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VALIDATING THE ANTI-CONVERSION LAWS: A CRITICAL ANALYSIS OF REV. STANISLAUS V/S THE STATE OF MADHYA PRADESH

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Abstract

The recent love jihad discourse has become a source of debate and controversy all over the country but are these laws legal? Even though anti conversion laws have existed in India since colonial times, odisha and Madhya pradesh were the first two post independence states to pass such laws. These laws were challenged in the supreme court and eventually the case of Rev. stanislaus V/s state of MP upheld the validity of these laws and since then this judgement has served as the primary weapon for legislatures to make these laws but was the supreme court's judgement in consonance with the constitution? This study seeks to critically analyse the judgement of Rev.stanislaus V/s the state of MP.

Backdrop of the judgement

Currently 12 out of 28 states in India have anti-conversion laws in place and these controversial laws hold a key element of the state's relationship with religion. The history of Anti-conversion laws can be traced all the way back to the colonial years of the 1930's and 40's. Orissa was the first state to pass an anti-conversion law post independence in 1967¹ creating a blueprint for others. The Orissa law barred religious conversions done through force, fraud or inducement. The law was struck down by the Orissa High Court in the case of *Yulitha Hyde and ors V/s state of Orissa and ors.*² for being ultra vires of the constitution which led to the emergence of three primary legal contentions pertaining to anti-conversion laws. The first contention was whether these laws curb the right to propagate and profess as per the constitution. The second contention was whether the state is legislatively competent to make these laws with regards to the seventh schedule of the constitution. The third contention was whether the act was ambiguous and susceptible to misuse. The Orissa HC stated that the act was in violation of all the aforesaid contentions and was struck down. The court opined that article 25 of the

¹ Orissa freedom religion act, 1967 (Act 2 of 1968)

² AIR 1973 Ori 116

constitution guarantees freedom of propagation and the prohibition of conversion by force or fraud is already a limitation under the article. Furthermore The court stated that the use of the word inducement is vague and ambiguous and therefore in contravention to article 25(1) and that the state government is not competent to make laws on the matter as it is a matter of religion and not of public order³. This judgement laid down the platform for the matter to be further scrutinised by the Supreme court. Madhya Pradesh passed its own anti-conversion law a year after Orissa in 1968⁴. The primary difference between the Orissa and the MP law was that the latter used the word allurements instead of inducement. The MP law was also struck down by the Madhya Pradesh High Court which laid the platform for the case of *Rev. Stanislaus V/s the state of MP*⁵.

Analysing the legal contentions.

In the *Rev. Stanislaus* judgement, the apex court scrutinised the judgement of the Orissa as well as the MP High Court. The court stated that freedom to propagate religion under article 25 does not grant a person the right to convert someone, it merely means to transmit and spread one's religion through the exposition of its tenets. It further stated that article 25 grants the freedom of conscience as well and if a person undertakes the conversion of another, it violates a person's freedom of conscience⁶. The aforesaid decision of the court shows that it fell short on understanding the gravity of the matter and therefore gave a shallow interpretation of the law.

On 6th december, 1948, the deliberations over the right to propagate and profess religion took place. Sceptics of the fundamental right to propagate religion contended that the right to propagate would lead to forceful conversions and erode the inherent culture India possessed. KM Munshi during this discourse stated "*So long as religion is religion, conversion by free exercise of the conscience has to be recognised. The word 'propagate' in this clause is nothing very much out of the way as some people think, not is it fraught with dangerous consequences.*"⁷ and almost three decades later, the apex court touched upon the same dilemma but didn't do justice to it as their analysis lacked depth which made this precedent susceptible to misuse. The aforementioned analysis of the court was not in line with what the constituent

³ Id. para.44

⁴ Madhya Pradesh freedom of religion act,1968 (Act 27 of 1968)

⁵ (1977) 1 SCC 677

⁶ Id. para.20

⁷ Constituent assembly debates on December 6th, 1948 available at:<http://www.scoonline.com/Print/ii86xZju> (last visited August 24,2024)

assembly envisaged. The constituent assembly unanimously agreed that the right to propagate one's religion comes under freedom of expression and as long as there is no undue influence to convert, conversion can be a result of propagation⁸. Propagation postulates a large part of religion. Christianity promotes the propagation of its religion⁹ whereas instances like the Shuddhi movement illustrate that conversions has been prominent in hinduism as well¹⁰. Propagation is an offset of free conscience, seldom a detriment of it. The judgement of the court threatens the exercise of free conscience due to its blurry analysis. The court failed to provide clarification on what constitutes a "person undertaking conversion of others". Does a priest performing a conversion ceremony of a person who is converting on their own accord come within its ambit? The scope for subjective interpretation can be dangerous especially in matters pertaining to religion as it can pose as a threat to the basic fabric of secularism and free conscience. The freedom to propagate religion was added to the constitution in light of the constituent assembly's vision of a secular India and the same has been reiterated by the Supreme Court in *S.R Bommai V/s union of India*¹¹ which states that secularism is sacrosanct to the Indian constitution and should not be tampered with and the judgement puts this basic fabric of our country in peril Furthermore, the apex court in the case of *Indian social action forum V/s Union of India*¹² held that "It is settled principle of interpretation that the provisions of the statute have to be interpreted to give the words a plain and natural meaning. But, if there is scope for two interpretations, the Courts have preferred purposive construction, which is now the predominant doctrine of interpretation"¹³. The court in the Rev.Stanislaus judgement did not touch upon the usage of words such as "inducement" and "allurement" which can be subject to misuse. The court, even though it upheld the constitutional validity of anti-conversion laws, failed to provide an interpretation of the law. Inducement and allurement are words which can have a wide connotation. Does a person merely preaching the tenets of their religion be said to be inducing or alluring another? Even though the act provides for a definition of these words, its application should be cleared by the court.

The second major contention was whether making anti-conversion laws came within the ambit of religion or public order under the seventh schedule of the constitution. Religion is not

⁸ ibid.

⁹ Supra note 3

¹⁰ Mehta, Nirav "The Inner Revolution: Shuddhi and the Reinvention of Hinduism," Swarthmore Undergraduate History Journal: Vol. 1: Iss. 1 , Article 2(2020)

¹¹ (1994) 3 SCC 1

¹² Civil appeal no. 1510 of 2020

¹³ Id. para 17

outrightly mentioned in the seventh schedule but entry 97 of the union list states that only the parliament can make laws on subjects not mentioned in the list¹⁴. Whether religious conversions pose a threat to the public order of a state is questionable. The rate of religious conversions in India is not even 1% across religions¹⁵. Forceful religious conversions on the other hand are not only a violation of a fundamental right but also a threat to the social fabric of our country but do they pose a threat to public order? The court in the *Rev. Stanislaus* judgement states that conversion can be used as a tool to ignite communal passions and therefore comes under the purview of public order¹⁶. The reasoning is correct, but public order is already mentioned as a reasonable restriction for freedom of religion under article 25 of the constitution, forceful conversions by the way of fraud and misrepresentation are a violation of freedom of conscience. Article 254 of the constitution gives the doctrine of repugnancy and the Supreme Court touched upon the topic of contradictory laws as far as 1954 in *Zaverbhai Amaldas v. the State of Bombay* which stated that two laws occupying the same field are void and thus central law prevailed over the state law¹⁷. Therefore the constitution has already accorded for the maintenance of public order as well as fraudulent conversion therefore the state should not make laws on the same subject.

Misuse of state level laws

A criticism of the anti-conversion laws is that it infringes a person's right to privacy as these laws require a person to make their conversion public via notice/intimation to the competent authority. This argument holds weight as religion is something which is personal and sacrosanct to an individual and no one should be mandated to make their conversions public. The earliest recognition of this issue was by the Himachal Pradesh High Court where it declared a provision of the Himachal Pradesh Freedom of Religion Act, 2006 as unconstitutional because it required the citizens to notify the authorities of their desire to convert to another religion¹⁸. The same has been reiterated in the landmark *KS Puttaswamy* judgement¹⁹, in which it is held that the Constitutional right to the freedom of religion under Article 25 has implicit within it the ability to choose a faith and the freedom to express or not express those choices to the world²⁰.

¹⁴ The constitution of India, VII schedule, item 97 list 1

¹⁵ "Key findings about the religious composition of India" available at: <https://www.pewresearch.org/short-reads/2021/09/21/key-findings-about-the-religious-composition-of-india/> (last visited August 24, 2024)

¹⁶ *Supra* note 5, para.25

¹⁷ (1954) 2 SCC 345, para 16

¹⁸ *Evangelical fellowship of India v. state of Himachal Pradesh*, 2012 SCC OnLine HP 5554

¹⁹ *KS Puttaswamy v. Union of India*, (2017) 10 SCC 1

²⁰ *Id.* Para 298

Therefore these statutory mandates given by the states are in contravention of the right to privacy.

Another criticism of the state level laws is that these laws have paved the way for blatant misuse. If a family doesn't agree to an interfaith marriage, they can file a case as they've been given the power to file an F.I.R under the statute. Therefore these laws can be a tool for harassment A study of 101 F.I.R's under the Uttar Pradesh anti conversion laws showed that the police registered the cases on third party information in more than half of these reports²¹. In UP from 2021-2023 more than 400 cases have been registered yet only about 40% of the people have confessed to converting forcefully²².

Conclusion

Conversions take place for numerous reasons. For some it's a spiritual choice, some convert to marry and escape the social stigma attached to it but in India, one of the biggest reasons to convert is not spiritual but in fact a matter of dignity. To escape the jaws of the age-old caste system and the systematic oppression that comes with it, many people of hindu religion choose to convert. Even the apex court has touched upon the issue of conversion of minorities²³. All things considered, conversions can be part of propagation, can be a necessity or a matter of free conscience, forceful conversions are and should stay unlawful but provisions to dodge the same have already been provided by the constitution. Therefore the vaguely worded state level anti-conversion laws should be revisited and the Supreme Court should rethink the current precedent set by the Rev. Stanislaus judgement and it has been presented by the opportunity to do the same as the case of *citizens for peace and justice V/s the state of Uttar Pradesh*, challenging the UP anti conversion laws is pending before the Hon'ble court.

²¹ "Hindutva Groups Are Misusing UP's Anti-Conversion Law, As Police Register Cases With No Legal Standing" available at: <https://article-14.com/post/hindutva-groups-are-misusing-up-s-anti-conversion-law-as-police-register-cases-with-no-legal-standing--65260e4c5987e> (last visited August 24, 2024)

²² Namita Bajpai, "833 held in 427 cases of forcible religious conversion in UP since Jan 2021" the new Indian express, May 11, 2023

²³ "Social Stigma May Continue Even After Conversion' : Supreme Court Judge Says While Hearing Plea To Extend Reservation To Converted Dalits" available at: <https://www.livelaw.in/top-stories/reservation-for-converted-dalits-sc-reservation-for-converts-to-christianity-islam-supreme-court-justice-ahsanuddin-amanullah-226186> (last visited August 25, 2024)