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Annexure 1

Anti-conversion Laws

Anti-conversion laws otherwise known as ‘Freedom of Religion’ laws, generally state, “No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by inducement or by any other fraudulent means.”¹

Coercive, violent or fraudulent conversions violate the right to freedom of religion. This freedom is protected in Article 25 of the Indian Constitution, which states, “Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.”² Additionally, Article 26 states, “Freedom to manage religious affairs Subject to public order, morality and health, every religious denomination or any section thereof shall have the right to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion....”³

However, instead of supporting Articles 25 and 26 of the Constitution, anti-conversion laws threaten “to undermine the integrity of Articles 25 and 26 of the Constitution by opening up the possibility of discriminatory abuse and overreach by law enforcement officials.”⁴ Anti-conversion laws are frequently used to disadvantage minorities and to impose on their right to freely practice, profess, and propagate religion.

Status of Anti-conversion Laws in India

In the 1960s and 1970s Madhya Pradesh, Orissa, and Arunachal Pradesh all enacted anti-conversion legislation.⁵ In 2003 Gujarat enacted similar legislation and in 2006 Himachal Pradesh

¹Himachal Pradesh Freedom of Religion Bill, Act 31 of 2006, Article 3.

²The Constitution of India, Article 25.

³The Constitution of India, Article 26.

⁴ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - “Acts of Bad Faith – Anti-Conversion Laws”, 2012, p. 207-238.

⁵ Madhya Pradesh Freedom of Religion Act, 1968; Orissa Freedom of Religion Act, 1967; Arunachal Pradesh Freedom of Religion Act, 1978.

followed suit.⁶ The state of Chhattisgarh formed in 2000 inherited Madhya Pradesh's legislation and passed a separate amendment criminalizing conversion in 2006.⁷ Additionally, Tamil Nadu passed anti-conversion legislation in 2002, but it was subsequently repealed in 2006.⁸ In 2006, the Rajasthan state legislature passed anti-conversion legislation; nonetheless due to then state governor Pratibha Patil's refusal of assent, the legislation was not formalized into law until it was passed again in 2008.⁹ Lastly, Jharkhand was expected to pass a Freedom of Religion Act in 2006, but the Bharatiya Janata Party (BJP), a Hindu nationalist party, lost a majority in the Lok Sabha and it failed to pass.¹⁰

Pro-Hindu Bias

One of the major problems these provisions employ is that they systemically substantiate a pro-Hindu bias and "allow conversions to Hinduism while attempting to thwart conversion in the other direction."¹¹ Specifically, Rajasthan and Chhattisgarh structure their anti-conversion laws to exclude "reconversion to the religion of one's forefathers" from the definition of conversion.¹² The religion of one's forefathers is Hinduism and thus reconversions to Hinduism are not subject to the provisions of anti-conversion laws in either of these states.¹³ The end result is that standards applicable to conversion are far more stringent than standards applicable to reconversions to Hinduism. Furthermore, in the Arunachal Pradesh Freedom of Religion Act of 1978, "conversion" entails "renouncing one religious faith and adopting another religious faith" with "religious faith defined as any indigenous faith."¹⁴

Ambiguous Provisions

The principal provision of anti-conversion laws, as cited in the introduction of this report, contains multiple ambiguous and problematic terms examples being -- "force", "allurement or inducement", and "fraud."¹⁵

In these provisions, force is defined as, "including a show of force or threat of injury of any kind including threat of divine displeasure or social ex-communication."¹⁶ If an individual maintains

⁶ Gujarat Freedom of Religion Act 2003; Himachal Pradesh Freedom of Religion Act, 2006.

⁷ Chhattisgarh Freedom of Religion (Amendment) Act, 2006.

⁸ "Religious Freedom Acts": Anti-conversion Laws in India, American Center for Law & Justice, 26 July 2009, http://www.aclj.org/media/pdf/Freedom_of_Religion_Acts.pdf.

⁹ Maneesh Chhibber, "Anti-conversion Law May be Left to Geholt, The Indian Express, 5 January 2009; Rajasthan Dharma Swatantrya Bill 2008.

¹⁰ All India Christian Council, "Jharkhand Likely to Introduce Anti-conversion Bill," <http://indianchristians.in/news/content/view/1070/47/>.

¹¹ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - "Acts of Bad Faith – Anti-Conversion Laws", 2012, p. 207-238.

¹² Rajasthan Freedom of Religion Bill 2006, Section 2(c); Chhattisgarh Act, Amendment of Section 2.

¹³ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - "Acts of Bad Faith – Anti-Conversion Laws", 2012, p. 207-238.

¹⁴ Arunachal Pradesh Act, Section 2(b).

¹⁵ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - "Acts of Bad Faith – Anti-Conversion Laws", 2012, p. 207-238.

¹⁶ Orissa Act, Section 2(b); Madhya Pradesh Act, Section 2(c); Gujarat Act 2003, Section 2(d); Arunachal Pradesh Act, Section 2(d); Rajasthan Bill 2006, Section 2(d); and Himachal Pradesh Act, Section 2(b).

that potential converts risk divine displeasure by joining another religion such as, Christianity, Islam, Sikhism, or Judaism the act of imparting conversion could in and of itself constitute an act of force.¹⁷ As legal scholar H.M. Seervai points out, “A person cannot choose if he does not know what choices are open to him,” and this broad definition of force limits potential converts ability to explore their options.¹⁸

In the Rajasthan, Madhya Pradesh, Chhattisgarh, and Gujarat Acts allurement is defined as follows, “the offer of any temptation in the form of: (1) any gift or gratification either in cash or in kind; (2) grant of any medical benefit, either monetary or otherwise.”¹⁹ The Himachal Pradesh, Orissa, and Arunachal Pradesh Acts define inducement, a term used in place of allurement, as follows, “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.”²⁰ Since charitable acts are fundamental to many religions, these definitions of allurement and inducement may restrict the freedom of religious practice.²¹ For example, religiously sponsored hospitals and schools may be construed as a form of “temptation” intended to generate conversions.²² In *Yulitha Hyde v. State of Orissa*, the high court ruled that the Orissa act was overly ambiguous in wording and wide in scope.²³ However, the Supreme Court of India in *Stainislaus v. State of Madhya Pradesh* overruled *Yulitha Hyde* and upheld the constitutionality of the Orissa act.²⁴

In the majority of anti-conversion provisions fraud includes “misrepresentation or any other fraudulent contrivance.”²⁵ This ambiguity grants government officials a high degree of discretion, which can lead to a bias in implementation. For example, if a convert is promised a closer relationship with God and subsequently does not receive such a relationship following conversion is that “misrepresentation?”²⁶ Drawing a line between “real” conversion attempts and improper efforts is a difficult task, and is one that should not be left to government officials. The government has no right to intrude on religious expression and exploration in this regard.

Indian Jurisprudence

Article 25 of the Indian Constitution protects the freedom of religion. However, Article 25 also places constitutional limitations on this right. Article 25 limits the freedom of religion in accordance with “public order, morality and health,” and only for those reasons can restrictions

¹⁷ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - “Acts of Bad Faith – Anti-Conversion Laws”, 2012, p. 207-238.

¹⁸ H.M. Seervai, Constitutional Law of India: A Critical Commentary, Vol. 2, 4th Edition, p. 1289.

¹⁹ Rajasthan Bill 2006, Section 2(b); Madhya Pradesh Act, Section 2(a); Chhattisgarh Act, Section 2(a); Gujarat Act, Section 2(a).

²⁰ Himachal Pradesh Act, Section 2(d); Orissa Act, Section 2(d); and Arunachal Pradesh Act, Section 2(f).

²¹ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - “Acts of Bad Faith – Anti-Conversion Laws”, 2012, p. 207-238.

²² Id.

²³ *Yulitha Hyde & Ors v. State of Orissa* (1973), AIR Ori 116.

²⁴ *Stainislaus v. State of Madhya Pradesh*, (1977) (1) SCC 677.

²⁵ Rajasthan Bill 2006, Section 2(e); Gujarat Act, Section 2(d); Himachal Pradesh Act, Section 2(c); Orissa Act, Section 2(c); Madhya Pradesh Act, Section 2(d); Arunachal Pradesh Act, Section 2(e).

²⁶ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - “Acts of Bad Faith – Anti-Conversion Laws”, 2012, p. 207-238.

be placed on this freedom.²⁷ In *SardarSyednaTaherSaiffudinSaheb v. State of Bombay* (1962), the Supreme Court held that the freedom to religion was not an absolute right. Elaborating upon the distinction between holding religious beliefs and manifesting one's beliefs to others the Court stated, "his religious beliefs are entirely his own and his freedom to hold those beliefs is absolute, he has not the absolute right to act in any way he pleased in exercise of his religious beliefs."²⁸

The biggest landmark case on the freedom of religion is *Rev. Stainislaus v. State of Madhya Pradesh*, a 1977 Supreme Court judgment, which upheld the constitutional validity of the Madhya Pradesh and Orissa anti-conversion laws. In preceding High Court judgments, the Orissa law was struck down and the Madhya Pradesh law was upheld. The Orissa law was struck down on the basis of a lack of legislative competence. Additionally the High Court of Orissa held the inducement provision was held of the act to be too vague.²⁹ The Madhya Pradesh law was upheld by the High Court of that state who construed the act to fall within the category of public order, an area of competence and legislative power for the state government.³⁰ The High Court of Madhya Pradesh also upheld the provision on allurement.³¹ The Supreme Court largely endorsed the ruling of the Madhya Pradesh High Court. The Court held that Article 25, "merely granted the right to transmit or spread one's religion by an exposition of its tenets... allowing a person to purposely undertake the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion... would impinge on the freedom of conscience guaranteed to all the citizens."³² Furthermore, the Supreme Court agreed with the Madhya Pradesh High Court when it held that state governments possess the legislative competency to restrict conversions. The Court stated that anti-conversion laws concerned public order and the prevention of public disorder that could result from forcible conversions.³³ The Supreme Court construed the Madhya Pradesh and Orissa anti-conversion laws to be aimed at "avoiding disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community."³⁴

International Standards

Article 18(1) of the International Covenant on Civil and Political Rights (ICCPR), which India has ratified, provides that, "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to have or to adopt a religion or belief of his choice, and the freedom... to manifest his religion or belief in worship, observance practice and teaching."³⁵ Moreover, the United Nations Human Rights Committee has observed that the right

²⁷ The Constitution of India, Article 25 (2) (a) and (b).

²⁸ *SardarSyednaTaherSaiffudinSaheb v. State of Bombay* (1962), AIR SC 853.

²⁹ *Yulitha Hyde & Ors v. State of Orissa*.

³⁰ *Stainislaus v. State of Madhya Pradesh*.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*; A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - "Acts of Bad Faith – Anti-Conversion Laws", 2012, p. 207-238.

³⁵ International Covenant on Civil and Political Rights, Article 18(1).

to freedom of religion is both “far reaching and profound.”³⁶ The Committee has declared that, “any restriction on the freedom to manifest one’s religion or beliefs pursuant to Article 18(3) must be ‘directly related and proportionate to the specific need on which they are predicated’.”³⁷ India’s anti-conversion laws do not meet the threshold requirements necessary for limitations on the right to freedom of religion.³⁸ There is a lack of compelling evidence to substantiate the allegations of mass conversions through force, allurements, or fraud in India. Specifically, no evidence has been found to support the allegation that large numbers of Dalits and indigenous peoples have been converted by force.³⁹

Article 18 of the Universal Declaration of Human Rights expressly incorporates the right to change one’s religion stating, “Everyone has the right to freedom of thought conscience and religion; this right includes freedom to change his religion or belief.”⁴⁰ Similarly, 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.”⁴¹ Thus, the right to change one’s religion is a fundamental right recognized in international law. As H.M Seervai highlighted, “an informed conversion does not in any way interfere with the freedom of conscience, but is a fulfillment of it and gives meaning to it.”⁴² Anti-conversion laws limit the ability to make an informed decision.

Article 18(2) of the ICCPR also affirms 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.”⁴³ Accordingly, all individuals also retain the right to refuse the offer of conversion and the right to be able to enjoy their freedom of religion without undue interference.⁴⁴

In 2009, the UN Special Rapporteur on Racism, Freedom of Religion, and Freedom of Expression stressed that, “the right to freedom of expression constitutes an essential aspect of the right to freedom of religion.”⁴⁵ Additionally, the Rapporteur warned that where limitations on the right were imposed, “the least intrusive means insofar as freedom of expression is concerned should be used in order to prevent a chilling effect.”⁴⁶ Anti-conversion laws do not respect

³⁶ Human Rights Committee, General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Article 18), 30 July 1993.

³⁷ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - “Acts of Bad Faith – Anti-Conversion Laws”, 2012, p. 207-238; Human Rights Committee, General Comment No. 22, 8.

³⁸ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - “Acts of Bad Faith – Anti-Conversion Laws”, 2012, p. 207-238.

³⁹ Interview with Tahir Mahmood, then Chairperson of the National Commission for Minorities, 3 May 1999.

⁴⁰ Universal Declaration of Human Rights, Article 18.

⁴¹ International Covenant on Civil and Political Rights, Article 18(2).

⁴² H.M. Seervai, Constitutional Law of India: A Critical Commentary, Vol. 2, 4th Edition, p. 1289.

⁴³ International Covenant on Civil and Political Rights, Article 18(2).

⁴⁴ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - “Acts of Bad Faith – Anti-Conversion Laws”, 2012, p. 207-238.

⁴⁵ Joint Statement by Githu Muigai, Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance; Asma Jahangir, Special Rapporteur on Freedom of Religion or Belief, and Frank La Rue, Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Freedom of Expression and Incitement to Racial or Religious Hatred, 22 April 2009.

⁴⁶ Id.

freedom of expression nor do they attempt to use the “least intrusive means” possible to achieve their intended effect.⁴⁷

Furthermore, the United Nations General Assembly’s Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) creates a positive duty that States must perform in order to eliminate the scourge of religious intolerance and discrimination.⁴⁸ Indian anti-conversion laws selectively target the conversions of religious minorities and thus, inappropriately discriminate against these religious groups. There have even been serious allegations of forced conversions to Hinduism and other serious violent attacks on non-Hindus in the name of reconversion.⁴⁹ A total of 12,857 reconversions to Hinduism from Christianity and Islam were reported by the VHP in 2004.⁵⁰

Lastly, in March 2016, with the full support of the State Department the United States Commission on International Religious Freedom’s (USCIRF) delegation applied for and was denied visas for a third time by the Indian Government. USCIRF members were also denied visas in 2001 and 2009. The delegation sought to visit India due to “longstanding and increasing concerns about religious freedom conditions in the country.”⁵¹ India’s denial of visas in this matter is utterly unacceptable. It is affecting the success of the Commission, the Commission’s ability to carry out their mandate, and India’s commitment to democratic values such as transparency, accountability, and fundamental rights.

Some Final Objections

Aside from the issues discussed above such as Hindu bias, ambiguous provisions, and conflicts with international law, the severity of penalties associated with anti-conversion laws and their necessity deserve further examination.

The penalties associated with violations of anti-conversion laws are severe. The Orissa and Madhya Pradesh Acts provide for imprisonment for a period of up to one year or a fine of 5,000 rupees.⁵² The Arunachal Pradesh Act provides for imprisonment up to two years or a fine up to 10,000 rupees for anyone guilty of converting, attempting to convert or abetting the conversion of another.⁵³ In addition, the Himachal Pradesh Act provides for maximum imprisonment period of two years or a fine of up to 25,000 rupees or both.⁵⁴ The Rajasthan and Chhattisgarh acts carry similar punishments.⁵⁵ Some acts also carry a higher punishment for the conversions of women, children and members of Scheduled Castes or Scheduled Tribes.⁵⁶ These penalties are notably

⁴⁷ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - “Acts of Bad Faith – Anti-Conversion Laws”, 2012, p. 207-238.

⁴⁸ Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, UN General Assembly, A/RES/36/55, 25 November 1981.

⁴⁹ Human Rights Watch, Overview of Human Rights Developments: India, 1999, <http://www.hrw.org/wr2k/Asia-04>.

⁵⁰ US Department of State, India, International Religious Freedom Report 2005, 8 November 2005.

⁵¹ 2016 USCIRF Annual Report

⁵² Orissa Act, Section 4; Madhya Pradesh Act, Section 4.

⁵³ Arunachal Pradesh Act, Section 4.

⁵⁴ Himachal Pradesh Act, Section 5.

⁵⁵ Rajasthan Bill 2008, Section 4; Chhattisgarh Act, Section 3.

⁵⁶ Himachal Pradesh Act, Section 5; Chhattisgarh Act, Section 3, Gujarat Act, Section 4; Orissa Act, Section 4; Madhya Pradesh Act, Section 4.

more severe than those imposed for rioting or causing death by negligence.⁵⁷ Given the ambiguity and discretion surrounding the laws, the penalties imposed are draconian and disproportionate.⁵⁸

As well, anti-conversion laws are unnecessary. Specifically, the Indian Penal Code criminalizes fraud and force and Sections 295(A) and 298 of the Code relate to harm to religious sentimentalities.⁵⁹ Many states view the Indian Penal Code as sufficient to address truly coercive conversions and thus, have not enacted anti-conversion laws on top of it.⁶⁰ Furthermore, the statistics do not support the hysteria surrounding mass conversions and the need for additional legislation; numbers of religious followers practicing each religion have remained remarkably stable.⁶¹

Conclusion

In conclusion, anti-conversion laws have a pro-Hindu bias, infringe on Article 25 of the Indian Constitution, and violate international standards such as the ICCPR and Universal Declaration of Human Rights. These laws are unnecessary and ambiguous. Moreover, they impose draconian penalties on offenders and do so in a disproportionate manner with religious minorities suffering the most. These laws should be immediately repealed/amended in every state where they currently exist and those responsible for forced reconversions to Hinduism should be held accountable for their actions.

⁵⁷Rajeev Shewan, 'Preliminary Submission on Rajasthan Dharma Swatantrya Bill, 2006.

⁵⁸ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - "Acts of Bad Faith – Anti-Conversion Laws", 2012, p. 207-238.

⁵⁹ Indian Penal Code (1860), Section 25, 295A, 298, 349.

⁶⁰ A.G. Noorani, South Asia Human Rights Documentation Centre, Challenges to Civil Rights Guarantees in India, Chapter 7 - "Acts of Bad Faith – Anti-Conversion Laws", 2012, p. 207-238.

⁶¹ Id.