

## INDIA'S LAWS RESTRICTING RELIGIOUS CONVERSION

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### ABSTRACT

*In India, more and more governments have passed legislation restricting religious conversion in recent years, focusing in particular on "forced" or "allured" conversions. Current laws have their roots in a number of colonial laws that were passed in British India and many princely kingdoms, including the anticonversion, apostasy, and public safety acts. Implementing such rules seems to call for analyzing the converts' mental state by examining their motivations and volition, or, to put it another way, figuring out if the converts were "lured" or genuine. Government evaluations of the validity of conversions in modern India sometimes rest on two presumptions: first, that those who convert in groups may not have done so voluntarily, and second, that certain groups are more susceptible to being seduced into adopting a different religion. These presumptions, which are present throughout the anticonversion statutes, accompanying court rulings, and government committee reports, reinforce societal constructs that women and members of lower castes are innately gullible and easily duped. Such rules must be carefully examined since, like "protective" laws in many other circumstances, they limit freedom in extremely personal, individual decisions.*

**Keywords:-** Religious Conversion, Motivations And Volition,

### I INTRODUCTION

Comparing current anticonversion statutes and accompanying commission findings in the Indian states of Gujarat, Madhya Pradesh, Orissa, Chattisgarh, and Tamil Nadu shows ingrained presumptions about the vulnerability of group converts, particularly women, lower castes, and tribals. An earlier, unenforced legislation (in Arunachal Pradesh since 1978) and possible new laws under debate (in Jharkhand and Uttarakhand), as well as the most recent acts in Rajasthan (2006) and Himachal Pradesh (2007), are beyond the purview of this article. Many of these laws' terminology avoids the issue of evaluating each person's will individually by accepting the notion that certain groups are more susceptible to being deceived into conversion. For instance, in certain jurisdictions, persons found to be converting Scheduled Castes (lower castes), women from tribal groups, or juveniles may be subject to lengthier jail sentences or heavier penalties. To facilitate governmental surveillance of conversion trends, especially large conversions, a few of governments have made it mandatory for persons to register their change of religion with a local official—in some cases, even before they convert.

### CONVERSION, RELIGION, AND LAW

A recurring issue in the writings of Marc Galanter and the other researchers he has influenced is the legal complexity of individual and collective identities. As shown in Galanter's early article on the Brother Daniel case, in which a Polish Jew who had converted to Carmelite monasticism petitioned to be admitted to Israel under the Law of Return, religious conversion tends to especially perplex courts seeking distinct identities. In such a situation, Galanter points out the difficulties of "state inquiries into the imponderables of personal identity" and the difficulty of a state attempting to identify and assess "personal qualities by administrative and judicial procedures ill-suited to the task."

In circumstances when low caste individuals convert from Hinduism, categorizing caste and religion for purposes of affirmative action in India becomes more difficult.<sup>4</sup> Conversion makes it more difficult to determine who in India is bound by which religion "personal laws" (certain civil laws, especially family laws, that differ by religious group). Administrators and judges struggle with the complexities of individual and collective identities, particularly the veracity of converts. Conversion is both a religious and a political act since, in India and elsewhere, different rights (to citizenship, to affirmative-action privileges, to alimony, etc.) rely on one's religious identification.

At a time when academics are concentrating more on the relationship between law and religion in Islamic regimes, The writings of Marc Galanter serve as a reminder of how closely related law and religion are, even in nations where secularism is formally practiced. Legal and religious orders contribute to one another's formation: No secular state is or can be purely neutral or impartial toward other faiths since the state establishes the parameters in which neutrality must exist. The official definitions and bounds of religion, for instance, are affected by legislation and court rulings. "Some aspects of what is purported to be religion are recognized, supported, and encouraged; others are the focus of indifference; and, at the end, some are restricted and forbidden." Legal disputes over whether preaching is necessary to the practice of certain faiths and, thus, protected by the right to freedom of religion raise questions about the definition of religion and "religious activity" that are subject to debate. The answer to this crucial issue will determine whether state laws restricting conversion in India, which are sometimes referred to as "Freedom of Religion" legislation. Do these rules hinder people' right to spread their religion to others or to modify their own religious identity, or do they preserve the religious freedom of groups who are "vulnerable" to missionary inducements?

Monitoring the line between faiths is another way "the State defines the boundaries within which neutrality must operate" (12). Laws governing conversion place the state in the position of a gatekeeper since conversion permits individuals to cross this line. Below are examples of state laws that play this function in restricting conversions among populations deemed vulnerable and in legislation forcing individuals to disclose conversions to local authorities, enabling them to keep tabs on and perhaps prevent "mass" conversions among big groups.

Anticonversion law is not only becoming more popular in Hindu-majority India; it has also just passed in Muslim-majority Algeria and is now being discussed in Sri Lanka (primarily in response to requests from Buddhist groups). Additionally, outdated conversion and apostasy laws are being resurrected in fresh settings, as seen by the recently abandoned (but well known) apostasy charges filed against Abdul Rahman in Afghanistan, despite the country's new constitution. The rise of evangelical Christianity, which has had a considerable influence on religious demography as well as politics in the Americas, Africa, Asia, and former Soviet Union nations, is one worldwide trend that has prompted an increase in interest in conversions.

#### **FROM COLONIAL PRECEDENTS TO CONTEMPORARY CONCERNS: RAIGARH/MADHYA PRADESH/CHATTISGARH**

In India, laws restricting conversion date back to the colonial period. Such rules were in place

in more than a dozen princely kingdoms, among them Kota, Bikaner, Jodhpur, Raigarh, Patna, Surguja, Udaipur, and Kalahandi. The continual tensions over conversions—tensions that ultimately led to a crucial Supreme Court case—are illustrated by 20 examples from central India, starting with one princely state, Raigarh, which after independence became a district of the state of Madhya Pradesh and then a constituent of the newly created state of Chattisgarh in 2000.

A individual who desired to convert was obliged under the Raigarh State Conversion Act of 1936 to "submit an application to a designated authority. However, concerns about conversions persisted—even after independence—in the Raigarh district of the post-Independence state of Madhya Pradesh and elsewhere. Such legislation was motivated by worries about public order or about foreign influences within the princely states in the context of encroaching colonialism.

Additional conversion-related concerns, including as public order, social cohesion, and national security in the new country, are addressed in the 1956 Report of the Christian Missionary Activities Enquiry Committee. In a letter accompanying the report, committee chairman Dr. M.B. Niyogi stated that the members of the committee were solely motivated by the need to uphold the nation's unity and security, to prevent social and cultural upheaval, and to emphasize the Constitution's fundamentally secular nature. The report was largely a harsh critique of missionary activity. If they have called attention to certain disruptive tendencies that are inherent in or incidental to the exercise of certain liberties in religious matters, they have done so with the intention of promoting the exercise of those rights and freedoms in a way that is consistent with public order, morality, and health rather than to restrict them.

In reality, the committee advocated against "any attempt or effort (whether successful or not), directly or indirectly to penetrate into the religious conscience of persons (whether of age or underage) of another faith." This study contained suggestions to limit conversions. Pages of the report described the committee's evidence and included listings like "The following persons reported that they were converted by giving [getting] loans for plough." Legal limits were made possible by the report's suspicion of conversions and beliefs about the credulity of impoverished converts.

The Madhya Pradesh Dharma Swatantrya Adhiniyam, which forbids "converting from one religion to another by use of force or allurement, or by fraudulent means, and matters incident thereto," was finally passed by the state of Madhya Pradesh in 1968.<sup>26</sup> It further stipulated that anybody who converts another person must notify the District Magistrate of the conversion within a certain timeframe, failing which they might face up to a year in jail, a fine of up to 1000 rupees, or both.<sup>27</sup> These rules have subsequently been tightened even more.<sup>28</sup>

Rev. Stanislaus v. State of Madhya Pradesh and Orissa, a significant Supreme Court ruling maintaining such legislative limits on conversions, was based on this Madhya Pradesh statute and an analogous 1977 law in the state of Orissa.<sup>29</sup> Notably, the Orissa High Court declared that state's very identical statute unlawful but the Madhya Pradesh High Court maintained that state's law. Both state regulations were affirmed by the Supreme Court as being constitutional, echoing Niyogi's concern for maintaining public order, which was first

expressed in his 1956 report on missionary activities.

The Indian Constitution's Article 25, which states that "public order" may provide as a justification for restricting religious liberties, including the freedoms of "profession" and "propagation" of religion, was the subject of controversy in Stanislaus. "Freedom of religion, including the right to practice, profess, and spread it. (1) Everyone has an equal right to freedom of conscience and the freedom to openly proclaim, practice, and propagate their religion, subject to public order, morality, and health as well as the other requirements of this Part.<sup>30</sup> The key concept in the court's ruling was the distinction between the right to "transmit" one's religion (which the court upheld) and the right to "convert" someone to one's religion (which the court rejected).<sup>31</sup>

The court determined that conversion limitations are lawful since conversion attempts interfere with "freedom of conscience" and "public order."<sup>32</sup> According to the court, "if a person intentionally attempts to convert another person to his religion, as opposed to his effort to transmit or spread the tenets of his religion, that would impinge on the 'freedom of conscience' guaranteed to all citizens of the country alike."<sup>33</sup> The public-order arguments included the following fictitious scenarios: "[I]f forcible conversion had not been outlawed, that would have created public disorder in the States"; and "[I]f an attempt is made to stir up communal passions, e.g.[,] on the ground that some one has been "forcibly" converted to another religion, it would, in all probability, give rise to an apprehension of a breach of the public order, affecting the

The Supreme Court's judgment underlined its confidence that sustaining these regulations will promote public order, regardless of whether such community sentiments are more or less probable when a state has a rule banning forced conversion.

How do these laws genuinely affect converts' lives? A Raigarh<sup>35</sup> court jailed two priests and a nun in 2002 after finding them guilty of coercive or fraudulent conversion.<sup>36</sup> The converted family assured the authorities in written declarations that they had willingly changed faiths, but their explanations did not persuade them. It should be noted that this conversion included 22 persons, including women and members of Scheduled Castes. The authorities disregarded their claims, ostensibly believing that they lacked objectivity.

Despite making these claims, the priests were detained for conversion by coercion. Evidently, government officials believed that people of lesser rank (in this case, women and members of lower castes), especially those converting together, were too impressionable to make their own conversion choices. This presumption was given more weight than the converts' own testimonies.

### **SCRUTINIZING MOTIVES AND TRACKING CONVERSIONS: ORISSA**

A high court in Orissa annulled the 1967 Freedom of Religion Act in Orissa, but it was restored in Stanislaus.<sup>38</sup> The text of Orissa's statute<sup>39</sup> does not really make the government's concern about groups seen as more susceptible to allurements explicit, but it is made plain in another official document pertaining to conversion. The Justice D.P. Wadhwa Commission of Inquiry looked into and produced a report on the killing of Christian missionary Graham Staines and his boys in Orissa.<sup>40</sup> The "Motive" part of the Wadhwa Commission report originally concentrated on the alleged motivations of the murderers but regularly switched to include probe the motivations of converts in the region. This portion of the report is filled with references to the Commission's specific concern for indigenous

groups in poverty.

"[I]t appears that the motive for the crime was that there were conversions of illiterate and poor Hindu tribals to Christianity on certain premises," the report said in reference to the assassins' motivations. The report cited a number of converts who had spoken before the Commission on their motivations. In a lengthy remark, Pastor Timothy Murmu apparently addressed the Commission's inquiries on possible coercion or allurement. The report indicated that "no force was used on anybody for conversion" while summarizing Murmu's comments. Economic circumstances did not improve [for those joining Christians], but those who converted "get inner peace and become better human beings," [Murmu] continued.42 Murmu said that during a protracted and severe sickness, he converted to Christianity.

### **VARYING PENALTIES AND REQUIRING PERMISSION: TAMIL NADU, GUJARAT, RAJASTHAN, AND HIMACHAL PRADESH**

Higher sanctions for conversions of those who are seen to be especially vulnerable have been introduced in state legislation in more recent times. In contrast to Orissa or Madhya Pradesh, the Tamil Nadu Prohibition of Forcible Conversion of Religion Ordinance (passed by the Tamil Nadu Assembly on October 31, 2002, and repealed May 18, 2004) included a harsher penalty for those who convert minors, women, or members of Scheduled Castes or Tribes against their will. The punishment for utilizing money or other rewards in conversion campaigns directed at these groups is four years in jail, not three, and a one lakh (one hundred thousand rupee) fine, which is double the punishment for campaigns aimed at other groups.

The Tamil Nadu ordinance also required people to notify the District Magistrate of any conversion in their district within the time frame that may be prescribed in order to help with conversion statistics: Whoever converts any person from one religion to another, whether by performing any ceremony by himself for such conversion as a religious priest or by taking part directly or indirectly in such a ceremony

### **SIGNIFICANCE FOR CONTEMPORARY POLITICS: THE CONVERT AS OBJECT**

Even if one law was overturned for political reasons and conversion legal limitations are becoming strict, this tendency is still present. Although it hasn't handled a case involving the most current iterations, which are more stringent than prior ones, the Indian Supreme Court has upheld anticonversion statutes. More states are considering passing similar legislation since recent state laws have become more onerous in their requirements. Most recently, a state governed by the Congress Party (Himachal Pradesh) enacted a law prohibiting conversions, indicating that other major parties are also in favor of such legislation in addition to the Hindu-nationalist BJP. Manmohan Singh, the first non-Hindu prime minister of the nation, is the leader of the coalition led by the Congress Party that now controls the national government. Sonia Gandhi, the head of the Congress Party, is a Catholic who has defended the rights of minorities and condemned prior conversion policies. When she was the governor of Rajasthan, Pratibha Patil, the current president of India, declined to sign the state's conversion law. However, the Himachal Pradesh precedent increases the risk that additional governments may tighten down on conversions, especially as Hindu-nationalist groups advocate for new anticonversion legislation at the state and possibly national levels. However, the attractiveness of such regulations seems to be limited to northern India for the time being. One similar legislation existed in the south, in Tamil Nadu, but it was finally



abolished, indicating that a national law of this sort may not be popular with the public on a political level.

What purpose do these laws serve? On a practical level, regulations for reporting conversions or even for permission to convert change what may otherwise be a private choice into a public act. Notably, arrests under these statutes seem to be very uncommon; possibly this is because it is hard to establish an intangible concept like coerced conversion. Both the Tamil Nadu legislation and an earlier statute from Arunachal Pradesh (1978) have never been put into effect or led to any arrests. However, the updated legislation have resulted in arrests in some states, suggesting that there may be a shift from symbolic adoption to practical implementation. At least some people who are thinking of converting may be discouraged by their fears of being exposed and being arrested.

These rules are particularly important because they support and define the conversation about conversion and converts, which has implications for lower-status groups on both a symbolic and practical level. The conversion laws and accompanying government materials covered here portray converts (especially group converts) as passive tools in the hands of active converters and women, Scheduled Tribes, and Scheduled Castes as victims. Such terminology dehumanizes the convert, especially those who come from vulnerable social groupings known as the "weaker sections" in Indian culture. The long-standing inclination to see converts or prospective converts as victims is maintained by these laws. Religious leaders have repeatedly emphasized the need to protect prospective converts from harmful missionaries or from traditional rituals, depending on whether they are trying to convert or keep people.

## **CONCLUSION**

If the convert is seen as the object rather than the subject of conversion, the liberty to alter one's religious identity becomes hazier (and simpler to disregard). In his discussion of the verb "to convert," Talal Asad contrasts its transitive and intransitive forms.<sup>83</sup> The idea of forceful conversion may be seen in many theological traditions as an oxymoron in the intransitive sense—"I converted"—because it is a contradiction. Contrarily, laws prohibiting forcible conversion, court rulings maintaining them, and commission reports supporting them all employ the transitive meaning, as in "He converted them." This use supports two interconnected ideologies by maintaining stereotypes of "them," the supposedly "weaker sections" of society (particularly lower castes, tribes, and women), and by fostering concern about how foreign meddling would undermine national ideals and the rule of law.

The right of the converts themselves to convert to another religion is left unmentioned since the legislation, court rulings, and government reports included here employ the word "to convert" in its transitive connotation. It is important to reiterate Marc Galanter's observation that laws "give certain aspects of what is claimed to be religion[,] recognition, support and encouragement, other aspects are the subject of indifference, and finally some are curtailed and proscribed."<sup>84</sup> The freedom to convert others is often restricted, whereas the right to convert oneself is treated with indifference in legal and administrative discourse today concerning conversion in India.

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