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AND THEIR CONFLICT WITH FREEDOM OF  
RELIGION

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## ANTI-CONVERSION LAWS IN INDIA AND THEIR CONFLICT WITH FREEDOM OF RELIGION

Preethi Maria Correa<sup>1</sup>

### INTRODUCTION

Religious conversion has become the focus of intense debate in modern India, surfacing in the realm of politics, the media and the judiciary.<sup>2</sup> Starting in the 1950s, various states began enacting laws aimed at restricting religious conversions, under the guise of 'Freedom of Religion Acts';<sup>3</sup> a move illustrative of a longstanding but growing unease with conversions in a democratic country that recognizes Freedom of Religion.<sup>4</sup> These laws have become the subject of much dispute and scrutiny.<sup>5</sup> On the one hand, there are those who advocate a restriction on conversion, so as to preserve peace and harmony in plural India. This view is common amongst various Hindu groups, who are averse to the proselytizing drive of minority Christian and Islamic communities.<sup>6</sup> On the other hand, there are those who believe such a restriction results in an infringement of the Right to Freedom of Religion, as guaranteed by the Constitution of India.

Currently, six Indian states<sup>7</sup> have anti-conversion laws<sup>8</sup> aimed at preventing attempts to convert people from one religion to another by means of force, fraud or allurement. State

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<sup>2</sup> Sarah Claerhout, Jakob de Roover, *The Question of Conversion in India*, 40 Economic and Political Weekly 3048, 3048 (2005)

<sup>3</sup> Chang Hwan Kim, "Freedom of Religion" Legislation in India: The Hindu-Christian Debate on Religious Conversion, 9 Mission and Theology 227, 227 (2002) available at <http://www.earticle.net/FileArticle/200707/633192048482031250.pdf> [accessed 4 December 2012]

<sup>4</sup> Laura Dudley Jenkins, *Legal Limits on Religious Conversion in India*, 71 Law and Contemporary Problems 109, 109 (2008) available at <http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1469&context=lcp> [accessed 2 December 2012]

<sup>5</sup> South Asia Human Rights Documentation Centre, *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights*, 43 Economic and Political Weekly 63, 63 (2008) available at <http://www.jstor.org/discover/10.2307/40276904?uid=2134&uid=2129&uid=2&uid=70&uid=4&sid=21101445849673> [accessed 2 December 2012]

<sup>6</sup> *Supra*, note 2.

<sup>7</sup> Madhya Pradesh, Chhattisgarh, Orissa, Arunachal Pradesh, Gujarat and Himachal Pradesh. See World Evangelical Alliance, *Joint stakeholder's report submitted by World Evangelical Alliance and Evangelical Fellowship of India before the Thirteenth Session of the UPR Working Group*, 28 November 2011 available at

officials are therefore, vested with unfettered power to gauge the legitimacy of conversions, without being given clear guidelines as to how to do so.<sup>9</sup> These laws are frequently abused so as to oppress religious minorities, particularly Christians engaged in the legitimate exercise of their Right to Freedom of Religion.<sup>10</sup>

This paper will analyze the constitutionality of the various anti-conversion laws enacted by the different states, by examining the laws currently in force and case- law of the Indian Judiciary, as well as the relationship between state and religion in contemporary India.

#### **FREEDOM OF RELIGION IN THE INDIAN CONSTITUTION**

Constitutionally, India is a secular nation with no preferred religion. However, over the years it has developed its own unique concept of secularism; one which is very different from the American notion of secularism, requiring complete separation of church and state, as also from the French model, where religion is relegated completely to the private sphere and has no place in the public one.<sup>11</sup>

When the Indian Constitution was originally enacted, the word 'secular' was absent from the preamble's short description of the country, which it called "Sovereign Democratic Republic'. This was a deliberate decision by the drafters, so as to clear any misgivings that India would adopt the Western model of a secular state. Twenty five years later, after the Indian concept of secularism had fully evolved through case-law and state practice, the preamble was amended so as to include the word 'secular'.<sup>12</sup> Indian secularism does not require total separation of religion and state; the two can interact with each other, within

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[http://lib.ohchr.org/HRBodies/UPR/Documents/session13/IN/JS21\\_UPR\\_IND\\_S13\\_2012\\_JointSubmission21\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/session13/IN/JS21_UPR_IND_S13_2012_JointSubmission21_E.pdf) [accessed 18 November 2012]

<sup>8</sup> Although these laws merely regulate religious conversions and do not ban them *per se*, they shall, for convenience sake, be referred to as 'Anti Conversion Laws' in this paper. See Saadiya Suleman, *Freedom of Religion and Anti Conversion Laws*, 1 ILI Law Review 106, 116 (2010)

<sup>9</sup> The former UN Special Rapporteur on Freedom of Religion has expressed concern about the vague and overbroad terms in anti-conversion laws, which have enabled local authorities to use "unfettered discretion" in interpreting and applying them. See United States Commission on International Religious Freedom, *USCIRF Annual Report 2012 - The Commission's Watch List: India*, 20 March 2012, available at: <http://www.unhcr.org/refworld/docid/4f71a66c2.html> [accessed 22 November 2012]

<sup>10</sup> United States Commission on International Religious Freedom, *USCIRF Annual Report 2012 - The Commission's Watch List: India*, 20 March 2012, available at: <http://www.unhcr.org/refworld/docid/4f71a66c2.html> [accessed 18 November 2012]

<sup>11</sup> Tahir Mahmood, *Religion, Law and Judiciary in Modern India*, 1 Brigham Young University Law Review 755, 256 (2006)

<sup>12</sup> *Ibid.*

the legally prescribed parameters. It only mandates that the state treat people of all religions absolutely equally and without discrimination.<sup>13</sup>

The Right to Freedom of Religion is a fundamental right enshrined in Article 25 of the Constitution which broadly parallels Article 18 of the Universal Declaration on Human Rights.<sup>14</sup> Article 25 states that '*All persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.*'<sup>15</sup> In interpreting the scope of this provision, the Supreme Court of India has held that while an individual's right to hold religious beliefs is absolute, that is, no person can be compelled, against his own judgment and belief, to hold any particular creed or follow a set of religious practices. However, his actions are subject to public order, morality and health, restrictions enumerated in Article 25 itself.<sup>16</sup> Therefore, any restrictions on an individual's freedom to practise or propagate his religion must be made on these grounds.

In analyzing an individual's right to religious propagation, reference must be made to the Constituent Assembly debates<sup>17</sup> on the scope of Article 25.<sup>18</sup> The proposal to include religious propagation as a fundamental right was the object of some criticism<sup>19</sup>, with the chief objection from the Hindus directed against the link between propagation and conversion.<sup>20</sup> Hinduism regards proselytism as a 'profoundly unspiritual act', thus contrasting strictly with the views of the Indian Christians, who regarded missionary activities as central to their religion.<sup>21</sup> The members acknowledged, however, that there was an integral link between the concept of secularism and the inclusion of the right to convert

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<sup>13</sup> *Ibid.*

<sup>14</sup> Article 18 of the Universal Declaration of Human Rights, 1948 states that "*Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance*"

<sup>15</sup> Art. 25(1) of the Indian Constitution

<sup>16</sup> *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* (1962) AIR SC 853

<sup>17</sup> The Constituent Assembly of India was elected to draft the Constitution of India and acted as the first Parliament, following India's independence in 1947. The Constituent Assembly Debates reflect the intention of the framers of the Constitution and are often referred to, for the purpose of its interpretation.

<sup>18</sup> H M SEERVAI, CONSTITUTIONAL LAW OF INDIA: A CRITICAL COMMENTARY 1287 (4<sup>th</sup> ed. 1991) *contra* South Asia Human Rights Documentation Centre, *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights*, 43 Economic and Political Weekly 63, 66 (2008)

<sup>19</sup> DANIEL EUGENE SMITH, INDIA AS A SECULAR COUNTRY 176 (1963)

<sup>20</sup> *Ibid.* at p.168.

<sup>21</sup> *Ibid.* at p.172.

within the ambit of religious freedom.<sup>22</sup> It was argued that because of secularism, '*[t]here is no particular advantage to a member of one community over another; nor is there any political advantage by increasing one's fold. In those circumstances, the word 'propagate' cannot possibly have dangerous implications*'.<sup>23</sup> Further, it was asserted '*[u]nder the freedom of speech which the Constitution guarantees, it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of the conscience has to be recognised*'.<sup>24</sup> It was recognized that this right must be subject to some limitations, so as to prevent forced conversions. Conversion by free exercise of the conscience had to be, however, recognized.<sup>25</sup>

### THE ANATOMY OF ANTI-CONVERSION LAWS

Today, anti-conversion laws are in force in the states of Orissa, Madhya Pradesh, Chhattisgarh, Himachal Pradesh, Arunachal Pradesh and Gujarat<sup>26</sup>. While these laws do not prohibit religious propagation, they aim to protect against 'forcible conversion'<sup>27</sup> using the following terms: '*No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by inducement or by any fraudulent means, nor shall any person abet any such conversion.*'<sup>28</sup> A major criticism of these Acts is the use of uncertain terminology; while the various terms used are statutorily defined, these definitions remain vague.<sup>29</sup> Force refers to '*show of force or threat of injury or threat of divine displeasure or social ex-communication.*'<sup>30</sup> This broad definition restricts interactions between potential converts and propagators of a religion.<sup>31</sup> Inducement is defined as inclusive of '*the offer of any gift or gratification, either in cash or in kind and shall*

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<sup>22</sup> Constituent Assembly of India (Vol VII), December 6, 1948 available at <http://164.100.47.132/LssNew/constituent/vol7p20.html> [accessed 12 December, 2012]

<sup>23</sup> *Ibid*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> Orissa Freedom of Religion Act, 1967; Madhya Pradesh Dharma Swatantraya Act, 1968; Chhattisgarh Dharma Swatantraya Act, 1968; Himachal Pradesh Freedom of Religion Act, 2006; Arunachal Pradesh Freedom of Religion Act, 1978; Gujarat Freedom of Religion Act, 2003.

<sup>27</sup> Li-Ann Thio, *Caesar, Conscience and Conversion: Constitutional Secularism and the Regulation of Religious Profession and Propagation in Asian States*, p. 20 available at <http://www.juridicas.unam.mx/wccl/ponencias/11/357.pdf>. [accessed 12 December, 2012]

<sup>28</sup> *Supra*, note 26, Sec. 3

<sup>29</sup> *Supra*, note 27.

<sup>30</sup> Section 2(b), Himachal Pradesh Freedom of Religion Act, 2006; Section 2(b), Orissa Freedom of Religion Act, 1967; Section 2(c), Madhya Pradesh Freedom of Religion Act, 1968; Section 2(c), Gujarat Freedom of Religion Act, 2003; Section 2(d), Arunachal Pradesh Freedom of Religion Act, 1978

<sup>31</sup> *Supra*, note 5, at p. 64

*also include the grant of any benefit, either pecuniary or otherwise.*<sup>32</sup> Since charitable acts are a feature of numerous religions, this definition might cause an infringement upon followers in the practice of their religious beliefs. Further, numerous missionaries engage in activities providing education and medical facilities and these may be construed as ‘temptations’ within the ambit of the above definition.<sup>33</sup> The ambiguous terminology in these Acts disrupts even legitimate methods of proselytizing and facilitates abuse of these laws by enforcement agencies, as it provides them with a wide margin of discretion in assessing whether or not a conversion is legitimate.<sup>34</sup>

The Acts impose an onerous burden on converts and persons seeking to propagate their faith, in the sense that, some of them require persons carrying out conversion or potential converts to give prior or subsequent notice of conversion to an official.<sup>35</sup> The Gujarat Freedom of Religion Act goes so far as to explicitly require that ‘prior permission’ be sought from the District Magistrate, before conversion, by any person carrying out conversion ceremonies.<sup>36</sup> Further, these Acts mandate harsh penalties for persons found guilty of forcibly converting others, with some Acts imposing a maximum imprisonment period of up to three years and a fine up to twenty-five thousand rupees.<sup>37</sup> Failure to give notice of intended conversion is also punishable.<sup>38</sup> Such a penalty is harsher than those imposed by the Indian Penal Code for offences like rioting and wrongful restraint, and therefore extremely disproportionate.<sup>39</sup>

Another problematic feature of some of these Acts is the exclusion of re-conversion to one’s native faith, from the definition of conversion. The Chhattisgarh Dharma Swatantraya Act

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<sup>32</sup> Section 2(d), Himachal Pradesh Freedom of Religion Act, 2006; Section 2(d), Orissa Freedom of Religion Act, 1967; Section 2(f), Arunachal Pradesh Freedom of Religion Act, 1978.

<sup>33</sup> *Supra*, note 5 at p. 65.

<sup>34</sup> *Ibid*

<sup>35</sup> Section 5, Arunachal Pradesh Freedom of Religion Act, 1978; Section 4, Himachal Pradesh Freedom of Religion Act, 2006; Section 5, Madhya Pradesh Freedom of Religion Act, 1968.

<sup>36</sup> Section 5 of the Gujarat Freedom of Religion Act, 2003 states that ‘*Whoever converts any person from one religion to another either by performing any ceremony by himself for such conversion as a religious priest or takes part directly or indirectly in such ceremony shall take prior permission for such proposed conversion from the District Magistrate concerned by applying in such form as may be prescribed by rules*’.

<sup>37</sup> Section 3, Chhattisgarh Freedom of Religion (Amendment) Act, 2006; Section 4, Gujarat Freedom of Religion Act, 2003

<sup>38</sup> Section 4, Himachal Pradesh Freedom of Religion Act 2006; Section 5, Gujarat Freedom of Religion Act 2003; Section 5, Arunachal Pradesh Freedom of Religion Act 1978, Section 5, Madhya Pradesh Freedom of Religion Act 1968.

<sup>39</sup> Rajeev Dhawan, ‘*Preliminary Submissions on Rajasthan Dharma Swatantrya Bill, 2006*’ available at [www.indianmuslims.info/book/export/html/241](http://www.indianmuslims.info/book/export/html/241).

specifically excludes 'returning to one's forefather's religion or his original religion' from the ambit of conversion<sup>40</sup>. Given that Hindus constitute majority of India's population<sup>41</sup>, it is reasonable to assume that the religion of one's forefather is, more often than not, Hinduism. Hence, while conversion is regulated, potential re-conversion, often into Hinduism, is acceptable.<sup>42</sup> In principal, induced reconversion should be prohibited in the same manner as induced conversion. The distinction between the two, is indicative of the fact that these Acts employ a clear anti-secularist approach and aim primarily, to prevent loss of Hindu members to religions like Christianity and Islam; particularly members of the lower castes<sup>43</sup>, who being the most maligned members of Indian society, form a large portion of Hindu converts.<sup>44</sup>

#### **JUDICIAL DETERMINATION OF ANTI-CONVERSION LAWS**

In the 1957 case of *Ratilal v. Bombay*,<sup>45</sup> the Supreme Court interpreted the ambit of Article 25 to include "the right to propagate one's religious views for the edification of others".<sup>46</sup> Twenty years later, the same issue arose in the case of *Stainislaus v. State of Madhya Pradesh*.<sup>47</sup>

While anti-conversion legislations have been challenged several times, before the Indian judiciary, the Supreme Court judgement in the *Stainislaus Case*<sup>48</sup> stands out as the key judicial pronouncement on their legal validity.<sup>49</sup> The case, which adjudged the validity of the Orissa and Madhya Pradesh anti-conversion laws, arose due to divergent judgements

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<sup>40</sup> Proviso to Section 2(b), Chhattisgarh Freedom of Religion (Amendment) Act 2006.

<sup>41</sup> According to the 2001 Census, Hindus comprise 80.5% of India's population, while Muslims and Christians comprise 13.4% and 2.3% respectively. See 'Distribution of Population by Religions', Drop-in Article on Census-No.4 available at [http://censusindia.gov.in/Ad\\_Campaign/drop\\_in\\_articles/04-Distribution\\_by\\_Religion.pdf](http://censusindia.gov.in/Ad_Campaign/drop_in_articles/04-Distribution_by_Religion.pdf).

<sup>42</sup> *Supra*, note 5, at p.64.

<sup>43</sup> The caste system is a system of social stratification, still existent in Hindu society. Hindus from higher castes have traditionally discriminated against the lower caste Dalits. It is these Dalit communities which have a particularly strong interest in converting to other religions, so as to escape the oppression of the caste-system. US State Department, Bureau of Democracy, Human Rights, and Labor, *India: International Religious Freedom Report 2007*, Sept. 14, 2007, available at <http://www.state.gov/g/drl/rls/irf/2007/90228.html> contra J.A Huff, Religious Freedom in India and Analysis of Anti-Constitutionality Laws, 10 Rutgers Journal of Law and Religion 1, 2 (2009) available at <http://org.law.rutgers.edu/publications/law-religion/articles/A10S-6Huff.pdf>. [accessed 2 December 2012]

<sup>44</sup> American Centre for Law and Justice, 'Religious Freedom Acts': Anti- Conversion Laws in India, June 26, 2009 available at [http://media.aclj.org/pdf/freedom\\_of\\_religion Acts.pdf](http://media.aclj.org/pdf/freedom_of_religion Acts.pdf) [accessed 2 December 2012]

<sup>45</sup> *Ratilal Panachand Gandhi v. The State of Bombay* 1954 AIR 388

<sup>46</sup> *Ibid.*

<sup>47</sup> *Stainislaus v. State of Madhya Pradesh* (1977) (1) SCC 677.

<sup>48</sup> *Ibid.*

<sup>49</sup> *Supra*, note 5, at p. 65

passed by the High Courts of Orissa and Madhya Pradesh. Reverend Stainislaus of Raipur, Madhya Pradesh refused to register conversions and challenged the Madhya Pradesh Freedom of Religion Act, contending a violation of Article 25 of the Indian Constitution.<sup>50</sup> A similar claim was brought before the Orissa High Court, challenging the constitutionality of the Orissa Freedom of Religion Act. While the Madhya Pradesh High Court upheld its Freedom of Religion Act, on the grounds that it guaranteed religious freedom to all, including those who are subject to conversions by ‘force, fraud and allurement’, the High Court of Orissa, establishing the right to convert as a component of Article 25, held that the term ‘inducement’<sup>51</sup> was too vague and capable of infringing upon the right to carry out legitimate proselytising activities protected by Article 25 and therefore, liable to be struck down.<sup>52</sup>

It was the Madhya Pradesh High Court’s ruling that was largely endorsed by the Supreme Court. They rejected the Orissa High Court’s understanding of conversion as an essential component of Article 25 and distinguished between the right to propagate and the right to convert. While the former was a fundamental right, the latter was not seen as a component of a fundamental right. It was stated that the right to religious freedom merely guaranteed the right to ‘*transmit or spread one’s religion by an exposition of its tenets*’ and that allowing people to ‘*purposely undertake*’ the conversion of other people to their religion, as opposed to merely transmitting or spreading his religious tenets, would amount to a violation of the ‘freedom of conscience’ guaranteed to all citizens.<sup>53</sup> Further, the Supreme Court ruled that State Governments had the legislative competence to enact such legislation for the purpose of maintenance of public order, as forcible conversions could result in public disorder.<sup>54</sup>

The *Stainislaus Case* overruled the Orissa High Court’s judgement in the case of *Yulitha Hyde v. State of Orissa*<sup>55</sup>, where it was held that the Orissa Freedom of Religion’s definition of

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<sup>50</sup> *Supra*, note 47.

<sup>51</sup> Section 2(d) of the Orissa Freedom of Religion Act states that: “ *Inducement shall include the offer of any gift or gratification, either in cash or in kind and shall also include the grant of any benefit, either pecuniary or otherwise*”

<sup>52</sup> *Supra*, note 47.

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> *Yulitha Hyde and Ors vs State of Orissa AIR 1973 Ori 116.*

inducement impinged legitimate means of proselytizing because of its ambiguous nature and wide scope.<sup>56</sup>

The *Stanislaus Case* has been widely criticized. H.M Seervai, an Indian Constitutional law authority, agonized over the Supreme Court's failure to consider the legislative history behind the drafting of Article 25, as well as its failure to analyze the importance of missionary activities in the Christian religion.<sup>57</sup> He argued that often, the purpose of religious propagation was not merely to spread knowledge of one's religion but also, 'to produce intellectual and moral conviction leading to action, namely, the adoption of that religion'<sup>58</sup> and that by propagating one's religion to another person with a view to its being accepted by the other person, one gives the other person an opportunity to exercise his freedom of choice of religion.

Seervai concluded by stating that the decision in the *Stanislaus case* is "productive of the greatest public mischief and ought to be overruled."<sup>59</sup> The government's entanglement with religion, in this manner, has become the cause of several instances of violence. It has been observed that the notion that proselytizing is illegal and unconstitutional has resulted in Christian missionaries being subject to hostility and prejudice in numerous parts of the country.<sup>60</sup>

In a recent positive development, the High Court of Himachal Pradesh struck down portions of the Himachal Pradesh Freedom of Religion Act 2006 as violative of the Constitution of India.<sup>61</sup> The World Evangelical Alliance Religious Liberty Commission challenged the validity of the Act, as well as the Himachal Pradesh Freedom of Religion Rules, 2007.<sup>62</sup> In its verdict delivered on August 30<sup>th</sup>, 2012, the Court struck down Sec. 4 of the Act, which made it compulsory for anyone seeking to convert from his/her religion to give a 30-day notice to

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<sup>56</sup> *Ibid*

<sup>57</sup> M SEERVAI, CONSTITUTIONAL LAW OF INDIA: A CRITICAL COMMENTARY 1287 (4<sup>th</sup> ed. 1991) , cited in V. Venkatesan, *Conversion Debate*, 25 Frontline (Sept. 2008) available at <http://frontlineonnet.com/f12519/stories/20080926251902600.htm> [accessed 12 December, 2012]

<sup>58</sup> *Ibid*.

<sup>59</sup> *Ibid*.

<sup>60</sup> V. Venkatesan, *Conversion Debate*, 25 Frontline (Sept. 2008) available at <http://frontlineonnet.com/f12519/stories/20080926251902600.htm> [accessed 12 December, 2012]

<sup>61</sup> Ravinder Makhaik, *HC partially strikes down Himachal's anti-conversion law* (31 Aug 2012) available at [http://articles.timesofindia.indiatimes.com/2012-08-31/india/33520613\\_1\\_anti-conversion-law-subramanian-swamy-notice](http://articles.timesofindia.indiatimes.com/2012-08-31/india/33520613_1_anti-conversion-law-subramanian-swamy-notice) [accessed 12 December, 2012]

<sup>62</sup> *Evangelical Fellowship of India v. State of Himachal Pradesh* CWP No. 438 of 2011

the District Magistrate prior to conversion.<sup>63</sup> The Bench observed that '*A person not only has a right of conscience, the right of belief, the right to change his belief, but also has the right to keep his beliefs secret*'.<sup>64</sup> The judgement has been viewed as a step in the right direction, for religious freedom in India.

#### **INTERNATIONAL PERSPECTIVE ON INDIAN ANTI-CONVERSION LAWS**

India has received criticism from the international community for its anti-conversion laws. On May 24, 2012, India was reviewed by the UN Human Rights Council in Geneva under the Universal Periodic Review<sup>65</sup> mechanism, where numerous states recommended the review of these laws, on the grounds of infringement of Freedom of Religion. Germany recommended that India reconsider laws and bills on religious conversion in light of freedom of religion in order to avoid the use of vague or broad terminology or discriminatory provisions. Similar recommendations were made by Italy, the Netherlands and Austria.<sup>66</sup> The World Evangelical Society's UPR recommendation stated: '*These laws claim to merely purge the use of force, fraud and inducement from religious persuasion in the interest of public order. But these vague and overtly broad legislations are in fact based on a long-time propaganda by right-wing Hindu groups against Christian and Muslim minorities.*'<sup>67</sup>

Article 18(1) of the International Covenant on Civil and Political Rights states that '*Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually*

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<sup>63</sup> Sec. 4 of the Himachal Pradesh Freedom of Religion Act 2006 reads as follows:

*'(1) A person intending to convert from one religion to another shall give prior notice of at least thirty days to the District Magistrate of the district concerned of his intention to do so and the District Magistrate shall get the matter enquired into all by such agency as he may deem fit: Provided that no notice shall be required if a person reverts back to his original religion.*

*(2) Any person who fails to give prior notice, as required under sub-section (1), shall be punishable with fine which may extend to one thousand rupees.'*

<sup>64</sup> *Supra*, note 62.

<sup>65</sup> The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. See <http://www.ohchr.org/en/hrbodies/upr/pages/BasicFacts.aspx> [accessed 18 November 2012]

<sup>66</sup> See UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review : India* , 9 July 2012, A/HRC/21/10, available at: <http://www.unhcr.org/refworld/docid/506d87a52.html> [accessed 18 November 2012]

<sup>67</sup> *Supra*, note 8.

*or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*<sup>68</sup> Having ratified the ICCPR, India is obliged to respect the rights it contains.

The United Nations Human Rights Committee has observed that the freedom to manifest religion in worship, observance, practice and teaching<sup>69</sup> has been recognized to ‘encompass a broad range of acts’ including the ‘freedom to prepare and distribute religious texts and publications.’<sup>70</sup> It is reasonable to conclude that the freedom to manifest religion in worship and teaching includes freedom to prepare and distribute religious texts and publications with the object of securing the conversion of non-adherents.<sup>71</sup>

This conclusion finds support in the interpretation of Article 9 of the European Convention of Human Rights, 1950 which while guaranteeing the right to manifest a religious belief<sup>72</sup> in a manner which mirrors Article 18 of the ICCPR, is made subject to ‘such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.’<sup>73</sup> While interpreting the scope of these limitations in the case of *Kokkinakis v. Greece*<sup>74</sup>, the European Court of Human Rights observed: ‘Bearing witness in words and deeds is bound up with the existence of religious convictions. According to Article 9, freedom to manifest one's religion includes in principle the right to try to convince one's neighbour, for example through teaching, failing which, moreover, freedom to change one's religion or belief, enshrined in Article 9, would be likely to remain a dead letter.’<sup>75</sup> While the Court was careful to differentiate between ‘bearing Christian witness’ and ‘improper proselytism’, it recognized that some faiths required their followers to spread their religious

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<sup>68</sup> Article 18(1) of the International Covenant on Civil and Political Rights, 1966 [Hereinafter “ICCPR”]

<sup>69</sup> *Ibid.*

<sup>70</sup> United Nations Human Rights Committee, *General Comment No. 22: The right to freedom of thought, conscience and religion (Art. 18):* 07/30/1993,CCPR/C/21/Rev.1/Add.4, para. 4 available at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15> [accessed 12 December, 2012]

<sup>71</sup> *Supra*, note 5, at p.69

<sup>72</sup> Article 9(1) of the European Convention on Human Rights, 1950

<sup>73</sup> Article 9(2) of the European Convention on Human Rights, 1950

<sup>74</sup> *Kokkinakis v. Greece* 17 EHRR 397 (1994) (ECtHR, App. No. 14307/88, 25 May 1993)

<sup>75</sup> *Ibid.*

beliefs, and therefore, followers will not be able to fully manifest their religious beliefs without doing so.<sup>76</sup>

The importance of spreading the tenets of one's religions in some faiths was also recognized by the former Special Rapporteur on Prevention of Discrimination and Protection of Minorities, Arcot Krishnaswami who observed, '*While some faiths do not attempt to win new converts, many of them make it mandatory for their followers to spread their message to all, and to attempt to convert others. For the latter, dissemination is an important aspect of the right to manifest their religion or belief.*'<sup>77</sup>

If one, however, is to conclude that acts of proselytism fall under the category of manifestation of one's religion, they are then subject to the restrictions on such manifestation stipulated in Article 18(3) of the ICCPR namely, those limitations prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.<sup>78</sup> The United Nations Human Rights Committee has observed that limitations imposed pursuant to Article 18(3) must be '*directly related and proportionate to the specific need on which they are predicated.*' Further, these limitations cannot be imposed in a discriminatory manner.<sup>79</sup>

Advocates of anti-conversion legislations argue that these laws conform to the requirement of necessity stipulated by Article 18(3) of the ICCPR. However, there is a clear lack of evidence to substantiate the allegations of mass conversion by force, fraud and allurement, which numerous states have used as justification to pass these laws.<sup>80</sup> On the contrary, states with these laws have been observed to be more prone to violence against religious minorities, as these laws are seen as a justification to harass minorities.<sup>81</sup>

Further, by excluding reconversion to one's native faith, often Hinduism from the ambit of their protection, these laws seem to be primarily concerned with prevention of loss of Hindu members to other religions. Such legislations have a discriminatory effect, if they are used

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<sup>76</sup> *Supra*, note 5, at p.69

<sup>77</sup> Arcot Krishnaswami, *Study Of Discrimination in the Matter of Religious Rights and Practices*, Practices', UN Doc E/CN.4/Sub 2/200/Rev 1, UN Sales No 60 XIV 2 (1960) *contra* Tad Stahnke, *Proselytism and the Freedom to Change Religion in International Human Rights Law* 1 Brigham Young University Law Review 251, 256 (1999)

<sup>78</sup> Article 18(3) of the ICCPR

<sup>79</sup> *Supra*, note 70, at para.8

<sup>80</sup> *Supra*, note 5, at p.69

<sup>81</sup> *Supra*, note 44.

primarily against religious minorities rather than being equally applied to majority religious groups.<sup>82</sup>

While these arguments focus on the rights of the proselytizer, the rights of the proselyte have also been the source of much discussion. While Article 18 of the Universal Declaration on Human Rights expressly guarantees the right to change one's religion<sup>83</sup>, Article 18(2) of the ICCPR states that '*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 United Nations Human Rights Committee has opined that the right to change one's religion flows from Article 18(1) of the ICCPR, which '*necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views.*'<sup>84</sup> Anti-conversion laws commonly mandate that potential converts provide notice of conversion to enforcement agencies. Regulations such as these infringe upon a person's right to choose a religion of his choice.

## CONCLUSION

Maintenance of public order has been used, repeatedly, as a justification for the enactment and implementation of anti-conversion legislation in several states. However, in truth, campaigns for anti-conversion laws have been spearheaded by Hindu nationalists, in a bid to stem the large number of conversions by lower-caste Hindus to Christianity or Islam. Many tribals and lower-case Hindus convert to minority religions in an attempt to escape the impoverishment and abuse perpetuated by the Hindu caste system.<sup>85</sup> These conversions are seen as a threat to the social caste system. Thus, anti-conversion laws are being used as a tool, to organize the majoritarian Hindu population against religious minorities.

It is clear that these laws, as they stand, pose a serious threat to the pluralistic nature of Indian society as well as the secularism, which forms the bedrock of the Indian constitution.

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<sup>82</sup> Thomas Gigerich, *Freedom of Religion as a Source of Claims to Equality and Problems for Equality*, 34 Israel Law Review 211, 222 (2002) *contra* South Asia Human Rights Documentation Centre, *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights*, 43 Economic and Political Weekly 63 (2008).

<sup>83</sup> *Supra*, note 14.

<sup>84</sup> *Supra*, note 70, at para. 5.

<sup>85</sup> Smita Narula, *Overlooked Danger: The Security and Rights Implications of Hindu Nationalism in India*, 16 Harvard Human Rights 41, 51 (2003)

As an increasing number of state governments continue to deliberate on the passing of these laws, it is the need of the hour for the judiciary to intervene, in order to ensure that the India Constitution and its principles of secularism, tolerance and equality are upheld.