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The Spread of Anti-Conversion Laws from India: A Threat to the Religious Freedom of Minorities

By Tehmina Arora¹

'The true measure of any society can be found in how it treats its most vulnerable members'.

M.K. Gandhi

India is a deeply religious and pluralistic society. A country with a Hindu majority, India is estimated to have the third largest Muslim population in the world and a Christian population of over 25 million. The country is also home to numerous Sikhs, Buddhists, Jains, Zoroastrians, Jews, and Baha'is and other animist traditions. India is also a constitutional democracy and guarantees that every person in India shall have the

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freedom of speech and expression, the freedom of association, the freedom of conscience and the right to profess, practice and propagate religion.

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Despite these positive attributes as a democracy with a deeply diverse religious demographic and a robust civil society, India finds itself in the throes of religious fundamentalism and violence against religious minorities for the past few

decades. The Pew Research Center's Religious Restrictions report has found that India scores in the "High" category on government restrictions and "Very High" on social hostilities, the highest category a country can be placed on the Pew scale.² The United States Commission on International Religious Freedom (USCIRF) in its 2016 Report placed India on its Tier 2 list of countries, where it has been since 2009.³

A skewed understanding of nationalism has called for and led to frequent attacks on Muslims and Christians in India at the hands of non-state actors affiliated to the hindu nationalistic groups.⁴

Communal violence witnessed a 17% rise in 2015, with 751 incidents recorded across the country as against 644 in 2014. As per data put out by the Centre in reply to a Lok Sabha question, casualties from communal unrest also increased last year, with dead and injured up at 97 and 2,264 from 95 and 1,921 in 2014, respectively. States which saw the maximum communal incidents were UP (155), Karnataka (105), Maharashtra (105), MP (92), Bihar (71), Rajasthan (65) and Gujarat (55). While UP and Karnataka are ruled by SP and Congress, respectively, four of the states — MP, Maharashtra, Rajasthan and Gujarat. A year-on-year comparison, however, showed that while incidents in MP saw a sharp increase from 56 in 2014 to 92 last year, they declined in both Rajasthan and Gujarat.⁵

In its annual report for 2015, the United States Commission on International Religious Freedom (USCIRF) noted that since the 2014 general elections in India, religious minority communities have been subject to *'derogatory comments by politicians linked*

² <http://www.pewforum.org/2015/02/26/religious-hostilities/>

³ http://www.uscirtf.gov/sites/default/files/USCIRF_Tier2_India.pdf

⁴ http://articles.economictimes.indiatimes.com/2008-09-22/news/27734625_1_bjp-ruled-states-hindutva-anti-christian-violence

⁵ <http://timesofindia.indiatimes.com/india/Communal-violence-up-17-in-2015/articleshow/51131055.cms>

to the ruling Bharatiya Janata Party (BJP)' and 'numerous violent attacks and forced conversions by Hindu nationalist groups' such as Rashtriya Swayamsevak Sangh (RSS) and the Vishva Hindu Parishad (VHP).⁶

Reports by faith-based rights agencies recorded over 177 incidents where Christians were targeted, with many more going unrecorded in 2015⁷. Members of the Christian minority community have been targeted in over 100 incidents across the country in the period of January- July, 2016. In some instances, women reported being sexually assaulted and threatened.⁸

Allegations of Religious Conversions

One of the primary causes of violence against minority populations, especially Christians, is the making of allegations of conversions by force and allurement. In a recent incident⁹, members of the Bajrang Dal, a Hindu extremist organisation, caught hold of a pastor and paraded him on a donkey in the northern Indian state of Uttar Pradesh with his head half shaven. They alleged that the pastor converted a man without his consent. Similarly, in the central Indian state of Madhya Pradesh, police arrested 13 people, including a blind couple, on January 14, 2016 for allegedly trying to convert a few residents by offering inducements or using force.¹⁰

While there are numerous such incidents that come to light each year, there is very little evidence to show that minority populations, especially Christians, have engaged in coercive practices to gain new converts. Asma Jahangir, the UN Special Rapporteur on Freedom of Religion or Belief, noted in her report on India in 2011 that: *'Even in the Indian states which have adopted laws on religious conversion there seem to be only few – if any – convictions for conversion by the use of force, inducement or fraudulent means. In Orissa, for example, not a single infringement over the past ten years of the Orissa Freedom of Religion Act 1967 could be cited or adduced by district officials and senior officials in the State Secretariat...'*¹¹

⁶ <http://www.uscirf.gov/sites/default/files/India%202015.pdf>

⁷ <http://speakoutagainsthate.org/>

⁸ Data collated from www.SpeakOutAgainstHate.Org

⁹ <http://www.christiantoday.co.in/article/pastor.humiliated.paraded.head.half.shaven.on.donkey.on.false.conversion.charges.in.u.p/17834.htm>

¹⁰ <http://indianexpress.com/article/india/india-news-india/blind-couple-among-13-in-madhya-pradesh-held-for-conversion/>

¹¹ Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum, MISSION TO INDIA (A/HRC/10/8/Add.3 , 26 January 2009) accessed at <http://www.wgpr.org/pdf/3.%20Special%20Rapporteurs.pdf> on November 11, 2011).

In spite of the absence of credible data to support laws restricting religious conversions in India, there are voices within the government which have called for a national law.¹² In April 2015, Union Home Minister Rajnath Singh of the BJP called¹³ for a national level anti-conversion law in response to reports of coercive reconversions to Hinduism and various attacks against members of religious communities.¹⁴

Legal Restrictions

Similar laws have been enacted at the state or province level in Odisha (previously known as Orissa) in 1967, Madhya Pradesh (1968), Arunachal Pradesh (1978), Gujarat (2003) and Himachal Pradesh (2006). Euphemistically titled 'Freedom of Religion Act', they are commonly known as anti-conversions laws:

- In 2002, the Tamil Nadu state assembly passed the Prohibition of Forcible Conversion of Religion Bill, which was repealed in 2004 after the defeat of the BJP-led coalition.
- In 2006, the BJP-led government in Rajasthan passed a similar freedom of religion bill. However, assent of the President of India is still pending ten years after the Bill was forwarded to him.
- The BJP in Madhya Pradesh and Chhattisgarh also unsuccessfully sought to tighten existing laws the same year.

Basic features of the laws

These laws are very similar in content, and claim to prohibit conversions by force, fraud and inducement or allurement. The Acts state that no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another using force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

All the Acts define "force" as "a threat of injury of any kind including the threat of divine displeasure or social ex-communication," and "fraud" or "fraudulent means" as "misrepresentation or any other fraudulent contrivance." The term "inducement" has been defined in some of the Acts¹⁵ as "the offer of any gift or gratification either in cash or in kind, including the grant of any benefit, either pecuniary or otherwise," while the

¹² <http://indiatoday.intoday.in/story/forcible-conversions-religion-narendra-modi-ghar-wapsi/1/407628.html>

¹³ <http://www.thehindu.com/news/national/states-should-act-against-communal-incidents-rajnath/article7150757.ece>

¹⁴ <https://www.sikh24.com/2015/11/05/indian-parliament-will-consider-criminalizing-religious-liberty/#.VrHoUk3UiUk>

¹⁵ Section 2 (d) the Orissa Pradesh Freedom of Religion Act, 1967 and the Himachal Pradesh Freedom

other Acts¹⁶ use the term “allurement” and define it as offer of any temptation in the form of any gift or gratification either in cash or kind, and grant of any material benefit, either momentary or otherwise.

Prior notice

The Acts also require the person converting to give details of his or her conversion to the district magistrate, either prior to the conversion ceremony or subsequent to it. The Gujarat law states that the person seeking to be converted must obtain prior permission from the concerned district magistrate before any conversion ceremony is performed.

Punishments

The Acts carry penal provisions and punishments, generally ranging from up to one year imprisonment and a fine of up to 5,000 Indian rupees to up to three years imprisonment and a fine of up to 25,000 Indian rupees. The punishment is more stringent if there is evidence of conversion by force, fraud or inducement among women, minors and Dalits (formerly ‘untouchables’ as per India’s caste system) or Tribals. Failure to send notice to or seek permission from the district magistrate before converting or participating in a conversion ceremony also renders one liable for a fine under the Acts.

Effect of the laws

Reports from the various minority communities and human rights agencies reveal that these laws foster hostility against religious minority communities. In several states, prosecutions have been launched under the Freedom of Religion Acts against members of the minority communities. There have also been frequent attacks against the community by members of right-wing Hindu groups on the pretext of ‘forcible’ conversions.¹⁷

The acts also restrict the right of individuals to practice their faith and adopt a religion freely as the district authorities become the final arbiter on whether a person should be allowed to convert or not.

Media reports from the western Indian state of Gujarat revealed that in five years, the state government received 1,838 applications from people of various religions to

¹⁶ Section 2 (a) the Madhya Pradesh Freedom of Religion Act, 1968 and the Gujarat Freedom of Religion Act, 2003.

¹⁷ Taking note of this trend, in its 2011 report, the USCIRF noted that: ‘*The harassment and violence against religious minorities appears to be more pronounced in states that have adopted “Freedom of Religion” Acts or are considering such laws...*’. The report further stated that: ‘*These laws have led to few arrests and reportedly no convictions*’. According to the US State Department, between June 2009 and December 2010 approximately 27 arrests were made in Madhya Pradesh and Chhattisgarh, but resulted in no convictions.

convert to another religion. Of them, 1,735 applications (94.4%) were filed by Hindus who wanted to renounce the religion of their birth to embrace some other creed. The state government has not approved half of these applicants, only 878 persons got permission to convert. Apart from 1,735 Hindus, 57 Muslims, 42 Christians and 4 Parsis have applied for permission to convert.¹⁸

The Acts therefore greatly impinge on the freedom of conscience of a prospective convert and on the right to privacy. The person is rendered incapable of taking the final decision with regards to his or her faith and instead requires the seal of approval of the local district authority.

Article 18 of the Universal Declaration of Human Rights distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have or adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19.1. In accordance with articles 18.2 and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.¹⁹

The United Nations Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, noted in her report²⁰ that:

“The requirement of advance notice or prior permission seems to be unduly onerous for the individual who intends to convert. Any state inquiry into the substantive beliefs and motivation for conversion is highly problematic since it may lead to interference with the internal and private realm of the individual's belief (forum internum). This approach is aggravated if such a Freedom of Religion Act awards specific protection to the state government and its officers against prosecution or legal proceedings with regard to ‘anything done in good faith or intended to be done under the Act or any rule made thereunder.’ Moreover, it seems unclear who may bring an action for, or lodge an appeal against, decisions with regard to the permissibility of a religious conversion.”

She also noted that:

¹⁸<http://timesofindia.indiatimes.com/city/ahmedabad/In-Gujarat-94-4-of-those-seeking-to-convert-are-Hindu/articleshow/51419977.cms>

¹⁹ Human Rights Committee, General Comment 22, Article 18 (Forty-eighth session, 1993). Compilation of general comments and general recommendations adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 35 (1994).

²⁰ United Nations. A General Assembly A/HRC/10/8/Add.3 26 January 2009 (Para 49).

“Any concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim.”

The provisions of the Acts fail to provide any safety mechanisms for those on whom they are casting a burden to disclose sensitive information. Besides, the mandatory declaration sought by the Acts violates Article 19 (1) (b) and (c) which give every citizen the right to assemble peaceably without the interference of the State.

South Asia

Despite the effect of these legal provisions on freedom of conscience, religion or belief, Nepal, Bhutan and Myanmar have also enacted similar laws, with Nepal going so far as to include them in the recently adopted Constitution. A similar proposal was introduced in Sri Lanka, but was struck down by the Supreme Court in 2004.²¹

Nepal

Article 26 of the Constitution of Nepal, 2015 (2072), protects freedom of religion, stating: *‘(1) Each person shall be free to profess, practice, and preserve his/her religion according to his/her faith.’*

However, section 26(3) of the Constitution states that *‘no person shall act or make others act in a manner which is contrary to public health, decency and morality, or behave or act or make others act to disturb public law and order situation, or convert a person of one religion to another religion, or disturb the religion of other people. Such an act shall be punishable by law.’*

The General Code in Chapter 19 which deals with Decency/Etiquette (‘Adal’) states in Number 1.512: *‘No one shall propagate any religion in such manner as to undermine the religion of other nor shall cause other to convert his or her religion. If a person attempts to do such act, the person shall be liable to imprisonment for a term of Three years, and if a person has already caused the conversion of other’s religion, the person shall be liable to imprisonment for a term of six years, and if such person is a foreign national, he or she²² shall also be deported from Nepal after the service of punishment by him or her.’*

Immediately after the enactment of the Constitution, Nepal witnessed a series of criminal prosecutions being launched against tiny minority Christian population.

On June 9, 2016 police in Charikot, Dolakha District of Nepal, arrested eight Christian representatives of a non profit organisation. They were charged with trying to convert children by distributing the booklet during earthquake-related awareness seminars in a

²¹ <http://www.csw.org.uk/2004/08/23/press/366/article.htm>

²² <http://www.lawcommission.gov.np/en/documents/2015/08/muluki-ain-general-code-2020.pdf>

Christian school. The seminar was to help students deal with post-traumatic stress because of a 7.8-magnitude earthquake that struck Nepal in April 2015. The Christians were released on bail eight days later, but are under trial.²³

In addition, there are several other similar cases that have been filed against Christians²⁴

Bhutan

The Constitution of Bhutan in Article 7:4 states: *'A Bhutanese citizen shall have the right to freedom of thought, conscience and religion. No person shall be compelled to belong to another faith by means of coercion or inducement'*.

In furtherance to this provision, in 2011, the legislature amended the Penal Code. The newly introduced Section 463 (A) states that: *'A defendant shall be guilty of the offense of compelling others to belong to another faith if the defendant uses coercion or other forms of inducement to cause the conversion of a person from one religion or faith to another'*.

Section 5 (g) of the Religious Organizations Act of 2007 also states that *'no Religious organizations shall compel any person to belong to another faith, by providing reward or inducement for a person to belong to another faith'*.

The potential for misuse and arbitrary action due to vague terminology has been witnessed in instances of violence and arbitrary action against the minority Christian community in the nation of Bhutan. On July 30, 2012, a government official beat and threatened to kill a Christian pastor Pema Sherpa. The independent pastor was hit on his forehead and chest after being asked by the official not to conduct worship service in his home. Sherpa was among four pastors the official had summoned.²⁵

In 2015, a court in Bhutan on Wednesday sentenced pastor Tandin Wangyal to three years, 11 months in prison for receiving funds for ministry activities from a Christian organization. The verdict from the court in Dorokha, Samtse District held the pastor guilty

²³ <https://www.worldwatchmonitor.org/2016/07/4559343/>

²⁴ <https://thehimalayantimes.com/nepal/chitwan-childrens-home-operator-held-promoting-christianity/>

²⁵ See <http://www.bhutannewsservice.com/main-news/politics/gelephu-dungpa-beats-christian-pastor-threatens-to-kill-him/> and <http://www.christianpost.com/news/official-beats-christian-pastor-in-buddhist-bhutan-79204/>

for receiving US\$11,864 in funding from a foreign Christian organization to conduct trainings and spread Christianity in the Buddhist country.²⁶

Myanmar

Similar legislation has been implemented in Myanmar in August 2015. The unofficial translation by the Chin Human Rights Organization of the Religious Conversion Law²⁷ states that :

'14. No one is allowed to apply for conversion to a new religion with the intent of insulting, degrading, destroying or misusing any religion.

15. No one shall compel a person to change his/her religion through bonded debt, inducement, intimidation, undue influence or pressure.'

The law also requires that the person wishing to convert should give the local authorities intimation of his/her conversion so that they can conduct an inquiry into it. The prospective converts would also be required to undertake special classes to understand the tenets of the religion.²⁸

Conclusion

A detailed analysis of these laws reveals that, far from promoting or protecting religious freedom, they have served to undermine the religious freedom guarantees under the Indian constitution and international law and the covenants to which India is a signatory.

Primarily motivated by a religious ideology, the anti-conversions laws fail to achieve the very purpose for which they have been enacted. On the contrary, they provide an opportunity for divisive forces to target the constitutionally protected rights of minority groups and pose a serious threat to the free practice and propagation of religious beliefs.

Furthermore, the laws fail to account for the agency of converts and treat them instead as passive recipients of external (and seemingly unwanted) pressures from “predatory” convertors. They tend to treat all religious conversions as suspect and liable to investigation and prosecution.

²⁶ <http://morningstarnews.org/2014/09/pastor-in-bhutan-sentenced-to-prison-for-accepting-funds-for-ministry/>

²⁷ http://www.burmalibrary.org/docs21/2015-Religious_Conversion_Bill_2nd_Public_Draft-en.pdf

²⁸ <https://www.mnnonline.org/news/anti-conversion-laws-in-burma-a-nail-in-religious-freedoms-coffin/>

The introduction of similar provisions in the other South Asian legal systems is a disturbing trend and requires the attention of the international community, as they stand in direct contrast to the rights and liberties guaranteed under international law.

This unchecked spreading of anti-conversions laws will affect the safety and security of local religious minorities wherever it occurs, as has been in the case in India.