

AUTHORITATIVE ENGLISH TEXT

BILL NO. 13 OF 2019

THE HIMACHAL PRADESH FREEDOM OF RELIGION BILL, 2019

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

THE HIMACHAL PRADESH FREEDOM OF RELIGION BILL, 2019

ARRANGEMENT OF CLAUSES

Clauses:

1. Short title and commencement.
2. Definitions.
3. Prohibition of conversion from one religion to another by misrepresentation, force, fraud, undue influence, coercion, inducement or marriage.
4. Punishment for contravention of provisions of section 3.
5. Marriages done for sole purpose of conversion to be declared null and void.
6. Court to which petition shall be presented.
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THE HIMACHAL PRADESH FREEDOM OF RELIGION BILL, 2019

(AS INTRODUCED IN THE LEGISLATIVE ASSEMBLY)

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BILL

to re-enact the law to provide freedom of religion by prohibition of conversion from one religion to another by misrepresentation, force, undue influence, coercion, inducement or by any fraudulent means or by marriage and for matters connected therewith and incidental thereto.

BE it enacted by the Legislative Assembly of Himachal Pradesh in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Himachal Pradesh Freedom of Religion Act, 2019. Short title and commencement.

5 (2) It shall come into force on such date as the State Government may, by notification in the Rajpatra (e-Gazette), Himachal Pradesh, appoint.

2. In this Act, unless the context otherwise requires,— Definitions.

10 (a) “coercion” means compelling an individual to act against his will by use of psychological pressure or physical force causing bodily injury or threat thereof;

(b) “conversion” means renouncing one religion and adopting another;

(c) “fraudulent” means to do a thing with intent to defraud;

15 (d) “force” includes a show of force or a threat of injury of any kind to the person converted or sought to be converted or to any other person or property including a threat of divine displeasure or social ex-communication;

- (e) "Government or State Government" means the Government of Himachal Pradesh;
- (f) "inducement" means and includes offer of any temptation in the form of any gift or gratification or material benefit, either in cash or kind or employment, free education in reputed school run by any religious body, easy money, better lifestyle, divine pleasure or otherwise; 5
- (g) "minor" means a person under eighteen years of age;
- (h) "prescribed" means prescribed by rules made under this Act; 10
- (i) "religion" means any organized system of faith, belief, worship or lifestyle, as prevailing in India or any part of it, and defined under any law or custom for the time being in force;
- (j) "religious priest" means priest of any religion who performs purification Sanskar or conversion ceremony of any religion and by whatever name he is called such as pujari, pandit, mulla, maulvi, father etc; and 15
- (k) "undue influence" means the unconscientious use by one person of his power or influence over another in order to persuade the other to act in accordance with the will of the person exercising such influence. 20

Prohibition of conversion from one religion to another by misrepresentation, force, fraud, undue influence, coercion, inducement or marriage.

3. No person shall convert or attempt to convert, either directly or otherwise, any other person from one religion to another by use of misrepresentation, force, undue influence, coercion, inducement or by any fraudulent means or by marriage; nor shall any person abet or conspire such conversion: 25

Provided that, if any person re-converts to his parent religion, it shall not be deemed to be a conversion under this Act.

4. Whoever contravenes the provisions of section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which shall not be less than one year but which may extend to five years and shall also be liable to pay fine.

Punishment for contravention of provisions of section 3.

5 Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe shall be punished with imprisonment for a term which shall not be less than two years but which may extend to seven years and shall also be liable to pay fine.

10 5. Any marriage which was done for the sole purpose of conversion by a person of one religion with a person of another religion either by converting himself before or after marriage or by converting the other person before or after marriage may be declared null and void by the Family Court on a petition presented by either party thereto.

Marriages done for sole purpose of conversion to be declared null and void.

15 6. Every petition under section 5 shall be presented to the Family Court or where Family Court is not established, the Court within the local limits of whose ordinary original civil jurisdiction,—

Court to which petition shall be presented.

- 20 (i) the marriage was solemnized; or
- (ii) the respondent, at the time of the presentation of the petition, resides; or
- (iii) the parties to the marriage last resided together; or
- (iv) in case the wife is the petitioner, where she is residing on the date of presentation of the petition.

25 7. (1) One who desires to be converted to other religion, shall give a declaration at least one month in advance, on the proforma as may be prescribed, to the District Magistrate or the Executive Magistrate specially authorized by the District Magistrate, of his intention, to convert his religion on his own volition or free consent and without any force, coercion, undue influence, inducement or fraudulent means:

Declaration before conversion of religion and pre report about purification Sanskar.

30 Provided that no notice shall be required if a person re-converts to his parent religion.

(2) The religious priest, who performs purification Sanskar or conversion ceremony for converting any person of one religion to another religion, shall give one month's advance notice of such Sanskar or conversion ceremony, on the proforma as may be prescribed, to the District Magistrate or any other officer appointed for that purpose by the District Magistrate of the district where such ceremony is proposed to be performed.

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(3) The District Magistrate, after receiving the information under sub-section (1) and (2), shall conduct an inquiry through police or such agency as he deems fit, with regard to intention, purpose and cause of proposed conversion.

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(4) Contravention of the sub-section (1) or sub-section (2) shall have the effect of rendering the said conversion, illegal and void.

(5) Whoever contravenes the provisions of sub-section (1) shall be punished with imprisonment for a term which shall not be less than three months, but may extend to one year and shall also be liable to pay fine.

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(6) Whoever contravenes the provisions of sub-section (2) shall be punished with imprisonment for a term which shall not be less than six months, but may extend to two years and shall also be liable to pay fine.

Prosecution to be launched with the prior sanction.

8. No prosecution for an offence under section 7 shall be instituted by any person except by or with the previous sanction of the District Magistrate or such other authority not below the rank of a Sub-Divisional Magistrate, as may be authorized by the District Magistrate in this behalf.

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Punishment for violation of provisions of the Act by an institution or organization.

9. If any institution or organization violates the provisions of this Act, the person or persons in charge of the affairs of the organization or institution, as the case may be, shall be subject to the punishment as provided under section 4 and the registration of such organization or institution under any law for the time being in force may be cancelled after giving a reasonable opportunity of being heard.

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10. Notwithstanding anything contained in any other law for the time being in force, no person or organization violating the provisions of this Act shall be allowed to accept any donation or contribution of any kind from within or outside the country.

Prohibition on accepting donation or contribution.

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11. When an offence is committed under this Act, —

Parties to offence.

(i) every person who actually does the act which constitutes the offence;

(ii) every person who does or omits to do any act enabling or aiding another person to commit the offence;

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(iii) every person who aids or abets another person in commission of the offence; and

(iv) every person who counsels or causes any other person to commit the offence.

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shall be deemed to have taken part in the commission of such offence and be guilty thereof and shall be charged as if he had himself committed the offence.

12. The burden of proof as to whether a religious conversion was not effected through misrepresentation, force, undue influence, coercion, inducement or by any fraudulent means or by marriage lies on the person so converted and, where such conversion has been facilitated by any person, on such other person.

Burden of Proof.

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13. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence committed under this Act shall be cognizable and non-bailable.

Offences to be cognizable and non bailable.

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14. (1) If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order published in the Rajpatra (e-Gazette), Himachal Pradesh, make provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient the purpose of for removing such difficulty:

Power to remove difficulties.

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Provided that no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before the State Legislative Assembly.

Power to make rules.

15. (1) The State Government may, by notification in the Rajpatra (e-Gazette), Himachal Pradesh, make rules for carrying out the purposes of this Act.

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(2) Every rule made under this Act, shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of not less than ten days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

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Repeal and savings.

16. (1) The Himachal Pradesh Freedom of Religion Act, 2006 is hereby repealed.

(2) Notwithstanding such repeal, any action taken or anything done under the Act so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act.

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STATEMENT OF OBJECTS AND REASONS

The Himachal Pradesh Freedom of Religion Act, 2006 (Act No. 5 of 2007) was enacted to provide for prohibition of conversion from one religion to another by use of force or inducement or by fraudulent means. After the said enactment, the society has undergone many transitional changes. Thus, keeping in view such transitional changes, it has become imperative and need of the hour to bring in place a more effective and stringent law to put a check on the forcible conversions and the conversions taking place by way of misrepresentation and inducement etc.

In the Act *ibid.*, some important terms are either not defined or their definitions are not exhaustive and clear. The punishments provided in the Act are not as sufficient as to have a deterrent effect and therefore, adequate punishments are required to be provided on the analogy of some other States like Uttarakhand. There is also no provision to check the marriages solemnized only for sole purpose of conversion. Besides, the Act also does not provide punishment to an institution or organisation involved in conversions.

The Constitution of India guarantees freedom of religion to all its citizens under article 25, 26, 27 and 28. The Hon'ble Supreme Court also in a case titled as *Rev. Stainislaus versus State of Madhya Pradesh*; AIR 1977 SC 908 has held that article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the Country alike.

It has been observed that there is a rise in conversions by fraudulent means and unless checked well in time this practice may erode the confidence and mutual trust between the different ethnic and religious groups in the State. The Constitution further provides for maintenance of public order. In case forcible conversions are not prohibited, it would create public disorder in the State. Thus, in order to check forcible conversions of religion in the State and to preserve the peaceful atmosphere thereof, it has been decided to bring an effective legislation in place of the Act *ibid.*

This Bill seeks to achieve the aforesaid objectives.

(JAI RAM THAKUR)

Chief Minister.

SHIMLA :

THE, 2019.

FINANCIAL MEMORANDUM

—NIL—

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of this Bill seeks to empower the State Government to make rules for carrying out the purposes of this Act. The proposed delegation of power is essential and normal in character.

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(JAI RAM THAKUR)

Chief Minister.

(YASHWANT SINGH CHOGAL)

Pr. Secretary (Law).

SHIMLA:

THE, 2019.