



## “RELIGIOUS FREEDOM ACTS”: ANTI-CONVERSION LAWS IN INDIA

### I. INTRODUCTION

The newly elected Indian government is considering repealing the so-called “Freedom of Religion” laws.<sup>1</sup> Starting in the 1950s, various States in India began to create tensions between Hindus and Christians through the enactment of “freedom of religion” legislation.<sup>2</sup> These laws have not only restricted the practice of Christianity and other non-Hindu religions, but have also led to an upsurge of violence against such minority religions in India. In effect, the Freedom of Religion Acts are direct Hindu attempts to use state power to prevent conversion; thus, they violate the freedom of religion espoused by the Constitution of India.<sup>3</sup> The Indian government has enacted such laws for six decades for the ostensible purpose of protecting minority religions from violence and censure and to ensure religious freedom for all. However, these “anti-conversion” laws are at the heart of a *power struggle* within the caste system in India, and the prohibition on conversion helps to keep the most maligned and powerless members of Indian society—the Dalits, or “untouchables”—performing the most menial, degrading, and dangerous jobs in India, with no prospect of upward mobility.

### II. BACKGROUND AND HISTORY OF ANTI-CONVERSION LAWS

In 1955, the Indian Parliament rejected an Indian Converts Bill, applicable to all of India, after members of the legislature warned of the harassment that would ensue because of the unfettered control local authorities would have gained.<sup>4</sup> However, the desire to regulate conversion gained the support of state governmental officials by 1956.<sup>5</sup> Anti-conversion laws prohibit attempts to convert any person from one religious faith to another by use of force, inducement, allurements, or any fraudulent means; aiding any person in such conversion is also

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<sup>1</sup> Dibin Samuel, *New Indian Government Set To Repeal Anti-conversion Laws*, CHRISTIANITY TODAY, available at June 24, 2009,

<http://www.christiantoday.com/article/new.indian.government.set.to.repeal.anticonversion.laws/23659.htm>.

<sup>2</sup> Chang Hwan Kim, *Freedom of Religion” Legislation in India: The Hindu-Christian Debate on Religious Conversion*, MISSION AND THEOLOGY, Vol. 9, Presbyterian College and Theological Seminary, (June 2002), available at <http://www.earticle.net/FileArticle/200707/633192048482031250.pdf>.

<sup>3</sup> *Id.* at 230. According to the Constitution of India, “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, practise and propagate religion.” INDIA CONST. part III, art. 25, (1), available at <http://lawmin.nic.in/coi/coiason29july08.pdf>.

<sup>4</sup> Kim, *supra* note 2, at 230-31.

<sup>5</sup> *Id.* at 231.

prohibited.<sup>6</sup> The Bharatiya Janata Party (“BJP”) has spearheaded the legislation of anti-conversion laws, and almost every State that has such laws in force is ruled by the BJP.

### III. ANTI-CONVERSION LAWS IN VARIOUS INDIAN STATES

Currently, anti-conversion laws are in force in five states: Orissa, Madhya Pradesh, Chhattisgarh, Himachal Pradesh, and Gujarat. In Arunachal Pradesh and Rajasthan, the laws have been passed but not yet implemented.<sup>7</sup>

The state of Madhya Pradesh enacted the *Madhya Pradesh Dharma Swantantrya Adhiniyam* (Freedom of Religion Act) in 1968, stating that it is a crime to “convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the *use of force* or by *allurement* or by any *fraudulent means* nor shall any person *abet* any such conversion.”<sup>8</sup> Any person who converts another in violation of this section may be imprisoned for one year, fined up to five thousand rupees, or both.<sup>9</sup> Furthermore, this law requires a violator to make the conversion publicly known to the District Magistrate<sup>10</sup> within *seven days*.<sup>11</sup> Failure to do so could result in one year in prison, a fine up to one thousand rupees, or both.<sup>12</sup>

In 1968, Orissa enacted a similar law.<sup>13</sup> However, the Orissa Freedom of Religion Rules, enacted in 1989, required the priest performing the ceremony of conversion to “intimate the date, time[,] and place of the ceremony . . . along with the names and addresses of the persons to be converted to the concerned District Magistrate *before fifteen days of the said ceremony*.”<sup>14</sup> One who fails to do so is liable for a fine of one thousand rupees.<sup>15</sup>

Following Orissa, the state of Madhya Pradesh amended its act in 2006 requiring the priest to provide a similar notice to the District Magistrate *one month prior* to such conversion<sup>16</sup> or risk imprisonment up to one year, a fine up to five thousand rupees, or both.<sup>17</sup> In addition, this amendment also required one who desired to convert his religion to declare his intent to change his religion “at his will and pleasure.”<sup>18</sup> Nondisclosure of such intent could result in a fine of one thousand rupees.<sup>19</sup>

<sup>6</sup> See, e.g., Orissa Freedom of Religion Act, No. 21 of 1968; Madhya Pradesh Freedom of Religion Act, No. 27 of 1968; The Himachal Pradesh Freedom of Religion Bill, No. 31 of 2006.

<sup>7</sup> Samuel, *supra* note 1.

<sup>8</sup> Madhya Pradesh Freedom of Religion Act, No. 27 of 1968, § 3 (emphasis added). Chhattisgarh was bifurcated from Madhya Pradesh in 2000, so it shares the same act and rules. The Chhattisgarh Freedom of Religion Amendment was passed in 2006. *All India Christian Council, Indian laws dealing with religion freedoms*, <http://indianchristians.in/news/content/view/1432/118/> (last visited June 24, 2009) [hereinafter *Indian Anti-Conversion Laws*].

<sup>9</sup> *Id.* § 4.

<sup>10</sup> *Id.* § 5(1).

<sup>11</sup> Madhya Pradesh Freedom of Religion Rules, 1969, § 3 (emphasis added).

<sup>12</sup> Madhya Pradesh Freedom of Religion Act, No. 27 of 1968, § 5(2).

<sup>13</sup> Orissa Freedom of Religion Act, No. 2 of 1968.

<sup>14</sup> Orissa Freedom of Religion Rules, 1989, § 5(1) (emphasis added).

<sup>15</sup> *Id.* § 7.

<sup>16</sup> Madhya Pradesh Freedom of Religion (Amendment) Act, No. 15 of 2006, § 5(2).

<sup>17</sup> *Id.* § 5(5).

<sup>18</sup> *Id.* § 5(1).

<sup>19</sup> *Id.* § 5(4).

The states of Arunachal Pradesh, Tamil Nadu, and Gujarat followed the same tradition and enacted similar laws, but with varying penalties, in 1978, 2002, and 2003, respectively.<sup>20</sup> However, Tamil Nadu subsequently repealed it in 2006—not surprisingly, Dalits comprise twenty percent of the Tamil Nadu population<sup>21</sup>—and the one in Arunachal Pradesh has never been implemented.<sup>22</sup> In 2006, the legislature of Rajasthan passed a similar bill, but the Governor, Pratibha Patil, refused to sign it due to complaints by religious minorities.<sup>23</sup> Finally, Himachal Pradesh enacted a similar law but with greater penalties and prior notice of conversion.<sup>24</sup>

While these anti-conversion laws, on their face, appear to protect religious adherents only from attempts to induce conversion by improper means, the failure to clearly define what makes a conversion improper bestows governments with unfettered discretion to accept or reject the legitimacy of religious conversions. For instance, there are several cases where the courts sentenced priests for converting people even after the converts provided statements that they voluntarily converted.<sup>25</sup>

These laws' broad definitions of "forcible conversion" enhance the Indian authorities' unfettered discretion. For instance, the laws define "allurement" and "inducement" as "any temptation in the form of any gift or gratification . . . or any benefit either pecuniary or otherwise . . ." <sup>26</sup> These definitions would cover "even an intangible benefit like invoking the blessings of the Lord"<sup>27</sup> or forgiveness of sins by God. Furthermore, these laws define "force" as a "threat of injury" or a "threat of divine displeasure."<sup>28</sup> Under this definition, a Christian could violate the law by quoting the passage from the Bible about Sodom and Gomorrah. Governments have described "subtle forms of humanitarian aid and development carried out as a normal part of [a] Church's mission" as a cause of improper and unethical conversions.<sup>29</sup>

The Freedom of Religion Acts have been challenged on the basis of the Indian Constitution's assurance of the "freedom of conscience and the right freely to profess, practice and *propagate* religion."<sup>30</sup> However, these rights are subject to "public order"; the Supreme Court of India found that to be a valid basis to restrict the freedom to propagate one's religion.<sup>31</sup>

<sup>20</sup> See *Indian Anti-Conversion Laws*, *supra* note 8.

<sup>21</sup> *Dalits and Tamil Nadu*, [http://indianhope.free.fr/site\\_eng/tamil.php3](http://indianhope.free.fr/site_eng/tamil.php3) (last visited June 24, 2009).

<sup>22</sup> Tamil Nadu Prohibition of Forcible Conversion of Religion (Repeal) Act, No. 10 of 2002 (repealing Tamil Nadu Prohibition of Forcible Conversion of Religion Ordinance, No. 9 of (2002)); Samuel, *supra* note 1.

<sup>23</sup> *Rajasthan Religion Bill Rejected*, BBC NEWS, May 19, 2006, [http://news.bbc.co.uk/2/hi/south\\_asia/4996708.stm](http://news.bbc.co.uk/2/hi/south_asia/4996708.stm).

<sup>24</sup> The Himachal Pradesh Freedom of Religion Act, No. 31 of 2006, §§ 3-5. (prescribing two years imprisonment and/or a fine of twenty thousand rupees for converting someone by use of force, inducement, or by any other fraudulent means, or abetting such conversion).

<sup>25</sup> Laura Dudley Jenkins, *Legal Limits on Religious Conversion in India*, 71 LAW & CONTEMP. PROB. 109, 116 (2008).

<sup>26</sup> See, e.g., Madhya Pradesh Freedom of Religion Act, No. 27, § 2(a)(i); Orissa Freedom of Religion Act, No. of 1968, § 2(d).

<sup>27</sup> Justice M. N. Rao, *Freedom of Religion and Right to Conversion*, PL WEBJOUR 19 (2003), available at <http://www.ebc-india.com/lawyer/articles/706.htm#Ref3#Ref3>.

<sup>28</sup> See, e.g., Orissa Freedom of Religion Act, No. 2 of 1968, § 2(b).

<sup>29</sup> Tracy Hresko, Note, *Rights Rhetoric as an Instrument of Religious Oppression in Sri Lanka*, 29 B.C. INT'L & COMP. L. REV. 123, 127 (2006).

<sup>30</sup> INDIA CONST. part III, art. 25, § 1.

<sup>31</sup> See Jenkins, *supra* note 25, at 115.

While interpreting the term “propagate,” the Court distinguished the “right to transmit one’s religion” from the “right to convert one’s religion.”<sup>32</sup> It held that

Article 25(1) guarantees freedom of conscience to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one’s own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the freedom of conscience guaranteed to all the citizens of the country alike.<sup>33</sup>

#### IV. HIGHER PENALTIES FOR CHILDREN, WOMEN, SCHEDULED CASTES, AND SCHEDULED TRIBES

Breaking anti-conversion laws is punishable with a maximum of two years’ imprisonment and a fine. However, in the case of children, women, or Dalits (Scheduled Caste) and other tribal outcasts (Scheduled Tribes), these laws provide harsher punishments. Orissa and Madhya Pradesh prescribe two years’ imprisonment and a fine of up to ten thousand rupees. Himachal Pradesh prescribes three years’ imprisonment and a fine of up to fifty thousand rupees.

The reason behind higher penalties for women and the lower castes is that these groups are considered “inherently naive and susceptible to manipulation.”<sup>34</sup> It is estimated that roughly 180 million Dalits (or “untouchables”) live in India.<sup>35</sup> “Dalits occupy the *bottom rung* of the caste ladder, at the opposite end of the social spectrum to the Brahmins,” and therefore must perform the most “menial, degrading[,] and dangerous tasks . . . .”<sup>36</sup> Due to this hierarchical system, “large segments of [the] Hindu population . . . suffer from illiteracy, poverty, ignorance and social disabilities including untouchability.”<sup>37</sup> Anti-conversion laws reinforce this social hierarchy by portraying these socio-economically disadvantaged groups as “innately weak and credulous.”<sup>38</sup>

Some argue that no law prohibits voluntary conversion.<sup>39</sup> But if these outcast groups “fall victims to monetary allurements or inducement of any nature in the form of immediate material gain[,] the same cannot be said to be a genuine change of religion responding to the call of the conscience.”<sup>40</sup> Even if, arguendo, the law prohibits only forcible conversion, changing one’s religion is a private decision, not a public act.<sup>41</sup> Therefore, the state should not impose

<sup>32</sup> *Id.* (quoting *Rev. Stainislaus v. State of Madhya Pradesh & Orissa*, A.I.R. 1977 S.C. 908 ¶ 18.).

<sup>33</sup> Rao, *supra* note 27 (quoting *Rev. Stainislaus*); Jenkins, *supra* note 25, at 115 (quoting *Rev. Stainislaus*).

<sup>34</sup> Jenkins, *supra* note 25, at 109.

<sup>35</sup> Reuters, *Untouchables caste off creed for better deal*, ALL INDIA CHRISTIAN COUNCIL, Oct. 16, 2006, <http://indianchristians.in/news/content/view/1447/48/>.

<sup>36</sup> *Id.* (emphasis added).

<sup>37</sup> Rao, *supra* note 27.

<sup>38</sup> Jenkins, *supra* note 25, at 113.

<sup>39</sup> Rao, *supra* note 27.

<sup>40</sup> *Id.*

<sup>41</sup> Jenkins, *supra* note 25, at 123.

restrictions on one's ability to choose a different religion—regardless of the fact that some may convert to change their social status.

There are numerous news articles detailing the mass numbers of “untouchables” converting to non-Hindu religions to escape their stigmatized status and achieve a better economic situation.<sup>42</sup> This is not a new happening: in 1956, 500,000 Hindu “untouchables” converted to Buddhism.<sup>43</sup> That same year, various Indian state governments started in earnest on the road to drafting anti-conversion laws.<sup>44</sup> The question, then, is why the conversion of the lowest rung members of the *majority* religion—Hindu “untouchables”—would spark anti-conversion laws—laws supposedly designed to protect *minority* religions. On the heels of such conversions comes the BJP's modification of anti-conversion laws to classify Buddhism and Jainism as branches of the Hindu religion, thus denying them status as unique religions.<sup>45</sup> Clearly, such action is designed with one purpose in mind: stop the untouchables from converting so that they remain pigeonholed in their menial jobs—forever at the service of the Brahmins and other higher castes (members of which comprise the Indian federal government). Multiple BJP-led States, including Rajasthan, Orissa, and Madhya Pradesh, have introduced or strengthened anti-conversion laws, with the stated purpose of “protecting” the vulnerable Dalits from “improper” pressure to convert. Critics across the board, however, are of one mind: the anti-conversion laws are designed to keep the “untouchables” just that—untouchable.<sup>46</sup>

Another contributing factor to the enactment of anti-conversion laws involves the history of Christianity in India. Christianity came to India during British colonialism almost 200 years ago. The British-led churches in India received funding from the West; after 200 years under British rule, the modern-day Hindu government fears that Christians in India would have ulterior motives in converting mass numbers of the population. Another factor is electoral strategy, that is, to get votes from the upper caste Hindu majority by appeasing them with a law that keeps the socially entrenched caste system in place.<sup>47</sup> However, the underlying factor is still the struggle for power—to keep the lower caste Hindus (untouchables and Scheduled Tribes) from competing with the higher and privileged castes.

## V. Increased Violence in States Where Anti-Conversion Laws Exist

Below is a list of the various States with anti-conversion laws, their demographics, and a brief explanation of the violence occurring in those States against minority religions.

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<sup>42</sup> See *id.*

<sup>43</sup> Benedict Rogers, *The ‘Untouchables’: The Human Face of India’s Caste System*, HOLY SPIRIT INTERACTIVE, <http://www.holyspiritinteractive.net/columns/guests/benedictrogers/untouchables.asp> (last visited June 24, 2009).

<sup>44</sup> Kim, *supra* note 2, at 231.

<sup>45</sup> U.S. DEP’T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT 2008, INDIA (2008), available at <http://www.state.gov/drl/rls/irf/2008/108500.htm> [hereinafter 2008 INT’L RELIGIOUS FREEDOM REPORT].

<sup>46</sup> See, e.g., Reuters, *supra* note 35; Manpreet Singh, *India: Despised Dalits quit Hinduism, find new dignity in Christ*, CHRISTIANITY TODAY, Dec. 9, 2002, available at <http://www.christianitytoday.com/ct/2002/december9/15.22.html?start=1>; Rubayat Ahsan, *Anti Conversion Law to stop Dalits escaping from the prison of Caste System*, Apr. 1, 2008, <http://developmenthumanrights.wordpress.com/2008/04/01/anti-conversion-law-to-stop-dalits-escaping-from-the-prison-of-caste-system/>; Rogers, *supra* note 43; cf. 2008 INT’L RELIGIOUS FREEDOM REPORT, *supra* note 45.

<sup>47</sup> See Jenkins, *supra* note 25, at 125.

- **Orissa:** Dalits and Tribals make up forty percent of the population in Orissa.<sup>48</sup> Hindu extremists attacked Christian villagers and churches over the Christmas holidays. They damaged about 100 Christian churches and institutions, destroyed 700 Christian homes—causing villagers to flee—and disrupted Christian-owned businesses.<sup>49</sup>
- **Madhya Pradesh/Chhattisgarh:** Madhya Pradesh accounts for the highest percentage of Dalit and Tribal population to total “outcast” population of the country—14.5 percent.<sup>50</sup> This State saw the third highest attack rate. Hindu extremists “disrupted prayer meetings, destroyed or damaged places of worship, vandalized property, assaulted pastors and lay persons, confiscated and destroyed religious material, and attempted to intimidate Christians from attending religious services.”<sup>51</sup> The police, however, arrested the victims—not their attackers—and then further victimized the Christians. Christians were also subject to false allegations of violating the anti-conversion laws.<sup>52</sup>
- **Himachal Pradesh:** The Freedom of Religion Act was passed in 2006 without any reports of forced conversions, and for assuredly entirely political reasons.<sup>53</sup> Dalits comprise 24.7 percent of the population in this state.<sup>54</sup> Attacks and beatings at Christian places of worship increased immediately upon passage of the anti-conversion law.<sup>55</sup>
- **Gujarat:** Dalits, Tribals, and Muslims together account for more than half of Gujarat’s population.<sup>56</sup> There were reports of attacks on Christians, disruption of worship services, death threats against pastors and parishioners, police refusal to prosecute, and continued refusal to prosecute any person for the communal violence and rioting of 2002.<sup>57</sup>
- **Rajasthan:** After repeated refusals by the governor to sign the original act, the assembly passed the Freedom of Religion Bill of 2008.<sup>58</sup> News media reported acts of violence against Christians, and police arrested people accused of forcible conversion and interrogated various Christian leaders accused of human trafficking and prostitution. A May 2008 terrorist attack killed 100 and injured 400 more.<sup>59</sup>

<sup>48</sup> P. Augustine Kanjamala, *Orissa: killing Christians to stop Tribals and Dalits from developing and achieving dignity*, ASIANEWS.IT, Aug. 28, 2008, <http://www.asianews.it/index.php?l=en&art=13079>.

<sup>49</sup> 2008 INT’L RELIGIOUS FREEDOM REPORT, *supra* note 45.

<sup>50</sup> *Who are the Dalit?*, <http://www.nacdor.org/TEXT%20FILES/Dalit.htm> (last visited June 24, 2009).

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> *Indian Anti-Conversion Laws*, *supra* note 8; *see also State Admits Few Complaints of ‘Forced’ Conversions*, COMPASS DIRECT NEWS, July 17, 2008, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=5475&backpage=archives&critere=himachal &countryname=India&rowcur=0>.

<sup>54</sup> *Who are the Dalit?*, *supra* note 50.

<sup>55</sup> *Christians Face More Attacks as Lenten Season Ends*, COMPASS DIRECT NEWS, Apr. 11, 2007, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=4829&backpage=archives&critere=himachal &countryname=India&rowcur=0>.

<sup>56</sup> Valjibhai Patel, *Dalits in Gujarat*, ZNET, <http://www.zmag.org/znet/viewArticle/5011> (last visited June 25, 2009).

<sup>57</sup> 2008 INT’L RELIGIOUS FREEDOM REPORT, *supra* note 45.

<sup>58</sup> *Indian Anti-Conversion Laws*, *supra* note 8.

<sup>59</sup> 2008 INT’L RELIGIOUS FREEDOM REPORT, *supra* note 45.

**VI. NEW GOVERNMENT IN INDIA TO REPEAL ANTI-CONVERSION LAWS?**

According to one media source out of India, the newly elected Indian government—specifically, Home Minister Chidambaram—will review and make recommendations related to anti-conversion bills and “Freedom of Religion Acts” throughout India.<sup>60</sup> In opposition to the Hindu BJP, which has supported the enactment of anti-conversion laws, the newly elected members of the Congress Party vehemently oppose the anti-conversion laws and have made sweeping promises to repeal them. This is in the face of BJP proposals to make already existing anti-conversion laws stricter in Madhya Pradesh and strong demand to introduce an anti-conversion law in Karnataka.<sup>61</sup> This promise is not new: in 2004, Congress party chief Sonia Gandhi campaigned against the mistreatment of minority religions under the BJP. The Congress-led coalition formed a majority in parliament, and Manmohan Singh became the country’s first Sikh prime minister, promising that violence against Christians would cease. However, in 2007, Gandhi’s own Congress Party passed an anti-conversion bill in Himachal Pradesh.<sup>62</sup>

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<sup>60</sup> Samuel, *supra* note 1.

<sup>61</sup> *Id.*

<sup>62</sup> *India: Another State Passes Anti-Conversion Bill: Christians term Congress Party’s move in Himachal Pradesh a ‘cruel joke’*, COMPASS DIRECT NEWS, Jan. 3, 2007, <http://www.compassdirect.org/en/display.php?page=news&lang=en&length=long&idelement=4714>.