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## ANTI-CONVERSION LAWS IN INDIA

*-Udaya Bhanu Peddireddi, student, Damodaram Sanjivayya National Law University.*

***“When the Constitution provides for the Fundamental Right to Profess and Practice religion, then how is it lawful to make laws that prohibit religious conversion, no matter the incentive??”***

### **Introduction:**

The recent order passed by the Gujarat High Court Bench consisting of Chief Justice of High court Justice Vikram Nath and Justice Biren Vaishnav to curb the regressive and patently Unconstitutional features of recent anti conversion law staying certain provisions which considers all interfaith marriage as those solemnized to carryout forceful religious conversion, is a welcome move in the direction of ensuring individual’s liberty and their choice.

The law, also known infamously as ‘anti love-jihad law’, contains provisions penalizing forcible or fraudulent religious conversions through marriage. While Section 3 and 4 of the Act deals with forceful conversion, the most debated, Section 5, states that priests must take prior permission from district magistrates before conducting conversions. The person who wishes to get converted also needs to inform the district magistrate in a prescribed form.

The law places the burden of proof of a lawful religious conversion from the converted onto his/ her partner. The state is entrusted with the power to conduct a police inquiry to verify the intentions of the parties who convert for the purposes of marriage. The amended law keeps a sword hanging over interfaith couples because it has created an impression that interfaith marriages are not permissible in the State.

### **History of Anti Conversion Laws:**

The existing Anti Conversion Laws in India have their roots tracing back to colonial history and the deep caste and communal fractures existing in the society. The late 60s and early 70s saw the passage of first generation of anti-conversion lass euphemistically called ‘Freedom of Religion’ Acts. These were enacted to allay anxiety among the Hindus to prohibit conversion into other religion such as Christianity, Islam and Buddhism, and to preserve the caste hierarchy.

### States and their enactment of Anti Conversion Laws:

Orissa was the leading state to pass a law that prohibited religious conversion “*by the use of force or inducement or by fraudulent means*” (*The Orissa Freedom of Religion Act, 1967*). Madhya Pradesh and Arunachal Pradesh replicated Orissa’s initiative. Gujarat took the matter a step further with enactment of the *Gujarat Freedom of Religion Act, 2003*. Other states in which laws with respect to anti-conversion were implemented included of Andhra Pradesh, Tamil Nadu.

The anti-conversion provisions of the State of Arunachal Pradesh are contained in the Arunachal Pradesh Freedom of Religion Act, 1978. The Tamil Nadu Prohibition of Forcible Conversion of Religion Act 2002 stated that no person shall convert or attempt to convert directly or otherwise any person from one religion to another either by use of force or by allurement or by any fraudulent means.

The Himachal Pradesh Freedom of Religion Act, 2006 is a prototype of the existing anti-conversion laws in other Indian states and it was enforced on February 18, 2007. Recent ordinances of this kind include The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Ordinance, 2020, was passed by UP Government on 28 November 2020. This ordinance has sparked much debate on the aspect of ‘Love Jihad’.

### Judicial Intervention:

In 1973, in a first of its kind, the Orissa High Court emphatically declared the Orissa Freedom of Religion Act, 1967 ultra- vires to the Constitution in the case of *Mrs. Yulitha Hyde And Ors v. State Of Orissa And Ors*.<sup>1</sup> This victory was short-lived for the reason that upon appeal, the Supreme Court in the case of *Stanislaus v. State of Madhya Pradesh* overruled the High Court’s judgment.<sup>2</sup>

The recent UP Ordinance is now seen as in conflict of the Allahabad High Court’s recent judgment in the case of *Sufiya Sultana v. State of U.P.*<sup>3</sup> which done away with the requirement of mandatory publication of notice and inviting objection under section 5, 6 and 7 of the Special Marriage Act, 1954 by declaring those provisions as declaratory and not mandatory being in

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<sup>1</sup> *Mrs. Yulitha Hyde and Ors. v. State of Orissa and Ors*, AIR 1973 Ori 116.

<sup>2</sup> *Stanislaus v. State of Madhya Pradesh*, 1977 SCR (2) 611.

<sup>3</sup> *Sufiya Sultana v. State of U.P.*, Habeas Corpus No. 16907 of 2020.

violation of right to privacy of citizens, which has been recognized as fundamental right by a nine Judge Bench of the Supreme Court in the case of *K.S. Puttaswamy v. Union of India*.<sup>4</sup>

It is obvious that the Gujarat law's provisions "interfere with the intricacies of marriage" and an individual's right to choice, thereby infringing Article 21 of the Constitution. Interference in a personal relationship would constitute a serious encroachment into the right to freedom of choice the two individuals". The principle that the right to marry a person of one's choice is integral to Article 21 flows from the verdict in *Shafin Jahan v. Ashokan*.<sup>5</sup> It is in this case it was held that neither the state nor the law can dictate a choice of partners or limit the free ability of person to decide on these matters. Social approval of intimate personal decisions is not basis for recognizing them.

The order stalling criminal action against those entering into a valid inter-faith marriage constitutes a significant judicial pushback against disconcerting attempts by various States to foment communal divides through dubious legislations.

### **Conclusion:**

The constitutionality guaranteed freedoms are above than the social values and morals. Right to life and Personal liberty is constitutional as well as human right. The freedom being entrenched in because of the various anti conversion laws is the choice of faith which is clearly not permissible. Choosing a faith is a substratum of individuality and the right of choice becomes a shadow. The belief and freedom of choice of an individual are important for the construction of the right.

Further the Country's Constitution also termed to be the Corner Stone of Democracy describes the nation to be secular, guaranteeing to every person the freedom of conscience and the right to freely practice and propagate religion under Article 25. India being a pluralistic country with diverse religious communities, naturally results in a recipe for expedient religious conversion. Further people make tactical shifts in their personal beliefs which best suits their self interest.

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<sup>4</sup>*K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1.

<sup>5</sup> *Shafin Jahan v Ashokan K.M.*, (2018) 16 SCC 368.

Prohibition of Religious Conversion merely that some of the conversions are induced by fraud would render Article 25 of the Constitution a dead letter. Tolerance, the indispensable civic virtue should be practiced for us to truly call ourselves a Secular Nation!!