

IIRF Reports

International Institute for Religious Freedom
Internationales Institut für Religionsfreiheit
Institut International pour la Liberté Religieuse



Tehmina Arora

India's Defiance of Religious Freedom: A Briefing on 'Anti- Conversion' Laws

Bonn – Cape Town – Colombo

**A monthly journal with special reports,
research projects, reprints and documentation**

IIRF Reports Vol. 1, No. 2, February 2012

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A monthly journal with special reports, research projects, reprints and documentation published by



Bonn – Cape Town – Colombo

VKW Culture and Science Publ.

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Bank account:

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Tehmina Arora

India's Defiance of Religious Freedom: A Briefing on 'Anti-Conversion' Laws



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"I fear this bill... will not help very much in suppressing the evil methods [of gaining converts], but might very well be the cause of great harassment to a large number of people. Also, we have to take into consideration that, however carefully you define these matters, you cannot find really proper phraseology for them... The major evils of coercion and deception can be dealt with under the general law. It may be difficult to obtain proof but so is it difficult to obtain proof in the case of many other offences, but to suggest that there should be a licensing system for propagating a faith is not proper. It would lead in its wake to the police having too large a power of interference."

Jawaharlal Nehru, India's First Prime Minister

Summary

While the Constitution of India provides for full religious freedom, six Indian states have "Freedom of Religion" Acts which regulate religious conversions. These laws claim to merely purge the use of force, fraud and inducement from religious persuasion in the interest of public order. But the "anti-conversion" laws clearly violate some key components of religious freedom.

These laws¹, enacted in the states of Orissa, Madhya Pradesh, Arunachal Pradesh Chhattisgarh, Gujarat and Himachal Pradesh, give the district administration wide and sweeping powers to inquire into religious conversions but carry no provisions for protection against discriminatory action on the part of the authorities. They also require a person converting to another religion to give details of the conversion to the local district magistrate, either prior to the conversion ceremony or subsequent to it. The law in Gujarat makes prior permission from the local authorities mandatory before any conversion ceremony is performed.

Besides, vague and wide definitions of terms such as "force," "fraud" and "inducement" or "allurement," potentially include even legitimate pursuits or actions of propagating one's faith. Inclusion of the terms such as "divine displeasure" in the definition of "force" restricts those propagating their religion to inform others about what they believe could be the fate of non-adherents.

These laws are premised on a longtime propaganda by Right-wing Hindu groups against minority Christians and Muslims – that poor and illiterate Hindus are being converted with the use of duress, deception or coercion, which threatens public order – and not on a scientific study on religious conversions.

Moreover, the laws in Arunachal Pradesh and Himachal Pradesh seek to prohibit conversions out of "original religion" or "indigenous faiths," showing that their real intent is to prevent or regulate conversions to faiths such as Christianity and Islam.

Country's prominent jurists have repeatedly stated that these Acts contradict India's international obligations under the International Covenant on Civil and Political Rights as well as the fundamental rights safeguarded in the Indian Constitution.

The state governments that have enacted these laws claim they do not defy religious freedom based on a 1977 ruling by the Supreme Court of India [in the Reverend Stanislaus vs. State of Madhya Pradesh² case] which upheld the Madhya Pradesh Freedom of Religion Act stating that the right to propagate did not include the right to convert another person.

However, the Supreme Court in the said case considered only the arguments whether an individual has a right to convert any person or merely to propagate the religion of one's choice and whether the state legislatures are competent to enact such legislations in order to protect public order.

Furthermore, the Acts have come under harsh criticism also from national and international agencies, including the UN Special Rapporteur and the National Commission for Minorities, as Right-wing Hindu groups have misused these laws to harass mainly the Christian community.

This briefing paper seeks to highlight the limits the anti-conversion laws put on religious freedom of communities that see propagation of their faith as a religious obligation, such as Christians, as well as that of the majority Hindu population.

¹Orissa Freedom of Religion Act 1967, Madhya Pradesh *Dharma Swatantraya* Act 1968, Chhattisgarh *Dharma Swatantraya Adhiniyam* 1968, Arunachal Pradesh Freedom of Religion Act 1978, Gujarat Freedom of Religion Act 2003 and Himachal Pradesh Freedom of Religion Act 2006.

²AIR 1977 SC 908.

Recommendations

To the Government of India

- Although maintenance of public order is a state responsibility, the central or federal government should issue an advisory to the state governments to repeal the anti-conversion laws;
- The Ministry of Home Affairs should provide training on human rights and religious freedom standards and practices to the state and central police and judiciary;
- Ensure that every state has an active commission for human rights and commission for minorities, and that members of these commissions are appointed by transparent and non-partisan procedures;
- The Law Commission of India should be assigned to conduct a research on the premise, impact and misuse of the Acts in each state;
- Increase opportunities for dialog between leaders of religious communities, legal experts and civil society representatives to address any allegations of improper conversions in the states with anti-conversion laws.

To International Organizations & India's Foreign Partners

- Raise religious freedom concerns the anti-conversion laws raise at the United Nations Human Rights Council Universal Periodic Review of India in 2012 and other forums.
- Urge the Indian government to reconsider the laws and bills on religious conversion as they violate human rights.

Overview

Many religious communities have lived in India for ages. According to the 2001 Census of India, 80.5 percent of the total population is Hindu while Muslims account for 13.4 percent and Christians 2.3 percent. The country also has Sikh, Buddhist, Jain, Baha'i and Jewish communities as smaller minorities.

India has also had a history of communal tensions, especially between the rightwing Hindus, who see India as a Hindu nation, and the Muslim and Christian minorities since the colonial days. The arrival of missionaries during the British rule was projected as a threat to India's culture by some.

The Freedom of Religion Acts were first brought into force in the princely states, where the British Crown had suzerainty and not a direct rule, in the 1930s. The Raigarh State Conversion Act 1936, the Patna Freedom of Religion Act of 1942, the Sarguja State Apostasy Act 1945 and the Udaipur State Anti-Conversion Act 1946 are some examples of these laws.³

Post-independence, the Indian parliament took up for consideration a legislative enactment regulating religious conversion known as Indian Conversion (Regulation and Registration) Bill of 1954, and later the Backward Communities (Religious Protection) Bill of 1960, and then the Freedom of Religion Bill of 1978 introduced by Member of Parliament OP Tyagi, who was a member of a Hindu nationalist party. However, all these measures were dropped for lack of majority support.

State legislatures had a greater success in enacting similar laws. India's federal structure, based on Article 246 of the Constitution, defines the power distribution between the federal or central government and the state governments, as well as some powers that are to be shared concurrently by both. Law and order is a state responsibility and prerogative.

The first state to enact the Freedom of Religion Act was Orissa in 1967 during the rule of the then Swatantra Party, which was known for its Right leanings.

The Madhya Pradesh Freedom of Religion Act was enacted in 1968, soon after a leader of the Congress Party, Govind Narayan Singh, defected to form his own party and coalition and eventually joined the Hindu nationalist Bharatiya Janata Party (BJP). And when Chhattisgarh was carved out of Madhya Pradesh in November 2000, it inherited the anti-conversion law from the latter.

The Congress Party enacted the Freedom of Indigenous Faith Act in Arunachal Pradesh in 1978 to preserve indigenous faiths. However, until today the law has not been implemented as the Rules governing the Act are yet to be framed.

In 1998, when Sonia Gandhi, an Italian-born Catholic and wife of the Late Indian Prime Minister Rajeev Gandhi, was appointed as the president of the Congress Party, the then ruling BJP began to target Christians politically, using the issue of conversions. The

³Anant, A. (2002) 'Anti-Conversion Laws', *The Hindu* (17 Dec.), National section, Delhi edn.

Rightwing party wanted to project her as a threat to the majority community, claiming that Christian missionaries would convert Hindus under her patronage.

Attacks on Christians followed, beginning with a massive spate of violence in Gujarat's Dangs district and the burning alive of Australian missionary Graham Staines and his two minor sons in Orissa state in 1999. The attacks constantly increased thereafter. Most recently, in Orissa's Kandhamal district, more than 6,000 homes were burned, 50,000 people were displaced, thousands were injured, and about 100 men and women were burned alive or hacked to death in August-September 2009, according to faith-based groups in India.

Even as violence on Christians rose since 1998, the anti-conversion legislation proliferated.

In 2002, the Tamil Nadu state assembly ruled by a regional party passed the Prohibition of Forcible Conversion of Religion Bill to please the BJP, its ally. But, after the defeat of the BJP-led coalition in the 2004 general elections, the state government repealed the law.

However, a year later, the BJP government in Gujarat passed the Freedom of Religion Act in March 2003.

In April 2006, the BJP-led government in Rajasthan passed a similar freedom of religion bill. However, assent of the President of India is still awaited after the Bill was forwarded to the President by the then Governor of Rajasthan, Pratibha Patil. The BJP in Madhya Pradesh and Chhattisgarh also unsuccessfully sought to tighten the existing laws the same year, even as the Congress Party government in Himachal Pradesh passed the Freedom of Religion Act for political considerations months before state assembly elections.

Effect of the Legislation

In several states, prosecutions have been launched under the Freedom of Religion Acts against members of the minority Christian community. There have also been frequent attacks against the community by members of Rightwing Hindu groups on the pretext of "forcible" conversions. However, in spite of the existence of these acts in some states for over 45 years, there have been very few convictions, though cases are registered under the Acts almost every month. For example, in the

year 2010, at least 18 arrests were reported under the anti-conversion and other restrictive laws in Chhattisgarh and Madhya Pradesh alone.⁴

Taking note of this trend, in its 2011 report, the United States Commission on International Religious Freedom (USCIRF) noted⁵ 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..."

The report further stated that:

"These laws have led to few arrests and reportedly no convictions. According to the U.S. State Department, between June 2009 and December 2010 approximately 27 arrests were made in Madhya Pradesh and Chhattisgarh, but resulted in no convictions. Compass Direct reported that in March 2011, police arrested 12 tribals in Orissa's Mayurbhanj district for violating the Orissa 'Freedom of Religion Act' by converting to Christianity without a permit issued by the authorities."

Asma Jahangir, the Special Rapporteur on Freedom of Religion or Belief, also noted in her report after a visit to India that:

"Even in the Indian states which have adopted laws on religious conversion there seem to be only few - if any - convictions for conversion by the use of force, inducement or fraudulent means. In Orissa, for example, not a single infringement over the past ten years of the Orissa Freedom of Religion Act 1967 could be cited or adduced by district officials and senior officials in the State Secretariat."

"However, such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them."⁶

⁴International Religious Freedom Report, 2010, US State Department (<http://www.state.gov/g/drl/rls/irf/2010/148792.htm>).

⁵USCIRF Annual Report 2011 - The Commission's Watch List: India (last accessed at http://www.unhcr.org/refworld/country_IND_4dbe90bac,0.html on November 11, 2011).

⁶Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum, MISSION TO INDIA (A/HRC/10/8/Add.3, 26 January 2009) accessed at <http://www.wghr.org/pdf/3.%20Special%20Rapporteurs.pdf> on November 11, 2011).

The report goes on to state that:

“There is a risk that ‘Freedom of Religion Acts may become a tool in the hands of those who wish to use religion for vested interests or to persecute individuals on the ground of their religion or belief. While persecution, violence or discrimination based on religion or belief need to be sanctioned by law, the Special Rapporteur would like to caution against excessive or vague legislation on religious issues which could create tensions and problems instead of solving them.”

A two-member team of the National Commission for Minorities in India comprising Harcharan Singh Josh and Lama Chosphele Zotpa, after their visit to the states of Madhya Pradesh and Chhattisgarh between June 13 and 18, 2007 noted that Hindu extremists frequently invoked the anti-conversion law in Madhya Pradesh as a means of inciting mobs against Christians or having them arrested without evidence.⁷

The report stated that:

“Obviously, the life of Christians has become miserable at the hands of miscreants in connivance with the police,” they noted in their report. “There are allegations that when atrocities were committed on Christians by the miscreants, police remained mere spectators and in certain cases they did not even register FIRs [First Information Reports].”

Basic Features of the Acts

Preamble

The Freedom of Religion Acts claim to prohibit conversions by force, fraud and inducement or allurement. The Acts state that no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

Definitions

The Acts in Orissa, Madhya Pradesh and Himachal Pradesh define conversion as “renouncing one religion and adopting another.” The Arunachal Pradesh law differs slightly, as it defines it as “renouncing an indigenous faith and adopting another faith or religion.”⁸

⁷State in India Tightens Controls on Conversions. (Compass News Direct, July 25, 2006).

⁸Section 2 (b), Arunachal Pradesh Freedom of Religion Act, 1978

The Gujarat law states that conversion means “to make one person to renounce one religion and adopt another religion.”⁹

All the Acts define “force” as “a threat of injury of any kind including the threat of divine displeasure or social ex-communication,” and “fraud” or “fraudulent means” as “misrepresentation or any other fraudulent contrivance.” The term “inducement” has been defined in some of the Acts¹⁰ as “the offer of any gift or gratification either in cash or in kind, including the grant of any benefit, either pecuniary or otherwise.” While the other Acts¹¹ use the term “allurement” and define it as offer of any temptation in the form of any gift or gratification either in cash or kind, and grant of any material benefit, either momentary or otherwise.

Contravention

The Acts carry penal provisions. The punishment generally ranges from up to one year of imprisonment and a fine of up to 5,000 Indian rupees, to up to three years of imprisonment and a fine of up to 25,000 Indian rupees.

The punishment is more stringent if there is evidence of conversion by force, fraud or inducement among women, minors and Dalits (formerly “untouchables” as per India’s caste system) or Tribals (aborigines). Apart from penal action, the Himachal Pradesh law states that if any person has been converted by force, fraud or coercion, she or he shall be deemed as not converted¹².

There is also a provision for fine for those who fail to send notice to or seek permission from the district magistrate before converting or participating in a conversion ceremony.

Section 2 (b).

⁹Section 2 (b), Gujarat Freedom of Religion Act, 2003.

¹⁰Section 2 (d) the Orissa Pradesh Freedom of Religion Act, 1967 and the Himachal Pradesh Freedom of Religion Act, 2006 and section 2 (f) of the Arunachal Pradesh Freedom of Religion Act, 1978.

¹¹Section 2 (a) the Madhya Pradesh Freedom of Religion Act, 1968 and the Gujarat Freedom of Religion Act, 2003.

¹²Section 3, proviso of the Himachal Pradesh Freedom of Religion Act, 2006.

Critique of the Acts

The primary critique of the Acts has come from several jurists due to their vague and overtly broad definitions. The United Nations Special Rapporteur on Freedom for Religion or Belief has stated in her report¹³:

“While these laws appear to protect religious adherents only from attempts to induce conversion by improper means, they have been criticized on the ground that the failure to clearly define what makes a conversion improper bestows on the authorities unfettered discretion to accept or reject the legitimacy of religious conversions. All of these laws include in the definition of use of force any ‘threat of divine displeasure or social excommunication.’

“Moreover, the terms inducement or allurement are defined to include the offer of any gift or gratification, either in cash or in kind, as well as the grant of any benefit, either pecuniary or otherwise. These broad and vague terms might be interpreted to cover the expression of many religious beliefs. In addition, some provisions are discriminatory in giving preferential treatment to re-conversions, for example by stipulating that returning to the forefathers’ original religion or to one’s own original religion shall not be construed as conversion.”

In March 2007, the National Commission for Minorities noted with concern the enactment of the Himachal Pradesh Freedom of Religion Act and observed that “the terminology used in the [Himachal Pradesh Freedom of Religion] Act and the methodology prescribed for implementing it” and the “attempt of the Act, and reportedly by similar pieces of legislation contemplated in some other States, to interfere with the basic right of freedom of religion that is the birth right of every Indian.”¹⁴

Conversion

The definition of conversion in these Acts overlooks the fact that conversion is primarily a thought process which may span several days, weeks or even years. And the definition in the Gujarat Act in particular suggests that conversion requires an external agency almost without the will of the prospective covert.¹⁵

On the contrary, the Supreme Court of India has held on several occasions that mere declaration of conversion cannot be taken as evidence of conversion; “but a bonafide intention to be converted in the Hindu faith, accompanied by conduct unequivocally expressing the intention may be sufficient evidence for conversion. No formal ceremony for purification or expiation is necessary to effectuate conversion...”¹⁶

Force

The definition of the term “force” as “threat of divine displeasure” unjustifiably impinges on possible interactions between potential converts and those seeking to propagate their faith. It restricts the latter from informing the former about non adherence, for example, as that may involve teachings on hell or God’s wrath. And without being informed, a potential convert cannot meaningfully exercise his or her freedom to change religion.

Proponents of these laws often quote the Orissa High Court ruling in *Yulitha Hyde v. State of Orissa*¹⁷, which held, “Threat of divine displeasure numbs the mental faculty; more so of an undeveloped mind and the actions of such a person thereafter, are not free and according to conscience.”

The courts in India have also reasoned that threatening anyone with divine displeasure puts great pressure on the threatened person and deprives them of the capacity of exercising their rational judgment. Repeatedly the courts have held that a suggestion of divine displeasure deprives a person of their abilities to make a choice.

However, this argument overlooks the fact that inherent in the propagation of a faith or religious belief is the articulation of the effects of failure to comply with the said beliefs. Commenting on this, noted social commentator, Pratap Bhanu Mehta¹⁸ says:

“In some ways this argument is bizarre. The intent of the statute seems to be to exclude certain kinds of religious appeals. There might be good reasons for excluding such appeals. The principal one might be the Hobbesian [of political theorist Hobbes] insight that in order to discharge our obligations to the state faithfully, we have to be relieved of all

¹³ A/HRC/10/8/Add.3 (page 17).

¹⁴ The full press release is available at the National Commission for Minorities website at <http://ncm.nic.in/The-Himachal-Pradesh-Freedom-of-Religion-Act.html> (last accessed on November 11, 2011).

¹⁵ Sec. 2 (b) of the Gujarat Freedom of Religion Act, 2003.

¹⁶ *Perumal Nadar v. Ponnuswami* (1971 AIR 2352).

¹⁷ All India Reporter 1973 Ori 116.

¹⁸ *Passion and Constraint*, MEHTA, PRATAP BHANU (In Rajevee Bhargava (ed.) *The Moral and Political Philosophy of the Indian Constitution* (Oxford University Press, 2008).

those sources of authority that induce even more fear in us than the state might. Or one might argue, on Rawlsian [of theorist John Rawls] grounds, that as a mark of reciprocity, one ought not to appeal to one's own comprehensive conception of the good in making public arguments..."

He added "...In Yulitha Hyde v. State of Orissa, the court wrote: 'Threat of divine displeasure numbs the mental faculty; more so of an undeveloped mind and the actions of such a person thereafter, are not free and according to conscience.' In cases involving the Representation of People's Act (RPA) the same assumption is made throughout.

If this analysis is correct, we can see a fairly stable set of assumptions about citizens that underlie two different domains that require abridging religious speech, whether it is attempts at conversion and the exclusion of religious appeal from elections. The court assumes throughout that citizens are, when it comes to receiving religious speech, or speech about religion, incapable of managing the impressions they receive – to use an old stoic concept.

If the insult is to one's religion, or an exhortation is made in the name of religion, we are incapable of receiving the expression on our own terms; incapable of managing our own responses, condemned to receiving these expressions unfreely and helplessly, incapable as it were of self-discipline. We can manage our impressions, exercise our religious choices and practice judgment, only when left alone. Hence the court's emphasis that the right to freedom of religion just means the right to freedom from other people's religion. Our choices are impaired, or faculties numbed, more so because we have undeveloped minds. This is the 'secret' rationale behind both anti-conversion legislation and the RPA."

Fraud

The definition of the word "fraudulent" as "misrepresentation or any other fraudulent contrivance" may seem innocuous on the face of it, but it is not. In spiritual matters, what would constitute misrepresentation? Could a statement like, "Prayers will heal you," or "God will grant you material blessings," be construed as employing fraudulent means? There is no answer.

Inducement/Allurement

A problem in defining the term "inducement" or "allurement" as "offer of any temptation in the form of any gift or gratification either in cash or kind or grant

of any material benefit either monetary or otherwise" was noted by the Orissa High Court in *Yulitha Hyde v. State of Orissa*. The court held that that the vague nature and wide scope of the term would impinge on various legitimate methods of proselytizing. While the Supreme Court subsequently overruled the Orissa High court's decision in *Rev. Stanislaus vs. Madhya Pradesh*¹⁹, the court chose not to comment on definitions provided under the Acts.

Supreme Court senior advocate Prashant Bhushan commenting on the provision is quoted as saying, "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."²⁰

Arbitrary, Wide Powers

The Acts give district authorities wide and sweeping powers to inquire into both the reasons behind a religious conversion and the procedure adopted for the same. This is a gross violation of the right to freedom of association, the right to privacy and the freedom of conscience.

The Acts cast an onerous burden on the part of the convert and the persons seeking to propagate their faith without providing the required checks and balances to ensure protection against misuse of authority.

For example, Section 4 of the Himachal Pradesh Act makes it obligatory for a person to give a 30-day prior notice to the District Magistrate about his or her intention to convert. As per the Rules, the District Magistrate who then "shall get the matter enquired into by such agency as he may deem fit". No time limit is prescribed for the conduct of such an enquiry nor have its modalities been defined.

The procedure is oppressive as it will deter a person from changing his religion due to unnecessary revelation of an individual's personal choice and belief to the public at large along with the stigma of having a police inquiry in matters relating to one's belief and conscience.

A similar law calling for the regulation and registration of converts was sought to be introduced in the Indian Parliament in 1955. But the then Prime Minister, Jawaharlal Nehru, said:

¹⁹ 1977 (1) Supreme Court Cases 677.

²⁰ Raipur's one-way conversion street, Dutt, Avinash (Tehelka, Sep 02, 2006) http://www.tehelka.com/story_main19.asp?filename=Ne090206Raipurs_one.asp.

“I fear this bill... will not help very much in suppressing the evil methods [of gaining converts], but might very well be the cause of great harassment to a large number of people. Also, we have to take into consideration that, however carefully you define these matters, you cannot find really proper phraseology for them. Some members of this House may remember that this very question, in its various aspects, was considered in the Constituent Assembly, [and] before the Constituent Assembly formally met, by various sub-committees... Ultimately, Sardar Patel got up and said, ‘Let there be no heat about this matter — because there was heat — it is obvious that three committees have considered this matter and have not arrived at any conclusion which is generally accepted. After that, they came to the conclusion that it is better not to have any such thing because they could not find a really adequate formula which could not be abused later on.’

“The major evils of coercion and deception can be dealt with under the general law. It may be difficult to obtain proof but so is it difficult to obtain proof in the case of many other offences, but to suggest that there should be a licensing system for propagating a faith is not proper. It would lead in its wake to the police having too large a power of interference.”²¹

In the same speech, which was an affirmation of public policy, Nehru pointed out that a faith which had been established for nearly 2,000 years in India — Christianity — had the right to enjoy a position of equality with other faiths. The parliament, accepting his advice, rejected the bill. It had the support of only one member, the rest of the House being opposed to its adoption.

Requirement of Notice/Prior Permission

The Acts require the person converting to give details of his or her conversion to the district magistrate, either prior to the conversion ceremony or subsequent to it. The Gujarat law states that the person seeking to be converted must take prior permission from the concerned district magistrate before any conversion ceremony is performed.

The Acts therefore greatly impinge on the freedom of conscience of a prospective convert and also on their right to privacy. The person is rendered incapable of taking the final decision with regards to his or her faith and instead requires the seal of approval of the local district authority.

Article 18 of the Universal Declaration of Human Rights distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief.

It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.²²

The United Nations Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, noted in her report²³ that:

“...The requirement of advance notice or prior permission seems to be unduly onerous for the individual who intends to convert. Any state inquiry into the substantive beliefs and motivation for conversion is highly problematic since it may lead to interference with the internal and private realm of the individual's belief (forum internum). This approach is aggravated if such a Freedom of Religion Act awards specific protection to the state government and its officers against prosecution or legal proceedings with regard to ‘anything done in good faith or intended to be done under the Act or any rule made thereunder.’ Moreover, it seems unclear who may bring an action for, or lodge an appeal against, decisions with regard to the permissibility of a religious conversion.”

She also said that:

“Any concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim.”

²¹ As quoted by Arcot Krishnaswami, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES (1960).

²² Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

²³ UNITED NATIONS A General Assembly A/HRC/10/8/Add.3 26 January 2009 (Para 49).

The provisions of the Acts fail to provide any safety mechanisms for those on whom they are casting a burden to disclose sensitive information.

Exemption of Reconversion

Some of the Acts blatantly violate the right to equality as provided under Article 14 of the Indian Constitution.

Under the Himachal Pradesh Act, for example, Section 4 proviso states that “no notice will be required if a person reverts back to his original religion.” This is an unreasonable classification and the legislature has failed to distinguish why a special provision is required for non-notification in the event of reconversion to “original religion.”

Similarly, the law in Arunachal Pradesh defines the term “conversion” as “renouncing an indigenous faith and adopting another faith or religion,” and further defines the term “indigenous” to mean “such religions, beliefs and practices including rites, rituals, festivals, observances, performances, abstinence, customs as have been found sanctioned, approved, performed by the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism as prevalent among Monpas, Menbas, Sherdukpens, Khambas, Khamtis and Singaphoos, Vaishnavism preached by Noctes and Akas, and Nature worship including worship of Donyi-polo, prevalent among other indigenous communities of Arunachal Pradesh.”

The Acts seek to differentiate between “indigenous faiths” and other religions and yet it fails to provide a reasonable nexus as to why “indigenous” faiths require special protection under the law.

Sufficiency of Existing laws

The anti-conversion laws have been enacted on the basis that conversions by force, fraud or inducement disrupt public order. However, the Indian Penal Code carries enough provisions to deal with it, such as Section 153A, which prohibits: promoting by words or symbols “feelings of enmity, hatred or ill-will” against religious groups, committing acts prejudicial to the harmony of religious groups, or organizing activities with the intent that participants train to use force or actually use force against religious groups. The punishment for these offenses is increased if they occur in a place of worship or at a religious ceremony.

“If somebody has carried out a conversion by use of force or cheating, then there are enough provisions in

the Indian Penal Code to bring him or her to book,” said National Minorities Commission Chairman Hamid Ansari. “Also, there is no data to establish that cases of conversion derived through coercion or cheating were sufficient to deserve special laws. It is sheer absurdity.”²⁴

India's Legal Obligations

Indian Constitution

Article 25 of the Indian Constitution provides for free practice and propagation of belief and religion, which the Freedom of Religion Acts violate as they restrict the right to propagate and ask to intimate all conversions or to seek prior permission.

Article 25 states:

“Freedom of conscience and free profession, practice and propagation of religion.—(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law—regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice...”

Article 26 concerns the freedom to manage religious affairs, which would include religious ceremonies such as baptism. It states:

“Freedom to manage religious affairs.—Subject to public order, morality and health, every religious denomination or any section thereof shall have the right—to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion...”

Moreover, Article 19 (1) (a) states that all citizens shall have the right to the freedom of speech and expression. This right is violated by the Acts, which include divine displeasure in the definition of “force.”

Besides, the mandatory furnishing of details of conversions sought by the Acts violate Article 19 (1) (b) and (c) which give every citizen the right to assemble peaceably...

²⁴Raipur's one-way conversion street, Dutt, Avinash (Tehelka, Sep 02, 2006) http://www.tehelka.com/story_main19.asp?filename=Ne090206Raipurs_one.asp.

Members of the constitution drafting committee noted that freedom of speech covers the right to propagate ones faith:

“...Under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of conscience has to be recognized. The word ‘propagate’ in this clause is nothing very much out of the way as some people think, nor is it fraught with dangerous consequences.”

Furthermore, the exclusion of “reconversions” in some of these laws violates the right to equality before law as promised under Article 14, which states:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

Besides, the provision for public enquiry into conversions and mandatory intimation violate the right to privacy, which is implicit in the right to life in Article 21.

In *R. Rajagopal vs. State of Tamil Nadu*²⁵, the court looked at the right of privacy and the freedom of the press. Justice Jeevan Reddy observed that in recent times, the concept of right to privacy has acquired a constitutional status. The judge came to the conclusion that ‘the right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a right to be let alone’. A citizen has the right “to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child-bearing and education, among other matters.”

International Covenants

The Government of India has acceded to various covenants, including the International Covenant on Civil and Political Rights (ICCPR), the Universal Declaration of Human Rights, the International Convention on Elimination of Racial Discrimination in 1968, which the anti-conversion laws defy.

Article 18 of the ICCPR ensures the right to freedom of thought, conscience and religion. It reads:

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 own choice and freedom, either indi-

vidually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others.

The States parties to the present covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 18 of the UDHR states:

“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.”

In its General Comment No. 22 on the right to freedom of thought, conscience and religion (Article 18), the Human Rights Committee stated that²⁶:

“3. Article 18 (UDHR) distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one’s choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.”

Special Rapporteur on Freedom of Religion or Belief Abdelfattah Amor stressed in an annual report to the Commission on Human Rights (E/CN.4/1997/91, para. 99) that:

“It is not the business of the State or any other group or community to act as the guardian of peo-

²⁵ 1995 AIR 264, 1994 SCC (6) 632.

²⁶ General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18): . 07/30/1993. CCPR/C/21/Rev.1/Add.4, General Comment No. 22. (General Comments).

ple's consciences and encourage, impose or censure any religious belief or conviction."

Article 5 (d) (vii) of the International Convention on Elimination of Racial Discrimination (1966) recognized the "right to freedom of thought, conscience and religion." Recognizing that the freedom of religion and belief, among other things, also contribute to the attainment of goals of world peace, social justice, friendship among people, the General Assembly of United Nations proclaimed in 1981 "The Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion". It contains eight articles laying down that there shall be no discrimination whatsoever on the basis of one's religion and that everyone shall have the right to freedom of thought, conscience and religion.

Conclusion

A detailed analysis of the Acts reveals that far from promoting or protecting religious freedom, they have served to undermine the religious freedom guarantees under both Indian and international law.

These laws currently limit religious freedom of as many as 175 million people who live in the states of Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh. And it may restrict the rights of 142 million more, as the legislation is yet to be implemented in some states while other states have plans to follow suit.

The legislation also exists in Arunachal Pradesh state, which has a population of about 11 million, but has not been implemented. The state assembly of Rajasthan, which has 43 million people, also passed an anti-conversion bill, but the state's governor referred it to the President's office and it remains pending. And the governments of Jharkhand, Uttarakhand and Karnataka – which have a combined population of about 88 million – have said they too may consider enacting the law.

Moreover, this legislation has also been emulated by India's neighbors Nepal and Bhutan and considered by Sri Lanka.

Primarily motivated by a religious ideology, the anti-conversions laws fail to achieve the very purpose for which they have been enacted. On the contrary, they provide an opportunity to divisive forces within the country to target the constitutionally protected rights of minority groups and pose a serious threat to the free practice and propagation of religious beliefs.

India's civil society, judiciary, legislature and executive, as well as the international community, need to work towards the repealing or striking down of these laws as they threaten not only the Indian ethos of tolerance and communal harmony but also set a dangerous precedence for other nations in the area of religious freedom.

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