

## **Need for and Validity of Anti-Conversion law in India.**

Authored by: **Neeru Mittal**

Assistant Professor,

Lovely Professional University, Phagwara.

Email- [neeru.18499@lpu.co.in](mailto:neeru.18499@lpu.co.in)/[neerumwalia87@gmail.com](mailto:neerumwalia87@gmail.com)

### **Abstract:**

Religion is not a place or thing or any kind of material that can be changed in another form forcefully. Which religion a person is following does not matter because purpose is same, that is, salvation. When a person infringes into another person's belief, faith and worship there arises a problem that is fight for the right of religion. To which there becomes a need of anti-conversion law which safeguards a person from conversion due to force, allurements, gratuity and other means. For instance State of Madhya Pradesh had come under the British force to convert their religion to Christians which is a breach of Article 25(1) of the Constitution of India which says "all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion". Minorities in this area were influenced by the benefits and services given by Britishers to convert into Christian. Thereafter Madhya Pradesh State legislature passed a Madhya Pradesh Swantra Adhiniyam Act, 1968 which is valid by taking into consideration Article 25(2)(a). Thereafter Orissa, Tamil Nadu, Gujarat, Rajasthan, Himachal Pradesh have also made anti conversion laws.

Keywords: Anti-conversion law, Constitutional Validity

### **Introduction:**

'Law arises with the needs of society'. There are two aspects; law changes the society, society changes law. This is the most important aspect of laws of Jurisprudence, which helps the society to maintain proper public order which is in favor of every individual.<sup>1</sup>

Preamble of the Indian Constitution declares India to be a secular nation whereby it means all are free to choose any religion of their choice. Secularism is one of the basic feature of the Indian Constitution. As the term religion has not been defined anywhere in the Indian constitution, so it is a matter of belief or faith of an individual to follow any particular religion. No one can be forced to follow any religion or there can be no forceful conversion by way of undue influence, fraud or coercion. As the instances of forceful conversion are on rise so dire need is felt concerning anti conversion laws. An Anti-Conversion law is a law which is made to protect the rights of every individual to maintain their religious sentiments and protects them from the conversion of religion forcefully. This law became the needs of

the society where conversion of religion was done in society by means of 'force', 'fraud', 'allurement' or 'inducement' prior to Independence as well as after Independence.

Prior to Independence, almost sixty percent of India was under British Provinces and forty percent was under the princely states which were indirectly working along the Britishers. When the Britishers started converting the religion of people by any of the means then some of the princely states come up with the anti-conversion enactments prior to independence, such as "Raigarh State Conversion, 1936".

After Independence people were forced to convert their religion, it was mostly in parts of Madhya Pradesh due to more tribal areas and in Orissa. Because of which these states came up with the Anti-Conversion law, "Orissa Freedom of Religion Act, 1967" and "Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968". Statute enacted by Orissa played a role model for other states to make anti-conversion laws.

Every enacted statute should be constitutionally valid i.e. acts made should not violate the provisions of Constitution. An impugned judgement of the A.P. High Court rendered by Justice M.N. Rao, have underlying theme regarding power of Judicial Review declaring it as one of the basic pillar of our Constitution.<sup>ii</sup>

Until now, eight states have come up with anti-conversion laws but Tamil Nadu repealed its anti-conversion law in 2004 reducing the number of states with same law to seven.

## **History of Anti-Conversion:**

### **Prior To Independence:**

Prior to Independence of India, territory of India was divided and governed into two parts. Firstly, Provinces of British Government covered almost 60 percent area of pre-independence India. Secondly, Princely States covered almost 40 percent area of pre-independence India and their Kings were in treaty with the British.<sup>iii</sup>

Since most of the parts were ruled by Provinces, it became easy to convert religion of people to Christian by means of fraud, force, allurement or inducement.<sup>iv</sup> Most of these conversions occurred during 1930s and 1940s.

The princely states such as Kota, Bikaner, Raigarh, Sarguja, Udaipur which were indirectly ruled by Britishers, have made certain enactments to safeguard the religion of people from British Missionaries. Enactments were "Raigarh State Conversion, 1936", "Sarguja State Apostasy Act, 1942", "Udaipur State Anti-Conversion Act, 1946".

### **Post-Independence:**

In Post-Independence era, the Territory of India had its own Constitution to rule India, that is, "The Constitution of India, 1950". The Framers of India were well known and safeguarded the interest and rights of people in the Constitution. "Article 25(1) of The Constitution of

India talks about freedom of Religion, by means of which ones can protect and safeguard his beliefs".<sup>v</sup>

Though in the Post-Independence era, Britishers cannot force people to convert in Christianity but means of allurements or inducements they were converting Indian people to their religion mostly Weaker Sections of Society because it has greater population in Orissa and Madhya Pradesh.<sup>vi</sup>

Their main focus was Weaker Sections of Society<sup>vii</sup> because of poverty and most common division of Hindu Society is casteism.

To safeguard the same, number of bills were passed in the parliament but due to lack of support, neither of them got passed such as the "Indian Conversion (Regulation and Registration) Bill, 1954", "Backward Communities (Religious Protection) Bill, 1960", "Freedom of Religion Bill, 1979".<sup>viii</sup>

## **Effective approach of states:**

In Parliament of India, all bills relating to Anti-Conversion Laws were dismissed due to lack of support from its members. These bills were of utmost importance to safeguard the religion of people. To safeguard the same though Constitution has a provision under Article 25(1) of but changing dynamics of the society lead to demand for appropriate law providing penalties for forceful conversion of religion. As Union Government failed in its attempt, number of states took an initiative to make an anti-conversion law. These states contained penal punishments in addition to fine. Eight out of twenty nine states enacted these laws.<sup>ix</sup>

## **Anti-Conversion laws enacted and punishments:**

### **Orissa:**

Due to the efforts of Chief Minister Rajendra Narayan Singh Deo "Freedom of Religion Act, 1967" got passed<sup>x</sup>, whereby Section 3 and Section 4 of the Act prescribes maximum punishment of one year or fine not more than five thousand or both. Section 5 of the Act prescribes for the investigations to be held by an officer equivalent to that of Inspector of Police.<sup>xi</sup>

### **Madhya Pradesh:**

Protection was given by "Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968". Section 3 and Section 4 prescribes maximum punishment of two year or maximum fine upto ten thousand or both. Section 5 states conversion ceremony has to take place in front of District Magistrate.<sup>xii</sup>

**Arunachal Pradesh:**

Protection was given by “Arunachal Pradesh Freedom of Religion Act, 1978”. Section 3 and Section 4 of the Act mentions about the maximum punishment of not more than two year or fine not more than ten thousands or both. Further Section 5 states conversion ceremony has to be taken place in front of District Commissioner and Section 6 states that investigation is to be done by an officer above or equivalent to the rank of Inspector of police.<sup>xiii</sup>

**Chhattisgarh:**

Chhattisgarh originated out of Madhya Pradesh in the year 2000 and retained “The Madhya Pradesh Dharma Swatantraya Adhiniyam Act, 1968” and titled it as “Chhattisgarh Dharma Swatantraya Adhiniyam Act, 1968”.<sup>xiv</sup>

**Gujarat:**

Protection has been provided by “Gujarat Freedom of Religion Act, 2003”. Whereby Section 3 and Section 4 prescribes for not more than three years of imprisonment or fine not increasing fifty thousand or both. Further Section 5 says conversion ceremony to be held in front of District Magistrate. Investigation of any such reported incidence is to be done by officer not under the position of Police Inspector.<sup>xv</sup>

**Himachal Pradesh:**

Under Section 4, 30 days prior to intention, intimation should be given to District Magistrate as per “The Himachal Pradesh Freedom of Religion Act, 2006”. Section 3 and Section 5 prescribes for the punishment for imprisonment of two years or fine upto twenty five thousand or both.<sup>xvi</sup>

**Rajasthan:**

State of Rajasthan also took initiative and introduced bill in 2006 but it did not got passed.<sup>xvii</sup>

**Tamil Nadu:**

Tamil Nadu gives protection by the “Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002”. But to protest this new Anti-Conversion law thousands of dalits were forced to convert to Christianity and Buddhism leading to repeal of the same in 2004.<sup>xviii</sup>

**Jharkhand:**

“Jharkhand Dharma Swatantraya Adhiniyam Act, 2017” under Section 3 mentions about maximum punishment of three years or fine of fifty thousand or both.<sup>xix</sup>

**Uttarakhand:**

Uttarakhand is the seventh state to pass an Anti-Conversion Law. Generally it is eighth to pass Anti-Conversion law but Tamil Nadu’s Anti-Conversion law got repealed, so, it is Seventh one. Under Uttarakhand Freedom of Religion Act, 2018 Section 3 and Section 5 prescribe for the punishment of imprisonment from one year to five year or fine or both.<sup>xx</sup>

**Articles and cases related to conversion of religion:**

1. ‘Profess’ means to follow one’s religion and ‘Propagate’ means to spread the goodness of religion throughout the territory and let the people pursue voluntarily by amicable and lawful means the same as provided by Article 25 of the Constitution.<sup>xxi</sup>
2. In *Ratilal Panachand Gandhi v. State of Bombay*, 1954 it was held that the right to believe in one’s faith is not merely for the followers of that particular religion but it extends to all religion.<sup>xxii</sup>
3. “In *Perumal Nadar (dead) by Legal Representative v. Ponnuswami Nadar (minor)* [AIR 1971 SC 2352]”, Supreme Court held that no formal ceremonies are needed to give effect to Conversion. Also in *S. Anbalagan v. B. 11 Devararajan and others* [AIR 1984 SC 411], Supreme Court held that no formal ceremonies are prescribed for the conversion or reconversion in Hinduism.<sup>xxiii</sup>
4. In *Rev. Stainislaus v. State of Madhya Pradesh*, [AIR 1977 SC 908] case, SC held that the one do not have right to convert another in name of propagation by means of pressure or inducement.<sup>xxiv</sup> The Constitution of India has not defined ‘Religion’. It is a matter of faith and belief. It was also held that freedom to profess religion also mean to convert one religion but not by means of pressure or inducement.
5. Article 18 of Universal Declaration of Human Rights render a person to have any thought, conscience, and religion. This article also gives privilege to convert one’s religion either alone or in a community.<sup>xxv</sup> But it did not give right to change others religion by any means.
6. In *Chandra Sekaran Case*, Supreme Court held that just because one is not practicing religion nor have fidelity towards his religion, he will not stop to be a Hindu. Renunciation of his religion or start gobbling beef or repulsing God or Goddesses is must.<sup>xxvi</sup>
7. In *Sujatha v. Jose Augustine (II)* (1994) Divorce & Matrimonial Cases 442), it is not necessary to conduct ceremony of baptism to become a Christian but a person needs to believe truly and profess the Christian faith to become a Christian.<sup>xxvii</sup>
8. In case of *M. Chandra v. M. Thangamuthu and Another* [AIR 2010 SCC 712], it has been observed by Supreme Court that the two conditions must be satisfied to be converted into

other religion. First, there should be a Conversion. Second, a person must be accepted by a community to which he has been converted.<sup>xxviii</sup>

**Anti-Conversion laws and their constitutional validity:**

1. First two Anti-Conversion laws after independence were made in the year 1967-1968. Constitutional Validity of both the acts has been done in case of “Rev. Stainislaus v. State of Madhya Pradesh, [AIR 1977 SC 908]”.

2. To check the constitutionality of both the acts, petitions were filled in the concerned High Courts. Division bench of Orissa High Court comprising of R.N. Mishra and K.B. Panda JJ held that ‘fraud’, ‘force’, ‘inducement’ have the extended meaning than that mentioned in the Indian Penal Code. Conclusions drawn by Division Bench were:

- a) Article 25(1) guarantees Christian religion also for propagation and conversion.
- b) Conversion by ‘fraud’ and ‘force’ mentioned in the act should be applicable within the limitations of Article 25(1).
- c) The word ‘Inducement’ mentioned in Act is vague as restrictions of Article 25(1) do not cover wide definitions.
- d) State legislature does not have power to make law with respect to religion. Entry 1 of List II and List III has given same power to state.
- e) Entry 97 of List I apply.

3. Madhya Pradesh High Court gave opposite interpretation regarding Article 25(1) and said that freedom of religion is not a monopolistic right; it is freedom of religion enjoyed by all individuals. Court viewed that from the point of Public Order, State has power to legislate under entry I, List II of Seventh Schedule.

4. Appeals were raised against the judgements of both the Courts as both of them have different views and five judge Bench of Supreme Court studied them and upheld legality of one and other.

5. In Rev. Stainislaus v. State of Madhya Pradesh, [AIR 1977 SC 908], Chief Justice A.N. Ray upheld the Validity of first two acts. Chief Justice formulated two questions:

- a) Whether both the acts are repugnant of Article 25(1)?
- b) Does state legislature have power to enact?

6. Explaining the questions as mentioned above Article 25(1) entitles all citizens for ‘freedom of conscience’ and not solely the worshiper of particular religion. And it does not give liberty to change other religion because it will breach the right guaranteed to every individual of ‘freedom of conscience’ given to country alike. Further as the act is in preserving the public order, so the legislative power is there as it is to avoid disturbances in public order.

7. Supreme Court Held: Both the issues raised were in favor of views of Madhya Pradesh High Court. The Judgement proceeded in two postulates; firstly, that the Article 25(1) do not

give right to convert religion of other individual; secondly, converting other person forcefully is the disturbance of public order.

Thus, there is similarity in the anti-conversion laws of all the states. These acts do not ban conversion but they ban such conversions which are done by means of 'force', 'fraud', 'allurement' or 'inducement'. Since these words are not defined so it have wide meanings and inclusive in nature.<sup>xxix</sup>

## **Conclusion:**

Thus, society needs to be protected from the forcible conversion of their religion by 'force', 'fraud', 'allurement', 'inducement' or any means. To safeguard their rights guaranteed as 'freedom of conscience'<sup>xxx</sup>, many approaches have been adopted.

Firstly, Parliament did sincere efforts to enact anti-conversion law but the bill was not passed due to lack of support of its members. Thereafter State takes its own measures and made an effective approach in making Anti-Conversion laws, which protected the rights of people from forcible conversion of their religion. In "Rev. Stainislaus v. State of Madhya Pradesh", Chief Justice A.N. Ray upheld the Validity of first two Acts.

## **Suggestions:**

Unity and integrity of the nation comes first and to ensure the same the attempt to make a uniform civil code of anti-conversion law have been made in parliament first time in 1954 and till now it is being made. Freedom to choose any religion also falls in the ambit of right to life and personal liberty and is one of the basic human right also which cannot be violated. Hence to safeguard the same it would be better to have one single code running over the country than many codes in different-different states. If there had been different issues then it is good to have different codes. But many codes on same issue of conversion are not fruitful. In this case it is better to have uniform code. It is not that only the states that have enacted laws are facing the problem of conversion but the other states too are facing the same. The states have tried but laws were not enacted for instance Rajasthan introduced the bill for anti-conversion law in 2006 but it was not passed. Therefore, anti-conversion law should be made uniform throughout the country, to protect the guarantees made under Article 25(1), with the suitable punishments. Strong apprehensions are there that current government may introduce bill to curb menace of conversion which is being practised at large scale in India because if we will keep on depending religious fundamentalism it will endanger the liberty to choose which will ultimately destroy the democracy and freedom and liberty will turn out to be a matter of past.

---

<sup>i</sup>Law and Social change, available at: <http://www.nmu.ac.in/Portals/46/SLM/LLM.PAPER-1.pdf> (last visited on October 12, 2019).

<sup>ii</sup>Available at: <https://indiankanoon.org/docfragment/1152518/?formInput=constitutional%20validity>(last visited on October 12 , 2019).

<sup>iii</sup>Available at: [https://www.worldstatesmen.org/India\\_princes\\_A-J.html](https://www.worldstatesmen.org/India_princes_A-J.html)(last visited on October 12 , 2019).

<sup>iv</sup>Available at: <https://www.loc.gov/law/help/anti-conversion-laws/india.php>(last visited on October 12 , 2019).

<sup>v</sup>Nirali, Freedom of Religion, Available at: <http://www.legalservicesindia.com/article/2254/Freedom-of-Religion.html>(last visited on October 12 , 2019).

<sup>vi</sup>V.Ventatesan, Conversondebate, available at:

<https://frontline.thehindu.com/static/html/fl2519/stories/20080926251902600.htm>(last visited on October 12 , 2019).

<sup>vii</sup>Neha Chauhan, RELIGIOUS CONVERSION AND FREEDOM OF RELIGION IN INDIA: DEBATES AND DILEMMAS, available at: Page 130, <http://ili.ac.in/pdf/paper817.pdf>(last visited on October 12 , 2019).

<sup>viii</sup>Available at: <https://www.loc.gov/law/help/anti-conversion-laws/india.php>(last visited on October 12 , 2019).

<sup>ix</sup>*ibid*

<sup>x</sup>*ibid*

<sup>xi</sup>The Orissa Freedom of Religion Act, available at: [http://lawodisha.gov.in/files/acts/act\\_884132771\\_1437987451.pdf](http://lawodisha.gov.in/files/acts/act_884132771_1437987451.pdf)(last visited on October 13 , 2019).

<sup>xii</sup>MADHYA PRADESH DHARMA SWATANTRYA ADHINIYAM, 1968, available at: <https://cjp.org.in/wp-content/uploads/2017/12/MADHYA-PRADESH-DHARMA-SWATANTRYA-ADHINIYAM-1968.pdf>(last visited on October 13 , 2019).

<sup>xiii</sup>THE ARUNACHAL PRADESH FREEDOM OF RELIGION ACT, 1978, available at: <https://cjp.org.in/wp-content/uploads/2017/12/Arunachal-Pradesh-Freedom-of-Religion-Act-1978-.pdf>(last visited on October 13 , 2019).

<sup>xiv</sup>State Anti-conversion laws in states, available at: <https://www.loc.gov/law/help/reports/pdf/2017-014600.pdf>(last visited on October 13 , 2019).

<sup>xv</sup>Available

at: [https://home.gujarat.gov.in/Upload/Gujarat%20Freedom%20of%20Religion%20Act2003\\_new\\_home\\_1\\_1\\_221015.pdf](https://home.gujarat.gov.in/Upload/Gujarat%20Freedom%20of%20Religion%20Act2003_new_home_1_1_221015.pdf)(last visited on October 13 , 2019).

<sup>xvi</sup>THE HIMACHAL PRADESH FREEDOM OF RELIGION ACT, 2006, available at: [https://indiacode.nic.in/bitstream/123456789/5395/1/the\\_himachal\\_pradesh\\_freedom\\_of\\_religion\\_act%2C\\_2006.pdf](https://indiacode.nic.in/bitstream/123456789/5395/1/the_himachal_pradesh_freedom_of_religion_act%2C_2006.pdf)(last visited on October 13 , 2019).

<sup>xvii</sup>Available at: <https://www.loc.gov/law/help/anti-conversion-laws/india.php>(last visited on October 13 , 2019).

<sup>xviii</sup>*Ibid*

<sup>xix</sup>Jharkhand Gazette: available at: [https://jhpolicer.gov.in/sites/default/files/jhpolicer\\_jharkhand\\_freedom\\_of\\_religion\\_act\\_2017.pdf](https://jhpolicer.gov.in/sites/default/files/jhpolicer_jharkhand_freedom_of_religion_act_2017.pdf)(last visited on October 13 , 2019).

<sup>xx</sup>Uttarakhand Freedom of Religion Act 2018, available at: <https://adfindia.org/wp-content/uploads/2018/10/Uttarakhand-FoR-Act-table.pdf>(last visited on October 13 , 2019).

<sup>xxi</sup>Shreyya, Constitutionality and judicial interpretation of religious conversion and its laws in India, available at: <http://www.legalservicesindia.com/article/2331/CONSTITUTIONALITY-AND-JUDICIAL-INTERPRETATION-OF-RELIGIOUS-CONVERSION-AND-ITS-LAWS-IN-INDIA.html>(last visited on October 13 , 2019).

<sup>xxii</sup>Krishnadas Rajagopal, Propagation without proselytisation: What the law says: available at: <https://www.thehindu.com/sunday-anchor/propagation-without-proselytisation-what-the-law-says/article6711440.ece>(last visited on October 13 , 2019).

<sup>xxiii</sup>Law commission of India Report: available at: <http://lawcommissionofindia.nic.in/reports/report235.pdf>(last visited on October 14 , 2019).

<sup>xxiv</sup>Available at: <https://indiankanoon.org/doc/1308071/>(last visited on October 14 , 2019).

<sup>xxv</sup>Universal declaration of human rights: available at: [https://www.ohchr.org/EN/UDHR/Documents/UDHR\\_Translations/eng.pdf](https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf)(last visited on October 14 , 2019).

<sup>xxvi</sup>*Supra Note 21*

<sup>xxvii</sup>Available at: <http://lawcommissionofindia.nic.in/reports/report235.pdf>(last visited on October 15 , 2019).

<sup>xxviii</sup>*Supra Note 21*

<sup>xxix</sup>: *Ibid*

<sup>xxx</sup>Guaranteed under Article 25(1) of the Constitution of India.