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ISSN: 2582-6433

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Are Anti-Conversion Laws The Antithesis To Secularism? A Critical Analysis Exploring The (Un) Constitutionality Of Anti-Conversion Laws.

Authored By - Vasundhara Saxena

Recently, conversion of religion has become the focal point of media, political, judicial, and legislative attention in India. The anti-conversion law bandwagon is being joined by multiple states in India – the State of Uttarakhand has been the latest to join in by passing the Uttarakhand Freedom of Religion (Amendment) Bill, 2022 which introduced stricter laws against conversion. Presently, 10 states in India have passed laws that impose punitive consequences on individuals who convert their religion or participate in the process of conversion. Some of these laws have been challenged in High courts. Some remain to be challenged. With the setting of a precedent like *Justice K.S.Puttaswamy (Retd.) vs Union Of India*[1], can the previous position of the Hon'ble Supreme Court sustain? And if it cannot sustain, then can the state laws made as a consequence of such legitimisation sustain? This article seeks to analyse and address how most anti-conversion laws violate the vires of the Constitution and impinge on basic fundamental rights like privacy and the right to freedom of religion. Multiple provisions from multiple acts have been discussed below.

1. HISTORICAL OVERVIEW –

Even though the debate started much before the Constitution was created[2], the creation of anti-conversion laws at the state level began approximately around 1960, after the creation of a Union level law failed due to lack of support.[3] Madhya Pradesh (1968), Odisha (1967), Gujarat (2003), Chhattisgarh (2006), Uttarakhand (2018), Jharkhand (2017), Himachal Pradesh (2019)

[1] (2017) 10 SCC 1
[2] Constituent Assembly Debate, Volume 7 (December 3, 1948), <www.constitutionofindia.net/constitution_assembly_debates/volume/7/1948-12-03 >, accessed on December 29, 2022.
[3] James Andrew Huff, Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws, (2009), 10 RUTGERS J. L. & RELIGION 1.

ISSN: 2582-6433

etc. have all passed legislations addressing anti-conversion with a variety of punishments. In essence, the thought process behind these laws is archaic, but the actual and rapid manifestation of such laws at the State level is fairly recent.

2. POSITION OF THE SUPREME COURT

The *Rev. Stanislaus v. State of Madhya Pradesh*[4] judgement elicited immense criticism from the legal fraternity for declaring that the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968 and Orissa Freedom of Religion Act, 1967 were constitutional and restrictions on conversion were justified, for it restricts "Freedom of Conscience" and threatens "Public Order".[5] The MP and Orissa laws were eerily similar in their imposition of bureaucratic intervention. However, presently the case of *State Of Madhya Pradesh vs. Samuel Daniel*[6] *is pending before the* Hon'ble *Supreme Court, where the Madhya Pradesh Government has appealed against the stay order given by the Madhya Pradesh High Court, where the Court made certain provisions inoperative on grounds of unconstitutionality. Presently, the* Hon'ble *Supreme Court expanded the right to privacy to include the right to practice and profession through K.S. Puttaswamy and Anr. vs. Union of India*[7] *which should be understood to change the stance on not just conversions, but also directly nullify the legitimacy of such laws which encroach upon individual freedom of religion by such intrusive, punitive and intimidating provisions. Though the Rev. Stainislaus v. State of M.P.*[8] was not explicitly mentioned, it is unfathomable that these 2 precedents could co-exist.

3. ANALYSING THE INTERPRETATION OF PUBLIC ORDER

The creation of anti-conversion laws under the reasonable restriction "public order" given under Article 25 does not seem logical, given the difference of context. The interpretation of exceptions to fundamental rights of individuals, which are also subject to other rights granted under Part III of the Constitution of India, cannot possibly be equated to that of the "Public order" mentioned in Entry I of List II of the Seventh Schedule of the Constitution of India.

[4] (1977) 1 SCC 677
[5] 4 Laura Dudley Jenkins, Legal Limits on Religious Conversion in India, (2008) 71 LAW & CONTEMP. PROBS. 109.
[6] SLP(C) No. 22733/2022.
[7] (2017) 10 SCC 1
[8] supra, n 4.

ISSN: 2582-6433

Even though the Hon'ble Supreme Court gave little explanation regarding why the impugned Act could fall under "Public Order" in *Rev. Stainislaus v. State of M.P.*[9],and was heavily criticised. The Odisha High Court had taken a different stance in *Mrs. Yulitha Hyde And Ors. vs State Of Orissa And Ors*.[10] , where Hon'ble Court used the doctrine of pith and substance to affirm that the same interpretation cannot be given to the 2 terms. In this judgement, the High Court refused to cover the Orissa Freedom of Religion Act, 1968 under the protection of Entry I of List II, which covers maintenance of public order. How does conversion of an individual from one religion to another pose a public concern enough to be a matter of public order? Unless such a conversion causes riots or public upheaval, a private conversion ceremony cannot possibly constitute a threat to public order. Subsequently, the Hon'ble Supreme Court overturned this reasoning in *Rev. Stainislaus v. State of M.P*. completely. The proportion of application and context of these 2 terms will inevitably be different in context of fundamental rights and national security, and equation of the 2 is sheer weaponization of the law.

4. USAGE OF VAGUE TERMS

Anti-conversion acts have a pattern of evading clarity. For example, the newly passed Uttarakhand Freedom of Religion (Amendment) Bill, 2022 and Section 12 of the Haryana Prevention of Unlawful conversion of Religion bill, 2022 define "Mass Conversion" as a conversion of merely 2 or more persons at once. The incredibly low threshold is capable of covering conversions of miniscule family units (who are converting out of free will) of as much as 3 people, which is heavily disproportionate and untrue to the word "mass". Does a simple conversion ceremony by a family also qualify as a "mass conversion"? Are there no other qualifying elements differentiating a small group's conversion from a mass conversion? How does one distinguish between the two? Another such term is "Unlawful Religious Conversion" defined as "any conversion which isn't in accordance with law of the land". This umbrella term can conveniently be extended to cover any and every conversion in its garb on any pretext available.

Another such example is Section 3 of the Uttar Pradesh ordinance 2020 which prohibits "conversion by marriage". If this implies that there shall be no conversion after the event of marriage, that means no interfaith marriages can take place at all, for the marriage shall precede

[9] Ibid.
[10] AIR 1973 Ori 116

ISSN: 2582-6433

the conversion, which is prohibited by the Act. By making post-marriage conversions punishable, a tight restriction is being created on interfaith marriages, which is a highly objectionable restriction to place on personal choice of faith under Article 25 of the Constitution.

A similar provision was enshrined in Section 3 of the Gujarat Freedom of Religion Act, 2003 which was challenged by Jamiat Ulama-E-Hind Gujarat[11] in the Gujarat high Court. The High Court held the provision to be infringing the freedom of choice under Article 21 of the Constitution and Section 3 and other provisions were declared inoperative. However, this order is presently under challenge before the Hon'ble Supreme Court by the Gujarat government. Similarly, the Odisha High Court held that the usage of the term "inducement" in the Orissa Freedom of Religion Act, 1968 was too vague and capable of covering legitimate proselytising activities.

5. BUREACRATIC INTRUSION, PUBLIC NOTICES AND VIOLATION OF PRIVACY

While these state laws differ in slight nuances, most laws[12] carry an identical provision – which is that of necessitating the involvement of bureaucracy at some level through a public notice. For instance, the Haryana Prevention of Unlawful Conversion of Religion Rules, 2022 mandate the declaration of conversion through a public notice. Such notices intend to invite objections to such conversions. This declaration is an open invitation to defamation and public criticism of the converting individual, which is an egregious violation of the right to privacy under Article 19 of the Constitution. Privacy entails protection from intrusion the State and private actors.[13] Similar provision exists in Section 2(fa) Himachal Pradesh Freedom of Religion (Amendment) Bill, 2022 which has been passed by the Legislative Assembly.

The District Magistrate's decision on this declaration will determine whether or not an individual can change their religion – instead of an individual's personal choice, which is also

[11] Jamiat Ulama-E-Hind Gujarat vs State of Gujarat, SLP(C) 019945 - 019946 / 2021
[12] Uttarakhand Freedom of Religion Act 2018, s 2., Madhya Pradesh Freedom of Religion Act 2021, s 10., Haryana Prevention of Unlawful conversion of Religion bill 2022, s 9., Gujarat Freedom of Religion Act 2003, s 5., Jharkhand Freedom of Religion Act 2017, s 5., Tamil Nadu Prohibition of Forcible Conversion of Religion Act 2002, s 3., Arunachal Pradesh Freedom of Religion Act 1978, s 5.
[13] Supra n 7.

ISSN: 2582-6433

a clear infringement of Article 25 of the Constitution. Not only does Article 25 entail the right to choose a faith, it also entails the right to choose to reveal or not reveal this choice publicly.[14] While it is not intrusive for the state to have basic information regarding an individual, the interventionist and discretionary power being given to District Magistrates to decide whether or not an individual will be allowed to convert is a gross violation of the right to privacy and freedom of religion. Even as a preventive measure, such sieving and surveillance of conversions cannot possibly be justified under the garb of preventing forced conversions. The Himachal Pradesh High Court in *Evangelical Fellowship of India vs. State of Himachal Pradesh* [15] (which challenged the Himachal Pradesh Freedom of Religion Act, 2006) and Madhya Pradesh High Court in *Rev. Suresh Carleton vs. The State of M.P.*[16] (which challenged the Madhya Pradesh Freedom of Religion Act, 2021) regarding the same provision of notification to the District Magistrate were examined and held the provision to be unconstitutional. The

6. THE EXEMPTION OF RECONVERSION

Several Acts[17] like Section 5 of the Uttarakhand Freedom of Religion Act 2018, exempt reconversions. The question is, can allurement, force or coercion not be used to reconvert an individual to their previous religion? This raises concerns regarding equal protection of laws and equality for all[18]. Article 14 of the Constitution prohibits class legislation, but "reasonable classifications" can still be made, provided they pass an essential two-pronged test – first, there must be intelligible differentia between the classes created, and that such classification must form a reasonable nexus with the objective of the Act. Firstly, there is no objective reason to imply that reconversions cannot be forced or done using the methods prohibited by the Act. Secondly, if conversion is capable of causing public disorder, so can reconversion, meaning that there is no rational nexus between this provision and objective of the Act. This exemption is particularly suspicious.

[14] Ibid, 245.
[15] (*2003) 7 SCC 439*
[16] WRIT PETITION NO.6263 OF 2021
[17] Chhattisgarh Freedom of Religion (Amendment) Act (2006) s 2., Uttar Pradesh Prohibition of Unlawful Conversion Ordinance (2020) s 3.
[18] Tehmina Arora, *India's Defiance of Religious Freedom: A Briefing on 'Anti-Conversion' Laws' (2012)*1IIRF Reports 5.

ISSN: 2582-6433

7. CONCLUSION –

Even though anti-conversion laws don't explicitly ban conversions, they pose an obstructive, intrusive and unjustifiable challenge in the way. They place checkpoints of bureaucratic interference which may not allow conversion to fructify. The law is being used as a means to an end in this case. The nature of this laws seems to stem from mass hysteria, instead of actual evidence of a conversion crisis. These laws are "Heckler's veto"[19] in play – where conversion itself has been restricted to curb forced conversions. Hence, the state has no legitimate interest in monitoring the conversion of an individual's faith, and no special legislation is required for such conversion.

[19] For clarification on the meaning and scope of the term, See Gautam Bhatia, 'Offend, shock or disturb : Free Speech under the Indian Constitution (2016) Oxford University Press 32