

## **ANTI CONVERSION LAW: JUST LAW OR A DISCRIMINATORY DRACONIAN DEROGATORY LEGISLATION**

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### **ABSTRACT**

Anti conversion law which is in news lately because of a lot of debate is a result of increasing hatred towards a particular section of society. It is similar to what happened in the USA in the year 1967. When Richard Loving challenged the ban on inter-racial marriages in the State of Virginia, the United States Supreme Court stated in *Loving v. Virginia*, “Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual, and cannot be infringed by the State... We have consistently denied the constitutionality of measures that restrict the rights of citizens on account of race. There can be no doubt that restricting the freedom to marry solely because of racial classifications violates the central meaning of the Equal Protection Clause.” In the USA the hatred is between the white supremacists and the black Americans as it is in India between the rightwing people who promote the supremacy of the majority over the religious minorities. It is not new though in the context of India, this kind of law has been prevalent for a long time in almost 7 states of the Indian union.

### **HISTORY OF ANTI-CONVERSION LAWS**

After India's independence, Parliament introduced several anti-reform bills, but none were struck. First, the Indian Amendment Bill (Regulation and Registration) was introduced in 1954, which sought to enforce “missionary licenses and registration for the conversion of government officials”. The bill failed to gather public support in Lok Sabha. This was followed by the introduction of the Relief Society (Religious Protection) Bill in 1960, “which aimed to explore the conversion of Hinduism to ‘non-Indian religions’, in the context of the Bill, which included Islam, Christianity, Judaism and Zoroastrianism”. The Freedom of Religion Bill was introduced in Parliament in 1979. It sought “legal impediments to religious reform.” These bills have also not been passed by Parliament due to a lack of political support.

In 2015, the Union's legal department had given the impression that legislation prohibiting forced and subversive reforms could not be enacted at the national level, because law and order

are a matter for the State under the Constitution. Still, secular governments can enact such laws. In recent years, several states have enacted the law on “Religious Freedom” to prevent religious, coercive, or forced conversion. The research organization, PRS Legislative Research recently released a report comparing various existing laws against the transformation of several provinces. The “Laws on Freedom of Religion” currently apply to eight provinces – (i) Odisha (1967), (ii) Madhya Pradesh (1968), (iii) Arunachal Pradesh (1978), (iv) Chhattisgarh (2000 and 2006), (v) Gujarat (2003), (vi) Himachal Pradesh (2006 and 2019), (vii) Jharkhand (2017), and (viii) Uttarakhand (2018). Laws passed in Himachal Pradesh (2019) and Uttarakhand also declare that marriage does not apply if it was intended for the sole purpose of conversion, or the conversion is made solely for marriage.

### **INTRODUCTION**

The anti-conversion law comes under the state domain and it is already present in 8 out of 29 states. Odisha, Arunachal Pradesh, Uttarakhand, Madhya Pradesh, Himachal Pradesh, Chattisgarh, Jharkhand and Gujarat. The reason behind these laws is to prevent the forceful conversion of people from one religion to another, coercive, conversion under undue influence, by financial assistance and by the threat of life.

### **KEY PROVISION OF THE ANTI CONVERSION LAW / UNLAWFUL CONVERSION ORDINANCE**

The key provisions of the bill are as follows:

Prohibition of conversion to another religion through misrepresentation, power, deception, improper influence, coercion, seduction or marriage coercion, improper influence, coercion, seduction or any other form of fraud or marriage and no one shall approve, confirm or conspire against such a change, provided that, if a person returns to his or her former religion, he or she shall not be deemed to be a convert under this Act. [Section 3] [ii] The Ordinance states that if any change is made as a result of any attraction, gift, consolidation, easy money, material gain, employment, free education at a prestigious school or a better way of life, displeasure with God or compulsion [iii]

The Ordinance provides that there shall be a prohibition against the conversion of one religion to another in the wrong way, power, improper influence, coercion, enticing or any other form of fraud. [Iv]

### **SHORTCOMINGS OF LAW**

It would allow the state to interfere with the private decisions of spouses and could serve as a barrier to interfaith marriage which is contrary to the basic constitutional principle. It may continue to create a cold effect and as a result, violate a person's right to privacy. In 2018, the Supreme Court reiterated this legal position in the case of Hadiya, in which it rejected allegations that Hadiya was forcibly converted to another religion for marriage. Holding this:

How Hadiya chose to lead her life is a matter of personal choice. The court emphasized the principles of human independence and dignity in the hope that: Such injustices will not be repeated to Hadadi or any other citizen [v]

### **WHY IS THE LAW DISCRIMINATORY AND TARGETS MINORITY**

Certain provisions in the law aim at it being partial law as it benefits the majority because of the term used in this law as conversion back to the original faith

### **MASS CONVERSION – SECTION 2(F)**

The section 2(f) of the law prohibits mass conversion, which means it halts and penalises the conversion of two or more people from one religion to another ( especially from Hinduism to either Islam or any other religion ). This provision is superficial and imbecile for example a family of 10 people ( husband, wife, their children, and the other members of the joint family ) convert from Hinduism to another religion than on what basis is it a more heinous act than conversion of a single person. It is a clear violation of article 19 which has given people a right to choose, it is ridiculous that in a nation people have a right to fulfil their promiscuity by having an adulterous relationship but they have no choice in the matter of the choice of religion.

### **DISCRIMINATED SKEPTICAL VIEW ON 'CONVERTOR'**

Section 2 (i) of the UP Act has given a new term, 'Religion Convertor'. This is wrong and it is clear that bad motives are being pursued. The whole conversion does not require the help of a

convert, or witnesses. One can change even completely alone. For example, in the case of conversion to Islam, it is necessary to pronounce the word ‘Shahada’ (I testify that there is no true God [god] other than God [Allah], while Muhammad is the Messenger and servant of God), with sincere faith and conviction. By introducing the concept of a dynamic person, it seems that the goal of the state is to gain more control over the vast majority of the population.

### **IT MAKES CONVINCING A PERSON OF A CRIME**

Section 3 of the UP Act has two additional sections, which Parliament and the Odisha Act do not have. The first is what they call the transformation of marriage. The second is that ‘and no one should continue, confirm or conspire against such a transformation. While delays and intrigues appear in the law, ‘persuasion’ is not. This is a pure myth. Under this law, it could mean that if four Muslims are likely to be discussing the legitimacy of Islam in a flat while a Hindu customer is present and taking part in the discussion, they are probably trying to ‘convince’ him to convert to Islam!

### **INDIRECTLY PROMOTES THE CONCEPT OF GHARVAPSI ( BJP’S LONG TERM PROPAGANDA)**

The second scenario for Phase 3 is very funny. It states, “Provided that, if any person converts to his or her previous religion, that person will not be considered a convert under this system.” The reversal may have been due to personal opinion, or to someone else’s conviction. It can be argued that this condition deals with what is commonly known as ‘Ghar wapsi’ (return home). In essence, it means that some individuals or organizations are licensed to do whatever they want to bring back their ‘deviant’ friends from ‘parental’ religious practices and when they do, anything they do will not be construed as ‘delay, persuasion or conspiracy’.

### **CREATION OF A POLICE STATE**

Section 8 (3) of the UP Act mandates that the person concerned and the Convertor must give notices and the district magistrate shall receive a police investigation into the actual purpose, purpose and reason for the proposed change.

Needless to say, this gives the police unlimited power, which will, perhaps, be abused. It is well known that the Indian police have been working as men wearing the helmets of the ruling party. What prevents the police from making a spy report that the proposed amendment violates the provisions of this law? The task will then be on the affected team to take the high court and fight a long and expensive legal battle. Section 12 of the UP law is ridiculous. The responsibility for proof that conversion was 'legal' rests with the person who 'caused' the conversion. They do not bother to ask a repentant person – his opinion does not matter at all. The government seems to be more interested in prosecuting and abusing this 'CONVERTOR'

For litigation, even if the government has a vested interest in preventing forcible conversion, all you need is for the convert to be asked to appear before a magistrate at a certain time of conversion and to submit a statement to the government. Recently, the High Court of Allahabad ruled, "The right to freedom of choice, regardless of religion, is fundamental to the right to life and personal liberty. Delhi held that an older woman was free to live wherever she wanted and anyone who wished and directed the police to advise the applicant and parents not to take the law into their own hands or threaten that woman or man.

UP law opposes these judgments and is therefore likely to be dismissed as bad constitutional principles. We are compelled to consider that the external motive for the strict law as well as the provision of strict penalties for all measures appears to be nothing but harassment. The law does not make good use of the word 'love jihad', but people know the political agenda behind it better.

### **WHAT ARE THESE LAWS BEING MADE FOR IN THE NATION?**

Since the BJP LED NDA government has gained power in the nation it has left no opportunity to gain votes of the majority by playing a communal card, this law is also a similar tomfoolery that will persuade and rig the innocent minds of the majority youth, and they will be more focused on futile situations and the prominent issues concerning them will go unnoticed and they will, in the end, get polarised which will help the Rightwing ideologies to gain control of the power. Since this legislation was made into the state a few incidents of religious conversions which were undiscussed before this legislation, are now making the headlines of almost every media channel, there are prevalent discussion, and a lot of such incidents have started coming under light, there are some claims of a Pakistan angle too which are futile and only means of political mobilisation

of a certain segment of the society to create a sense of hatred and to further the communal propaganda which will have an enduring effect on the minds of the youth ( tomorrow's ) permanent voter for the larger extent of the coming era ( India has the largest number of people in the reproductive age so the example we set today will yield results tomorrow the vote bank we make today will yield us votes tomorrow).

The law is also an attempt to criminalise and demonize the people of the Muslim and Christian community to further the belief of the founder and ex Sirsanchalak of the RSS ( parent organization of the BJP ) . it was written by the MS GOLVALKAR in his book that Muslims and Christians can not be nationalists as they have missionary system in their blood ( missionary – propagation of religion ). These laws are also important to counter the conversion rates which are on the rise as a lot of Dalit organizations that are working for their upliftment and political mobilisation like BAMCEF ( BACKWARD AND MINORITY CLASSES EMPLOYEES FEDERATION), AZAD SAMAJ PARTY, BAHUJAN MUKTI PARTY, BAHUJAN KRANTI MORCHA all these organisations believe that Dalits should politically and socially mobilise to demand their rights/ respect denied by the upper-class. The anti-conversion laws are often present in states with significant Dalit and Adivasi populations so that their religious conversion can be stopped to keep a sense of population majority maintainance and even to keep them under threat ( mainly Christian and Muslims as they will not carry out missionary work).

The anti-conversion law is an example of right-wing genius as it is evident that there is discrimination but still no one can question the legitimacy as it has been formed by a full majority government of Mr YOGI ADITYANATH ( HINDU HRIDAY SAMRAT ). The governments of this sort are going all out against the Binding factor also known as the Ganga Jamuni Tehzeeb and furthering the ideas of class and religion-based society which is not a better option for the nation but it is rightly said that a state where “” JINGOISM AND MAJORITARIANISM COME IN MIND OF PEOPLE THE LOGIC GETS ILLOGICAL “ and it is the reason why people instead of questioning and criticizing are supporting the discriminatory law.

### **MY COMMENT / OPINION**

UP'S ANTI CONVERSION LAW is full of legal mistakes that make the intent behind this law evident. it is to be understood that religious conversion is nothing new in India rather it has been

taking place for centuries but with the ultra-rightwing political party in power this religious conversion matter is being used as a tool to remain in power. The real purpose of the law is to harass people so much that every change is frustrating.

Problems start with the preamble. Among other things, it seeks to ban what it calls ‘illegal marriage conversion’. It can be noted that any references to marriage are not found in the Madhya Pradesh and Odisha Acts, the oldest laws of this kind in the country.

There can be no change in marriage. There could be a ‘marriage’. ‘By marriage’ means that conversion automatically follows any religious marriage. This is wrong. As Mashood Baderin, a professor of law at the University of London, explains regarding Islam, “Under Islamic law, a Muslim man marries a Christian or Jewish woman (ahl-e-kitab, that is, the People of the Book) has a religious obligation to respect and honour both Christianity and Judaism. Therefore, a woman’s beliefs and religious rights are not at stake in marriage, for she will be free to practice and practice her religion as a Christian or a Jew. “

Uttar Pradesh law fails to recognize that modification is not the same as an irreversible chemical reaction, which can occur only on one side and there is no going back. There is nothing tangible to change. Even male circumcision is not required to be converted to Islam or Judaism, although it is a recommended practice. There are an estimated 36000 interfaith marriages in India every year, how can the government decide which one of these marriages is by force, undue influence and a forced marriage if there is no such claim from either side ( married couple ). It is the commonsensical thing that if a person after marriage finds the marriage was fake/forced or any sort of cheating has taken place then they can revoke the marriage ( as the religious conversion is not an irreversible change) and can reach out to the concerned authorities to get remedy. The state’s concern about forcible conversions is understandable as it could involve several crimes, such as wrongful confinement (Section 342 IPC), intimidation (section 506 IPC), kidnapping (Section 359-369 IPC), assault (Section 352 IPC), the threat of divine displeasure (Section 508 IPC) etc.

On the contrary, it can be argued that a possible breach of public order over inter-faith marriages is sought to be invoked because, with the UP government’s blessing and knowledge, some organisations sharing the ideology of the ruling party might be hell-bent upon disturbing public order.

I would like to conclude that, the government of up should elude themselves from forming laws that are meant to promote a political and social ideology of religious supremacy and suppression of other religions as in this law it only targets the minorities whereas it welcomes the people from other communities to convert back into their old religion ( there have been several news about how the Hindutva outfits target the converted people and force them to convert back into their opd religion which is totally against the right to freedom of choice Article 19, right to life and equality 14).

The laws of this sort not only are discriminatory but they have an ill impact on the minds of people because the minorities of the nation will feel alienated and under threat which gives rise to an increased communal void and it has negative implications on the structure of the society. Continous targetting of minorities will also promote them to get support from the anti-country elements that look at these situations as a means to further their ideas of creating turmoil in the nation.

It would be better if the government tries to focus on inclusion ( IDEA OF TOGETHER WE LIVE TOGETHER WE GROW) and to win the support of every person of the nation, as it would play a vital role in nation-building and enhancement of a secular image in the world which will yield good relationships with other nations where these minorities ( Muslims and Christians, Buddhists . ) make up the majority. Such a stand on religious matters will create a sense of nationalism too in the hearts of people who have given that up because of sheer discrimination and rising hate in the nation.

### **CONCLUSION**

This law deals with the forceful and coercive conversions, but still has a lot of shortcomings like it needs to keep the right to privacy in line, and it should not discriminate in the name of religion ( which is the base of this law ) but if it is applied appropriately it will yield good results in stopping the evil prevalence of forceful conversion in the society and it will fulfil the basic idea behind its enactment All we can hope is to have better application and interpretation of this law which brings peace and justice to the society.



**ENDNOTES**

<https://www.livelaw.in/top-stories/breaking-up-governor-promulgates-uttar-pradesh-prohibition-of-unlawful-conversion-of-religion-ordinance-2020-166517> accessed on 28th November 2020

<https://theprint.in/opinion/up-doesnt-need-anti-conversion-law-india-needs-stronger-special-marriage-act/551516/> accessed on 28th November 2020

<https://www.loc.gov/law/help/anti-conversion-laws/india.php#:~:text=The%20anti%2Dconversion%20law%20in,%2C%20allurement%2C%20or%20fraudulent%20means.> Accessed on 28th November 2020

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