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PROSELYTISM : THE INDIAN PERSPECTIVE- Emy Elizabeth Saiju¹**Abstract:**

Through this paper, the author presents an explorative and critical analysis about the laws on religious conversions or proselytism in effect at present in the territory of India . The aim of this study is to analyze different aspects of these laws, the opinions of various parties about these laws and to arrive at a conclusion about what these laws actually warrant for and as to whether these laws are an effective way to curb the rising number of unlawful religious conversions in the country. The true meaning of these laws are explored by taking into account the judgements of various courts in different cases , as far as cases relating to unlawful or forced conversions are concerned. Laws passed by some states on this regard are analyzed critically to check whether they efficiently serve the purpose they were enacted for. Certain relevant parts of the Indian Constitution which provides clarity regarding the constitutional basis of the discussed provision is also mentioned. Another significant question whether the state infringes the fundamental rights of the citizens or the ‘freedom of conscience’ by placing unwanted restrictions on the liberty of citizens is also actively looked into in the paper. The findings of the research suggest that even though the number of cases reported regarding unlawful conversions have increased, the law still holds the space for misuse by powerful parties. The paramount task these laws seek to accomplish can only be brought about by effective implementation.

INTRODUCTION

India is a secular country. Our Constitution begins with the words – “WE, THE PEOPLE OF INDIA , having solemnly resolved to constitute India into a SOVEREIGN , SOCIALIST , SECULAR , DEMOCRATIC ...” The word ‘secular’ was added to the preamble of the Indian Constitution by the 42nd Amendment of 1976. What does ‘secular’ mean in the Indian context? It simply means that the state does not have an official religion. As guaranteed by Articles 25-28 , Indians as well as foreigners in our country are “**equally entitled to freedom of**

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conscience “ and thus have the “right to profess, practice and propagate any religion” of their choice. The state will not interfere in matters of religion unless for matters affecting public order ,morality and health. Secularism stands on a scale balanced with extreme caution in a country like India which is home to a multitude of religions . As MP ShashiTharoor puts it :

“Western Dictionaries define secularism as absence of religion but Indian secularism does not mean irreligiousness. It means profusion of religions.”²

RIGHT TO FREEDOM OF RELIGION IN INDIA

India is a multi-religious country. Therefore there is a need for laws to ensure equal rights and protection to all religions . Fundamental Rights enshrined in Part III of the India Constitution plays this crucial role. It is observed in Article 25(1) that :

“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”.

This right is not only available to Indian citizens but also to foreigners in India. The term ‘freedom of conscience’ in the article should be discussed further. It simply means that every individual can follow any religion of his/her choice. This is also in support of religious conversions as long as they are not induced fraudulently. Religious conversion is simply renouncing the religion that is being followed and adopting a new religion. Religious conversion is an actively discussed issue in our country as it can be easily misused by parties and this urgently calls for specific laws regarding the same.

First, let us examine what is meant by ‘right to propagate’ any religion. The age old ambiguity surrounding this concept is whether the right to propagate includes the right to convert. Let us consider the Supreme Court’s take on the same:

MrsYulitha Hyde And Ors. Vs State of Orissa And Ors. On 24th October 1972

The petitioners in this case challenged the Orissa Freedom of Religion Act 2 of 1968. In the following judgement it was stated by the hon’ble court that:

² taken from MP ShashiTharoor’s tweet on March 10 , 2018

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“The true scope of the guarantee under Article 25(1) of the Constitution, therefore, must be taken to extend to propagate religion and as a necessary corollary of this proposition, conversion into one's own religion has to be included in the right so far as a Christian citizen is concerned.”

The Durgah Committee, Ajmer ... vs Syed Hussain Ali And Others on 17 March, 1961

In this case , the hon'ble court held that :

"Under Article 25(1), subject to public order, morality and health and to the other provisions of Part III, all persons are equally entitled to freedom of conscience and their right freely to profess, practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others."

This judgement reduces the line separating the notions of propagating one's own religion and forcefully converting the followers of another religion into one's own religion into an even thinner line which might even go unnoticed. And this has always been the problem all these legislations have been trying to address from stage one.

3) Rev. Stanislaus vs State Of Madhya Pradesh & Ors on 17 January, 1977

This case was filed by Rev. Stanislaus against the Madhya Pradesh Dharma Swatantrya Act by which the government refused to register religious conversions. As the MP High Court upheld the Act , the case went to the Supreme Court . This case is particularly interesting as the judgement of the High Court went against the what the Orissa High Court had held in the Orissa Freedom of Religion Act case regarding whether 'inducement' and fraudulent conversions . Both these cases were heard together by the Supreme court which upheld both Acts. A part of the judgement is cited below:

According to the Century Dictionary (which is an Encyclopedic Lexicon of the English Language) Vol. VI, 'propagate' means as follows:--

"To transmit or spread from person to person or from place to place; carry forward or onward; diffuse; extend; as propagate a report; to propagate the Christian religion".

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We have no doubt that it is in this sense. that the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.

RECENT DEVELOPMENTS

Recently some states like Gujarat, Uttar Pradesh and Karnataka passed anti-conversion laws.

‘love jihad’ Anti-conversion law ,UP

The Uttar Pradesh Prevention of Unlawful Religious Conversion Ordinance 2020 was signed by the Governor on 28th November 2020. Under the law ,fraudulent or induced conversion is a non- bailable offence with up to 10 years jail term. This law is under lot of scrutiny on the ground that it violates equality and personal freedom of marriage as well as for discrimination against minorities.

The Gujarat Freedom of Religion (Amendment) Act, 2021

The Act seeks to put an end to religious conversions where consent was obtained by fraudulent ways and also without prior sanction by the state. This act is facing a lot of disapproval especially with the recent ban by the HC on some of its provisions like the shift of burden of proof from the converted to his/her partner.

Karnataka Protection of Right to Freedom of Religion Bill, 2021

This Bill recognizes a forced act of conversion by means of “misrepresentation, force, fraud, allurements or marriage” as a cognisable and non-bailable offence and prohibits the same. For the conversion to be deemed valid , the district magistrate must be informed by the person wishing to convert atleast thirty days prior , after which the magistrate through the police will hold an inquiry to make sure that the actual reasons for conversion are lawful.

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Madras High Court on religious conversion:

Recently a Christian priest, P George Ponnaiah approached the Madras High Court to quash an FIR filed against him triggered by a 'hate speech' he delivered in July 2021. He was accused of hurting the religious sentiments of certain groups of Hindus. While deciding the case, Justice G R Swaminathan commented that –

“The founding fathers adopted secularism as the guiding principle of the country and made the right to freely profess and propagate one’s religion a fundamental right. So, if an individual out of personal conviction wants to change his religion, his choice must be respected. But religious conversion cannot be a group agenda. Our Constitution speaks of composite culture. This character has to be maintained.”

CONCLUSION

To sum up everything that has been stated so far, it is evident that the state is trying to uphold the Fundamental Rights of the citizens by bringing in new legislations to protect their Freedom of conscience and religion. However, what makes this task a paramount one is the thin line separating what is lawful and what is not with regard to a person’s freedom to convert. Even with all these laws the notion, of religious conversion is still not beyond misuse. There is still space for abuse of these provisions by powerful religious groups, individuals, parties etc. Also, the stringent opposition raised against these laws by political parties themselves, on the ground that it violates an individual’s personal freedom of marriage and so on, complicates the implementation process. To what extent these laws can succeed in a country with a volatile situation like India is a question still under discussion considering the delicate nature of the task.

REFERENCES:

1. <https://www.thehindu.com/news/national/people-are-free-to-choose-religion-supreme-court/article34278898.ece>
2. <https://main.sci.gov.in>
3. <https://www.casemine.com/search/in/religious%2Bconversion>

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4. <https://www.thehindu.com/news/national/people-are-free-to-choose-religion-supreme-court/article34278898.ece>
5. <https://www.theleaflet.in/wp-content/uploads/2021/08/2021-Amendment-Act-C.pdf>
6. <https://indianexpress.com/article/explained/gujarat-hc-anti-conversion-law-7465894/>
7. https://www.livelaw.in/pdf_upload/the-karnataka-protection-of-right-to-freedom-of-religion-bill-2021-406502.pdf
8. <https://www.thehindu.com/news/national/karnataka/explained-karnatakas-anti-conversion-legislation/article38018242.ece>



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