

Are anti-conversion laws antithetical to the Constitution of India?

In recent years, a slew of anti-conversion laws have been passed in many states. They blur the line between forced conversions and the right to choose one's religion, argues Raushan Tara Jaswal in this piece.



Representative Image Only

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THERE is no denying that India is a 'secular' state; it is the very fabric of the nation enshrined in the [Preamble](#) and within a series of fundamental rights from [Articles 25–28](#) of the Indian Constitution.

These rights enable us to practise a unique form of secularism that not only separates the Church from the State but actively advocates for the protection, preservation and promotion of religion without excessive government intervention.

The Constitution aims to advance [religious freedoms](#) of 'conscience', 'practice', 'profession' and 'propagation'. Limitations on these freedoms, if any, must be tested on the touchstones of public order, morality and health.

However, in recent years, the attacks on these freedoms have intensified through State interventions of regulating inter-religious marriages, dietary preferences, and religious conversions.

There have been multiple incidents of communal clashes in [Haryana](#), [Maharashtra](#), [Manipur](#) and [Uttar Pradesh](#) and other states, which some scholars argue are not only enabled by the ruling regime's [impunity](#), but also furthered by [discriminatory policies](#).

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Discrimination at the grassroots level has ushered various nations to publicly [condemn](#) the rising religious intolerance.

However, are these concerns warranted if some of the regulations successfully protect the spirit of secularism and freedom enshrined under Article 25?

Recent laws passed by states such as Gujarat, Himachal Pradesh, Madhya Pradesh, Uttarakhand and Uttar Pradesh outlaw and criminalise 'forced conversions'.

Can the recent anti-conversion laws be tested on the touchstone of constitutionality and pass with flying colours? This Independence Day, let us unpack the constitutionality of the laws.

Freedom of propagation of religion in the Indian Constitution

Concerns regarding the term 'propagation' have been entrenched in history within the hallmarks of debates of the [Constituent Assembly](#), triggered by the fear of conversion of the existing Hindu populations to Abrahamic religions, especially in the backdrop of our colonial past.

However, the freedom of propagation of religion has persisted and has been crystallised in the very fabric of Indian constitutionalism.

In fact, by precedent, the Supreme Court has elucidated on the right to propagate religion as transmission or spread from person to person or place to place through the exposition of its tenets.

Propagation does not entail the inherent right to convert another person to one's religion to balance its scope with a person's freedom of conscience. The freedom of conscience, as understood in the context of internationally recognised instruments, refers to a [personal and private right](#).

In comparison, the right to propagation would entail its manifestation with respect to the community and hence can be limited on the grounds of public order, morality or health.

What constitutes 'propagation' has been a controversial question in India recently, especially at the state level.

An idea that stemmed from protecting vulnerable masses from being induced, coerced, or allured to convert to different religions, resulted in the prohibition of 'forced' religious conversions through legislation.

[Madhya Pradesh](#) and [Odisha](#) were the first states to enact an anti-conversion law in the 1960s to prohibit conversion from one religion to another by 'force', 'allurement', or 'fraud'.

These laws have survived judicial scrutiny by the Supreme Court in [Rev. Stanislaus versus State of Madhya Pradesh](#) (1977).

While respecting an individual's choice, the court did not place a complete ban on conversion, but it did narrowly read the scope of 'propagation' not to include an inherent right to convert others, specifically through deceit and fraud.

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The judgment read that such provisions can successfully stand the test of 'public order', as forcible conversions could lead to communal passions leading to a break in public order.

Referring to the *Rev. Stanislaus* case, the newer anti-conversion laws seem to align with similar intentions, since these legislations also seemingly ban 'forcible' conversion or conversions induced by fraud.

Keeping in mind the recent communal tensions squarely based on religious tensions and intolerance, 'public order' regulations seem to be the need of the hour. Religion-neutral in their wording, the new anti-conversion laws also seek to protect the vulnerable.

With almost half of the states [enacting](#) legislation restricting forced religious conversions, the issue seems to have gained momentum in the past few years.

The question remains: Can the new legislations meet the test of constitutionality as done in the *Rev. Stanislaus case*, or are they somehow different?

Fear of the known and the unknown

The common thread that runs through the recent state legislations on forced conversions has added dimensions about prior intimation, conversion for marriages and taking permission of the district magistrate, amongst others, that Madhya Pradesh or Odisha did not foresee in the past.

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The issues that raise eyebrows are the requirements in Chhattisgarh and Gujarat to send a notice to the State through the office of the district magistrate or the necessity of permission from the district magistrate in Himachal Pradesh, Jharkhand and Uttarakhand.

Marriages borne out of 'forced conversions' in the light of the rising fear of 'love jihad') are rendered void, and the initiation of criminal proceedings by persons other than the victim on their behalf is a nod to the paternalistic legal framework in India.

The issues of the prior notice requirement have been held to be violative of the right to privacy and freedom of conscience of an individual by the [Himachal Pradesh High Court](#).

The new legislative requirements failed the strict scrutiny test as they did not justify the most restrictive way to achieve the objective of curbing forced conversions and were hence violative of [Article 14](#).

Another aspect that was struck down, owing to Article 14 and the doctrine of reasonable classification, was the *proviso* of such notice requirement being done away with if the person reverts to their 'original religion'.

Not only does the Act fail to define 'original religion', but according to the Supreme Court, there was also a failure to draw reasonable classification between any other conversion and conversion to 'original religion'.

It was also stated that such prior notices could lead to a public order crisis and were contrary to the objective that the Act sought to achieve. However, the state has reenacted another legislation with almost identical provisions.

In fact, [Uttar Pradesh](#) has gone a step ahead and posted the requirements of an enquiry into all religious conversions (whether forced or completely consensual).

Another issue that directly pertains to religious conversions is the issue of marriage. The religious conversion laws in Uttar Pradesh and Himachal Pradesh outlaw conversions for marriage and classify it as a prohibitive practice.

If a marriage following a religious conversion has indeed taken place, it shall be declared null and void.

Not only does the provision take away a person's right of choice of religion, but it also restricts their ability to choose a partner for themselves.

While the [Special Marriage Act](#) of 1954 enables people of different religions to get married, it should be the choice of the individual whether to convert or retain their faith and State intervention in the marital aspects sets a dangerous precedent.

In the recent proceedings regarding marital rape, the State [argued](#) that it cannot intervene in the institution of marriage. Applying the same principle in the present cases, the State should refrain from dictating or restricting the choice of marriage.

The new provisions undermine the freedom to choose and impinge on a person's bodily, sexual and decisional autonomy, which are thoroughly decided by the Supreme Court in [K.S. Puttaswamy versus Union of India](#) (2017) and [Shafin Jahan versus Asokan K.N. and Ors](#) (2018).

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The provisions take cue to curb the evil of conversion to other religions which may permit bigamy, as seen in [Sarla Mudgal versus Union of India](#) (1995) and have a heavy burden to discharge.

A burden of such nature would be impossible to discharge under the 'public order' limitation and would not stand the test of strict scrutiny between the objective it seeks to achieve and its provisions.

The Gujarat and Allahabad high courts have already started to pave the way to protect such couples, married or otherwise, by [staying](#) specific provisions of these legislations or by granting [protection](#) to such couples and providing a glimmer of hope for the future.

While forced conversions have been subject to criminal proceedings and punishment throughout the decades, some newer legislations, such as those in Himachal Pradesh and Uttar Pradesh, have made the offences prescribed under the anti-conversion Acts non-bailable with a heavy fine attached to them.

A unique addition in this domain is the initiation of such criminal proceedings on behalf of the assumed victim, a step undertaken by the states of Gujarat, Jharkhand and Himachal Pradesh.

Apart from undermining the choice of consenting adults, it also gives a wide berth to the family to object, further violating the couple's privacy and autonomy.

Conclusion

The freedom of belief, thought, and conscience is inherently a personal and private right. The State's intervention in such ambits reflects the perception of a draconian police State.

The government should not be allowed to intervene in the freedom to choose one's thoughts and beliefs, as it has been held by the Supreme Court to be intrinsically linked to the right to live with dignity and personal autonomy, as mentioned in the *K.S. Puttaswamy* case.

In fact, on multiple occasions, especially the *Shafin Jahan* case, the court has also gone a step further to state that the right to choose one's religion is essential to individual liberty, and freedom of faith is essential to a person's autonomy as granted by the Constitution.

Most of the newer provisions in the anti-conversion laws have not yet been challenged and tested on constitutional grounds. However, arguments about the right to privacy, the autonomy of thought, belief and the fundamental right of freedom of conscience can still successfully challenge the constitutionality of these newer legislations.

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Additionally, the provisions are *prima facie* violative of Article 14 and [Article 21](#), apart from Article 25.

Conversions induced by fraud, incentive and allurements are the narrow exceptions and constitute 'forced' conversions, which may be upheld as such in light of the *Rev. Stanislaus* case, but other provisions about claims, marriage, notices and permissions must be struck down.

Whether religious conversion laws are antithetical to the Constitution of India remains a complex and highly debated topic.

While it is essential to safeguard individuals from coercive or fraudulent conversions, it is equally vital to ensure that the right to religious freedom is upheld and protected.

Striking a balance between these competing interests is a challenging endeavour that requires careful consideration of constitutional principles, human rights, and the diverse socio-religious fabric of India.

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