

Religious Diversity in Asia

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Some ‘Side Effects’ of Religious Diversity: Exploring Religious Conversion in the Indian Secular State

Ayelet Harel-Shalev and Noa Levy

1 Introduction¹

In the constitutions of many of today’s democracies, the official character of the state is no longer defined in religious terms, and freedom of religion of the citizens of these states is thus ensured. In such states with religiously diverse societies, interreligious interactions and encounters are common practice in both the social and the political spheres. Nevertheless, in many of these states, including India, the issue of religious conversion presents a challenge to the secular nature of the state. Although the separation of church and state is not a prerequisite for democracy, in the early days of Indian independence, India’s leaders chose to create a constitutional order based on secular and egalitarian values (Brass 2010; Harel-Shalev 2010; Shani 2017). Nonetheless, in India – a democracy that constitutionally declared its secular character and one that is committed to ensuring freedom of religion of its citizens – continuing discomfort with religious conversion is evident, particularly conversion to Islam or to Christianity.

India – the world’s largest democracy and one of its most populous countries – is also a centre of dynamic religious vibrancy: not only is it the birthplace of some of the world’s major religions – Buddhism, Hinduism, Jainism, and Sikhism – but it also hosts numerous other faiths, such as Islam, Christianity, Judaism, and Zoroastrianism (Table 4.1). As shown in the Table, the religiously diverse Indian society is made up of a Hindu majority and various religious minorities that are entitled to minority rights in the sphere of religion (Harel-Shalev 2017).

The multi-religious character of India has been acquired over the centuries via the punctuated arrivals of foreigners from both near and far. A brief turning back of the clock from modern secular India to the Mogul era reveals complex relations between Hindus and Muslims at that time (Eaton 2014), and most Mogul rulers of India employed strategies that involved forced religious

¹ This research was supported by the I-CORE Program of the Planning and Budgeting Committee and The Israel Science Foundation (grant No. 1754/12).

TABLE 4.1 Religious groups in India

Religious group	% of the population in 1951	% of the population in 2011
Hinduism	84.1	79.80
Islam	9.8	14.23
Christianity	2.30	2.30
Sikhism	1.79	1.72
Buddhism	0.74	0.70
Jainism	0.46	0.37
Others/Religion not specified	0.43	0.9
Zoroastrianism	0.13	not counted

conversions to Islam (Eaton 1984). Even when this approach was not exercised, many Hindus chose or were compelled to convert to Islam to escape the burden of *jizya* taxes, which all non-Muslims were required to pay. A different form of enticement to conversion was practiced during the British colonial period, in that the British Raj showed favouritism toward Christian converts by granting them legal benefits (Kim 2003; Viswanathan 1998). An understanding of these processes taking place during the pre-independence era is, therefore, crucial to understanding the development of India's policy toward conversion. During the formative years of independence, the dominant Hindu majority encouraged peaceful interreligious relations and relinquished official Hindu superiority in federal India, thus creating a *civic-secular* state rather than a *formally Hindu-dominated* state. Nonetheless, during the past few decades, several Indian states have enacted laws to restrict religious conversion (Osuri 2013; Barua 2015), reflecting the enduring disquiet surrounding conversions in a democratic country that acknowledges freedom of religion.

By analysing primary sources, this chapter reveals the direct policy measures of the State of India toward conversions between different religions. It also analyses changes in India's policy directives vis-à-vis religious diversity and religious conversions and explores how the religious sphere has indelibly shaped modern India. More specifically, this chapter aims to analyse Indian policy directives toward religious conversion, from the time of Indian independence to the present, by mapping the relevant direct and indirect legislation and jurisdiction in India at both the state and national-federal levels. Particular focus is placed on policy directives for preventing conversion and on the response of the Indian political elites to the phenomenon of conversion from Hinduism to Christianity or Islam.

Interestingly, while addressing the subject of religious diversity, the current study reveals that the phenomenon of opposition to or discomfort with religious conversion is not merely a recent phenomenon tied to the political rise of Hindu nationalism since the 1980s. Rather, this chapter undertakes the complex work of demonstrating that such unease or anxiety associated with religious conversion has a much longer history in India: Underpinned by various historical and demographic factors, it shapes the ways in which religious diversity is being constructed and contested.

The first section of this chapter thus presents a brief discussion regarding the expression of conversion in India as both a spiritual and a political act and the ways in which it throws light on the relationships between religion, politics, and state. The second section explores freedom of religion and legal articles relating indirectly to conversion in the early years of independence. The third section investigates the legislation passed by various Indian states relating to conversion and the responses of the Indian (federal) Supreme Court to this legislation. The fourth and final section analyses differences and similarities between the various state authorities, namely at the state level, the judicial level, and the federal-states level, and draws conclusions as to the broader implications of religious and political struggles. Overall, this chapter presents a dialectic system, in which the state and its various arms move between a sincere intention to implement freedom of religion, on the one hand, and various fears of religious conversion out of the Hindu fold, on the other, all of which affect the nature of religious diversity in India.

2 Religious Diversity, the State, and Religious Conversion in India – An Overview

Conversion from one religion to another is an important moment, not only for the person converting, but also for the two religious communities directly affected by the conversion – one has been abandoned and the other, adopted. The circumstances in which religious conversions take place can shed light on the ways religious communities function and how they address fundamental questions of identity (Hames 2016). An investigation of the dynamics of conversion can also illuminate the dynamics of minority – majority cultures living side by side and the ways in which democratic and secular states address religion.

Religious conversion had existed for generations before the concept of the nation state had evolved, and in recent centuries conversion has become an almost universal norm in world politics. However, the dawn of the modern nation state has complicated this process, since it is commonly held that exercising some control over religious demographics is in the best interests of the

nation. Understanding the complex relationships between religion and state are, therefore, crucial for the analysis of religious diversity in general and religious conversion in particular.

Contrary to secularization theory, the spread of democracy has not tempered the global influence of religion, which has actually grown in recent decades (Rebe 2012), and religion continues to play a role in state governance the world over, albeit to varying degrees. In fact, almost all democracies subscribe to an established religion, are influenced by religious doctrines, provide financial support to religious organizations, and practice religious customs (Rebe 2012), thereby generating an additional tension that resides alongside the tension between the aspiration to a unified nation state and religious diversity in practice.

The motives behind state regulation of religious conversion vary. Although secular constitutional orders promise separation of religious and state authorities, in practice they tend to exhibit a range of approaches to religion–state relations, from separationist to accommodative and cooperative models. Often, the state’s approach is situated along a continuum between a complete ban to the complete protection of religious conversion, including propaganda and proselytism (Thio 2010).

For the person converting voluntarily, the act of conversion might involve soul-searching and learning. For the former religious community of the convert, the act of conversion might be seen as a challenging moment that raises questions about the nature and cohesion of the community. In multi-religious societies, religious conversion could be considered as an expression of competition between religious camps, which characterizes religious diversity. Religious conversion has both political and personal consequences. For example, in India and elsewhere, certain rights, e.g., citizenship, affirmative-action benefits, and religious rights, vary with the citizen’s religious identity. Viswanathan (1998, p. xvii) rightly considers conversion in India to be a spiritual, but also a political, activity, located at “the nexus of spiritual and material interests”. India represents a unique case with respect to religious conversion, since its predominant religion is Hinduism, which, on the one hand, can be considered a tolerant religion that encourages non-violent conflict resolution (Gandhi 2014), but on the other hand, dictates strict hierarchies via the caste system (Ambedkar 2014). Moreover, as demonstrated below, the phenomenon of conversion to a non-Hindu religion tests Hindu tolerance, and it has been known to evoke a fundamentalist and violent side of Hinduism (Lal 2006).

Current research on religious conversion in India typically concentrates on personal journeys (Heredia 2007; Stroope 2011; Fernandes 2011), specific

trends in conversion and their effects at the local level (Eaton 1997; Kim 2003; Robinson 2003), and trends of conversion specifically to Islam (Mathew 1982). Such research often includes analyses of women's status (Coleman 2008), analyses of laws (Dudley-Jenkins 2008, 2019; Kim 2002), and evaluations of the Hindu nationalist movement's anti-conversion agenda (Fernandes 2011; Jaffrelot 2010). While these perspectives provide important input to the overall understanding of the subject, they do not provide the broad, multidisciplinary perspective required for the empirical study of religious conversion. Therefore, as mentioned above, the current chapter aims to extend the analysis of the direct measures of state policy taken toward conversions as they pertain to the different religious groups. To this end, the chapter goes beyond the direct interpretation of the law and of local legislation that prohibits conversion and investigates indirect policies and political acts seemingly unrelated to conversion. Such political acts include the series of legislative processes that institute affirmative action to promote the status of the lower castes and the Backward Classes (BCs) of Hindus, as well as articles in personal laws that relate directly and indirectly to converts.

The state's attempts to track religious conversions seem to be directed primarily to conversions from Hinduism to non-Indic minority religions, particularly to Islam and Christianity (Dudley-Jenkins 2008), to which millions of Hindus have converted. Such conversion by groups belonging to the lower castes, especially the *Scheduled Castes* (untouchables/BCs/Dalits), has consistently elicited negative government responses (Desai 1991).

Generally, the reasons for religious conversion in India involve four intertwined elements that are not always easy to separate: 1) spiritual searches; 2) the rigidity of the Hindu caste system, which has left the lower castes and the *Scheduled Castes* confused and demoralized; 3) the benefits offered by the advocates of other religions; and 4) political motivations.

As mentioned above, the current chapter focuses on modern India, and particularly on the transformation from the mandate period to the era of nation building. As the formative years of the state were a crucial time in establishing the foundations of religious tolerance (and intolerance), they are analysed through studying the proceedings of the debates of the Constituent Assembly (the legislative body that preceded the Indian parliament) regarding constitutional articles as they pertain to religious diversity and the freedom to practice religion. Those debate proceedings and subsequent constitutional legislation are compared to the debate proceedings of the Indian parliament, the Lok-Sabha, to state-level legislation against conversion, and to the verdicts of India's Supreme Court in the relevant cases.

3 National-Level Legislation, Judicial Verdicts, and Religious Conversion

Indian notions of secularism and modernism have been shaped by considerations of demography (Coleman 2008), culture, and heritage (Dudley-Jenkins 2008; Galanter 1989). The independent state of India was established in the midst of a violent partition process, which involved severe competition between Hindus and Muslims. While Pakistan defined itself as a Muslim state, India defined itself as a secular state that adopted a formally neutral policy toward its myriad religious communities. The title “secular” was added to the preamble of the Indian Constitution in 1976 through the passage of the 42nd Amendment, although it was evident that the dominant leaders of India aimed at a state that did not “belong” to any one specific group. The Indian state, thus shaped by its leaders in this spirit, grants equal civic rights and constitutional rights, such as freedom of religion, to all its citizens. The constitution guarantees equality before the law to all citizens, and it formally includes two clearly worded articles that prohibit discrimination of any kind (Articles 14 & 15). Moreover, despite the serious inter-communal tensions in India’s early years, in practice, Muslim symbols were embedded within the state’s symbols and streets were named after Mogul rulers, who were responsible for massive, forced conversions throughout the sub-continent. India’s Hindu founding leaders chose to include the Mogul period as an indispensable part of India’s cultural heritage, thereby acknowledging that Islam is an inherent part of the country’s identity.

The constitution of India does not mention the word ‘conversion’ and makes it very clear that the state will not discriminate on the grounds of religion.² Article 25(1) of the constitution guarantees freedom of conscience to every citizen and not merely to the followers of a particular religion. The right to freedom of religion, covered in Articles 25, 26, 27 and 28 of the constitution, confers religious freedom on all citizens of India. According to the Indian constitution, all religions are equal before the state and no religion shall be given preference over another. Citizens are free to preach, practice, and propagate the religion of their choice.

Article 295 of the Indian Penal Code (1860), which is still valid in independent India, states that any malicious attempt to slander or insult the religious beliefs (or values) of a given class is illegal. The *Representation of People’s Act* (1951) attempts to prevent the use of religion to garner political support and to prevent the promotion of enmity between different groups on the grounds

² The Constitution of India, Art. 23[2] (1949).

of religion. Such actions are deemed corrupt and punishable by law. Indeed, such laws have been passed to sustain the principle of religious freedom and secularism in India.

Protocols of Constituent Assembly debates reveal that the final formulations of the articles relating to religious freedom were accompanied by long, heated discussions. The right to disseminate religious propaganda was particularly controversial.³ Christian representatives in the Constituent Assembly fiercely insisted on the inclusion of the right to “propagate” religion in the articles regarding freedom of religion. While the Christians saw propaganda and proselytization as indispensable parts of their religion, many Hindu Constituent Assembly members felt that the Christians were taking undue advantage of the “majority’s generosity”.⁴ Discussing the Freedom of Religion article, Lokanath Misra⁵ stated that “this is the most disgraceful article, the blackest part of the draft constitution.... I have considered and studied all the constitutional precedents and have not found anywhere any mention of the word ‘propaganda’ as a fundamental right, relating to religion”.⁶

During the constitutional assembly debates, Sardar Patel, one of the leaders of the Indian National Congress, agreed to omit a clause vehemently opposed by Christian members and organizations that outlawed conversion from one religion to another through coercion or undue influence. Despite the objections expressed to the very idea of conversion by majoritarian Hindu Congressmen, such as Algurai Shastri and Purushottam Das Tandon, the Constitution’s only reference to religious liberty was thus a positive one, affirming religious rights as mentioned above.⁷ Article 25 of the constitution was approved, and the dissemination of religious propaganda became legal and constitutional. The courts backed parliament’s approach and affirmed the status of secularism in the 1975 *Indira v. Rajnarain* case as a basic feature of the constitution, with the declaration that “The state shall have no religion of its own and all persons shall be equally entitled to freedom of conscience and the right freely to profess, practice, and propagate religion”.⁸ However, Rao (2003) argued that, although the constitution allows all citizens to propagate religion, no mention is made of a fundamental right to convert another person to one’s own religion. India’s Supreme Court later addressed this issue in several cases, as detailed below.

3 Constituent Assembly Debates [CAD], Vol III, p. 488 (1947).

4 CAD, Vol III, p. 500 (1947).

5 Discussed as article 19 of the draft constitution but became article 25 in the final constitution.

6 CAD, Vol VII, pp. 817–818, 822 (1947).

7 CAD, Vol III, pp. 484–485, 490–493 (1947).

8 *Indira v. Rajnarain*, 887 SC, paragraph 665 (1975).

Despite India's official and constitutional definition as a secular and democratic state, we claim that, in some instances, India has adopted different approaches for Hindu and non-Hindu citizens. The constitution indicates that the term "Hindu" includes adherents of the Sikh, Jaina, and Buddhist religions⁹ and converts to these religions. We further suggest that the constitution's explicit distinction between members of the "local" *Indic religions* (Buddhism, Sikhism, and Jainism) and the followers of Islam and Christianity puts in place the means by which to treat these followers differently. Accordingly, while *Atmaparivartan* (conversion within one's religious tradition) is accepted and tolerated in Indian society, *Dharam Parivartan* (conversion from an Indic religious tradition to a non-Indic religion) has become increasingly politicized and frowned upon (Heredia 2007; Stephens 2007).

The Lok-Sabha did not constitute laws prohibiting religious conversion, although there have been attempts to do so (notable are the cases in Lok-Sabha Debates [LSD], 1954, 1960, 1978, 2003, 2011). However, two sets of federal laws, which are applicable to all states and union territories (UTs) in India, have had a substantial impact on issues of conversion (Federal India is composed of 29 states and 7 UTs ruled by Delhi.) Both affirmative action laws for lower caste Hindus and Hindu personal laws, collectively termed "the Hindu Code Bills of 1954–1956", indirectly affect converts from Hinduism to a non-Indic religion in various ways (see below).

3.1 *Special Affirmative Action/Reservation for the Hindu Backward Classes*

During the sessions of the Constituent Assembly, long and comprehensive discussions were held over the issue of an affirmative action policy, termed in India as "reservation" or "reservations policy",¹⁰ but these focused on the Hindu community.¹¹ An affirmative action policy was thereby adopted for those belonging to the Hindu BCs. A few decades later, following the recommendations of the Mandal Commission, Parliament extended this policy to less disadvantaged middle-class groups, belonging to the Other Backward Classes (OBCs)¹² (an issue that is addressed below).¹³

9 The Constitution of India, art. 25 (1949).

10 CAD, Vol VII, pp. 552–3, 673–702, 934–47 (1947).

11 The reservations policy was also extended to the Anglo-Indian community, a marginal segment of society (see Articles 331, 336, and 337 of India's constitution).

12 Mandal Commission Report. *Backward Classes Commission*. Government of India, Vol I–VII (1980).

13 The list of OBCs was added to the list of BCs (see the Mandal Commission Report, 1980).

These policy directives, which were intended to promote the disadvantaged lower-caste Hindu population, were to become closely intertwined with the phenomenon of religious conversion, which characterizes disadvantaged groups (Harel-Shalev 2010). While affirmative action is considered a just cause meant to integrate lower castes and Hindu *Scheduled Castes* into Indian society, it is not implemented to promote other, unrepresented, non-Indic minorities – a situation that directly affects the issue of religious diversity and its implementation. Furthermore, when a BC Hindu decides to undergo conversion to a non-Indic religion, s/he will most probably no longer be entitled to benefits provided by the state, suggesting that there is more to affirmative action than promoting disadvantaged castes. Accordingly, one may suspect that government policies to promote lower-caste Hindus are not instituted independently of the trends of religious conversion in India.

In light of these decisions, it would appear that India's political elite deduced that affirmative action would not harm the principle of equality or the preservation of equal opportunities; rather, they probably concluded that such a policy would strengthen those principles and practices. Therefore, it was decided that the state would ease access to education and civil service jobs for the Hindu lower classes. For these purposes, reservations would be introduced in the central government, in Parliament, in the local government operating in the states, in the education system, in government offices, and in selected public service institutions.¹⁴

There was, however, an important criterion resting on group identity for the reservation: A Presidential Decree announced, in August 1950, that “No person, professing a religion different from Hinduism shall be ... a member of a scheduled caste”.¹⁵ This declaration was discussed and assured by the Supreme Court in the 1951 case *Venkataraman v. The State of Madras*.¹⁶ In this case, the Supreme Court cited a violation of the Constitution, declared it illegal, and overturned the decision of the Madras government with regard to reservations for minorities other than the Hindu BCs.

Soon after the above decision, there was a pressing need to address the definition of Hindu when it came to affirmative action policy. A review of the text of the relevant order indicates that the term “Hindu” also refers to Jains, Sikhs, and Buddhists (Shiva-Rao 1968). This extension was introduced by the government to ensure that other minorities, namely, Christians and Muslims,

14 The Constitution of India, Art. 330, 332, 334, 335, 338–342 (1949).

15 The Constitution [Scheduled Castes] Order (1950). Gazette of India, Extraordinary, 1950, Part II, Section 3, page 163.

16 *Venkataraman v. The State of Madras*. SC 229 (1951).

would not have access to either overrepresentation or reservations. In 1990, the Presidential Order regarding *Scheduled Castes* was amended; paragraph three now reads ... “no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of a Scheduled Caste” (Stephens 2007, p. 268). This Order reinforces the legal presumption that “non-Hindus” are excluded from a *Scheduled Caste* status, unless specifically allowed to claim such a status by the central government. The state thus applies a multifaceted formula through which it awards the Hindu lower classes collective rights that are denied to minority ethno-religious communities (Harel-Shalev 2010).

This legislation had implications not only for born Christians and Muslims, but also for converts. In a 1959 circular, the Department of Home Ministry also indicated that converts to Christianity would forfeit their rights to a *Scheduled Caste* status unless they “reconverted” back to the Hindu fold. While conversion to the Indic religions (such as Buddhism and Jainism) was accepted, categorizing caste and religion for purposes of affirmative action became problematic when low-caste individuals and *Scheduled Castes* converted from Hinduism to either Islam or Christianity, and the benefits to which they were formerly entitled were revoked.¹⁷ This issue has sparked a number of salient legal conflicts. The unique phenomenon of BCs conversion challenges both Hindu tradition and the modern democratic Indian state and has led to severe conflicts over power and control.

Over the years, several types of petition have been presented to the state’s Supreme Courts, including a request to decide the issue of the continued eligibility to affirmative action of members of the BCs who had converted.¹⁸ The Supreme Court backed the political system and reaffirmed that a person who had renounced the Hindu religion was not eligible for consideration under the reservations policy for BCs. Hindu BC (among what the state terms as “*Scheduled Castes*”) who converted to another religion were, however, entitled to reservations in some instances only after the Mandal Commission’s recommendations for non-Hindu OBCs were implemented in the 1990s (Harel-Shalev 2010).

17 In subsequent legal amendments to the 1950 order, the central government has allowed both Sikhs (1956), Buddhists (1990), and converts to these traditions to claim an SC status, provided that they can prove their membership in an underprivileged community.

18 Such as Michael v. Venkataswaran. AIR 1952. Mad. 474 (1952).

3.2 *Personal Laws and Religious Conversion*

According to the vision of India's leaders in the infant years of the independent state, the Indian Constituent Assembly recommended the legislation of "uniform personal laws" for all citizens of India, in accordance with the principles of secularism and with India's self-definition as a civic nation.¹⁹ This recommendation later became Article 44 of the Indian constitution (Harel-Shalev 2009; Lerner 2013), with the current personal law of minority communities remaining unchanged.

The Hindu Personal Law was, nevertheless, revised by the Indian Parliament during the 1950s. The principles of traditional Hinduism, which is extremely rigid regarding all matters of social hierarchy and the caste system, frequently contradict the liberal values of the constitution. Despite this inherent dissonance, the independent country's first Prime Minister, Jawaharlal Nehru, and his colleagues, succeeded in introducing revisions that shaped the law to potentially fit the democratic regime.

The Hindu Personal Law was included in what is termed "The Hindu Code Bills (HCB) of 1954–1956", which were, in effect, applicable to all Hindus living throughout the country (Galanter 1989). Although the Hindu Code Bills did not cancel the caste system altogether (as Ambedkar had demanded), the Untouchability (Offences) Act²⁰ was passed during the same period, making it illegal to discriminate against the *Scheduled Castes*. The Hindu Code Bills further prohibited discrimination as to who may enter temples, and they prohibited the practice of *sati* (self-immolation by a widowed woman), polygamy, and other traditional, non-democratic customs. In addition, they promoted women's rights.

A careful reading of these laws, however, indicates that the Hindu Code Bills had another effect, which involved downgrading the rights of converts from Hinduism to non-Indic religions (Kim 2002). The collection of laws included in the Hindu Code Bills comprise the Hindu Marriage Act,²¹ the Hindu Succession Act,²² the Hindu Minority and Guardianship Act,²³ and the Hindu Adoptions and Maintenance Act.²⁴ Each law presents obstacles for converts to either Christianity or Islam, who face a variety of restrictions, such as: 1) Clause 13(1) ii of the Hindu Marriage Act states that a partner's renouncement of Hinduism (via conversion) gives legitimate grounds for divorce. 2) The Hindu Succession

19 CAD, Vol VIII, pp. 552, 781–82 (1947).

20 The HCB Act 22 (1955).

21 The HCB Act 25 (1955).

22 The HCB Act 30 (1956).

23 The HCB Act 32 (1956).

24 The HCB Act 78 (1956).

Act, clause 26, indicates that children who are born to a convert are disqualified from inheriting the property of their Hindu relatives. 3) The Hindu Minority and Guardianship Act, clause 6, disqualifies a convert from being the guardian of his or her own child. 4) Clauses 7, 8 and 9 of the Hindu Adoptions and Maintenance Act state that if a person has ceased to be Hindu, he or she cannot prevent his or her partner from adopting a child or from putting his or her child up for adoption. In addition, clause 18 of the same law declares that a convert is not entitled to maintenance, i.e., alimony.

As further testament to the preference awarded to the Indic religions, in the case of *Chandrashekhara v. Kulundurivalu*, the court ruled that a convert from the Hindu religion to Sikhism, Buddhism, or Jainism does not cease to be a Hindu.²⁵ Accordingly, converts to Islam, Christianity, Judaism, or Zoroastrian are no longer recognized as Hindus. While conversions to Judaism or Zoroastrianism are rare, many Hindus have chosen to embrace Christianity or Islam and have thus been affected by this ruling.

In the early years of India, both the Parliament and the judicial system emphasized the nature of religious diversity in the state and its formal secular nature. However, even at that time, certain legislations and public policy initiatives implied a distinct preference toward people who chose to remain Hindus, as compared with those who converted out of the Hindu fold. The state justified this stance on the basis of the notion that caste-based inequality has religious roots within Hinduism. Fernandes (2011) maintains that because religious conversions of BCs to Christianity and Islam have often been linked to breaking from the religious basis of caste, the state believes it is acting legitimately in upholding its policy of excluding former BC Christians and Muslims from welfare policies. However, this ideological justification surrounding the social dimension of conversion does not apply to conversion to Buddhism and Sikhism. Rather than promulgate a neutral or secularized approach to social inequality, the state has chosen to distinguish between BCs among Christians and Muslims, on the one hand, and BCs among Sikh, Buddhist, and Hindu communities, on the other (Fernandes 2011, p. 128), thus actively creating inequalities between “local” and “foreign” religions.

4 Beyond the Formative Years: State-Level Legislation and Religious Conversion in the Era of Rising Hindu Nationalism

In the early years of the Indian state, a genuine attempt can be identified to embrace religious diversity, as reflected, for instance, in Nehru’s call to the

²⁵ *Chandrashekhara v. Kulundurivalu*. SC (2) 440 (1963).

religious minorities: “you are as much the flesh and blood of India as anyone else, and you have every right to share in what India has to offer” (Jawaharlal Nehru in “Freeing the Spirit of Man” 1963). However, although this call was a dominant voice in India, other voices, which expressed less empathy toward religious minorities, were also heard.

Since the late 1960s, the relatively neutral, secular approach of the Indian state has shifted to an active pursuit of the preservation of particular models of religious communities, and various states in India have instituted legislation prohibiting and directly limiting religious conversion. In fact, a thorough analysis reveals that, despite the alleged separation of religion and state, in recent decades, the Indian regime has in many cases related to communities that share the Indic culture as “we”, while the non-Indic communities are considered strangers.

This notion is reflected in a Supreme Court verdict, known as *the Ayodhya Case* or *the Ismail Faruqui Case*,²⁶ in which the court determined that Hinduism is a tolerant religion that treats believers of other religious faiths with tolerance. The Supreme Court noted the broadmindedness of the Hindu religion in its conclusion:

Hindustan is a tolerant faith [*sic*]. It is that tolerance that has enabled Islam, Christianity, Zoroastrianism, Judaism, Buddhism, Jainism and Sikhism to find shelter and support upon this land

Dr. M. Ismail Faruqui and others v. Union of India and others, 1994

While emphasizing the tolerant spirit of Hinduism, the following comments lend support to the claim that the central government and judicial agencies perceived Hindus as the original or native residents of Bharat/India, and that religious minorities were, in effect, “guests” that found shelter and support in India. A quote by the former prime Minister of India further emphasizes this issue:

We do not apply policy of conversion, as they do ... where ever Muslims reside, they tend not to do well together with others but isolate themselves and come at the same time to spread their religion accompanied by threats and terror ... A large number of non-Hindus live in our country, but there has never ever been religious persecution here. We have never discriminated between **our people and aliens** ...

VAJPAYEE, quoted in Banerjee, 2002 [our emphasis]

²⁶ Ismail Faruqui M. and others v. Union of India and others, (6) SCC 360, paragraph 159 (1994).

These quotations emphasize the complexity of religious diversity in India, which is shifting on a continuum between openness and rigidity. Predominantly Hindu India must cope with the “otherness” of the members of the different religions practiced in the subcontinent. During the past three decades, state-level governments have altered their interactions with religious minorities by instituting more direct anti-conversion mechanisms. Accordingly, several states in India have enacted laws to restrict religious conversion, particularly targeting conversions via force or allurement. As a result, judges and administrators struggle with the ambiguities of personal and group identities, including the authenticity of converts (Galanter 1989; Sahoo 2018).

4.1 *Religious Diversity and Bills for Religious Freedom – ‘Anti-Conversion’ Legislation*

Although laws intended to regulate religious conversions existed in various parts of India in its pre-independence era (Osuri 2013), there was no state-level legislation to regulate religious conversion during the first two decades of its independence. The right to practice and propagate religion was acknowledged in the constitution, although it was subject to constitutional limitations, as laid down in Article 25, which touches upon “public order”, “morality”, and other issues:

Article 25. Freedom of conscience and free profession, practice and propagation of religion.

- (1) 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, practice and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law – (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

However, the leaders of several Indian states decided that the national legislation and Article 25 of the constitution were insufficient for regulating (and, to some extent, controlling) religious conversion. Accordingly, since the late 1960s, these states have chosen to legislate various Freedom of Religion Bills, which impose more direct limitations on religious conversion. Appointed by the Congress-led Government of Madhya Pradesh in 1954, the Niyogi Committee,

which enquired into Christian missionary activities, was used as the basis for the Hindu call for state-level anti-conversion legislation in a later period (Kim 2002).²⁷ The Committee's report included recommendations to restrict conversions and indicated that conversion was a threat to the Indian nation's public order, social cohesion, and national security. The Niyogi Committee further emphasized that this discussion of missionary activities and propaganda was meant solely to maintain "the solidarity and security of the country, to prevent disruption of society and culture", thus implying that conversion caused harm to the secular character of the state. In addition, the Niyogi Committee report emphasized that "the goodwill of the majority community in any country is the greatest and the safest guarantee for the fulfilment of Constitutional obligations, even more than law courts or executive authorities", emphasizing the "generosity of Hindus" in granting rights to religious minorities. The spirit of the Niyogi report brings us back to the complexity of religious diversity in India and to the ongoing inner conflict between openness and rigidity.

Freedom of religion bills, acts, and rules, also known in the academic literature as anti-conversion laws, exist in seven states in independent India: Madhya Pradesh, Chhattisgarh, Orissa, Arunachal Pradesh, Rajasthan, Gujarat, and Himachal Pradesh.²⁸ Although Arunachal Pradesh enacted its law in 1978, the government has yet to frame the rules needed for its enforcement. Gujarat has a Freedom of Religion Act (2003) and Rules (2008), which proscribe religious conversions by means of allurements, force or fraud, but these were challenged by a civic organization and have not been implemented. Tamil Nadu also constituted a rule regarding conversion, entitled The Tamil Nadu Prohibition of Forcible Conversion Ordinance No. 9 (5 October 2002),²⁹ but, being perceived as a restriction on freedom of religion, it was revoked

27 Niyogi, M. B. (1956, April 18). Letter no. 993, from Dr. M.B. Niyogi, Chairman to Shri K.B.L. Seth. Retrieved from <http://www.voiceofdharm.com/books/ncr/4cmae.htm> (accessed October 21, 2012).

28 Orissa Freedom of Religion Act, (1967), No. 21 of (1968); Madhya Pradesh Freedom of Religion Act, No. 27 (1968); Madhya Pradesh Freedom of Religion Rules (1969); Chhattisgarh Freedom of Religion (Amendment) Act (2006), Act 18 of (2006); Arunachal Pradesh Freedom of Indigenous Faith Act (May 19, 1978), Act 4 of (1978); Gujarat Freedom of Religion Act (2003), No. 24 of (2003); Gujarat Freedom of Religion Rules (2008); The Himachal Pradesh Freedom of Religion Bill, No. 31 of (2006); Rajasthan Freedom of Religion Act (2006); Rajasthan Freedom of Religion Bill (2008), Bill 18 of (2008).

29 Tamil Nadu Ordinance No. 9 (5 October 2002), Retrieved from <http://www.tn.gov.in/acts-rules/ord9-2002.htm>, passed by the Tamil Nadu Assembly on 31 October 2002, and repealed 18 May 2004.

two years later.³⁰ Potential new laws are under discussion in Jharkhand and Uttarakhand (Dudley-Jenkins 2008; South Asia Human Rights Documentation Centre [SAHRDC] 2008). The laws imposed to regulate conversion are not identical, but, in general, they were intended to prohibit religious conversion “by the use of force” or “by inducement” or by “any fraudulent means”. These legislations were met with objections by minority religions, yet these minority religions were not successful in cancelling them altogether (Banerjee 1982; Barua 2015; Harel-Shalev 2010; Osuri 2013).

The official registration of individuals who have undergone religious conversion has become locally systematized in several states for several reasons, one of which is the series of affirmative actions and benefits granted to *Scheduled Castes* and tribal populations. Thus, Indian citizens are expected to inform the authorities of converting from Hinduism to a non-Indic religion. Another important reason is that local governments are interested in being able to trace conversion trends and, particularly, to be notified of occurrences of mass conversion, which might suggest an act of coercion or fraud.

All “freedom of religion” laws require a person converting to another religion to provide details to the local district magistrate about the conversion, either prior to or subsequent to the act of conversion. Even stricter regulatory measures, which potentially confer greater control on the authorities, can be found in the Gujarat Freedom of Religion Act from 2003,³¹ which includes legislation that bans conversion without specific “permits”. In this case, both the convert and those facilitating the conversion must sign documentation from the district magistrate authorizing the legality of the conversion process and affirming the convert’s free will; this process thus enables even closer official oversight of conversion patterns (Stephens 2007). The main difference between various anti-conversion laws is that, while older laws – such as those passed in in Orissa, Madhya Pradesh, and Tamil Nadu – required only notification, the Gujarat Freedom of Religion Act empowers the district authorities to approve or decline a conversion and allows them to interpret as they see fit the meanings of fraud, force, inducement, and allurement – a critical

30 It included a penalty not found in either the Orissa or the Madhya Pradesh statutes, providing for harsher punishments of people who forcibly convert minors, women, or Scheduled Castes or Tribes. People who used money or other benefits in conversion efforts targeted at these groups would receive four years imprisonment and a one-lakh fine – twice the amount for conversion efforts aimed at other groups. To aid in tracking conversion numbers, the Tamil Nadu ordinance also required people to inform the District Magistrate about any conversion activity in their district.

31 Gujarat Freedom of Religion Act (2003). Retrieved from: http://www.minoritiesofindia.org/wp-content/uploads/2015/01/Gujarat_Freedom_of_Religion_Act.pdf.

influence on the lives of the converts and of those who facilitate the conversion (Dudley-Jenkins 2008, 2019).

In most cases, the interpretation of fraud, force, inducement, and allure-ment by state courts has been very general (Dudley-Jenkins 2008; SAHRDC 2008). In several cases, the courts have sentenced priests for converting people even after the converts had provided statements that they had converted voluntarily. For instance, in 2002, a Raigarh court in Chhattisgarh sentenced two priests and a nun to prison for conducting a mass conversion by fraud and inducement. When the converted families wrote statements asserting that their conversion had been voluntary, the authorities were not convinced, since some of the converted people were women and members of *Scheduled Castes* (Dudley-Jenkins 2008, p. 116; Kumar 2002). Under what appears to be a legal practice of protection, there was a clear statement by the authorities regarding women and members of BCs being non-autonomic entities, who lack independent thinking. In such cases, where first-person statements are treated as insufficient, an important question is raised: What will be considered by the state as an accepted affirmation that a conversion is genuine and voluntary?

In general, violators of the anti-conversion laws receive increasingly stringent punishments. While the Acts in Orissa and Madhya Pradesh provided for imprisonment of up to one year and fines of up to 5,000 rupees, the latest acts (laws) in these two states suggest much higher punishments, namely, up to four years of imprisonment and a fine of up to 50,000 rupees.³² Penalties for breaking the law, which have typically included imprisonment, a fine, or both, are substantially harsher if the offense involves minors, women, or a *Scheduled Caste* member. Accordingly, as Dudley-Jenkins (2008) concluded, the Indian courts' perspective in the matter of conversion is that converts, especially those from "weaker sections" of society, are victims who deserve protection (Coleman 2008, p. 270; Dudley-Jenkins 2008, p. 124).³³

On occasion, appeals have been made to the high courts regarding the interpretation of the legal basis of specific clauses in these laws (the Supreme Court is federal, whereas each state has a high court). For instance, inconsistencies in verdicts of the state courts, namely, between the Madhya Pradesh law and a similar law in Orissa, eventually led to a major Supreme Court decision that upheld the legal restrictions on conversions, *Rev. Stanislaus v. State of Madhya Pradesh and Orissa* (1977).³⁴ This ruling followed in the wake of two dissonant

32 See, for instance, the laws of Gujarat, Arunachal Pradesh, or Himachal Pradesh; Special Report of The SAHRDC (2008, p. 71).

33 To further read on the status of women in these laws, see Dudley-Jenkins (2008).

34 The case *Rev. Stanislaus v. State of Madhya Pradesh and Orissa*. AIR. 1977. SC 908, came from the High Court of Madhya Pradesh and was combined with *State of Orissa v. Hyde*, which was heard in the High Court of Orissa, AIR, 1973, Ori 116.

court rulings: the High Court of Madhya Pradesh upheld its state's law, and the Orissa High Court found the very similar law in its state to be unconstitutional. In this case, the Supreme Court intervened, advocating in its verdict that both these state laws are constitutional and enable strict legislation, which further prevents intact conversion.

The Supreme Court's discussion in the *Stanislaus* case focused on Article 25 of the Indian constitution, which provides that "public order" may form the basis for limiting religious freedoms, including the "profession" and "propagation" of religion. Central to the Supreme Court's decision was the interpretation of the right to propagate religion, as the court has made a clear distinction between the right to "transmit" one's religion (which the court allowed) and a right to "convert" a person to one's religion (which the court did not recognize). The court held that restrictions on efforts to convert are constitutional because such efforts impinge on both "freedom of conscience" and "public order" (*Stanislaus* case 1977). Additionally, the Supreme Court refused to interpret the right to convert as part of the right to propagate religion.

On occasion, the high courts of various Indian states have rejected various clauses of these acts in those states. For instance, several clauses of Himachal Pradesh's anti-conversion law were found to be unconstitutional and were cancelled in August 2012 (Makhaik 2012). In this case, *the Evangelical Fellowship of India v. the state of Himachal Pradesh* (2011),³⁵ the judges struck down Section 4 of the Himachal Pradesh Freedom of Religion Act, 2006, and Rule 3 of the Himachal Pradesh Freedom of Religion Rules, 2007. They were concerned about the 30 days advance notice required on the part of the converter, which they felt could endanger the facilitators of conversion and could expose them to persecution, yet they approved other clauses of these bills. The high court used this opportunity to reiterate its policy regarding religious conversion:

15. Christianity entered and flourished in India right from the time when St. Thomas Aquinas came to India in 52 AD ... Today ... Christians and Parsis have flourished and attained high offices in the country. Islam is now the second largest religion of the country. Though, by peaceful propagation, each religion may expand the number of its followers, there have to be limitations on the manner in which conversions are carried out and no civilized society can permit conversions to be carried out by "force", "fraud" or "inducement". The word of God cannot be spread either through the sword or by the use of money power.

35 *Evangelical Fellowship of India v. The State of Himachal Pradesh*. CWP No. 438 of 2011 A, a/w CWP No. 4716 of 2011E (2011).

16. The right to propagate one's religion may entitle a person to extol the virtues of the religion which he propounds. He, however, has no right to denigrate any other religion, thought or belief. One may promise heaven to the followers of one's religion, but one cannot say that damnation will follow if that path is not followed. The essence of secularism is tolerance and acceptance of all religions. The right to propagate can never include the right to denigrate any other thought, religion or belief. Therefore, though the right to propagate may be a fundamental right but the right to convert ... is not a fundamental right.

The Evangelical Fellowship of India, Paragraphs 15 & 16

The high courts and the Supreme Court were more cautious than the state legislators, but, in general, they advocated the idea that religious conversion should be supervised. In so doing, they indirectly supported and justified the "freedom of religion bills", and influenced the already complicated nature of religious diversity in India.

5 Discussion, Conclusions and Contribution

No secular State is or can be merely neutral or impartial among religions, for the State defines the boundaries within which neutrality must operate.

MARC GALANTER 1992, p. 249

India is a unique State, believing in secularism and yet preserving its spirituality through constitutional provisions, legislation, State policy and judicial pronouncements. Maintaining a rational balance between secularism and religiosity, accommodating religious sensitivities of the people to a reasonable extent, avoiding religion-based discrimination among the citizens as far as possible, and endeavoring to put them on a par regardless of religious affiliation, are the basic features of religion-state relations in India.

TAHIR MAHMOOD 2011, p. 401

Analysis of religious conversion in India can provide new concepts and models to learn about religious diversity. The analysis and disaggregation of Indian state policy toward religious conversion raises several important issues: 1) Policies regarding religious conversion are not identical among all Indian states, as only one-fifth of the Indian states have thus far legislated

what could be interpreted as anti-conversion bills (both Congress-led coalitions and right-wing coalitions). 2) National-level policies diverge from state-level policies. An indirect policy favouring Hindus and believers of Indic religions has been implemented at the national level, whereas some states have adopted policies to directly limit religious conversions from the Hindu and greater Indic folds to non-Indic religions. 3) The states are especially sensitive to the conversions of *Scheduled Castes* and of women and children, and they are more sensitive to converts who renounce Hinduism than to converts from other religions. 4) The trend toward increasing the legal limitations imposed on conversions continues. 5) Our findings verify that the state of India is not entirely neutral in terms of its religious communities (Khalidi 2008). Within the framework of the formal definition of India as a secular state that ensures freedom of religion, freedom to propagate religion, and proportional budgeting to the various religious communities, religious conversion exposes a sensitive nerve in India's tolerance and often provokes violent reactions.

While considering the issue of religious diversity in democracies in general and in Asia in particular, one should acknowledge that separation of state and religion does not require total secularism or indifference to religion. The fact that the state of India has its own religious preferences should not endorse the claim that India is non-democratic. Every state shapes its policy according to its real or perceived threats, and it chooses to defend itself from these threats and anxieties in various ways (Harel-Shalev 2009). A "fear of disorder" continues to be a constant concern of India's leaders, emanating from Hindu-Muslim communalism and partition (Brass 2000). In addition, demography is a crucial factor, since the majority is always wary of being rendered a part of the minority (Appadurai 2006, pp. 73–85), and the historical backgrounds of partition and past conquests have continued to take their toll. Therefore, once a nation's social reality is threatened by actively proselytising religious movements, considered to be inherently "foreign", the state's ability to secure its preferred vision of the common good is undermined (Taylor 2005, p. 65; Thio 2010, p. 12). Thus, to preserve its status quo, a state with a particular sense of national ethos and culture will probably exploit various strategies to minimize the chances of its specific social order or national ethos being dismantled.

Sunil Khilnani writes that, at the time of Indian Independence, "Liberty was understood not as an individual right but as a nation's collective right to self-determination" (Khilnani 1997, p. 26). Our findings suggest that the right of the liberal individual to convert may be considered as interfering with the collective right to liberty of the "Indian nation". As an integral part of India's social and political fabric, religious conversion has many effects on inter-community relations and it intensifies existing societal conflicts. Religious conversion

functions as a destabilizing force (Viswanathan 1998), which disrupts the delicate balance that the secular state has strived to preserve between its competing religious communities.

Hindu civic code legislation, already passed during the 1950s, favoured Hindus, discriminated against converts, and indirectly affected individuals' choices (Harel-Shalev 2009; Kim 2002). Following the same logic, some scholars portray Indian secularism as "contradictory" (Rudolph and Hoeber-Rudolph 1987); others conclude that secularism provides a forum for conflict resolution among India's vast and diverse cultural communities (Coleman 2008); and yet others (such as Nandy 2002) claim that Indian secularism has failed to address the religious nature of political life in contemporary India. In this context, Cossman and Kapur (1997) remind us that the Supreme Court of India did not stop the Hindu Right Wing from hijacking the dominant understanding of secularism as a means of promoting its vision of *Hindutva* and its agenda of establishing a Hindu state: The Supreme Court was not bold enough to translate India's secularism as the equal respect of all religions. This situation has inevitably cultivated a conflictual relationship between the secular state and religious society.

The current research reveals a gap between the intentions and declarations of the founding leaders to create a secular, democratic state, which is neutral in terms of religious identity and the reality of India at the beginning of the twenty-first century. Legislative moves at the level of the states have tended to be less cautious and "politically correct" than the legislators who formulated the constitution intended. Yet, this study shows that even the legislation in the formative years of the state favoured India's Hindu community and discriminated against converts to non-Indic religions by several, albeit being less direct, means.

Nadkarni (2003) explains that the controversy surrounding religious conversions in India grew out of the country's bitter experience with religion-based separatism. The potential threat that an area with a Christian majority could demand to separate from India in the future, perceived as a real threat by some in India, equally alarms both the government and the public. Other scholars, in contrast, claim that anti-conversion bills are unnecessary, as the bills already in existence are sufficient to counter any trend of fraudulent conversion. They take the position that, in any case, modern India does not suffer from mass conversion movements (SAHRDC 2008, pp. 71–72).

Clearly, an individual's decision to follow a specific religion, to cease practicing a specific religion, or even to change his or her faith is considered a basic human right (UN 1981). An outright prohibition of the choice of individuals to change their religion – despite the conversions being free of force or brutal

persuasion – would represent a troubling development in contradiction to the country’s constitution. Nevertheless, while India imposes certain regulations on its citizens’ right to convert, the country’s leaders are basically not amenable to the act of converting others to a different religion. Thus, proselytism is not considered a constitutional right by India’s legislators or judicial representatives.

One of India’s famous converts was Dr. B. R. Ambedkar, India’s first minister of law. He belonged to the BCs and claimed that the Varna (caste) system in Hinduism is fundamentally opposed to democracy (Ambedkar 2014). He, therefore, fought against caste discrimination, announced his will to convert in 1935, and eventually converted to Buddhism in 1956 (Ambedkar 2014). In the wake of Ambedkar’s conversion, approximately 500,000 *Scheduled Caste* individuals converted to Buddhism (Jaffrelot 2005). In fact, research (Bankar 2012) shows that the conversion to Buddhism of individuals who experienced severe humiliation and discrimination as BCs has changed their psychological make-up and raised their self-esteem. – This change is attributed to the religious conversion of Ambedkar and his followers in 1956 (Bankar 2012).

Nonetheless, the Indian courts and legislators treat converts as victims who deserve protection. As much as it was a religious move, the act of conversion of the Ambedkarites was a political move. Although the perspectives of the courts and the legislators have been driven by the belief that the uneducated, weaker sections of society need protection, their policies also involve shrewd considerations of political stability or “public order”, and they reflect cultural, religious, and demographic preferences.

The India of the twenty-first century continues to be rife with religious unrest, with issues of religious freedom at the forefront. Together with parliamentary and judicial debates, NGOs belonging to the Hindu Right Wing, as well as Christian movements and churches, use the media and other stages to promote their respective agendas (Kim 2002). Objections to religious conversion have fuelled innumerable incidents of violence throughout India (Barua 2015).³⁶

Some researchers have indicated that the *Sangh Parivar* (Hindu nationalist movement) is the main driving force behind the anti-conversion laws in India (Kolluri 2002; Van der Veer 1996). While the *Sangh Parivar* is indeed a strong supporter and the originator of these laws, one should remember that the formation of the Niyogi Committee in 1954 (report on Christian missionaries) and legislation of the Himachal Pradesh Freedom of Religion Bill in 2006, were led by the Congress Party.

36 The challenges continue – as recently, Hindu movements have been trying to re-convert former-Hindus back into the Hindu fold – but this phenomenon is beyond the scope of the current chapter.

Taken together, the above-described manifestations of the Indian political and religious landscapes, intertwined as they are, indicate that religious contention is neither an exclusively right-wing phenomenon nor a passing phase in India's political atmosphere. Instead, being highly politicized, religion continues to be a hotly disputed issue at almost all levels of Indian political and social life. The conversion of individuals and/or lower caste groups raises immediate suspicion and numerous questions in the volatile Indian socio-political context. Disaggregation of the reactions toward religious conversions suggests that, while at the national level the state of India shows relative tolerance toward religious conversion, the state governments consider the national legislation inadequate and use various mechanisms to preserve religious demographics and protect the Hindu culture. Although the Supreme Court has invalidated specific clauses in various laws, it has not hesitated to give overall approval to legislation sponsored by Indian states interested in regulating and limiting religious conversion.

The case of India illustrates the complexity of the relationship between democratic states and religious diversity. Throughout the world, legal systems and political regimes are required to accommodate religious diversity (Blank 2012). The willingness to absorb religious minorities often contradicts the nature of the nation-state and its tendency to create mechanisms of unification and inclusiveness. The study of religious conversion provides a prism for analysis and yields insights about the nature of religious diversity in Asia and beyond.

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