The dark step of writing hate into law – Anti-Conversion Laws

What is the issue?

- The new marriage laws (Anti-Conversion-Laws) by some states seem to put state power and the law behind majoritarian communal biases.
- This needs contemplation given the democratic and secular ideals guaranteed by the Indian constitution.

How have the marriage provisions evolved?

- In 1872, the colonial state drew up a law after it received petitions from Keshub Chandra Sen of the Brahmo Samaj.
- The petitions demanded that people of different backgrounds be allowed to marry according to their 'rites of conscience'.
- The Special Marriage Act, in 1954, took this further in independent India.
- It took away the colonial law's requirement to renounce religion.
- However, it still allowed intrusion by the state, unlike under personal laws, by demanding notices to be put up in advance.
- This was done to ensure that there were no living spouses or minors being married.
- But this clause was misused by communal social groups to stop such unions.

What makes anti-conversion-laws flawed?

- **Fundamentally wrong** - Under the Constitution, it is the individual citizen who has and exercises rights and obligations.
- The Constitution does address communities when speaking of minority rights and untouchability, to only acknowledge and overcome social discrimination.
- This is also because such social discrimination impedes the ability of those citizens to exercise their rights as individuals.
- But the new laws treat religious communities, instead of individual citizens, as basic entities.
- The laws take away the agency that the Indian Constitution allows each individual to exercise.
- They thereby fundamentally distort the framework of Indian republic.
- **Violate privacy, choice rights** - The laws blatantly violate the Right to Privacy.

- The Supreme Court has in fact decreed Right to Privacy to be fundamental.
- The level of state interference in a civil union, which is a solemnisation of a relationship between two individuals, breaches the basic structure of the Constitution.
- **Right to choose faith** - The laws impede the exercise of an individual's right to choose her faith without seeking state sanction.
- Under the laws, everyone (from the police, local administration and communal groups and families) is given ample time to interfere and deny the individual, without any locus to do so.
- In matters of change of profession, nationalities, electoral choices and even political parties, no such interference is brought into play.
- **Patriarchal** - The basis of the new law is deeply patriarchal.
- This is like reliving 1920s India when competitive communalism fanned charges of Hindu girls in North India being taken away like cattle.
- The malicious myth of 'love jihad' where adult women are seen as property is now the law.
- The laws target Muslim men, but are also a living hell for Hindu women as in the Hadiya case.

What are the larger concerns?

- **Constitutional values** - India is said to have effected a social transformation given the values spelt out and written into the law of the Republic.
- The Constitution offered high principles to aspire for, and ensured the citizens were always jumping just a little bit, to be better.
- All laws should meet this brief.
- However, these new laws do the opposite; they put state power and the law itself behind majoritarian communal biases.
- This would only empower regressive social mores governing marriage and fellowship.
- Inter-religious marriages may be less than 2.5% of all marriages, but the promise they hold goes beyond numbers.
- They reaffirm the fundamental constitutional premise of all citizens being equal, besides promoting the ideals of freedom and fraternity.
- **Trust** - Spreading rumours of 'love jihad' even as the government confirmed in Parliament that there was no evidence of it is unfair.
- But more than that, it is dangerous as it seeds mistrust, and changes fundamental ideals that all plural democracies must live by.

What is the way forward?

- India must never forget the price a society and a country pays for writing

hate into law.
    - Hitler’s enactment of the Nuremberg Race Laws in 1935 ended up guiding Nazi racial policy for the remaining decade.
- It is for the court to suo motu strike these laws down if it wants to preserve the basic structure of the constitutional edifice.

Source: The Hindu

