

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 5

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Restrictions on Freedom to Propagate Religion vis-a-vis Anti-Conversion Laws in India

MALLOWS PRISCILLA P¹

ABSTRACT

The judgment of the Supreme Court in the case of Rev. Stanislaus v. State of Madhya Pradesh, had set the precedent for interpretation of the 'right to propagate religion' vis-a-vis the anti-conversion laws in India. The precedent has seen as the guiding light on deciding the constitutional validity of such laws. A reality check is also to be conducted to accept the fact that the anti-conversion laws in India do not confer unbridled restriction on the freedom of religion. An empirical study utilizing the data collected by Pew Research Centre is conducted to find whether the anti-conversion laws restrict freedom to propagate religion in India. The author analyses the said data and also gives certain suggestions to regulate coerced religious conversions, based on the outcome of the analysis.

Keywords: Freedom Of Religion, Anti-Conversion Laws, Propagation Of Religion.

I. INTRODUCTION

Religion, caste and culture are potential factors of identity in India and most certainly are potential factors of discrimination. Culture and caste are dependent on religion which is the controlling factor in defining the identity. There is no conversion from one culture to another nor from one caste to another but there is in religion. Religious conversion impliedly leads to cultural and caste conversion². Endorsing a religion changes the identity of an individual in the society. Right to change one's religion cannot be prohibited in a secular democracy with promising freedom of religion but the right to convert is not provided for under the Constitution of India, when came into question before the Supreme Court of India³, it was held to be not covered under the freedom to propagation of religion and thus upholding the laws regulating

¹ Author is an Advocate, India.

² For instance, Pongal is a harvest festival celebrated in the state of Tamil Nadu. It is a festival of worshipping the Sun God. Every farmer celebrates Pongal and it is a part of Tamil culture. When this farmer endorses Christianity, he ceases from celebrating Pongal, though it is a part of his culture but his religion prohibits him from worshipping the sun. With respect to caste, religious conversion displaces your caste. Hinduism has caste system and Christianity does not, so religious conversion from Hinduism to Christianity will eliminate the people from their caste.

³ Rev. Stanislaus v. State of Madhya Pradesh, 1977 SCR (2) 611

religious conversion in India. India has a longstanding but growing unease with religious conversions in a democratic country that recognizes freedom of religion. India has a history of religious conversions between its various religious communities, including significant conversions by lower castes to the minority religions.

At a time when scholars are increasingly focusing on law and religion in Islamic states, Marc Galanter's work reminds us of the intertwined nature of law and religion, even in countries officially committed to secularism. Legal and religious orders help to constitute each other. No secular State is or can be merely neutral or impartial among religions, for the State defines the boundaries within which neutrality must operate. For example, laws and court decisions have an impact on the official boundaries and definitions of religion itself. Certain aspects of what is claimed to be religion are given recognition, support and encouragement; others are the subject of indifference; finally some are curtailed and proscribed. Debates over the boundaries of religion and religious activity occur in legal discussions of whether proselytizing is essential to the practice of certain religions and thus protected by the right to freedom of religion. This question is central to determine the constitutionality of state laws limiting religious conversion in India, often entitled "Freedom of Religion" laws. Do these laws protect the religious freedom of groups that are vulnerable to missionary inducements, or are they restricting the freedom of citizens to propagate their religion to others or to change their own religious identity? Another way the State defines the boundaries within which neutrality must operate is by monitoring the boundary between religions.

Religious conversion allows people to cross this boundary, so laws regulating conversion put the state in the role of a guardian of these boundaries. This role of the State is examined with respect to the anti-conversion laws that have been legislated by the Governments in secular democracies in furtherance of taking charge of this role. Laws regulating conversion are of controversy not only in India but also in other secular multi-religious democracies. South Asia has emerged as the nexus of argumentative repository for such laws. Being a secular democracy, it has to be addressed and not silenced by legislating Freedom of Religion laws⁴ which is strongly criticised and is claimed to be misused in practice by violating the right to propagate religion. Nationalist Political Party persistently lays emphasis on anti-conversion laws, which are nomenclated as "Freedom of Religion" Acts. The stated rationale for anti-conversion laws is that Christians and Muslims are using coercion to convert vulnerable

⁴ Laws intend to prevent religious conversions carried out by the use of force or inducement or by fraudulent means. It has been titled as the Freedom of Religion Act and is commonly known as the anti-conversion law. The term anti-conversion law and freedom of religion Act will be interchanged in use in this research.

groups. These laws are pre-independence legislations, legislated by the then princely states. After independence, a Central law for the same was proposed but was never materialized. However, the State Legislatures were successful in passing such legislations. These laws are in force in six states in India, currently. The 2019 elected Government also has made efforts for an Anti-Conversion Bill in the Centre. The alleged purpose of each of the anti-conversion laws is to prohibit conversion by force, fraud, or inducement. Each of these laws state that, "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 allurement or by any fraudulent means nor shall any person abet such conversion."⁵

These laws define conversion, allurement, fraud, coercion in vague literature and impose blanket ban on religious conversion. Further penalties with fine and imprisonment are imposed and conditions are laid down for religious conversions, if any. These laws have been severely criticized and alleged to restrict the freedom of religion and in particular freedom to propagate religion and freedom to change one's religion. But when the Constitutionality of these laws was questioned, the judiciary denied it to be a restriction on the freedom of religion. This denial has haunted India since 1977 and has always been suggested a re-consideration. The restrictions on freedom of religion in India have been surveyed and data has been put together by the Pew Research Centre. The data with respect to India has been separated and is analysed here to find whether the anti-conversion laws restrict freedom to propagate religion.

(A) Literature Review

India, a secular democracy with a promising freedom of religion under the Constitution of India, was placed in the list of Tier 2⁶ countries in the annual report⁷, 2019 of the United States commission on International Religious Freedom. This report instigated the author to understand the position of the freedom of religion in India. An article titled, '**freedom of religion**⁸' by T.N Madan helps to trace the evolution of freedom of religion and evaluates the situation in India. The author comes to an understanding that freedom of religion under the Indian Constitution are with defined limits and finds no issue with the freedom of conscience and the right to profess and practice a religion of one's choice but with that of the right to

⁵ Meghan Grizzle Fischer, Anti-Conversion Laws and the International response, 6 Penn St. J.L. & Int'l Aff. 1 (2018)

⁶ defined by the U.S. Commission on International Religious Freedom as nations in which the violations engaged in or tolerated by the government during 2018 are serious and characterized by at least one of the elements of the "systematic, ongoing, and egregious" CPC standard.

⁷ USCIRF, Annual report of the U.S Commission on International Religious Freedom, 2019, <https://www.uscirf.gov/reports-briefs/annual-report/2019-annual-report>

⁸ T.N.Madha, Freedom of Religion, Economic and Political Weekly, Vol. 38, No. 11, pp. 1034-1041 (Mar. 15-21, 2003)

propagate religion being of a debatable issue since the Constituent Assembly debates. The State intervention over a person's religious faith in India is listed out in the article from providing funds to holy tours to legislating personal laws. The author then discusses about tolerance and religious pluralism in India in the eras of Vivekananda, Dayanand, Emperor Ashoka and Akbar and the same being threatened by the ideology of cultural nationalism (Hindutva) and ends with a note that freedom of religion is in its nascent stage and is of issue everywhere including United States, China, Israel or any other Muslim nation. The article gives a brief overview of the freedom of religion in India getting dislinked between the topics he was trying to discuss in the articles. Beginning with the right to propagate religion and drifted away with the State interference in the religious affairs and concluded with an end note of tolerance posing religious freedom to be an issue forever. One striking feature in the article was that it carried a line of thought about Christian missionaries work in India and it appeared that the author attempted to have an implied criticism of the right to propagate religion in India, presenting an unclear picture about the issue he discussed. Thus the position of right to propagate religion not being clear and the mention of T.N.Madan about anti-conversion laws affecting the proselytising activities of the Christian missionaries and the argument that in practice all anti-conversion laws might be used to target the conversion efforts of religion minorities⁹ triggered the curiosity to examine the anti-conversion laws and their restriction on the right to propagate religion. The study on anti-conversion laws in India has gained international attention than domestic attention which is required. Most of the works on the anti-conversion legislations is from universities abroad. A concern that requires domestic attention is under-researched in India by Indian scholars due to the presumptive notions and circumstances of politics in India, generalizing or ignoring the concern that exists. However, the work of the scholars such as James Andrew Huff, Laura D. Jenkins, Meghan Grizzle Fischer, and Ian Richard Douglas has focused on the study of India's anti-conversion laws. **James Andrew Huff** in the article titled **'Religious Freedom in India and analysis of the constitutionality of anti-conversion laws'**¹⁰ traces the historical origins of anti-conversion laws in India a part similar to that of Laura Jenkins' work in 2008 but James here focuses on historical origin of all the anti-conversion laws in India from pre independence to current while Laura Jenkins focuses only on the anti-conversion legislation in Chattisgarh. Keeping in background the historical aspect, the article devolves into setting the base for considering the constitutionality of anti-conversion laws by briefing about the required provisions of the Indian Constitution. The article looks into

⁹ id, pp.71

¹⁰ James Andrew Huff, Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws, 10 Rutgers J. L. & Religion 1 (2009)

the international aspect of the freedom of religion by referring to Universal Declaration of human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). The judicial decisions and opinions from the Apex Court and the High Courts have been considered and James feels that there is no equality of religions and there is being a social reformation of religion in India by the judiciary. With these four aspects in background, the article examines the constitutionality of anti-conversion laws. The constitutionality has been upheld by the Apex Court but James felt the need to re-examine its constitutionality and hence this article. In determining the constitutionality, the article supports the judgment of the Orissa High Court, ruling the laws to be unconstitutional and supporting the judgment of the High Court negating the legislative competency of the Orissa State Legislative Assembly. The article goes ahead on suggesting the High Courts to look into the Orissa High Court's judgment by ignoring apex Court's decision, which is evident that this suggestion is redundant. The analysis of anti-conversion laws being a subject of religion rather than public order is also identified by this article in brief when the same subject was dealt in length by the South Asian Human Rights Documentation Centre. The article concludes by stating that there is time to re-consider the Apex Court's decision to declare the anti-conversion laws as unconstitutional. The article gives the required judgment but requests the Court to reconsider the judgment, thus expressing the dissatisfaction of the reasoning of holding the impugned laws to be Constitutional.

After doubting the ruling of the Apex Court of India, a reading of the anti-conversion laws in the statute book was necessary. The language of these laws in the Statute book express a vagueness and ambiguity in the terms used in the legislation. The language of these anti-conversion laws was scrutinized with a detailed eye by the South Asian Human Rights Documentation Centre and was recorded in the article **Anti Conversion Laws: Challenges to Secularism and Fundamental Rights**¹¹. South Asian Human Rights Documentation Centre in their study has found that the anti-conversion laws poses a threat to secularism and have substantiated their claim in the article. The article demonstrates the vague language used in the anti-conversion laws in India and how it violates rather than guarantying the freedom of religion. The objection that the author raises to the anti-conversion laws is the broad language used in the statute. The article looks into the definitions of conversion, force, inducement, fraud in the legislations and concludes that the term 'conversion' has used in the sense to cover only religions that are not native to India, the term 'force' used in the legislation infringes one's right to change religion rather to propagate religion. The term 'inducement' also impinges

¹¹ South Asian Human Rights Documentation Centre, Anti Conversion Laws: Challenges to Secularism and Fundamental Rights, Economic and Political Weekly, Vol. 43, No. 2, pp. 63-69, 71-73, (Jan. 12 - 18, 2008)

upon the legitimate ways to proselytise religion and it is corroborated by the Orissa High Court judgement in the case of Yulitha Hyde and Others v. State of Orissa. But the uncertainty, no more seems to be an issue because of the Supreme Court's ruling over-turning the Orissa High Court's judgment in the case of Rev. Stainislaus v. State of Madhya Pradesh. The article gives three points of critical analysis to the Supreme Court judgment. First, the side stepping of the apex Court in applying the essentiality test to conversion as an integral part of Christian faith. Second, the constitutional debate underlying Article 25 not being referred to in deciding the right to convert under Article 25 and third is authorizing the restriction on 'public order' where the reasoning of the Court on this ground of restriction is found to be not satisfactory. Further the article addresses the freedom of religion domestically and internationally and the lack of justification of the anti-conversion laws not being a restriction over the rights guaranteed. The article concludes by discouraging the use of anti-conversion laws for majoritarian purposes and ideology when there can be alternatives to penalize improper prolestyzation and stands opposed to the legislations analysed as they pose a threat to the Indian secularism and weaken the principles of equality and tolerance. Though the article identifies tolerance to be the strongpoint behind India's secularism and State's duty to endorse it but does not address the issue of tolerance in detail and the recommendations or the suggestions to State that can improve the level of tolerance in India. The article at one point mentions about infringing a person's right to change religion but does not discusses about the same. The language of the anti-conversion law being unclear is clearly established in by the South Asian Human Rights Documentation Centre and is also corroborated by Laura Dudley Jenkins' work where the author not just examined the language of the law but looked into the history, the judicial stand of the State of Orissa and Chhattisgarh and attempted a justification for the existence of anti-conversion laws. Laura Dudley Jenkins in the article **Legal Limits on Religious Conversion in India**¹² scrutinizes the freedom of religion laws in India. She believes that these laws are made on two assumptions first, that people who convert in groups may not have freely chosen conversion, and second, that certain groups are particularly vulnerable to being lured into changing their religion. Keeping in background the language of the law and the regulation it brings, the author has examined conversion in India by placing reliance on the works of Marc Galantor. The law of Chhattisgarh is taken up for examination by the author tracing it back to the colonial era. The transformation of the law from Raigarh State Conversion Act of 1936 devolving into Madhya Pradesh Dharma Swatantrya Adhiniyam in 1968 without any change in the intent of

¹² Laura Dudley Jenkins, *Law and Contemporary Problems*, Vol. 71, No. 2, Galanter-Influenced Scholars, pp. 109-127 (Spring, 2008)

the legislature in independent India with the confidence on the report of the Christian Missionary Activities Enquiry Committee of 1956 and traces the journey of this law in the Constitutional Courts. The apex Court's affirmation on the need for the law on the restriction of public order and freedom of conscience has been highlighted by the author. The take-over of assumption over the testimony of converts has been explained by the author with a help of a case in Raigarh. The author shifts the attention to Orissa Freedom of Religion Act dating back to 1999 when Graham Staines was murdered and the Wadhwa Committee report that followed after the incident. The author expresses that the report pointing fingers to the failed surveillance of the State in tracking conversions is to overshadow the motive of the killers over that of the converts. The article gives a brief overview of the penalties under freedom of religion laws and finally discusses the relevance of these laws in the contemporary politics justifying the freedom of religion laws for the purpose of protection of the weaker section in a Hindu nationalist perspective. There being only criticisms of the freedom of religion laws, this article is the first attempt to bring in a justification for the existing laws of concern here. Though concluding that the right to convert is curtailed and leaving with a comment on the right to convert oneself subject to indifference. In spite of finding a justification, the author criticizes about curbing the right to convert. But the issue is that the right to convert does not exist is clearly established by the Apex Court and is believed so by the nation.

The right to propagate religion is of a controversy due to the conversion activities in India that had taken place, have taken place and will continue to take place for ever. There is no end to propagation of religion in India, religious sects that deal with propagation of religion, most of them being a minority in India. Christianity can be always used as an example as a religion which has a mandate to propagate religion. Though the literature available does not explicitly mention about the anti-conversion laws targeting the Christian missionaries in India, it impliedly conveys this fact and is evident from the Apex Court decision being a case of Christian propagation. The Christian conversion in India has also been studied and recorder. A work from the University of Toronto on the conversion to Christianity in India has been beautifully worked on by **Ian Douglas Richards** in his study titled, **'Poles Apart: The Debates on Religious Conversion in Post-Independence India'**¹³. This work is an historical analysis of the ideological and religious debates over conversion to Christianity in India since its Independence in 1947. In particular, the study focuses on how these debates have played out within various forms of proposed and enacted anti-conversion legislation at the state and

¹³Ian Douglas Richards, *Poles Apart: The Debate on Religious Conversion in Post-Independence India*, Proquest Number:10241550 ProQuest LLC (2017)

federal levels of government. The study identifies the key poles of the conversion debate, first set forth in India's Constituent Assembly Debates, and which have remained remarkably uniform through 70 years of legislation, rhetoric, and scholarship. The first chapter situates the study within the context of existing scholarship on both conversion and Christianity in India, with a focus on emerging scholarly views of the manifold ways in which conversion can be defined. Beginning with defining the word conversion, he explains the theories of conversions and the existing study of freedom of religion in India. The study examines India as a secular nation and attempts to identify the status of religious minorities within a conceptual space which, while secular, reflects a predominantly Hindu worldview. The study provides an extensive analysis of the conversion debates preceding the Indian Constitution, government reports, High Court rulings, and legislation proposed and enacted on regulating conversions. Later, he examines a second tranche of anti-conversion legislation enacted at the state level between 2002 and 2008, following the rise to power of the Hindu nationalist political parties at various levels of government in India and also provides for a contemporary expressions of the debate over religious conversion in India, with a focusing on court challenges to existing anti-conversion legislation. The concern of secularism is addressed in the study, arguing that what is at stake for India as a secular state with constitutional protections for freedom of religion. This argument is put forth by Douglas by looking into how both conversion's critics and proponents understand the diversity of motivations for converting, and how this knowledge is applied to ensure religious freedom for all of India's citizens. This study has taken into consideration cases and reports that the previous literature has failed to consider. Even though the literature available has analysed the anti-conversion laws they had only mentioned about the required Government reports. If the Article has analysed the reports, the analysis on the laws have given a back stage, like in the article of **Chad M. Bauman** titled **"Postcolonial Anxiety and Anti-Conversion Sentiment in the Report of the Christian Missionary Activities Enquiry Committee"**¹⁴,a giving the reasons behind the report and the contents of the report. It is a complete doctrinal study on the available resources that add input to the subject. This study being complete in itself, cannot be debated that the work of Douglas has ignored the sources available but the reality of the situation is not been captured by this doctrinal study. This is where the empirical aspect is to be considered in order to capture the ground reality of the limits on conversion in India. So, the work of the author will build on the work of Douglas.

¹⁴ Chad M. Bauman ,Postcolonial Anxiety and Anti-Conversion Sentiment in the Report of the Christian Missionary Activities Enquiry Committee, *International Journal of Hindu Studies*, 181-213, (12.2.2008)

Now, it is well established that the contemporary developments also demonstrate that the rhetoric and antipathy towards conversion and especially conversion to Christianity, remains a real and significant issue in India. Culture can play an important role in this issue in India when people shift religion. The idea of Hindu Nationalism shadowed by Indian nationalism attacks the culture of Indian when they convert from one religion to another. The study titled, **‘The power of persuasion: Hindutva, Christianity, and the discourse of religion and culture in Northeast India’**, written by **Arkotong Longkumer** is centred on the language of ‘religion and culture’, the paper examines the intersection between Sangh Parivar activities¹⁵, Christianity, and indigenous religions in relation to the state of Nagaland. The article then argues that the discourse of ‘religion and culture’ is used strategically by Sangh Parivar activists in the Northeast to assimilate disparate tribal groups and to envision a Hindu nation. In this work the author visualizes, the idea of Hindutva as a nationalist concept and not a theocratic or religious one. However, the article argues that the boundaries between Hindutva as cultural nationalism and its religious underpinnings are usefully maintained by the Sangh Parivar in the context of Nagaland because they allow Sangh activists to simplify the situation by relegating Christianity as mere belief, ‘as a state of mind rather than as constituting activity in the world’. By deploying the language of belief, Sangh activists are able to reconstitute the limits of Christianity and incorporate it into Hindu civilisation on their own terms. The Sangh version of Christianity can thus be encompassed with the civilisation and familial characteristic of Bharat. In this context, the author addresses two interrelated issues. First, he presents the work of the Sangh Parivar in the Northeast of India, which has grown in recent years. They believe that Christianity is challenging the territorial integrity of Bharatvarsh. This ‘challenge’ is regarded by the Sangh as territorial ‘secessionism’; their aim is to prevent it and unite the country. In this way, the Sangh disregards the geographical marginality of the Northeast – only 1 per cent of its borders are with the rest of India. For many this marginality has meant that the region has been maligned and misunderstood, not least due to differences in culture, race, and religion. Christianity, to a large extent, fills these gaps of insecurity; it has become a powerful marker of identity in the Northeast of India with large majorities in Nagaland, Mizoram, Meghalaya, the hill areas of Manipur, and parts of Arunachal Pradesh. Next, he assesses certain implications of the relationship of Christianity with Sangh Parivar notions of what it means to be ‘Hindu/Indian’ by exploring how these notions enter into contemporary discourse through

¹⁵ The Sangh Parivar are known as a family of associations organized around the core Rashtriya Swayamsevak Sangh (RSS) principles to establish and promulgate the notion of Hindutva (or Hinduness), whose aim is to build a strong Hindu nation. It includes, for instance, the political (BJP) and the religious wing (Vishva Hindu Parishad –VHP).

his work with the Sangh Parivar activists by highlighting two points. First, to resist the spread of Christianity and to counter its suspicion of 'Hindu' groups, the Sangh is working closely with non-Christian indigenous religions in the region. Historical and mythological narratives are drawn from the epics such as the Mahabharata to illustrate their links with these indigenous groups, and to emphasise the composite territorial integrity of Bharat since time immemorial. The Sangh draws on the discourse of sanatan dharma (eternal religion and culture) to consolidate this unifying representation. Second, to limit its cultural force, the Sangh characterise Christianity solely as 'the profession of belief' precisely to be able to encompass it within the broader spatial domain of Bharat. In this context, he examines the ethnographic construction of a 'Christian Hindu' and illustrates how the Sangh develop this construction by examining the broader tension between locality and religious allegiance, and by following this Sangh territorial logic: just as Christianity demands exclusive religious allegiance, so do the Nagas demand exclusive territorial independence. Once this allegiance is recomposed to its more inclusive 'Hindu' ideology, integration, and not secessionism, will be achieved.

Although this work focuses primarily on Nagaland, the article states that these ideas resonate regionally within Northeast India, and more generally in South and Southeast Asia but the author would strongly disagree to this statement made in this article as the case of Nagaland cannot be equated with other Indian states as Nagaland is primarily a Christian state while other States in India would view Christianity as the religion of the minorities or as a foreign religion. The allegation of the Sangh Parivar's activities towards the religion of Christianity can be found to be true only when it is in confirmation from the people in the field who face them when they exercise the right to propagate religion. Also, in this work the author purely brings it as a social debate on religion and culture and the role of law has not been addressed. This being the lacuna in this work, the proposed empirical study will help in examining the intersection of law in the Christian activities in the Indian States, especially in that of the rural and illiterate parts of the State where forced religious conversions are accused for.

Thus the role of culture points out an issue in the debate on conversion in India. Another component that was identified by **C.S. Adcock** in his article¹⁶ with respect to conversion was that of Caste. This article brings in a different perspective and understanding of the interface between caste and conversion focusing not just on the proselytizing religions but finding the reason for conversion from the Ancient Hindu period. This article is way ahead of all the literature that analyses anti-conversion laws from pre-independent India. The era that this

¹⁶ C.S. Adcock, *Debating Conversion, Silencing Caste: The Limited Scope of Religious Freedom*, 29 *J. L. & Religion* 363 (2014)

article traces back to is that of Vedas and Dharmasastras. When all the existing literature criticized the restriction on right to propagation, this article examined the arguments against proselytization, providing an argument from the other side that not just Hindu nationalist but Indians in general consider proselytizing activities to be against secularism, placing reliance on the Shuddhi Movement and the tolerance critique. This article argues that the criticism of freedom of religion Acts and the politics of conversion is being discussed without mentioning caste. The contemporary Freedom of Religion Acts betray a preoccupation with low castes, both imposing stricter penalties on those who proselytize among them and policing the conversions of low castes with extra rigor. The legislation shows concern only for low castes' conversions away from Hinduism, however. Thus a second critical objection the article lists out to the Acts is that in imposing unequal restrictions on conversions to Islam and Christianity, they extend special rights to the Hindu majority. The third major objection against the legislation is that it demonstrates paternalism toward low castes-seems to part ways with wider discussions of secularism and religious freedom. Historically, criticism of proselytizing religiosity helped to secure the practical reality of a Hindu majority that forms the political backdrop to disputes over religious conversion today, just as it helped to delegitimize and defuse low-caste self-assertion decades ago. Like the *shuddhi* debates of the 1920s, contemporary debates over religious freedom in India frame the conflict as a *religious* problem, deflecting attention from the politics of caste. Assessments of the politics of religious freedom need to be attentive to what the framing perspective of religious freedom excludes.

The allegation of this article that caste is one of the main components to restrict the right to propagate religion has to be verified by an empirical study as to whether caste is the major opposition to the exercise of the right to propagate religion. The term 'proselytize' used in this article has to be examined as to whether it means the same as 'propagate' or an extension of the meaning to propagate. This needs an understanding of the legal language used in the context of anti-conversion legislations.

Anti-conversion legislations are not unique to India, other countries in the world also have legislated and enacted anti-conversion laws. The existence of anti-conversion laws in four of the South Asian states- India, Myanmar, Nepal, Bhutan and Pakistan has been analysed with the background and the legislations in the countries. An international evaluation of the rights involved in the conversion activities has been noted by **Meghan Grizzle Fischer**¹⁷ who presents the international legal basis for the freedom to convert and then evaluates the language

¹⁷ Ibid 4

of these laws and bills in that context. It also details the effects these laws have had on believers of different faiths, including severe persecution of religious minorities. It explains how the United Nations has a special role to play in combating anti-conversion laws and evaluates the UN's response to anti-conversion laws through its many mechanisms, including the Human Rights Council, special rapporteurs, the Universal Periodic Review, human rights treaty bodies, and the General Assembly. The article calls on the United Nations to combat anti-conversion laws more effectively, especially through returning to its mandate to promote and protect universally agreed, fundamental rights. In this article, the countries five countries analysed are countries that had a State religion or countries that have a State religion, excluding India which never had nor does have a State religion. Placing India in line with those nations is a threat to secularism in India and a research on the freedom to propagate religion has to be researched on an empirical basis to know the answer for India's position in international reports on freedom of religion being that of a concern.

The literature available strongly advocates for the ground reality to be known as to whether the anti-conversion laws as alleged impose any restriction from the Government in restricting the freedom to propagate religion and freedom to change religion. Hence, this research analyses the empirical data available on the restrictions on the freedom of religion

(B) Statement of Problem

The freedoms enumerated under Article 25 of the Indian Constitution are subject to public order, morality and health. One of the freedoms guaranteed under Article 25 is the freedom to propagation of religion. A person propagates a religion and the other person who hears it, gets converted to the religion being propagated. Right to convert is not covered under the right to propagate religion as was made clear by the apex Court¹⁸. There are laws in place in 6 States of India to regulate religious conversions. The literature available on the freedom of religion laws criticizes the language of the law¹⁹, analyses its constitutionality²⁰ and critically analyses the only judgment on this subject. The laws have been alleged to restrict the freedom of religion rather than protecting freedom of religion. But have not proved that the restrictions on freedom of religion in India stems from the anti-conversion laws. These allegations have to be examined and hence this research.

¹⁸ *Supra* 2

¹⁹ South Asian Human Rights Documentation Centre, *Anti Conversion Laws: Challenges to Secularism and Fundamental Rights*, *Economic and Political Weekly*, Vol. 43, No. 2, pp. 63-69, 71-73, (Jan. 12 - 18, 2008)

²⁰ James Andrew Huff, *Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws*, 10 *Rutgers J. L. & Religion* 1 (2009)

(C) Objectives

1. To determine whether anti-conversion laws plays an active role in restricting the freedom of religion in India.
2. To examine if anti-conversion laws, are the only Government restriction imposed on the freedom to propagate religion
3. To find whether the restrictions imposed on the freedom of religion are targeted towards preventing religious conversions.

(D) Hypothesis

Anti-conversion laws influence the Government restriction on freedom to propagate religion

(E) Research Question

1. What are the restrictions on freedom to propagate religion in India?
2. Are anti-conversion laws the parent law for the restrictions on freedom to propagate religion?

(F) Scope and Limitations

This report will analyse the empirical data on restrictions on freedom to propagation of religion in India and its relation to anti-conversion laws. This research will help in understanding how anti-conversion laws influence the restrictions on the fundamental rights which also can lead to infringement of the guaranteed freedom. The denial of these laws to be unconstitutional and not restrictive will be checked through this research.

This report has excluded the social restrictions in India. The probabilities that the anti-conversion laws would be misused and may lead to higher social hostilities in India is not taken into account as the study focuses on the Government restrictions that law can impose and not the social restrictions it can bring about. Government restrictions can be challenged if it infringes the fundamental rights but social restriction recourse to unless tolerance is observed. Another limitation to the study is that the data is analysed from Pew Research Centre, which is reliable but the data is available only up till 2016. However in India there has not been any significant change with respect to the anti-conversion laws.

II. DATA ANALYSIS

The data on Government restrictions on religion around the world has classified the 198 countries into four levels- Very High, High, Moderate and Low as shown in the map Figure 1. The sources of the data collected and the coding process for the Government restriction Index has been provided in Annexure-1. The level of Government restriction in India is high

according to the data collected by the research Centre. India being a secular country with promising freedom of religion placed in the level of high restrictions probes in to analyze the data on the Government restrictions in India. The Government Restriction Index has been arrived at with the help of 20 indicators.

Government restrictions on religion around the world

Level of government restrictions on religion in each country as of December 2016

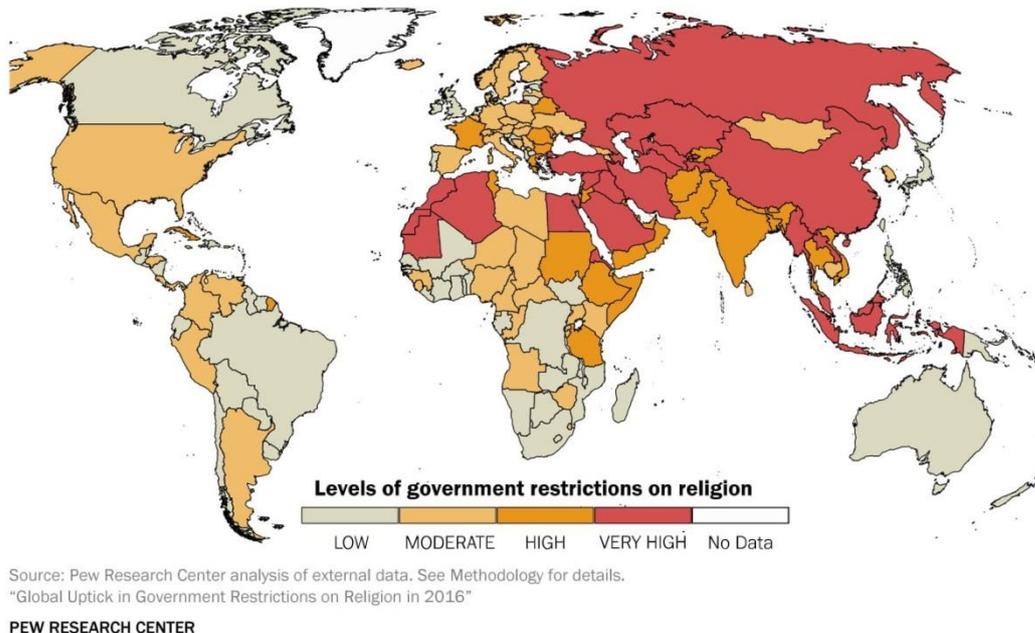


Figure 1: Government Restrictions on religion around the world)

Of these 20 indicators, 5 indicators will be taken into consideration for the purpose of this research. The indicators numbered 5 to 9²¹ are the 5 indicators that relate to freedom to propagate religion and freedom to change religion. The results of these indicators show that the freedom to propagate religion and freedom to change religion is not prohibited but restricted. It also made available to every person in India but with restrictions. Whether anti-conversion laws are the cornerstone of these Government restrictions will be proved in this research.

S.No.	Indicators	India
1.	Is public preaching by religious groups limited by any level of government?	Yes, for some religious groups
2.	Is proselytizing limited by any level of government?	Yes, for all religious groups

²¹ See Appendix

3.	Is converting from one religion to another limited by any level of government?	Yes
4.	Is religious literature or broadcasting limited by any level of government?	Yes
5.	Are foreign missionaries allowed to operate?	Yes, but with restrictions

Figure 2: The 5 indicators of Government restriction on freedom to propagate religion and their results for India as recorded by the Pew

Research Centre

(A) Is public preaching by religious groups limited by any level of government?

Public preaching forms an essential component of propagation of religion. When public preaching by religious groups is limited, it would directly infringe on the freedom to propagate religion. Religious preaching is limited in India for some religious groups as per the data. Not all religious groups indulge in public preaching. Only certain religious groups preach the religion to the general public. This limitation imposes restriction on such religious groups. One example could be the evangelical Protestants in India who preach to the public, generally. Preaching to the public could range from preaching from the stage in a religious gathering to passing a flyer on the in the street by propagating their religion. Public preaching is relevant only for faiths that make it mandatory for the followers of that faith to spread the message. The minority religious groups in India fit this criteria and not the majority. Hence it can be said that this restriction is discriminatory.

1. Relevance of Anti-conversion laws

Anti-conversion laws are alleged to infringe the freedom to propagate religion. Public preaching is one of the aspects of propagation of religion. It has been inferred from the data collected that public preaching is limited in India by the Government for some religious groups. There are no laws that specifically regulate public preaching by religious groups in India. Anti-conversion laws can be said to be the law that this restriction stems from. To support this contention, reliance can be placed on the incidents when certain preachers were arrested for public preaching alleging forced conversions but were not convicted²².

²² See Tariq Ahmad, State Anti-conversion Laws in India, The law Library of Congress, Global Research Centre, pp.1-25, 17, (2017)

(B) Is proselytizing limited by any level of government?

What is proselytizing and what is propagation of religion? Proselytizing is the attempt to persuade other people to accept your religious beliefs, and to consequently change their religion²³. The purpose of propagation of religion is to proselytize and has to be accepted as an undisputed fact. Propagation without proselytizing disables the former. Exercise of propagation of religion will lead to religious conversion which is also another undisputed fact. The relationship between propagation of religion, religious conversion and proselytizing has been demonstrated in Figure 3. It cannot be separated. In this process it has to be ensured that no illegal means or any element of coercion or fraud is involved in propagating one's religion. The data reveals that proselytizing is not allowed in India and the anti-conversion law is the limit for the same.

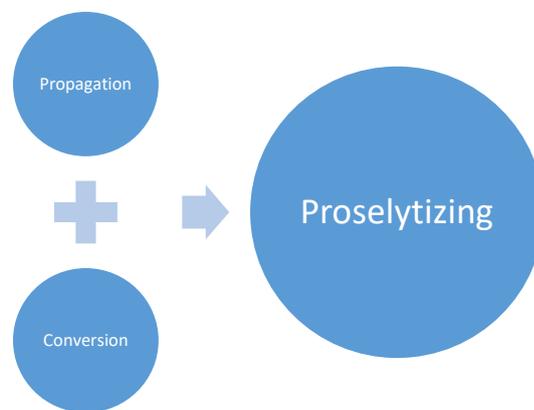


Figure 3: The relationship between propagation of religion, religious conversion and proselytizing

1. Relevance of anti-conversion law

Anti-conversion laws come into play in controlling the unethical religious conversions in the process of propagation of religion. When proselytizing is not allowed in India, freedom to propagate religion serves no purpose and is a mere freedom on the letter of law and not in spirit of the law. The data states that proselytizing is not allowed for all religious groups. In such a case, anti-conversion law would be a restriction that is valid as limiting proselytizing limits persuading people to convert and no question of religious conversions arises when this process is prohibited. But anti-conversion law prohibits only forced conversions as in the language of the law and has been criticized by scholars that it prohibits religious conversion per se. However the data is clear as to prohibition of proselytizing and hence it is clear that this restriction also stems from the existing anti-conversion law.

²³ Asher Maoz, *Proselytism and the Right to Change Religion, Law and Religion in the 21st Century*, Routledge, 243 (2016)

(C) Is converting from one religion to another limited by any level of government?

Propagation of religion and religious conversions cannot be separated. These two elements are like two sides of the same coin. Propagation of religion leads to religious conversion and it cannot be denied. A person converts to a religion when he is aware of the religion he gets converted and he is made aware by someone's propagation of religion. When propagation of religion is limited, converting from one religion to another is also limited effectively. Thus this indicator would show the restriction on freedom to propagate religion.

1. Relevance of anti-conversion laws

Anti-conversion laws not just prohibit coerced religious conversions but also impose certain conditions on religious conversions. Persons converting also lose the benefit of affirmative action as a result of religious conversion²⁴. This restriction clearly stems from the anti-conversion laws that impose such conditions.

(D) Is religious literature or broadcasting limited by any level of government?

Religious literature is a means of propagation of religion and broadcasting of religious programs are also a means of propagation of religion. The restriction on religious literature and broadcasting would restrict the freedom to propagate religion in India.

1. Relevance of anti-conversion laws

This indicator would be the least relevant to stem from anti-conversion laws. However, it still has the connection. Religious literature and broadcasting can persuade people to convert from one religion to another. Unethical means of conversions through literature and broadcasting are possibilities of allurements through the literature and broadcasting facilities that anti-conversion laws can check on. Thus, limiting religious literature and broadcasting.

(E) Are foreign missionaries allowed to operate?

India has a long standing unease with religious conversions. The purpose of foreign missionaries is to propagate religion and provide aid in their own possible way to the needy. This combined purpose of propagation and providing the needs cannot be separated. They propagate religion and also help in providing education, medical facilities and so on. People accept the religion propagated by these missionaries in the course of the aid provided. Any restrictions on their work will effectively be a restriction on propagation of religion.

²⁴ See Madhya Pradesh Freedom of Religion Act, 1969

1. Relevance of Anti-conversion law

Missionary work is not prohibited in India through any laws and was also made clear by the Delhi High Court in *Dr.Christo Thomas Philip v. Union of India&Ors.*²⁵. Yet, the data reveals that there are restrictions on operation of foreign missionaries in India. Foreign missionaries provide various aids to the people in the place they are ministering. Their work includes religion and aid. These aids provided by them can be termed as allurements under the anti-conversion law because of the definition that law has applied. Thus, limits the operation of foreign missionaries in India.

Thus it has been established that anti-conversion laws are the cornerstone for the restrictions on the freedom to propagate religion. When propagation of religion is expressly provided under Article 25 of the Constitution of India, the end result should also be considered. Proselytizing in unethical ways are the practices that have to be condemned. Anti-conversion laws are not the solution for the same, which disables even ethical ways of propagation of religion.

Further, this contention can be established by comparing the results for Nepal in the same data collected by the Pew Research Centre. Nepal is a country that can be compared with India with respect to restrictions on freedom of religion. Both the countries are secular democracies with anti-conversion laws. Both these countries have Hindu majority and religious faiths that propagate religion are minority in these countries. The indicators for Nepal with respect to Government restrictions on freedom to propagate religion are also the same as that of India, which is provided in the Table below (Figure 4). Moreover India and Nepal are ranked in the category of High in the Government Restriction Index²⁶. Nepal also has the same trend as that of India and it clearly establishes that it is the anti-conversion law that has resulted in this trend in these two countries. The restrictions imposed are as a result of these laws.

S.No.	Indicators	Nepal
1.	Is public preaching by religious groups limited by any level of government?	Yes, for some religious groups
2.	Is proselytizing limited by any level of government?	Yes, for all religious groups
3.	Is converting from one religion to another limited by any level of	Yes

²⁵ W.P.(C) 1775/2018 & CM Nos. 27041/2018

²⁶ See Appendix 1

	government?	
4.	Is religious literature or broadcasting limited by any level of government?	Yes
5.	Are foreign missionaries allowed to operate?	Yes, but with restrictions

Figure 4: The 5 indicators of Government restriction on freedom to propagate religion and their results for Nepal as recorded by the Pew

Research Centre²⁷

III. CONCLUSION

Anti-conversion laws are special laws that are claimed to protect the vulnerable groups from forced religious conversion. There are general laws in force in India that criminalizes fraud and can be implemented in cases of forced religious conversions. But anti-conversion laws are also to ensure that the majority religious group always remain a majority and is not disturbed by the minority religious groups and hence the vague literature that is capable of a blanket prohibition on religious conversions. The Legislature has to reconsider the Freedom of Religion Acts when these laws give way to restrictions on freedom to propagate religion and with the passage of time it results in an increase in social hostilities in the State. Government has to repeal these Freedom of Religion Acts and no such law has to be legislated with vague literature. Unethical conversions can very well be made a distinct offence, specifically defined and inserted under Chapter VX of the Indian Penal Code 1860. Anti-conversion laws have to be repealed in order to curb the authority of these discriminatory restrictions. If the necessity of such law is demanded in the future, these Acts have to be reformed and have to specifically narrow down the definitions of fraud, coercion and inducement. False complaints have to be addressed and no misuse of the law can be permitted. The law cannot be discriminatory in enforcement against targeted minority religious groups. One last suggestion would be to not deny the affirmative action for the converts who continue to be in the weaker sections of the society. If anti-conversion laws are put through this reformation then the restrictions on freedom to propagate religion will largely be reduced and India can be ranked in the moderate category.

²⁷ Ibid 25

IV. BIBLIOGRAPHY

ARTICLES

1. Rex Adhar, Is Freedom of Conscience superior to Freedom of Religion?, *Oxford Journal of Law and Religion*, 1-19 (2018)
2. Asher Maoz, *Proselytism and the Right to Change Religion, Law and Religion in the 21st Century*, Routledge, 243 (2016)
3. James Andrew Huff, *Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws* , 10 *Rutgers J. L. & Religion* 1 (2009)
4. T.N.Madha, *Freedom of Religion, Economic and Political Weekly*, Vol. 38, No. 11, pp. 1034-1041 (Mar. 15-21, 2003)
5. James Andrew Huff, *Religious Freedom in India and Analysis of the Constitutionality of Anti-Conversion Laws* , 10 *Rutgers J. L. & Religion* 1 (2009)
6. South Asian Human Rights Documentation Centre, *Anti Conversion Laws: Challenges to Secularism and Fundamental Rights, Economic and Political Weekly*, Vol. 43, No. 2, pp. 63-69, 71-73, (Jan. 12 - 18, 2008)
7. Laura Dudley Jenkins, *Law and Contemporary Problems*, Vol. 71, No. 2, *Galanter-Influenced Scholars*, pp. 109-127 (Spring, 2008)
8. Ian Douglas Richards, *Poles Apart: The Debate on Religious Conversion in Post-Independence India*, Proquest Number:10241550 ProQuest LLC (2017)
9. Chad M. Bauman ,*Postcolonial Anxiety and Anti-Conversion Sentiment in the Report of the Christian Missionary Activities Enquiry Committee, International Journal of Hindu Studies*, 181-213, (12.2.2008)
10. C.S. Adcock, *Debating Conversion, Silencing Caste: The Limited Scope of Religious Freedom*, 29 *J. L. & Religion* 363 (2014)
11. Meghan Grizzle Fischer, *Anti-Conversion Laws and the International response*, 6 *Penn St. J.L. & Int'l Aff.* 1 (2018)
12. V.P.Bharatiya, *Propagation of Religion: Stainislaus v. State of M.P*, *Journal of the Indian Law Institute*, Vol. 19, No. 3 (July-September 1977), pp. 321-333
13. Tehmina Arora, *Asia: The Ambiguity Religion in India: A Commentary on Laws*, 4 *Christian Law*. 18 (2008)
14. Rajeev Dhavan, *Religious Freedom in India*, 35 *Am. J., Comp. L.* 209 (1987)
15. Thio Li-Ann, *Contentious Liberty: Regulating Religious Propagation in a Multi-Religious Secular Democracy*, 2010 *Sing. J. Legal Stud.* 484 (2010)

16. Nathan C. Walker, A Legal Approach to Questions About Religious Diversity, Religion and Society (May 2014), DOI: 10.1093/oxfordhb/9780199935420.013.003
17. Heiner Bielefeldt , Freedom of Religion or Belief—A Human Right under Pressure, *Oxford Journal of Law and Religion*, Vol. 1, No. 1 (2012), pp. 15–35, doi:10.1093/ojlr/rwr018
18. Faizan Mustafa; Jagteshwar Singh Sohi, Freedom of Religion in India: Current Issues and Supreme Court Acting as Clergy, 2017 *BYU L. Rev.* 915 (2017)
19. Christopher J. Heaney, Cooking up a New Lemon Test: The Establishment Clause, Displays of Religious Objects, and Lessons from India, 10 *First Amend. L. Rev.* 559 (2012)
20. Aviad Hacoen, *Proselytism and the Right to Change Religion in Israel, Law and Religion in the 21st Century*, Routledge, 243 (2016)

BOOKS

21. Rex Adhar, *Research Handbook on Law and Religion*, Edward Elgar (2018)

REPORTS

22. United Nations Commission on International Religious Freedom, *Limitations on Minorities Religious Freedom in South Asia* , (November 2018)
23. USCIRF, *Annual report of the U.S Commission on International Religious Freedom, 2019*, <https://www.uscirt.gov/reports-briefs/annual-report/2019-annual-report>
