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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

UNVEILING AMBIGUITY: THE ENIGMA OF STATE ANTI-CONVERSION LAWS IN INDIA AND THEIR CONFLICT WITH INTERNATIONAL HUMAN RIGHTS CONVENTIONS

AUTHORED BY - JAYA UMA R K

ABSTRACT

The "Freedom of Religion Acts" in India, commonly known as "anti-conversion" laws, are state-level statutes currently in force in eight of the twenty-nine Indian states: Arunachal Pradesh, Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, and Uttarakhand.¹ While there exist slight variations in the language and wording of these laws from state to state, they largely share a common objective – to prevent individuals from engaging in or attempting religious conversion through methods categorized as "forcible" or "fraudulent," as well as through the use of "allurement" or "inducement." This study contends that these laws contain ambiguous provisions, including prohibitions on conversions, notice requirements, and burden-shifting provisions, which are inconsistent with the International Human Rights Conventions to which India is a signatory. Moreover, these laws are contended to violate the freedom of religion guaranteed by the Indian Constitution. To address these issues, a doctrinal study has been conducted, employing grounded theory for data collection. Precedents from the Indian Supreme Court have been analyzed to examine the impact of anti-conversion laws in India on the freedom of religion and their compliance with the International Human Rights Conventions to which India is a signatory. This study seeks to provide a comprehensive analysis of the complex landscape of anti-conversion laws in India and their implications.

KEYWORDS: Anti-conversion laws, Religious freedom, India, State-level statutes, International human rights conventions

¹ ISSUE UPDATE: INDIA'S STATE-LEVEL ANTI-CONVERSION LAWS - USCIRF, <https://www.uscifr.gov/sites/default/files/2023%20India%20Apostasy%20Issue%20Update.pdf> (last visited Nov 8, 2023).

INTRODUCTION

India, a nation celebrated for its rich tapestry of cultures, traditions, and diverse faiths, has long grappled with the intricate interplay between religious freedom, conversions, and state intervention. At the heart of this complex and often contentious landscape lie the "Freedom of Religion Acts," colloquially referred to as "anti-conversion laws." Enacted at the state level, these statutes are currently in effect in eight out of India's twenty-nine states, including Arunachal Pradesh, Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, and Uttarakhand.² These laws have been a subject of significant debate and scrutiny, both nationally and internationally. They reflect the nation's efforts to address the challenges and tensions arising from religious conversions. As these laws significantly impact the practice of faith and religious diversity in India, they warrant comprehensive examination. This research paper aims to provide a thorough analysis of anti-conversion laws in India, shedding light on their historical evolution, key provisions, and the broader sociopolitical context in which they operate. It also investigates the contentious and potentially ambiguous aspects of these laws, such as prohibitions on conversions, notice requirements, and burden-shifting provisions.

Moreover, the paper contends that these legal provisions potentially conflict with international human rights conventions that India has signed, as well as the constitutionally guaranteed freedom of religion. To investigate these concerns, a doctrinal study approach is employed, drawing on qualitative data and using precedents from the Indian Supreme Court to understand the impact of anti-conversion laws on religious freedom and their alignment with India's international obligations. This research seeks to contribute to a more comprehensive understanding of the multifaceted landscape of anti-conversion laws in India and their implications for religious freedom and human rights, fostering informed discussions and potentially influencing the ongoing discourse around these laws.

THE HISTORY OF ANTI-CONVERSION LAWS

² *Ibid.*

The Indian subcontinent is the birthplace of four major world religions—Hinduism, Buddhism, Sikhism, and Jainism.³ According to reported 2011 census data, 79.80% of the population of India is Hindu, 14.23% Muslim, 2.30% Christian, 1.72% Sikh, 0.70% Buddhist, and 0.37% Jain.⁴

Laws restricting religious conversions were originally introduced by Hindu princely states during the British Colonial period - mainly “during the latter half of the 1930s and 1940s.”⁵ These states enacted the laws “in an attempt to preserve Hindu religious identity in the face of British missionaries.”⁶ There were “over a dozen princely states, including Kota, Bikaner, Jodhpur, Raigarh, Patna, Surguja, Udaipur, and Kalahandi,”⁷ that had such laws. Some of the laws from that period include the Raigarh State Conversion Act, 1936; the Surguja State Apostasy Act, 1942; and the Udaipur State Anti-Conversion Act, 1946.⁸ First, the Indian Conversion (Regulation and Registration) Bill was introduced in 1954, which sought to enforce the “licensing of missionaries and the registration of conversion with government officials.”⁹ This bill did not secure the necessary majority support in the lower house of Parliament, leading to its rejection by the members. This was followed by the introduction of the Backward Communities (Religious Protection) Bill in 1960, “which aimed at checking conversion of Hindus to ‘non-

³ Religion: 2001 Census Data, OFFICE OF THE REGISTRAR GENERAL & CENSUS COMMISSIONER, INDIA, http://censusindia.gov.in/Census_And_You/religion.aspx (last visited Apr. 19, 2017), archived at <https://perma.cc/ME8WUBXD>

⁴ Hindu Population Reducing in India as ‘They Never Convert People’: Kiren Rijju, DECCAN CHRONICLE (Feb. 13, 2017; updated Feb. 14, 2017), <http://www.deccanchronicle.com/nation/current-affairs/130217/hindu-populationreducing-in-india-as-they-never-convert-people-kiren-rijju.html>, archived at <https://perma.cc/8BUG-KQ4N>; see also C-1 Population by Religious Community, OFFICE OF THE REGISTRAR GENERAL & CENSUS COMMISSIONER, INDIA, <http://www.censusindia.gov.in/2011census/C-01.html> (last visited Apr. 19, 2017), archived at <https://perma.cc/Q7R7-DRRB>.

⁵ Jennifer R. Coleman, Authoring (In)Authenticity, Regulating Religious Tolerance: The Legal and Political Implications of Anti-Conversion Legislation for Indian Secularism 23 (Paper Presented to Penn Program on Democracy, Citizenship, and Constitutionalism Graduate Workshop, Sept. 13, 2007–08), <https://www.sas.upenn.edu/dcc/sites/www.sas.upenn.edu.dcc/files/uploads/Coleman.pdf>, archived at <https://perma.cc/9WY3-DTFN>

⁶ James Andrew Huff, Note, Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws, 10(2) RUTGERS J. L. & RELIGION 1, 4 (2009), <http://www.lawandreligion.com/sites/lawandreligion.com/files/A10S-6Huff.pdf>, archived at <https://perma.cc/7Z7Y-9U8Q>.

⁷ Laura Dudley Jenkins, Legal Limits on Religious Conversion in India, 71 LAW & CONTEMP. PROBS. 109, 113 (2008), <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1469&context=lcp>, archived at <https://perma.cc/7BYA-UNDW>.

⁸ *Supra* note 1.

⁹ DR. IQTIDAR KARAMAT CHEEMA, U.S. COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM, CONSTITUTIONAL AND LEGAL CHALLENGES FACED BY RELIGIOUS MINORITIES IN INDIA 4 (Feb. 2017), [https://www.uscirf.gov/sites/default/files/Constitutional and Legal Challenges Faced by Religious Minorities in India.pdf](https://www.uscirf.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf), archived at <https://perma.cc/KQ7P-DY7R>.

Indian religions’ which, as per the definition in the Bill, included Islam, Christianity, Judaism and Zoroastrianism,”¹⁰ and the Freedom of Religion Bill in 1979, which sought “official curbs on inter-religious conversion.”¹¹ Parliament did not pass these bills because they lacked the required support from its members. Ministers of the current Bharatiya Janata Party (BJP) government have voiced their support for the adoption of an anti-conversion law at the national level, which some critics see as an attack on the secular values of India’s Constitution.¹² In 2015, “high- ranking members of the ruling BJP party, including the party’s president Amit Shah, called for a nationwide anti-conversion law.”¹³ However, the BJP government’s plan to enact national legislation reportedly “hit a roadblock” with the Ministry of Law and Justice, which advised against the move, stating that it is “not tenable” since it is “purely a state subject”¹⁴—i.e., a matter that lies purely under the constitutional domain of the states under the State List in Schedule Seven of the Constitution.¹⁵ At the state level, laws related to Freedom of Religion have been introduced to oversee religious conversions that occur through coercion, deceit, or other forms of enticement.

STATE ANTI-CONVERSION LAWS IN INDIA

These statutes at the state level are implemented to oversee and control religious conversions. Such laws began to be introduced in the 1960s after the failed attempts to enact an anti- conversion law at the Union (or central) level, and were first enacted by Orissa and Madhya

¹⁰ INDIAN LAW INSTITUTE, A STUDY OF COMPATIBILITY OF ANTI-CONVERSION LAWS WITH RIGHT TO FREEDOM OF RELIGION IN INDIA 31 (2007) (submitted to India’s National Commission for Minorities).

¹¹ *Id.*

¹² Saurav Datta, India’s Mass Conversion Problem, AL JAZEERA (Jan. 4, 2015), <http://www.aljazeera.com/indepth/opinion/2015/01/india-mass-conversion-problem-20151274531627294.html>, archived at <https://perma.cc/4UFD-KQZ8>.

¹³ USCIRF ANNUAL REPORT 2016 – TIER 2 COUNTRIES – INDIA (May 2, 2016), available at <http://www.refworld.org/docid/57307ce6c.html>, archived at <https://perma.cc/C78P-ZHJF>; Shoaib Daniyal, As Clamour to Ban Conversion Grows, A Reminder: Five Indian States Have Already Done So, SCROLL.IN (Sept. 15, 2014), <https://scroll.in/article/679080/as-clamour-to-ban-conversion-grows-a-reminder-five-indian-states-have-alreadydone-so>, archived at <https://perma.cc/3QZ6-58HS>.

¹⁴ National Anti-conversion Law Not Tenable: Law Ministry, DECCAN CHRONICLE (Apr. 15, 2015), <http://www.deccanherald.com/content/471944/national-anti-conversion-law-not.html>, archived at <https://perma.cc/D4JD-SEBB>.

¹⁵ CONSTITUTION OF INDIA, Seventh Sched., <http://lawmin.nic.in/olwing/coi/coi-english/coi-4March2016.pdf>, archived at <https://perma.cc/H8TF-SAVH>.

Pradesh states.¹⁶ At present, such laws are in effect in eight out of twenty-nine states: Arunachal Pradesh, Orissa, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, and Uttarakhand.¹⁷ The legislation in Arunachal Pradesh remains unenforced because of the absence of subsidiary regulations. Similarly, although an anti-conversion bill has been approved by the State of Rajasthan, it is pending the President of India's signature. Several other states, including Manipur, are reportedly “considering similar laws.”¹⁸

In the 1980s, the target of anti-conversion legislation was largely Muslims seeking to convert non-Muslims, while “Christianity has received more attention since the 1990s because of its association with Western-style colonialism and the role active proselytizing plays in the course of being a good Christian.”¹⁹ The state statutes are fairly similar in text and structure, however, there are significant differences. According to one researcher, the goal has been essentially the same in each draft bill: to constrain the ability of communities and individuals to convert ‘from the religion of one’s forefathers,’ often in the name of protecting those making up the ‘weaker’ or more easily ‘influenced’ sectors of society—namely women, children, backward castes and untouchables.²⁰ The anti-conversion laws in Rajasthan and Arunachal do not address reconversions to “native” or “original” faiths.²¹ All of these laws seek to “prevent conversions ‘carried out’ by ‘forcible or ‘fraudulent’ means or by ‘allurement’ or ‘inducement.’ ”²² Penalties for breaching the laws can range from monetary fines to imprisonment; the laws impose punishments ranging from one to three years of imprisonment and fines of 5,000 to 50,000 Indian rupees (about US\$70 to \$70422).²³ Some of the laws provide for stiffer punishments of

¹⁶ Huff, *supra* note 4.

¹⁷ Meghan G. Fischer, Anti-Conversion Laws and the International Response, 6 PENN. ST. J. L. & INT’L AFF. 1, 14 (2018), <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1175&context=jlia>, archived at <https://perma.cc/HUP5-6QNW>.

¹⁸ USCIRF, ANNUAL REPORT 2013: INDIA 4, [https://www.uscirf.gov/sites/default/files/resources/India%202013\(1\).pdf](https://www.uscirf.gov/sites/default/files/resources/India%202013(1).pdf), archived at <https://perma.cc/2QJX-KLEB>.

¹⁹ Coleman, *supra* note 3, at 26.

²⁰ *Id.* at 23.

²¹ Rajshree Chandra, Converting Religion, Converting Law: Rajshree Chandra, KAFILA (Dec. 24, 2014), <https://kafila.online/2014/12/24/converting-religion-converting-law-rajshree-chandra/>, archived at <https://perma.cc/T6D2-HFAJ>.

²² BECKET FUND FOR RELIGIOUS LIBERTY, SUBMISSION ON UNITED NATIONS HUMAN RIGHTS COUNCIL: UNIVERSAL PERIODIC REVIEW: INDIA 2 (Nov. 20, 2007).

²³ One US dollar is currently equivalent to 83.27 Indian rupees.

women, children, or members of scheduled castes or scheduled tribes (SC/ST) are being converted.²⁴

INTERNATIONAL HUMAN RIGHTS CONVENTIONS

Under international human rights law, individuals possess the right to convert to a different religion or adopt non-religious beliefs. As stated in Article 18 of the Universal Declaration of Human Rights (UDHR), every person is entitled to freedom of religion or belief, encompassing the liberty to alter their religious beliefs. Everyone has the "freedom to have or adopt a religion or belief" of their choosing, according to Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR). The UDHR and the ICCPR also safeguard an individual's right to encourage or support another individual's voluntary conversion to a different religion or no religion at all.²⁵ Article 18 of the Universal Declaration of Human Rights safeguards individuals' rights to manifest their religious beliefs through activities like teaching, practice, worship, and observance. Similarly, Article 18(1) of the ICCPR protects an individual's right to express religion or belief through "worship, observance, practise, and teaching." The ICCPR's Article 18(2) prohibits "coercion" that restricts an individual's "freedom to have or adopt a religion or belief of his choice."²⁶

PROHIBITION ON CONVERSIONS

India's state-level anti-conversion laws use broad and vague language that extends beyond cases involving coercion, potentially allowing for the scrutiny of voluntary religious conversions. Section three of the Prohibition of Unlawful Conversion of Religion Act, 2021, Uttar Pradesh states that "no person shall directly or indirectly convert or attempt to convert" another individual using "misrepresentation, force, undue influence, coercion, allurement, or any fraudulent

²⁴ INTERNATIONAL RELIGIOUS FREEDOM REPORT FOR 2015: INDIA, supra note 16; see also South Asia Human Rights Documentation Centre, Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights, 43(2) ECON. & POL. WKLY. 71 (Jan. 12, 2008), available at <https://www.jstor.org/stable/pdf/40276904.pdf>, archived at <https://perma.cc/4HKT-85SJ>.

²⁵ *Supra* note 1.

²⁶ *Ibid.*

means."²⁷ Section three violations are punished by imprisonment for one to five years and a fine of at least 15,000 Indian rupees (\$180). The former is penalised by two to ten years in jail and a fine of at least 25,000 rupees (\$300); the latter is punishable by three to ten years in prison and a fine of at least 50,000 rupees (\$600).

Provisions aimed at preventing what is derogatorily referred to as "Love Jihads," which involves conversions within interfaith marriages, are progressively gaining prevalence within India's state-level anti-conversion laws. The Haryana Prevention of Unlawful Conversion of Faith Act, 2022,²⁸ forbids conversion or attempts at conversion "by marriage or for marriage" as well as hiding one's "religion with intention to marry." The former is punished by one to five years in jail and a fine of at least one lakh rupees (\$1,200); the latter is punished by three to ten years in prison and a fine of at least three lakh rupees (\$3,600). Converting or trying to convert a juvenile, woman, or someone from a Scheduled Caste or Tribe carries a four- to ten-year jail sentence and a fine of at least three lakh rupees (\$3,600).

These restrictions also infringe upon the rights of individuals who wish to encourage or assist others in voluntarily changing their religion. As stated by the UN Special Rapporteur on Freedom of Religion or Belief, Article 18 of the ICCPR safeguards "non-coercive efforts to convince others" to undergo a conversion. Furthermore, according to the Special Rapporteur, ICCPR Article 19(2), which protects freedom of expression, also protects "communicative outreach activities aimed at persuading others, including religious discourse."

NOTIFICATION REQUIREMENT

Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Uttarakhand, and Uttar Pradesh are among them. The Jharkhand Freedom of Religion Act, 2017,²⁹ for example, requires anyone planning a religious ceremony in which someone will be converting from one faith to another to notify and obtain permission from the local District Magistrate. The law additionally mandates that individuals who have undergone a

²⁷ The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act. §3. (2021).

²⁸ The Haryana Prevention of Unlawful Conversion of Faith Act. (2022).

²⁹ The Jharkhand Freedom of Religion Act. (2017).

conversion must inform the District Magistrate once the process is finalized. Non-compliance with these regulations can result in penalties of imprisonment for a maximum of one year, a fine of up to 5,000 rupees (equivalent to \$60), or a combination of both.

Some anti-conversion laws, such as the Karnataka Protection of Right to Freedom of Religion Act, 2022,³⁰ require the District Magistrate to issue a public call for objections to the conversion after being notified of an individual's intention to convert. If an objection is lodged, the District Magistrate organises an investigation "about the genuine intention, purpose, and cause of the proposed conversion" "through officials of the Revenue or Social Welfare Department." According to General Comment 22 to Article 18 of the ICCPR, "no one can be compelled to reveal his thoughts or adherence to a religion or belief." According to ICCPR Article 18(2), no one shall be "subjected to coercion which would impair his freedom to have or adopt a religion or belief." According to General Comment 22,³¹ "penal sanctions," such as those imposed on an individual for failing to notify the government of a planned conversion, constitute coercion that would "impair the right to have or adopt a religion or belief." This is especially true in India, where adherents of minority religions may face violence.

BURDEN-SHIFTING PROVISIONS THAT PRESUME GUILT

In seven states, individuals who are charged with violating anti-conversion laws are required to demonstrate their innocence. These states include Gujarat, Haryana, Himachal Pradesh, Karnataka, Madhya Pradesh, Uttarakhand, and Uttar Pradesh. As an illustration, in Madhya Pradesh's Freedom of Religion Act from 2021, Section 12 places the responsibility on the accused to demonstrate that a conversion did not occur through misrepresentation, allurement, force, threat of force, undue influence, coercion, or any fraudulent means, including marriage. Individuals accused of crimes are not presumed guilty under international human rights law.

³⁰ The Karnataka Protection of Right to Freedom of Religion Act. (2022).

³¹ General Comment 22 on Article 18 of the ICCPR, GENERAL COMMENT 22 ON ARTICLE 18 OF THE ICCPR | A CONSCIENTIOUS OBJECTOR'S GUIDE TO THE INTERNATIONAL HUMAN RIGHTS SYSTEM, [https://co-guide.info/interpretation/general-comment-22-article-18-iccpr#:~:text=General%20Comment%202022%20emphasises%20the,profess%20any%20religion%20or%20belief.\(last visited Nov 8, 2023\).](https://co-guide.info/interpretation/general-comment-22-article-18-iccpr#:~:text=General%20Comment%202022%20emphasises%20the,profess%20any%20religion%20or%20belief.(last%20visited%20Nov%208,%202023).)

According to UDHR Article 11, everyone charged with a criminal offence³² "has the right to be presumed innocent until proven guilty." Similarly, Article 14 of the ICCPR states that anyone charged with a criminal offence "has the right to be presumed innocent until proven guilty according to the law." According to General Comment 32 to ICCPR Article 14, the presumption As per General Comment 32 on ICCPR Article 14, the presumption of innocence places the burden of proving the accusation on the prosecution, rather than requiring the defendant to establish their innocence.

JUDICIAL DECISIONS

The Constitution of India guarantees the freedom to profess, practice, and propagate one's religion under Article 25.³³ The Supreme Court in the case of *Ratilal Panachand Gandhi v. State of Bombay* clarified this provision by holding 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".³⁴ The Supreme Court, in the case of *Rev Stanislaus v. State of Madhya Pradesh*, deliberated on whether the freedom to practice and disseminate one's religion encompassed the liberty to engage in conversions. As summarized by Professor Laura Jenkins, the Court found that "restrictions on efforts to convert are constitutional because such efforts impinge on 'freedom of conscience' and 'public order'".³⁵ This holding was summed up by the Court as follows: "It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike... It has to be

³² *Rev. Stanislaus v. State of Madhya Pradesh*, (1977) 1 SCC 677.

³³ INDIA CONST. ART. 25.

³⁴ *Ratilal Panachand Gandhi v. State of Bombay*, 1954 S.C.R. 1035.

³⁵ Laura Dudley Jenkins, *Legal Limits on Religious Conversion in India*, 71 *LAW & CONTEMP. PROBS.* 109, 115 (2008), <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1469&context=lcp>, archived at <https://perma.cc/MM8W-K64C>.

appreciated that the freedom of religion enshrined in the Article [25] is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following the other religions. What is freedom for one, is freedom for the other, in equal measure, and there can therefore be no such thing as a fundamental right to convert any person to one's religion."³⁶

Because Article 25(1) stipulates that the right is subject to "public order," the Court also found that the acts "clearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States," and that "the expression 'Public order' is of wide connotation."³⁷ On the question of competency, the Court found that the acts fall within the purview of the states under Entry I ("Public Order") of List II of the Constitution's Seventh Schedule and are not regulated as a subject of religion, which is under the residuary jurisdiction of the central legislature.³⁸ Some academics have criticised this decision for not recognising "propagation" as including freedom to convert and for failing to "discuss the definitions of inducement and allurements, which was the primary bone of contention" with these laws. According to Professor Mustafa and Professor Sohi, "the Supreme Court also did not revert to the legislative history of Article 25—the term propagate was included in the Constitution as a compromise to assure Christians that it would include freedom to convert. Moreover, if one takes the reductionist understanding of propagation—given the court in this case—the inclusion of such a term in the Indian Constitution would be rendered meaningless. The mere right to propagate for the enlightenment of others would already be covered under the right to free speech and expression under Article 19(1)(a) of the Indian Constitution. Thus, we submit that the right to convert was actually included in Article 25, and, as such, the decision of the Supreme Court in Stanislaus not only was erroneous but also led to instability in society, as Indian Christians feel they have been cheated in this matter. The assurances given to them in the Constituent Assembly on the inclusion of the word propagate

³⁶ *Rev. Stanislaus v. State of Madhya Pradesh*, ¶ 21.

³⁷ *Id.* ¶ 24.

³⁸ *Id.* ¶ 25.

have not been fulfilled, and the government has done nothing to remedy the situation arising out of the highly restrictive interpretation of the term propagation by the Supreme Court.”³⁹

ARRESTS AND CONVICTION

Despite criticism of India’s anti-conversion laws, some human rights bodies, including the USCIRF, have acknowledged that “these laws have resulted in few arrests and no convictions.”⁴⁰ The US State Department’s International Religious Freedom reports published in 2010 and 2011 have also noted few arrests and no convictions under various anti-conversion laws during the respective reporting periods.⁴¹ Nevertheless, according to the USCIRF, some observers note that “these laws create a hostile, and on occasion violent, environment for religious minority communities because they do not require any evidence to support accusations of wrongdoing.”⁴² More recent USCIRF reports have highlighted the following arrests:

In 2017, leaders and followers belonging to religious minority groups encountered harassment and apprehension due to the enforcement of these legislations. For example, a Catholic nun, along with four tribal women, were detained in June 2017 based on suspicion of induced conversion.⁴³ In April 2017, three Christians were arrested in the Khandwa district based on allegations that they were converting people.⁴⁴ In July 2017, Christians protested in Ludhiana, Punjab, after Sultan Masih, the pastor of the Temple of God Church, was murdered in public based on suspicions of his engaging in the conversion of others.⁴⁵ Furthermore, the most recent international religious freedom report published by the US State Department has emphasized a

³⁹ 8 Faizan Mustafa & Jagteshwar Singh Sohi, Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy, 2017(4) BYU L. REV. 915, 942-3 (2018), <https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=3113&context=lawreview>, archived at <https://perma.cc/V7KT-H8VW>.

⁴⁰ USCIRF ANNUAL REPORT 2014, Tier 2: India, at 122 (Apr. 30, 2014), [http://www.uscirtf.gov/sites/default/files/USCIRF 2014 Annual Report PDF.pdf](http://www.uscirtf.gov/sites/default/files/USCIRF%202014%20Annual%20Report%20PDF.pdf), <https://perma.cc/B7VS-A53V>.

⁴¹ U.S. DEPARTMENT OF STATE: BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM 2010: INDIA (Nov. 17, 2010), <http://www.state.gov/j/drl/rls/irf/2010/148792.htm>, archived at <https://perma.cc/8LFV-4UWK>.

⁴² USCIRF ANNUAL REPORT 2016, Tier 2 Countries – India, *supra* note 10.

⁴³ USCIRF ANNUAL REPORT 2018, Tier 2: India, at 165 (Apr. 2018), <http://www.uscirtf.gov/sites/default/files/2018USCIRFAR.pdf>, archived at <https://perma.cc/MQ2W-FBDD>.

⁴⁴ *Id.*

⁴⁵ *Id.*

specific occurrence. “Media reported police arrested seven Christian pastors – Stanley Jacob, Vijay Kumar, Sumit Varghese, David from New Delhi, Amit from Mathura, Anita from Hathras, and Dinesh from Rajasthan – on December 4 while they were holding a prayer meeting in a private home. The following day a court sentenced them to 14 days in judicial custody for carrying out a forcible conversion campaign.”⁴⁶ Other incidents of arrests from news reports are outlined below: In early December 2020, in Mathura district in the North Indian state of Uttar Pradesh, police arrested seven Christian preachers “for allegedly carrying out a “forcible conversion campaign” in a village.⁴⁷ In mid-February 2022, Indian police in the state of Madhya Pradesh arrested a Christian priest and questioned members of a seminary after a hardline Hindu group linked to the ruling BJP government “accused them of trying to convert villagers to Christianity by distributing Bibles and singing carols.”⁴⁸

UNVEILING AMBIGUITY

India's anti-conversion laws, commonly referred to as "Freedom of Religion Acts," are state-level statutes that have been a subject of ongoing debate and scrutiny both nationally and internationally. Enacted in eight of India's twenty-nine states, including Arunachal Pradesh, Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, and Uttarakhand, these laws share a common objective - to prevent individuals from engaging in or attempting religious conversion through methods categorized as "forcible" or "fraudulent," as well as through the use of "allurement" or "inducement." However, an in-depth analysis reveals that these laws contain ambiguous provisions that are inconsistent with India's international human rights obligations and the constitutionally guaranteed freedom of religion.

⁴⁶ U.S. DEPARTMENT OF STATE: BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, INTERNATIONAL RELIGIOUS FREEDOM 2017: INDIA (May 29, 2018), <https://www.state.gov/j/drl/rls/irf/2017/sca/281022.htm>, archived at <https://perma.cc/S747-CNZG>.

⁴⁷ Anuja Jaiswal, 7 Christian Preachers Jailed for ‘Forcible’ Conversion Bid in UP, THE TIMES OF INDIA (Dec 3, 2020), https://timesofindia.indiatimes.com/city/agra/7-christian-preachers-jailed-for-forcible-conversion-bid-inup/articleshow/61940544.cms?utm_source=toiaandroidapp&utm_medium=others&utm_campaign=show, archived at <https://perma.cc/3FE7-Y7BU>.

⁴⁸ Indian Police Arrest Christian Priest after Complaint by Hindu Group, REUTERS (Feb. 20, 2022), <https://www.reuters.com/article/us-india-religion/indian-police-arrest-christian-priest-after-complaint-by-hindugroup-idUSKBN1EA06V>, archived at <https://perma.cc/22F5-X66E>; Indian Carol Singers Arrested after ‘Conversion’ Complaint, BBC NEWS (Feb. 20, 2022), <https://www.bbc.com/news/world-asia-india-42363561>, archived at <https://perma.cc/LLB3-M9C4>; Losing Confidence in Government, Country Is Being Divided in Name of Religion: Top Catholic Body, THE WIRE (Feb. 20, 2022), <https://thewire.in/government/losing-confidence>

During the British colonial period, laws aimed at curbing religious conversions were initially enacted by princely states with Hindu rulers, primarily in response to the activities of British missionaries. After India gained independence, several anti-conversion bills were introduced at the national level but failed to gain parliamentary support. The focus of these laws has evolved, with Muslims being the primary target in the 1980s and Christianity drawing increased attention since the 1990s. Presently, anti-conversion laws are in effect in several states, with others considering similar legislation. The motivation behind these laws is to restrict conversions, particularly among marginalized communities, such as women, children, backward castes, and scheduled tribes.

International human rights conventions, to which India is a signatory, protect the right of individuals to change their religion or belief freely. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) protect the right to choose or embrace a religion of one's preference and to promote or assist others in making voluntary conversions. For example, the Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021, prohibits direct or indirect conversions using "misrepresentation, force, undue influence, coercion, allurement, or any fraudulent means." These vague terms open the door to arbitrary interpretations and potential misuse, posing a serious threat to personal liberties.

The impact on interfaith marriages is another contentious aspect of these laws. For instance, the Haryana Prevention of Unlawful Conversion of Faith Act, 2022, forbids conversion by marriage or for marriage and hiding one's religion to marry. These provisions have the potential to infringe on individuals' privacy and personal choices, especially in a diverse and pluralistic society like India. They may discourage interfaith marriages and create a hostile environment for those seeking to exercise their right to choose their partners freely.

Notice requirements, which compel individuals to inform the government about their intention to convert, also raise concerns. Ten state-level anti-conversion laws require such notifications, with penalties for non-compliance, including imprisonment and fines. These requirements not only infringe on personal privacy but can also have a chilling effect on religious conversion, as they

might deter individuals from pursuing their beliefs openly. This process can expose individuals to potential harassment and discrimination, especially in regions where religious minorities are vulnerable to violence and persecution. Recent incidents of arrests based on allegations of induced conversion underscore the potential for misuse and intimidation. These laws cast a shadow of uncertainty over religious minorities, stifling their ability to freely practice and propagate their faiths, and creating a climate of fear and insecurity.

India's anti-conversion laws, despite their stated intentions, raise significant concerns regarding their ambiguity, impact on religious minorities, and their compatibility with international human rights conventions and the Indian Constitution. These laws have the potential to infringe on personal liberties, privacy, and the presumption of innocence. They also risk creating a hostile environment for religious minority communities and discouraging interfaith marriages. It is imperative to address these concerns and bring India's anti-conversion laws in line with international human rights standards to ensure a more inclusive and pluralistic society that upholds the principles of freedom of religion and expression.

CONCLUSION

In conclusion, the enigma of India's state-level anti-conversion laws and their conflict with international human rights conventions is a complex issue with far-reaching implications. These laws, officially known as "Freedom of Religion Acts," are currently in effect in eight of India's twenty-nine states. While their primary objective is to prevent forced or fraudulent conversions, they contain ambiguities and provisions that raise concerns about their compatibility with international human rights conventions and the constitutionally guaranteed freedom of religion in India. State-level anti-conversion laws in India have a historical origin dating back to the British colonial period, introduced by Hindu princely states to safeguard Hindu religious identity against British missionary activities. These laws, originating in the late 1930s and 1940s, aimed to protect vulnerable segments of society, including women, children, backward castes, and untouchables. After India gained independence, various national-level anti-conversion bills were proposed but not adopted. Consequently, state-level anti-conversion laws came into existence in the 1960s, with Orissa and Madhya Pradesh being among the first states to enact them. The

vague terms like "indirectly convert" or "allurement" leave room for interpretation and potential misuse. Additionally, some states have introduced provisions aimed at preventing "Love Jihad," which refers to conversions in the context of interfaith marriages. While the intention may be to prevent forced conversions, the language used in these provisions can also encompass voluntary conversions, raising concerns about religious freedom. Notification requirements are another contentious aspect of these laws. Ten states have imposed notification requirements on individuals planning to convert and those involved in another person's conversion plans.

The burden-shifting provisions within these laws pose a significant challenge. In seven states, those accused of breaching anti-conversion laws are required to demonstrate that a conversion did not occur through misrepresentation, allurement, force, threats, undue influence, coercion, or any fraudulent methods. This contradicts the principle of "innocent until proven guilty" upheld by international human rights standards. The burden of proof should be on the prosecution to establish guilt, not on the defendant to prove their innocence. These provisions create an unjust legal framework and can be used to target religious minority communities, particularly when there is a lack of concrete evidence. The impact of these laws on religious minorities is a subject of significant concern. While certain reports suggest that these legislations have led to minimal arrests and zero convictions, they have been employed as tools to intimidate and apprehend leaders and followers of religious minority groups on suspicion of inducing conversions. Instances of arrests, demonstrations, and violence have been recorded, underscoring a hostile atmosphere for religious minority communities. These laws instil a sense of fear and insecurity, potentially discouraging individuals from openly professing their religious convictions. The enforcement of these laws can lead to discrimination and harassment of religious minority communities, which contradicts the principles of religious freedom and human rights.

The conflict between India's state-level anti-conversion laws and international human rights conventions is the most critical issue at hand. Under these conventions, individuals have the right to change their religion or belief freely. Article 18 of the Universal Declaration of Human Rights and Article 18(1) of the International Covenant on Civil and Political Rights guarantee the right to change one's religious convictions. These conventions also protect the freedom to encourage or support another person's voluntary conversion to a different religion or belief. The anti-conversion laws, with their prohibitions, notification requirements, and burden-shifting

provisions, appear to contravene these international obligations. They restrict the exercise of religious freedom and the freedom to persuade or support others in making their religious choices without coercion. However, some critics argue that the court's interpretation of "propagation" is restrictive and does not recognize the freedom to convert as part of the right to propagate one's religion.

In conclusion, India's state-level anti-conversion laws are a matter of significant concern due to their potential impact on religious freedom, their ambiguous provisions, and their potential conflict with international human rights conventions. The implications for religious minorities are evident in the climate of fear and uncertainty these laws create. To address these issues, India must review and amend these laws to align them with its international commitments and promote a more inclusive and rights-based approach to uphold the principles of religious freedom and human rights in its diverse and pluralistic society. Finding a balance between protecting individuals from forced conversions and safeguarding the fundamental right to religious freedom is essential in resolving this enigmatic issue.



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