

DISSERTATION – ARTICLE – PUBLICATION

A CRITICAL ANALYSIS OF ANTI-CONVERSION LAWS IN INDIA AND THEIR INTERPLAY WITH THE CONTEMPORARY HUMAN RIGHTS REGIME

AUTHOR – SUSAI ROSHAN A, LL.M STUDENT AT AMITY INSTITUTE OF ADVANCED LEGAL STUDIES, AMITY UNIVERSITY UTTAR PRADESH

UNDER THE SUPERVISION OF

DR. SETU GUPTA, ASSISTANT PROFESSOR II, AMITY INSTITUTE OF ADVANCED LEGAL STUDIES, AMITY UNIVERSITY UTTAR PRADESH

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LIST OF ABBREVIATIONS

DM	District Magistrate
FIR	First Information Report
HP	Himachal Pradesh
ICCPR	International Covenant of Civil and Political Rights
INR	Indian National Rupee
IPC	Indian Penal Code
UDHR	Universal Declaration of Human Rights
UP	Uttar Pradesh

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ABSTRACT

People all over the world has their own opinion and conscientious believes. The history of religion is the oldest history in this entire world, even in tribes who have not yet developed have their own way of worship and their own God. There are lot of religions in this planet, it is diversified which seems to be staggering. When people think commonly about origin of religion, people think the name of some central figures of their religion and the credit goes to them. Some of those central figures were Kings, Reformers and Moralistic Philosophers. And every religion in the world when it is observed keenly, the way of worship and understandings defers time to time, so, different era had different directions of worship within the same religion.

Within the same religion people classified into many sects and people have different ideas and understandings about their own religion. During 19th century because of all those scientific innovations people and different disciplines of research, many people began to believe that there is no existence of God.

In almost every religion, the priest would profess or teach the knowledge of faith to the devotees as well as to other people who might be having different faith. The thousands of years old Tamil literatures, for example epic literature like 'Mani Megalai' depicts religious conversion of the main character. Another example is epic literature named 'Soolamani' which was written about 2,500 years ago by Tholamozhi Dhevar, which was written to teach about a particular new religious faith named 'samanam' to every people whoever followed (1) 'Saivam' (Lord Siva Worshipers) and (2) 'Vainavam' (Lord Vishnu Worshipers) religions these two combines a major part of Hinduism, and other parts of Hinduism was classified by Adhi Shankarar during 8th Century C.E. that includes (3) 'Koumaram' (Worshipers of Lord Murugan), (4) 'Ganapathiyam' (Worshipers of Lord Ganapathy, (5) 'Souram' (Sooriya Namashkaram) (Worshipers of Sun) and (6) 'Saktham' (Worshipers of Shakti deity).

When these religions were already in existence 'Soolamani' an epic literature was written before 2,500 circa years ago to teach another new religious faith, shows propagation of religion existed in olden Bharath. During modern 1st century C.E. it became an essential religious practice of disciples of Jesus Christ to teach the principles taught by him, during that time there was no religion named Christianity existed. And later many religions or religious sects started to convert people to their religion forcefully, which makes no sense at all. This forceful conversion infringes human rights of people. Since, this forceful conversion problem is in our Modern India which is a democratic nation, this has to be curtailed, hence we require good 'Freedom of Religion Laws' which does not violate any rights of any sect and also to protect the right of all against forceful conversion.

This present research would bring up those laws to prevent forceful conversions and would analyse whether it protects the fundamental and human rights of all citizens with equal preference.

Keywords: Religion, Proselytization, Anti-Conversion Laws, Freedom of Religion.

CHAPTER 1

INTRODUCTION:

Religious beliefs of every people should be accepted by everyone as the truth of others. It is possible to achieve unity among all groups of people in a civilized society when people have equal ways of thinking for all religious beliefs. Religion is not the core source of any communal problem; rather, the misuse of religion is the only cause of any problem that exists in the community. The various members of the community are getting more unbalanced as a result of the dissemination of erroneous information regarding members of other religions and other religions. Those who promote erroneous education cause their followers to think in an unreasonable manner, which fosters discord within the community.

In accordance with the opinion expressed by Dr. S. Radhakrishnan, religion has the potential to be a manifestation of creative impulses that propels society into a new stage. A number that belongs to various religions, including Hindus, Muslims, Christians, Sikhs, Zoroastrians, Buddhists, Jains, Jews, and Jehovah's Witnesses, etc, have a presence in our country, which is a stronghold of democracy.¹⁵¹⁴

Articles 25 to 28 of Indian Constitution enshrines certain rights with regarding to religious aspect, in order to protect and preserve all the religions that are being practiced in our country. Article 25 of Indian Constitution guarantees freedom of conscience and free profession, practice, and religious propagation of religion. For the sake of convenience, Article is provided here under:

Right to Freedom of Religion¹⁵¹⁵

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— (a) regulating or restricting any economic, financial, political, or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II. —In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

The freedom that has been provided by this article is unrestricted, although it is subject to reasonable limitations. The imposition of these acceptable restrictions is necessary for the purpose to prevent religious a commotion The term "religious fanaticism" is usually believed to refer to "religious fundamentalism." Fundamentalists are those who eliminate others from the category of privileged individuals and, as a consequence, discriminate against other individuals who belong to different

¹⁵¹⁴ Khwaja A. Muntaqim, Protection of Human Rights (National & International Perspectives) 92 (Law Publishers (India) Pvt. Ltd., 1st edn. 2007).

¹⁵¹⁵ The Indian Constitution, art. 25.

religions. A potent harm that also has an effect on human rights, religious fundamentalism has an impact not only on the political and economic well-being of a nation as well as on human rights.

A definition of the phrase "propagation" that is contained in Article 25 of the Indian constitution was provided by the court in the case of *Rev. Stanislaus v. State of M.P.*¹⁵¹⁶ The court had also taken into consideration the case of *Adelaide Company of Jehovah's Witnesses Incorporated v. The Commonwealth*.¹⁵¹⁷

A citizen has right and freedom to transmit or to spread or teach his own religion to anyone, but the word 'propagation' should be seen through the lens of the word 'freedom of conscience' of every Indian citizen, hence it is made clear and held by the court that there is no fundamental right to convert anyone to the religion that a citizen is propagating.

In the process of analyzing international documents, it is important to note that these instruments also contain safeguards for religious liberty. For instance, the UDHR¹⁵¹⁸ stipulates that every individual possesses the right to adhere to any religion or to hold any belief, and that even individuals possess the liberty to alter their religious or philosophical beliefs. Everyone has the "freedom to practice their faith or to adopt a religion or belief" of their own volition, according to the ICCPR¹⁵¹⁹. Both of these international institutions uphold the right of individuals to freely express their own religious and philosophical beliefs in their own way. Therefore, everyone has the freedom to follow, worship, practice, and instruct in the religion with which they are personally identified.

Some forms of proselytism are prohibited under these international conventions, notwithstanding the fact that individuals have the right to express their religious beliefs in accordance with these instruments. "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice," the ICCPR¹⁵²⁰ states. As is the case with the Indian Constitution, the manifestation of religion is subject to reasonable restrictions. This is same as well as in the international laws that deal with human rights, particularly those that is regarded to forced conversions to other religion or beliefs.

It is reasonable that 12 States of India have come out with "Anti – Conversion" laws. The States namely, Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Uttarakhand, and Uttar Pradesh have this law enacted to curb religious conversion in certain way or for certain purpose.

However, many Indian citizens have criticised that "Anti-Conversion" Laws were passed in many States to prevent people from conversion to minority religions like Islam and Christianity. It is argued that the purpose of this legislation is not to protect against coerced proselytism.



¹⁵¹⁶ AIR 1977 SC 908.

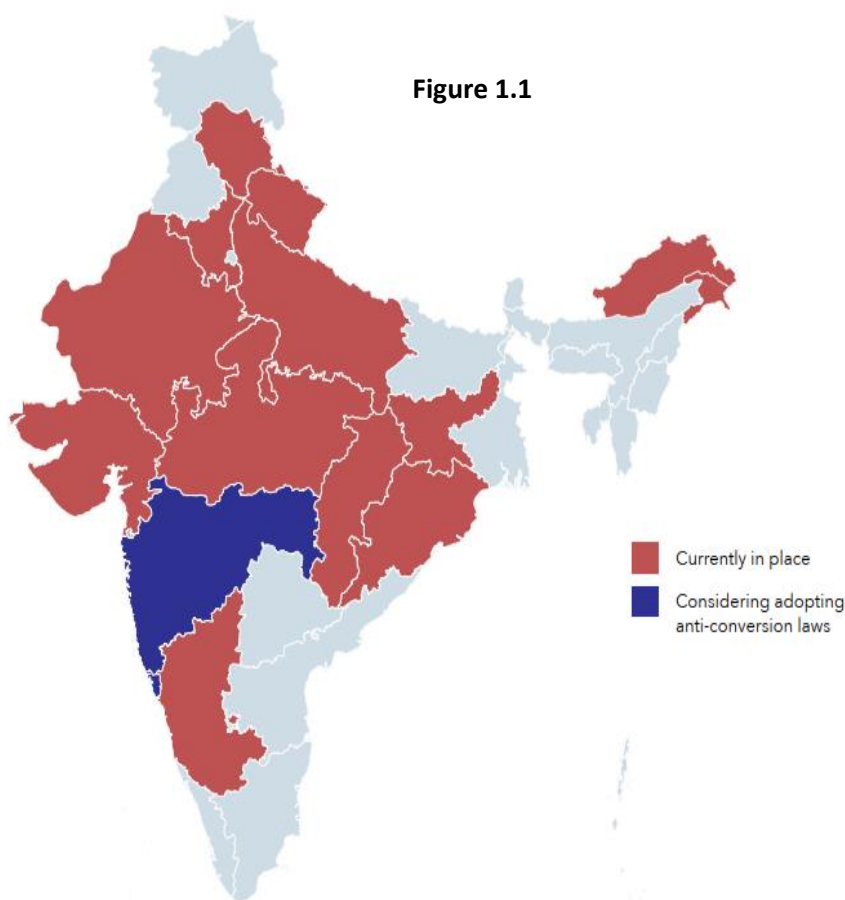
¹⁵¹⁷ [1943] HCA 12, (1943) (1) 67 CLR 116, 125.

¹⁵¹⁸ Universal Declaration of Human Rights, art. 18.

¹⁵¹⁹ International Covenant on Civil and Political Rights, art. 18 (1).

¹⁵²⁰ International Covenant on Civil and Political Rights, art. 18 (2).

Figure 1.1



REVIEW OF LITERATURE:

It is of utmost importance to carry out a comprehensive analysis of the existing literature in order to acquire a comprehensive understanding of the topic at hand and to locate the areas that have not been explored by previous researchers. In particular, the present researcher was able to gain a better understanding of the freedom of religion, particularly for Indian individuals, by reading the sources that were available to them. The present researcher performed a comprehensive review of the following literature sources in order to acquire a more comprehensive understanding of this subject.

Books and commentaries:

Khwaja A. Muntaqim, *Protection of Human Rights (National & International Perspectives)* (Law Publishers (India) Pvt. Ltd., Allahabad, 1st edn. 2007), has been used in the current research to know about the concept of religion in a secular nation and the human rights for the followers and non-followers of that religion. This book covers almost every aspect of human rights with relevant judicial precedents for each topic.

Palok Basu, *Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws* (Modern Law Publications, Allahabad, 1st edn. 2002), has been utilized to find about the definition of religion and religious conversion. The most important portion of our Constitution is fundamental rights, this book covers about constitutional remedies for human rights violations. And the author of the book enlightens the readers about “Vaudhaiv – Kutumbakam” which means “the entire Universe is a family” which was the life style of Indians during Vedic period.

Palok Basu, *Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws* (Modern Law Publications, New Delhi, Allahabad, 2nd edn. 2009), whereas in Chapter 25 of this book the author provides a lot of view about the Human Rights and Freedom of Religion.

C. Raj Kumar and K. Chockalingam, *Human Rights, Justice, and Constitutional Empowerment* (Oxford University Press, New Delhi, 1st edn. 2007). In which the author has given a detailed view about impunity for communal violence in India, which has given a guidance for the present research, for the significance of Anti – Conversion Laws.

Goldie Osuri, *Religious Freedom in India Sovereignty and (anti) conversion* (Routledge, Abingdon, 1st edn. 2013). This book offers an example of how disputes over sovereignty contribute to the emergence of secularism and religious diversity. The concentration on sovereignty gives a clear picture on the process by which religious diversity serves as a benchmark for the group deemed to qualify as religiously secular. This book also gives an idea about legal judgements on communal violence, human rights organizations, and individuals who are looking for justice for such violence. The author makes the connection between religious freedom and sovereignty by using historical, legal, philosophical, and popular cultural archival materials. This book will be helpful for the scholars and students in the disciplines of the cultural studies, legal studies and religion studies, hence, I would say this book is an addition to the theoretical and political concerns human rights based on religious issues.

Journals and Articles:

Luke Wilson, "Issue Update: India's State-Level Anti-Conversion Laws," United States Commission on International Religious Freedom, March 2023. The researcher of this write-up had gone through the Anti – Conversion Laws in India and come out with an opinion how this law is used for harassing minority religions.

The United States Commission on International Religious Freedom, *India Country Update* (2022). This report says about the problems regarding to religion that are not monitored by the ruling Government properly.

PRESENT STUDY:

Statement of Problem:

The Constitution provides protection for all actions, including those that are carried out in accordance with the beliefs of a particular religious sect when they are carried out. It is the responsibility of a given religious sect to choose the fundamental principles that underpin its faith, free from the influence of any other religious sect organizations or individuals. On the other hand, the Supreme Court always has the purpose of addressing it in such a way that it will not have an impact on the rights of other religion adherents.

"Secularism" is a notion that originates from the Western world, however the concept of secularism in India is quite different. The traditional Bharath's concept of secularism is the traditional society itself. In those days, people were more tolerant, accepting, and accommodating to people who followed different religions and lived different ways of life. As a result of the fact that Hinduism itself encompassed a variety of modes of belief, individuals were willing to accommodate it. Even in this modern period, every religious sect has its own unique method of essential religious practice. However, given the current circumstances, it is of the utmost importance to safeguard the religious beliefs and rights of every individual who adheres to their own religious tradition. In particular with regard to indigenous people, scheduled castes, or scheduled tribes, the reason for this is because there has been an increase in proselytizing that is carried out through compulsion and undue

influence, or through the danger of losing one's job or schooling. As a result, if a state is significantly impacted by this issue, the government of that state is obligated to devise a remedy that would prevent this kind of religious conversion from occurring.

Therefore, a small number of Indian states have enacted legislation that are either "anti-conversion" or "freedom of religion" in order to prohibit certain conversions as being considered illegal conversions. Propagation, on the other hand, is seen by officials to be an act of attempting to convert people in the majority of situations. However, according to these regulations, it is impermissible to make an attempt to convert people by deceiving them. Consequently, a large number of First Information Reports (FIRs) are being filed by authorities, which, in many instances, result in acquittal. This is due to the fact that officials have misunderstood propagation as an attempt to convert in accordance with these regulations. The courts have issued orders to halt the implementation of "anti-conversion" laws in certain states and have also halted certain portions of those states' "anti-conversion" laws.

Conceptual Frame work:

Religion – "It is a matter of belief and doctrine, concerning the human spirit, expressed overtly in the form of ritual and worship."¹⁵²¹

Proselytization – "To try to persuade someone to change their religious or political beliefs or way of living to your own."¹⁵²²

Research methodology:

The current research is based on doctrinal or non-empirical method. For the objectives and hypothesis of this research, the findings can be made by analyzing the articles of prior researchers, by analyzing books, commentaries, and journals.

Scope of Study:

The ultimate scope of this study is to analyze all the existing Anti – Conversion laws in India and find its similarities and to understand about its implementation in each States and finally to find how does it impact on human rights of Indian Citizens.

Research Objectives:

The research objectives for the study are to:

- i. Find the similarities between all 12 Anti – Conversion laws that exists in India.
- ii. Find the objectives of those Acts.
- iii. Find implementation of these Acts.
- iv. Find if the purpose of the law is served or not.
- v. Find its impact on human rights of Indian Citizens.

Research Questions:

The following questions would be raised pertaining to this dissertation:

- i. Whether "conversion" is defined according to the law?
- ii. Whether religious conversion is prohibited by law?
- iii. Whether the law is clear how fraudulent conversions could be curbed by these enactments?

¹⁵²¹ Justice Palok Basu, Law Relating to Protection of Human Rights under the Indian Constitution and Allied Laws 416 (Modern Law Publications, Allahabad, 1st edn. 2002).

¹⁵²² Cambridge English Dictionary available at: <https://dictionary.cambridge.org/dictionary/english>.

- iv. Whether these enactments are properly utilized by the authorities to prevent fraudulent conversion?
- v. Whether this law impacts human rights positively or negatively?

Hypothesis:

To fulfill the objectives and scope of this study the hypothesis hereunder is framed:

- ❖ 'Anti – Conversion' laws are implemented properly by the authorities without violating anyone's human rights.
- ❖ The purpose of 'Anti – Conversion' laws are served in India.
- ❖ 'Anti – Conversion' laws do not prevent propagation of one's religion.

Chapterisation:

Chapter 1 - Introduction to the topic of research, it introduces about religion and religious fundamentalism and how does that affect the harmony of citizens of India. The concept of proselytization and propagation of religion.

Chapter 2 - Constitutional Guarantee for Religious Freedom, explains about the freedom of religious practice and propagation enshrined by Indian Constitution and International instruments. The researcher tries to explain the readers about the concept of essential religious practice. Whether an individual has any right to convert anyone to his religious belief.

Chapter 3 - Freedom Of Religious Act - Is It Necessary? Would take readers through the necessity of Anti – Conversion laws in India though we are living in a greatest democratic and secular country. The reader would get an answer for the issue that, though we have religious rights, why do we need a law to regulate the freedom of religion.

Chapter 4 - Freedom Of Religious Act in India - An Overview. This is the chapter from where the current researcher would compare the similarities between all 'Anti – Conversion' laws that exists in India. The reader can understand how the religious freedom is protected by each States of India by abiding the Constitution of India.

Chapter 5 - Judiciary's View on These Enactments. By this chapter the present research is intended to show how Indian Judiciary has viewed about these enactments, whether the Judiciary has struck down any provisions as unconstitutional or whether they have stayed any provisions being enforced and judicial interpretations made under these enactments.

Chapter 6 - CONCLUSIONS AND SUGGESTIONS. Through this research article, the present researcher intends to bring a logical conclusion with all matters that is discussed in above chapters and the present researcher intends to make suggestion based upon the study made in this current research, to furtherance the enhancement of human rights regarding to religious practices.

Students Learning Outcome:

Through this entire research made following are the learning outcome:

1. The significance of 'Anti – Conversion' laws.
2. The scope of religious freedom provided in the Constitution for Indian citizens.
3. The religious rights guided in UDHR and ICCPR.
4. The effect on human rights, while these enactments are being enforced.

1.1 What is Religion?

When it comes to the definition of religion, there is no general agreement. The word "religion" is derived from the Latin words "re," which means "back," and "ligare," which means "to bind."¹⁵²³ The word "religion" is a combination of these two Latin words. Religion is defined as a belief that binds the spiritual character of man to a supernatural being. This belief is associated with a sense of dependency and obligation, as well as the feelings and activities that naturally emerge from such a belief. This definition comes from Webster's Comprehensive Dictionary.

It was said by Swami Vivekananda that, it is believed that religion, in the form that it is typically taught all over the world, is founded on faith and belief. However, in the majority of situations, religion is just comprised of many sects of theories, and this is the reason why we find all religions arguing with one another. Faith and believe are the foundations around which these theories are built.¹⁵²⁴

Aurobindo, a wise man, asserts that the search for God by man is the basis for religion, and that the primary role of religion is "the search for God and the finding of God."¹⁵²⁵

Sir Julian Huxley, a well-known scientist who combined philosophy, science, and religion, once said that religion is the outcome of a specific type of social interaction that occurs between man and his surroundings. Huxley combined the three disciplines of philosophy, science, and religion.

1.2 Religion as fundamental right:

As outlined in the Indian Constitution, the right to freedom of religion is considered a fundamental right. Article 44(2) of the Irish Constitution served as a primary source of inspiration for the incorporation of the concept of religious freedom into Articles 25 and 26 of the Indian Constitution.

Throughout Articles 25–30 it is understandable in the bare reading that religious minorities have been provided with the right to establish and manage educational institutions. This right extends to nearly all topics that are related to religion.

The Indian government said in a statement that it had accepted the two international conventions and the Universal Declaration of Human Rights, but with certain restrictions. These objections did not include the right to freedom of religion.

The Universal Declaration of Human Rights (UDHR) from 1948 is mirrored in the International Covenant on Civil and Political Rights (ICCPR) by Article 18. The Universal Declaration of Human Rights (UDHR) is a declaration that is not legally enforceable and was signed by all the member nations of the United Nations. One of the universally recognized basic human right is freedom of religion or belief. Universal, indivisible, interdependent, and connected are the characteristics that define human rights. Freedom of religion or belief is also protected by a number of other international conventions¹⁵²⁶. Additionally, it is a component of customary international law.

According to those International instruments the freedom of religion includes following aspects:

- (1) No one should have their right to freedom of conscience, religion, or thought curtailed. This right must encompass the freedom to practise, worship, observe, and teach any religion or belief one chooses, either alone or in community with others, in public or private settings. This also includes freedom to everyone by their own willingness to adopt any religion or belief.
- (2) No one may be forced to do anything that would limit their ability to practise any religion they choose or to adopt a particular faith.

¹⁵²³ A. Parthasarathy, "Vedanta Treatise", at p. 106

¹⁵²⁴ "The complete works of Swami Vivekananda," Vol I, at p. 127.

¹⁵²⁵ Sri Aurobindo, "The Life Divine," at p. 699.

¹⁵²⁶ Including Article 9 of the European Convention on Human Rights and Article 10 of the Charter of Fundamental Rights of the European Union.

- (3) When it is legally mandated or necessary to protect the public safety, order, health, or morals along with the fundamental rights of other people, the Government can impose limitations over the people in freedom of expressing the religious or philosophical beliefs.
- (4) The Nations which have ratified the Covenant is obligated to ensure the freedom of parents and legal guardians to ensure whether their children get education that is parallel to their religious and moral beliefs.

The right to change one's religion is an essential component of religious liberty. There are a lot of different motives for conversion. Examples of large-scale conversions that were carried out through coercion can be seen throughout history. Additionally, conversions might occur as a result of allurements or the threat of divine displeasure with regard to the individual. Both illiteracy and ignorance are frequently the causes that lead individuals to switch from one religious belief system to another. The poverty and social disparities, including untouchability, that Dalits are forced to endure in Hindu society are another factor that contributes to the conversion of Dalits inside the Hindu community.

The term "right to conversion" refers to the individual's right to voluntarily abandon one faith and choose another one at their own volition. This kind of transition from one religion to another must obviously be the result of an individual's conviction that the religion into which he was born has not lived up to his expectations, whether or not they are of a spiritual or rational kind. There are also instances in which it may be the consequence of a person losing confidence in their own religion due to the rigidity of the tenets and practices of that religion.

In few instances we might have seen that few people have lost their faith over the existence of God and they have adopted atheism. In the context of the "Right to Conversion," a change in religion that occurs as a result of any of the aforementioned factors is considered to fall within its purview.¹⁵²⁷



¹⁵²⁷ M.N. Rao, Freedom of Religion and Right to Conversion PL WebJour 19 (2003).

CHAPTER – 2

CONSTITUTIONAL GUARANTEE FOR RELIGIOUS FREEDOM

2.1 Introduction

The Indian Constitution's Article 25 guarantees the freedom of religion. However, it required going through a lot of genesis and growth before it could take on this form. Now to understand the right to freedom of religion, it will be appropriate for us to understand its history. The Draft¹⁵²⁸ submitted to the Sub-Committee on 17 March, 1947 had ten points regarding this right. It was titled as "*The Right to Religious and Cultural Freedom*." The essence of the draft that has been proposed is presented below:

- (1) The right to freedom of conscience and the right to freely profess and practice religion in a manner that is compatible with public order, morality, or health are rights that are recognized and protected by the Constitution for all citizens.

This also had a proviso, which showed the meaning, Providing, however, that the commercial, financial, or political actions that are associated with religious worship should not be considered to be included in the right to profess or practise religion within the context of this provision.

- (2) Every citizen shall be entitled with the cultural freedom, with the freedom to communicate through speech or writings in their own mother tongue. They also can learn and adopt and use any language and script as they desire.
- (3) Regardless of whether their minority is based on religion or language, when the State permits national minorities to form and administer any educational institutions at their own expense, those permitted institutions are also entitled to the same rights like other citizens. Additionally, they are allowed to freely use their language and practise their religion.
- (4) The earnings of taxes that are particularly appropriated in payment of religious requirements of any community of which a person is not a member. No person may be compelled to pay taxes that are specifically appropriated for this purpose.
- (5) A person who belongs to a group of people who do not practise a specific religion is not obligated to obtain training in that faith.
- (6) Without parents' or guardians' consent, an individual who is below the age of 18 may not be permitted to change their religious views.
- (7) Enactments may be enacted by the Union Government to prohibit the conversion from one faith to another by using force, undue influence or material enticement. This is a criminal offence.
- (8) It is responsible for every State to ensure adequate facilities within the public educational system in each town and districts, whereas the instruction language shall be as the language of sizeable population of that locality. It is very necessary to ensure whether the children of primary schools get instructions in their native language.
- (9) It is forbidden for any legislation that provides state funding for schools to discriminate against schools that are managed by minority groups, regardless of whether the discrimination is based on religion or language.
- (10) All monuments of artistic or historic interest or places of natural interest within the Union are guaranteed immunity from deterioration, destruction, removal, disposal, or exportation, unless specifically authorised by a legislation of the Union. Additionally, these monuments are required to be kept and maintained in accordance with the law of the Union.

¹⁵²⁸ Article VI of K.M. Munshi's Note and Draft on Fundamental Rights.

In addition to this, Dr. Ambedkar's Draft allowed for the freedom to preach and convert. A number of individuals, including Alladi Krishnaswami Ayyar, Rajkumari Amrit Kaur, and others, voiced their grave concerns regarding the possibility that social reform legislation, both currently in effect and in the future, could be rendered null and void unless it was explicitly saved by qualifying the right to religion or restricting it to "freedom of religious worship." The draft that Munshi had submitted was approved by the subcommittee as long as it was modified significantly.¹⁵²⁹

The modifications included following points in it:

- (i) "All persons" were granted the right to freedom of religion, which had previously been restricted to citizens alone.
- (ii) The freedom to wear and carry kirpans was recognised as an integral aspect of the Sikh religious practice.
- (iii) Once religion was rendered subject to other elements of fundamental rights, the right to profess and practise it was also subject to those requirements.
- (iv) The right to "freely profess and practice religion" was changed to read "to freedom of religious worship and freedom to profess religion." This change was made when the right was modified.

Despite this, the Minorities Subcommittee advocated for the reinstatement of the right to freely "practice religion" as well as the ability to spread one's own religious beliefs. After taking into account the many and contradictory recommendations that were included in the reports of the two Subcommittees and attempting to find a way to reconcile the competing viewpoints that were taken by members of the Advisory Committee,¹⁵³⁰ the Advisory Committee made the proposal related to clause 13.¹⁵³¹ This made the current Article 25 of Indian Constitution.

2.2 Judicial interpretations

2.2.1 Religion:

Within the context of articles 25 and 26 of the Constitution, the term "religion" refers to a personal experience for the individual who has faith and belief in the religion. A man's connection to his universe, his creator, or his super power is established by his religious beliefs. Religion, in its most fundamental sense, is a question of personal faith and belief, or the personal relations of an individual with what he considers to be the cosmos, his maker or his creator, which, according to his beliefs, rules the existence of insentient beings and the forces of the universe. This is because, due to the very nature of things, it would be extremely difficult, if not impossible, to define the word religion or matters of religion or religious belief or practice. Therefore, religion cannot be defined in the framework of articles 25 and 26, and it must be considered with pragmatism.¹⁵³²

As it was decided in a case by the Apex court of India,¹⁵³³ a religion may not only establish a set of moral guidelines for its adherents to follow, but it may also prescribe rituals and observances, ceremonies, and modes of worship that are considered to be essential components of the religion. These forms and observances may even extend to topics pertaining to the manner in which one eats and dresses. The courts are the ones who are responsible for determining whether a practice that is being claimed for protection is an essential or integral part of the religion or whether it is of a secular nature.

Even if performing ritual ceremonies is a crucial part of the religion, someone who conducts ritual rituals or associates themselves with their performance is not regarded as a member of the religion. It

¹⁵²⁹ Dr. Subhash C. Kashyap, Constitutional Law of India 682 (Lexis Nexis, Haryana, 2nd edn. 2015).

¹⁵³⁰ Presided by Sardar Vallabhbhai Patel.

¹⁵³¹ Interim Report of 23 April, 1947.

¹⁵³² A.S. Narayana Deekshitulu v. State of Andhra Pradesh, (1996) 9 SCC 548.

¹⁵³³ Commissioner of Hindu Religious Endowments v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt AIR 1954 SC 2822.

is important to note that there is a distinction between the person who performs the religious service and the service itself. It is not within the legislative authority of the legislature to regulate the religious faith and belief that the religious service be performed in conformity with the doctrines, Agamas, customs, and usages that are common in the temple, etc. However, the priestly service is a part of secular worship. As a result of the fact that the appointment of *Arachakas* is a secular act, the legislature has the authority to create a legislation that eliminates their hereditary right to appointment. This measure would not be in violation of either article 25(1) or article 26(b).

For an instance, in the recent judgment in the case of *All India Adi Saiva Sivacharyargal Seva Sangam rep. by its General Secretary, B.S.R. Muthukumar v. State of Tamil Nadu rep. by Secretary to Government Namakkal Kavignar Maaligai and Another*¹⁵³⁴ and followed by other cases also¹⁵³⁵, it was held that any trained Archakas despite of any caste or non-brahmin can be appointed as Archaka in any temple in Tamil Nadu, placing reliance of *Seshammal v. State of Tamil Nadu*¹⁵³⁶ wherein it was determined that the hereditary right could not be asserted since the appointment of a "Archaka" is a secular act. As a result, the next-in-line of succession rule cannot be applied when appointing an Archaka, and a trustee is not required to nominate a candidate just because they are the next in line of succession from the person who held the office before them. On the other hand, it is expected of the Archaka that they are well-versed in the Agamas and rituals that are required to be conducted at a temple and that they have accomplished a great deal in this area.

When it comes to doing pooja in a temple, Brahmins do not have a monopoly on the practice. It is also possible for a non-Brahmin to be designated as a pujari if they have received the appropriate training and are familiar with the procedures.¹⁵³⁷

2.2.2 Subject to public order, morality and health and to other fundamental rights:

Article 25 of the Constitution guarantees every citizen the freedom of conscience and right to freely profess, practise and propagate about their own religion. This right, on the other hand, is not unqualified. Article 25(1)'s opening sentences state that this privilege is contingent upon public order, morality, and health in addition to the other requirements listed in Part III of the Constitution. According to this interpretation, a person's right under article 25(1) may be restricted or regulated if exercising it would violate other provisions of Part III of the Constitution or if doing so would be against the interests of public health, morality, or order. Any person expressing their freedom of conscience or their right to practise, and propagate religion¹⁵³⁸ would be prohibited from violating the rules of the law that pertain to public order, morality, and health. These laws would have to be complied with, and they cannot be disregarded.

For example, it was held in the case of *Gulam Abbas v. State of Uttar Pradesh*,¹⁵³⁹ it is understood that how judiciary had viewed public order, Additionally, the right to profess, practise, and propagate one's religion, as outlined in article 25, is subject to the requirements of maintaining public order. In the purpose of maintaining public order and avoiding conflicts between Shia and Sunni communities, the relocation of graves would not be considered a violation of article 25 of the Shariat Law, despite the fact that it should be avoided.

The following is an expression that can be used to accurately describe the specific regions of link between Morality and Law:

¹⁵³⁴ 2022 SCC OnLine Mad 4154.

¹⁵³⁵ Muthu Subramania Gurukkal v. Hindu Religious Religious and Charitable Endowment Department and Another (2023) 4 Mad LJ 618.

¹⁵³⁶ (1972) 2 SCC 11.

¹⁵³⁷ N. Aditya v. Travancore Dewaswom Board, 2nd (Supp) NSC 35 38.

¹⁵³⁸ T.M.A Pai Foundation v. State of Karnataka (2002) 8 SCC 481.

¹⁵³⁹ (1984) 1 SCC 81.

1. In the pursuit of those excellences that are associated with the benefit of all, the law is related with morality in the going ahead of those activities. This does not imply that positive human regulation ought to preclude all indecencies nor order all temperance's: rather it restricts just the grosser shortfalls of humanity which undermine the actual endurance of society and orders those ethics which can be appointed by human means to the benefit of everyone.
2. It is via the honest conviction that is compelled, that is, through the requirement of a proof that corresponds to an essential purpose, that law is related with morality. This is due to the fact that regulation, as the order of rational explanation, basically implies a commitment. As a consequence, commitment originates from the fundamental concept of regulation as a potent direct of practical reason, which may be defined as an association of some need between the demonstration that is commanded and the aim for which that act is instructed. In any event, the dedication to good human regulations is not comparable to the commitment to ethical quality in any manner.
3. The law is inextricably linked to morality, whereas regulation is dependent on moral standards and cannot be in conflict with them; commonly referred to as "normal moral regulation."
4. In spite of the fact that both morality and law originate from and are coordinated by a comparable source, namely common-sense explanation or reasonability, law is related with morality. By deciding the concept of governmental issues, one can acquire a more expedient understanding of this particular relationship. Governmental issues are a human masterpiece, which means that they are a work of participation and judiciousness, and as a matter of reasonability, they are essentially related with morals.
5. The concept of law is associated with profound morality, but equality is an ethical concept that is insignificant outside of the realm of profound quality. To put it simply, equity is what constitutes the construction of an equity portfolio.¹⁵⁴⁰

Whenever the fundamental right to freedom of conscience and the right to profess, practise, and propagate religion is invoked, the act that is being complained of as violating the fundamental right must be investigated to determine whether or not the act in question is intended to protect public order, morality, and health; whether or not it is authorised by a law that was made to regulate or restrict any economic, financial, political, or secular activity that may be associated with religious Performing such a duty and function is the responsibility of the court. We have a tradition that teaches tolerance, a philosophy that preaches tolerance, and a constitution that practices tolerance; let it not be watered down.¹⁵⁴¹

In the case of *Forum, Prevention of Environment, and sound pollution v. Union of India*,¹⁵⁴² it was made clear about public order and health. Article 25 of the Constitution does not in any way impair the religious rights of any individual, and putting restrictions on the duration of time that firecrackers can be set off does not violate those rights.

Tandava dance performed by Anand Margis in a procession¹⁵⁴³ or at a public place while carrying lethal weapons and human skulls was not an essential religious rite for the individuals who subsequently followed Anand Marg. As a result, an order that prohibited such a procession in the interest of maintaining public order and morality did not violate the rights guaranteed by articles 25 and 26.

¹⁵⁴⁰ Akhilesh Kumar, Abhaya Augustim, For a Healthy Society its Laws Should Be Based on Morality: A Critical Study on Law & Morality, 5.1 GLS LJ (2023) 9.

¹⁵⁴¹ *Bijoe Emmanuel v. State of Kerala*, (1986) 3 SCC 615.

¹⁵⁴² (2005) 5 SCC 733.

¹⁵⁴³ *Acharya Jagdiswarananda Avadhuta v. Commissioner of Police*, (1983) 4 SCC 522; *Commissioner of Police v. Acharya Jagdiswarananda Avadhuta*, (2004) 12 SCC 770.

2.2.3 Right to profess, practice and propagate – determination of essential religious practice:

When the people who drafted the Constitution were considering whether or not to grant the right to profess, practise, and spread religion, they considered the possibility that the freedom of conscience should be accompanied by the freedom to proclaim one's spiritual convictions without interference. Any believer can publicly declare his creed, since Article 25 provides the freedom of 'profession'. Additionally, the freedom to practise means that the believer has the right to give expression to his faith in the form of private and public congregational worship.¹⁵⁴⁴

The freedom that is guaranteed by Article 25 of the Constitution is the freedom that does not infringe upon the freedom of other individuals in a manner that might be considered comparable. Every individual possesses a fundamental right, as outlined in the constitutional framework, not only to entertain the religious belief of his choice, but also to express his religion and thoughts in a manner that does not infringe upon the religious right and personal freedom of other individuals.¹⁵⁴⁵

An individual who is a citizen of India does not have to do so by law to perform the singing of the national anthem. Executive directives are not permitted to be used in order to regulate the right to freedom of religion that is outlined in article 25. It is sufficient for the pupils who belong to Jehovah's witnesses among Christians to stand up and show respect when the national anthem begins to be sung.¹⁵⁴⁶ In the case of *Mohamed Hanif Quareshi v. State of Bihar*¹⁵⁴⁷ It is not possible to conclude that a complete prohibition on the killing of cows is in violation of article 25 of the constitution since it has not been demonstrated that the offer of a cow as a sacrifice on a specific day is an obligatory overt act for an individual who practices Islam for the purpose of performing his religious beliefs and concepts.

It cannot be said that the religious teachers or the priests can use any kind of microphones and speakers to perform their religious rituals. As per article 25(1) of the constitution, it is only guaranteed that individuals have the freedom to exercise, profess, and propagate their religion; however, this is not an absolute right. In accordance with the terms of article 19 (1) (a) of the Constitution, the provision of article 25 is subject to those reasonable restrictions. On the basis of a genuine and proper reading of the provision of article 25 (1), when read in conjunction with article 19 (1) (a) of the constitution, it is not possible to assert that a citizen should be forced to listen to something that he does not like or that he does not require.¹⁵⁴⁸

Both Article 25 and Article 26 of the Constitution provide protection for religious practice, which is an essential and integral component of religion. This protection is in regard to religious practice. While an activity may or may not be a necessary and fundamental component of a religion's practice, it is nonetheless possible that it is. Article 25 does not provide any protection for the latter. A law that prohibits individuals who have more than two children from running for Panchayat elections does not violate article 25 because it does not prohibit them from running.¹⁵⁴⁹

Articles 25(1) and 26(b) respectively guarantee the freedom to conduct religious affairs and the right to participate in religious activities. If the practice in question is absolutely and totally secular, or if the matter covered by the Act is fundamentally and entirely secular in nature, then it is not feasible to say that either article 25(1) or article 26(b) has been violated. The right of the denomination to conduct its own business in areas related to religion is also protected, as is the practice of religion.

¹⁵⁴⁴ John Vallamattom v. Union of India, (2003) 6 SCC 611.

¹⁵⁴⁵ Lily Thomas v. Union of India, (2000) 6 SCC 224.

¹⁵⁴⁶ Supra note 28.

¹⁵⁴⁷ AIR 1958 SC 731.

¹⁵⁴⁸ Church of God v. K.K.K. Majestic Colony Welfare Association, (2002) 6 SCC 318.

¹⁵⁴⁹ Javed v. State of Haryana, (2003) 8 SCC 369.

Therefore, it is necessary to take into account whether the practice in question is religious or whether the affairs in question are religious whenever a claim is brought on behalf of an individual citizen alleging that the impugned statute violates his fundamental right to practice religion or on behalf of the denomination alleging that the fundamental right guaranteed to it to oversee its own affairs in matters of religion is violated. Assuming that the practice in question is a religious practice or that the issues in question are matters pertaining to religion. In the event that the exercise is a religious practice or the concerns at hand are related to matters of religion. Obviously, the rights that are secured by article 25(1) and article 26(b) cannot be violated if the practice in question is a religious practice or if the affairs in question are things that pertain to concerns of religion.¹⁵⁵⁰

As a result of the fact that the protection that is guaranteed by articles 25 and 26 of the Constitution is not limited to matters of doctrine or belief, but rather extends to acts that are done in pursuit of religion, it includes a guarantee for rituals, observances, ceremonies, and modes of worship that are essential or integral parts of religion. When determining what constitutes an integral or essential part of a religion, it is necessary to take into consideration the doctrines, practices, principles, historical background, and other aspects of the particular religion in question.¹⁵⁵¹

2.2.4 Right to Propagate:

There are a few different interpretations of the word "propagate," one of which is to multiply specimens of (a plant, animal, illness, etc.) by using any process of natural reproduction from the parent stock. However, this interpretation cannot be the meaning for the purposes of article 25(1) of the constitution for obvious reasons. The term 'propagation' in Article 25 is not used in biological sense. The Article does not bestow any right to anyone to convert anyone from one religion to other. Instead, it grants the freedom to transmit or disseminate one's religion by explaining its concepts. But it is important to note that Article 25 (1) protects "freedom of conscience" of every citizen, not just those who practise a particular religion. This, in turn, shows that there is no fundamental right to convert anyone to one's own religion. This is due to the fact that if a person purposefully undertakes the conversion of another person to his religion, as compared to his effort to transmit or spread the tenets of his religion, then this would be a violation of the "freedom of conscience" that is guaranteed to all citizens of the country in the same manner.

Hence, it is understandable that the Anti-conversion laws that are in force to prohibit the forcible conversion of a person to their own faith are not in violation of article 25 on the grounds that they were intended to prevent disturbances to public order.¹⁵⁵²

Article 25 guarantees that every individual, subject to public order, health, and morality, has the freedom not only to entertain such religious belief as may be approved by his judgement and conscience, but also to exhibit his belief through such outward acts as he believes proper and to propagate or disseminate his concepts for the edification of others as well. While this freedom is guaranteed to every individual, it is subject to public order, health, and morality. The propagation of belief is protected, regardless of whether it takes place in a church or monastery, a temple, or a parlour gathering. This protection applies regardless of the setting it takes place in.¹⁵⁵³

In the case of *Kishore Kumar v. P.K. Sekar Babu, Udhayanidhi Stalin and Ors*¹⁵⁵⁴, which is also called as *Santa Dharama case*, in which the court said Article 25 of Indian Constitution provides right to propagate but that propagation shall not be a divine displeasure towards other religion. The right

¹⁵⁵⁰ *Tilkayat Shri Govindlalji Maharaj v. State of Rajasthan*, AIR 1963 SC 1638.

¹⁵⁵¹ *Supra* note 30.

¹⁵⁵² *Supra* note 3.

¹⁵⁵³ *Supra* note 21.

¹⁵⁵⁴ 2024 SCC OnLine Mad 366.

to freedom of practice and dissemination of religion is unquestionably guaranteed to all individuals by the Constitution of India, as is evident from the fact that this right is guaranteed.

It is not known how the petitioner can complain that the rights guaranteed under Article 25 of the Constitution of India are being violated by performing the Kumbabishegam of Arulmigu Thandayudhapani Swami Temple, Palani, and the Thaipooasam festival during the mandala pooja. This is due to it is subject to public order, morality, and health. Therefore, when all citizens shall have the right to profess, practise, and propagate religion, it is not known how the petitioner can complain that the right.¹⁵⁵⁵

2.2.5 Religious Practice:

There is not a single religious tradition that does not contain a message of compassion and kindness. The only reason that acts of charity and compassion are not considered to be part of the "religious practice" in accordance with the definition of article 25 (2) (a) of the Constitution of India is due to the fact that charitable and compassionate acts are taught in every religion.¹⁵⁵⁶

It is not possible to consider every action that takes place within the temple to be a "religious practice." In addition, the authority of the State to make any law "regulating or restricting any economic, financial, political, or other secular activity which may be associated with religious practice" is expressly reserved under clause (2) of article 25 of the Constitution. This provision was included in the Constitution. In the event that there is any kind of financial or economic activity that is connected with religious practice, the state has the authority to enact laws that regulate such activities, even if the activity in question is already affiliated with religious practice.¹⁵⁵⁷

Occasionally, religious and secular practices become inextricably intertwined with one another. When it comes to the Hindu religion, this is especially true since, according to the ancient smriti, all human actions, from birth to death, as well as the majority of individual actions from day to day, are considered to be religious in nature in some way or another. This is the case because of the vast majority of human actions. Sometimes, they assert that they are the religious system or sanctuary, and they look for the protection that is provided by articles 25 and 26 of the Constitution.¹⁵⁵⁸

"Religious service" and "person who performs service" are two different things; there is a difference between the two. Because the service of the priest is considered a secular activity, the state has the authority to control it in accordance with article 25 (2). It is not possible for the state to govern religious service because it is an essential component of that religion; yet, the state is able to regulate the appointment of priests and the compensation they receive.¹⁵⁵⁹

There must be a clear differentiation made between religious faith and belief and the actions that are associated with religion. The religious beliefs and belief of individuals is what the state safeguards. In the event that religious practices are in conflict with public order, morality, or health, or if they are in conflict with a program of social welfare that the state has embarked upon, then the religious practices must be put on hold in order to prioritize the welfare of the people of the state as a whole.¹⁵⁶⁰

¹⁵⁵⁵ S. Suriya Kannan v. Arangavalar Kuzhu and Others, 2023 SCC OnLine Mad 1146.

¹⁵⁵⁶ John Vallamattom v. UOI, (2003) 6 SCC 611.

¹⁵⁵⁷ Sri Jagannath Temple Puri Management Committee v. Chintamani Khuntia, AIR 1997 SC 3839.

¹⁵⁵⁸ Supra note 20.

¹⁵⁵⁹ Bhure Nath v. State of Jammu and Kashmir, (1997) 2 SCC 745.

¹⁵⁶⁰ State of Bombay v. Narasu Appa Mali, AIR 1952 Bom 84.

In the *Venkataramana v. State of Mysore*¹⁵⁶¹ case, it is noteworthy that while article 25 (1) specifically focuses on the rights of individuals, article 25 (2) has a broader scope and encompasses the rights of communities as well. It also governs both provisions 25 (1) and 26 (b) of the Constitution. Nevertheless, the rights acknowledged in article 25 (2) (b) must be inherent in the process of aligning the right granted by article 25 (2) (b) with the right safeguarded by article 26 (b).¹⁵⁶²

While interpreting the Articles 25 and 26, it is very much essential for the court to check the balance between the freedom of an individual or group with their integral or essential religious practise with regard to the religious matter concerned to control or regulate by the State for the larger public interest. The objective of the religious freedom that is guaranteed by articles 25 and 26 is to serve as a guide to the life of a community and to designate each faith to act in accordance with the cultural and social needs that it may have in order to establish a social order that is equal. This is done in order to produce a social order that is equitable. A compromise is reached among the rigidity of the right to religious belief and religious rituals and the freedom of conscience that is granted to the individual in order to connect with his universe, creator, and realise his spiritual self. This compromise is found in Articles 25 and 26. Within the confines of the Constitution, this equilibrium is accomplished.¹⁵⁶³

Article 25 of the Constitution does not explicitly address property, unlike Article 26 of the Constitution. The freedom to exercise, declare, and promote one's religious beliefs, which is protected by ownership or the entitlement to own property. Similarly, this entitlement does not encompass the freedom to practise one's religion at a specific location, which could potentially violate the constitutional provisions of articles 25 and 26 that guarantee freedom of religion. Articles 25 and 26 of the Constitution protects the religious practices that are deemed to be essential and integral practise of a faith. An action may be considered a religious practice, but it is not always a fundamental and inseparable component of that religion.¹⁵⁶⁴

In the case of *Visheshwara of Kashi Vishwanath Temple v. State of Uttar Pradesh*,¹⁵⁶⁵ it is clear that any law passed for secular activity which may relate with an issue of religion the State can enact it. 'Secular activity' laws are safeguarded by Article 25 (2) of the Constitution. If an unquestionably secular matter is claimed to be an issue related to religion, or if an obviously secular practice is alleged to be a religious practice, the court would be justified in dismissing the claim because the protection guaranteed by article 25 (1) and article 26 (b) cannot be extended to secular practices and operations in conjunction with denominational problems which are not considered problems of religion, and therefore, a claim put forward by a citizen that a purely secular matter amounts to a religious practice, or A comparable claim that was made on behalf of the denomination, which stated that a completely secular situation is an affair in matters of religion, could have to be rejected on the grounds that it is founded on illogical considerations and cannot attract the provisions of article 25 (1) or article 25 (b). In order to properly address the true scope and effect of articles 25(1) and 26(b), it is imperative that this particular facet of the problem be taken into consideration.¹⁵⁶⁶

According to the provisions of Subclause (a) of Article 25 (2), the State is granted the authority to enact any law that regulates or restricts any economic, financial, political, or other secular activity that may be associated with religious practice. This authority is specifically granted to the State by

¹⁵⁶¹ AIR 1958 SC 255.

¹⁵⁶² Subhash C. Kashyap, *Constitutional Law of India* 685 (Lexis Nexis, Haryana, 2nd edn., 2015).

¹⁵⁶³ *Supra* note 20.

¹⁵⁶⁴ *Dr. M. Ismail Faruqui v. Union of India*, (1994) 6 SCC 360.

¹⁵⁶⁵ (1997) 4 SCC 606.

¹⁵⁶⁶ *S.P. Mittal v. Union of India*, AIR 1983 SC 1.

Article 25 (2). This might be an additional restriction upon the freedom to profess, practise, and propagate one's religion.

There is just a small portion of the subject matter that is related with religious practice that is covered by Article 25 (2) (a), which allows for the creation of laws. In accordance with the provisions of Article 25 (2) (a), it is mentioned that the state is not prohibited from enacting any laws concerning the religious practice in and of itself. The creation of a legislation that pertains to economic, financial, political, or other secular activities that are related with the religious practice is the subject of the restricted jurisdiction that is conferred by article 25 (2).¹⁵⁶⁷

For the purpose of regulating the secular activities that take place in mosques, temples, and other houses of worship, laws can be enacted. It is not possible to overturn a law that has been approved that allows for the management of a temple to be taken over by another entity since it violates either Article 25 or Article 26 of the Constitution. It is a secular act to manage the temple that is being managed. It is also possible for the authority of the temple to control the activities of the many kinds of servants who work there. It is possible for the Temple committee, which is appointed by the State, to be given the authority to exercise disciplinary authority over the servants of the temple, including the priests.¹⁵⁶⁸

2.2.6 Legislation pertaining to social welfare and reform:

Legislation in the interest of social welfare and reform, which are evidently part and parcel of public order, national morality, and the collective health of the people, is permitted by Article 25 of the Constitution. For an example, according to Muslim law, it is permissible to marry four different women. There is no provision in the personal law that places a requirement or obligation on a person to perform four marriages. In light of this, an act that places restrictions on it would not be considered a violation of the right to freedom of religion that is guaranteed by Article 25 of the Indian Constitution.¹⁵⁶⁹

It is impossible to argue against the state's authority to enact laws concerning issues that are associated with marriage. There is no doubt that marriage is a social institution, and it is an institution in which the state retains a significant amount of interest. There is still a very substantial volume of opinion in the world today that acknowledges monogamy as a very desirable and praiseworthy institution, despite the fact that it may not be universally acknowledged that this is the case.

The same way though people have the right to propagate their religion, they cannot involve in doctored conversions or forceful conversions. To reform this the State Government may feel appropriate to enact 'Freedom of Religious Act' in their own State according to the circumstances prevailing over there, in order to curb the law-and-order issue while converting people through allurements.

An equal right to freedom of conscience and the right to openly profess, practise, and propagate religion is guaranteed to all individuals, not only citizens, according to Article 25 of the Constitution of the United States of America. On the other hand, this right to freedom of religion is contingent upon (i) public order, (ii) morality, (iii) health, and (iv) other fundamental rights.

At one point in time during the process of drafting the Constitution, Dr. Ambedkar had, among other things, recommended the adoption of the "right to convert." This is something that should be noticeable. The Constitution only protects the "right to propagate" one's religion, hence this was not

¹⁵⁶⁷ Supra note 26.

¹⁵⁶⁸ Supra note 54.

¹⁵⁶⁹ Supra note 37.

approved by the government. It is not permissible to violate laws that pertain to public order, morals, or health in the sake of individuals' rights to freedom of conscience or religion.¹⁵⁷⁰

Hence, it is understandable that 'Freedom of Religious Act' enacted by 12 States in India that regulates the conversion, is not violative of Article 25 of Indian Constitution.

CHAPTER – 3

FREEDOM OF RELIGIOUS ACT – IS IT NECESSARY?

3.1 Introduction

It is via this sensation that a sense of living with other possibly tossing and turning bodies and souls of the townspeople is created. Some of the townspeople are on spiritual quests, some are conventional in their religion, still others are agnostic, and some are even vehemently atheistic. It is possible that the politics of religious identity in the context of India might be seen to be characterised by this sense of simultaneous heterogeneity as well as a competitive proclamation of borders. However, these barriers become more entrenched when this heterogeneity appears to be continuously subject in political life to the fictions of homogenising norms, laws, and other aspects of society.¹⁵⁷¹

The process of regulating national life involves the subjectification and disciplining of distinct religious communities, as well as the formation of identities. As an example of such a site of regulation, the phenomena of conversion have been seen. Because of the causes that will be discussed in this book, conversion has been a highly sensitive place in both the years before and after the country gained its independence. In the years leading up to independence, a number of princely nations passed laws that prohibited conversion. The Raigarh State Conversion Act of 1936, the Patna Freedom of Religion Act of 1942, the Sarguja State Apostasy Act of 1945, and the Udaipur State Anti-Conversion Act of 1946 were some of the acts that were enacted during this time period. Other states that passed legislation of a similar nature included Bikaner, Jodhpur, Kalahandi, and Kota and a great number of others were especially opposed to the religious change towards Christianity.¹⁵⁷²

The states of Orissa, Madhya Pradesh, and Arunachal Pradesh all approved anti-conversion legislation in the years following post-independence of India. These laws were passed in 1967, 1968, and 1978 respectively.

In more recent times, conversion has once again become a contentious topic, which might be linked to the rise of Hindu nationalism that has occurred during the 1990s. Currently, 12 States of India have come out with "Anti – Conversion" laws. The States namely, Arunachal Pradesh, Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Rajasthan, Uttarakhand, and Uttar Pradesh have this law enacted to curb religious conversion in certain way or for certain purpose.

Due to the fact that such legislation would be incompatible with India's secular constitution, which upholds the right to freedom of religion, Freedom of Religion Acts do not expressly prohibit conversion.

¹⁵⁷⁰ Supra note. 26.

¹⁵⁷¹ Goldie Osuri, *Religious Freedom in India Sovereignty and (anti) conversion 14* (Routledge, Abingdon, 1st edn. 2013).

¹⁵⁷² Sathianathan Clarke *Religious Liberty in Contemporary India* (2000).

3.2 Special circumstances were anti-conversion required:

Since a couple of decades ago, the literature that focuses on conversion in the setting of India has been the primary focus of interest among academics. If the etymological meaning of conversion, which originates from the Latin word “convertere,” which means “to turn around” or “turn completely,” has meant either a renewal of one's own faith or belief or a journey towards a different religious world-view, then the meanings of conversion have been greatly expanded, multiplied, and contested by the terms of scholarly discussion and debate. Furthermore, the “making and unmaking of religious forms” as well as identities, as well as the social, political, and historical upheavals that are generated by acts of conversion, have been the driving force behind a significant amount of scholarly research on the issue.

Within the scope of this chapter, the present researcher's primary objective is to investigate the unusual genealogies of (anti) conversion. In the process of revealing a genealogy, Foucault makes the observation that there is an exposing of power relations at stake. As a result, genealogy gives us the ability to “establish a historical knowledge of struggles and to make use of this understanding tactically today.”

In light of this, the present researcher would want to inquire about the numerous genealogies of religious conversion. In what way do they indicate that the history of conversion is an exception?

Historical genealogies shed light on the process by which anti-conversion discourses came to be acknowledged as a central location for the organization of Hindu reformist and nationalist movements. Genealogies of politics and law shed light on the fact that early anti-conversion legislation can be traced back to the fight of tribal communities for land. In light of this, I will begin by providing a genealogy of academic work on conversion. I will then argue that conversion should be situated within the context of religious, cultural, political, and legal battles for sovereignty.

Between the approval of early anti-conversion laws, which were literally concerned with the sovereignty of princely states, and the adoption of anti-conversion legislation after the country gained its independence. Additionally, it sheds light on the extraordinary genealogy of conversion within the context of a conventional knowledge of India. So, it is crucial to explore how a normative understanding of India as a Hindu nation emerged, and how conversion played a significant role in this emergence.

Norms regarding conversion are also assumed, debated, and shifted in academic research on conversion. I begin with an exploration of these debates. If earlier academic research placed an emphasis on conversion as a response to socioeconomic circumstances, more recent analyses of conversion map. Nevertheless, a portion of this early research is characterised by the utilisation of colonial categories with regard to the establishment of rigid caste structures, the distinction between proselytizing and non-proselytizing faiths.¹⁵⁷³ These assumptions, as recent postcolonial critique has demonstrated, emerged through colonial categorizations.

It is possible to structurally adopt and recognize any new religious or cultural formation that is formed by the figure of the renouncer within the confines of caste categories. The “fashioning of discrete identities and the development of new perspectives” is hence something that Dube and Dube point out. The relevance of this critique in respect to the way in which the analytical category of conversion has functioned within the setting of South Asian culture is quite significant. Only Christianity and Islam have been able to be classified as proselytising faiths as a result of this

¹⁵⁷³ Goldie Osuri, *Religious Freedom in India Sovereignty and (anti) conversion* 21 (Routledge, Abingdon, 1st edn. 2013).

formulation; hence, the act of converting to either Christianity or Islam has been seen as producing a "foundational rupture."

Previous researcher Vishwanathan investigates the manner in which, via the use of this technology, assumptions of India as a Hindu nation and discourses of Hindu majoritarianism arose. He does this by building on the research of postcolonial academics who have addressed the impacts of the colonial legacy of the census (Appadurai 1993). In his reading, he found that conversion was a significant difficulty for the government of the Britishers, but it also made it possible for the state to expand its power. As a result of the British Government's efforts to resolve the issue of conversion, the normative assumptions of Hindu nationalism and the post-independence secular governmentality of conversion were shaped.¹⁵⁷⁴

India is a symphony in which, similar to an orchestra, there are a variety of instruments, each of which has its own unique sonority and sound, and all of these instrument work together to interpret a certain score. This country has always been a strong advocate for the combination of these two things. The use of inquisitorial methods was never implemented. Those who arrived and sought refuge there, whether they were Parsis, Jews, Christians, or Muslims, were never compelled to abandon their religious beliefs or to become assimilated into what could be referred to as a uniform Hindu humanity.¹⁵⁷⁵

In this memory, a prevalent Indian secularist narrative portrays India as a tolerant Hindu society that welcomes succeeding migrant communities who are identified by religious diversity. This narrative is not opposed to religious belief and is considered to promote the ethos of religious pluralism. According to van der Veer's argument in *Imperial Encounters: Religion and Modernity in India and Britain*, the colonial encounter brought about a transformation in the manner in which Christian missionary activity was carried out.

In the nineteenth-century context, shuddhi, a ritual of purification, first showed up with reference to the Brahminical Hindu concept of the taboo in opposition to crossing the seas: "The high-caste Hindu, notably the Brahmin, would necessarily have to come into closest connection with many elements of pollution if he left India for overseas." This ritual of purification was recoded as reconversion, as noted by Jordens; reconversion presumes a return to one's original religion.

Therefore, despite the fact that it is a conversion, it is not considered to be one. This alteration of the meaning of shuddhi in a colonial framework is identified by Jordens, who emphasises the political backdrop of Punjab that led to this transition. During the latter part of the nineteenth century, the British administration in Punjab was responsible for the establishment of governmental and educational positions.

Thus, a purification ritual began to be used as a strategy to reconvert those who had been converted into a supposedly original faith. If the possibility of conversion determines the way in which religious freedom in the Indian constitution is bound to the restraints of public order, and anti-conversion laws are legislated on the basis of a protectionism discourse skeptical of converting individuals (both converters and those who convert), then conversion performs as a key site to the right to religious freedom.

¹⁵⁷⁴ Goldie Osuri, *Religious Freedom in India Sovereignty and (anti) conversion 25* (Routledge, Abingdon, 1st edn. 2013).

¹⁵⁷⁵ Dr. Sarvapalli Radhakrishnan, Constituent Assembly Debate on December 11, 1946.

By extending the terms of the discussion that Schmitt and Agamben have used to formulate the exception, the present researcher is increasing the scope of the theory of conversion in this manner. According to this interpretation, conversion is not a state of exception that requires the suspension of law; rather, it is an extraordinary event or location that requires a sovereign decision, either in accordance with the provisions of the Constitution or through the implementation of anti-conversion laws.

It is a common practice in Hindutva discourses to portray Muslims and Christians as posing a threat to both internal and exterior individuals. According to these discourses, the issue of conversion is framed as something that is special and poses a threat not only to the identity of Hindus but also to the identity of Indians¹⁵⁷⁶ as a whole. Assuming that conversion is an exception to the national norm of Hindu identity, then the attacks against conversion are carried out by means of the power that Hindutva sovereignty possesses to decide on conversion as an event and site of exception.

3.3 Constitution and Anti-conversion laws:

Over the course of the history of the Indian subcontinent, the question of religious conversion has consistently been one that is fraught with sensitivity and instability. An opposing opinion within the CA was most briefly articulated by Shri S. Santhanam, who stated that all individuals have the freedom to disseminate their faith in equal amount and that this right was not provided to proselytising religions alone. Shri S. Santhanam's statement was the most succinct summary of the contrast. In addition to this, he claimed that the word "convert" had been purposely left out of Article 25, and that the restrictions and limitations that were included in Article 25 were just as significant as the right that it bestowed.

There has been some debate regarding the word 'propagate,' as stated by the Honourable Shri K. Santhanam. At the end of the day, dissemination is nothing more than freedom of expression. It has come to my attention that the term "convert" is not present in the above sentence. The individuals who were responsible for the drafting of this Constitution have taken great effort to ensure that no unrestricted freedom to convert has been granted. Every person possesses the entitlement to freedom of conscience, and it is considered a favourable advancement when an individual willingly decides to convert based on their freedom of conscience. It is exempt from any constraints or restrictions. Nevertheless, if any religious group tries to engage in large-scale conversions by exerting undue influence, whether it be through financial incentives, coercion, or any other methods, the government is fully justified in imposing limitations on such practices. As a result, this article has been prepared with great care, and the exceptions and qualifications that it contains are just as significant as the rights that it grants. With that being said, I believe that the essay, in its current form, is deserving of our unwavering support.

By referring to the proceedings of the Constituent Assembly, one can have the most comprehensive understanding of the constitutional objective underlying Article 25 as well as the draftsmen's positions on the term "propagation" and "conversion." The insertion of the term "propagate" in Article 25 was a topic that was extensively addressed by the Constituent Assembly, who cited concerns that were substantially comparable to the argument that is taking place today. According to members of the Constituent Assembly who advocated for the removal of the word "propagate" from Article 25, they warned of the potential for conflicts and disputes in society that could arise as a result of the spread of religion by individuals who profess to be proselytising religions.

¹⁵⁷⁶ Goldie Osuri, *Religious Freedom in India Sovereignty and (anti) conversion* 50 (Routledge, Abingdon, 1st edn. 2013).

It is noteworthy that the Constituent Assembly also deliberated on the potential inclusion of an extra fundamental right through Clause 17, which stipulates that any religious conversion induced by compulsion or undue influence shall not be legally recognised. It was decided by the Constituent Assembly that Clause 17 should not be included as a fundamental right because it enunciates a "rather obvious doctrine that was unnecessary to include in the Constitution." The Constituent Assembly believed that it would be more appropriate to "leave it to the legislature" to decide whether or not to add Clause 17.

"Much of this debate may be shortened if it is recognised that there is no difference of opinion on the merits of the case that forcible conversion should not be or cannot be recognised by law," said the Honorable Sardar Vallabhbhai J. Patel.¹⁵⁷⁷ "This has the potential to be a significant aspect of this debate." When it comes to that premise, there is no disagreement in opinion. Whether or not this provision should be included in the list of essential rights is the sole question that has to be answered. Now, if it is a goal for the administration to take action, it has a position in the Second Part, which is comprised of rights that cannot be challenged in court. In the event that you believe that it is essential, we should move it to the second part of the schedule because it is a well-known fact that the law of the land prohibits the practice of forcible conversion or conversion by force. We have even put an end to the practice of imposing education on people against their choice, and we do not in the slightest imply that the practice of converting people from one faith to another by coercion will be acknowledged. In the event that one thousand individuals undergo conversion, however, this is not acknowledged. Would you be willing to take it to a court of law and request that it not acknowledge it? It does nothing but make things more complicated and offers no solution. If, on the other hand, you would like this idea to be enunciated as a seventh clause, following clause 6 in the Second Schedule, then it is not essential to engage in any debate; you are free to do so. Regarding the merits of the case, there is no agreement among the parties involved. On the other hand, at this point in time, it would be foolish to discuss the possibility of forcible conversion based on merits, because there is no doubt about it."¹⁵⁷⁸

In light of the proceedings of the Constituent Assembly, it would be fair to state that anti-conversion legislation was definitely contemplated by the draftsmen of the Constitution. A secular nation, India does not have a state religion because it is a secular nation according to its constitution. In spite of this, it has developed throughout the course of its history an intriguing concept of secularism that, on a fundamental level, is neither the same as the American concept of secularism that mandates the complete separation of church and state, nor is it the same as the French concept of religious liberty. The French concept of *laïcité*¹⁵⁷⁹ has been described as an essential compromise whereby religion is confined totally to the private sphere and has no place in public life whatsoever.

Despite the fact that it was permitted to incorporate all of the fundamental principles of secularism into various provisions of the Constitution when it was first enacted, the Constitution's preamble did not incorporate secularism at that time, nor did it include the statement that India is a "Sovereign Democratic Republic" in its brief description of the nation. This was definitely not an omission that was made by accident; rather, it was a choice that was thoughtfully considered with the purpose of maintaining a strategic distance from any apprehension that India could be hesitant to accept any of the western ideas of a mainstream secular state. The unorthodox concept of secularism in India had been totally resolved by the time the event occurred, which was twenty-five years after the fact.

¹⁵⁷⁷ <http://parliamentofindia.nic.in/ls/debates/vol5p11a.htm> last accessed 15-04-2024.

¹⁵⁷⁸ *Supra* note 65.

¹⁵⁷⁹ Rachael F. Goldfarb 'Taking the "Pulpit" Out of the "Bully Pulpit": The Establishment Clause and Presidential Appeals to Divine Authority' 24 PENNST. INT'L L. REV. 209, 209-16 (2005).

At the beginning of the nineteenth century, Western Europe was the birthplace of the secularist movement. In the beginning, the plans were divided in a manner that was apart from religion. During a significant section of the nineteenth century, when English-educated persons were forming The Indian National Congress, secularism made its debut in Indian politics without any precedent. This occurred during the time period when the Indian National Congress was established. In 1931, during a session held in Karachi, the Congress came to the conclusion that the state needs to demonstrate non-partisanship with regard to all branches of religion. The term "secular" was an expression that was avoided by the people who drafted our Constitution. Prof. K.T. Shah made two attempts to convey the saying by suggesting a change. Both of these attempts were unsuccessful. Unfortunately, he was unsuccessful in both of these endeavors due to the opposition he encountered from Dr. Ambedkar.¹⁵⁸⁰

Inside India, the existence of a significant amount of religious diversity has ensured that there is a conceptual response to challenges that arise both inside and between different religions. We are able to examine it and learn from it, even if we do not take it as a template, about the ability to maintain peace between communities, rights that are distinctive to communities, rights of minorities, the permeable divide between the advanced/modern state and religion, and the capabilities to oblige or accommodate the last.

Way of life, on the other hand, is a broad term that encompasses not only religion but also other aspects of life that are related to the region, such as language, customs, food habits, literary and cultural aspects of life, and aspects of life that may or may not have anything to do with religion. Religion cannot be the only component of word "way of life."

The provision of state legislation was declared unconstitutional by the Supreme Court for the very first time in the case of *Swamiar*,¹⁵⁸¹ which relied on Articles 24 and 26 of the Constitution. Regarding the case of *Saifuddin*, the court stated that the fundamental rights outlined in Articles 25 and 26 are not restricted to topics pertaining to doctrine or belief; rather, they also encompass actions that are carried out in the name of religion.

When it comes to the debate regarding the preambular separation of religion and state, the decision that the Supreme Court made in the case of *Bhuri Nath v. State of Jammu and Kashmir*¹⁵⁸² is of great significance. In this case, the Supreme Court ruled that the appointment of the head priest of the Vesno Devi Shrine could not be directly controlled or done by the state. Consequently, as a result of this decision, it is possible to draw the conclusion that there is a boundary or demarcation that is acceptable between the law or the state and religion is present. In addition, the freedom of conscience is not limited to adherents of a single faith but rather encompasses all individuals.¹⁵⁸³

The government in India has been and continues to be able to control the conflicts that arise between and among the many religious groups. Anti-conversion laws, for instance, were enacted in order to prevent the unethical conversion of individuals from one religion to another within the population. Even as early as the 1930s,¹⁵⁸⁴ a few of the princely states in India had already enacted legislation that prohibited Christian conversion.

In any case, during the course of the past few years, secular nations, despite the fact that they boast such positive attributes, have, for all intents and purposes, been under a strain of anxiety. There is hardly any reason to be surprised by the fact that political secularism, the ideal that safeguards

¹⁵⁸⁰ <http://panmohamadfaiz.com/2007/08/21/law-religion-and-state>.

¹⁵⁸¹ 1954 SCR 1005.

¹⁵⁸² (1997) 2 SCC 745.

¹⁵⁸³ Krishnadas Rajagopal, Propagation Without Proselytisation: What the Law Says, *The Hindu*, Dec. 21 (2014) at 15, available at <http://www.thehindu.com/sunday-anchor/propagation-without-proselytisation-what-the-law-says/article6711440.ece>.

¹⁵⁸⁴ Faisal Mohammad Ali, Christian Anger at Conversion Law, *BBC NEWS (CENTRAL INDIA)*.

them, has not been brought to overwhelming criticism. There are a few academics who have made the assumption that this study is so thorough and justified from a moral and ethical standpoint that it is absolutely necessary to abandon political secularism. In the context of India, it is possible to understand it by tracing back to the communal violence that occurred following the destruction of the Babri Masjid in the contemporary day Ayodhya debate, the burning train that contained Hindu passengers and the uproars that followed it, and the example of communal strains that occurred in Assam and made headlines.

This is the case due to the fact that the whole history of humanity has been characterised by a period of ignorance and weakness, prior to the emergence of natural and social powers that have possessed the ability to comprehend these forces. Religion is founded on the premise that people are unaware of the true nature of these powers, that they are impotent in the face of them, and that they are afraid of the invisible almighty. As a consequence of this, for example, a significant section of the Vedic Gods, such as Agni, Surya, Indra, and so on, were believed to be representations or personifications of various natural or social powers. These powers have the potential to either benefit man or cause him harm. It is wholly beyond the control of man to determine whether or not there will be timely rains. For instance, timely rains could be beneficial to agriculture; yet, either the absence of rain or its delay could result in the destruction of crops. It was for this reason that rain was considered to be a symbol of Indra. Religion serves as a mental support system for man since he feels helpless in the face of these strengths, which have the potential to negatively impact his life.¹⁵⁸⁵

When individuals have feelings of insecurity regarding this psychological support, their emotions become triggered, which can lead to events like as the destruction of the Babri mosque, the incident at Godhara, or the yatras of various political parties that are organised to promote the feelings of the constituents.

The Constitution of our country is secular and pragmatic, as we can see. However, despite the fact that our Constitution takes a pragmatic approach, our social order is still behind the times and semi-feudal, and this paradox gives rise to a number of issues. This is a fact that cannot be denied. Due to the fact that religion had a significant impact on the personalities and thoughts of men in a society that was either feudal or semi-feudal, those with vested interests are attempting to take advantage of this circumstance by maintaining and highlighting caste and communal divisions, as well as by planting the seeds of conflict among the populace. Recent times have seen an increase in the intensity of this activity.

Separation of humans has been caused by religion and caste. What is it that will take us all together? The sciences have the potential to bridge the gap. Although the term "science" does not refer to material science, it does refer to the entire logical stance, the exploratory inquiry of our concerns, and the experimental answer to those problems. In light of this, it is highly probable that we have adjusted or become more receptive to secularism as time has progressed. Because of this, the fundamental ideology of secularism, regardless of the "number" of positives, has been subjected to severe criticism in the majority of countries around the world, including India.¹⁵⁸⁶

In spite of such criticism, the feedback for secularism appears to be unanswerable. This is due to the fact that critics have focused on common ideas that were created in countries that are predominantly religiously homogenous. At this point, it is now time for us to alter our attention and check our temptation to compare the goodness of secularism in India to that of the rest of the world; instead, one must begin to believe in it. It is necessary for us to take a Xenophanian perspective, who

¹⁵⁸⁵ Justice Markandey Katju, Law, Religion and Politics 1(2) J.T.R.1.1, 1-7.

¹⁵⁸⁶ Supra note 71.

was a philosopher who lived before Socrates, and to take into consideration the fact that even though the Indian rule might not be completely accurate, one must at least be willing to accept it as accurate. Consequently, we will begin to perceive secularism in a different light, namely from an ethical and moral standpoint, not in the sense of being completely religious in and of itself, but rather in the context of institutional dominance and homogenization.

After further consideration, Justice Katju¹⁵⁸⁷ is of the opinion that, in the days ahead, the judicial system, if it is to be regarded a state, will be required to play a significant role in ensuring that individuals make progress in all aspects of their lives. This is primarily owing to the fact that the higher judiciary is objectively situated in such a way within the framework of our Constitution that it is in a position to provide the people with the appropriate direction. As a result of their constitutionally independent status, judges are able to adopt a perspective that is more comprehensive and long-term than that of other authorities. Hence, they are in a position to heroically put to forward modern and dynamic views which will be of tremendous support to those around them in their struggle for social and economic upliftment.

Taking into consideration the aforementioned, it is possible to draw the conclusion that an ideal secular state would respect all religions and that the state's interference in matters pertaining to religion should be kept to a minimum, with the exception of situations in which public order, morality, or health are at stake. Secularism has been one of the pillars of the Constitution, and as a result, citizens are free and equal, regardless of their caste, coloured skin, gender, language, religious affiliation, or social standing. On the other hand, the conditions have shifted since India gained its independence, and the secular position of the country has been confronted with difficult difficulties on numerous occasions, such as the Godhara riot in Gujarat.

In light of the fact that the implementation of the consistent Civil Code and anti-conversion laws are regarded as a danger to the identities of minority groups, there has been no consistent consensus reached about these issues. Nevertheless, in spite of the problems mentioned above, the Indian Constitution possesses a special ability to accommodate multiculturalism while maintaining its secular nature. While many countries, particularly those in the third world, have witnessed the collapse of a secular authority as a result of clashing traditions, India, on the other hand, has been able to ensure that unity is maintained despite the existence of variety.

A crucial anchoring role has been performed by the judiciary in order to accomplish this goal. The "Sarva Dharma Samabhava" is a fantasy that was conceived by the people who drafted the Constitution of India, and the Indian people should not ignore it.

In India, the interpretation and practice of secularism have been, and continue to be, sensitive to and accommodating to the ground realities. This has been the case since the beginning of secularism. Relationships between religion and state in India are both unique and fascinating as a result of this combination. An examination of India's model of secularism and religious freedom reveals that there is a discernible amount of parity between the interests of religious and secular groups.

Both Muslims and Christians adhere to the monotheistic belief system. Buddhism is one of the religions that does not concern itself with the existence or non-existence of the Supreme deity. In addition to the difference that occurs along the lines of religion, there are a great number of groups that adhere to the beliefs of agnosticism and atheism.

¹⁵⁸⁷ Justice Markandey Katju, Law, Religion and Politics 1(2) J.T.R.1.1, 1-7.

Therefore, the worship of God is not necessarily bound up with religion in every circumstance. Since it is founded on faith, reason is unable to provide an explanation that adequately explains its rational foundation. Due to the fact that human knowledge is inherently flawed, Shri Aurobindo held the belief that the truth of any conception that is associated with religion cannot be described using rational thought.

As a result of the fact that every religion is established on particular doctrines and ideas, and that it adheres to particular practices, the question of the extent to which the freedom of religion ought to be permitted takes on a great deal of significance and importance in a democratic society that is based on the basis of the Rule of Law. A theocratic state is one in which law and religion are inextricably linked, and the degree of freedom enjoyed by those who profess a faith that is not the state religion is always significantly restricted.

They get treatment that is comparable to that of people of a lower class, and they are denied equality in many areas with individuals who adhere to the state religion. The principles of Western democracy have only begun to take root in nations where the society has become more open and the freedom of religious belief has grown to be accepted as a virtue that has been established. These countries are the only ones that have experienced the concepts of Western democracy have taken root. This freedom makes its appearance in a variety of diverse ways throughout different countries.¹⁵⁸⁸

The term "right to conversion" refers to the individual's right to voluntarily abandon one faith and choose another one at their own volition. This type of conversion from one religion to another is evidently driven by an individual's strong belief that the religion they were born into has failed to meet their expectations, regardless of whether these expectations are of a spiritual or rational nature.

Additionally, due to inflexibility of a religion's principles and rituals an individual may lose their own faith over the religion. There are instances where an individual adopts atheism because they might have reached to a stage that God does not exist. In the context of the "Right to Conversion," a change in religion that occurs as a result of any of the aforementioned factors is considered to fall within its purview.¹⁵⁸⁹

Conversely, the claim of changing one's religion is seen as an abstract right that can be asserted by both individuals who are converting and outsiders who demand the right to convert others. This claim is often referred to as the "Right of Conversion" and is sometimes considered equivalent to proselytism.

Shri K. Santhanam, a member of the Constituent Assembly, offered a comprehensive elucidation of the objective, which can be summarised as:

The activities of the Christian Missionaries in this country included mass conversion, and the people have taken a significant amount of objection to that," the statement reads. The individuals who were responsible for the drafting of this Constitution have taken great effort to ensure that no unrestricted freedom to convert has been granted. Every individual has the right to freedom of conscience, and it is a positive development if any individual chooses to convert voluntarily due to the freedom of conscience. It cannot be subject to any limitations or restrictions. However, the state has the authority to prohibit any action

¹⁵⁸⁸ M.N. Rao, Freedom of Religion and Right to Conversion PL WebJour 19 (2003).

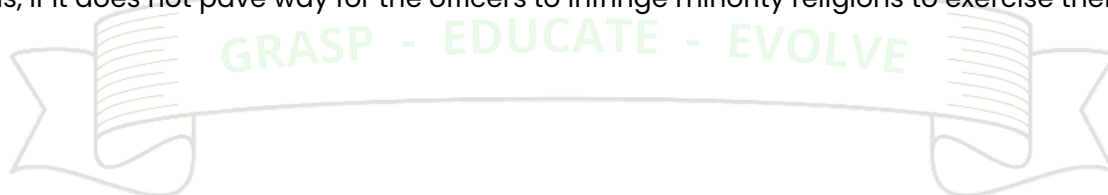
¹⁵⁸⁹ Quoted in Gandhiji on Conversion: Prof. K.N. Vaswani.

that involves the use of undue influence, whether it be via the use of money, pressure, or any other means, in the event that any attempt is made by one religious community or another to convert a large number of people. In light of this, I would like to make the argument that this article, in its current form, is not so much an article that guarantees freedom as it is an article that guarantees toleration – toleration for everyone, regardless of the religious practice or profession. And this tolerance is contingent upon the public order, morals, and health of the community. As a result, this item has been prepared with extremely careful attention to detail, and the exceptions and conditions are just as significant as the right that it bestows. It is for this reason that I believe the Article, in its current form, is deserving of our unwavering support.

In one of his speeches, Justice Venkataramana Iyer emphasized the difference between, the rights of an individual or any institution by Article 25(1) and the expansive authority of the State by Article 25 (2) (b). Using the principle of harmonious construction, it was held that the right guaranteed under Article 26(b) to the religious institutions are subject to the authority of the State. According to this interpretation, the learned judge held that the rights of Gowda Saraswata Brahmins to participate in particular rites are denominational rights. As a result, the High Court made the proper decision when it granted a decree to that restricted extent. A decision was made to deny the Gowda Saraswata's contention that they had the power to prevent other people from accessing the temple.

As a result of the Durgah Committee case,¹⁵⁹⁰ The law was further elucidated. Although Gajendragadkar, J., representing the Constitution bench, affirmed that the four clauses of Article 26 ensure the fundamental freedoms of every religious denomination or branch to manage their own affairs, he expressed a word of caution regarding the decision made in the *Venkataramana Devaru case*,¹⁵⁹¹ concerning the behaviours that a religious group considers to be part of its faith. In order for practices to be considered as a component of religion, they must be viewed by that religion as being fundamental and inseparable. Even practices that are not inherently religious can be given a religious appearance and be considered as religious practices under Article 26.... in other words, the freedom might be reasonably restricted, if it is not such an essential religious practise or an integral part of that particular religion.

Hence, as discussed with the points given above, it is understandable that to monitor public order, morality and health there should be some legislation that would support in that regard; especially for freedom of religion the State Government may enact a law, that is very very reasonable. Therefore, the 'Freedom of Religion Act' enacted by several States in India may welcomed with both the hands, if it does not pave way for the officers to infringe minority religions to exercise their right.



¹⁵⁹⁰ Durgah Committee v. Syed Hussain Ali, (1962) 1 SCR 383.

¹⁵⁹¹ (1983) 1 SCC 51.

CHAPTER – 4

FREEDOM OF RELIGIOUS ACTS IN INDIA – AN OVERVIEW

The below provided table shows the name of the enactments that each State has:

Table 4.1

Arunachal Pradesh	The Arunachal Pradesh Freedom of Religion Act, 1978.
Chhattisgarh	Chhattisgarh Freedom of religion act, 2006.
Gujarat	Gujarat Freedom of Religion Act, 2003.
Haryana	Haryana Prevention of Unlawful Conversion of Religion Bill, 2022.
Himachal Pradesh	Himachal Pradesh Freedom of Religion act, 2019.
Jharkhand	The Jharkhand Freedom of Religion Act, 2017.
Karnataka	Right to Freedom of Religion Act, 2022.
Madhya Pradesh	The Madhya Pradesh Freedom Act 2021.
Odisha	The Orissa Freedom of Religion Act, 1967.
Uttar Pradesh	The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2018.
Uttarakhand	The Uttarakhand Freedom of Religion (Amendment) Act, 2022.

These enactments disallow religious conversion by force or allurement or by any fraudulent means.

4.1 Comparison of Anti-Conversion Laws:

4.1.1 Arunachal Pradesh:

The rule against conversion is the name that is most commonly used to refer to the law that was passed in 1978 by the state of Arunachal Pradesh. This enactment is known as the Arunachal Pradesh Freedom of Religion Act. The goal of this law is to control religious conversions that take place within the state and to ban conversions that are induced or forced onto people. The law that prohibits conversion in Arunachal Pradesh is broken down into its most important elements, which are as follows, discussed in detail:

The Freedom of Religion Act of 1978 was passed in Arunachal Pradesh with the primary goal of outlawing and preventing religious conversions that are conducted via the means of force, compulsion, seduction, or deception. This was the fundamental intention behind the pass of this legislation. In order to protect individuals from being forced or influenced against their choice to change their religious beliefs, the rule was created with the intention of preventing such influences.

Clause of Prohibition: When it comes to the use of force, coercion, undue influence, deception, seduction, or allurement, the Act clearly prohibits any individual or group from attempting to convert

another individual from one religious faith to another. In this context, "attempting to convert somebody else from one religious faith to another" is specifically included.

In the event that it is determined that individuals or groups are in breach of the terms of the Act by participating in the practice of forced conversions, there is a possibility that they will be liable to fines. Additionally, it is likely that the punishment will include a fine in along with a prison sentence that might extend for a period of time that is as long as two years.

Conversion Validity: According to the statute, any conversion that takes place in a manner that is contradictory to the provisions of the Act is regarded to be invalid regardless of the circumstances surrounding the conversion. When something like this has place, it is an indication that conversions that were achieved via the use of force, compulsion, seduction, or deception are not accepted legally.

The individual or organisation that is being accused of the forced conversion is the one who has responsibility for holding the burden of proof in any legal proceedings that have to do with to a violation of the Act. In order to satisfy this requirement, they are required to present evidence that the conversion was not carried out using any of the of the prohibited methods that are mentioned in the Act.

Enforcement and Implementation: It is the responsibility of the government of Arunachal Pradesh, which is held accountable for this responsibility, to ensure that the terms of the anti-conversion law are enforced and put into effect within the state. There have been complaints of people being coerced into adopting a different religion, and the legislation provides the authorities in charge of law enforcement with the authority to examine these allegations and take necessary legal action against those who are responsible for these conversions.

To preserve the freedom of religion of individuals and to ensure that religious conversions are carried out in a way that is free and voluntary, free from any type of coercion or manipulation, the objective and intention of the anti-conversion law in Arunachal Pradesh is to safeguard the freedom of religion of individuals. For the purpose of fostering social cohesion through the control of religious conversions, the law's purpose is to offer protection for the rights and dignity of persons, as well as to provide protection for the rights of individuals.

The anti-conversion law of Arunachal Pradesh is a mechanism that serves the objective of preventing persons from being compelled to convert to a different religion and ensuring that religious freedom is preserved within the state. This demonstrates the government's commitment to protecting the rights and beliefs of its citizens while at the same time encouraging peace and harmony among the various religious communities. It is a manifestation of the government's dedication.

4.1.2 Chhattisgarh:

In order to change one's religion, a person is obligated to fill out a form that contains personal data and present it to the district magistrate at least sixty days in ahead. After that, the magistrate will make a request to the police to ascertain the person's "real intention, reason, and motive.

Punishment for Violation: Anyone who is discovered to be guilty of engaging in prohibited conversions in contravention of the laws should be prepared to face punishment. One of the conceivable kinds of punishment is a sentence of imprisonment for up to three years, as well as a fine of at least twenty thousand rupees. However, if the person who converted is a minor, a woman, or a member of a Scheduled Caste or Scheduled Tribe, the punishment may be more severe, with the possibility of up to four years in prison or a fine of at least twenty thousand rupees.

4.1.3 Gujarat:

In 2021, the Gujarat Legislative Assembly amended the Freedom of Religion Act to make "love jihad," which refers to the practice of converting one's religion through marriage in a manner that is either coerced or false, illegal. It is against the law to convert someone illegally using means like as deception, compulsion, fraud, undue influence, or other forms of seduction. Furthermore, in order for religious priests to engage in the process of converting individuals from one faith to another, they are required to acquire authorization from the district magistrate. Additionally, as per this legislation, marriage can be declared as null and void if the religious conversion is not lawful.

According to the legislation, those who are found guilty risk terms that can range anywhere from three to ten years in imprisonment and fines that can reach up to ₹500,000. Women, juveniles, and members of Scheduled Castes or Scheduled Tribes are subject to more severe punishments, which include a minimum fine of ₹3 lakh and a prison sentence ranging from 4 to 7 years.

Additionally, the statute considers marriages of this nature to be invalid and imposes the burden of proof on the individual who is being accused. In spite of this, the Gujarat High Court has concluded that an interfaith marriage does not constitute a kind of forced conversion and does not necessitate the formal consent of the district magistrate. This is the case unless in cases where there is evidence of fraud or coercion.

4.1.4 Himachal Pradesh:

According to the Himachal Pradesh Freedom of Religion Act, 2019, it is illegal to convert another person through the use of force, marriage, or persuasion and marriage. Furthermore, the Act defines "mass conversion" as a combined conversion of two or more individuals; this definition applies to the situation. There was also an increase in the maximum penalty for forced conversion, which was enhanced to ten years in prison by the statute in 2019. A more precise definition of mass conversion is included in the Himachal Pradesh Freedom of Religion (Amendment) Bill of 2022, which also increases the penalty to ten years from the current one of five years.

Furthermore, at least a month before the conversion, a person who seeks conversion should submit prior notification and the legislation mandates it. Any form of fraud, including but not limited to force, deception, compulsion, undue influence, and enticement, is prohibited by the Act in connection with the conversion process. According to the act, the term "coercion" can also be used to refer to the act of employing physical or psychological pressure that leads in bodily injury or the risk of bodily harm in order to force someone to behave against their will. A "marriage for the sole purpose of conversion is null and void," as stated in the enactment, is considered to be invalid. After a sub-inspector has reviewed the complaints that have been filed in accordance with the new law, offenders will be tried in a sessions court.

4.1.5 The state of Jharkhand:

The Jharkhand Freedom of Faith Act, 2017, which prohibits the practice of converting to a different religion, is the anti-conversion law for the state of Jharkhand. Offenders face the possibility of a fine of 50,000 Indian Rupees (INR), three years in jail, or both, as stipulated by the legislation. If the person who converted is a female, a minor, or belongs to a scheduled caste or tribe, the penalty is raised to a maximum of four years of imprisonment and a fine of one hundred thousand Indian rupees, or both. Notification of the District Magistrate is required one month in advance from both parties who intend to convert and those who are really carrying out a conversion.

4.1.6 The state of Madhya Pradesh:

In 1968, the Madhya Pradesh Freedom of Religion Act was enacted with the primary purpose of ensuring that religious conversions take place in a free and voluntary manner, as well as preventing

conversions that are carried out against the will of the individual. The legislation's purpose is to protect individuals from being coerced or compelled against their will to change their religious beliefs or the way they practise their religion.

In accordance with the legislation, a declaration is required to be presented to the District Magistrate sixty days before to the conversion that is expected to take place. In the statement, it is necessary to indicate that the individual intends to convert themselves voluntarily and without being subjected to any form of coercion, undue influence, force, or seduction.

Those who violate Section 3 are subject to a maximum punishment of five years in prison for the act of unlawfully converting from one faith to another. In addition, those who violate the law face a minimum penalty of fifty thousand rupees.

4.1.7 Odisha:

Under the Orissa Freedom of Religion Act of 1967, it is illegal for anyone to forcefully, coercively, deceitfully, or fraudulently convert or try to convert someone from one religion to another. This includes using undue influence, deception, inducement, allurement, or any other fraudulent methods. This applies to any attempted conversion or conversion that takes place either directly or indirectly. Additionally, the district magistrate must be notified in advance of any individual who wishes to convert to a different religion.

Punishment of violation: Any individual who is found to be found guilty of violating the requirements by engaging in conversions that are prohibited is liable to appropriate punishment. There is a possibility that the punishment will consist of a fine of at least Rs. 5000 and a prison sentence that might last for up to one year. On the other hand, the punishment may be more severe if the individual who converted is a minor, a woman, or a member of a Scheduled Caste or Scheduled Tribe. In these cases, the punishment may include a prison sentence of two years or a fine of at least ten thousand rupees.

In accordance with the law, any conversion that happens to be carried out in a manner that is contrary to the terms of Section 3 is regarded as being null and void. In the event that it is discovered that a conversion was brought about through the use of unlawful means, then the conversion will not be recognised legally.

Burden of Proof: The individual or group that is being suspected of engaging in banned conversions is the one who is responsible for bearing the burden of proof in any legal proceedings that pertain to a breach of Section 3. They are required to provide evidence that neither force nor coercion nor undue influence nor fraud nor inducement were used in the process of converting the individual.

It is the intention of Section 3 to protect the right of persons to freely practise their religion by outlawing any religious conversions that are fraudulent, coercive, or forced, and by imposing penalties on anyone who infringe these requirements. Conversions in Orissa are guaranteed to be carried out in an unrestricted manner, free from any form of exploitation or manipulation.

4.1.8 Uttar Pradesh:

The Uttar Pradesh Prohibition of Unlawful Conversion of faith Act 2020 has a section that details the prohibition of converting from one faith to another by the use of specific forbidden ways.

The law stipulates the religious conversion for marriage to be authorised in the state of Uttar Pradesh by a district magistrate for which a declaration is required to be submitted by the person who wishes to get his / her religion converted at least 60 days in advance and the declaration given

must contain the intentional consent to get his/her religion converted and the assertion that his/her intentional approval to get converted consists of any coercion, force allurement and undue influence and notice to be provided by religious convener or priest at least 1 month in advance.

Prohibited Conversions: Section 3 prohibits religious conversions that are:

Force: All conversions that are carried out via the use of physical force or the threat of physical force against the individual who is being converted or any other individual whatsoever.

Coercion: Conversion that occurs as a result of coercion, intimidation, or any other sort of pressure that forces the individual to convert against their will.

Undue Influence: An act of conversion that is carried out by using dishonesty, deception, misrepresentation, or any other unethical means to exercise undue influence over another person.

Fraudulent Means: The act of converting someone using fraudulent tactics, such as making false promises, spreading incorrect information, or manipulating relevant facts.

Allurement: Conversion is achieved by presenting a person with any temptation, financial gain, or reward, whether monetary or non-monetary, with the intention of increasing the likelihood that they will convert.

Punishment for Violation: Any individual who is found to be found guilty of violating the requirements by engaging in conversions that are prohibited is liable to appropriate punishment. There is a possibility that the punishment will consist of a fine of at least Rs. 15000 and a prison sentence that might last for up to five years. On the other hand, the punishment may be more severe if the person who converted is a minor, a woman, or a member of a Scheduled Caste or Scheduled Tribe. In these cases, the punishment may include imprisonment for a period of two to ten years or a fine of twenty-five thousand rupees or more. Additionally, the punishment for mass conversions is three to ten years of imprisonment with a penalty of fifty thousand rupees or more. If an individual is found to be in violation of the conversion procedure There is a possibility that the punishment will consist of a fine of at least Rs. 10,000 for the individual and Rs. 25,000 or more for the converter, as well as imprisonment for a time that can last up to three years for the individual and up to five years for the converter.

Burden of Proof: When it comes to any judicial actions that involve a violation of Section 3, the person who carried out the conversion is the one who is responsible for proving that it was not carried out by any of the banned means that are stated in the section.

Validity of Conversion: In accordance with the law, any conversion that is carried out in a manner that is contrary to the terms of Section 3 is regarded as being null and void.

4.1.9 Uttarakhand:

In accordance with Section 3 of the Jharkhand Freedom of Religion Act, 2017, it is prohibited for any anyone to convert or seek to convert any other individual from one religion to another, either directly or indirectly, through the use or practice of deception, force, undue influence, coercion, allurement, or any other fraudulent means. Someone is not permitted to assist, convince, or plan for such a conversion to take place.

Explanation: Conversion through the solemnization of marriage or a relationship that is in the nature of marriage due to the grounds stated in this subsection will be considered to be incorporated for the intent of this subsection.

Conversion through the solemnization of marriage or a relationship that is in the nature of marriage due to the grounds stated in this subsection will be considered to be incorporated for the intent of this subsection.

Anyone who breaches section 3 will be subject to a minimum penalty of two years in prison, with the possibility of a seven-year sentence, as well as a fine of at least twenty-five thousand rupees. This will not influence any potential civil responsibility that may be incurred.

However, with the proviso that anyone who violates the regulations of section 3 in relation to a minor, a woman, or a member of the Scheduled Caste or Scheduled Tribe would be subject to a minimum term of two years in jail, with the possibility of a ten-year sentence, in addition to a fine of at least twenty-five thousand rupees: With the added restriction that anyone who is found to be in violation of the mass conversion regulations outlined in section 3 suffers a minimum penalty of three years in jail, with the possibility of up to 10 years in prison, in addition to a fine of at least fifty thousand rupees.

4.2 Criticism on Anti-Conversion Laws:

The proponents of these laws argue that they are created with the intention of preventing conversions or attempted conversions that are carried out through deception, coercion, or seduction. On the other hand, they argue that these laws are designed to make activities of this nature illegal.¹⁵⁹² Therefore, such regulations provide a vital shield for the purpose of preserving religious freedom, which is a right that is guaranteed both inherently by the Constitution and in international human rights instruments.

Critics, on the opposite hand, contend such laws are the result of an anxious and pro-Hindu chauvinism that is unfriendly to religious minorities. The wide language that is used in the statutes is particularly offensive because it leads to ambiguity regarding the activities that are prohibited, which in turn raises the possibility that administrative authorities may use the ambiguous terminology of the legislation to discriminate against religious minorities.

A substantial amount of ambiguity exists in the meanings of phrases such as conversion, force, seduction or allurement, and fraud, which allows for their misuse. In an absurd manner, the overly broad definition of force interferes with the relationship between people who are considering converting to Christianity and those who are looking to convert themselves voluntarily. As a result, the latter are unable to enlighten the former about what their religion teaches about non-followers. This limits the amount of information that can be made available to the possible convert, which in turn restricts the freedom of the potential convert to alter their religion.

According to such definitions, there is a great deal of uncertainty regarding the behaviours that are permitted and those that are not permitted when it comes to the concept of allurement or inducement. In a similar vein, the terms "fraud" and "misrepresentation" are not understood in any particular way, and the enactments do not provide any guidance regarding this matter.

There have been incidents of violence directed at the Christian community that are motivated by religious beliefs. To prevent future loss of the theory of basic structure, activists within the Indian Christian community in India and civil society groups have argued that it is necessary to protect the constitutional freedom to practise, profess, and promote one's own religion. This is done in order to prevent further degradation of the doctrine.

¹⁵⁹² Asia Human Rights Documentation Ctr., Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights, ECON. & POL. WKLY. 63-73 (2008).



There is without a doubt no acceptable basis for justifying conversions that are brought about via the use of violence or any other form of force that is equally immoral. This is a violation of the principle of freedom of conscience, which is guaranteed by the Constitution of India and is stipulated under international human rights laws. On the other hand, the wording that is used in anti-conversion legislation goes much beyond the protection of this right, and in fact, it does not appear to be motivated in any way by the desire to safeguard the freedom of conscience. On the contrary, the risk of "discriminatory abuse in their application" is a very real factor to consider. The verbiage that these pieces of legislation employ converts them from their apparent role as guards of constitutional rights into actually violators of the exact guarantees that they are supposed to preserve.¹⁵⁹³



¹⁵⁹³ Tad Stahnke, Proselytism and the Freedom to Change Religion in International Human Rights Law BYU L. REV. 251, 256 (1999).

CHAPTER – 5

JUDICIARY'S VIEW ON THESE ENACTMENTS

5.1 Analysis of few cases:**5.1.1 Madhya Pradesh High Court in Stanislaus:¹⁵⁹⁴**

Regarding the authority granted by the Madhya Pradesh Dharma Swantantraya Adhiniyam, 1968, the Madhya Pradesh High Court evaluated concerns that were comparable to those that were reviewed by the Orissa High Court.

Several provisions of the M.P. Act, including Section 3 (Prohibition of forcible conversion), Section 4 (Prohibition for contravention of the provisions of Section 3), and Section 5(2) (Intimation to be given to District Magistrate with respect to conversion), were challenged. Additionally, the legislative authority of the state to enact the M.P. Act was also questioned.

As a result of the High Court's disagreement over the extent of Article 25, it was decided that Article 25 does not bestow an absolute right on any individual. This is because the right in question must be exercised in a manner that is proportional to the rights of other individuals under Article 25. It was also decided that the freedom to promote one's faith cannot be understood as a right to trespass upon the same freedom of others by "questionable methods," and that as a result, the state has the ability to pass laws that ban the conversion of others through the use of coercive means.

During the course of its proceedings concerning the challenge to the legislative competence of the State, the M.P. High Court made a reference to the Yulitha decision and stated that it was unable to agree with the rationale contained within it. The M.P. High Court, based on a number of previous decisions, came to the conclusion that the term "public order" should be understood in the broader sense of being "in the interest of public order," as opposed to the more specific context of the phrase "maintenance of public order." With this interpretation in mind, it was decided that the M.P. Act would fall under the jurisdiction of Entry 1 List II of the Seventh Schedule of the Constitution under the Constitution.

5.1.2 Orissa High Court:¹⁵⁹⁵

In the Orissa High Court, the petitioners sought to contest the constitutionality of the Orissa Freedom of Religion Act, 1968 (the Orissa Act) by arguing that it infringed upon the rights specified in Article 19 and Article 25 of the Constitution. They also raised concerns about the legislative jurisdiction of the State Legislature.

The individuals who submitted the appeal contended that the propagation of the Christian faith through the use of certain of the practices that have been deemed illegal by the Orissa Act is a component of such religion. The Orissa High Court, in its consideration of the scope of Article 25 rights¹³, came to the conclusion that the right to propagate one's own religion included the right to convert another person to one's own faith. This assertion was made with regard to Christian residents.¹⁵⁹⁶

¹⁵⁹⁴ Supra note 3.

¹⁵⁹⁵ Yulitha Hyde v. State of Orissa, AIR 1973 Ori 116.

¹⁵⁹⁶ The Orissa High Court relied on the decision that was made by the Supreme Court in the case of Durgah Committee v. Syed Hussain Ali, AIR 1961 SC 1402, which states that Article 25 "affords him the right to demonstrate his belief in what he does by such towards the outside acts as may seem to him adequate in order to disseminate his ideas for the advantage of others."

The expanded interpretation of the terms "force," "fraud," and "inducement" in Section 2 of the Orissa Act, which went beyond the definition in the Penal Code of 1860, was subject to dispute. This occurred because they impeded the dissemination of the Christian faith.

5.1.3 Validity of the Madhya Pradesh Act and Orissa Act.

Appeals from decisions made by Yulitha and Stanislaus were jointly heard by the Supreme Court of India. This was due to the fact that the respective High Courts held views that were diametrically opposed to one another on common questions of law concerning the scope of Article 25 and the legislative competence of states to enact anti-conversion legislation. There was a significant amount of reliance placed on Stanislaus by the Supreme Court in order to uphold the legality of the Orissa Act and the M.P. Act.

Considering the width of Article 25, the Supreme Court decided that Article 25 does not guarantee any rights to anyone to convert others to their own religion; rather, it grants the freedom to transmit or disseminate one's faith by explaining its beliefs or tenets. It is important to keep in mind that Article 25(1) guarantees "freedom of conscience" to every citizen, and not just to those who adhere to a specific religion. This, finally, gives the answer, that there is no fundamental right to convert others to one's own religion. This is due to the fact that if a person purposefully undertakes the conversion of another person to his religion, this would be a violation of the "freedom of conscience" that is guaranteed to all citizens of the country in the same manner.

The phrase "purposefully undertaking the conversion of another person to one's own religion" does not make it apparent how this would infringe on the freedom of conscience of the individual in question, unless it is presumed that the conversion in question is carried out using questionable means. It was believed that the use of the phrase "to convert" in its transitive form implied that the "converttee" did not have any agency in the process. It is possible to comprehend this ratio decidendi of the Supreme Court when one considers the fact that the word "convert" was purposefully left out of Article 25.

If, on the other hand, the M.P. Act and the Orissa Act only seek to regulate conversions through coercive means, it becomes clear that if the propagation of religion by a single individual results in the voluntary conversion of an additional individual to the propagator's religion, then both the "propagator" and the "propagatee" are within the scope of their rights under Article 25. This is because the ratio decidendi is only intended to regulate conversions through coercive means. The Himachal Pradesh High Court (also known as the H.P. High Court) subsequently adopted this contextual reading of the ratio decidendi that was handed down by the Supreme Court.

In the case of Stanislaus, the Supreme Court confirmed the broader interpretation of "public order" and determined that forced conversions would likely cause concern about a potential disruption of public order that would impact the entire community. Consequently, the act of converting someone by force would be subject to the authority of Entry 1 of List II of the Seventh Schedule to the Constitution. This matter was discussed in terms of the legislative authority of the individual states during the enactment of the M.P. Act.

5.1.4 Satya Ranjan Majhi:¹⁵⁹⁷

In the Orissa High Court, the constitutionality of Section 2 (Definitions) of the Orissa Act, as well as Rule 4 (Declaration before conversion) and Rule 5 (Intimation of ceremony) of the Orissa Freedom of Religion Rules, 1989 (the Orissa Rules), was contested. The Orissa Rules were referred to as the Orissa Rules.

¹⁵⁹⁷ AIR 2003 Ori 163.

In accordance with the decision made by the Supreme Court's Full Bench in the case of Stanislaus, the Orissa High Court came to the conclusion that a challenge to Section 2 of the Orissa Act had been conclusively decided against the petition parties.

With regard to the challenges that were brought against the Orissa Rules, the Orissa High Court decided that the rules had been adopted in order to accomplish the goal of the Orissa Act, which was to outlaw the practice of forceful conversions. In accordance with Rule 4 of the Orissa Rules, the individual who holds the intention of converting must first provide the Magistrate with a declaration to that effect before undergoing the process of conversion.

Rule 5 of the Orissa Rules requires that the priest who will be performing the conversion ceremony inform the Magistrate about the ceremony at least 15 days before the actual conversion ceremony. After receiving such an intimation, the Magistrate will send the information that is included in Form "A" of the Orissa Rules to the local police station. The local police station will then conduct a "local inquiry" to determine whether or not there are any objections to the conversion. The Orissa High Court could not find any flaws in the mechanism that was established by the Rules. This includes the statutory obligation that the "converter" is required to give prior information to the Magistrate, which is outlined in Rule 5. The Rules were designed to guarantee that the conversion is not one that violates the Orissa Act.

5.1.6 *Graham Staines murder case*.¹⁵⁹⁸

The Division Bench of the Supreme Court affirmed the life sentence imposed on the accused for the triple murder of Australian missionary Graham Staines and his two minor sons. The court stated that there is no valid reason to interfere with someone's belief through force, provocation, conversion, incitement, or on the flawed assumption that one religion is superior to another. The defendant was convicted and received a life sentence for the offence.

In a subsequent order dated January 25, 2011, these sentences were altered to read as follows: "There is no justification for interfering in someone's religious belief by any means." This alteration was made for reasons that are intriguing. The question of whether or not this order made the Supreme Court's position more clear is debatable.

5.1.7 *Evangelical Fellowship of India*.¹⁵⁹⁹

Section 2 (Definitions), Section 4 (Notice of intention), and Section 8 (Power to make rules) of the Himachal Pradesh Freedom of Religion Act, 2006 (the H.P. Act) were challenged by the petitioners before the Himachal Pradesh High Court. Additionally, Rule 3 (Notice before conversion), Rule 4 (Inquiries in other cases), Rule 5 (Registration and investigation of case), and Rule 6 (Sanction for prosecution) of the Himachal Pradesh Freedom of Religion Rules, 2007 (the H.P. Rules) were also challenged by the petitioners.

In light of the decision that the Supreme Court made in the case of Stanislaus, the challenge to the definitions of "force," "fraud," and "inducement" in Section 2 of the H.P. Act was not taken into consideration.

In accordance with Section 4 of the H.P. Act, an individual who intends to convert his faith is required to provide the Magistrate with a thirty-day notice prior to the conversion. The Magistrate will then have the matter investigated by any agency that he deems appropriate. In the event that the converttee fails to provide this notice, a penalty will be imposed. If the converttee is returning to his

¹⁵⁹⁸ Rabindra Kumar Pal v. Republic of India, (2011) 2 SCC 490.

¹⁵⁹⁹ Evangelical Fellowship of India v. State of H.P., (2013) 4 RCR (Civ) 283.

previous religion, then the statutory obligation of notification that is outlined in Section 4 is not required to be fulfilled.

As was previously indicated, the High Court of the State of Himachal Pradesh ruled that Section 4 of the H.P. Act was unconstitutional in its entirety. As far as the burden on the converttee was concerned, the High Court of Himachal Pradesh made the observation that the Higher Pradesh Act had gone much further than the M.P. Act (under which there is no statutory obligation on the converttee to give notice before conversion⁴²) or the Orissa Act (where the converttee is required to give a declaration prior to conversion; nevertheless, no time-period has been established and non-filing of such declaration is not an offence).

It was the opinion of the High Court of Himachal Pradesh that the H.P. Act ought to be geared towards penalising the one who is attempting to convert another person through the use of coercive measures, rather than the converttee. The decision was made that the converttee's obligation to provide notification breaches his fundamental right to privacy and may also make him susceptible to physical and psychological torture, which would be contrary to the purpose of the H.P. Act.

Additionally, it was determined that the decision to waive the notification requirement in situations involving re-conversion was not only completely illogical but also a violation of Article 14 of the Constitution, which was titled "Right to equality before the law." In addition, Rule 3 and Rule 5 were deemed to be beyond the scope of authority, particularly in relation to activities that were related to Section 4.

5.2 Common findings in cases:

The fact that the activities that the proposed anti-conversion legislation seeks to sanction are already crimes under the Penal Code, 1860 (IPC)⁴⁴ is one of the early objections that is usually brought against the legislation during the legislative process. On the other hand, if one takes into consideration the numerous unconventional methods that can be utilised to bring about a forced conversion (such as the threat of excommunication and the wrath of the divine), it becomes clear that the objective of forbidding non-voluntary conversions can be accomplished solely through the implementation of a specific piece of legislation.

The following question that needs to be taken into consideration is whether or not such legislation would be more appropriate to be adopted at the state level or at the central level.

This is a copy of Para In spite of the fact that the Constitution includes a complex plan for the distribution of legislative powers between the central government and the states, in the form of the Union List (List I of the Seventh Schedule of the Constitution), the State List (List II of the Seventh Schedule of the Constitution), and the Concurrent List (List III of the Seventh Schedule of the Constitution), the word "religion" does not appear in any of these lists. There is a point of view that the fact that the word "religion" was specifically left off of the lists gives the impression that the legislators did not intend for religion to be a subject of legislation.

Even in the event that this point of view is accepted, the right to freedom of religion is not an unqualified right. In accordance with Article 25, the right to freedom of religion is contingent upon public order (Entry 1 List II), health (Entry 6 List II), and morality (which does not have a specific entry on any list). Legislation that prohibits conversion has been passed by the states up until this point in the "interest of public order."

Public health and public order are exclusively the responsibility of the state, and the central government is unable to pass laws pertaining to these issues. As a result of the fact that "religion" and "morality" are not specific entries under any list, it is possible that they are covered by Entry 97 List I

(Union List). As a result, national anti-conversion legislation could be passed in the interest of "public morality," on the grounds that the use of coercive means that result in the conversion of another person is an immoral activity.

Furthermore, it has been suggested that religious conversion also has repercussions on other parts of personal law, such as marriage and divorce, succession, and other topics that are under the purview of Entry 5 List III (commonly known as the Concurrent List). In terms of topics that are on the Concurrent List, the Union Legislature takes precedence over the State Legislatures. As a result, a national statute that regulates religious conversions for the purpose of marriage and divorce, succession, and other purposes could also be passed.¹⁶⁰⁰

Consequently, legislation that regulates religious conversions can be implemented at both the central government level and the state level, but for rather different reasons. Nevertheless, any attempt to establish national anti-conversion law may very probably be unsuccessful due to the current gap in political opinions regarding such legislation.

5.3 Anti-Conversion laws as well as the deeper intrusions on individual liberty:

Therefore, it is vital to have a solid understanding of the actors involved in religious conversion in order to have a thorough understanding of the differences between the older legislation and the more recent legislation. Proselytising faiths typically have persons, such as preachers or clergy, who are responsible for disseminating the word of their religion to the general public and, if successful, performing the proper rites to welcome new members into their faith. For example, Reverend Stanislaus was one of the individuals who participated in the challenges to the prior laws.

These individuals make up the first group of actors. Those folks who are interested in changing their religion, either with or without the assistance of a preacher, are the second group of players. These individuals were not involved in the decision that was made by Stanislaus in any way. In point of fact, the Supreme Court did not take any consideration into account the influence that these laws would have on individuals; rather, it concentrated solely on the limited subject that was related to preachers. The development of the jurisprudence on privacy, which will be discussed in the following section, is strongly connected to the impact that was previously mentioned.¹⁶⁰¹

Having established this context, we will now go on to the next set of anti-conversion legislation, which includes all of the laws that were passed after the year 2000 (sometimes known as "the newer laws"). These laws go beyond the simple prohibition of preachers converting people to their religion against their will (which was upheld in Stanislaus). They now require individuals who are interested in changing their religion, as well as those who facilitate the conversion, to provide prior notice to the District Magistrate or to obtain permission from the District Magistrate.

This is done out of fear of the potential for penal consequences. Additionally, they broaden the concept of "forced conversion," establish an exception to this term for "reconversion," make marriages that have occurred as a result of "forced conversion" null and void, and allow individuals other than the person who was converted to commence criminal proceedings.

When it came to the recognition of a right to privacy that is inherent in the Indian Constitution, the result in Puttaswamy was unanimous. There were six different perspectives presented, all of which agreed with one another on significant elements. The right to individual decisional autonomy was one of these, and it was described as an intrinsic component of privacy in all of the views. This right was possibly the most important feature of religious freedom. In the judgement, decisional autonomy, also

¹⁶⁰⁰ Indian Law Institute, A Study of Compatibility of Anti-Conversion Laws with Right to Freedom of Religion in India.

¹⁶⁰¹ Manish, Evaluating India's New Anti-Conversion Laws, 6.2 CALJ (2022) 32.

known as the freedom to make decisions for oneself, was outlined as an essential component of individual autonomy, and it was referred to as "perhaps the central concern of any system of limited government."¹⁶⁰²

Reverse Onus: Even in cases where there are reverse onus rules in place for the prosecution of offences, the mere registration of a complaint does not lay the burden of proof on the individual who is being accused. As was said earlier, in the majority of instances, the prosecution is required to prove certain "foundational facts" before the accused can shift the burden of proof upon themselves. Generally speaking, these fundamental truths are reflected within the provision.¹⁶⁰³

When section 12 of the Act of UP is read in its entirety, it becomes clear that there are no "foundational facts" that the prosecution must prove in order for the accused to be able to transfer the burden of proof onto themselves. One of the things that the accused is expected to do when defending himself in such circumstances is to present evidence that contradicts the allegations that he committed the crime. It is necessary to first establish the fact that is being challenged in order to demonstrate that the contrary is true. For this reason, it is of the utmost importance that the *foundational facts* be established before the accused person is put in the position of having to reason out the negative.¹⁶⁰⁴

The clause would result in a situation in which the burden of proof would be placed on the accused in the event that a mere allegation of a dishonest, fraudulent, or forced conversion was made. This would occur in the absence of any creative judicial decision maker.



¹⁶⁰² John Sebastian & Aparajito Sen, Unravelling the Role of Autonomy and Consent in Privacy 9 Indian j Const 1 (2020) 1.

¹⁶⁰³ Pallvi Hooda, Validity of Reverse Onus Clauses in the Anti-Conversion Laws of Uttar Pradesh, Madhya Pradesh and Uttarakhand 13 RMLNLUJ (2021) 185.

¹⁶⁰⁴ Sahid Hossain Biswas v. State of W.B., 2017 SCC OnLine Cal 5023.

CHAPTER – 6

CONCLUSION AND SUGGESTIONS

In the simplest form, The Anti-conversion laws are comprised of four primary components:

- (i) The requirement that an individual must provide prior notice or obtain permission from the state in order to change their religion.
- (ii) The widening the definition of "forced conversion" while simultaneously creating an exception for "reconversion".
- (iii) Declaring the marriages that have occurred after "conversion" without prior notice as null and void; and
- (iv) The authorization of individuals other than the individual who converted to initiate criminal proceedings.

(i) Requirement for prior notice and permission:

In the case of *Evangelical Fellowship*¹⁶⁰⁵, the requirement of prior notice and authorization was overturned because there was a lack of compelling state interest and the state did not use the least restrictive measures to achieve its goal. This decision was made in accordance with the strict scrutiny test. In light of *Puttaswamy's* case, the criteria that is to be applied is now one of proportionality; nonetheless, it is argued that this should not have any impact on the decision. As was mentioned in the part that came before this one, "even at its lowest level of scrutiny, proportionality requires the court to determine that the measure was legitimate, suitable, necessary, and balanced."

There is no justification for why prior notice is required to prevent forced conversions; the requirement, as demonstrated by *Evangelical Fellowship*, is disproportionate and, in fact, could prove to be counterproductive to the intent behind retaining public order; there is also is no procedural safeguard—to the contrary.

(ii) Increasing the scope of the definition of "forced conversion" and the exception for "reconversion"

As was said before, the term of "forced conversion" is something that was never thoroughly investigated by the Supreme Court in the case of *Stainislaus*. This is despite the fact that it was scrutinised by the Orissa High Court in previous proceedings, and several aspects of it were judged to be questionable due to their lack of specificity.

It has been argued that the matter is still unanswered, particularly in relation to the more recent statutes, which have expanded the term beyond the reach of even the older regulations that were challenged in the *Stainislaus* case.

For the reasons that are explained in *Evangelical Fellowship*, the exceptions to "reconversion" are likewise arbitrary and flagrant violations of Article 14. This is due to the fact that there is no logical rationale for treating two sets of converts differently based on the religion that they converted to.

(iii) Declaring the marriages as null and void:

There are a few of the more recent statutes that have sections that are poorly composed, rendering "marriage done for sole purpose of unlawful conversion" null and void provisions. In light of two decisions made by the Supreme Court that protect human liberty in matters pertaining to marital

¹⁶⁰⁵ 2012 SCC Online HP 5554, ¶ 47.

choice, it is argued that such prohibitions on marriage by inter-religious couples are in direct consequence of these rulings.

The Supreme Court of India, in the case of *Lata Singh*¹⁶⁰⁶, dismissed criminal proceedings that had been brought against an inter-caste couple by their relatives who had expressed disapproval of the marriage. In addition, it was mentioned that people who committed acts of violence against couples who were of different castes or religions were violating their fundamental rights.

In another case involving an interreligious couple, *Shafin Jahan*,¹⁶⁰⁷ the Supreme Court ruled that the right to choose one's religion is an essential component of individual liberty that was constitutionally protected. This decision was made in conjunction with the fact that one of the pair had converted to the religion of the other before to the marriage proceeding.

Due to the fact that the right to choose one's religion and one's partner is constitutionally protected, it follows that the restrictions that the new laws place on marriages will need to be read narrowly and subject to the exception that was established in the case of *Sarla Mudgal*.¹⁶⁰⁸ In that case, the Supreme Court of India ruled that conversion just for the sole reason of subjecting themselves to Muslim personal law and contracting a bigamous marriage would be void.

(iv) Initiating criminal proceedings by others:

The elements of the new legislation that allow for the filing of a First Information Report (FIR) regarding the claimed offence are considered to be the most insidiously troublesome. These rules allow for the filing of a FIR not only by the "victim" of the alleged forced conversion, but also by the parents, siblings, or any other relative, even if the victim is a minor. Specifically, this is being used to strip young women of their rights to choose both their faith and the partner they want to be with.¹⁶⁰⁹ It is a body blow to personal autonomy, according to the argument. According to *Puttaswamy* and *Shafin Jahan*, this decisional autonomy is a fundamental component of the right to privacy. This was previously mentioned, and it is a basic component of the right to privacy.

When it comes to provisions that have the effect of infringing upon individual provisions, the standard of proportionality that was stated in the previous judgement would apply to both substantive and procedural requirements. Taking this into consideration, it is argued that the provisions of the more recent regulations that allow third parties to commence criminal procedures without the agreement of the individual convert are completely disproportionate.

6.2 Suggestions:

- (A) The *reverse onus* concept is used in these Acts without proving the foundational facts, and because of this concept the people who involve in an honest propagation of religion will be considered as a violator of these laws and taken as an undertrial prisoner, again their rights will be violated, hence, it is suggested that the concept of reverse onus from these laws may be removed.
- (B) There is no justification for why prior notice is required to prevent forced conversions; a person could be forced or allured to make this prior notice. Since, the procedure of prior notice cannot be capable of analysing whether the applicant is forced or not, to convert; this is a tedious process for those people who genuinely want to convert themselves. Rather, this could be made like, a declaration can be produced to the respective officer after the conversion, in order to maintain the data of number of conversions.

¹⁶⁰⁶ *Lata Singh v. State of UP*, (2006) 5 SCC 475, ¶ 16.

¹⁶⁰⁷ *Shafin Jahan v. Asokan K.M.*, (2018) 16 SCC 368.

¹⁶⁰⁸ *Sarla Mudgal v. Union of India*, (1995) 3 SCC 635.

¹⁶⁰⁹ *Saumya Uma & Niti Saxena, Juxtaposing 'Honour' with Women's Agency: Rights and Wrongs of Anti-conversion Law(s)* 56 (1) *Econ. & Pol Wkly* 15 (2021).

- (C) As it was discussed above, it is fundamental right of any person to choose their life partner with whom they will spend their entire life, but these laws can declare a marriage that is done after the conversion without prior notice as null and void. So, the married couple will now should lose their love for the sake of law, instead the law may not interfere in one's private life or selection of life. It may instead provide a complaint mechanism for reporting this if anyone of the couple is not willfully involving in it.
- (D) These Anti-Conversion laws treat the people who convert from Hinduism to other religion in a stringent manner and the same law treats very flexible, for the people who already converted to other religion and would perform a reconversion. Again, this both are conversion only, but, both the conversions are treated differently, so there is no equal treatment given. Thus, it violates Article 14 of the Constitution, hence this might be amended in these enactments.
- (E) These Anti-Conversion laws allow anyone to complaint against a conversion as 'forced conversion' even though the converted person is not complaining that the person was forced to convert. This increases lot of pending criminal actions and increases lot of undertrial prisoners, since the offences are non-bailable offences. Hence, the law may be amended that the person aggrieved or his guardian or family member only can file a complaint and the person who got converted may be given with the right to withdraw the complaint even though that person has not made that. The same way, the offences except 'mass conversion' can be amended to 'bailable offence', so that the honest propagators will not be infringed of any of their fundamental rights by misusing these enactments.



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