

RELIGIOUS CONVERSION AND FREEDOM OF RELIGION IN INDIA: DEBATES AND DILEMMAS

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Abstract

Almost all the countries in the world guarantee freedom of religion in some form or the other. Such a guarantee assumes special importance in a multi-religion country like India which owes its religious diversity to history rather than any recent or contemporary phenomena. Religion is a volatile issue in India and religious conversions add more to the volatility of the issue therefore various state governments have enacted anti-conversion laws with the purported aim of preventing conversions brought about by coercion or inducements. Such laws have been a subject of intense criticism and have been alleged as infringing on one's right to freedom of religion. The paper examines the issue of religious conversion in the light of existing constitutional provisions, judicial pronouncements, and secularism and through the lens of contemporary political philosophy.

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I Introduction

HUMAN BIRTH is an ascription of sorts, ascription to a certain race, status, caste (in the Indian context) and religion. Whether such ascriptions are capable of revision and if so then to what extent has been a subject of human inquiry, a social project (for instance backward caste movements to get rid of caste based inequalities in India) as well as contemporary political philosophy.

Any discussion on religion in public sphere in India (as opposed to religion being a subliminal human experience) automatically brings the spotlight on secularism or

more specifically Indian model of secularism.¹ There can be no universal model of secularism as there is no universal religion.²

Donald E. Smith explains that "To most Indians, secular means non-communal, or non-sectarian, but it does not mean non-religious. The basis of secular state is not a wall of separation between state and religion but rather a no preference doctrine which requires that no special privilege be granted to any one religion. The secular state includes the principle that the function of the state must be non-religious."

India is a nation of many religions and freedom of religion has been accorded constitutional protection. Articles 25 to 28 constitute significant constitutional provisions on freedom of religion. It is also pertinent to mention here that the term religion is nowhere defined in the Indian Constitution but the term has been given expansive content by way of judicial pronouncements.

Religion has been a volatile issue in the country capable of inciting sentiments which have often seen being translated into violent outpourings in the public sphere. A case in point being Anti conversion laws in India which have been a subject of innumerable inconclusive debates and also a subject matter of this article.

II Right to freedom of religion in India

Indian constitution in its Part III provides endorsement to freedom of religion in India. This freedom is reserved not just for Indian citizens but is also conferred on anyone who resides in India. It becomes amply clear from the words of article 25 which 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."

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¹ The American idea of secularism is based on the complete segregation of the church and the state and the French model of *laïcité* which guarantees the neutrality of the state toward religious beliefs, and the complete isolation of the religious and public spheres.

See, United States Commission on International Religious Freedom, Special report on Constitutional and Legal Challenges Faced by Religious Minorities in India¹ (Feb. 2017). Available at: www.uscirf.gov.

² Secularism has been viewed as a political doctrine, based on the assumption of the autonomy and equality of all citizens within the imaginative project of national unification which tends to create a system of citizenship not unaccustomed to traditional social inequalities.

See, Talal Asad, *Formations of the Secular* (Stanford University Press, Stanford, 2003), Rajeev Bhargava, ed. *Secularism and its critics* (Oxford University Press, New Delhi, 1998).

³ Donald E. Smith, *India as a Secular State* 381 (Princeton University Press, New Jersey, 1963).

The limitations placed on this freedom have been discussed by the apex court in the following words:⁴

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. Both in the American as well as in the Australian Constitutions the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection. Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not.

Further the Indian state is also empowered to regulate matters incidental to religion or in other words secular activities associated with religious practices but the state is not permitted to interfere with the religious matters as such. What the state can regulate under article 25(2)(a) are the activities which are really of an economic, commercial or political character though these may be associated with religious practices.⁵ Further religious denominations have also been given freedom to establish and maintain institutions for religious and charitable purposes; to manage its own affairs in matters of religion; to own and acquire movable and immovable property and to administer such property in accordance with law.⁶

To sum up, the Indian position on the freedom of religion entails non interference of the state in religious matters and the only permissible interference is confined to matters incidental to religion. This is a skeletal model of Indian secularism. How this skeletal model works out when life and blood are infused into it is a matter of ongoing observation.

⁴*The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar*, AIR 1954 SC 282.

⁵*Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388.

⁶Article 26 of The Constitution of India.

It is important to note that secularism was a late entrant to the Indian constitution.⁷ Attempts have been made to strengthen secularism in India:⁸

Failed attempts have been made to amend the Indian Constitution and make its statement of secularism clearer and stronger. The Constitution (Eighty-third Amendment) Bill, 1993 sought to empower Parliament to ban parties and associations that promote religious disharmony, and to disqualify members who indulge in such misconduct. The bill, however, was not passed.

The importance which has been given to religion by the Indian state can also be seen from the fact that there is a chapter titled "Of Offences Relating to Religion" in the Indian Penal Code which makes acts intending to outrage religious feelings of any class by insulting its religion or religious beliefs punishable by imprisonment.⁹ Therefore it is only natural for a multi-religion country to take the issue of conversion seriously.

III Religious conversion

The freedom of religion starts getting murky over the issue of religious conversion. What further compounds the issue is the absence of any explicit right to convert in the provisions relating to the concerned fundamental right in the Constitution. The apex court was, in a number of cases before it, presented with an opportunity to delve upon whether the right to propagate entails the right to convert because the former is a fundamental right and the latter becomes illegal if done forcibly. A 1954 Supreme Court of India judgment in the case of *Ratilal Panachand Gandhi v. State of Bombay* has made the provision of article 25 clearer by confirming that every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgement or conscience but to exhibit this belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others.¹⁰

However, in another judgment in the case of *Digvijayanand Rajendra Ramdasji v. State of Andhra Pradesh*, the apex court decided that "the right to propagate one's religion means the right to communicate a person's beliefs to another person or to expose the tenets of that faith,

⁷The word "secular" was inserted later in the Preamble of the Indian Constitution vide 42nd Amendment to the Constitution in 1977.

⁸*Supra* note 1 at 2.

⁹The Indian Penal Code, 1860, s. 295 A.

¹⁰*Supra* note 5.

but would not include the right to "convert another person to the former's faith."¹¹ Therefore it came to be judicially established that although propagation enjoys constitutional protection under the right to freedom of religion but conversion does not.

The State of Orissa was one of the earliest states to enact Freedom of Religion Act in 1967. The Orissa Act, 1967, describes its purpose as "An act to provide for prohibition of conversion from one religion to another by use of force or inducement or by fraudulent means and for matters incidental thereto."¹² The prescribed punishment for converting someone via the objectionable means outlined in the Orissa Act, 1967 was a one-year prison sentence, a fine of Rs. 5,000 or both. Interestingly, the fine for converting a minor, woman, or a member of the Scheduled Castes or Tribes was two years imprisonment, a fine of Rs.10,000 or both.¹³ Presumably, these additional penalties in the Act were included to protect what the government viewed as the "weaker sections of society." The increased fine for converting a minor or woman or member of the Scheduled tribes or castes was based on the idea that those who convert individuals from these groups were exploiting their "poverty, simplicity, and ignorance."¹⁴

The State of Madhya Pradesh enacted its own anti-conversion act in 1968, entitled the Madhya Pradesh *Dharma Swatantrya Adhiniyam*. The language employed in the *Adhiniyam* it is extremely similar to the Orissa Act of 1967. Furthermore even the quantum of punishment including fine for conversion brought about via objectionable means was also identical.

The Orissa Act of 1967 was challenged in the case of *Yulitha Hyde v. The State of Orissa*¹⁵ on two grounds, namely, "(a) The State Legislature has no legislative competency to legislate on the matters covered by the Act, and (b) The Act infringes the fundamental right guaranteed under article 25 of the Constitution."¹⁶ Although the Act was eventually declared *ultra vires*, quite important observations were made on the inter-relatedness of propagation and

¹¹1970 AIR 181.

¹²The Orissa Freedom of Religion Act, 1967.

¹³*Supra* note 12, s. 4.

¹⁴Lalit Mohan Suri, ed. *The Current Indian Statutes* 5 (Chandigarh: Law Register Press, 1968).

¹⁵AIR 1973 Ori 116.

¹⁶*ibid.*

conversion. Most importantly, conversion was viewed as a right inherent in the right to freedom of religion as guaranteed by the Indian Constitution. The court observed:¹⁷

The true scope of the guarantee under article 25 (1) of the Constitution, therefore, must be taken to extend to propagate religion and as a necessary corollary of this proposition, conversion into one's own religion has to be included in the right so far as Christian citizenship is concerned.

The court gave three grounds for declaring the Act as unconstitutional namely, article 25 (1) guarantees conversion as part of the Christian religion, the definition of inducement is too vague, and the State has no power to enact the legislation envisioned by the Act since the Act deals with religion and not public order.¹⁸

As with the Orissa Act, 1967, the *Madhya Pradesh Adhiniyam* was also challenged two years later. Since both the Acts were substantially of similar nature heavy reliance was drawn on the earlier *Yulitha* judgement given by the Orissa High Court. But the surprising part is that the purpose of this reference was to argue against the earlier judgement. In the present case¹⁹ the Court found the law to be within the competence of the state government because the court viewed conversions brought about via prohibited means were matters of public order and not religious matters.

Since both the Acts were challenged on similar grounds and because of the ensuing opposing verdicts, the Supreme Court in *Rev Stanislaus v. State of Madhya Pradesh*, considered in great detail the issue whether the fundamental right to practise and propagate religion includes the right to convert, delivered a verdict on the constitutional validity of two of the earliest pieces of anti-conversion legislation in India: the Madhya Pradesh Dharma Swatantraya Adhiniyam, 1968, and the Orissa Freedom of Religion Act, 1967, both of which, it was alleged, restrict, as opposed to promote, religious liberty.²⁰ Justice Ray wrote:²¹

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

¹⁷*Ibid.*

¹⁸*Ibid.*

¹⁹*Rev. Stanislaus vs State*, 1975 AIR M. P

²⁰1977 SCR (2) 611.

²¹*Ibid.*

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.

Commenting upon the above judgement many scholars have pointed out that the apex court has further obfuscated the issue making it even more problematic and prone to abuse by the majority. As the constitutional law scholar, H.M. Seervai, observed, in response to the decision in *Stainislaus*, to propagate religion is not to impart knowledge and to spread it more widely, but to produce intellectual and moral conviction leading to action, namely, the adoption of that religion. Successful propagation of religion would result in conversion.²² A conclusion that propagation ought to be restricted only to the edification of religious tenets is a reasoning that gratifies the interests of the majority, and the majority alone.²³ Religions like Islam and Christianity are proselytizing in nature and the Supreme Court in declaring that edification rather than conversion can only be protected as the aim of religious propagation under article 25 of the Indian Constitution is nothing but interference by the State with the freedom of conscience. Or, as Seervai observed, "conversion does not in any way interfere with freedom of conscience but is a fulfilment of it and gives meaning to it."²⁴

The years following the apex court's judgement in *Stanislaus's* case saw further enactments of more anti-conversion legislations. In 1978, a year after the Supreme Court's ruling in the case of *Reverend Stanislaus v. Madhya Pradesh*, and in the wake of considerable anti-Christian violence in India's northeast, the third of the initial tranche of State Freedom of Religion Acts was enacted in the then Union Territory of Arunachal Pradesh.²⁵

It is also important to note that even in pre-Independence era anti-conversion statutes were made by Princely States such as the Raigarh State Conversion Act of 1936, the Patna Freedom of Religion Act of 1942, the Sarguja State Apostasy Act 1945 and the Udaipur State Anti-Conversion Act of 1946 which were specifically against conversion to Christianity.²⁶

²²H.M Seervai, *Constitutional Law of India* 1289 (Universal Law Publishing, 4th edition, 2013)

²³Suhrith Parthasarathy, "Conversion and freedom of religion", *The Hindu*, Dec. 23, 2014.

²⁴*Supra* note 22.

²⁵Brojendra Nath Bannerjee, *Religious Conversions in India* 269-70 (New Delhi: Harnam Publications, 1982).

²⁶Krishnadas Rajagopal, "Propagation without proselytisation: what the law says", *The Hindu*, 21st December, 2014.

Anti-conversion laws are promulgated on the premise that forced or induced conversions happen and need to be prevented. Such laws are controversial because they run the risk of being abused by majoritarian forces in the country. Because legislative intent of such laws can be ascertained by reading the statute holistically with the aid of various tools of interpretation but no such tools exist to ascertain the intent behind an act of conversion, which is deeply personal (even spiritual) for some. So how will the state distinguish between conversion as a sincere act of conscience from that of one brought about by corruptible means. The problem is further aggravated in case of mass conversions (as opposed to individual conversion) and a question is often raised regarding the genuineness of such acts because they are often done for a political agenda more and have little or nothing to do with faith or conscience. Because conversion, by its very nature, defies any setting up of rational standards against which pronouncements regarding its genuineness can be made. Religion appeals more to the emotive rather than the rational part of a person's life.

Door-to-door religious conversion in USA

In USA, various cases regarding "Door-to-door solicitation" were brought before the attention of the federal Supreme Court. One such case was *Martin v. City of Struthers*.²⁷ In this Jehovah's Witness case, the court struck down an ordinance forbidding solicitors or distributors of literature from knocking on residential doors in a community, the aims of the ordinance being to protect privacy, to protect the sleep of many who worked night shifts, and to protect against burglars posing as canvassers. The five-to-four majority concluded that on balance "[t]he dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose but that forbidden by the Constitution, the naked restriction of the dissemination of ideas."²⁸

In *Watchtower Bible and Tract Society v. Village of Stratton*,²⁹ the court struck down an ordinance that made it a misdemeanour to engage in door-to-door advocacy "religious, political, or commercial" without first registering with the mayor and receiving a permit. "It is offensive to the very notion of a free society," the court wrote, "that a citizen must first

²⁷319 U.S. 141.

²⁸*Ibid.*

²⁹122 S. Ct. 2080 (2002).

inform the government of her desire to speak to her neighbours and then obtain a permit to do so.³⁰

So, in US, the judiciary's attitude amply tells that the right to propagate which is a part of freedom to religion is not divested of right to convert somebody (through the exposition of one's religious tenets and not through force, fraud, allurements or coercion) or solicit somebody to one's religion.

Even the international instruments like Universal Declaration of Human Rights (UDHR),³¹ European Convention on Human Rights (ECHR)³² and even ICCPR (International Covenant on Civil and Political Rights) explicitly recognise that right to conversion is implicit in the right to freedom of religion.

Reasons for conversion

Why do people convert? This has been a subject matter of many disciplines viz. psychology, sociology, theology but not law. Law is only concerned with the legality or illegality of the reasons but not the reasons per se. Even so, it is important to briefly mention various reasons which precede conversion.

One of the most significant factors credited with motivating individuals to convert to other religion is 'relative deprivation'.³³ Various social studies on conversion conducted in the 1960s and 1970s reveal that economic, social, moral, spiritual, and psychological deprivation has been described as the key impetus behind a person's decision to alter their religious identities.³⁴ Most importantly gravitation towards other religions may also be a consequence of brainwashing, or persuasion by way of coercion.

IV Conclusion

Human beings are embedded in their immediate social, economic, political, cultural contexts. Are they absolutely free to do as they choose or the freedom is to be exercised within the

³⁰*Ibid.*

³¹Universal Declaration of Human Rights 1948, art. 18.

³²European Convention on Human Rights, art. 9.

³³H.A. Baer, 'A field perspective of religious conversion: The Levites of Utah' 19(3) *Review of Religious Research* 279 (1978).

³⁴C.Y. Glock, 'The role of deprivation in the origin and evolution of religious groups', in R. Lee and M.E. Marty (Eds.), *Religion and social conflict: Based upon lectures given at the Institute of Ethics and Society at San Francisco Theological Seminary* 24-36 (Oxford University Press, New York, 1964).

societal bounds, that is the question. Contemporary political philosophy has attempted to address this seemingly irreconcilable dilemma and this has resulted in the emergence of libertarian versus communitarian debate. It is essentially a debate between those who favour individual rights and autonomy on the one hand and those who emphasize the bonds of community in political life.

Libertarian debate

The libertarians regard self to be prior to the ends.³⁵ This means that an individual is free, rational and capable of self determination and reserves the right to question, revise and reject his or her most deeply held convictions about the nature of the good life, if these are found to be no longer worth pursuing.³⁶ In other words the individual precedes cultural and community based identities and that there is a distance between the two. Libertanarism as a political philosophy is therefore committed to reversibility. As a result its proponents favour a neutral state.³⁷So going by Liberalism debate, an individual can revise any part of his good life including his religion if he/she considers it not worth continuing or pursuing.

Communitarian debate

The communitarian perspective developed and became central to political theory with the publication of Michael Sandel's *Liberalism and the Limits of Justice*.³⁸ In this book, Sandel develops one of the most forceful critiques of Rawlsian liberalism, the statement of which is found in John Rawls's *A Theory of Justice*.

Communitarianism entails the view that community is the pivot around which individuals develop their personality, realize their talents and pursue their goals. Self, in communitarianism, is neither independent nor prior to the ends.

People according to communitarians, do not live in complete and permanent isolation, rather they are constituted and shaped through their membership of particular communities. As human beings we are essentially members of a family, religion, tribe, race and nation, As such, rather than being distant from social and community ends and values, we have a history

³⁵John Rawls, *A Theory of Justice* 560 (Oxford University Press, London,1971).

³⁶See, Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (OUP, 2002).

³⁷*Supra* note 36.

³⁸Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge University Press, 1998).

and are placed/positioned in specific social circumstances.³⁹ Going by communitarianism debate, religious conversion does not appear to be an absolute right because not everything is subject to "revisability"

Religion demography is of importance in India as the problem of religion in India is, in some respects, *sui generis*, and no western conception can really fit in.⁴⁰

In the end one can infer that right to freedom of religion would be illusory if one were not permitted to change it, of course without any coercion or allurements. All the major international instruments explicitly mention the right to conversion as implicit in the right to freedom of religion. Even solicitation has been held lawful in USA and any ordinances or orders passed to ban such soliciting have been quashed by the courts.

The Indian Constitution guarantees the right to freedom of religion but unlike ECHR and UDHR, it does not explicitly mention right to conversion. The notion that freedom of religion in India does not contain the freedom to religious conversion seems a little absurd. There may not be a fundamental right to religious conversion (as held in *Stanislaus* case) but it certainly is a right to convert one's religion if there are no elements of fraud, coercion and allurements. To deny this right to citizens of a democratic country or to put a restrictive meaning to it would be inconceivable in today's milieu.

³⁹*Ibid.*

⁴⁰Vijay Nambiar, "India: How Secular?" *Economic and Political Weekly* 947 (1964).