachari who was also in support of the *status quo* of the article supported KM Munshi and went on to speak about historical and sociological context in which Hindus had converted to Christianity. He argued that people embraced Christianity primarily due to the manner in which the Christian faith treated its brethren.²⁸

After much deliberation, the right to propagate religion became a fundamental right with conversion by free exercise of the conscience being constitutionally guaranteed under Article 25. Because propagation entails persuading others to one's point of view, it may include dismissing other people's religion. This may fuel religious tensions and lead to violence, jeopardizing public order and safety. As a result the state's job is to strike a balance between the right to propagation of religion and the public's right to order and safety. This has also been recognized by the apex Court in one of its rulings where it was held that if propagation of religion is practiced in a way with the deliberate intention which outrages the feelings of others, it will not be protected under Article 19 and can be penalized under clause (2) of it.²⁹

For the reference, the “first amendment to the Constitution of U.S.A.” says, “Congress shall make no law respecting an establishment of religion or...prohibiting the free exercise thereof”. This clause guarantees two things: *firstly*, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship, popularly known as the ‘Anti- Establishment’ clause and *secondly*, it safeguards the free exercise of the chosen form of religion which is also known as ‘Free Exercise’ clause.³⁰ The freedom to act in the exercise of one’s religious belief includes the freedom to propagate that belief. The state cannot deny the right to preach religious views unless such propagation transgresses the limits imposed by law for the preservation of public order³¹, safety³² and morals.

Hence in conclusion it can be inferred that the religious freedom protected under Article 25 of the Constitution of India includes the right to propagate one’s religion by

²⁸ *Ibid.*

²⁹ *Ramji Lal Modi v. State of Uttar Pradesh*, AIR 1957 SC 620.

³⁰ D.D. Basu, *The Commentary on The Constitution of India*, (8th edn, Lexis Nexis, 2011), 3420.

³¹ *Chaplinsky v. New Hampshire*, (1942) 315 US 568.

³² *Arver v. United States*, (1918) 245 US 366.

way of preaching, teaching and writing with the explicit objective of convincing people of other religion about the goodness of one's religion.

2.4 CONCEPT OF CONVERSION IN THE CONTEXT OF PROPAGATION OF RELIGION

Conversion means changing one's religion. Conversion constitutes a dynamic dimension of every religion. Through this process religions acquire new believers and lose existing ones.³³ Every religion strives to increase the number of its adherents and simultaneously checks conversion of its believers to other religions. As per Article 25 of the Constitution, right to propagation of religion has been recognized as a fundamental right and in a case it was held that if any law prevents a person from propagating his/ her doctrine, it would affect the religious freedom under Article 25.³⁴ It is also the case that the right to hold religious discourses, associations and propaganda, would also follow from the freedoms guaranteed in Article 19 (1) (a) and (c).

Competing arguments also exist regarding conversion from one religion to another. Going by the Supreme Court judgment, propagation does not mean "conversion" but conveyance of one's own belief to another by exposition or persuasion without any element of coercion.³⁵ Hence comparing both the contrasting arguments it can be said that the right of a person to transmit or spread his religion by an exposition of his tenets cannot include the right to convert another person also because that other person also enjoys and is guaranteed "freedom of conscience", i.e., the right not to be converted against his conscience or will.

Freedom of conscience, as guaranteed under Article 25 of the Constitution, means right to hold and entertain freely any faith or belief in accordance to one's own prudence and conscientiousness. The right to conscience has been conceived in India with a view of the plural nature of the Indian society with regards to the religion and to accommodate people following various religions under one State umbrella with the State dissociating itself with any religion. It is also true that India is home to many religions of the world and hence guarantee of freedom of conscience not only

³³ Moshe Hirsch, 'The freedom of proselytism under the Fundamental Agreement and International Law' (1998) 47, Catholic university Law Review.

³⁴ *Shri Lakshmana Yatendru v. State of Andhra Pradesh*, AIR 1996 SC 1414.

³⁵ *Ibid* 2.

establishes peace and harmony amongst her people but also creates harmony among varied religions. Freedom of conscience has also been given due regards by the Supreme Court where it held that “no person can be compelled to sing the National Anthem if they have genuine, conscientious religious objections”.³⁶

The problem arises when the ambit of freedom of conscience, extent of freedom of propagation of religion and the right to conversion is discussed. Propagation would mean spreading and publicizing one’s views for the edification of others. Further, it has to be understood that right to convert other person to one’s own religion is different from one’s right to convert his/ her own religion. The latter is enshrined under Article 25, the former lies in the grey area of propagation of religion. As per the Supreme Court judgment, there is no fundamental right to convert another person to one’s own religion because that would impinge upon freedom of conscience guaranteed to all citizens.³⁷

The origin of the term propagation is in the recommendation made by the sub-committee on minorities for adoption by the Constituent Assembly. Even the recommendations of the sub- committee on fundamental rights did not contain this term. The sub- committee on minorities proposed that religions like Islam and Christianity were proselytizing faiths and hence they should be allowed to propagate their faith.³⁸ The advisory committee later accepted this proposal and incorporated this right in their draft. With regards to conversion within the ambit of propagation, in the Constituent Assembly debate, one of the members, K Santhanam clearly advocated for the difference between propagation and conversion. In his speech he was against the interpretation of the term propagation as a right to convert others. He further said, *“those who drafted this Constitution have taken care to see that no unlimited right of conversion has been given. People have freedom of conscience and, if any man is converted voluntarily owing to freedom of conscience, then well and good. But if any attempt is made by one religious community on another to have mass*

³⁶ *Bijjo Emmanuel v. State of Kerala*, AIR 1987 SC 748.

³⁷ *Ibid* 2.

³⁸ Shiva Rao, *The Framing of India’s Constitution: Select Documents* (1st edn, Lexis Nexis, 1967), 208-209.

*conversion through any undue influence, the state has every right to regulate such activity”.*³⁹

It has to be noted that whenever the issue of propagation was debated in the Constituent Assembly it was only that the proselytizing religion i.e., Christianity and Islamism would be discussed in the backdrop of it. This created a false impression that this particular right was for them only and also propagation and conversion means the same and could be used/ practiced interchangeably. In other words, the right to propagate acquired the color of a right to convert exclusively.⁴⁰ In the post independence India, two bills were introduced in the house to regulate conversion activities. The “Indian Converts (Regulation and Registration) Bill” and the “Backward Communities (Religious Protection) Bill” were introduced to tackle the problem of mass conversions by the foreign missionaries. Both the bills were not passed by the house due to lack of support.⁴¹

Though these specific bills could not see the light of the day, yet the judiciary was vigilant enough to dissociate the concept of propagation and conversion with each other. In the case of *G.X. Francis v. State of M.P. & Ors*, it was held that the oppressive methods in the propagation of religion cannot be tolerated.⁴² Further in the case of *Rev. Stanislaus* the appellant claimed that the right to ‘propagate’ one’s religion meant the right to convert a person to one’s own religion and is covered under Article 25. The basis of this argument lies in another case⁴³ where it was argued that the Christ commanded every Christian “to carry His *message* throughout the world and the Christians took it as a mandate to convert non- Christians. In the instant case⁴⁴, the court noted that biological sense of the word ‘to multiply specimens’ (Christians) could not be relevant to the theme of Article 25 and therefore the court upheld the dictionary meaning and held that to spread, to disseminate, to diffuse, to extend, to propagate the Christian religion was germane to the constitutional right.

³⁹ CA Deb 18 November 1948, vol 7, 834-835.

⁴⁰ V.P. Bharatiya, ‘Propagation of religion: *Stainislaus v. State of M.P*’ (1977) 19 Journal of Indian Law Institute < <https://www.jstor.org/stable/43950519?seq=1> > accessed 25 April 2022.

⁴¹ Tariq Ahmad, ‘State anti- conversion laws In India’ (2018) Law Library, Library of Congress < <https://tile.loc.gov/storage-services/service/l1/lglrd/2018298841/2018298841.pdf> > accessed 26 April 2022.

⁴² *G.X. Francis v. State of Madhya Pradesh & Ors.*, M.P.L.J. 1957 Nagpur 1 at 33.

⁴³ *Yulitha Hyde & Ors. v. State of Orissa*, AIR 1973 Ori 116.

⁴⁴ *Ibid.*

Taking note from the previous case, the court in *Rev. Stainislaus* concluded that “the world ‘propagate’ has been used in Article 25 (1) does not grant right to convert another person to one’s own religion but to transmit or spread one’s religion by an exposition of its tenets.” The court further explained about the ‘freedom of conscience’ guaranteed under the same article which is available to all the citizens and not merely to followers of a particular religion and ultimately it means that there stands no fundamental right to convert another person to one’s own religion as such activity would impinge upon the “freedom of conscience” guaranteed to the other person.

In this context it becomes imperative to refer to foreign judgments that would support the concept of conscience alienated from the concept of conversion. In the case of *Kokkinakis*, it was observed that it is the right of the agnostic philosopher to express his belief to try to share them and even to try to convert them. But even here there were limits to persuasion in that force or manipulative behavior, brainwashing and other like techniques should not be permitted.⁴⁵ In another case⁴⁶, it was observed that the meaning of Article 44.2.1⁴⁷ is that “*no person shall directly or indirectly be coerced or compelled to act contrary to his conscience in so far as the practice of religion is concerned, and, subject to public order and morality, is free to profess and practice the religion of his choice in accordance with his conscience. Correlatively, he is free to have no religious beliefs or to abstain from the practice or profession of any religion*”.⁴⁸

Proselytism is viewed as inter-personal in nature under the international law and is covered by human rights law. The freedom to proselytize entails two distinct but linked ideas of liberty: the freedom of proselytizers to engage in proselytizing activities, and the freedom of potential proselytes not to be interfered by such activities. This distinction corresponds to the ‘positive’ and ‘negative’ senses of freedom.⁴⁹ The negative sense refers to freedom from unwarranted interference. On the contrary positive sense refers to individual autonomy to exercise religious freedom without external constraints or coercion. Analyzing the international human

⁴⁵ *Kokkinakis v. Greece*, (1993) A 260A.

⁴⁶ *Mc. Gee v. Attorney General*, (1974) IR 284.

⁴⁷ Art 44.2.1, Constitution of Ireland (1937), *Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.*

⁴⁸ *Ibid* 23.

⁴⁹ Isaiah Berlin, *Four Essays on Liberty* (1st edn, Oxford Paperbacks, 1969).

rights law, especially referring the freedom of religion, the distinction between the notions of positive and negative freedom corresponds to freedom to maintain a religion without interference and the freedom to persuade another person to convert his religion. As there exist conflict between right to propagation and right to conversion in the context of Indian Constitution, the same happened many years ago between these two notions of freedom during the drafting of international charters.

Two major international instruments which define freedom of religion are “Universal Declaration of Human Rights” (hereinafter UDHR)⁵⁰ and “International Covenant on Civil and Political Rights” (hereinafter ICCPR)⁵¹. During the drafting of draft article 18 of the UDHR, the term “freedom to change his religion or belief” attracted objection especially from Muslim major nations for they feared unnecessary influence of foreign missions involved in proselytism activities. The objections were anyway ignored and the original draft article was adopted as it is.⁵² Again during the drafting of ICCPR, the issue of conversion arose for the text “this right includes freedom to maintain or to change his religion or belief”. This particular provision was again objected for the fear of favouring missionary activities. Following amendment requests by many nations, the amended version was finally adopted which contained the text “this right includes freedom to have or to adopt a religion or belief of his choice”.⁵³ It can clearly be identified the difference in the wordings of both the international instruments where UDHR gives explicit right to change religion but the ICCPR contains vague terms.

Having discussed two major international instruments regarding freedom of religion, the question arose whether it includes freedom to proselytize. This can be answered only when the conflict between freedom to proselytize and freedom to maintain a religion without interference will be addressed. The freedom to proselytize, as a component of the freedom to manifest a religion, is protected under international law

⁵⁰ Universal Declaration of Human Rights (1948).

⁵¹ International Covenant on Civil and Political Rights (1966).

⁵² Universal Declaration of Human Rights, UNGA, (1948) art 18 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.

⁵³ International Covenant on Civil and Political Rights, UNGA Resolution 2200A (XXI), Article 18 (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

and consequently a sweeping prohibition on proselytism is unlawful. On the other hand, the freedom to maintain a religion is also protected under international law and an absolute freedom of proselytism without limitation will unquestionably be also illegal.⁵⁴ So the intermediate position under international law which we can conclude is that it would be allowed to continue with the proselytization activities but with prohibition on coercion etc which hampers free choice.⁵⁵

Conclusively, it is inferred that conversion is the end result of right to propagate and not the right itself. Hence, after evaluating various judgments and interpretation of Article 25 it is inferred that right to convert another person to one's own religion is not enshrined in the Indian Constitution.

2.5 CONCLUSION

After explaining the meaning of religion, the chapter discussed how the Indian judiciary arrived at a certain position as to the extent of propagation of religion, right to convert and its interplay with freedom of conscience of people. The Constituent Assembly debates gave an insight as to why the house was divided on the question of addition of the term 'propagation'. Propagation was always seen as a monopoly of Christian community and hence whenever this term was debated, a fear of biasness towards them arose in the people of other religion. This fear was not only seen in the Indian Constituent Assembly debates but also during the drafting of ICCPR and UDHR in the international forum as discussed. Though this position was established, in the current times, after enactment of various anti conversation laws, again these debates have been started which will be discussed in the subsequent chapters.

⁵⁴ Moshe Hirsch, 'The freedom of proselytism under the fundamental agreement and International law' (1998) 47 Catholic university Law Review
<<https://scholarship.law.edu/cgi/viewcontent.cgi?article=1494&context=lawreview> > accessed 28 April 2022.

⁵⁵International Covenant on Civil and Political Rights (1966) art 18 (2).

CHAPTER III

EXISTENCE OF ANTI CONVERSION LAWS IN INDIA

3.1 INTRODUCTION

As already stated, religion plays a central part in a human's life but there can be several instances where a person due to several reasons do not like his religion or would like to embrace another religion. Whenever people think that the religion which they follow is unable to satisfy their spiritual senses or they need a new purpose in life or that they are unhappy with the social order their current religion prescribes, religious conversion is the answer to them. They change their religion and adopt a new one. The constitution of India allows every person to practice any religion though these rights are not absolute and are subject to few restrictions. These restrictions give rise to certain kind of laws known as "freedom of religion" laws or in general- anti conversion laws. Though the history of law of such kind is very old, it has gained much public attention in the recent times since several states are enacting it. This chapter discusses the history of anti conversion laws as early as of 1936 to the very recent laws of Uttar Pradesh among other states. Since many states are enacting these laws in a similar fashion, there must be some reasons for doing so which has also been discussed in the following sections of the chapter.

3.2 MEANING OF CONVERSION

Religious conversion in the very literal sense means renouncing one's own religion and accepting a new religion. There are many authors and researchers who have tried to define conversion in various ways especially in terms of psychology and theology so as to cover maximum aspect of conversion. According to W. James in his published paper, he defined conversion as "*....the process, gradual or sudden, by which a self hitherto divided, and consciously wrong inferior and unhappy, becomes unified and consciously right superior and happy, in consequence of its firmer hold upon religious realities*".⁵⁶ Some researchers have also highlighted the identity formation aspect of the religious conversion.⁵⁷ According to them, Conversion is the process through which a new perspective gets emotionally entrenched in the

⁵⁶ William James, *The Varieties of Religious Experience* (2nd edn, Random House Books, 1999), 186.

⁵⁷ Hans Mol, *Identity and the Sacred* (1st edn, New York: Macmillan, 1976) 50-51.

personality, resulting in its unification. The convert considers himself to have taken on a new persona. The acceptance of a new orientation, a re-ordering of priorities and values, is then referred to as conversion.

Another research also highlighted the fact that conversion not only changes one's belief but it also affects the way that a person subsequently interacts with the surroundings.⁵⁸ As per this study, any change or growth in faith will necessitate a realignment of those actions and operations that are most fundamental to human beings' ability to cope adequately with environmental demands: namely, ways of relating to others, groups, traditions, and authority; general patterns of decision-making; and ways of representing meanings in the totality of an experience world.⁵⁹ Theologians on the other hand have always acknowledged the role of God or spiritual needs in the process of conversion. Conversion for them is change in religious affiliation from previously practiced religion.⁶⁰

3.2.1 Historical Aspect

A careful examination of the history of religious conversion in India shows that it has occurred under a variety of situations spanning time and location. It's also clear that people who feel incomplete in their former worldview or existence are attracted to the process of conversion to another religious faith. As a result, it can be seen that those who are socially unhappy, politically uneducated, and economically disadvantaged in society have resorted to such urge for self-gratification and amelioration.⁶¹

Conversion to Islam

The contact of India with Islam started in the early 8th century (712AD) due to the Arab conquest of the Sindh. But it was only in the 13th century that the Islamic rulers started to make an impact on the social, political and economic lives of Indian people. The regime in a quest to expand its loyal base to the state aggressively got involved in

⁵⁸ Howe, L.T., 'A developmental Perspective on Conversion' Perkins Journal, 34, 35.

⁵⁹ *Ibid.*

⁶⁰ 'Conversion (Theology of)', *Encyclopedia*, <<https://www.encyclopedia.com/religion/encyclopedias-almanacs-transcripts-and-maps/conversion-ii-theology#:~:text=For%20most%20Catholics%2C%20the%20word,from%20no%20religion%20at%20all>> accessed 30 April 2022.

⁶¹ Gogoi Kukil, 'Religious Conversion in India and its Different Modes (2018) 3 MSSV Journal of Humanities and Social Sciences, <<https://www.mssv.ac.in/frontendpages/index/journal-of-humanities-vol-3-issue-1>> accessed 30 April 2022.

their expansion policy which eventually led to the spread of Islam in the eastern delta region.⁶² Muslims in a bid to increase their population launched *Tabligh* movement. This movement particularly targeted Hindus of lower castes who were outside of Hindu order and were protecting neo- Muslims from the extermination of *Shuddhi* movement of Arya Samajis.⁶³

Conversion to Christianity

Under the command of Vasco-de-Gama, the Portuguese first set foot in India in 1498.⁶⁴ This was the start of the Christians' imperialistic political path in India. Vasco-de-Gama was quickly followed by Christian missionaries. Following that, the Portuguese's primary goal was to preach Christianity. It was at this point that conversions started. Goa was taken from Muslim control by the Portuguese in 1510. They use conversion to Catholicism to create a body of loyal followers in order to dominate the foreign area with the help and support of the local communities and to incorporate them into the political body. Furthermore, the Portuguese utilised two conversion systems- one was by caring for orphan children by giving them to Christian families and the other by providing financial assistance or job opportunities.

However, prohibiting non-Christian practises among converts as well as among Hindus was another tactic that helped the progress of conversion to Catholicism in Goa. Instead, Christian missionaries urged the upper and low caste Hindu populations to celebrate various saints by eating pork and beef. Priests pushed the village's elders and leaders to become Christians, and other caste groups soon followed. The lower castes converted to Catholicism to gain access to new jobs that emerged with the entrance of the Portuguese, such selling wine and baking etc.⁶⁵

Fast forward to twentieth century, for the Dalits in the state of Tamil Nadu, religious conversion was a conscious movement by removing themselves from the

⁶² Gogoi Kukil, 'Religious Conversion in India and its Different Modes (2018) 3 MSSV Journal of Humanities and Social Sciences, < <https://www.mssv.ac.in/frontendpages/index/journal-of-humanities-vol-3-issue-1> > accessed 30 April 2022.

⁶³ Robinson Rowena and Clark Sathianathan, *Religious Conversion in India- Modes, Motivations and Meaning* (1st edn, Oxford University Press India, 2003).

⁶⁴ What was the main cause of religious conversions in Bharat during past centuries, *Hindu Janajagruti Samiti*, <<https://www.hindujagruti.org/hindu-issues/religious-conversion/15793-html>> accessed 05 May 2022.

⁶⁵ Robinson Rowena and Clark Sathianathan, *Religious Conversion in India- Modes, Motivations and Meaning* (1st edn, Oxford University Press India, 2003).

conventional Hindu world order. Since the Dalit community faced various injustices at the hands of orthodox Brahminical ideals of Hinduism, they found it easier to convert to other religion and enjoy equal status among other people. “Protestant missionaries provided a counter-worldview to Hinduism for the Dalits along with social and economic capital which were denied in their earlier social order.”⁶⁶

3.2.2 Motives behind conversion

There are various reasons and motives behind conversion. Some of them are explained below:

1. **Response to crisis:** research has suggested that conversion is a response to some crisis which motivates people to change their religion. Alternatively, it is also referred to as “significant emotional events” which is a combination of crisis which affects the person and the resolution they take. Significant emotional events are a result of insights, relationship or trauma. One of the researches said that “when a person has a major life-changing discovery, a big new relationship, or a traumatic encounter, those things or experiences cut through all of the protection mechanisms and structures of the personality structure to get right down to the characterological level. A paradigm shift in the value and belief system is brought about at that level by the cognitive, psychological, and moral-spiritual content of the "major emotional event." With the new light of the new "important event of the psyche," all of the presumptions, commitments, "loves," values, or beliefs that had previously comprised the basis of being and integrated viewpoint are now illuminated in a new way”.⁶⁷

When a person is unable to understand the current circumstances with the knowledge and beliefs he possesses, he feels the need to adopt a new belief to satisfy his intellectual needs. When the world no longer makes sense, another frame of reference or paradigm is needed. Conversion is one way to help organize a new world view and deal with the external circumstances which may have caused the significant emotional event.

⁶⁶ *Ibid.*

⁶⁷ J. H. Ellens, ‘The Psychodynamics of Christian Conversion’ *Journal of psychology and Christianity* < <https://psycnet.apa.org/record/1986-00981-001> > accessed 07 May 2022.

Conversion as a response to crisis was also addressed by *Bakken* who said that in times of distress it is very obvious that a person will resort to satisfaction provided by a religious ideology.⁶⁸ For individuals in crisis, religion may become a salient element in the environment which could help alleviate the current state of dysphoria or crisis. Another researcher also maintained that conversion is always motivated by the dissatisfaction and ordinariness of the pre- conversion life and the person is in the search of life solutions.⁶⁹

2. Therapeutic: Many researchers have suggested that religious conversions bring about a positive change in the personality of an individual and have compared such change to a therapeutic experience. Conversion satisfies spiritual and psychological discomfort is quite an old and widely accepted notion and has been equated with spiritual and psychological rebirths; from despondent to hopeful.⁷⁰ In relation to psychotherapy conversion has been described as “*the gradual converts to more conventional religiosity are sometimes superior in their life adjustment and the effects of psychotherapy are not any better by comparison*”.⁷¹

3. Religious deficiency in early life: Some researchers went on to the extent of investigating the factors and experiences happened in the childhood of a potential convert to understand their current motivation to convert. Through empirical study it was found that changing one's religious affiliation might be seen as a way of filling a need for someone looking for a unifying factor in modern society. When the terms "deficit" or "deficiency" are used in this context, it means that something is missing or has to be supplied. Joining a church is offered as a "solution" for persons suffering from particular deficits because the prescription is considered the remedy. As a result, religious membership might be viewed as a means of providing a more fulfilling sense

⁶⁸ Timothy Bakken, 'Religious conversion and social evolution clarified' (1985) 16 *Small Group Behaviour* < <https://journals.sagepub.com/doi/10.1177/104649648501600203> > accessed 10 May 2022.

⁶⁹ S.M. Silverstein, 'A study of religious conversion in North America, Genetic, Social and General psychology Monographs' 272.

⁷⁰ William James, *The varieties of religious experience* (2nd edn, New York: Random House Books, 1999).

⁷¹ Allen E. Bergin, 'Religiosity and mental health: A critical reevaluation and meta-analysis, Professional Psychology Research and Practice' (1983) 9 *Amcap*<<https://scholarsarchive.byu.edu/irp/vol9/iss3/2/>> accessed 10 May 2022.

of integration for people whose non-religious jobs and statuses are less rewarding.⁷²

Wallace looked into converts' 'lack of consistent life experiences'. "*Individuals who have not had a sharing of religious beliefs in the family will be either confused about or lacking in knowledge of religious principles and will be more likely to look for the kind of purpose in life that religion may provide them,*" she predicted.⁷³

3.3 ANTI CONVERSION LAWS IN INDIA

Laws which regulate or altogether bar the forced religious conversion of an individual on various grounds are called anti conversion laws. In the recent times, many states in India have enacted laws against religious conversion done via force or allurement. Post independence till now, at least ten states has enacted these state level statutes to keep a check on forced religious conversions. With small and minor differences in these laws majorly they fall in the same line with almost similar content and penalties.

3.3.1 Historical Aspect

Anti-conversion laws are not a new concept that emerged in the recent past. In actuality, the struggle against proselytism dates all the way back to the British colonial era before independence.⁷⁴ Especially the Hindu princely states promulgated these laws with the intention to protect the conversion of people from Indic religion to non- Indic religion. Princely states such as Kota, Bikaner, Jodhpur, Patna⁷⁵, Raigarh⁷⁶, Surguja⁷⁷, Kalahandi, Udaipur⁷⁸ had these laws.⁷⁹ Implementing such rules would seem to require examining the converts' motivations and intentions in order to ascertain whether they were legitimate converts or were lured.

The right to spread one's religion and convert others was never restricted by the British rulers in India. They themselves practised proselytizing religion and avoided

⁷² Ruth A Wallace, 'A Model of Change of Religious Affiliation' (1975) 14 *Journal for the Scientific Study of Religion* < <https://www.jstor.org/stable/1384406?seq=1> > accessed 15 May 2022.

⁷³ *Ibid.*

⁷⁴ Akshay Ravi, 'A legal history of anti conversion laws in India' *Lawbeat* (06 February 2022) <<https://lawbeat.in/columns/legal-history-anti-conversion-laws-india>> accessed 10 April 2022.

⁷⁵ The Patna Freedom of Religion Act (1942).

⁷⁶ Raigarh State Conversion Act (1936).

⁷⁷ Surguja State Apostasy Act (1945).

⁷⁸ Udaipur State Anti- Conversion Act (1946).

⁷⁹ Laura Dudley Jenkins, 'Legal Limits on Religious Conversion in India' (2008) 71 *Law and Contemporary Problems* < <http://www.law.duke.edu/journals/lcp.>> accessed 15 May, 2022.

taking any actions that may jeopardise their missionary work during their reign. On the contrary, they greatly aided evangelists and assisted conversion to Christianity by enacting new measures in the area of private law to eliminate barriers to others' conversion to Christianity and to provide attractive legal reliefs to converts to Christianity.⁸⁰ In response to these proselytizing activities the Hindu princely states started to enact anti conversion laws to keep a check. The first such law was the Raigarh State Conversion Act enacted in the year 1936. This enactment banned the preaching of Christianity and prohibited the entry of Christian missionaries in the former kingdom of Chhotanagpur areas such as Jodhpur, Surguja, Raigarh etc.

The Raigarh State Conversion Act, 1936 required a person wanting to convert to submit an application to a designated officer. Raigarh law was actually a threat from the government officials to the missionaries and the oppressed classes of Hindus, such as Adivasis not to adopt other religions.⁸¹ Another similar law⁸² enacted few years after the Raigarh law required a person seeking to convert to file an affidavit before the registrar of conversions who could order an inquiry. If both parents converted, the law required the child to be placed with a non- converted relation or a state orphanage.⁸³ A little later, the Sarguja State Apostasy Act, 1945 was the another enactment to prohibit conversion from Hinduism to another non-Indian religion by vesting the power to allow or disallow conversion in the *Darbar* of the *Rajas* under the guise of maintaining law and order and establishing public peace.

This law also mandated the potential convert to notify the authorities of his intention to convert three months before the actual ceremony and without the permission such conversion would be deemed to be void.⁸⁴ Similarly the Udaipur law of 1946 required all conversions from *Hindu* religion to other faith to be registered in the government records. The purpose of all these laws was to insulate *Hindu* from the onslaught of

⁸⁰ Faizan Mustafa and Anurag Sharma, 'Conversion Constitutional and Legal Implications' (2003) Kanishka Publishers and Distributors, New Delhi <<https://catalogue.nla.gov.au/Record/2231843>> accessed 10 May 2022.

⁸¹ Faizan Mustafa, 'Constitutionality of Anti Conversion Laws' *The Statesman* (Calcutta, 20 March 2005) <<https://www.thestatesman.com/not-found/constitutionality-of-anti-conversion-laws-44674.html>> accessed 15 May 2022.

⁸² *Ibid* 33.

⁸³ Sanjoy Ghose, 'Unsustainable laws' (2001) Lawyers collective <http://lawyerscollective.org/lc_mag/freedownloads/magazine2001/January%202001/usus_stein_able_law_s.htm> accessed 16 May 2022.

⁸⁴ Furquan Ahmad, 'A study of compatibility of Anti-conversion laws with Right to Freedom of Religion in India' (2008) Indian law Institute, New Delhi <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2359250> accessed 20 May 2022.

Christian missionary activities. Most of these laws required individual converts to register their conversion with specified government agencies. Those who secured conversion of a person by fraud, misrepresentation, coercion, intimidation, undue influence or the like were made liable to punishment. Minors could not have been converted and children of convert would not automatically get their parents new faith. Conversion to another religion was thus legally sought to be regulated by the Hindu rulers of princely States.⁸⁵

3.3.2 Reasons for Promulgation

In the pre- independence era, it was mainly the Hindu princely states who were enacting the anti conversion laws to keep a check on the proselytizing activities of Muslims and especially the Christians. Post- independence several states started to enact such laws based on either previous experience or reports of committees.⁸⁶ One such report chaired by M. Bhawani Shankar Niyogi which was constituted by the then Madhya Pradesh government observed scathing remarks against the Christian community. The committee which also included five other members suggested that the Christian missionaries were creating “a state within a state” and accused them of indulging in proselytizing activities under the disguise of philanthropic activities.⁸⁷ The chairman also wrote a letter in the report which is read as “*Committee were guided solely by the necessity to maintain intact the solidarity and security of the country, to prevent disruption of society and culture, and to emphasize the essential secular character of the Constitution. If they have drawn attention to certain disruptive tendencies inherent in, or incidental to, the exercise of certain liberties in matters of religion, they have done so not with a view to curtailing individual rights and freedom, but to the exercise thereof in a manner consistent with public order, morality and health*”.⁸⁸

⁸⁵ ‘A study of compatibility of Anti-conversion laws with Right to Freedom of Religion in India’ (Indian Law Institute, New Delhi).

⁸⁶ Uttar Pradesh Law Commission, *Freedom of Religion* (Law Com No 8, 2019); Niyogi Committee Report on Christian Missionary Activity, 1956.

⁸⁷ Subhash Agrawal, ‘Law, Order and Religious Conversions’ *Financial Express* (25 September 2003) < <https://www.financialexpress.com/archive/law-order-religious-conversions/91728/>> accessed 20 May 2022.

⁸⁸ Letter from Dr. M.B. Niyogi, Chairman, Christian Missionary Activities Enquiry Committee to Shri K.B.L. Seth, Chief Secretary to the Government of Madhya Pradesh <<http://voiceofdharma.org/books/ncr/>> accessed 15 April 2022.

The report included recommendations to limit conversions; in particular, the committee proposed forbidding “any endeavor or effort (whether successful or not) to delve into the religious conscience of persons (of age or underage) of another faith, directly or indirectly.” Suspicion of conversion and beliefs about the gullibility of poor converts, articulated in this study laid the way for legal restrictions in this report. Based on the report, the state government promulgated the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968, an act which prohibits conversion from one religion to another by use of force or allurement, fraudulent means or matters incidental thereto.⁸⁹

Further, there are other reasons as well which led to enactment of such laws. They are below:

1. Existing Laws are not Sufficient

India is a secular country and its Constitution provides freedom of religion, one of the statutory laws, the Indian Penal Code discusses the offences related to religion. Chapter XV (of offences related to religion) contains a total of five sections viz. sections 295, 295A, 296, 297, 298.⁹⁰ These sections broadly covers almost all aspect of religion, from defilement of places of worship or object of great respect to outraging the religious feeling of persons and disturbing religious assemblies. No matter how effective these provisions are yet they are not religious conversion specific.⁹¹ These sections do not deal with acts of conversion by force, misrepresentation, undue influence, allurement or by marriage. Since the problem of conversion by illegal means persists in the society, a specific piece of legislation becomes necessary.

2. To Prevent Forced Conversion

Forced conversion means conversion of a person through various illegal means such as fraud, undue influence, coercion, allurement, marriage etc. Although conversion by own will is legal and in pursuance of religious freedom provided under the constitution of India, forced conversions impinges upon the freedom to conscience of

⁸⁹ The M.P. Dharma Swatantrya Adhiniyam (1968).

⁹⁰ The Indian Penal Code (1860).

⁹¹ Uttar Pradesh Law Commission, *Freedom of Religion* (Law Com No 8, 2019) 249.

the converts.⁹² Preamble of various anti- conversion laws states that the laws have been enacted to prevent forced conversions.⁹³

Recently the state of Haryana also passed the anti- conversion Bill which aims at curbing forced conversions effected through misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage by making it an offence.⁹⁴ Reasons given by the state government for the promulgation of this law is that right to freedom of conscience and propagation cannot be construed to be right to proselytize; since freedom of conscience has been given to all persons irrespective of any particular religion. Further, threats of forceful conversion remain an important reason to enact the law.

With regards to conversion employed as a means to avoid or to enter in a new marriage without actually embracing the religion, such conversion will not be called as a bona fide conversion. Conversion has to be inspired by religious feeling and should be undergone for its own sake and should not be used as a tool to achieve an object such as to marry or for the property rights or to avoid any pending legal responsibility. In case of a religious conversion there should be a change of heart, emotion and honest conviction for the tenets of new religion in lieu of tenets of the original religion. Religious conversion without a bona fide belief or intention and for the sole purpose of deriving legal benefits is illegal.⁹⁵ Further, entering into interfaith marriage upon conversion puts the conversion under the shadow of undue influence or coercion.

The flip side to it is also dangerous where forced conversion is happening after the marriage hiding the real religious identity of one of the partners.⁹⁶ Marriage is also made a tool to convert spouse by hiding one's religious identity before the marriage.

⁹² *Ibid* 2.

⁹³ Madhya Pradesh Freedom of Religion Act (2021), Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021), Orissa Freedom of Religion Act (1967).

⁹⁴ Hitender Rao, 'Haryana Assembly passes anti- conversion law' *Hindustan Times* (Chandigarh, 22 March 2022) <<https://www.hindustantimes.com/cities/chandigarh-news/haryana-assembly-passes-anti-conversion-law-101647967365975.html>> accessed 20 May 2022.

⁹⁵ *Lily Thomas v Union of India*, 2000 (6) SCC 24; *Sarla Mudgal v. Union of India*, 1995 (3) SCC 635; *Smt. Noor Jahan Begum @ Anjali Mishra & anr. v. State of Uttar Pradesh & anr.* W.P. (C) No. 57068/2014.

⁹⁶ Utkarsh Anand, 'Marriage being used for unlawful conversion' *Hindustan Times* (New Delhi, 24 October 2021) <<https://www.hindustantimes.com/india-news/marriage-being-used-for-unlawful-conversion-terror-activities-uttar-pradesh-defends-love-jihad-law-in-allahabad-high-court-101635014812324.html>> accessed 22 May 2022.

In an affidavit filed, the argument has been advanced that in a bid to remedy the malaise of changing one's religion against his/ her will by way of marriage, anti conversion laws should be enacted.⁹⁷ Assuming responsibility even in private affairs of the people, the state argued that when "marriage is one of the instruments being abused for unlawfully converting individuals, the state cannot abdicate its responsibility to regulate the alliance of two adults".⁹⁸

3. Documents act as a Proof of Bona Fide Conversion

Similar to marriage conversion is a solemn act. The social and legal consequences of religious conversion are extensive. It has an impact on rights to succession, marriage, and running for office. A person may be subject to a different personal law after conversion. If the individual who changed their faith also happens to be a member of a scheduled caste or tribe, they may no longer be eligible to run for office from a seat designated for SCs or STs. Thus, from the perspective of a convert's rights and limitations the act of conversion is crucial.

Conversion cannot be viewed as an action that can be initiated by a simple declaration, whether written or spoken. At the same time, no particular formalities or ceremonies are required according to the law declared by Supreme Court. In practicality, no religious writings or laws officially require ceremonies, however some people do perform rituals like baptism (Christianity) or *Shuddhi* (Hinduism). Credible evidence of the intention to convert followed by definite overt acts to give effect to that intention is necessary. The subsequent conduct of the convert is also important to establish the veracity of conversion yet in the time where plethora of cases of manipulated conversions are faced by the courts, the courts have now recognized the value of evidentiary facts which establishes conversion.⁹⁹

⁹⁷ Rajesh Kumar Pandey, 'Marriage is being used for forced religious conversions' *The Times of India* (Prayagraj, 26 October 2021) <<https://timesofindia.indiatimes.com/city/allahabad/marriage-is-being-used-as-tool-for-forced-religious-conversion-uttar-pradesh-govt-to-allahabad-hc/articleshow/87278432.cms>> accessed 26 May 2022.

⁹⁸ Utkarsh Anand, 'Marriage being used for unlawful conversion' *Hindustan Times* (New Delhi, 24 October 2021) <<https://www.hindustantimes.com/india-news/marriage-being-used-for-unlawful-conversion-terror-activities-uttar-pradesh-defends-love-jihad-law-in-allahabad-high-court-101635014812324.html>> accessed 22 May 2022.

⁹⁹ India Law Commission, *Conversion/ reversion to another religion- mode of proof* (Law Com No. 235, 2010).

This has led the courts to observe that filing of declaration of conversion before an appropriate authority is one of the important aspects for the court to be satisfied with regards to bona fide conversion but the court has also observed that it should not be made the sole criteria.¹⁰⁰ In a case, the court emphasized that “there should be declaration in such a way that it would be known to those who it may interest. If a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion”.¹⁰¹ This judgment legitimizes a certain procedure (here declaration) for everybody who wishes to convert.

In its 235th report, the Law Commission of India also accepts the position that for the converts to have a documentary evidence of their conversion, a declaration before appropriate forum can be suggested. Though, the commission was also cautious thereby making this requirement optional and not mandatory.¹⁰² So for the implementation of the recommendation the provision of declaration is justified but it also goes against the recommendation where the commission has asked it not to made mandatory whereas the impugned Acts are prescribing exactly the opposite of it.

4. To Protect the Rights of the People

India being a melting pot of many religions and cultures allows every person to practice their religion through constitutional mandate. Preamble is framed with great care and reflects high purpose and noble objectives. However, there are various reports which suggest that conversions are being done by intimidation, force, allurements etc.¹⁰³ These reports also suggest that few NGOs and other individuals are targeting socially and economically downtrodden people especially people from schedule tribe and schedule caste through illegal means.¹⁰⁴ Forcible conversion impinges upon the fundamental right to practice religion of the converts. In a case, the court held that term *propagation* under article 25 only enshrines within itself

¹⁰⁰ *Ibid.*

¹⁰¹ *Dr. Abdur Rahim Undre v. Smt. Padma Abdur Rahim Undre*, AIR 1982 Bombay 341.

¹⁰² India Law Commission, *Conversion/ reconversion to another religion- mode of proof* (Law Com No. 235, 2010) 16.

¹⁰³ Bharti Jain, ‘13 NGOs Lose FCRA License over Religious Conversion’ *The Times Of India* (New Delhi, 08 September 2020) <<https://timesofindia.indiatimes.com/india/13-ngos-lose-fcra-licence-over-religious-conversions/articleshow/77988277.cms>> accessed 25 May 2022.

¹⁰⁴ Arguments Submitted by the Petitioner in the matter of *Ashwini Kumar Upadhyay v. Union of India & Ors.*, Writ Petition (C) of 2020.

persuasion and not coercion and it does not allow a person to convert another person to their own religion.¹⁰⁵ This means that if a person purposely undertakes the task of converting person as against just exercising his right to mere propagate this will impinge upon the freedom of conscience guaranteed to those converts as guaranteed under article 25.

Further, fundamental right to practice freedom of religion not being absolute and is subject to public order, health, morality and other provisions of part III, the Court in this regards held that when a gathering is intended to mislead people by making false and untenable claims design to lure poor, incredulous and ignorant masses into joining a particular fold, faith or religious group by making false claims the courts can prohibit or strike down such activities.¹⁰⁶ Also, in reference to forced conversion, the apex Court opined that government may consider the feasibility of appointing a committee to enact a conversion of religion Act.¹⁰⁷ Keeping in view these judgments and opinions of the Hon'ble court along with the rights of people under article 25 and also the duty of the state under articles 14, 15, 21 and 46, it becomes imperative for the state to take appropriate steps to stop forced religious conversions.

3.4 CONCLUSION

The issue of conversion has created significant debates in India, and it should be noted that changing one's religion should be a personal choice and not influenced by others. Looking at the history of conversion the reasons for conversion are many. Conversions take place either due to allurements or due to undue influence etc. Another motive for conversion is poverty and social inequalities, including untouchability, to which dalits are subjected in the society. This chapter mainly focused on the reasons why people convert and also explained the reasons behind string of anti conversion laws being promulgated in India. Reports of few commissions such as the Law Commission of India, Law Commission of Uttar Pradesh, Niyogi report had recommended in favor of such provisions which checks forced conversions and safeguards right of people in India.

¹⁰⁵ *Ibid* 2.

¹⁰⁶ *Ram Gopal Tripathi v. Sarvajeet Herbert*, 2003 SCC Online 550.

¹⁰⁷ *Ibid* 37.

Taking cues from these reports and assuming the role of *parens patriae* to safeguards rights of people various states in India enacted anti conversion laws though these laws have always been the subject of controversy. A section of the society accuses the government for promulgating such law which has a chilling effect on almost every fundamental rights while another section applause the government for safeguarding the rights of susceptible people especially the people from Schedule case and Schedule tribe, women and children. Though this is still a debate whether the government went overboard in enacting these laws or these laws are actually needed in the society, a clearer picture can be seen when the conflicting arguments will be compared in the following chapters

CHAPTER IV

IMPLICATION OF ANTI CONVERSION LAWS ADOPTED BY THE INDIAN STATES

4.1 INTRODUCTION

In India a number of states¹⁰⁸ have enacted anti- conversion laws also known as Freedom of Religion Act in common parlance to check “unlawful” or forceful conversions through various means. States like Madhya Pradesh and Odisha have these laws for around half a century while states like Karnataka and Uttar Pradesh have recently promulgated these laws. Though these laws are enacted in the name of protecting religious rights of persons especially the members of Schedule tribe, castes or women but the same laws have been challenged time and again for ironically the same reason; religious rights of people. Right to propagate, right to equality, and right to privacy are the main concerns of the petitioners who challenge these laws. Yet as of now at least ten states have enacted these laws.

This chapter is divided into three parts which will deal with three broad issues, firstly provisions of these laws which have been challenged on various grounds mainly in conflict with religious freedom, secondly the implications of these laws on society and thirdly the current status of these laws and if is there any pending amendment and/ or any guidelines or pending case/s etc.

4.2 LEGISLATIVE PROVISIONS RELATED TO CONVERSION

The freedom to profess, propagate, and practice religion is guaranteed by the Constitution which also permits all religious groups to administer their own business in matters of religion subject to public order, morality, and health. There has been no national legislation that restricts or regulates religious conversions to date since it falls within the ambit of state legislatures. In addition, the Union Law Ministry in the year 2015 stated that the Parliament lacks the legislative authority to implement anti-

¹⁰⁸ Orissa Freedom of Religion Act (1968); Gujarat Freedom of Religion Act (2003); Jharkhand Freedom of Religion Act (2017); Himachal Pradesh Freedom of Religion Act (2019); UP Prohibition of Unlawful Conversion of Religion Act (2021); Madhya Pradesh Freedom of Religion Act (2021); Karnataka Protection of Right to Freedom of Religion Ordinance (2022).

conversion legislation and any such law would fail judicial scrutiny.¹⁰⁹ Since states have autonomy to decide matter related to public order etc, in India, at least ten states have promulgated anti- conversion laws till date with the major aim and objective of prohibiting “unlawful conversion” as defined in respective statutes.

The oldest anti conversion law in the post independence India was promulgated by the state of Orissa as “The Odisha Freedom of Religion Act, 1967” and the state of Madhya Pradesh closely followed it in the year 1968 as “The Madhya Pradesh Dharma Swatantrya Adhiniyam”. Other states like Gujarat, Chattisgarh, Himachal Pradesh, Arunachal Pradesh, Uttarakhand and Jharkhand also followed the suit. The very recent is the state of Uttar Pradesh which in the year 2020 passed an ordinance as “The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance” which is attracting both criticism and applause from different sections of the society.

The Ordinance now cleared and has become an Act has in total 15 sections and 3 schedules and its preamble is read as “*to provide for prohibition of unlawful conversion from one religion to another by misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by marriage and for the matters connected therewith or incidental thereto*”.

There are few grounds on which these laws have been challenged. They are:

(a) Definitions

Starting with the definition clause, section 2(a) of the Uttar Pradesh Act is one of the many bone of contentions in the act. While article 18(2) of the ICCPR protects against coercion and thus forcible conversions and while the concepts of force and fraud are already covered by the penal code of India the wider concept of allurement remains a source of contention in the impugned Act. The Act defines through 3 clauses allurement as “offer of any temptation in the form of any gift, gratification, easy money or material benefit either in cash or kind; employment, free education in

¹⁰⁹ ‘National Anti Conversion Law not Tenable’, *Deccan Herald*, <<https://www.deccanherald.com/content/471944/national-anti-conversion-law-not.html>> accessed 25 May 2022.

reputed school run by any religious body; or better lifestyle, divine displeasure or otherwise.”¹¹⁰

In a judgment pronounced by Orissa High Court, it was held that there arises a problem in defining the term ‘inducement’ or ‘allurement’.¹¹¹ The court held that the vague nature of the term would impinge on various legitimate methods of proselytizing. These broad and vague terms might be interpreted to cover the expression of many religious beliefs and unnecessarily curtail their freedom of propagation and expression.

The ICCPR recognises the right to express one's beliefs under Article 19 and this together with Article 18 which guarantees religious freedom states that people must be permitted to share their religious beliefs. These broadly defined ‘terms’ aim to penalize a wide spectrum of religious speech by persons who share their religious ideas with others, whether or not they hope to convert their listeners, putting a limit on their religious freedom. Praying for a cure for a disease or donating assistance in the form of food or water after a natural disaster¹¹² could be considered allurement or inducement, making religious groups' charitable activities—often vital components of their faith—criminal. Further it is also apprehended and said that “Anything can be called allurement. In many Christian institutions education for Christians is free, so if somebody changes his or her religion, even education can be defined as allurement.”¹¹³

The usage of the term gift, allurement etc. in the Uttar Pradesh Act or any other state law has also started a debate on the nexus between conversions, gratifications, and socio-economic disparities between proselytizer and target group especially in the backdrop of religious activities. As suggested by the United Nations Special Rapporteur in her report, with respect to the “Sri Lanka Prohibition of Forcible Conversion of Religion Bill”, she highlighted the fact that the formulations of the Bill could have serious repercussions for various charities and religious groups. “*It is very difficult to assess the genuineness of a conversion. While it may be easy to prove that*

¹¹⁰ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 2 (a).

¹¹¹ *Ibid* 23.

¹¹² Sunil Raman, ‘Religious row over tsunami relief’ *BBC News* (Kerala, 24 May 2005) <http://news.bbc.co.uk/2/hi/south_asia/4574799.stm> accessed 25 May 2022.

¹¹³ Avinash Dutt, ‘Raipur’s one-way conversion street’ *Tehelka* (2006) <http://www.tehelka.com/story_main19.asp?filename=Ne090206Raipurs_one.asp> accessed 26 May 2022.

*a person has received a gift, it would not be easy to demonstrate that the person has converted because of the gift”.*¹¹⁴

The alleged ‘gifts of allurements’ as expressed in the Prohibition of Forcible Conversion of Religion Bill entail a double edge; this provision is especially prone to misuse and abuse that would legitimize religious intolerance against certain religious groups and religious minorities.¹¹⁵ As the Rapporteur further commented that “*The wording of the draft laws is also too vague. It allows too great a margin of interpretation, which could be a source of possible abuse and could potentially transform the law into a tool of persecution by those who are genuinely opposed to religious tolerance*”.¹¹⁶ With regards to India, another report¹¹⁷ commented that the lawmakers have been criticized for failing to precisely define what constitutes a conversion, allowing the authorities unrestricted leeway in accepting or rejecting the legitimacy of religious conversion.

Further, in the Uttar Pradesh Act, section 2 (h) provides the definition of religion. This definition has been criticized because it not only includes traditional religions but also different faiths, thereby increasing the ambit of the statute. Due to this, the definition of religion is claimed to be vague and ambiguous. However, supporters of this particular provision claims that one of the aspects of preventing conversion is from the view point of tribal people. “These tribal people do not have any religion or follow animism and often it is seen that missionaries and different groups target these gullible tribal people to convert them to their own religion.”¹¹⁸ Religious conversion has had a negative impact on tribal youth houses, panchayats, traditional folk dances, festivals, and values to name a few things.

¹¹⁴ Asma Jahangir, United Nations Human Rights Office of the High Commissioner, *Report of the Special Rapporteur on freedom of religion or belief, Civil and Political Rights including the questions of religious intolerance: Mission to Sri Lanka, 2005.*

¹¹⁵ Michael Hertzberg, ‘the Gifts of Allurement: Anti Conversion Legislation, Gift Giving and Political Allegiance in South Asia’ (2020) *Journal of Contemporary Religion.*

¹¹⁶ Asma Jahangir, *Report of the Special Rapporteur on freedom of religion or belief, Civil and Political Rights including the questions of religious intolerance: Mission to Sri Lanka, 2005.*

¹¹⁷ Asma Jahangir, United Nations Human Rights office of the High Commissioner, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right to Development: Mission to India, Report of the Special Rapporteur on Freedom of Religion or Belief, 2009.*

¹¹⁸ The Print Team, ‘What UP Govt’s New Anti Conversion Law says, and Origin of ‘Love Jihad’*’ The Print* (26 November 2020) <<https://theprint.in/opinion/what-up-govts-new-anti-conversion-law-says-and-origin-oflove-jihad/552115/>> accessed 27 May 2022.

Their original culture which we refer to as tribal culture has declined and a new way of living as well as cultural processes has evolved. In the majority of situations, religious conversion has placed converted tribal in a dilemma. They have been unable to accept the new culture or completely abandon their previous tribal culture following the conversion. They have developed a disdain and hatred for their native culture.¹¹⁹ Religious conversion among tribals has impacted tribal societies in ways that have proved troublesome for the tribal community and Indian society as a whole. Some of the impacts are explained below:

- 1. Partition and segmentation:** The process of partition began as a result of religious conversion among the tribals. Christian tribals and non-Christian tribals are split into two groups in tribal life. Such two segments of the same tribal society became culturally, socially, and cognitively alienated from one another and a sense of separate identity arose.
- 2. Cultural Conflict:** Religious conversion has provided to the tribal Christians a pattern of westernization in the form of religious unity, education as well as western values and morality. Due to conversion tribal Christians have become westernized and have given up their original tribal religion and have started going to Church and worshipping the Christian way accepting Christian theology, imitating western clothes and customs adopting Christian marriage system and so on. Because of such westernization conflict arises between the original customs and traditions of the tribals and the customs and traditions of Christianity adopted by the converted tribals. For example many tribals follow Hindu rituals in marriages. Those tribals who have embraced Christianity perform Christian ceremony but they also perform their own tribal rituals either before or after the Christian ceremony.¹²⁰ Thus, they have not been able to accept or reject the new Christian ceremony. This event indicates a major cultural conflict arising out of conversion.
- 3. Emergence of religious hierarchy:** Tribal villages existed in the traditional social structure as separate and independent units prior to religious

¹¹⁹ Dr. Vinay N. Patel, 'Religious Conversion among Tribes of India: Reflections from Sociology, International Journal of Advances in Social Sciences' (2017) 5 International Journal of Advances in Social Sciences

<<https://anvpublication.org/Journals/HTMLPaper.aspx?Journal=International+Journal+of+Advances+in+Social+Sciences%3BPID%3D2017-5-1-1>> accessed 25 May 2022.

¹²⁰ *Ibid.*

conversion. They had their own preachers and religious places but after the religious conversion, the converted religious groups in the village extend to a large area and there is a religious hierarchy of priests, religious heads and distant religious centers. Their religious loyalty and their contacts Christian tribal villages have strengthened and extended to foreign countries also sometimes which could be dangerous to one's national loyalty.¹²¹

Under the influence of conversion, there have been changes in social life of the converted tribals where the reflection of negative influence is clearly visible and it is for this purpose the definition of religion has been drafted to include not only traditional religion, but also several faiths.¹²²

(b) Reconversion

With regards to section 3 (2) of the "Uttar Pradesh Act" and Section 3 of "Himachal Pradesh Act", a very peculiar exception has been drafted by the lawmakers who push the instances of reconversion out of the ambit of this law and ultimately it has been made lawful. In the words of the Uttar Pradesh provision, it is "*Provided that, if any person reconverts to his/ her immediate previous religion, the same shall not be deemed to be a conversion under this Act*".¹²³ Such type of provision and its root can be traced back to the 19th century onwards as the expansion directed towards marginal groups and tribals became more organized.

To put it in perspective, the point of view of various Hindutva outfits and their supporters are that all Indians were originally, at least ancestrally, Hindus. Hence they have always supported the idea of "*bringing back people from non Hindu religion to Hindu religion*" and they have developed a whole glossary of terms such as "*homecoming*", "*reconversion*", "*reclamation*", "*shuddhi*" (*purification*), "*paravartan*" and the most famous of all, "*Ghar Wapsi*". Common to all these labels

¹²¹ *Ibid.*

¹²² Purna Katiyar, 'How Churches in A.P. are Facing Resistance over Conversion of Tribals' *The Economic Times* (Changlang, 19 November 2017) <<https://economictimes.indiatimes.com/news/politics-and-nation/how-churches-in-arunachal-pradesh-are-facing-resistance-over-conversion-of-tribals/articleshow/61703687.cms?from=mdr>> accessed 27 May 2022.

¹²³ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s3 (2).

is an insistence that all that is being attempted is to bring people back to their “natural” state.¹²⁴

The politics of *Ghar Wapsi* is so widely played in India that even the state machinery seems to be a party to such reconversions. Speaking of the indigenous Muslim population in India, Bhaskarteerth, the deputy to the Shankaracharya of the Sharada Peethis known to have said that “barring a few hundred thousand Muslims whose ancestors had come to the country from Afghanistan and Baluchistan and the Muslims of India were descendants of Hindu converts and therefore they should all be made Hindu once again.”¹²⁵

This notion of the Hindu identity being “true” and “real” (and simultaneously, the Muslim being the “enemy” to be overcome) is integral to the motivation behind reconversion campaigns.” Few news articles also suggest that such mass reconversion has been accepted by the state and moreover such “reconversion” or “*Ghar Wapsi*” has been successfully differentiated with the “conversion” or “unlawful conversion” as mentioned in statutes. To substantiate, a news broke in the state of Jharkhand where Rashtriya Swayamsevak Sangh (hereinafter RSS) workers claimed that they reconverted 53 families to Hinduism.¹²⁶ They further went on to claim and said that “you cannot call it conversion; we are only bringing back our lost brothers and sister to their religion”.¹²⁷

One another instance shows how Hindutva and reconversion supporters justify their imposition on people of other faith to bring back them into Hinduism. Prime Minister of India Narendra Modi gave a speech in April 2015 in support of this position, saying, "The Supreme Court of India has given a good definition of Hindu Dharma,

¹²⁴ Sumit Sarkar, ‘Conversions and Politics of the Hindu Right’ *Economic and Political Weekly* <<https://www.epw.in/journal/1999/26/special-articles/conversions-and-politics-hindu-right.html>> accessed 28 May 2022.

¹²⁵ Yoginder Sikand, ‘Arya Shuddhi and Muslim Tabligh: Muslim Reactions to Arya Samaj Proselytization’ (2003); Robinson Rowena and Clark Sathianathan, *Religious Conversion in India- Modes, Motivations and Meaning* (1stedn, Oxford University Press India, 2003).

¹²⁶ Huff Post Staff, ‘RSS claims that 53 families ‘returned’ to Hinduism in its ‘Christianity- free’ campaign in Jharkhand’ *Huffpost* (11 April 2017) <https://www.huffpost.com/archive/in/entry/rss-claims-that-53-families-returned-to-hinduism-in-its-chris_a_22034921> accessed 28 May 2022.

¹²⁷ Saurav Roy, ‘RSS converts 53 families in drive to make block in Jharkhand Christian free’ *Hindustan Times* (Ranchi, 10 April 2017) *Hindustan Times*, <<https://www.hindustantimes.com/india-news/rss-converts-53-families-in-drive-to-make-block-in-jharkhand-christianity-free/story-Um4Q7eItY4escQeynJHXM.html>> accessed 28 May 2022.

the Supreme Court has ruled that Hindu Dharma is not a religion but a way of life.”¹²⁸ One cannot ‘convert’ into or out of Hinduism if it is viewed as a lifestyle choice rather than an organized religion. By this logic, the argument of *Ghar Wapsi* is no longer about coerced conversion or reconversion but rather the re-adoption of a lifestyle or set of cultural practices.

While the official state machinery is increasingly attempting to distinguish itself from overtly Hindu organisations and separate itself from their actions it is clear that their power is growing and their activities are becoming more public. Trends like that of *Ghar Wapsi* are becoming integral to not only the religious but also the socio-economic identities of many communities in the country with official representatives publicly announcing their intent to continue these campaigns and no evidence of strict state action against them can be seen. Asserting Hindu identity is being promoted as the best option, both economically and spiritually.¹²⁹

The judiciary system has been active on this issue and had pronounced judgments which also support the *Ghar Wapsi* movement. In one of the judgments, it has held that a Dalit or tribal re-converting to Hinduism from Christianity would be entitled to reservation benefits for Scheduled Castes and Scheduled Tribes.¹³⁰ The bench also held that a person shall not be deprived of quota benefits if he or she decides to ‘reconvert’ to Hinduism and adopts the caste of his forefathers just because he has a Christian spouse or was born to Christian parents. It further held that “There has been detailed study to indicate that the Scheduled Caste persons belonging to Hindu religion who had embraced Christianity with some kind of hope or aspiration have remained socially, educationally and economically backward.”¹³¹ This judgment can be seen as legitimizing and incentivizing the *Ghar Wapsi* programme which is being run fully fledged throughout the country.

¹²⁸ *Manohar Joshi v. Nitin Bhaurao Patil & Anr.*, 1996 AIR 796; ‘Hinduism is not a religion but way of life, says Modi’ *The Hindu* (Vancouver, 02 April 2016) <<https://www.thehindu.com/news/international/Hinduism-not-a-religion-but-a-way-of-life-Modi/article60329447.ece>> accessed 28 May 2022.

¹²⁹ Yashasvini Rajeshwar and Amore C. Roy, ‘Coming Home (Ghar Wapsi) and Going Away: Politics and the Mass Conversion Controversy in India’ (2019) MPDI Journal.

¹³⁰ *K.P. Manu, Malabar Cements Ltd. v. Chairman, Scrutiny Committee for Verification of Community Certificate*, 2015 SCC Online SC 161.

¹³¹ Tarique Anwar, ‘SC ruling on conversion- it’s a stamp on reconversion’ *Firstpost* (New Delhi, 28 February 2015) <<https://www.firstpost.com/india/sc-ruling-on-reconversion-its-a-stamp-of-approval-for-ghar-wapsi-says-vhp-2126461.html>> accessed 29 May 2022.

The moot question which arises and is still not addressed is that what if such reconversion is effected by misrepresentation, force, undue influence, coercion, allurements or by any fraudulent means or by marriage. Thus, the statute leaves a scope of mischief to emanate in the name of reconversion.

(c) Filing of FIR

Further, if we compare section 4 of the “Uttar Pradesh Act” which is similar to Section 4 of the “Madhya Pradesh Act”¹³², it allows “any aggrieved person, brother/sister, parents or any other person related by blood, marriage and adoption to file an FIR against such conversion”. Since in most of the cases it is the family members who are against the conversion of an individual or are against marrying their children with a person of other religion by changing their child’s religion or against their parents’ will, this section allows the disgruntled family members to file an FIR and cause obstruction in the process.¹³³ In various instances it has also been seen that FIR has been filed in haste, in pressure and they turn out to be false. Various incidents where similar FIRs citing same turn of events such as hidden religious identity of men, have been filed shows how a law can be abused against a target group.¹³⁴

Moreover, being cognizable and non-bailable offences¹³⁵, the magnitude of abuse of laws increases manifold. Unnecessary arrests have also been reported in various cases which could have been avoided.¹³⁶ The suspect had to move the High Court for protection of their liberty and the Hon’ble court directed of no coercive action till next hearing.¹³⁷ In a recent case of *Simran Sagar & Anr. v. State of GNCT & Ors.*, the Delhi Police informed the Delhi High Court that the petitioners may seek assistance from the said department of social welfare and that they will be provided with adequate safe housing in accordance with the Supreme Court’s ruling in the case of *Shakti*

¹³² *Ibid* 36.

¹³³ Pathikrit Chakraborty, ‘8 FIRs lodged in UP, Times of India’ *The Times of India* (Lucknow, 18 December 2020) <<https://timesofindia.indiatimes.com/city/lucknow/anti-conversion-law-8-firs-lodged-in-up-case-by-case-details/articleshow/79795406.cms>> accessed 29 May 2022.

¹³⁴ Ananya Bharadwaj, ‘16 anti conversion law cases, key accused Muslims, but UP Govt. insists law is religion neutral’ *The Print* (Lucknow, 12 January 2021) <<https://theprint.in/india/governance/16-anti-conversion-law-cases-key-accused-muslims-but-up-govt-insists-law-is-religion-neutral/581856/>> accessed 29 May 2022.

¹³⁵ Uttar Pradesh Prohibition of Unlawful Conversion of Religion (2021) s 7; Madhya Pradesh Freedom of Religion Act (2021) s 13.

¹³⁶ The Wire Staff, ‘No evidence against Muslim man accused in forced conversion case, UP tells Allahabad HC’ *The Wire* (New Delhi, 08 January 2021) <<https://thewire.in/law/uttar-pradesh-allahabad-high-court-forced-conversion-no-evidence-framed>> accessed 29 May 2022.

¹³⁷ *Nadeem v. State of Uttar Pradesh*, Criminal Misc. Writ Petition 16302 of 2020.

*Vahini*¹³⁸, and that the concerned SHO have already been provided to the petitioners and adequate protection will be provided to the petitioners' lives as and when required.¹³⁹

However, the mere possibility of abuse cannot be used to declare a statute invalid. The Supreme Court expressed the same thing in the case of *Justice K.S.Puttaswamy (Retd) v. Union of India*, ruling that “a statute cannot be struck down on the ground that there is possibility for misuse”.¹⁴⁰

The offences under section 7 of the “Uttar Pradesh Act” and section 13 of the “Madhya Pradesh Act” are cognizable and non-bailable. When this clause is combined with the fact that any aggrieved person, brother/sister, parents, or anybody related by blood, marriage, or adoption can register a FIR, the converted individuals are left with a lot of room for harassment and victimization. Making eligible many people to file an FIR and also making the offences cognizable hits directly upon the personal liberty of the citizens.

(d) Declaration Form

The law leads to unreasonable intrusion into the domain of personal liberty since as per Section 8 (1) of the Uttar Pradesh Law; it requires a sixty-day prior declaration to the District Magistrate or additional District Magistrate that the conversion is free of fraud, force, undue influence, or allurement. Furthermore, the person conducting the religious ceremony for conversion must send a similar one-month advance notice to the District Magistrate or Additional District Magistrate of the location where the conversion is scheduled.¹⁴¹ After receiving information concerning conversion, the District Magistrate will have a police investigation undertaken to determine the true motive, purpose, and cause of the proposed conversion. Non-compliance with this requirement is penalized¹⁴², and it renders the conversion illegal and void¹⁴³. Similar provision/s can be found under section 10 of the Madhya Pradesh Act.

¹³⁸ *Shakti Vahini v. Union of India*, W.P. (crl) No. 1122/2020.

¹³⁹ W.P. (crl) No. 2118/ 2020.

¹⁴⁰ *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.

¹⁴¹ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 8 (2).

¹⁴² Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 8 (5).

¹⁴³ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 8 (4).

This provision has been criticised for making conversion declaration mandatory in all cases. As a result of this rule, conversion is presumed to be without free consent *per se*, and the person must prove that his conversion was voluntary. Furthermore, an obligatory police investigation into the true motive, purpose and cause of conversion has the potential to subject the converted person to unwarranted harassment. Police involvement is likely to raise a few eyebrows in society resulting in unwarranted stigmatisation of the converted person. This provision has the potential to lend state sanction and administrative backing to the societal hostility that interfaith couples already confront on a daily basis.¹⁴⁴

The post-declaration conversion is discussed in Section 9 of the “Uttar Pradesh Act”. Within sixty days of conversion, the converted person must send a declaration to the District Magistrate of the place where he or she habitually resides. A copy of the declaration will be displayed on the District Magistrate's office notice board until it is confirmed.¹⁴⁵ Within twenty-one days of receiving the declaration, the converted individual must appear before the District Magistrate to authenticate his identity and confirm the contents of the declaration.¹⁴⁶ The District Magistrate will then record the fact of declaration and confirmation in a registry, of which the converted individual will receive a certified copy. Similar provision can be found in section 9 of the Karnataka Protection of Right to Freedom of Religion Ordinance, 2022.¹⁴⁷

These provisions require the converted person to send a post-conversion declaration and then present himself to the District Magistrate to have it confirmed. Not only that, but his proclamation is posted on the DM's public notice board. This public declaration of one's conversion has the ability to turn a private event into a public one. Furthermore, there is a possibility of being targeted by fringe elements.

An observation made by the Supreme Court in the *Joseph Shine* case is relevant here and it was held that “The right to privacy depends on the exercise of autonomy and

¹⁴⁴ Manu Sebastian, ‘UP Ordinance Criminalizing Religious Conversion by Marriage is an Assault on Personal Liberty’ *Live Law* (30 November 2020) <<https://www.livelaw.in/columns/up-ordinance-criminalizing-conversion-for-marriage-is-an-assault-on-personal-liberty-166575>> accessed 30 May 2022.

¹⁴⁵ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 9 (2).

¹⁴⁶ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 9 (4).

¹⁴⁷ Rajat Asthana, Tanvi Vipra, ‘Explained Karnataka’s Ordinance on religious conversion’ *PRS Legislative Research* (18 May 2022) <<https://prsindia.org/theprsblog/explained-karnataka%E2%80%99s-ordinance-on-religious-conversion>> accessed 30 May 2022.

agency by individuals. In situations where citizens are disabled from exercising these essential attributes, Courts must step in to ensure that dignity is realized in the fullest sense”.¹⁴⁸

In the same judgment it was also observed that “The element of public censure, visiting the delinquent with penal consequences, and overriding individual rights, would be justified only when the society is directly impacted by such conduct. In fact, a much stronger justification is required were an offence is punishable with imprisonment. The State must follow the minimalist approach in the criminalization of offences, keeping in view the respect for the autonomy of the individual to make his/her personal choices”.

Further, exhibition of declaration form by the converted and making it public is in conflict with the right to privacy as well as recent judgment in the light of Special Marriage Act¹⁴⁹. In a judgment which removed hindrances in the way of inter-faith marriages, the Allahabad High Court ruled that couples seeking to solemnise their marriage under the “Special Marriage Act, 1954” can choose not to publish the mandatory 30-day notice of their intention to marry.¹⁵⁰ Section 5 of the Special Marriage Act, the legislation that allows solemnisation of marriages irrespective of the religion of the couple requires parties to give a 30-day public notice of their intention to marry. The public notice is displayed at the office of the marriage officer inviting potential objections to the marriage.

Similar provisions in the “Himachal Pradesh Freedom of Religion Act, 2006,” that required notice of intention in case of religious conversion were struck down in 2012 by the Himachal Pradesh High Court, claiming a violation of the fundamental right to privacy.¹⁵¹ The state, however, repealed the 2006 statute and introduced a new law in 2019 that included the same provision that the court had previously set down.¹⁵² Conclusively, sections 8 and 9 of the Uttar Pradesh Law as well as Section 7 of Himachal Pradesh Law not only create a double hurdle by allowing objections from the public post the conversion but also give police unfettered powers for which there

¹⁴⁸ *Joseph Shine v Union of India*, 2018 SCC 1676.

¹⁴⁹ Special Marriage Act (1954).

¹⁵⁰ *Safia Sultana v. State of Uttar Pradesh*, Habeas Corpus No- 16907 of 2020.

¹⁵¹ *Evangelical Fellowship of India v. State of Himachal Pradesh*, CWP No. 438 of 2011.

¹⁵² The Himachal Pradesh Freedom of Religion Act (2019) s 7(2).

can be no possible explanation apart from deterring citizens from converting out of their own free will.

(e) Burden of Proof

Section 12 of Himachal Pradesh Law, section 12 of Madhya Pradesh Law and section 12 of Uttar Pradesh Law are one of the most criticized sections of the respective statutes wherein the burden of proof as to whether a religious conversion was not effected through misrepresentation, force, undue influence, coercion, allurement, or by any fraudulent means or by marriage falls on the person who caused the conversion/ accused and where such conversion was facilitated by any person, on such person.

The burden of proof is the responsibility of the parties to prove the facts in order for the court to rule in their favour. '*Onus Probandi*' is another name for this burden of proof. If the side that bears the burden of proof fails to do so the matter may be decided against him.

Previously it was primarily the prosecution's responsibility to prove the facts. As a result, if the prosecution fails to do the same, the accused has an advantage. Therefore, there had been several changes made in the legislation so that any crime should not be left unpunished. The Indian courts in many circumstances have reversed the burden upon the accused to prove his innocence. But in the case of heinous crimes such as rape, etc, this legal burden lies upon the accused to prove his innocence. These are some of the exceptions to this concept.

This traditional burden of proof is shifted on the accused only in circumstances of likelihood that the accused seems to be guilty or when the criminal act takes place within the four walls of house, and is never unqualified. There are several circumstances where the burden of proof is on the accused like cases of dowry death¹⁵³, custodial rape¹⁵⁴, suicide of a married woman¹⁵⁵ etc. In each such case, the shifted burden of proof on accused is accompanied with specific circumstances like for dowry death, it must be shown that soon before her death such woman was

¹⁵³ The Indian Evidence Act (1872) s 113 (b).

¹⁵⁴ The Indian Evidence Act (1872) s 114 (a).

¹⁵⁵ The Indian Evidence Act (1872) s113 (a).

subjected to cruelty or harassment in connection to a demand of dowry and the marriage was solemnized not later than seven years of death.

In addition, it must be proven that the married woman's suicide occurred within seven years of marriage and that her husband or his family members had harassed her before the suicide. Nowhere is it as unqualified as in the provisions of impugned Acts. Additionally, even family can file a FIR under the impugned legislation. Further the offences are made cognizable and non-bailable which subject the converted person to needless harassment.

4.3 IMPLICATIONS OF SUCH LAW ON THE SOCIETY

In the year 2015, a member of the upper house in the Parliament, declared¹⁵⁶,

*“It is very important to keep the Hindus in majority in the country. We have to take measures to arrest the decline... My argument is that religion must remain a matter of personal choice. But in India, it has become a political tool in the hands of foreign powers, which are targeting Hindus to fragment our nation again on communal lines. This has to be resisted in national interest and in the interest of all minorities in India.”*¹⁵⁷

The comment of the member reflects a popular and powerful nationalist viewpoint in India that “conversions away from the majority religion pose a threat to the country”. To combat this perceived threat, Indian states have promulgated laws prohibiting conversion from one faith to another in vaguely drafted statutes such as "inducement" and "fraudulent circumstances." In practise, the laws are selectively implemented, making it illegal to convert from one religion to another, especially from majority religion to minority religion. Mere existence of an anti-conversion law in a state or country typically provides religious extremists an upper hand to persecute adherents of minority religions.

¹⁵⁶ Tarun Vijay, Member of Rajya Sabha, Parliament of India.

¹⁵⁷ Eustaqio Santimano, ‘Indian Parliamentarians propose ban on conversions’ *World Watch Monitor* (06 October 2015) <<https://www.worldwatchmonitor.org/2015/10/indian-parliamentarians-propose-ban-on-conversions/>> accessed 30 May 2022.

Anti- conversion laws first came into existence during pre- independence era in the 1930s in princely states, or those states where British did not rule directly.¹⁵⁸ Soon after independence the government wanted a national law regarding this issue but due to its effect on law and order, an entry which falls in List II of the Seventh Schedule, finally the states were able to promulgate “freedom of religion” laws.¹⁵⁹ The purpose of these laws is to prohibit conversion by force, fraud, allurement etc. However, after analyzing how these laws operate in practicality, another aspect of these laws that is their effect and implication on the society can be seen. Few broad effects have been explained:

- 1. Violence against minorities-** Indian states’ anti-conversion legislation were studied and investigated by the “UN Special Rapporteur on freedom of religion or belief.”¹⁶⁰ She acknowledged that the laws were aimed at Christians and Muslims,¹⁶¹ saying, "*They (the laws) have been criticized on the grounds that the failure to clearly define what constitutes an improper conversion bestows on the authorities unrestricted discretion to accept or reject the legitimacy of religious conversions.*" She complained that provisions requiring advance notice to the government or permission from the government are "unduly burdensome," and that “state inquiry into substantive beliefs and motivation for conversion is highly problematic because it may lead to interference with the individual's internal and private realm of belief”.

Continuing with the report about targeting Muslims and Christians, few news articles could substantiate the apprehension and the implication of these laws on the society. Several people have been arrested for violating anti-conversion laws especially in the state of Madhya Pradesh where according to the Global Council of Indian Christians’ President, “the absolute lack of political will to Control the most dangerous elements

¹⁵⁸ Tehmina Arora, ‘India’s Defiance of Religious Freedom: A Briefing on ‘Anti- Conversion’ Laws’ (2012) 1 IIRF Reports < https://www.iirf.eu/site/assets/files/92149/iirf_reports_2012_02.pdf > accessed 01 June 2022.

¹⁵⁹ The Constitution of India (1950) Entry 1, List II, Seventh Schedule.

¹⁶⁰ UNHRC, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum: Mission to India*, U.N. Doc. A/HRC/10/8/Add.3 (Jan. 26, 2009).

¹⁶¹ UNHRC, *Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum: Mission to India*, U.N. Doc. A/HRC/10/8/Add.3 (Jan. 26, 2009).

encourages the Hindu fundamentalists to harass and intimidate the vulnerable Christian community”.¹⁶² In another incident, few Christians faced criminal charges under the anti conversion laws for merely singing Christmas carols and distributing Bibles.¹⁶³

Further, two Christians were arrested alleging they were involved in converting children whereas they maintained that they were merely facilitating the children to a prayer meeting.¹⁶⁴ In an extremely disturbing case, police arrested a “Pentecostal pastor and his Christian friend for forced conversion which the men denied. Later they were found tied to a tree after being beaten by Hindu extremists.”¹⁶⁵

In another report, it was documented as said by the head of a church, “There is tremendous pressure on us that we cannot go and meet our people in the villages and the police and Hindu activities’ have been unleashing a reign of terror against minority groups, especially Christians.”¹⁶⁶ Similar incident happened in Chhattisgarh where a Christian was arrested for distributing pamphlets. Another incident on the similar lines also happened in Uttar Pradesh where a Christian man was arrested on the suspicion of force conversion through sharing Bibles and despite not having any evidence, police used force and kept him in prison allegedly for public order.¹⁶⁷

A report of the “Religious Liberty Commission, an initiative of Evangelical Fellowship of India” established to promoted religious liberty and freedom for all,

¹⁶² Nirmala Carvalho, ‘Madhya Pradesh: government “encourages” radical Hindus to persecute Christians’ *PIME Asia News* (Mumbai, 31 July 2014) <<https://www.asianews.it/news-en/Madhya-Pradesh:-government-encourages-radical-Hindus-to-persecute-Christians-31772.html>> accessed 02 June 2022.

¹⁶³ News Release, ‘We are afraid of Christmas— Christians in India fear violence during holiday season’, *ADF Int'l* (Dec. 19, 2017) <<http://adfinternational.org/detailspages/press-release-details/we-are-afraid-of-christmas---christians-in-india-fear-violence-during-holiday-season>> accessed 02 June 2022.

¹⁶⁴ Nirmala Carvalho, ‘Two Christians arrested in Madhya Pradesh for “forced conversions” of minors’ *ASIANEWS.IT* (Mumbai, 24 October 2017) <<http://www.asianews.it/news-en/Two-Christians-arrested-in-Madhya-Pradesh-for-%E2%80%9Cforced-conversions%E2%80%9D-of-minors-42137.html>> accessed 03 July 2022.

¹⁶⁵ Nirmala Carvalho, ‘Madhya Pradesh: abducted and beaten, two Christians are arrested by police for “forced conversions”’ *ASIANEWS.IT* (Mumbai, 26 July 2016) <<http://www.asianews.it/news-en/Madhya-Pradesh:-abducted-and-beaten,-two-Christians-are-arrested-by-police-for-forced-conversions-38141.html>> accessed 03 July 2022.

¹⁶⁶ Saji Thomas, ‘India arrests 12 for violating anti-conversion law’ *UCANEWS.COM* (18 January 2016) <<http://www.ucanews.com/news/india-arrests-12-for-violating-anti-conversion-law/74989>> accessed 04 June 2022.

¹⁶⁷ Nirmala Carvalho, ‘Christian man detained on security grounds even though he did not commit any crimes’ *ASIANEWS.IT* (Mumbai, 18 January 2015) <<http://www.asianews.it/news-en/Christian-man-detained-on-security-grounds-even-though-he-did-not-commit-any-crimes-33130.html>> accessed 03 June 2022.

produced data of crime against religious minorities across states where such laws exists. Uttar Pradesh topped the list with 95 incidents against Christians in the year 2020. It is followed by Chhattisgarh, Jharkhand and Madhya Pradesh with 55, 28 and 25 cases respectively.¹⁶⁸ Case of Church burnt, demolition of Church, worship stopped, forced conversions etc has also been reported in that report.

Taking note of the this trend, in its report, the “United States Commission on International Religious Freedom (USCIRF)” noted that, “*The harassment and violence against religious minorities appears to be more pronounced in states that have adopted ‘Freedom of Religion’ Acts or are considering such laws...*”.¹⁶⁹

Despite the countless arrests, only a few dozen persons have been prosecuted and far fewer have been convicted throughout all states.¹⁷⁰ The US State Department’s International Religious Freedom reports have also noted few arrests and no convictions under various anti- conversion laws during the respective reporting periods.¹⁷¹

Nonetheless, the rules limit religious freedom since radicals see them as a license to attack and persecute people who practise minority religions. According to one estimate, “more than 75 percent of the acts of violence against Christians, which currently number around 1,000 per year, are committed in the name of preventing fraudulent conversions in villages”.¹⁷² For fear of retaliation, many do not even explore other religions or do not convert. The recent uptick in arrests shows that enforcement may lead to more charges and convictions.

2. Unchecked cases of reconversion/ *Ghar Wapsi*: *Ghar Wapsi* is a term originated from Hindi, literally meaning “homecoming” or “coming home”

¹⁶⁸ Religious Liberty Commission of the Evangelical Fellowship of India, ‘Hate and targeted violence against Christians in India Yearly Report 2021’ (2021) <<https://efionline.org/2022/02/15/religious-liberty-commission-yearly-report-2021/>> accessed 05 June 2022.

¹⁶⁹ United States Commission on International Religious Freedom, *Annual Report 2011, The Commissions Watchlist: India*, (28 April 2011).

¹⁷⁰ John Dayal, ‘Court upholds anti-conversion law, knocks out major clause’ *UCAN INDIA* (31 August 2012) <<http://www.ucanindia.in/news/court-upholds-anti-conversion-law-knocks-out-major-clause/18945/daily>> accessed 05 June 2022.

¹⁷¹ United State Department of State, *Bureau of Democracy, Human Rights and Labour International Religious Freedom 2010: India* <<http://www.state.gov/j/drl/rls/irf/2010/148792.htm>> accessed 06 July 2022.

¹⁷² John Dayal, ‘Court upholds anti-conversion law, knocks out major clause’ *UCAN INDIA* (31 August 2012) <<http://www.ucanindia.in/news/court-upholds-anti-conversion-law-knocks-out-major-clause/18945/daily>> accessed 05 June 2022.

which can be described as “coerced” conversion or reconversion of people of non Hindu religion to Hindu religion.

The anti conversion laws have had no effect in preventing mass conversion to Hinduism, showing the statutes’ fundamental goal of keeping people from leaving Hinduism. Hindu activists claim to have ‘reconverted’ hundreds of thousands of Christians and Muslims to Hinduism by establishing large conversion camps, whereas in contrary, the ‘reconverted’ people claimed that they were threatened.¹⁷³ As per the news report, almost 700,000 non Hindu Indians were converted to Hinduism over the last two decades.¹⁷⁴ Nationalist group RSS claims that “it has converted thousands of Muslims and Christians and has taken over 60 unused Christian churches in one state alone.”¹⁷⁵ In one Christian church turned into a Hindu temple, “RSS converted 70 tribals back to Hinduism which the radicals explained as not a conversion but recognition of wrongdoing and a ‘homecoming.’”¹⁷⁶ A news report claims RSS ‘reconverted’ 200 Muslims in Uttar Pradesh.¹⁷⁷ Another news report claims that Vishwa Hindu Parishad (hereinafter VHP) which is affiliated to RSS reveals that “it has ‘brought back’ 33,975 persons to their ‘original faith’, through its *Ghar Wapsi* campaign.”¹⁷⁸ Human rights groups believe Hindus are using coercion to convert poor religious minorities back to Hinduism.”¹⁷⁹

In a case, the High Court of Himachal Pradesh struck down section 4 of the Himachal Pradesh Act of 2006 which clearly put reconversion outside the ambit of penal offences. Proviso of section read, “no notice shall be required if a person reverts back to his original religion”. *Firstly*, ‘original religion’ has not been defined and *secondly*,

¹⁷³ Shashank Bengali, ‘Hindu activists organize mass reconversion camps in India’ *Los Angeles Times* (Mumbai, 25 December 2014) <<https://www.latimes.com/world/asia/la-fg-india-conversions-20141225-story.html>> accessed 06 June 2022.

¹⁷⁴ *Ibid.*

¹⁷⁵ Nirmala Carvalho, ‘Hindu radicals ‘reconvert’ Christians, turn Church into a temple dedicated to Shiva’ *PIME Asia News* (Aligarh, 28 August 2014) <<https://www.asianews.it/news-en/Uttar-Pradesh:-Hindu-radicals-reconvert-Christians,-turn-church-into-a-temple-dedicated-to-Shiva--32005.html>> accessed 07 June 2022.

¹⁷⁶ *Ibid.*

¹⁷⁷ Ishita Mishra, ‘RSS ‘re- converts’ 200 Agra Muslims, says more in line’ *The Times of India* (Agra, 09 December 2014) <<https://timesofindia.indiatimes.com/city/agra/rss-re-converts-200-agra-muslims-says-more-in-line/articleshow/45419338.cms>> accessed 07 June 2022.

¹⁷⁸ Pratul Sharma, ‘VHP claims huge success in ‘Ghar Wapsi’ campaign’ *The New Indian Express* (New Delhi, 06 July 2015) <<https://www.newindianexpress.com/thesundaystandard/2015/jul/05/VHP-Claims-Huge-Success-in-Ghar-Wapsi-Campaign-779319.html>> accessed 07 June 2022.

¹⁷⁹ Jason Burke, ‘India investigates reports of mass “reconversion” of Christians’ *The Guardian* (New Delhi, 29 January 2015) <<https://www.theguardian.com/world/2015/jan/29/india-mass-reconversion-christians-hinduism>> accessed 08 June 2022.

the court observed that why if a person is to revert back to his original religion (general consensus- religion by birth), no notice is required. The court held it irrational and violation of Article 14.¹⁸⁰

- 3. Genuine cases also being suspected:** Even in states where conversion is legal the government does not easily issue permission. Over a five-year period in Gujarat, the state administration received 1,838 conversion applications, 94.4 percent of which were from Hindus seeking to change to another religion.

Only 878 applications, or 47.8%, were approved by the government. Some analysts believe that the government has not accurately recorded all of the conversion applications and that many more have applied.¹⁸¹ This shows that the narrative set by few state laws that almost all the conversions are illegal and induced by force or allurements is becoming detrimental for genuine cases also around the country which is eventually diluting peoples' right to freedom.

- 4. Agency of converts has been denied:** Rule 4 of the Orissa Rules of 1989 requires the person willing to convert to give a declaration before a magistrate while Rule 5 requires the concerned priest to intimate date, time and place of ceremony of conversion along with name and address of the convert to the concerned district magistrate in pursuance of form- A. A quick look at Form- A further demands father's name of the convert, his/her gender, occupation and monthly income, whether belonging to SC/ ST community and two witnesses. Demand of these specific and peculiar information especially the gender and caste of the convert sets a broader narrative in the mind of the society that certain class of people are always the victim of conversion and they can never have agency to take such steps on their own will. Also the requirement of two witnesses denies the agency to the convert who have already, in advance, declared about their willingness to convert in the first place and reinforces the notion that almost anyone's word is more valuable than that of the converts.

¹⁸⁰ *Ibid* 53.

¹⁸¹ 'In Gujarat, 94.4% of those seeking to convert are Hindu' *The Times of India* (Gandhinagar, 16 March 2016) <<https://timesofindia.indiatimes.com/city/ahmedabad/in-gujarat-94-4-of-those-seeking-to-convert-are-hindu/articleshow/51419977.cms>> accessed 09 June 2022.

Form A of the Himachal Pradesh rules requires information of the converts with regards to their class (whether SC or ST), religion and new religion, date of birth and a declaration of conversion at own will.¹⁸² Rules 3 (2) and 5 gives wide powers to the magistrate if he thinks any conversion is happening by use of force or allurement and he can get the matter enquired as he deems fit. This shows direct conflict between the declaration of the covert of his free will and power of the magistrate under rules 3 and 5. Wide powers given to the authority not only negate the declaration of the convert but also downplay their agency and sincerity.

It can also be observed that harsher punishment has been prescribed in case the victim belongs to schedule caste or schedule tribe or is a women or a minor.¹⁸³ These kinds of provisions not only reinforce the societal hierarchy that these people who are at the bottom of the hierarchy are also weak and imprudent and can never have an agency to willingly convert but also discourages them to convert so that they can remain in the same order of the society and serve forever the people of higher hierarchy.

5. Increased administrative surveillance: Promulgation of acts comes within the ambit of legislative bodies but majority of acts comes with rules for the proper implementation of the laws. These rules are made by the administrative bodies. In case of anti- conversion laws, it is pertinent to note that these rules contain few forms to be filled by the converts or the person facilitating conversion. Rule 3 of the Orissa Rules requires the district magistrate to maintain a list of organizations involved in the propagation of religion and they have also got the power to call persons receiving benefits from such organizations.¹⁸⁴ These requirements not only give sweeping power to the administration but also requirement of rule-3 are an administrative check on “sincerity”.¹⁸⁵ Further, forms B to D which requires data of convert, collects information of conversion procedures happening in a district, etc not only exposes personal information of the converts but also invites unnecessary gaze

¹⁸² Himachal Pradesh Freedom of Religion Rules (2007).

¹⁸³ Madhya Pradesh Freedom of Religion Act s 5; Uttar Pradesh Prohibition of Unlawful of Religion Act s 5; Himachal Pradesh Freedom of Religion Act 2019 s 4.

¹⁸⁴ Orissa Freedom of Religion Rules (1989).

¹⁸⁵ Laura Dudley Jenkins, *Religious Freedom and Mass Conversion in India* (1st edn, University of Pennsylvania Press, 2019).

of the administration. Similar forms are also prescribed in the Madhya Pradesh rules.¹⁸⁶

Form A of the Gujarat Rules directs any person who is converting another person either as a priest or as a part of an organization or being directly or indirectly involved in such procedure shall obtain prior permission of the district magistrate.¹⁸⁷ This requirement led to the harassment of those willing to convert as well as those who were a part of such conversion ceremony at the hands of authorities.¹⁸⁸ Further, almost all the rules and forms demand information about the monthly income of the convert which allows the authorities to unnecessarily bring such conversion under the scanner for the reason of allurements. Since income and lifestyle is quite subjective and no fix laws or rules can govern the threshold of it, such information can lead to unnecessarily making any valid conversion as illegal.

4.4 CURRENT STATUS OF THESE LAWS

Odisha

Odisha is the first state in India after independence to promulgate anti-conversion law. In the year 1967, the state enacted the Orissa Freedom of Religion Act to check unlawful conversion. After nearly half a decade this law was challenged in the High Court of Orissa and subsequently it was declared *ultra vires* to the Constitution.¹⁸⁹ The Court held in its conclusions that article 25(1) of the Constitution “guarantees propagation of religion and conversion is a part of the Christian religion,” that “the term ‘inducement’ is vague and many proselytizing activities may be covered by the definition and the restriction in Article 25(1) cannot be said to cover the wide definition,” and that the state legislature lacked the competence or jurisdiction to make the law in question on the topic of “religion” under the Seventh Schedule of the Constitution. However, this decision was overturned by the Supreme Court of India in *Rev. Stainislaus v. State of Madhya Pradesh*¹⁹⁰ and hence the Act of Madhya Pradesh is in force as of now.

¹⁸⁶ The M.P. Dharma Swatantrya Rules (1969).

¹⁸⁷ Gujarat Freedom of Religion Rules (2008).

¹⁸⁸ ‘In submission to Gujarat Governor, Dalits seeks softening of conversion rules’ *The Indian Express* (Ahmedabad, 04 September 2016) <<https://indianexpress.com/article/cities/ahmedabad/in-submission-to-gujarat-governor-dalits-see-softening-of-conversion-rules-3012484/>> accessed 10 June 2022.

¹⁸⁹ *Ibid* 23.

¹⁹⁰ *Ibid* 2.

Madhya Pradesh

The State of Madhya Pradesh was the second state to enact an anti-conversion law, the Madhya Pradesh Freedom of Religion Act, 1968 (Madhya Pradesh Dharma Swatantra Adhiniyam). Unlike the Orissa High Court, in 1977 the Madhya Pradesh High Court upheld the Madhya Pradesh Freedom of Religion Act, 1968, holding that the relevant sections establish the equality of religious freedom for all citizens by prohibiting conversion by objectionable activities such, as conversion by force, fraud and by allurement.¹⁹¹

The Madhya Pradesh Freedom of Religion Ordinance, 2020 was promulgated in the year 2021 and after few months it was passed to become an Act.¹⁹² This Act repeals the Madhya Pradesh Dharma Swatantra Adhiniyam, 1968, which previously regulated religious conversions in the state. Currently, a petition filed by an NGO, Citizens for Peace and Justice, has challenged the validity of the Himachal Pradesh law before the Supreme Court which is pending.¹⁹³

Arunachal Pradesh

On the lines of Orissa and Madhya Pradesh anti-conversion legislation was promulgated in the states of Andhra Pradesh, Tamil Nadu, and Arunachal Pradesh in 1978. The State of Arunachal Pradesh enacted The Arunachal Pradesh Freedom of Religion Act, 1987. The law which was passed in view of the perceived threat to indigenous religions, received presidential assent on October 25, 1978. However, it does not appear to be enforced because the government has yet to frame the rules needed to implement it.¹⁹⁴

¹⁹¹ *Ibid* 2.

¹⁹² 'Madhya Pradesh Assembly passes anti conversion bill' *The Hindu* (Bhopal, 08 March 2021) <<https://www.thehindu.com/news/national/other-states/madhya-pradesh-assembly-passes-anti-conversion-bill/article34018703.ece>> accessed 12 June 2022.

¹⁹³ *Citizens for Peace and Justice V. States of Uttar Pradesh, Uttarakhand, Himachal Pradesh & Madhya Pradesh*, WP (cr1) 428/2020.

¹⁹⁴ Damien Lepcha, 'Tribal Identity Movement Calls for Implementation of Anti- Conversion Law in Arunachal Pradesh' *Northeast Now* (24 February 2021) <<https://nenow.in/north-east-news/arunachal-pradesh/tribal-identity-movement-calls-for-implementation-of-anti-conversion-law-in-arunachal-pradesh.html>> accessed 15 June 2022.

While enforcement of the law is lacking, the government of Arunachal Pradesh in the past had reportedly announced that it plans to repeal the law.¹⁹⁵ The announcement was made by the Chief Minister of Arunachal Pradesh in a function organized by the Arunachal Pradesh Catholic Association. The Chief Minister reasoned that the current Anti-conversion Law demoralizes people, targets only Christians, and will be ‘misused in the future by irresponsible officials.’ He further stated that the misuse of this law will lead officials to torture people and spread violence, which will in turn ‘break Arunachal Pradesh into pieces.’¹⁹⁶

Chhattisgarh

The State of Chhattisgarh was established in November 2000 as a result of the partitioning of the Madhya Pradesh. Chhattisgarh reportedly retained the anti-conversion law of Madhya Pradesh and adopted it under the title Chhattisgarh Freedom of Religion Act, 1968.¹⁹⁷ The subsidiary rules for implementation of the Act were also retained. The rise of Hindu Nationalism and the BJP party in Chhattisgarh since the 1990s led to the passage of a number of anti-conversion laws between 2000 and 2010. Moreover, attempts were made during this period to make pre-existing laws more stringent.

In 2006, the state legislature, passed an amendment to the 1968 Act to make it more stringent, but the measure is still awaiting assent. The amendment bill is being reviewed by the Ministry of Home Affairs (MHA) after previous governors of Chhattisgarh refused to give their assent.¹⁹⁸

¹⁹⁵ First Post Staff, ‘Arunachal Pradesh Govt. Plans to Repeal Anti-conversion Law ahead of 2019 Polls; Tribal Leaders Oppose Move’ *FIRST POST* (03 July 2018) <<https://www.firstpost.com/india/arunachal-pradesh-govt-plans-to-repeal-anticonversion-law-ahead-of-2019-polls-tribal-leaders-oppose-move-4639461.html>> accessed 12 July 2022.

¹⁹⁶ Utpal Parashar, ‘BJP Government in Arunachal Pradesh Plans to Repeal Anti-conversion Law’ *Hindustan Times* (New Delhi, 30 June 2018) <<https://www.hindustantimes.com/india-news/bjp-government-in-arunachal-pradesh-plans-to-repeal-anti-conversion-law/story-aLzsWx8ZNYTnxTHxgqFIZK.html>> accessed 13 June 2022.

¹⁹⁷ ‘Chhattisgarh passes anti conversion bill’ *World Asia* (Raipur, 4 August 2006) <<https://gulfnnews.com/world/asia/india/chhattisgarh-passes-anti-conversion-bill-1.248514>> accessed 14 July 2022.

¹⁹⁸ Vijaiya Singh, ‘MHA examining Chhattisgarh’s anti conversion Bill’ *The Indian Express* (New Delhi, 22 December 2014) <<https://indianexpress.com/article/india/india-others/mha-examining-chhattisgarhs-anti-conversion-bill/>> accessed 15 June 2022.

Gujarat

The anti-conversion law in the State of Gujarat was enacted as the Gujarat Freedom of Religion Act, 2003. The purpose of the Act is to prohibit forcible conversions from one religion to another. This act underwent two amendments since then, one in 2006 and another recently in 2021. The 2006 amendment bill ran into controversy because it proposed to allow conversions amongst followers of different sects of the same faith as well as between Hindus, Buddhists and Jains.¹⁹⁹ The bill then had to be withdrawn as the Buddhists and Jains raised objection as being subsumed as a denomination of the Hindu religion.²⁰⁰

Amendment of the impugned Act in 2021 has also been challenged in the High Court. The petition challenged sections 3, 4, 4A, 4B, 4C, 5, 6 and 6A on the ground that these provisions are manifestly arbitrary and violates the right to privacy. They also raised the issue of criminalizing inter- religious marriage due to this amendment act. The Gujarat High Court passed an interim order prohibiting application of impugned sections to inter-faith marriages which provides relief to interfaith couples.²⁰¹

Rajasthan

Rajasthan State's legislature also passed an anti-conversion Bill in 2006, but it never got the assent by the Governor.²⁰² According to one report, the Governor "did not sign the bill because of complaints by religious minorities."²⁰³ As of now, Rajasthan do not have an anti conversion law but the High Court of Rajasthan recently in a case framed some guidelines to check the menace of forceful conversion.²⁰⁴ The High Court also noted that the guidelines will be in force till any statute is enacted.

¹⁹⁹ Gujarat Freedom of Religion (Amendment) Bill 2006 s 2 (b).

²⁰⁰ 'Gujarat govt. withdraws Freedom of Religion (amendment) bill' *India Today* (Gandhinagar, 10 March 2008) <<https://www.indiatoday.in/latest-headlines/story/gujarat-govt-withdraws-freedom-of-religion-amendment-bill-23507-2008-03-10>> accessed 15 June 2022.

²⁰¹ Apurva Vishwanath 'Provisions of anti conversion law that HC has stayed for now' *The Indian Express* (New Delhi, 23 August 2021) <<https://indianexpress.com/article/explained/gujarat-hc-anti-conversion-law-7465894/>> accessed 16 June 2022.

²⁰² 'Rajasthan anti conversion bill sent back to governor' *The Economic Times* (Jodhpur, 14 June 2006) <<https://economictimes.indiatimes.com/news/politics-and-nation/rajasthan-anti-conversion-bill-sent-back-to-governor/articleshow/1645158.cms?from=mdr>> accessed 17 June 2022.

²⁰³ 'Rajasthan Religion Bill rejected' *BBC News* (19 May 2006) <http://news.bbc.co.uk/2/hi/south_asia/4996708.stm> accessed 18 June 2022.

²⁰⁴ *Chirag Singhvi v. state of Rajasthan & Anr.*, Habeas Corpus No. 149/ 2017.

Himachal Pradesh

The Himachal Pradesh Freedom of Religion Act, 2006 was enacted in 2007. Section 4 of the impugned act which required the person intending to convert to give prior notice to the district magistrate of his intention to do so and also mandated the magistrate to inquire such matter as he may deem fit. This section also provided for fine in case the covert fails to give notice. The High Court of Himachal Pradesh setting aside the impugned section observed that “*A person not only has freedom to religion but also has the right to keep his beliefs secret. No doubt, the right to privacy is not absolute and in case of clash between individual rights and public good, public interest prevails. However, we shall not equate majority interest with public interest. Public interest would mean integrity, unity, maintenance of law and order and merely because majority view is different, it does not mean that the minority view must be silenced*”.²⁰⁵

In the year 2019, the 2006 Act was repealed and a new Act, The Himachal Pradesh Freedom of Religion Act, 2019 was promulgated. Section 4 of the previous act which was set aside has again been included in the new act as Section 7. Currently, a petition filed by an NGO, Citizens for Peace and Justice, has challenged the validity of the Himachal Pradesh law before the Supreme Court which is pending.²⁰⁶

Uttar Pradesh

The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020 was passed to regulate conversions and criminalize forced conversions in the state. Promulgated in the backdrop of a case where the court held that conversion of religion solely for the purpose of marriage was not a valid conversion²⁰⁷, however, the Allahabad High Court set aside the previous judgment.²⁰⁸ Even after the concerned High Court’s changed position, the government of Uttar Pradesh passed the “Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021”, thereby replacing the ordinance. Currently the act is effective throughout the state but a

²⁰⁵ *Ibid* 53.

²⁰⁶ *Ibid* 63.

²⁰⁷ *Priyanshi v. State of Uttar Pradesh*, Writ- C No.- 14288 of 2020.

²⁰⁸ *Salamat Ansari &Ors. v. State of Uttar Pradesh*, CrI. Mis. Writ Petition No- 11367 of 2020.

petition filed by an NGO to challenge its validity lies pending in the Supreme Court.²⁰⁹

4.5 CONCLUSION

As we read, we could gather that laws of almost every state have been challenged on several grounds. Though cases like *Rev. Stainislaus* have upheld the validity of these laws, High Court of Rajasthan and Gujarat has taken more liberal view and has tried to enlarge the ambit of religious freedom of people as well as other fundamental rights. We also see disparity between number of arrests and number of convictions and also referred few news article where reports of hatred against minority community especially Christians were reported. Though few laws which are in force for almost fifty years have stood the test of time, in light of recent incidents being reported from around the nation, it becomes the duty of the state to keep a check on these incidents and also keep reviewing these laws from time to time. By this way, abuse of these well intent laws could be stopped and India will remain a truly secular nation.

²⁰⁹ *Ibid* 63.

CHAPTER V

TEST OF ANTI CONVERSION LAWS UNDER THE LENS OF CONSTITUTIONAL PROVISIONS

5.1 INTRODUCTION

India has always been a secular country and has been home to many religions. However, the issue of religious freedom gets murky when it comes to religious conversion. The Indian Constitution has expressly mentioned the right to freedom of religion, as enumerated in Articles 25-28. Since no fundamental rights are absolute Article 25 is also subjected to public order among other restrictions. It is with reference to this restriction, anti conversion laws are being promulgated by the states. Since time and again these laws have been challenged on the ground of impinging upon constitutional mandates thereby disturbing the secular fabric of the society, it becomes imperative to test those arguments in the light of constitutional provisions and various judgments. Further the effects of anti conversion law on other fundamental rights such as right to equality and right to privacy and liberty will also be studied in this chapter.

5.2 CONCEPT OF SECULARISM AND THE EFFECT OF ANTI CONVERSION LAWS ON IT

Few months before India got independence, Constituent Assembly in early May 1947 adopted clauses 13, 14 and 15 of the draft Constitution which dealt with freedom of religion.²¹⁰ Clause 13 sought to guarantee freedom of conscience, right to profess, practice and propagate religion, clause 14 guaranteed rights of religious denomination whereas clause 15 prohibited the state to levy tax on funds specifically appropriated to further the cause of religion or denomination.

After India got independence on 15 August 1947, abovementioned clauses were adopted by the Constituent Assembly though these clauses were replaced by Articles and were spread out between Articles 19 and 22. These Articles led to the deliberations among the members regarding the true meaning of the term secularism.

²¹⁰ CA Deb 01 May 1947, vol 3, <available at https://www.constitutionofindia.net/constitution_assembly_debates/volume/3/1947-05-01> accessed 19 June 2022.

Shri Loknath Misra commented, “*Our state shall remain unconcerned with religion*” but he was also quick to acknowledge the absurdity of inclusion of provision relating to religion and making it justifiable when the state wanted to divorce itself from religion.²¹¹ He was quick to call out the conflict between making India a secular state yet making right to propagation of religion a fundamental and justifiable right.

In response to Misra, Pandit Lakshmi Kanta Maitra explained that by the term secularism, he understands that the state will not discriminate between citizens on the ground of religion they follow. This essentially meant that the state will not patronize any specific religion nor any preferential treatment shall be given to followers of any particular religion. Finally, elaborating the tentative scope of Indian secularism, he explained that the state shall not deny to any person not only the right to profess or practice but also to propagate.²¹²

In the further discussion in the assembly many members asserted that in secular state citizens must follow a common law in all contexts including those related to their everyday lives, their language, their culture, and their personal laws. But many members rejected this reasoning on the grounds that it was an incorrect perspective on this secular State. Citizens from various communities must be free to practise their own religion, live according to their own rules and be subject to their own personal laws in a secular state.

In light of the members of the Constituent Assembly's opinions on the subject of religion the Assembly came to the conclusion that religion is a particularly delicate subject in a nation like India, where there has long been a multi religious culture. Therefore, the State should refrain from embracing a specific religion, i.e., the State should maintain its neutrality toward all religions. It shouldn't support or adopt any certain religion. Religion is a matter of personal preference, and the State has duty to respect that choice.

“Secular” is an English term whose origin lies in “*saeculum*” of Latin language which means an age or ‘the spirit of an age’. Dictionary meaning of the word ‘secular’ defines it as “concerned with the affairs of the world, worldly not sacred, not

²¹¹ CA Deb 6 December 1948, vol 7, <https://www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-06> accessed 19 June 2022.

²¹² *Ibid.*

monastic, temporal, profane, lay²¹³ and non spiritual, having no concern with religion or spiritual matters.”²¹⁴ Coined in the year 1851 in England, the term now implies divergence of society and culture from religion.

A state to be recognized as a secular State, three characteristics should be present. *Firstly*, the principle of liberty mandates the State to permit its citizen to practice any religion of their choice. *Secondly*, the principle of equality requires the State not to discriminate a particular religion over the other. *Thirdly*, the principle of neutrality meaning the State does not involve itself with religious affairs or organizations, also known as the ‘wall of separation’ doctrine in the United States of America.²¹⁵

Indian Constitution originally did not enshrine the word ‘secular’ neither in the preamble nor in the provisions guaranteeing right to religion. However, there was always an attempt by the members to include this term since its inception. One of the members Mr. K.T. Shah made multiple attempts to introduce the term ‘secular’ through amendments in the Constitution. In his first attempt, he proposed amendments to Article 1 of the Draft Constitution from “*India shall be a Union of States*” to “*India shall be a Secular, Federal, Socialist Union of States*”.²¹⁶ Another amendment introduced by him also aimed to established secularism in India.²¹⁷ For the third time again he tried to amend the Constitution and incorporate the word ‘secular’.²¹⁸ Interestingly, all his three attempts failed as Dr. B.R. Ambedkar, the chairman of the Drafting Committee of the Constituent Assembly rejected his proposal. This confirms that exclusion of this particular term was not accidental but was deliberate.

Perhaps, the framers were aware of the anti- religion concept of secularism developed in the Christian countries and they were apprehended that introduction of such term would give an impression towards the Indian Constitution that it is against the cultural

²¹³ ‘Secular’ *The Concise Oxford Dictionary*.

²¹⁴ ‘Secular’ *Encyclopedia Britannica Vol. XX (London, 1960)*.

²¹⁵ Partha Chatterjee, ‘Secularism and toleration’ (1994) 29 *Economic and Political Weekly* <<https://www.epw.in/journal/1994/28/special-articles/secularism-and-toleration.html>> accessed 20 June 2022.

²¹⁶ CA Deb 15 November 1948, vol 7, <<http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C15111948.html>> accessed 20 June 2022.

²¹⁷ CA Deb 25 November 1948, vol 7, <<http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C25111948.html>> accessed 20 June 2022.

²¹⁸ CA Deb 03 December 1948, vol 7, <<http://164.100.47.194/loksabha/writereaddata/cadebatefiles/C03121948.html>> accessed 20 June 2022.

ethos of Indian people.²¹⁹ Although the constitution already had various provisions which reflect one or the other facet of the concept of secularism²²⁰, nevertheless, through the Constitution (Forty- Second Amendment) Act, 1976, the term ‘secular’ along with few other terms were added to the preamble of the Constitution. In the case of *S.R. Bommai*, secularism was held to be the basic structure of the Constitution.²²¹ It was further held that “though the freedom of religion has already been guaranteed to all persons in India, from the point of view of State, the religion, faith or belief of a person is immaterial. To the State, all are equal and are entitled to be treated equally. In the matters of State, religion has no place”.

The anti conversion Laws allow the government to assume the role of protecting religious identities of people and demonstrates intolerance towards the religious choices of the people. This is very much against the secular fabric of India which is holding the democratic character of the country. The Indian concept of secularism is not a negative concept of religious tolerance but it is a positive concept which anticipates equal respect for all religions from the end of the State and refrain that State from discriminating between religions. In a case, significance of secularism was highlighted where it was held that “any step inconsistent with constitutional policy is, in plain word, unconstitutional”.²²²

It is obvious that the States are actively interfering in partisan manner to safeguard and enable State intervention in the right to change one's faith through the passage of these laws. The apparatus developed has a significant and punitive impact. The ultimate result would be to question any sincere conversion and bring almost all propagation activities under the ambit of the impugned laws. These legislations are an attempt to use religious policing to harass and intimidate religious minorities and excessively interfere into their private lives rather than a neutral instrument to protect vulnerable groups. This violates the fundamental principles of the Constitution and runs counter to the secularism as a basic structure.

²¹⁹ Rajib Hassan, ‘Secularism concept and Application in India with special reference to Constituent Assembly Debates’ (2014) 3 Voice of Research <<https://ideas.repec.org/p/vor/issues/2014-06-18.html>> accessed 22 June 2022.

²²⁰ The Constitution of India (1950) arts 25, 26, 30, 15(1), 15(4), 16, 17, 29(2), 325, 330(1), 332(1), 27, 290(A), 28(1), 28(2), 28(3).

²²¹ *S.R. Bommai v. Union of India*, AIR 1994 SC 1918, 1919.

²²² *Ibid.*

5.3 EFFECT OF ANTI CONVERSION LAWS ON FREEDOM OF RELIGION

Article 25, among other rights also provides every individual the freedom to conscience. Dictionary meaning of conscience states “a person’s inherent moral sense of right or wrong which guides their behavior” and that a person’s moral sense of right and wrong can confirm to a particular faith or not. This freedom of conscience would entail that one can be non- religious and exercise the right to conscience or be religious and exercise the same right. Although, the apex court in the case of *Rev Stanislaus* held that the right to propagate does not include right to convert another person and upheld the validity of the Odisha and Madhya Pradesh Laws but it also in a way restrained the freedom of conscience and the right to propagate religion. Freedom of conscience enshrined in the Constitution will be rendered weak and hollow if each case of religious conversion will be presumed to be forced conversion unless proven otherwise through complicated process involving the State.

The court in *Rev Stanislaus* tested the validity of impugned statutes from the prism of public order²²³, a proviso stated in Article 25, thereby negating a person’s individual autonomy. Through this judgment, the court upheld every citizen’s freedom of conscience against forceful conversions but it also infringed a person’s individual autonomy.²²⁴The right to liberty and dignity would be redundant if a personal issue involving physical and mental autonomy were framed as a problem of public order. That rather than striving to ascertain the "right intentions" and legitimacy of someone's religion, the State has responsibility and duty to impose limits on those communal components that impede conversion from one faith to another.

As per the discussion of this dissertation, anti conversion Laws are largely in conflict with the fundamental rights though a particular provision of the recently enacted Acts of two states follow the precedent set by the apex court involving marriage and conversion. Section 6 of the Uttar Pradesh Act declare void any marriage done for the sole purpose of unlawful conversion or vice versa and Section 6 of the Uttarakhand Act also declare void any marriage done for the sole purpose of conversion where either the man himself converts before or after marriage or converts the women before or after the marriage. Both these provisions reiterates the judgment pronounced in the

²²³ *Ibid* 2.

²²⁴ *Ibid* 2.

case of *Sarla Mudgal*²²⁵ and *Lily Thomas*²²⁶ where subsequent marriage was held to be void since it was entered only for the benefits the other religion would provide and the conversion was observed to be improper.

In the case of *Sarla Mudgal*, it was held by the court that a person under the constitutional scheme has every right to exhibit his belief and ideas but that do not give them a right to infringe the religious right and personal freedom of another person. A case which pronounced upon the validity of second marriage entered into by a Hindu man after converting to Islam without dissolution of his previous marriage held the subsequent marriage to be void. The second marriage was held to be in violation of religious rights and personal freedom of his first Hindu wife. Further, on account of protection of Article 25 of the person who convert in the impugned case, the court held that mere conversion will not bring to an end the marital ties and a man solemnizing such second marriage cannot seek protection of Article 25.²²⁷

Similarly in *Lily Thomas*, it was held that faith in religion comes from the depths of the heart and mind. Religion, faith, and devotion are difficult to compare one to the other. It would constitute religious bigotry if the person pretended to have converted to a different faith solely for some sort of material gain or benefit. From this perspective, it becomes clear that a person who mockingly converts to a different religion where multiple marriages are legal in order to renounce the prior union and desert his wife cannot be allowed to take advantage of his exploitation because religion is not a commodity to be exploited. Every personal law recognises marriage as a holy institution and it should be preserved as well as respected.²²⁸

Taking in account both the judgments, it can be inferred that rendering void any marriage done for the sole purpose of unlawful conversion or vice versa will not amount to violation of the freedom of religion or any of its aspects. As held in the instant case that when the convert adopted Islam he only feigned the conversion to solemnize a second marriage and had no real faith in Islam and such freedom of religion cannot be used as a veil for evading other laws.²²⁹

²²⁵ *Ibid* 37.

²²⁶ *Ibid*.

²²⁷ *Ibid*.

²²⁸ *Ibid*.

²²⁹ *Ibid*.

5.4 EFFECT OF ANTI CONVERSION LAWS ON RIGHT TO EQUALITY

Article 14 of the Constitution enshrines within itself “principle of equality and prohibits discrimination on the grounds of religion, race, caste, sex or place of birth.” In interpretation of this article, the court has held that the equal protection of laws guaranteed does not mean that the same laws should be applied to all persons. The varying needs of different classes of persons often requires separate treatment and identical treatment for people coming from an identical circumstances will actually lead to inequality. Hence a “reasonable classification” becomes necessary so that no inequality occurs in the society.

For a classification to be a reasonable one, it must pass twin test, one, the classification must be founded on an intelligible differentia, i.e., there has to be a strong logical reasoning in classification of groups and two, the classification must bear a rational nexus to the objective of the law or the goal the law was enacted to achieve.²³⁰ Through development in the equality jurisprudence a new dimension has been added to article 14. The twin test though continues to be valid, doctrine of non-arbitrariness has been held to be a new concept of equality.²³¹ This implies any arbitrary action will eventually negative the principle of equality. The impugned laws not only fail the twin test of reasonable classification but also fail the new concept of equality developed in *the E.P. Royappa case*.

Arbitrary and illogical classification between conversion and reconversion showcases blatant disregard for the principle of equality. Laws which are enacted in the name of treating conversions as a matter of public concern where conversions through illegal means shall be penalized, exempting reconversion from its ambit neither holds good for classification found on an intelligible differentia nor by excluding a certain kind of conversion will help achieve the overall aim of the statute. Such illogical classification provided in the “Himachal Pradesh Freedom of Religion act, 2006” could not stand the judicial scrutiny and the particular section was struck down.²³² The court in its judgment opined, “*We fail to understand the rationale why if a person*

²³⁰ *Anwar Ali Sarkar v. State of West Bengal*, AIR 1952 SC 75.

²³¹ *E.P. Royappa v. State of Tamil Nadu & Anr.*, 1974 SCR (2) 348.

²³² Himachal Pradesh Freedom of Religion Act (2006) s 4; *Evangelical Fellowship of India v. State of Himachal Pradesh*, CWP No. 438 of 2011.

is to revert back to his original religion, no notice is required.”²³³The court further reasoned it with a hypothetical situation that if supposedly a person born in religion A at the age of 20 converts to religion B and then wants to convert back to religion A at the age of 50, he has spent many more years as a follower of religion B than religion A.

As per the court, reconverting to religion A should require a notice. The court with the illogic of the provision again framed a hypothetical situation as “*if a person born in religion A, converts to religion B, then converts to religion C and then to religion D, if he converts back to religion B or C, he is required to give notice, but if he converts back to religion A, then no notice is required. This also, according to us, is totally irrational and is in violation of Article 14 of the Constitution of India*”.²³⁴

Such classification between conversion and reconversion is based on the presumption that reconversion do not happen at the behest of fraud or other illegal means and all reconversions are done by the reconverts on their own will which not only goes against the whole intention of “freedom of religion Act” but also gives safe harbor to the supporters of *Ghar Wapsi*.

These laws also create irrational classification between people of different sex and different castes. All the anti conversion laws provides for stricter punishment if the victims of forced conversion are women, members of schedule caste or tribe or is a woman. These provisions not only deny person from these categories agency to decide for themselves but also views them as a permanent victim and susceptible to illegal conversions. Especially for the women, these laws will further stereotype them which is against the apex courts’ position in equality of sexes. “A stereotypical attitude of a particular sex shall not hold legitimate claims under the Constitution and there shall be equality between sexes in the matter of faith, belief, expression and worship.”²³⁵

²³³ *Ibid* 53.

²³⁴ *Ibid* 53.

²³⁵ *Indian Young lawyers Association v. State of Kerala*, 2018 SCC Online SC 1690.

5.5 EFFECT OF ANTI CONVERSION LAWS ON RIGHT TO LIFE AND LIBERTY

Article 21 which reads, “No person shall be deprived of his life or personal liberty except according to procedure established by law” is held to be core of the Constitution and is the most natural, reformist and progressive provision. This article secures right to life as well as right to personal liberty. Right to life does not mean a mere animal existence²³⁶ or bare survival but would also include leading a healthy life, protection of a person’s tradition, culture, heritage etc.²³⁷ The other facet of this article, right to liberty has received quite an expansive interpretation. It means “the right of an individual to be liberated from limitations or infringements on his person, regardless of whether they are straightforwardly forced or indirectly brought about by calculated measures. Right to privacy is a major facet of personal liberty”.

The provisions of the statutes²³⁸ which mandate potential convert to inform to the authorities and further invites their scrutiny throttles an individual’s personal liberty. Such encroaching and scrutinizing powers of the state in the private affair of a person are a grave assault on an individual’s personal liberty. In a case, the apex court has emphasized that the State in exercising its *parens patriae* jurisdiction should not transgress into the area of determining the suitability of partners to a marital tie and such decisions should be left with the individuals themselves.²³⁹ The provisions of these laws which are complicated and cumbersome negate the very idea of liberty and freedom to choose. Since assertion of choice is inseparable facet of liberty and dignity, unnecessary influence of the State will have a chilling effect on exercising this right. The court in a case has held that “the choice of an individual is an inextricable part of dignity and no one shall be permitted to interfere in the fructification of the said choice.”²⁴⁰

Further, the court has already set a precedent in the case of *Lata Singh*, “an adult individual’s choice to marry whoever they want even if it is inter- case or inter-religious marriage and further directs authorities to protect such couples against any

²³⁶ *Kharak Singh v. State of Uttar Pradesh*, 1964 SCR (1) 332.

²³⁷ *Sunil Batra v. Delhi Administration*, (1978) 4 SCC 409.

²³⁸ Uttarakhand Freedom of Religion Act (2018) s 8; Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 8.

²³⁹ *Shafin Jahan v. Ashok K.M.* (2018) 16 SCC 368.; *Salamat Ansari & Ors. v. State of Uttar Pradesh & Ors.*, (Crl. Misc. Writ Petition No. 11367 of 2020).

²⁴⁰ *Ibid* 50.

legal proceedings.”²⁴¹ These laws by criminalizing inter- religious marriages and conversion by way of marriage are against the set precedent. A person's freedom of choice includes the liberty to exercise the constitutional rights that are guaranteed to him. The sections of the impugned statutes²⁴² violate a person's right to freedom of religion, freedom of expression, and right to life and personal liberty. These statutes fundamentally disregards a person's right to freedom of choice and upholds the *parens patriae* theory by criminalising conversions due to marriage and presuming that all religious conversions are in some way the result of influence or force. This can be deduced from a simple reading of the law since they do not offer exemptions for voluntary conversions and instead place unreasonable limitations on an individual's decision to convert by involving the State in such private decision, like marriage.

Since these laws attempt to govern private affairs of the persons by unnecessarily giving State the power to intrude in the lives of people, it not only compromises their autonomy but also infringes their right to privacy. In *K.S. Puttaswamy v. Union of India*, it was held that “privacy is the core of human dignity, and it includes preservation of personal intimacies, sanctity of family life, marriage and sexual orientation. Personal choices governing the way of life are intrinsic to privacy. The destruction by the State of a sanctified personal space whether of the body or of the mind is in violation of the guarantee against arbitrary State action.”²⁴³

As per the provisions²⁴⁴, when the individuals have to approach the Magistrate to register their intention to convert, then the Magistrate get the inquiry done with regards to veracity of conversion, then he exhibits a copy of declaration on the notice board²⁴⁵ which exposes the convert’s personal details, it has a chilling effect on the right to privacy of the convert. The act of allowing the state to be satiated about the person’s personal choice is not only unconstitutional but also severely impinges their privacy. In this regards, the Hon’ble Supreme Court has held that “the right to be left alone is also fundamental to the right to privacy and to have to inform the State about

²⁴¹ *Lata Singh v. State of Uttar Pradesh & Ors.* (2006) 5 SCC 475.

²⁴² Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 3 (1); Uttarakhand Freedom of Religion Act (2018) s 3.

²⁴³ *Ibid* 50.

²⁴⁴ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 8; Madhya Pradesh Freedom of Religion Act s.8.

²⁴⁵ Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act (2021) s 9 (2).

family matters, violates the exercise of liberty.”²⁴⁶ Further elaborating on liberty, the court in another case held that where a conflict arises, the quest for human dignity, liberty and equality must prevail.²⁴⁷

5.6 CONCLUSION

As discussed in the chapter the anti conversion Laws do have an effect on the various rights the Indian Constitution guarantees. One of the basic structures of the constitution, secularism is affected due to the operation of the impugned laws in the society. Moreover, several provisions simultaneously affect rights such as equality, privacy, liberty etc. Although one of the provisions do respect one aspect of right to religion and reiterates the judicial precedent but largely these laws are in conflict with the guaranteed rights and needs to be amended.

²⁴⁶ *Ibid* 50.

²⁴⁷ *Ibid* 76.

CHAPTER VI

CONCLUSION AND RECOMMENDATIONS

6.1 CONCLUSION

Religious conversion is not a recent problem and has long been a contentious issue. Even though the Indian Constitution provides the right to freedom of religion, conscience and propagation the debate around its scope in light of freedom of religion Acts is a burning issue.

Through this dissertation the concept of religion has been discussed both sociologically as explained by various philosophers and also legally as pronounced by the judiciary around the world. In the context of India, the apex court has defined religion and its facets through catena of judgments which ultimately established the meaning and scope of religious rights. The anti conversion Laws enacted by individual states were tested on these rights. Especially, the pronouncement on the right to propagation and freedom of conscience set the stage for enactment of more anti conversion Laws.

Religious conversion is a part of right to religion and is being practiced since ages in India owing to various reasons. As discussed in the dissertation, the reasons are many and are permitted by the Constitution of India but forced conversions are prohibited and penalized by legislation. Conversion through coercion, fraud, allurements etc are defined as forced conversion and is brought within the ambit of anti conversion Laws.

As would be clear from the discussion of the dissertation, anti conversion Laws are enacted to check forced religious conversions through force, fraud, allurements etc. Incidents such as forcing people to convert their religion, alluring vulnerable people to join the converter's religion, performing marriage by misrepresenting one's religious identity or converting religion without embracing it only to enter into another marriage are on the rise and are not only impinging upon the rights of people but also damaging the secular fabric and creating communal tensions in the society.

Since such incidents hammer mainly upon the religious rights under Article 25 of the Indian Constitution along with other rights, several states to protect these rights and preserve public order have enacted anti conversion Laws. Article 25 which provides

for freedom of conscience, practice, propagate and profess also subjects these rights to public order, morality, health and other provisions of part III of the Constitution. It is in order to secure the public order in the society, state governments have enacted anti conversion Laws. Though these laws are not new and were enacted as early as in 1936, post- independence there are ten states which have passed these laws.

Prima facie it seems a well intended law aimed to protect people's right especially women and persons from Schedule caste and Schedule tribe but ironically few provisions comes directly in conflict with the same rights for which these laws were enacted in the first instance. One of the first such laws in independent India was enacted by the state of Orissa closely followed by the state of Madhya Pradesh and both the laws were challenged. Though both the Acts were upheld by the apex court, the court only tested the legislative competence of the state assemblies in enacting such type of laws and also held these laws to be well within the ambit of Article 25. The court in the impugned case did not examine all the aspects of the Acts including the violation of right to privacy, autonomy, right to life, secularism, unreasonableness and arbitrariness of the Acts.

As discussed in the dissertation, vague definitions provided in all the Acts has the potential to cover broad activities of certain religious group which are an important aspect of their religion and these definitions unnecessarily curb their freedom of expression and propagation. A judgment of the High Court observed the problems of such definitions and held it to have a chilling effect on the various legitimate methods of proselytization. Further, few Acts explicitly keeps reconversion or coming back to one's original religion out of its ambit. This provision not only presumes that all reconversions are will full and free from any inducement, allurements etc. but it also creates an unreasonable classification between conversion and reconversion thereby blatantly destroying the essence of Article 14.

Further, few Acts allows family members to file an FIR against such conversion apart from the people converted themselves. This allows the disgruntled family members to cause obstruction in the process against their children who went against their wish and changed religion. The offences under the Acts have been made cognizable and non-bailable and the burden of proof lies on the accused. This is a clear discharge from the accepted criminal law jurisprudence.

A very concerning provision which mandates declaration of desire to convert pre conversion and post conversion before the District magistrate blatantly infringes right to autonomy as well as privacy. Then it further empowers the Magistrate to enquire about the genuineness of the conversion. The Act of Uttar Pradesh went ahead a step further and requires the Magistrate to exhibit a copy of declaration on the notice board. These provisions not only increase executive interference in personal matters of persons but also dilute the right to privacy of the convert by posting declaration form on the notice board and turning a private affair into a public one. Recently a High Court judgment in the backdrop of Special Marriage Act which contained similar provision made it declaratory instead of mandatory. Though such provision still feature in the anti conversion Acts.

These laws do little good to further its objects and do much harm in a civilized country like India. Various reports discussed in the dissertation suggest that these laws are being used to target a specific religion and violence against religious minorities have increased. Further, as the statutes exempt reconversions, cases of *Ghar Wapsi* have increased which if done through fraud or allurement etc. is nothing different from conversion. These laws have set a narrative in the society that all the conversions are forced and needed to be inquired even though a declaration form indicating the intention to convert willfully is the very step in the process of conversion as per the law.

As stated earlier these laws not only allows administration interference in private affairs but also furthers the notion of class and gender divide by denying the agency to women and persons belonging to Schedule caste and Schedule tribes.

With regards to the role of judiciary in shaping India's religious rights, the nation's higher courts have applied and construed all of the constitutional clauses and legislative laws relating to religious freedom in diverse ways. When taken as a whole, these court rulings outline the boundaries of religious freedom and rights for individuals as well as for communities, as well as the place of religion in State affairs and the role of the State in matters of religion. In India, the judiciary has taken a leading role in deciding religious disputes. Many religious disagreements between individuals and the State and between diverse communities, sects and groupings have been settled as a result of the review of these situations.

Faced with the dual challenges of harmonizing constitutional protections to religious freedom with traditional religious practices the Indian Supreme Court has walked a double edged sword acknowledging that it is often searching for a common ground and strike a correct balance. Judiciary has done a tremendous job while reconciling the conflicting religious issues in India. It is the pious responsibility of the judiciary to uphold this faith reposed by the citizens of India and collaterally maintain the fine balance of separation of powers between three organs. This is the way out through which we can achieve the true spirit of the Constitution.

6.2 RECOMMENDATIONS

1. The meaning of certain terms e.g., inducement, allurement should be comprehensively defined in order to avoid the misuse of laws. Though in the case of *Rev. Stanislaus* these terms have been constitutionally upheld yet for the better application of these laws on the ground comprehensive meaning is required. A badly drafted law and uncertain meanings widens the scope of the law which unnecessarily impinges upon the rights of the people due to its ambiguous meaning.
2. Certain Acts have created an artificial distinction between conversion and reconversion. These provisions not only hammers on the concept of equality but also wrongly presumes that all reconversions are willful hence need not be under the ambit of anti conversion Laws. As discussed in the dissertation there are certain religious groups who carry out mass reconversions and also claims to do so which is against the right to conscience available to all persons in India. Hence, such provision should be struck down from the statutes.
3. The provision which casts the burden of proof upon the accused should also be struck down since this provision departs from the general criminal law jurisprudence where the burden is upon the prosecution or on the person who refutes the existence of a fact. In addition the offence are also made cognizable and non- bailable so to discharge a burden of proof becomes almost impossible for the accused. In a bid to bring the statute in line with the general criminal jurisprudence and the concept of innocent until proven guilty this particular provision should be struck down.

4. The Acts should also not differentiate between genders and people from different communities since it furthers the notion in the society that certain category of people are always vulnerable and they cannot exercise their free will without State's assistance. The State have a duty to protect and can make special provisions for these category of people but since religion and conversion is a very private affair such type of provision should be struck down in order to allow minimum state interference.
5. Although the Acts are enacted to prevent only forced conversions but the extremely complicated paper work and involvement of administrative authorities makes it practically impossible to convert even willfully or discourages to convert at the least. This goes against various International Conventions which recognizes conversion to which India is a party. Also inquiry of every conversion even after producing the document by the potential convert of his willful intention to convert negates the very requirement of the document in the first place. Hence such provision should be streamlined and be made friendlier.
6. The public display of declaration containing personal information and the requirement to inform the Magistrate pre and post declaration in general should be made advisory and not mandatory. These declarations are very private and shouldn't get in the way of a sincere, voluntary conversion. By making these declarations public, religious and civil society groups can frighten and threaten potential converts. Since the Acts allows more people to meddle in this incredibly private decision to alter one's religion, interfaith couples in case of marriage already feel threatened and victimized by their families and relatives and society in general.
7. Police Inquiry should not be carried out as a matter of routine in every case of conversion. The Ordinance makes Police inquiry mandatory after a pre-conversion declaration is given to ascertain the genuineness of the details of

the declarant and to ensure that the person intending to convert is doing so out of their own free will. Police Inquiry should only be conducted when there is a complaint. If it is conducted before every conversion it will discourage even voluntary conversions. Conducting of police inquiry as if every conversion is a criminal offence not only infringes a person's rights under article 21 and 25 but also creates a stigma against those who intend to convert.

8. The legislation ought to have a mechanism in place to eliminate frivolous accusations from relatives or family members who oppose the conversion. The laws contains provisions for any aggrieved family or friends or other persons to lodge a complaint under the respective Acts if they believe that an intended conversion violates the provisions. A person converting to another religion and a person facilitating the conversion can easily be termed as offenders under the Act and can be subject to severe punishment under the Acts. Therefore, governments should be very careful not to infringe on the Fundamental Rights of a person by creating such intrusive provisions.
9. Since independence a number of States have passed state level legislation restricting religious activities that are thought to be intended to convert people to a different religion through illegal means. These laws are enacted in pursuance of public order issues listed in List II. The Central Legislature has not yet passed any legislation dealing specifically with the implications of changing one's religion or its causes. In the seventh schedule, the word "religion" is not used explicitly and hence in pursuance of Entry 97 of List I the union government in consultation with the Law Commission of India should enact a comprehensive law on this matter. A central law will not only ensure a uniform application of the law throughout the country but will also avoid the confusion and multiplicity of various laws of different states.
10. Further, it is recommended that the central law should clearly define the scope and ambit of conversion ceremonies in effecting conversion. The absence of prescription of specific procedure creates a legal vacuum in the area of religious conversion which is not in tune with the constitutional guarantee of

freedom of conscience. For this purpose the recommendations of 235th Law Commission of India report shall be consulted.

11. A training and sensitization programme on religious freedom and human rights should be organized for the police forces, member of the judiciary and other authorities involved in the process of conversion and justice delivery system in general.
12. The Law Commission of India should be assigned to undertake a research so as to indentify the impact and misuse of the Acts in states where these laws are in force.
13. As religion and religious conversion is a personal matter, instead of involving State a mechanism should be developed to facilitate dialogue between heads of religious communities, legal experts and representative of civil society so as to address the issue of forced conversion privately.
14. The Union Government shall enact a comprehensive legislation against targeted and religious violence under the impugned Acts.
15. Prosecute Police officials who fail in their constitutionally mandated duty to enforce the law of the land, by being complicit in attacks against religious minorities and by shielding the attackers or otherwise scuttling due process of law.
16. Ensure that an active Commission for Human Rights and Commission for minorities are operational in every state, and that members of each commission are appointed by transparent and non-partisan procedures.

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