

UNIVERSAL PERIODIC REVIEW
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Joint stakeholders' report submitted by:

- **World Evangelical Alliance (WEA), an NGO with special consultative status since 1997.** WEA is a network of churches in 129 nations that have each formed an evangelical alliance and over 100 international organizations joining together to give a world-wide identity, voice, and platform to more than 600 million evangelical Christians worldwide. WEA was founded in 1846 in London.
www.worldevangelicals.org
- **Evangelical Fellowship of India (EFI).** EFI was founded in 1951 as a national alliance of evangelical Christians in India. It is a member of WEA. www.efionline.org

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ANTI-CONVERSION LAWS IN INDIA

OVERVIEW

1. While the Constitution of India provides for full religious freedom under Articles 25 and 26, **six Indian states have enacted “Freedom of Religion” Acts which regulate religious conversions.** These laws claim to merely purge the use of force, fraud and inducement from religious persuasion in the interest of public order. But these “anti-conversion” laws clearly violate some key components of religious freedom and are used as a pretext for serious human rights violations against religious minorities.
2. **These laws¹, enacted in the states of Orissa, Madhya Pradesh, Arunachal Pradesh Chhattisgarh, Gujarat and Himachal Pradesh, give the district administration wide and sweeping powers to inquire into religious conversions but provide no provisions for protection against discriminatory action on the part of the authorities. And they require a person converting to another religion to give details of the conversion to the local district magistrate, either prior to the conversion ceremony or subsequent to it. The law in Gujarat makes prior permission from the local authorities mandatory before any conversion ceremony is performed.**
3. **Besides vague and wide definitions of terms such as “force,” “fraud” and “inducement” or “allurement,” they potentially include even legitimate pursuits or actions of propagating one’s faith. Inclusion of the terms such as “divine displeasure” in the definition of force restricts those propagating their religion to inform others about parts of their religious convictions.**
4. These laws are premised on a long time propaganda by right-wing Hindu groups against minority Christians and Muslims – that poor and illiterate Hindus are being converted with the use of duress, deception or coercion, which threatens public order – and not on a scientific study on religious conversions.
5. **Moreover, the laws in Arunachal Pradesh and Himachal Pradesh seek to prohibit conversions out of “original religion” or “indigenous faiths,” showing that their real intent is to prevent or regulate conversions to faiths such as Christianity and Islam.**
6. The state governments that have enacted these laws claim they do not defy religious freedom based on a 1977 ruling by the Supreme Court of India [in the Reverend Stanislaus vs. State of Madhya Pradesh² case] which upheld the Madhya Pradesh Freedom of Religion Act stating that the right to propagate did not include the right to convert another person.
7. The Supreme Court however in the said case, considered only the following arguments, i.e. whether an individual has a right to convert any person or merely to propagate the religion of one’s choice and if the state legislatures are competent to enact such legislations in order to protect public order.
8. Furthermore, the Acts have come under harsh criticism also from national and international agencies, including the UN Special Rapporteur on freedom of religion or belief and the National

¹ Orissa Freedom of Religion Act 1967, Madhya Pradesh *Dharma Swatantraya* Act 1968, Chhattisgarh *Dharma Swatantraya Adhiniyam* 1968, Arunachal Pradesh Freedom of Religion Act 1978, Gujarat Freedom of Religion Act 2003 and Himachal Pradesh Freedom of Religion Act 2006. See annexes.

² AIR 1977 SC 908

Commission for Minorities, as right-wing Hindu groups have misused these laws to harass mainly the minority Christian community.

THE “FREEDOM OF RELIGION” ACTS: A VIOLATION OF FREEDOM OF RELIGION

9. The vague and overtly broad definitions in the Acts already constitute in itself a violation of freedom of religion.³ In March 2007, the National Commission for Minorities noted with concern “the terminology used in the [Himachal Pradesh Freedom of Religion] Act and the methodology prescribed for implementing it” and the “attempt of the Act, and reportedly by similar pieces of legislation contemplated in some other States, to interfere with the basic right of freedom of religion that is the birth right of every Indian.”⁴

Conversion

10. The definition of conversion in these Acts overlooks the fact that conversion is primarily a thought process which may span several days, weeks or even years. And the definition in the Gujarat Act in particular suggests that conversion requires an external agency almost without the will of the prospective convert.⁵ **This understanding of conversion considers the convert as a potentially irresponsible person that needs to be protected from its own choices. The person is infantilized and its freedom to make its own choice is denied.**

Force

11. **The definition of the term “force” as “threat of divine displeasure” unjustifiably impinges on possible interactions between potential converts and those seeking to propagate their faith. And without being well informed, a potential convert cannot meaningfully exercise his or her freedom to change religion.**
12. Proponents of these laws often quote the Orissa High Court ruling in *Yulitha Hyde v. State of Orissa*⁶, which held, “Threat of divine displeasure numbs the mental faculty; more so of an undeveloped mind (sic) and the actions of such a person thereafter, are not free and according to conscience.” The courts in India have also reasoned that threatening anyone with divine displeasure puts great pressure on the threatened person and deprives them of the capacity of exercising their rational judgment. Repeatedly the courts have held that a suggestion of divine displeasure deprives a person of their abilities to make a choice.

Fraud

13. The definition of the word “fraudulent” as “misrepresentation or any other fraudulent contrivance” can also be problematic, if the judicial power has to decide what “misrepresentation” or a “fraudulent contrivance” is, with regard to spiritual matters. This opens the possibility for a judge to evaluate which religious convictions are acceptable and can be expressed publicly, and which cannot.

³ See also the report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum, MISSION TO INDIA (A/HRC/10/8/Add.3):

“While these laws appear to protect religious adherents only from attempts to induce conversion by improper means, they have been criticized on the ground that the failure to clearly define what makes a conversion improper bestows on the authorities unfettered discretion to accept or reject the legitimacy of religious conversions. All of these laws include in the definition of use of force any ‘threat of divine displeasure or social excommunication. Moreover, the terms inducement or allurement are defined to include the offer of any gift or gratification, either in cash or in kind, as well as the grant of any benefit, either pecuniary or otherwise. These broad and vague terms might be interpreted to cover the expression of many religious beliefs. In addition, some provisions are discriminatory in giving preferential treatment to re-conversions, for example by stipulating that returning to the forefathers’ original religion or to one’s own original religion shall not be construed as conversion.” (§48)

⁴ The full press release is available at the National Commission for Minorities website at <http://ncm.nic.in/The-Himachal-Pradesh-Freedom-of-Religion-Act.html> (last accessed on November 11, 2011)

⁵ Sec. 2 (b) of the Gujarat Freedom of Religion Act, 2003

⁶ AIR1973 Ori 116

Inducement/Allurement

14. A problem in defining the term “inducement” or “allurement” as “offer of any temptation in the form of any gift or gratification either in cash or kind or grant of any material benefit either monetary or otherwise” was noted by the Orissa High Court in *Yulitha Hyde v. State of Orissa*. The court held that the vague nature and wide scope of the term would impinge on various legitimate methods of sharing one’s faith. While the Supreme Court subsequently overruled the Orissa High court’s decision in *Rev. Stanislaus vs. Madhya Pradesh*⁷, the court chose not to comment on definitions provided under the Acts.

Arbitrary, Wide Powers

15. **The Acts give district authorities wide and sweeping powers to inquire into both the reasons behind a religious conversion and the procedure adopted for the same.** This is a gross violation of the right to freedom of association, the right to privacy and the freedom of conscience.

16. **The Acts cast an onerous burden on the part of the converted person and the persons seeking to propagate their faith without providing the required checks and balances to ensure protection against misuse of authority. For example, Section 4 of the Himachal Pradesh Act makes it obligatory for a person to give a 30-day prior notice to the District Magistrate about his or her intention to convert.** As per the Rules, the District Magistrate “shall get the matter enquired into by such agency as he may deem fit”. No time limit is prescribed for the conduct of such an enquiry nor have its modalities been defined. **The procedure is oppressive as it will deter a person from changing his or her religion due to unnecessary revelation of an individual’s personal choice and belief to the public at large along with the stigma of having a police inquiry in matters relating to one’s belief and conscience.**⁸

Requirement of Notice/Prior Permission

17. **The Acts 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 take prior permission from the concerned district magistrate before any conversion ceremony is performed. The Acts therefore greatly impinge on the freedom of conscience of a prospective covert and also on their 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.** In accordance with articles 18.2 and 17 of the ICCPR, no one should be compelled to reveal his thoughts or adherence to a religion or belief.⁹

⁷ 1977 (1) Supreme Court Cases 677

⁸ Arcot Krishnaswami, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities in *STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES* (1960), mentions that a similar law calling for the regulation and registration of converts was sought to be introduced in the Indian Parliament in 1955. The parliament rejected the bill. The then Prime Minister, Jawaharlal Nehru, said:

“I fear this bill... will not help very much in suppressing the evil methods [of gaining converts], but might very well be the cause of great harassment to a large number of people. Also, we have to take into consideration that, however carefully you define these matters, you cannot find really proper phraseology for them. Some members of this House may remember that this very question, in its various aspects, was considered in the Constituent Assembly, [and] before the Constituent Assembly formally met, by various sub-committees... Ultimately, Sardar Patel got up and said, ‘Let there be no heat about this matter — because there was heat — it is obvious that three committees have considered this matter and have not arrived at any conclusion which is generally accepted. After that, they came to the conclusion that it is better not to have any such thing because they could not find a really adequate formula which could not be abused later on.’”

“The major evils of coercion and deception can be dealt with under the general law. It may be difficult to obtain proof but so is it difficult to obtain proof in the case of many other offences, but to suggest that there should be a licensing system for propagating a faith is not proper. It would lead in its wake to the police having too large a power of interference.”

⁹ Human Rights Committee, General Comment 22, Article 18 (1993), §3.

Exemption of Reconversion

18. Some of the Acts blatantly violate the right to equality as provided under Article 14 of the Indian Constitution. For example, **under the Himachal Pradesh Act, Section 4 proviso states that “no notice will be required if a person reverts back to his original religion.”** This is an unreasonable classification and the legislature has failed to distinguish why a special provision is required for non-notification in the event of reconversion to “original religion.” **A similar provision exists in the Arunachal Pradesh freedom of religion.**

EFFECT OF THE LEGISLATION ON HUMAN RIGHTS

19. Apart from violating rights of the general populace in the six states, the anti-conversion laws further victimize the religious minorities, including the Christian community which has faced numerous violent attacks each year since 1998. These attacks appear to be more pronounced in states that have adopted ‘Freedom of Religion’ Acts.
- 20. Human rights organisations including faith based organisations record frequent attacks against the minority Christian community by right-wing Hindu groups, on the allegation of “forcible conversions”. However, in spite of the existence of these acts in some states for over 45 years, there have been very few convictions, though cases are registered under the Acts almost every month.¹⁰ In the year 2010, there were approximately 18 arrests reported under state level "anti-conversion" laws and other restrictive laws in Chhattisgarh and Madhya Pradesh alone.**
21. Targeted attacks against Christians began with a massive spate of violence in Gujarat’s Dangs district and the burning alive of Australian missionary Graham Staines and his two minor sons in Orissa state in 1999. The attacks on religious minorities constantly increased thereafter.
- 22. Over the period of 2006 – 2011 (June), faith based human rights group has recorded over 750 incidents of violence and hostility against the Christian community. These reports did not include the violence recorded in Orissa’s Kandhamal district in 2007 and 2008. In Orissa in these two years, more than 6,000 homes were burned, 50,000 people were displaced, thousands were injured, and about 100 men and women were burned alive or hacked to death, according to faith-based groups in India. The southern state of Karnataka recorded the most number of incidents of violence against the Christian community after**

See also the report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, Addendum, MISSION TO INDIA (A/HRC/10/8/Add.3):

“(…) 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. (...) [A]ny concern raised with regard to certain conversions or how they might be accomplished should primarily be raised by the alleged victim.” (§49)

¹⁰ See also the 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):

“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. However, such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them. There is a risk that ‘Freedom of Religion Acts may become a tool in the hands of those who wish to use religion for vested interests or to persecute individuals on the ground of their religion or belief. While persecution, violence or discrimination based on religion or belief need to be sanctioned by law, the Special Rapporteur would like to caution against excessive or vague legislation on religious issues which could create tensions and problems instead of solving them.” (§50)

Orissa. The People Union for Civil Liberties recorded approximately 1000 attacks in that state in a space of 500 days.¹¹

23. A two-member team of the National Commission for Minorities in India comprising Harcharan Singh Josh and Lama Chosphe Zotpa, after their visit to the states of Madhya Pradesh and Chhattisgarh between June 13 and 18, 2007 noted that Hindu extremists frequently invoke the anti-conversion law in Madhya Pradesh as a means of inciting mobs against Christians or having them arrested without evidence. The report stated that:

“Obviously, the life of Christians has become miserable at the hands of miscreants (sic) in connivance with the police,” they noted in their report. “There are allegations that when atrocities were committed on Christians by the miscreants (sic), police remained mere spectators and in certain cases they did not even register FIRs [First Information Reports].”

25. RECOMMENDATIONS TO THE GOVERNMENT OF INDIA

- **Although maintenance of public order is a state responsibility, the central or federal government should issue an advisory to the state governments to repeal the anti-conversion laws;**
- **The Ministry of Home Affairs should provide training on human rights and religious freedom standards and practices to the state and central police and judiciary;**
- **The government should ensure an active Commission for Human Rights and Commission for Minorities is operational in every state, and that members of each commission are appointed by transparent and non-partisan procedures;**
- **The Law Commission of India should be assigned to conduct a research on the premise, impact and misuse of the Acts in each state.**

¹¹ STATE TERRORISM – TYRRANY (A REPORT ON THE ATTACKS ON MINORITIES AND THEIR PLACES OF WORSHIP IN KARNATAKA) – 2011 (Full report can be accessed at http://www.pucl.org/Topics/Religion-communalism/2011/saldanha_report.pdf)

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