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Email –

editor@ijlra.com

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**THE KARNATAKA PROTECTION OF RIGHT TO
FREEDOM OF RELIGION BILL, 2021**
(Critical Analysis of Karnataka Anti-Conversion Bill, 2021)

By: Drashti Patwa

Karnataka Anti-Conversion Bill
An Extensive and Scrupulous Study on Contemporary Issue

Abstract

Anti-Conversion Laws in India are very volatile. Various states have enacted anti-conversion laws, including Orissa, Madhya Pradesh, Gujarat, Uttar Pradesh, to curb the forceful religious conversions. There is a history of conversion from one religion to another to grow a particular religion widely. To fulfill a particular community's growth, people end up converting the weak and easily influenced sections of the society into their religion through allurements. Such practices are illegal and unlawful, against the realm of the Indian Constitution, which guarantees the right to conscience. Therefore, the government introduces anti-conversion laws in India to control immoral and unlawful conversions. Recently, the Karnataka government introduced the Karnataka Protection of Freedom of Religion Bill, 2021, in the Karnataka State Assembly and was passed with a voice vote successfully. The bill is still pending to be tabled at State Legislative Council. Thus, this article deals with the extensive study of anti-conversion laws in India. The article covers the history of anti-conversion laws, features of current Karnataka Anti-conversion Bill and comparative study with similar laws of other states, the constitutionality of Anti-Conversion Laws in India, and challenges that the said Karnataka bill is facing at the time of introducing at the State Assembly.

Keywords: Anti-Conversion Laws, Article 25, Freedom of religion, secularism

Introduction

India is a diverse country that consists of various religions in itself. It has a rich heritage and a history of foreign invaders' constant invasions¹. There have been several instances of forceful conversions to grow their particular community. Such forceful and fraudulent conversions have caused fear, especially in the minds of the Hindu community. Such unconsented conversions are significant issues considered by current right-wing nationalists of India. Therefore, the need for anti-conversion laws is felt in the country.

The Karnataka Protection of Right to Freedom of Religion Bill, 2021, was tabled in the Karnataka State Assembly on 21st December 2021 and was passed by the said assembly on 23rd December 2021². The said bill has been passed by voice vote, although there has been strong opposition against this bill by the opposition parties. This bill is still pending to be tabled at the State Legislative Council. The Congress party has firmly opposed the bill; however, the BJP government pointed out that Congress brought a similar anti-conversion bill in 2016. Therefore, the bill got passed by the Karnataka assembly expedite. The Karnataka Protection of Right to Freedom of Religion Bill, 2021 has been drafted in similar lines with anti-conversion laws of majorly Uttar Pradesh, Madhya Pradesh, and Gujarat, which focuses on prohibiting 'unlawful and illegal conversions' from one religion to another through force, undue influence, coercion, misrepresentation, allurements or by any fraudulent methods³.

To understand the rationale behind the recent introduction of the Karnataka Anti-Conversion Bill, we need to look back on the position of conversions in Indian history before and after independence.

History of Anti-Conversion Laws in India

Anti-Conversion Laws are not a new concept that has come up recently; it has a history behind them. When we moved back in the British colonial times, laws regarding religious conversions were at their peak. There were enactments of laws that restricted religious conversions during the

¹ Kiran Parashar, What does Karnataka's contentious anti-conversion Bill propose, The Indian Express, (Jan 11th, 2022, 9:20 PM), <https://indianexpress.com/article/explained/karnatakas-anti-conversion-bill-explained-7686686/>

² Anuradha Raman, Karnataka's anti-conversion legislation, The Hindu, (Jan 12th, 2022, 10:23 PM), <https://www.thehindu.com/news/national/karnataka/explained-karnatakas-anti-conversion-legislation/article38018242.ece>

³ Pratiba Raman, Despite Mounting Criticism, Karnataka Assembly Passes Anti-Conversion Bill, The Wire, (Jan 12th, 2022, 10:30 PM), <https://thewire.in/government/karnataka-anti-conversion-bill-criticism>

1930s and 1940s by the Hindu princely states to protect and preserve the Hindu religious identity from the control and influence of the missionaries, especially British missionaries. These Hindu princely states include Kota, Bikaner, Raigarh, Surguja, Kalahandi, Jodhpur, Patna, and Udaipur. Laws enacted during that period were the Raigarh State Conversion Act, 1936 then, the Patna Freedom of Religion Act of 1942 then, the Surguja State Apostasy Act, 1945 then, the Udaipur State Anti-Conversion Act, 1946. This was the scenario pre-independence.

Post-independence, the Parliament introduced various Anti-Conversion Bills, but none were enacted. Indian Conversion (Regulation and Registration) Bill, 1954, was introduced in the Parliament for the first time to license the missionaries and compulsory registration of conversion. However, this bill was rejected due to political support. Later Backward Communities (Religious Protection) Bill, 1960, was presented in the Parliament after six years to track the conversion of Hindus to non-Indian religion. In this bill, non-Indian religions include Christianity, Islam, Zoroastrianism, and Judaism. This bill also failed to be passed at the central level. However, it is pertinent to observe that the conversion from Hindus to Buddhism was not taken into consideration under the said bill⁴.

Nevertheless, a substantial number of Hindus converted to Buddhism during that time. Jan Sangh MP O.P. Tyagi later introduced another bill in 1979. This bill was known as the Freedom of Religion Bill, 1979, a private member bill, and therefore, it failed due to a lack of parliamentary support.

Currently, we do not have any Anti-Conversion Laws that govern the conversion from one religion to another at the central level. In 2015, the Union Law Ministry stated that Parliament does not have the legislative competence to pass anti-conversion legislation, and therefore, different states have been enacting these laws⁵. BJP government attempted to enact anti-conversion laws at the national level. However, it ultimately failed since the Ministry of Law, and Justice advised rejecting such laws as these steps are 'not tenable' because they are 'purely a state subject'. Thus, anti-conversion laws lie under the state list in the seventh schedule of the Indian Constitution.

Overview of State Level Anti-Conversion Laws

Before Karnataka Bill, nine states possess anti-conversion laws, i.e., Orissa, Madhya Pradesh, Arunachal Pradesh, Gujarat, Uttarakhand, Uttar Pradesh, Himachal Pradesh, Chhattisgarh,

⁴ Aniruddha Shrivastava, An Analysis of Anti-Conversion Laws in India, Vol. 2 Iss. 1, International Journal of Integrated Law Review, 93, 94 & 95, 2021

⁵ *Id.* at 3.

Jharkhand. In Rajasthan, the anti-conversion bill has been passed. However, the president's assent is still pending. In Arunachal Pradesh, anti-conversion laws are not being implemented since subsidiary rules are lacking. Tamil Nadu brought similar laws in 2002. However, it was repealed in 2006 due to minorities' opposition. Manipur and other states are still considering such laws. This law took place from the 1960s after the failure to enact union-level anti-conversion laws. The first anti-conversion law was enacted in Orissa in 1967, followed by Madhya Pradesh in 1968.

When we moved towards the 1980s, the main aim of anti-conversion laws was targeting Muslims seeking to convert to non-Muslims. In the 1990s, Christianity's primary focus was maintained because of its association with Western-style colonialism and its active role in proselytizing to become a good Christian.

Attributes of The Karnataka Protection of Rights to Freedom of Religion Bill, 2021

Let us understand the current The Karnataka Protection of Rights to Freedom of Religion Bill, i.e., the Karnataka anti-conversion bill. This bill has been introduced in the Legislative Assembly to prohibit unlawful conversion from one religion to another by any misrepresentation, force, undue influence, coercion, allurement, or fraudulent means. This is dealt with under section 3 of the said bill. The definition of force, undue influence, coercion, allurement, fraud, Mass Conversion has been mentioned under section 2 of the said bill. It is pertinent to note here that under section 3 of the bill, it is clearly stated that if any person reconverts to their previous religion, then the same would not be considered as conversion as per this Act⁶.

Section 4 talks about the person who is competent to complain. Thus, this section says that any person who has been converted or his or her parents, brother, sister, or any other person related to the converted person by blood, marriage, or adoption can file a complaint under this provision⁷.

Section 5 speaks about the punishment for contravention of section 3, which is three to five years, along with twenty-five thousand rupees fine. However, whoever contravenes the provision of section 3 concerning minors, women, or any person that belongs to S.C. or S.T. shall be punished with imprisonment of three years that can be extended to ten years along with a fine of fifty thousand rupees⁸. Further, in respect of mass conversion, the fine increases to one lakh, and the

⁶ The Karnataka Protection of Right to Freedom of Religion Bill, 2021, 11th Session, Acts of Parliament, 2021 (India)

⁷ *Id.* at 4.

⁸ *Id.* at 4.

punishment remains from three years to ten years. The Court can also ask the accused to compensate the victim, which may extend to five lakh maximum and add to the fine. If a person is convicted again for the same offense under this Act, he or she will be liable for a minimum of five years of punishment along with a fine of rupees two lakhs.

Under section 6, marriage done for the sole purpose of unlawful conversion or vice-versa will be declared null and void. To solemnize the marriage, sections 8 and 9 shall be applied.

Section 8 talks about the procedure to be followed if one wishes to convert from one religion to another of their own will. The one who wants to convert has to send a minimum of thirty days advance declaration in Form-I to District Magistrate or Additional District Magistrate. The religious converter which performs the conversion ceremony shall also give thirty days advance notice in Form-II to District Magistrate or Additional District Magistrate. Once the District Magistrate receives the information, he will notify the proposed religious conversion on the notice board and Tahsildar's office to call for any objections. Suppose any objection is received within thirty days. In that case, he shall initiate an inquiry through the Revenue or Social Welfare Department officials to find out the cause of conversion. If, after inquiry, any commission of an offense is found out, then the District Magistrate shall initiate criminal proceedings for the contravention under this Act.

Section 9 talks about the declaration that a converted person has to give after his or her conversion within thirty days of his or her date of conversion. The converted person shall come before the District Magistrate within twenty days and confirm the contents of the declaration. Once there is no further objection within thirty days, the District Magistrate shall inform the concerned authority about the conversion.

Another necessary provision of this bill is section 12, which speaks about the burden of proof under the Act. The burden of proof lies on the person who has caused the conversion to prove that the religious conversion was not under any misrepresentation, force, undue influence, coercion, allurements, or by fraudulent means or by marriage⁹.

Constitutionality of Anti-Conversion Laws and Freedom of Religion

Indian Constitution does not follow the French model of secularism, which makes a clear distinction between the state and religion. In India, the definition of secularism is different since

⁹ Aniruddha Shrivastava, An Analysis of Anti-Conversion Laws in India, Vol. 2 Iss. 1, International Journal of Integrated Law Review, 93, 96 & 97, 2021

this word in the Indian Constitution provides that the state shall neither have a particular religion nor shall it favor any particular religion. Basically, in Indian Constitution, Secularism is equated to the freedom of religion. The word Secularism was embodied in the Indian Constitution by the 42nd Constitutional Amendment Act; however, prior to this, the principle of secularism was manifested in Articles 25, 26, 27, and 28.

The provision regulating freedom of religion is already incorporated in Constitution. Examining article 25 of the Indian Constitution, it is understood that this article is not absolute. Article 25 speaks about 'freedom of conscience and free profession, practice and propagation of religion. 'However, article 25(2) mentions reasonable restrictions as well. Restrictions in terms of regulating the secular activities concerning religious practices. It is important to note that Article 25(2)(a) does not prevent any state from making any law to regulate or restrict any economic, financial, political, or secular activities¹⁰. Thus, here we can deduce to the understanding that states are not restricted in enacting anti-conversion laws, and therefore, anti-conversion laws are not unconstitutional.

A highly debated fragment of article 25 is 'freedom of propagation of religion. 'The literal meaning of propagation is spreading an idea or theory and promoting it widely. When we trace the concept of propaganda, we come across a general trend within the religious communities to expand their family who believes in one direction only and that no one should desire to leave the family. Freedom of propagation of religion is a right to promote one's beliefs and practices and spread them across the nation. However, the question arises whether 'propagation of religion' includes 'conversion from one religion to another as well?

This question has been dealt with in the landmark case of *Rev. Stanislaus V. State of Madhya Pradesh & Ors, 1977¹¹*. In Madhya Pradesh High Court, The Madhya Pradesh Dharma Swantantraya Adhiniyam Act, 1968 was challenged. This Act prohibited forcible conversions and penalized such conversions. The High Court upheld the validity of the Act. Later a similar challenge was made concerning the Orissa Freedom of Religion Act, 1967 in Orissa High Court. Here the High Court held that Article 25(2) of the Indian Constitution gives the right to propagate one's religion and conversion is an integral part of Christianity. Therefore, the State Legislature has no power or authority to make laws relating to anti-conversion.

¹⁰ Aniruddha Shrivastava, An Analysis of Anti-Conversion Laws in India, Vol. 2 Iss. 1, International Journal of Integrated Law Review, 93, 97 & 98, 2021

¹¹ Rev. Stainislaus v. State of Madhya Pradesh & Ors, AIR 908, 1977 SCR (2) 611

Thus, both these cases were brought before the Supreme Court of India, and the issue discussed in this case was whether propagation of religion includes conversion as well? The appellants argued that the right to propagation includes the right to convert while challenging the acts. However, the Supreme Court observed that if the right to propagate includes the right to convert, then the fundamental right to conscience guaranteed under Constitution will be infringed. Therefore, the right to propagation includes the right to spread the teaching and principles of one's religion and does not include the right to convert. The Supreme Court held that it has to be understood that freedom of right is not guaranteed concerning only one religion. It covers all religions, and therefore, the right to convert any person to one own religion cannot be a fundamental right. The issue of State Legislature competence was also challenged in this case. The appellants argued that the matter of regulation of religion is in the hands of the Central Legislature. However, the Supreme Court held that the acts deal with the prohibition of fraudulent, forced, and allured conversion, which amounts to maintaining public order. Therefore, it is under the purview and competence of the State Legislature.

Judicial Interference

From the very beginning, the Hon'ble Supreme Court's decision has been strongly emphasized protecting inter-caste and inter-faith marriages. *Lata Singh vs. State of Uttar Pradesh, 2006* is one such case where Supreme Court held that India being a democratic country and a person when turns major, has the right to marry whomsoever they want. If parents and relatives are against the marriage, then maximum, they can cut off the ties and bond they have with the couple apart from that, they have no right to interfere in the couple's life.

In *Arumugam Servai vs. State of Tamil Nadu, 2011*¹² and *Bhagwan Dass vs. State (NCT of Delhi), 2014*¹³, the Supreme Court witnessed the brutality caused to couples of inter-faith marriage by the 'Khappanchayat' and relatives. The Court referred to the Lata Singh case, strongly disagreed and condemned such atrocities, and directed the State Government to take expedite steps in this and all other similar cases.

In *Re vs. Indian Woman Says Gang-Raped on Orders of Village Court, 2014*¹⁴, the Supreme Court declared that the right of freedom of choice in marriage is an inherent aspect of Article 21 of the Constitution of India.

¹² Arumugam Servai v. State of Tamil Nadu, (2011) 6 SCC 405]

¹³ Bhagwan Dass v. State (NCT of Delhi), SLP 1208/2011

¹⁴ Re vs Indian Woman Says Gang-Raped, 28th March, 1947

In *Ratilal Panachand Gandhi vs. The State of Bombay*¹⁵ and others, the Supreme Court held that every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others.

Criticism on The Karnataka Protection of Right to Freedom of Religion Bill, 2021¹⁶

Currently, till date, the bill has been passed in Karnataka State Assembly and is not yet tabled in the Legislative Council. Several issues are being raised by politicians, journalists, and other social welfare groups on passing the said bill in Karnataka. These issues are pointed out as under:

1. The bill presumes that there exists forceful conversion in inter-faith marriages. However, the couple has decided their own, being adults and going against the will of their parents, relatives, and societies. The Gujarat High Court has stayed provisions of State law that made conversion 'by marriage' an offense, stating that such provisions placed all marriages of inter-faith nature in jeopardy.
2. The bill says if the couple wants to solemnize inter-faith marriage, then they have to inform the District Magistrate minimum of thirty days prior to the date of marriage. This has led to the debate of whether such interference of the District Magistrate causes infringement of the right to privacy under article 21 of the Indian Constitution? Since informing prior to District Magistrate will lead to disclosing the couple's personal marriage decision, this causes difficulties in their lives. Society will come to know about interfaith marriage, and they might create troubles in couple's life. Moreover, marriage is a personal private matter, and it should be left on couples how they want to keep it. Himachal Pradesh High Court struck down a similar provision in 2012 with a view that asking someone to disclose plans to change one's faith violates the right to keep one's religious belief private and secret. In a sense, it infringes the right to privacy guaranteed under the Indian Constitution.

¹⁵ Ratilal Panchand Gandhi vs The State of Bombay, AIR 388, 1954 SCR 1035

¹⁶ Saahas Arora, Why the Karnataka Protection of Right to Freedom of Religion Bill is unlikely to pass Constitutional muster, The Leaflet, (Jan. 12th, 2022, 10:30 Pm), <https://theleaflet.in/why-the-karnataka-protection-of-right-to-freedom-of-religion-bill-is-unlikely-to-pass-constitutional-muster/>

3. In the Assembly, Congress member, D.K. Shivakumar tore the bill and said that this law was against the Constitution. This attempts to disturb peace in the state and divert public attention for political reasons. Siddaramaiah, a Congress member, opposed the bill; however, Chief Minister of Karnataka Basavaraj Bommai said that this bill is constitutional and is not a hidden secret. Congress government itself initiated a similar bill in 2016 during its tenure.
4. The bill states that the burden of proof remains on the person who helps/carries out the conversion or who abets the conversion. This provision is taken from Uttar Pradesh Law. The Gujarat High Court has given this portion of the Act stay orders. The Court held that this provision puts 'parties validly entering into an interfaith marriage in great jeopardy' by placing the burden of proof on the couple to prove that their marriage is valid and 'not just conversion.'
5. The bill carries stringent punishments for violating any provision under the said Act. It is more stringent than Uttar Pradesh Laws.
6. Under the said bill, women have been considered under the weak and highly influenced category, along with minor and scheduled cases and scheduled tribes.
7. Reconversion under this bill is not considered to be conversion at all. Therefore, if, for instance, a person converts from Hindu to Muslim by his own will and later gets reconverted forcefully, then the reconversion will not be considered conversion at all and thus cannot claim Justice under this Act.
8. District Magistrate has been given more powers than required. One of the opposition parties pointed out that according to the bill, District Magistrate will decide whether there is a conversion at his own investigation and in his own capacity, which is an unfair and biased provision.
9. The process of conversion by own's will is lengthy.
10. It is claimed that the current bill is a tool to harass Christians. Peter Machado, the Archbishop of Bengaluru, said that since the beginning, the anti-conversion bill has been anti-Christian in nature. This targets the Christians in particular. Does he then end the statement by saying that the government will be as stringent if Catholics want to convert to Hinduism?
11. Peter Machado also pointed out a loophole in the provision that says that allurements for conversion of any kind will be considered illegal. He comments that it will be a crime tomorrow to do some charity. So as per the definition of allurements, even giving free education will need an explanation. This definition is mentioned in section 2 of the bill and contains

various items such as gifts, free education, promise to marry so on and so forth. So, according to him, if someone wants to help a Dalit child, for instance, then that person has to explain why the child is being helped and why the person is offering free education.

12. In the span of one year, 32 incidents of church attacks have been witnessed in Karnataka. Also, according to a recent fact-finding report compiled by the United Christian Forum, Karnataka stands 3rd among the states that have witnessed the highest number of attacks on Christian members and churches.

13. There are provisions of IPC that govern the religious sentiments and have penal punishments for the same; nevertheless, the anti-conversion bill is into being. Do we need this bill? Section 153 A, 295, and 295-A of IPC protects the religious sentiments of an individual and penalizes for the contravention of any of these provisions.

Conclusion

Karnataka's anti-conversion bill is in controversy. Government is keen about passing the bill. However, there are many oppositions from the minorities and activists. In my opinion, considering the debate, discussion, loopholes, and criticism, the actin issue needs more insights and needs to be looked upon again. Proper substantial data should be presented in public and in the assembly showing the high frequency of forced and allured conversions in Karnataka. There must be an in-depth evaluation of the need for this law at this point. Debates and discussions should be conducted on this bill in the assembly and legislative council. Thus, we understand that the anti-conversion laws are not unconstitutional; however, the current