

# INDIAN CIVIL LAWS GOVERNING RELIGIOUS CONVERSION

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## I. Introduction

In the Constitution of India, adopted in the Constituent Assembly as the Law of the Land on November 26, 1949, the fourth fundamental right of all the citizens of India is titled as "Right to Freedom of Religion." This fundamental right is formulated in Article 25 of the Constitution as follows:

Art. 25. (1) Subject to public order, morality and health and to the 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 affect the operation of any existing 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.

I am giving below a summary of the commentary on this art. 25 as given by Acharya Durga Das Basu, an eminent Professor of Law and the author of the *Shorter Constitution of India*.<sup>1</sup> This will help us to understand the meaning of the key phrases and expressions of this article as given by the legal experts and judges in the past 52 years of India's "Free Land Experience" of Democracy enjoying the provisions of the fundamental rights for religious freedom in our Land.

## II. "Freedom of conscience and the right freely to profess, practise and propagate religion"

There are apparently three important points involved in this article

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<sup>1</sup>Acharya Durga Das Basu, *Shorter Constitution of India*, New Delhi: Prentice-Hall of India, 12<sup>th</sup> ed., 1996.

which call our special attention. (A) This article guarantees that every person (not only the born citizens of this country) who is legally residing in India shall have the *freedom of conscience* and shall have the right to *profess, practise and propagate the religion* he follows personally, subject to certain restrictions set by the State on the following grounds, namely (i) public order, morality and health; (ii) other provisions of the Constitution; (iii) regulation of non-religious activity associated with religious practice; (iv) social welfare and reform; (v) throwing open of Hindu religious institutions of a public character to all classes of Hindus. (B) Since the freedom offered here belongs to every person, it is a matter of common sense that the freedom of one cannot encroach upon a similar freedom belonging to other persons. Hence, punishing forceful or fraudulent 'conversion' would not violate the spirit of this article. (C) Subject to the restrictions which this article imposes, every person has a fundamental right under our Constitutional provisions not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his beliefs 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.

Now the expression, "freedom of conscience" is taken by legal experts from a dictionary meaning as "a sense of right or wrong, a moral judgment that opposes the previously recognized ethical principles and that leads to feelings of guilt if one violates such a principle."<sup>2</sup> In this common sense, "freedom of conscience" has no necessary connection with any particular religion or of any faith in God. It also implies the right of a person not to be converted into another man's religion<sup>3</sup> or to bring any religion at all.

### III. "Subject to public order, morality, and health"

These delimiting factors indicate three important areas of public interest and individual's health and sanity which must be also of religious concerns when religion is also socially affected. (i) The "freedom of religion" is subject to the interest of the public order and decorum so that it would not authorise the outrage of the religious feelings of another

<sup>2</sup>Webster's New World Dictionary, s. v. 'Conversion'.

<sup>3</sup>Basu, *Shorter Constitution of India*, 217. Refer also the case of *Stanislaus v. MP State* (A 1975 M.P.163 [166]).

community with a deliberate intent. (ii) The restrictive expressions mentioned above save the power of a competent legislature to prohibit deleterious practices, such as the sacrifice of human beings to propitiate gods or goddesses in the name of religion, or to direct the exhumation or removal of graves or interred corpses for the purpose of detection of crime or for preventing breach of the peace between fighting communities, or to prohibit performances like the 'tandava' dance by the *Ananda Margis* in the public places or streets.<sup>4</sup> (iii) In this connection it has been clarified in a judicial judgment that "mere guarding of a shrine by the Police is no interference with the freedom of worship."<sup>5</sup>

#### IV. "Subject to the other provisions of this Part"

This specification further restricts that the "freedom of religion" guaranteed in clause (1) is subject to the power conferred upon the State by clause (2) of this article.<sup>6</sup> Since the freedom guaranteed by this article is subject to the other provisions of Part III of the Constitution, this article does not exempt religious property from the power of higher domain conferred by Art. 31(2) of the Constitution. Because the other provisions of Part III include Art. 19 regarding "Right to Freedom," it would follow that the freedom of religion guaranteed by Art. 25 is subject to reasonable restrictions in the collective interest under clauses (2) to (6) of Art. 19 and the rights guaranteed to other citizens by the different sub-clauses of Art. 19(1).

#### V. "All persons"

This expression used in this article has a wider denotation regarding the beneficiaries of this freedom. The freedom of religion conferred by this Article is not confined to citizens of India but extends to all 'persons' including aliens, and individuals exercising their rights individually or through institutions; and whether he or she belongs to a religious minority or not. Hence, the head of a religious institution can complain to the higher secular authorities under the provisions of the Constitution of India about the infringement of the right conferred by this Article. So there is no

<sup>4</sup>Refer the case of *Jagadiswaranand v. Police Commissioner* (A.1984 SC. 51) as quoted in Basu, *Shorter Constitution of India*, 218.

<sup>5</sup>Refer the case of *Digyadarsan v. State of A.P.* (A.1970, SC. 181).

<sup>6</sup>Refer the case of *Venkataramana v. State of Mysore* (A.1958, SC. 255).

infringement of this right by the mere appointment of a day-to-day administrator for a *matth* pending an inquiry against the *matthadhipati* or charges of misappropriation of funds or property of the *matth*.

#### VI. "To Profess and Practise (Religion)"

Freedom of conscience would be meaningless unless it is supplemented by the freedom of unhampered *expression of spiritual conviction in word and action*. Matters of conscience come in contact with the State only when they become articulate. While freedom of 'profession' means the right of the believer to declare his or her creed in the public, freedom of practice means his right to give expression to the same in forms of private and public worship. It would then include the freedom to practise certain rituals and ceremonies which are 'integral' to a religion. The right to perform a religious practice may be acquired also by some custom. When so acquired, it would have the protection of Art. 25, with respect to all the religious rites, practices, observances, ceremonies, and functions which are being customarily performed by the members of the "Petitioner community" and not according to the version of the person who opposes. In deciding the question as to whether a given religious practice is an integral part of a religion or not, the test always would be whether it is regarded as such *by the community following the religion or not*. Of course, this question will have to be decided by the Court of appeal and the finding of the Court will depend upon the evidence adduced as to the conscience of the community and the tenets of the religion.

In the same vein the constitutional experts say that the right to conduct a religious procession would follow from the same freedom of religion, of course, subject to restrictions imposed in the interest of preventing a breach of the peace or obstruction of the thoroughfare. Once the right of a community to take out a religious procession is established, it cannot be interfered with on the ground that it offends against the sentiments of another community. But the use of loud speakers, ringing church or temple bells, or *Mosque wanques* at odd times disturbing the sleep of the people of a mixed religious neighbourhood, high blown band-sets or drum beating or playing horrible *jass* disco ballads in the residential premises, hospitals and sanatoriums, and schools during their working times, are all to be regulated by the State for the sake of good public order, in spite of their emotionally charged religious biases. Such State

interventions are part of the restriction called "public order" and such interventions of the local civic authority cannot be interpreted as infringement of the "right of religious freedom." Hence, however powerful the opposition be against these aspects of the public order, the Police cannot abdicate their authority to play the role of an impotent before a band of miscreants, interfering with the lawful exercise of the legal rights of other people. In the true spirit of this article the laws relating to a religious procession are differentiated and applied differently as distinguished from the laws related to public meetings.

### VII. "The right to propagate one's religion"

The right to propagate one's religion in the judicial sense means the right to communicate a person's beliefs to another person or to expose the tenets of that faith, but would *not* include any right to 'convert' another person to the former's faith,<sup>7</sup> because the latter person is "equally entitled to freedom of conscience," according to these words that precede the word 'propagate'. Of course, the latter person is free to adopt any religion in the free exercise of his conscience, but nobody has any fundamental right to convert him to another religion where he does not do it out of his free choice. This is the crucial point of departure in the arguments against the popular claim of having a fundamental right guaranteed in the Indian Constitution concerning the right to practise and propagate one's religion including the right of conversion.

By the term 'religion' the Articles 25 and 26 imply not only matters of faith or belief but also all those rituals and observances which are regarded as integral elements of a religion by the followers of a doctrine.<sup>8</sup> Hence, the wearing and carrying of *kirpans*, for example, shall be deemed to be included in the profession of the Sikh religion. It is also noted in various judicial pronouncements that, since religion is a matter of faith it is not necessarily a theistic form of religion that is exclusively meant by the term. There are well-known religions in India like Buddhism and Jainism which do not believe in God. On the other hand, though a religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual

<sup>7</sup>Basu, *Shorter Constitution of India*, 219.

<sup>8</sup>Basu, *Shorter Constitution of India*, 219-230.

well-being, it would not be correct to say that religion is nothing else but a doctrine or belief. Every religion has its outward expression too in some symbolic rituals either initiated by the founders or started by the followers in the course of their historical traditions of practices which got approved as part of the organic growth of a religion. Hence, Durga Das Basu observes that Art. 25(1) guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his *conscience*, but also the right to *exhibit* his belief in his conduct by such outward acts as may appear to him proper in order to spread his idea for the benefit of others. The scope of state regulation mentioned in the sub-clause (a) of clause (2) is a limited one.<sup>9</sup> It is not State regulation of *the religious practices as such* which are protected unless they run counter to public health or morality, but of activities which are really of an economic, commercial or political character though they are associated with religious practices.<sup>10</sup> Hence, for the application of the present sub-clause, it is necessary to distinguish religious practices which are *essentially* of a religious character from those which are not. Only those practices are protected by Art. 26(b) which are regarded by the religion in question as its essential and integral part.<sup>11</sup> On the other hand, in the name of State regulation, the State cannot prohibit the practice of a religion altogether.

#### VIII. *The Concept of "Social Welfare and Reform," according to Clause 2(b) of Art. 25*

The expressions "social welfare and reform" as a regulative factor mentioned in this article does not enable the Legislature to 'reform' a religion from within, out of its existence or identity. The Legislature cannot extend its reform-oriented legislation to the basic and essential nature and practice of any religion, the protection of which is guaranteed by Art. 25(1) itself.<sup>12</sup> However, "social reform" means eradication of such alleged "religious practices" which stand on the way of the country's progress as a whole but do not form *the essence of religion*. Hence, the State may prohibit *bigamy* amongst the Hindus because the need of

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<sup>9</sup>Basu, *Shorter Constitution of India*, 219-20. Refer also the case *Stanislaus v. M.P. State* (A 1975 M.P.163 (166)).

<sup>10</sup>Basu, *Shorter Constitution of India*, 220-221.

<sup>11</sup>Basu, *Shorter Constitution of India*, 221.

<sup>12</sup>Basu, *Shorter Constitution of India*, 222.

having a natural son by marrying a second wife on the failure of the first wife to give a son has not been understood in the traditions of Hindu religion as an essential element, as the purpose might be served by taking an adopted son. Similarly, prohibition of deleterious practices like 'sati' or the practice of 'devadasi' system, *narabali* (human sacrifice), etc., is justified through legislation aiming at healthy social reform and welfare of the people concerned. The State stands for maintaining good social order conducive for social progress and welfare of the larger number of the people of a nation. In this connection it is to be noted that a majority of the Supreme Court held affirmatively that the banning of 'excommunication' which is made solely on *religious grounds* cannot be considered to promote welfare and social reform, because it is a right belonging to a religious denomination under Art. 26(b); but it may be so where the *law bars excommunication on non-religious grounds*, e.g., for the breach of some obnoxious social rule or practice, or as a punishment for the crime punishable under the law of the land.<sup>13</sup>

#### IX. "Freedom of Religion" and the 'Secular' Character of the Constitution

Notwithstanding the inclusion of the word 'Secular' in the Preamble of the Constitution of India by the 42<sup>nd</sup> Amendment in 1976, the ideology of 'Secularism' had been already there incorporated in the substantive provisions of the Constitution before the said amendment. This view had been affirmed by most of the Judges of the 9-Judge Bench in *Bommai vs Union of India*<sup>14</sup> case while clarifying their position about the content of 'Secularism' as reflected in the various relevant articles of the Constitution such as Articles 14-16, 25-28, 30, etc. Based on these articles and other relevant interpretations of legal experts, the majority of the 9-Judge Bench laid down the following elements of 'Secularism' as enshrined in the Constitution of India which must be taken as conclusive so long as they are not overruled by any larger Constitutional Bench of the Supreme Court of India:

- (1) Our Constitution prohibits the establishment of a *theocratic State* (Art. 156, 162).

<sup>13</sup>Basu, *Shorter Constitution of India*, 222.

<sup>14</sup>Basu, *Shorter Constitution of India*, 222. Refer the case of *Bommai v. Union of India* (A. 1994, SC. 1918).

(2) Not only the State is prohibited to establish any religion of its own, but it is prohibited further, to identify itself with or favouring any particular religion, because the State is enjoined to accord *equal treatment* to all religions and religious sects or denominations.

(3) On the other hand, *Secularism* under the Indian Constitution does not mean an anti-God or atheist society. It only means *equal status* of all religions, without any preference in favour of, or discrimination against any one of them. Under a secular State, the existence of a legal right or public duty does not depend on the profession or practice of any particular religion. The State attempts to secure the good of all citizens irrespective of their religious beliefs or practices.<sup>15</sup>

The above given summary of the interpretations of the secular character of the Indian Constitution is relevant here in order to understand the limits of the fundamental right called the "Freedom of Religion" and its conversion oriented propaganda.

#### **X. A Brief Historical Survey of State Legislations on Regulating Religious Conversion**

After the adoption of a secular Constitution as passed in the Constituent Assembly on November 26, 1949 India was declared a Republic on January 26, 1950, and a Parliament in the Union and Legislative Assemblies in the respective States were duly constituted after conducting elections to these legislative bodies according to the provisions of the Constitution. In December 1954 a Member of the Parliament (M.P.) from Gujarat introduced into the Lok Sabha a Bill challenging the provisions of the 25<sup>th</sup> article relating to the fundamental right of the "freedom of religion" proposing regulations on the missionary conversion work in many parts of North India, done vigorously by foreign missionaries under the shield of the fundamental rights guaranteed in the Constitution of the new Republic. This Bill was titled *The Indian Converts Regulation and Registration Bill*. When the Bill was taken up for discussion in September 1955, it was strongly opposed by the Christian M.Ps like A. M. Thomas, Pocker Saheb, and Thomas Kottukapally; the Bill was also opposed by the then Prime Minister Jawaharlal Nehru.

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<sup>15</sup>See B. Shiva Rao, *The Framing of India's Constitution: A Study*, New Delhi: The Indian Institute of Public Administration, 1968, 170-318.



Nehru said that the Bill would not help very much in suppressing whatever evil methods may be used for conversion. Rather, "it might cause great harassment to a large number of people," he added. This Bill was rejected by an overwhelming majority.<sup>16</sup> This was the fate of the first Bill introduced in the Parliament for checking incentive-motivated conversion work of foreign missionaries, vigorously done with the financial support of foreign funding agencies. No proper catechetical instructions in Christian faith and doctrines were accompanying such propagandist mission work, so much so that large number of tribals and aboriginals (*ādivāsis*) in the States of Madhya Pradesh, Orissa, Bihar, Arunchal Pradesh, and other North-Eastern States were joining to form Christian communities in these areas mostly attracted by the financial offers of the foreign missionaries and other material provisions distributed by supporting agencies from abroad.

In 1956, M. B. Niyogi, a retired Chief Justice of the Nagpur High Court and Chairman of the "Christian Missionary Activities Enquiry Committee," recommended to the Government of Madhya Pradesh the following:

*Suitable control on conversions brought about through illegal means. If necessary, legislative measures should be enacted... The legislation should also secure submission of monthly or quarterly lists, giving names and addresses of persons of another faith seeking information about Christianity and also lists giving names and addresses of persons baptized.*<sup>17</sup>

Not long after, in a Press Conference at Bhopal, K. N. Katju, then Chief Minister of Madhya Pradesh, announced that the recommendation of the Niyogi Committee to prohibit conversion of minors was "likely to be enforced."<sup>18</sup> In 1958 the *Madhya Pradesh Prevention of Religious Conversion Bill* was drafted for the consideration of the Legislative Assembly. Its declared purpose was "to prevent the conversion of the uneducated aboriginals and other people ... by making antinational

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<sup>16</sup>See Julian Saldana, *Conversion and Indian Civil Law*, Bangalore: Theological Publications in India, 1981, 144ff.

<sup>17</sup>Saldana, *Conversion and Indian Civil Law*, 145.

<sup>18</sup>Saldana, *Conversion and Indian Civil Law*, 146. See also *Report of the CBCI*, November-December, 1958, 171.

propaganda and using illegal methods by the foreign missionaries and other institutions." According to the proposed Bill, a convert who is a major shall "declare on affidavit before any magistrate that he is changing his religion of his free will," no minor may change his religion. A convert's minor child shall not be deemed to belong to his religion. Offenders under this Bill would be liable to 6 months imprisonment and/or a fine of Rs.500. The bishops of Madhya Pradesh forwarded a memorandum to the Chief Minister, pointing out that the Bill contravened the Fundamental Rights. The Bill was later rejected by the Legislative Assembly.<sup>19</sup>

Ten years later after the withdrawal of the *Madhya Pradesh Prevention of Religious Conversion Bill* under the fear of its legislations going against the constitutional guarantees of the fundamental rights, especially the "Right of Religious Freedom," in 1968 the States of Orissa and Madhya Pradesh a second time enacted legislation to control 'conversions' especially incentive forced conversions. So also other States, namely, Bihar (1968), Rajasthan (1970), and Gujarat (1972) were contemplating and tentatively drafting Bills to be introduced in their respective Legislative Assemblies.

In 1970, a Bill seeking prohibition of any conversion of minors was rejected by the Parliament. On that occasion also the Deputy Home Minister said that such a prohibition ran counter to the Constitution. Since then the Central Government has desisted from introducing anti-conversion measures. Not only Christian representations resisted such anti-conversion Bills but other minority communities like the Buddhists, too, expressed their disapproval of such legislations.<sup>20</sup> Pouring oil to fire certain political parties like Jana Sangh sought to stall the activities of Christian missionaries in certain States, especially in Madhya Pradesh, Orissa, and Gujarat. The enactments of these States also reflect the strong negative attitude of the majority of Hindus towards conversions to Christianity.

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<sup>19</sup>Saldana, *Conversion and Indian Civil Law*, 146; refer also Rao, *The Framing of India's Constitution*, 257.

<sup>20</sup>Saldana, *Conversion and Indian Civil Law*, 147; also refer Rao, *The Framing of India's Constitution*, 259.

## XI. Some Significant Highlights from the Constituent Assembly's Discussions on "Freedom to Propagate Religion"

In this survey of the history of the legislations regulating the "freedom to propagate religion," made both by the Constituent Assembly of the Nation and by the particular enactments of the various States of the Indian Union according to their specific needs, I feel it important to present some significant highlights from the various interventions and discussions of some representatives of the Constituent Assembly in order to understand the mind of the "Fathers of the Indian Constitution," which is said to have incorporated into its legal formulations, the best of the available mindsets, ideas, insights, and universal perspectives regarding human rights and human freedom.

In his draft on fundamental rights, submitted on March 18, 1947, Harnam Singh conceded to all communities, freedom to preach their religion, within the limits of public order and morality, and without offending the sentiments of other communities. Ambedkar, the chairman of the drafting committee of the whole Constitution, in his draft of March 24, 1947, was more explicit. He wanted every Indian citizen to have "*the right to profess, to preach and to convert.*" Applying this principle in his own choice, in October 1956, he himself became a Buddhist, together with about two hundred thousand fellow 'untouchables'.

In a memorandum on March 31, 1947 to the Sub-Committee on Minorities, M. Ruthnaswamy from Madras named *the right to preach and propagate their religion among "the more important of the rights that must be safeguarded"* for the minorities. In a similar Memorandum (April 3, 1947) P. K. Salve said that every citizen must enjoy the right freely to "*propagate his religion in private and public.*" However, this right was not included in K. M. Munshi's draft (March 17, 1947) which was taken up for discussion by the Subcommittee on Fundamental Rights. T. T. Krishnamachari of Madras, later Cabinet Minister for several years, observed in one of his interventions in the Constituent Assembly that he was of the opinion that people coming under a new Government should not feel that it is a change for the worse. Therefore, the Constitution must provide for the continuance of things as they are, in religious matters, unless the *status quo* has something which offends all ideas of decency, equity, and justice. Just as the Arya Samajists are free to carry on their

*suddhi* propaganda so are the Christians and others to propagate their own religion. He concluded saying:

I feel that if the followers of any religion want to subtract from the concessions given herein in any way, they are not only doing injustice to the possibility of integration of all communities into the one nation in the future but also doing injustice to their own religion and to their own community.<sup>21</sup>

K. M. Munshi felt that those who objected to the word 'propagate' were thinking in terms of the old regime, where Christian missionaries, particularly the British, derived influence from the political authority to acquire converts. No such advantage accrues to any community today, "not is there any political advantage by increasing one's fold." Even if the word ('propagate') were not there, the freedom of speech guaranteed by the Constitution would permit one to persuade others to join one's own religion. He admitted that he was a party to the "compromise with the minorities" which ultimately led to the controversial word being inserted into the Constitution. He added saying:

I know it was on this word that the Indian Christian community laid the greatest emphasis, not because they wanted to convert people aggressively, but because the word 'propagate' was a fundamental part of their tenet... So long as religion is religion, conversion by free exercise of the conscience has to be recognized.<sup>22</sup>

After his address, a vote was taken and the proposition got approved, and thus Art. 25 passed into the Constitution of India on December 6, 1948. The final version of the article reads as follows:

*Subject to public order, morality, 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.*

## **XII. Restrictions on Conversion<sup>23</sup>**

K. M. Munshi's draft on the fundamental right on the "freedom of

<sup>21</sup>Saldana, *Conversion and Indian Civil Law*, 153.

<sup>22</sup>Saldana, *Conversion and Indian Civil Law*, 153.

<sup>23</sup>Saldana, *Conversion and Indian Civil Law*, 154.

practising and propagating religion" when presented to the Sub-Committee for the primary discussion on March 17, 1947, contained the following two clauses as restrictive principles delimiting the extension of the application of the Art. 25:

- 1) "No person under the age of eighteen shall be free to change his religious persuasion without the permission of his parents or guardians."
- 2) "Conversion from one religion to another brought about by coercion, undue influence or the offering of material inducement is prohibited and is punishable by the law of the Union."

The Sub-Committee in its turn adopted on March 27, 1947 an amended version of the above clauses as follows:

- 1) "No person under the age of 18 shall be converted to any religion other than the one in which he was born or be initiated into any religious order involving a loss of civil status."
- 2) "Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law and the exercise of such coercion or undue influence shall be an offence."

When the above clauses came up before the Sub-Committee on Minorities on April 18, 1947, M. Ruthnaswamy said that the provisions of clause 1 would break up family life. "A minor should be allowed to follow his parents in any change of religion or nationality which they may adopt," he added. C. Rajagopalachari questioned the necessity of clause 2, since it was already covered by the Indian Penal Code. The Minorities Sub-Committee then recommended a redrafting of clause 1 as follows:

- (a) "No person under the age of 18 shall be made to join or profess any religion other than the one in which he was born, except when his parents themselves have been converted, and the child does not choose to adhere to his original faith..."
- (b) "No conversion shall be recognized unless the change of faith is attested by a Magistrate after due inquiry."

On August 25, 1947 Sardar Vallabhai Patel, Chairman of the Advisory Committee, informed the President of the Constituent Assembly, that after further consideration the Committee recommended the *deletion* of the controverted clause. The clause, he said, "enunciates a rather

obvious doctrine which it is unnecessary to include in the Constitution." Thus it came about that clauses 1 and 2 were excluded from the Constitution of India under Article 25. But we will notice that these clauses were later taken up by the legislatures of certain States like Madhya Pradesh, Orissa and others, and they were modified accommodating them to the formulations of their proposed anti-conversion bills as will be seen soon below.

### **XIII. Policy of 'Reservation' Adopted by the Minorities in the Constituent Assembly**

An allied problem that came up during the discussion on the fundamental right of the propagation of one's religion is the question of reserving separate electorate and reservation of seats to the religious minorities. *The religious minorities agreed among themselves under the leadership of the Christian representatives of the Constituent Assembly against accepting any privileges in this matter.* Of course, this was a great gesture of generosity shown towards the majority community represented in the Constituent Assembly for their concurrence of supporting Article 25 related to the fundamental right of religious freedom. Obviously, the Hindu leaders warmly applauded this momentous decision as a giant stride towards national integration. Father Jerome D'Souza, an expert nominee to the Constituent Assembly representing Christian Minority Communities, explained the implication of this decision in favour of Christian missionary activities in view of warding off certain apprehensions still lingering the minds of many Hindus. He strongly agreed with other leaders and legal experts of the Constituent Assembly that "political rights and duties should not be attached to religious affiliations." So he said:

Opposition to conversion and the increasing of the strength of different communities was undoubtedly based upon the fact that such conversions had political effects. The keeping up of reservation on the basis of population would help to maintain such opposition to the expansion of our community.<sup>24</sup>

There is no hiding of the truth that it was with great difficulty and after much debate in the Constituent Assembly between a handful representatives of the minorities and a big number of the representatives of

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<sup>24</sup>Saldana, *Conversion and Indian Civil Law*, 159.

the majority community, the Hindus, that "freedom to profess, practise and propagate religion" got accepted as a fundamental right by Art. 25 in the Constitution of India. The fact that this has been acknowledged so itself is a great achievement in the making of Indian democratic secular consciousness as a constitutive element of the basic nature of Indian Constitution. This is all the more a remarkable achievement in favour of the survival and growth of the minority community in India, especially taking note of the fact that even the best intentioned Hindus, like Mahatma Gandhi, the acknowledged "Father of the Nation," disapproved of the efforts of Christian missionaries at conversion. But it is also understood that the article 25 declaring the freedom to propagate one's religion was reluctantly conceded as a *compromise* with the minorities for relinquishing their right to reserved seats in the legislature.

#### **XIV. The Orissa Freedom of Religion Act 2 of 1968<sup>25</sup>**

This Act 2 of 1968 of the Orissa Government was a revised attempt to legislate against the alleged "induced conversion" oriented missionary activities of missionaries in Orissa. One of the strong objections against this Act was that it gave a handle to government officials and other vested interested politicians to harass any convert and anyone who influenced his conversion. Section 3 of the Act stated:

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

The maximum punishment for contravening these provisions was one year's rigorous imprisonment and/or a fine of Rupees five thousand. This punishment was doubled where the convert or would be convert was a minor, a woman or a member of a Scheduled Caste or Scheduled Tribe (S.4). Obviously, we may observe that the formulation of this Act sounds a low estimation of women, Scheduled Castes and Tribes, since they are equated with minors. 'Conversion' was defined as "renouncing one religion and adopting another" (S.2/a). Under this Act, three catechists and a priest were prosecuted by the Magistrate at Gunupur in 1968. Thereupon, the Roman Catholics and the Protestants petitioned the Orissa High Court

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<sup>25</sup>Saldana, *Conversion and Indian Civil Law*, 160.

against the constitutionality of the Act. The case is titled as *Yulitha Hyde vs State of Orissa* (A 1973 Orissa 116). Among the petitioners were two Catholic priests, who described themselves as persons who "have dedicated themselves to the propagation of the Catholic faith and are engaged in evangelization leading to conversion of persons belonging to other faiths by and/or through preaching an exhortation."

On behalf of the petitioners, various reasons which motivate Christians to propagate their faith and non-Christians to embrace it were adduced. Among them the following deserve special mention: Christians believe that the divine gift of faith must be unselfishly shared with all people; this is also the command of Jesus Christ as attested in the Gospels of Matthew 28:19ff; Mark 16:15ff and the Church teaching through the Vatican Council II document *Ad Gentes* art. 5. Conversion is a work of God's grace, which is obtainable by daily prayer... People of the depressed classes embrace Christianity as an escape from the hatred and disdain of the upper classes of the society. Catechumens are ordinarily given a course of religious instruction for a period of six months to one year. They are helped to improve their economic condition because "Christians believe that satisfaction of the basic physical wants creates a wholesome basis for effectiveness of religion." Large portions of *Ad Gentes* arts. 12 and 13 were quoted to show that Christians must collaborate with all men in "waging war on famine, ignorance, and disease," and preach the mystery of Christ whenever occasion offers.

The judge noted that mild threats are often held out in propagating the faith in the God of Christians, such as the following from the Old Testament: "But if you will not obey the voice of the Lord your God ... the Lord will send upon you curses, confusion, and frustration in all that you undertake to do, until you are destroyed and perish quickly..." However, these are common spiritual exhortations available in all religions, having their own spiritual motivational influence on the devotees. So these religious texts cannot be interpreted as applying any force of any divine threat on a person to accept Christianity by any means. So in the arguments between the petitioners' Counsel and the Advocate for the Government there was certain consensus about the meaning of the terms of 'force', 'fraud', and 'inducement', as defined in the Act. It defines *force* as a show of a threat of injury of any kind including threat of divine displeasure or social excommunication; *fraud* as misrepresentation or any



other fraudulent contrivance; *inducement* as the offer of any gift or gratification, either in cash or in kind, and shall also include the grant of any benefit, either pecuniary or otherwise (S. 2/b-d).

The judgement was delivered by Justice R. N. Misra, with the concurrence of Justice K. B. Panda, on October 24, 1972. In the light of the documentation submitted to their Majesties by the Counsel of the petitioners, Justice Misra admitted that, "*it is the religious duty of every Christian to propagate his religion.*" The Government Advocate did not dispute this assertion of fact. Justice Misra continued to observe that "*freedom of religion protects also acts done in pursuance of religious belief; as a 'necessary corollary' to the right to propagate religion, conversion into one's own religion has to be included in the right so far as a Christian citizen is concerned.*" By stating thus his Lordship clearly upheld the right of Christians to propagate their religion through conversions, under Art. 25(1) of the Constitution of India.

Justice Misra further held that under arts. 246, 248 and the Seventh Schedule (List I, No. 97), the Parliament has *exclusive power to make any law with respect to religion*; and the disputed Act now under review deals essentially with the subject matter of 'religion'. Therefore, the state Legislature had no power to enact the impugned legislation, "*which in pith and substance is a law relating to religion.*" His Lordship's final verdict reads as follows:

*We declare that the Act is ultra vires the Constitution and direct ... the State Government not to give effect to the Act. The four criminal cases pending before the Magistrate at Gunupur are hereby quashed.*

It is reported that it is partly due to this judgment of the Orissa High Court that similar Bills proposed in the Rajasthan and Gujarat Legislatures were not actually taken up so far for discussion and enactment.

#### **XV. The Madhya Pradesh Dharma Swātantrya Adhiniyam 27 of 1968<sup>26</sup>**

The State of Madhya Pradesh in September 1968 enacted the *Dharma Swātantrya Adhiniyam* (Freedom of Religion Act), which is on the same lines as that of Orissa Act 2. The Madhya Pradesh Act requires

<sup>26</sup>Saldana, *Conversion and Indian Civil Law*, 163.

"every month the District Magistrate must send a report of conversions to the State Government.

Against the background of the quashing of the *Orissa Freedom of Religion Act 2* (1968) by the High Court of Orissa on October 24, 1972, on the ground that it was *ultra vires* of the provisions of the Constitution of India, a case was filed in the High Court of Madhya Pradesh in the suit of *Rev. Stanislaus vs The State of Madhya Pradesh* (A 1975 MP 163-174) on April 23, 1974, challenging the Constitutional standing of this Act. The petitioner contended, among other things, that the Act is violative of art. 25/1 of the Constitution of India and that the subject of the legislation is *ultra vires* the State legislature; Parliament alone has the power to legislate on this subject, according to No. 97 of List I of the 7<sup>th</sup> Schedule to the Constitution.

The judgement of the Court was delivered by Chief Justice P. K. Tare, with Justice U. N. Bachawat concurring. Justice Tare first tackled the question whether the Act violates art. 25/1. It is to be noted, he said, that, "freedom of religion is not a monopoly of a single individual, but the freedom is to be enjoyed by a person commensurate with similar freedom to all other individuals." He went to state that, the Act guarantees religious freedom to one and all including those who might be amenable to conversion by force, fraud or allurement. As such, the Act, in our opinion, guarantees equality of religious freedom to all, much less can it be said to encroach upon the religious freedom of any particular individual. Since the provisions of the Act "establish the equality of religious freedom for all citizens by prohibiting conversion by objectionable activities such as conversion by force, fraud and by allurement," Justice Tare rejected the contention that the Act violates Art. 25(1) of the Constitution. Justice Tare then answered the claim of the petitioner that the State Legislature has no power to legislate on the subject matter of the disputed Act. His Lordship pointed out that, according to no. 1 of List II of the 7<sup>th</sup> Schedule to the Constitution read together with art. 246(3), "public order" is one of the items with respect to which the State Legislatures have power to legislate.<sup>28</sup> Basing himself on *Ramji Lal Modi vs State of Uttar Pradesh* (A1957 SC 620), his Lordship argued:

<sup>28</sup>Saldana, *Conversion and Indian Civil Law*, 165.

“every month the District Magistrate must send a report of conversions to the State Government.

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If, therefore, certain activities have a tendency to cause public order, a law penalising such activities as an offence would amount to imposing reasonable restrictions in the interests of public order although in some cases those activities may not lead to a breach of public order.

In his summary Judgement, the Chief Justice Tare did not further discuss whether the State Government had sufficient evidence to prove that conversions were taking place through force, fraud or allurements, nor – supposing such proven instances – whether these instances were of such a nature as to threaten public order. He concluded by briefly stating that the subject-matter of the impugned Act “is covered by entry no. 1 of list II of the Seventh Schedule and as such, the Madhya Pradesh Legislature was competent to enact that piece of legislation.” He, therefore, disagreed with the judgement of the Orissa High Court in the case of *Yulitha Hyde vs State of Orissa* which held the contrary view in respect of a similar piece of legislation by the Orissa Legislature. Hence the petitioner made an appeal to the Supreme Court.

### **XVI. The Review and the Judgment of the Supreme Court**

After reviewing the judgments of both the Madhya Pradesh High Court and the Orissa High Court concerning the Constitutional validity of the two legislative Acts of both Madhya Pradesh and Orissa regarding the “Freedom of religion” as a fundamental right involving ‘propagation’ by ‘conversion’, on January 17, 1977, a five-member Bench of the Supreme Court of India upheld the above mentioned laws of Orissa and Madhya Pradesh as valid legislations in the tenor of the Constitution Art. 25 and other related sections. The Supreme Court mainly followed the reasoning of the Madhya Pradesh High Court, and pronounced a consolidated judgment with more far reaching implications for the future operations of the same Acts in their respective States. The Judgment was delivered by Justice A. N. Ray, the then Chief Justice of India. Justice Ray denied that Art. 25 of the Constitution grants a fundamental right to convert persons to one’s religion. What it grants is the right,

to transmit or spread one’s religion by an exposition of its tenets. It has to be remembered that Article 25/1 guarantees ‘freedom of conscience’ to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no

fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the 'freedom of conscience' guaranteed to all the citizens of the country alike... What is freedom for one, is freedom for the other, in equal measure, and there can be no such thing as a fundamental right to convert any person to one's own religion.

### **XVII. Other Legislations of States and the Centre**

After the review and the upholding of the two Acts of Orissa and Madhya Pradesh, by the Supreme Court in January 1977, Arunachal Pradesh passed its own legislation known as *Arunachal Pradesh Freedom of Religion Act 1978*. Last year (2002) the Governor of Tamil Nadu issued an anti-conversion *Ordinance* at the instigation of the Chief Minister Ms. Jayalalita. The ordinance has to undergo thorough review and formal legislation in the Legislative Assembly and should get the final consent of the President of India before it can have the force of a State law. However, it is only a matter of formality and procedure, and in a short while there will be the fifth State, Tamil Nadu, passing an anti-conversion bill prohibiting all forms of "religious conversion" bringing them all under some pretext of "force, fraud, or inducement." While this article is in the making reports came in that the Gujarat State passed its own Legislation on the "*Freedom of Religion and Regulation of Conversion*" (March 27, 2003), the text and the details of the Act are awaited for critical study.

A brief sketch of the history of the attempts of Central Legislation in this connection is felt appropriate here. Four years after the declaration of India as a Secular Republic (January 26, 1950), in 1954, a Congress member moved the "*Indian Converts' Regulation and Registration Bill*" in the Parliament introducing compulsory "licensing of missionaries" and "registration of conversions." The Bill was, however, dropped at the behest of Jawaharlal Nehru, the then Prime Minister, who could anticipate the possible dislike of minority communities, whose ballots were almost counted assuredly in the second General Election which was scheduled for 1955. But again in 1960, after the re-election of the Indian National Congress into power at the Centre, a private member's Bill, under the pretext of the protection of the backward religious communities, was

introduced in the Parliament under the title, "*Backward Communities' Religious Protection Bill*" explicitly aiming at checking the conversion of Hindus to non-Indian religions like Islam, Christianity, Judaism, and Zoroastrianism. This Bill was also rejected from being passed into a law due to its "apparent affront on specific religious faiths." Again in 1970, a "*Bill to forbid any conversion of minors*" was introduced in the Parliament, but was rejected due to lack of conceptual clarity about the term "a minor," who must totally or partially depend on the parents or guardians and their religious choices. After a lapse of some eight years and after the Supreme Court's affirmative review and verdict on the Orissa and Madhya Pradesh anti-conversion Acts, on December 22, 1978, a *Freedom of Religion Bill* was introduced in the *Lok Sabha* to cover the whole of India, may be also with a tacit intention of backing-up the effective enforcement of the State Laws already passed by some States. Since there was severe opposition and criticism in the public against this Bill it did not get through. Although another attempt was made in this direction in 1979 it also fell flat on the floor of the Parliament where multi-party interests in winning political elections on "communal bases" emerged as a trump card for campaigning elections. Hence, in the past 23 years nobody dared to bring a Central legislation prohibiting "religious conversion," although some State Legislatures have followed suit in this line.

For an easy reference to all the available laws governing 'conversion' below is given a tabulation of the Conversion Laws.

#### RELIGIOUS CONVERSION LAWS AT A GLANCE<sup>29</sup>

ORISSA (1968)	MADHYA PRADESH (1968)	Arunachal Pradesh (1978)	Central Bills (1978)
1. No use of force, fraud, or inducement for conversion.	Same	Same	Same
<i>Punishment:</i> Up to 1yr. R. imprisonment and/or fine up to Rs. 5000/- Punishment doubled if covert is	<i>Punishment:</i> 1 yr. Imprisonment & rest as of Orrisa Act.	<i>Punishment:</i> Up to 2yrs. Imprisonment and fine up to Rs. 10,000/- (No mention of doubling	<i>Punishment:</i> Simple/ R.I. up to 1 yr., and/or fine up to Rs. 3000/- . If convert is a minor etc.,

<sup>29</sup> Adapted and updated from the table given by Saldana, *Conversion and Indian Civil Law*, 205.

minor, woman, or member of SC or ST		punishment)	imprisonment doubled and fine up to Rs. 5000/-
2. No mention of reporting to Magistrate about conversion	Person converting another must inform District Magistrate within 7 days. <i>Punishment:</i> 1 yr., imprisonment and/or fine Rs. 1000/-	Person converting another must inform Deputy Collector of district within a specific period.	Yet to make rules to implement the provisions of the Bills pending in the Lok Sabha.
3. <i>Relevant Provision:</i> "No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means, nor shall any person abet any such conversion (Orissa Act, section 3).			
4. <i>Definitions:</i> 'Conversion': "Renouncing one religion and adopting another." 'Force' : "Shall include a show of force or a threat of injury of any kind including threat of divine displeasure or social excommunication." 'Fraud' : "Shall include misrepresentation or any other fraudulent contrivance." 'Inducement' : "Shall include the offer of any gift or gratification, either in cash or in kind, and shall include the grant of any benefit, either pecuniary or otherwise."			

### XVIII. Concluding Observations

Apart from the above tabulated anti-conversion laws of various States, there are certain Central Laws which effectively discourage conversion from Hinduism to Christianity or Islam by subjecting the converts to loss of economic benefits. They also indirectly encourage re-conversion from these religions to Hinduism by officially and legally offering economic gains, concessions, and reservations in specific areas of admission to educational institutions and job opportunities. Among these legal provisions of economic gains (which are explicit inducements to economically backward people to join or get reconverted into Hinduism in view of getting these concessions of the State), is the "*Scheduled Castes Law*," which is *prima facie* a religion-based law, and definitely not one based on caste affiliation or socio-economic backwardness. The *Constitution (Scheduled Castes) Order 1950*, emphatically laid down that any person who is not a Hindu could never be a member of the Scheduled

caste and was not entitled to enjoy the benefits of the Scheduled Castes. The *Hindu Succession Act* also technically discourages 'conversion' by stating that if a Hindu converted to Islam or Christianity and pre-deceases his father, children born to him after his conversion shall not inherit the estate of their Hindu grandfather. If, however, such a child reconverts to Hinduism during his grandfather's lifetime, he will get a full share from the grandfather's property.<sup>30</sup>

Thus, both the *Scheduled Castes Law* and *Hindu Succession Act* offer inducement or allurements to the Hindus for sticking to Hinduism as also for converting or re-converting to Hinduism from Christianity or Islam. On the other hand, conversion of a Hindu to Buddhism or Sikhism would have no implications under either of these laws. In other words, the word 'secular', though it is added by the 42<sup>nd</sup> amendment (1976) to the Preamble of the Constitution of India, its spirit is not yet incorporated into the legal system and its executive machinery. Hence, the actual practice of 'secularism' remains discriminatory, and is in favour of the majority community; naturally, from this perspective, the minority communities are at a disadvantage. In future, by checking the growth of the minority communities' numerical strength through the ruthless implementation of the strategically worded "anti-conversion laws" of various States, rightly motivated Christian social workers, educationists, and leaders of people's liberation-movements would be unjustly persecuted, harassed, and even brutally murdered as in the case of Sister Rani Maria in Indore (1994), and Graham Staines and his innocent minors Timothy and Philip (1999).

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<sup>30</sup>William Lourdayyan, *Conversion Debate and the Holocaust*, 1999, 118. Also read Ishanand Vempeny, *Conversion: National Debate or Dialogue*, Anand: Gujarat Sahitya Prakash, 1999, and J. F. Seunarine, *Reconversion to Hinduism through Suddhi*, Madras: The Christian Literature Society, 1977.