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India's Anti-Conversion Laws: The Death of Secularism

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The Karnataka bill on conversions goes much further than the laws enacted in other states in its infraction of liberty and it contains a raft of illegitimate provisions. Its intentions have been laid bare by the belligerence that has accompanied its advocacy.

In his magisterial commentary on the Constitution of India, HM Seervai describes the Supreme Court's judgment in *Rev. Stanislaus v. State of Madhya Pradesh* (1977) as "clearly wrong", as "productive of the greatest public mischief," and as a verdict that "ought to be overruled". More than four decades later, the judgment continues to stand and has spawned a series of legislations that strike at the heart of Indian secularism. The latest in this series is the Karnataka Protection of Right to Freedom of Religion Bill, 2021. This proposed law, in seeking, among other things, to ban religious conversion for the purposes of marriage, treats liberties governing ethical choice not as fundamental rights but as grants that are subject to the whims and fancies of a bureaucratic, theological state.

The Karnataka bill, which has cleared the state assembly and is slated to be placed before its legislative council, expressly cites, and takes inspiration from, the judgment in *Stanislaus*. There, the Supreme Court had upheld laws made by Madhya Pradesh and Orissa , which were amongst the first efforts to restrain religious conversion. These laws, the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, and the Orissa Freedom of Religion Act, 1967, were ostensibly meant—or at least so their titles suggested—to promote free choice, but their stipulations were distinctly illiberal.

The MP and Orissa laws were predominantly similar in that they both required any planned religious conversion to be brought to the knowledge of a district magistrate, who then had to provide his imprimatur to the move. They prohibited, and imposed penalties on, conversions that were attempted through use of force, inducement, or allurement, or through other fraudulent means. But in defining these words in vague terms, the laws ensured that ultimate discretion vested in the bureaucracy. For example, the MP law defined allurement as an "offer of any temptation in the form of (i) any gift or gratification either in cash or kind; (ii) grant of any material benefit either monetary or otherwise." The Orissa law defined inducement to include "the offer of any gift or gratification, either in cash or in kind." But both laws were silent on what gratification would mean—would it include, for instance, spiritual promises?

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To be sure, on the face of it a law that seeks to ban the use of coercive forces to incite conversion might seem to be in harmony with the Constitution. But what the Supreme Court failed to realise in Stanislaus was that these laws, despite their professed framing, have never been intended to address genuine legislative concerns. On the contrary, they have always been aimed at strengthening brute majoritarian beliefs. This is evident from the politics that has come to define the new Karnataka bill. The draft law criminalises conversion secured either by misrepresentation, force, undue influence, coercion, or allurement, or by any other fraudulent means or "by promise of marriage." It defines allurement as including an offer of any temptation that might take the nature not only of gifts in the form of money, but also offers of "free education" or a "better lifestyle." As events in the lead up to and since the bill's introduction have only made all too clear, the real intention here is to intimidate minorities, especially those of the Christian faith in the state.

In the lead up to Christmas, with discussions over the bill intensifying, and with its clearance in the legislative assembly, a spate of attacks on churches and prayer meetings have been witnessed in the state. Members of the Bajrang Dal have been seen barging violently into churches across the region. Video footage has shown a man wielding a sword chasing a pastor in a church in Belgavi. On 23 December, the 160-year-old St. Joseph's church in Chikkaballapur district in southern Karnataka was vandalized. It was, said a spokesperson for the archdiocese, the 11th such incident in the state since just September last year. But the police have made no arrests.

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All through this period, the state government has chosen to ramrod through the legislative assembly its new bill. In many ways, this law mirrors the one enacted in Uttar Pradesh recently, and the ones that brought amendments to existing legislation in Gujarat and MP, in that it prohibits conversion for the purposes of marriage. But quite apart from the effect that these laws have already had on minorities, they are also distinctly unconstitutional. In some ways, the Karnataka bill is broader still in its infraction of liberty than the ones implemented in other states. Inbuilt in its various stipulations are a raft of illegitimate provisions.

First, the law emulates its counterparts by making mandatory the grant of notice to a district magistrate from a person who is desirous of converting her religion. The magistrate will then publish this proposal and call for objections. This demand for publication, by itself, is anathema to the right to privacy that is now regarded as fundamental. In 2012, a similar provision mandating public intimation of conversion was struck down by the Himachal Pradesh High Court, which held that a person possessed not only a right of conscience but also a right to keep her beliefs secret.

Second, the Karnataka bill compounds this problem by imposing on the person seeking to convert, a burden to establish the negative that the conversion has not been made through one or the other of the prohibited categories. This is not only arbitrary but also disproportionate in that it's a burden that can almost never be discharged.

Third, it proscribes altogether conversions made for the purposes of marriage. In August this year, the Gujarat High Court held a preliminary hearing on a challenge to the validity of an analogous provision. Section 3 of the Gujarat Freedom of Religion Act, 2003 (as amended in 2021) now also prohibited conversion "by marriage." In staying this provision, the High Court held that "Prima-facie inter-faith marriages between two consenting adults by operation of the provisions of Section 3 of the 2003 Act interferes with the intricacies of marriage including the right to the choice of an individual, thereby infringing Article 21 of the Constitution of India." But the Karnataka law pays no heed to this.

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Fourth, it exempts reconversions made to a person's "immediate previous religion" from the application of its provisions. Now, if conversions made through allurement, force, or coercion are deemed as deserving of censure, it's difficult to see how reconversion can constitute a special category. In interpreting Article 14 of the Constitution, which guarantees to everyone a right to equality, the Supreme Court has held that while the Constitution prohibits class legislation, laws can still make what are "reasonable classifications". For a classification to fall under such a category, it must fulfil a twin test: one, the classification must be founded on an intelligible differentia, which distinguishes persons or things that are grouped together from others that are left out, and, two, the classification made must bear a rational nexus to the law's objective. In this case, assuming the bill's chief purpose is to treat conversions as a matter of public concern, a classification that exempts reconversions will certainly bear no relation to those aims. This is unless the government wants to argue that the law is not neutral and that it is only, in fact, concerned with conversions *from* Hinduism.

Indeed, days after the bill's clearance in the assembly, the South Bangalore Member of Parliament, and the president of the Bharatiya Janata Party's youth wing, Tejasvi Surya hinted at precisely this. At an event organized by the Sri Krishna Mutt in Udupi, Mr. Surya claimed that annual targets must be set to bring people back into the Hindu fold. "There are people who belonged to Hinduism but were converted to Islam or Christianity," he said. "It is our duty to bring these people back into the fold of Hinduism. Also, Hindus in Pakistan who were converted to Islam should be brought back into the fold." Hinduism, he added, was "tolerant, scientific, progressive and forward-looking", and "all the mutts and temples should have annual targets to bring back people to Hindu religion. For instance, there were people who had to undergo religious conversion because of Tipu Sultan… It is important to bring these people back to the fold of Hinduism. That is the only way a renaissance can happen." Surya has since "withdrawn" these remarks through a statement on Twitter, but the motif of Hindu majoritarianism is written into the campaign's ethos, and this proposed law is but an extension of that idea.

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Fifth—and this is arguably the bill's most damaging provision—the law seeks to define its various prohibitions in what is decidedly vague language. For example, allurement is defined to mean practically any incentive that is offered to a person for the purposes of conversion. If a conversion is made based on a promise that a certain religion might offer a person spiritual upliftment, the definition

as it stands might see those actions as constituting allurement. If a person belonging to religion X claims that his faith offers mental peace and proselytizes this as an aid to converting person Y, then there's every chance X might fall foul of the law, opening himself up to criminal prosecution.

This idea that religious proselytizers ought not to allure others to convert to their religion has many antecedents. But it's the judgment in *Stanislaus* that continues to offer it legitimacy. The only difference in this instance is that the Karnataka bill takes the definitions offered by the MP and Orissa laws and makes them vaguer still by adding a raft of unclear stipulations. In writing for the court in *Stanislaus,* Chief Justice AN Ray held that it was wrong to conflate propagation with conversion. Article 25 in plain terms states that "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." The word, "propagate", Chief Justice Ray said, has been used here in its strict dictionary sense. According to him, it granted to a person the right to "transmit or spread one's religion by an exposition of its tenets," but not "a right to convert another person to one's own religion." He added: "It has to be remembered 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."

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But, as Seervai notes in his commentary on the judgment, of what use is propagation if one cannot advocate conversion. "Successful propagation of religion," he wrote, "would result in conversion." Today, with the aid of the illogic in *Stainslaus*, state legislatures around the country have used the bogey of public order to not merely limit but to altogether erase from the Constitution the fundamental right that Article 25 guarantees.

In the case of the Karnataka law, its intentions have been laid bare by the rampant belligerence that has accompanied its advocacy. Yet, it's not merely in its spirit that it offends the Constitution. In treating different religious faiths unequally, it invades on the right to equality. In mandating publication of an intention to convert, it invades on the right to privacy. In allowing the district magistrate wide police powers over conversion, it invades on dignity. In altogether prohibiting conversion for the purposes of marriage, it strikes at a person's basic ethical liberty. And, in defining its proscriptions in ambiguous text, it treats the right to freedom of conscience as expendable. The result: the death of the secular state.