

Anti-Conversion Law and its Impact on Interfaith Marriages in the Church

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Religious conversion in India is not a new matter of political contention. Since independence, several states have come up with laws to prohibit the conversion activities. However, in the recent years since Narendra Modi government came to power in 2014, there have been plethora of laws passed by the state assemblies, particularly in the BJP ruled states, in the name of 'Freedom of religion' that in reality is directed to deter any effort to convert people to other religion through allurements, force or on pretext of marriage.

The latest addition to the list is Uttarakhand Freedom of Religion (Amendment Act), 2022. The new bill passed recently by the Uttarakhand assembly amends the prevalent Freedom of religion Act of 2018 and imposes a fine of Rs. 50,000 on any person who tries to convert the other through "misrepresentation, force, undue influence, coercion, allurements or by any fraudulent means." It also makes it a cognizable and non-bailable offence with a minimum prison term of 3 years that can be extended up to 10 years. As per the new law, the convict will have to even pay Rs. 5 lakhs to the victim.

Recently while hearing a plea by Ashwini Upadhyay, the Supreme Court also expressed grave concern over the alleged 'rampant conversions' going on in the country. Earlier, the same court of Justice Fali S Nariman had rejected Upadhyay's petition on the ground that Article 25 also allows 'propagation' of religion. Though the available data hardly suggests any possible demographic change through conversion, as peddled by the Hindu rights, the matter has now entered as a day-to-day conversation.

A 2021 incident in Karnataka shows us the fragility of such presumptions. BJP MLA of Hosadurga, Goolihatti Shekhar when alleged that his mother had been forcefully converted to Christianity, the police were directed to conduct a survey on churches. The police in its report while said that they couldn't identify any 'illegal church'; Tahsildars who were recruited to examine the charges of forceful conversion noted they identified 50 families from two villages who embraced Christianity without any allurements or force. Interestingly, in December Goolahatti himself retracted his statement and said that he was "not sure" whether his mother was actually converted.

Petitions in the Supreme Court

On 16th January, 2023, a bench of Chief Justice of India **DY Chandrachud** and **Justices PS Narasimha** and **JB Pardiwala** passed the order after noting that there are at least five such pleas before the Allahabad High Court, seven before the Madhya Pradesh High Court, two each before the Gujarat and Jharkhand High Courts, three before the Himachal Pradesh, and one each before Karnataka and Uttarakhand High Courts. "*In view of pendency of matters before diverse High*

Courts, a transfer petition will be filed before this court for tagging and transferring of all cases before this court. List the matters after 2 weeks," the Court said. Pertinently, the Court also called for the deletion of certain offending statements made against religious minorities in one of the petitions filed by BJP leader and advocate, Ashwini Upadhyay.

In another matter, the Supreme Court on January 3 observed that all religious conversions cannot be presumed by a State to be illegal while agreeing to hear a Madhya Pradesh government appeal against a High Court decision freezing a mandatory provision requiring a person who desires to convert to another faith to give 60 days' prior intimation to the local District Magistrate. A Bench led by Justice M.R. Shah issued notice but refused to order an interim stay of the High Court order even as Solicitor General Tushar Mehta, for Madhya Pradesh, argued that "conversion in the country is based on marriage".

The provision under question is Section 10 of the Madhya Pradesh (Freedom of Religion) Act, 2021. Section 10(1) and (2) of the Act mandated that a person who desires to convert and a priest/person who intends to organize a conversion, respectively, should give a two-month prior declaration to the District Magistrate that the proposed change of religious faith is not motivated by force, undue influence, coercion or allurement. A person who wants to organise a conversion and refuses to give such a declaration would suffer penal consequences, which includes imprisonment of three to five years and costs of not less than ₹50,000.

Mr. Mehta said, conversion largely happened in the country by marrying a person of another faith. The provision did not ban inter-faith marriage but only acted as a safeguard against forcible or illegal conversion. He urged the court to at least restore the implementation of Section 10 of the 2021 Act to the extent that the intimation to District Magistrates may continue. He said the High Court had gravely erred in not considering the larger public interest involved against the conduct of illegal religious conversions through force or deceit.

"But not all conversions are illegal..." Justice Shah remarked orally. The Bench said it would examine the petition and the question of granting interim relief in the next hearing on February 7.

In a similar matter on 9th Jan, Senior Advocate P. Wilson appearing for the State of Tamil Nadu said that the matter should be left up to the legislature to decide and added that the plea was politically motivated. He pointed out that there was an anti-conversion law in Tamil Nadu in 2002 which was repealed in 2006. Therefore, it is the will of the people, which gets reflected through the legislature, which should prevail and the Court cannot issue any direction to frame a law. A month ago on the 5th December, 2022, the top court remarked, "The purpose of charity should not be conversion. Allurement is dangerous", and expressed that the forced religious conversion is a very serious matter.

These statements and procedures in various High Courts and the Supreme Court of India give us a clear indication how the Union government is desperate in bringing out a unified national level law on the matter of religious conversions.

The Karnataka Protection of Right to Freedom of Religion Act, 2022

A look at some clauses of the anti conversion Act of our neighbouring state will give us a better view such controversial laws of our country.

Section 3 of the Karnataka Protection of Right to Freedom of Religion Act penalizes anyone who "converts or attempts to convert, either directly or otherwise, any other person from one religion to another by use or practice of misrepresentation, force, undue influence, coercion, allurement or by any fraudulent means or by any of these means or by the promise of marriage", and also "those abetting or conspiring for such conversions will also be penalized". The Act defines the term "*allurement*" as means and includes offer of any temptation in form of, - (i) any gift, gratification, easy money or material benefit either in cash or kind;(ii) employment, free education in school or college run by any religious body; or (iii) promise to marry; or (iv) better lifestyle, divine displeasure or otherwise; or (v) portraying practice, rituals and ceremonies or any integral part of a religion in a detrimental way vis-à-vis another religion ; or (vi) glorifying one religion against another religion. This ambiguous definition appears to be a trap aimed at the minority run institutions, through which the complainant can conveniently interpret the law to falsely charge someone with the act of forced conversion.

This law emulates its counterparts of like-minded states by making mandatory the grant of notice to a district magistrate from a person who is desirous of converting his/her religion. The magistrate will then publish this proposal and call for objections. This demand for publication, by itself, is anathema to the right to privacy that is now regarded as fundamental. In *Evangelical Fellowship of India v. Himachal Pradesh* (CWP No. 438 of 2011), justice J. Deepak Gupta struck down a similar provision mandating public intimidation of conversion in Himachal Pradesh Freedom of Religion Act, 2006, holding that a person possessed not only a right of conscience but also a right to keep his beliefs secret.

Through this Act, the government of Karnataka intends to proscribe altogether conversions made for the purpose of marriage. Section 6 stipulates, "Marriage done for sole purpose of unlawful conversion or vice-versa to be declared null and void". This is a similar provision already enacted in the anti-conversion laws of Uttar Pradesh and Madhya Pradesh. But in hearing on a challenge to the validity of an analogous provision of Section 3 of the Gujarat Freedom of Religion Act, 2003, (as amended in 2021), the high court of Gujarat stayed this provision holding that, "Prima-facie inter-faith marriages between two consenting adults by operation of the provisions of Section 3 of the 2003 Act interferes with the intricacies of marriage including the right to the choice of an individual, thereby infringing Article 21 of the Constitution of India." A division bench comprising Chief Justice Vikram Nath and Justice Biren Vaishnav passed this interim order to protect the parties of inter-faith marriage from being unnecessarily harassed by government and various organisations. But the Ordinance of Karnataka heeded deaf ear to this judgment.

Under the similar laws of Gujarat and Uttar Pradesh, only family members and relatives (parents, brother, sister or any other person related by blood, marriage or adoption) can file a police complaint alleging the forced conversion. Whereas, Section 4 of the Act of Karnataka illustrates, “Any converted person, his parents, brother, sister or any other person who is related to him by blood, marriage or adoption or in any form associated or colleague may lodge a complaint of such conversion which contravenes the provisions of section 3”. This provision obviously paves way for anyone to drag a particular institution or individual persons to legal disputes in the name of alleged forced conversion.

The Karnataka’s Act also makes the matter more complicated through the legislation in its Section 12, by imposing on the person seeking to convert, a burden to establish the negative that conversion has not taken place through one or the other of the prohibited categories. This notion is totally arbitrary in its nature and also disproportionate as a burden such as this type can almost never be discharged. This provision is modeled after the law of Uttar Pradesh and it is worth recalling that such similar provision was also stayed by the high court of Gujarat earlier last year, stating that such provision puts “parties validly entering into an interfaith marriage in great jeopardy”.

Severe punishment is also prescribed under the law of Karnataka, leading a person found guilty of conversion to face a jail term of three to five years and also a fine of Rs. 25,000. It is ridiculous to note that this legislation makes a discriminatory point even on the faith aspect between an ordinary man, woman and a SC/ST person by stipulating higher form of punishment for converting a woman or a person from the community of SC/ST. This is discriminatory and unconstitutional. Compared to the anti-conversion law of Uttar Pradesh, the punishments enshrined in the Karnataka law is more and severe.

Facts and Myths:

While the Hindu right wing activists have been crying foul over the issue of conversion of Hindus to other religions, the facts and the figures show the contrary.

Hinduism saw the largest increase in new converts, according to statistics collected by *The New Indian Express* collated from government gazettes of the State of Kerala that contain official figures for the year 2020. 241 of the 506 people who reported their change of religion with the government were Christians or Muslims who converted to Hinduism. Islam attracted 144 converts overall, compared to 119 converts to Christianity.

To provide a breakdown, the following number of conversions took place

Conversions	Female	Male	Total
Hindu to Christian	60	51	111
Christian to Hindu	108	101	209
Hindu to Islam	72	39	111
Islam to Hindu	22	10	32
Christianity to Islam	19	14	33
Islam to Christian	2	6	8
Hindu to Buddhism	1	1	2

Data Source- The New Indian Express

Despite these trends, a complicit silence exists around this — cases of conversion to Hinduism are not referred to in public debate and not debated by the country’s media. Such forced or mass conversion or “re-conversion” are termed as *ghar wapsi* or ‘Homecoming’. Even when the present anti-conversion laws are spoken about, the conversion to Hinduism does not find much place. The erroneous assumption that the “original” faith of Adivasis and Dalits is/was sanatani Hinduism is a highly contested one since their faith practices pre-date the formalization of the caste-ridden, stratified Hindu faith.

Examples/Instances of “Gharwapsi” and forced conversions to Hinduism by Extremist Groups:

S. No.	States	Year	Incidents
1.	West Bengal	2015	Ghar Wapsi: At least 50 people from both Christian and Muslim communities were “re-converted” to Hinduism during the Virat Hindu Sammelan, justifies action saying conversion is service to Hindu samaj.
		2018	An Organisation called Hindu sanhati, led by Tapan Ghosh, organized “ghar wapsi” with 16 members of a Muslim family, who had “been re-converted to Hinduism”, being showcased on the dais of rightwing outfit Hindu Samhati.
2.	Gujarat	2020	144 tribal Hindus who converted to Christianity many years ago converted back to Hinduism in Dang district, Gujarat by the Agniveer organisation.
		2021	21 families of Dharampur and Kaprada talukas reverted to Hinduism from Christianity in a program organized by the Vishwa Hindu Parishad in Vapi.

3.	Andhra Pradesh	2019	The local cell of the Hindu nationalist party converts about 500 Christians back to Christianity in Andhra Pradesh, and convinced them to take an oath to the Hindu religion and to promise not to go to church anymore.
4.	Tripura	2019	98 Christian tribals 'forced' to reconvert to Hinduism by the VHP in Tripura.
5.	Kerala	2015 2015	About 30 Christian tribals were reportedly converted to Hinduism at an event organised by the Vishwa Hindu Parishad (VHP) in Alappuzha. 35 people converted to Hinduism in Kottayam district. They were Dalit families who had converted to Christianity a few generations back.
6.	Uttar Pradesh	2014	In 2014, 57 Muslim families with more than 200 members converted to Hinduism in Agra.

Source: Table collated by CJP Legal Research Team <https://cjp.org.in/anti-conversion-laws-are-forced-conversions-a-myth-or-reality/>

Impact on Interfaith Marriages in the Church

Interfaith couples in India can get married under the Special Marriage Act 1954 (SMA). This is often accompanied by the threat of harassment and violence from family members as the Act requires couples to declare an intention to marry to State authorities and provides a 30-day window for anyone to file objections. To avoid this, many interfaith couples avoid the SMA route and adopt another strategy: one of the parties converts to the religion of the other and get their marriage registered under the relevant personal law – a process that allows for relatively more secrecy. But recent anti-conversion legislations like the Karnataka Protection of Right to Freedom of Religion Act make the matter worse. The couples are left with choosing between the devil and the deep blue sea.

The Karnataka anti-conversion bill fuses religious conversions and interfaith marriage. Section 6 of the Karnataka Anti-Conversion Act legislates, *“Marriage done for sole purpose of Unlawful conversion or vice-versa to be declared null and void.- Any marriage which has happened with sole purpose of unlawful conversion or vice-versa by the man of one religion with the woman of another religion, either by converting himself before or after marriage or by converting the woman before or after marriage, shall be declared as null and void by the Family Court or where the Family Court is not established, the Court having jurisdiction to try such case on a petition presented by either party thereto against the other party of the marriage: Provided that, all the provisions of section 8 and 9 shall apply for such marriages to be solemnized”*. This ill-intended anarchic law makes any person even with the real transformation of heart to change his/her religion to be vulnerable before the officials to get trapped. Sections 8 and 9 of the Act that are about the complicated and long procedures before and after marriage make the concerned persons wearisome. The priests officiating such marriages could be easily booked for forced conversions on false charges. In the past one year the State of Uttar Pradesh alone has

booked 108 cases under the Anti-Conversion law under the guise of Love-jihad and forced conversions.

Similar to the SMA, the anti-conversion law now gives the State authorities further discretion to decide on the validity of interfaith marriages. All conversions are to be subject to the inquiry of the District Magistrate and to be kept open to objections from the general public. By allowing the State to be the judge of a person's intent to convert or marry, the law provides entry way for State authorities as well as the larger public to intrude into two deeply personal affairs of the individual – marriage and conversion. As opposed to protecting the individual's liberty to marry whom they wish to, this draconian law jeopardizes personal freedoms. This law places the interfaith marriages under further scrutiny in an atmosphere of ever-expanding animosity towards such relationships.

The catholic priests need to be cautious while preparing and blessing such interfaith marriages. Particularly in the States where the Anti-Conversion laws are in force, it is better to recommend the interfaith couples first to register their marriage under the SMA in which the other party remains in his/her religion and later on could get the required dispensation and rectify the marriage as a disparity of cult in the Catholic Church. At least this procedure could be followed for the time being since the matter is pending before the Supreme Court. As far as the State of Tamil Nadu is concerned, though there is no Anti-Conversion law in force, the priests need to take necessary precautions of the persons coming from others States just for the sake getting baptized, so that they could go back to their state and get married in the Catholic Church. It is better to advice them to follow the earlier suggested procedure.

Conclusion:

These anti-conversion laws, as claimed by the legislators, ostensibly seek to end conversion through unlawful means, to put an end to type of conversion solely for the sake of marriage and to ensure protection of religious faith from the religious fundamentalists. The question is whose fear it is that pushes the legislators to frame such laws. India is a multi religious country, which is so rich in spirituality, a country that gave birth to new religions, and a country where people of different religious beliefs have lived in harmony for centuries. By guaranteeing to its citizens, freedom of conscience and free profession, practice and propagation of religion, in Article 25, the constitution of India envisions a country that is secular in its nature not imposing upon anyone a particular religious faith. In *Rev. Stanislaus v. State of Madhya Pradesh* (1977), the Supreme Court reiterated that the provision of Article 25, "propagate", does not mean anyone can be forced to be converted. But it should also be of the view that no one should be forced to hold on to a particular religious belief that he or she does not value any more. No one should be forced to stop the spiritual benefits of other religion, just because someone is born in a particular religious community.

The Law Commission of India, that was chaired by Justice P.V. Reddy, in report No. 235, dated December 27, 2010, pertinently advised the Government of India stating that, “Religious conversions may appear to many in Indian mindset to be unnecessary, puerile and negation of the very concept of respect for both religions as also the followers of such religion. But certainly, the freedom of faith guaranteed the Constitution may not justify the negation of the right to pursue the chosen faith, by conversion where necessary”. Interestingly, the Law Commission of the state of Karnataka too, that was chaired by Justice V. S. Malimath, in its proposal to the Government of Karnataka on 21st September, 2013, to enact a suitable law for the protection of freedom of religion, positively proposes that the focus of such law should be “equally protecting the right to freely practice ones religion as well as on the right to freely understand the other religions to make an informed decision to convert to the other religion or not..”. Considering all these, if the existing anti-conversion laws of India are not appropriately interpreted, adopted and implemented, or made use to target the minority religious communities, the secularism that is envisioned by the constitution of India, will surely be at stake.