

FUNDAMENTAL RIGHT TO CHOOSE RELIGION

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I. INTRODUCTION

Long ago, the Bhagwad Gita¹ taught us that man should remain free to come closer to God in whatever way he found satisfactory. The Rig Veda succinctly sets out the Indian attitude of toleration by declaring, "The real is one, the learned call it by different names."² The Arthashastra of Kautilya as back as in the 3rd century B.C. emphatically stated that the king should offer equal protection to all irrespective of their religious affiliations. 'In the happiness of his subjects' says Kautilya 'lies his happiness'; in their welfare his welfare; whatever pleases himself he shall not consider as good; whatever pleases his subjects he shall consider as good.³

In India, every body have fundamental right to freedom of religion guaranteed by the Constitution. The concept of religious freedom as incorporated in Articles 25 and 26 of our Constitution is largely based on 'Article 44(2) of the Irish Constitution'.⁴

Articles 25 to 28 of our Constitution deal with the right to freedom of religion. Comprehensively almost all matters concerning religion are covered by these four articles. Article 30, mentions religion in the context of the right of religious minorities to establish and administer educational institutions of their choice. Article 25 of our Constitution which is modeled on Article 44(2) of the Irish Constitution provides that "all persons have freedom of conscience and the right to freely profess, practice and propagate religion, subject to public order, morality and health". Freedom of religion and freedom of conscience are obviously interrelated. Profession and practice of religion is but an external manifestation of the call of conscience.

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¹ See K.M. Sen, HINDUISM (New Delhi, 1961) at 39.

² *Id.*, Chapter I, 164.

³ *Id.*, at XIX, 39.

⁴ Article 44(2) of Irish Constitution reads "Freedom of Conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen". See J.M. Kelly, THE IRISH CONSTITUTION (Dublin, 1984).

'Conscience' is the 'inmost thought' or is the sense of moral correctness that governs or influences the action of an individual. Every individual justifies his omissions and commissions with reference to the same influencing force. One of the articulates and outward expressions of the conscience is religion.⁵ In practical terms the freedom of conscience implies a right to hold or entertain freely any faith or belief in accordance with one's own prudence and conscientiousness. This is basically an approbation and accommodation of multiple faiths existing among the people living together at a place or in a country. A state in which this tolerant pattern of life is adopted is, in the modern constitutional terms, called a 'secular' state.

II. FREEDOM OF RELIGION AND THE INDIAN CONSTITUTION

The right to freedom of conscience has been conceived in India keeping in view the plural nature of the Indian society. The ideal was adopted by national leaders during freedom struggle with a view to unite various communities against the British power. It continued later because the government of a country like India could never function satisfactorily without freedom of faith, that being the concern for all. The Constitution, however, did not exclusively detach religion from public life. It adopted a progressive and modern outlook guaranteeing equal rights to all citizens, respecting their freedom of conscience.

Secularism and freedom of conscience, in this perspective, constitute a reinforcing ideal sought to be preserved in the post-colonial India. The Preamble of the Indian Constitution openly declares India as a "sovereign, socialist, secular, democratic republic" which secure to all citizens "liberty of thought, expression, belief, faith and worship." Though many have debated the meaning of the term 'secular' in the Indian context, it has come to imply equality of rights for all regardless of religion or belief. Under articles 14, 15 and 16 of the Indian Constitution, discrimination on the ground of religion is prohibited and all citizens are guaranteed the right to equal treatment before the law and the right to equal protection of the laws. The insertion of the word 'secular' in the preamble of the Constitution by 42nd Amendment Act, 1976 made the concept constitutionally explicit.

⁵ *Ratilal v. State of Bombay*, AIR 1954 SC 388; *Bijoe Emmanuel v. State of Kerala*, AIR 1987 SC 148.

The Supreme Court of India has explained the secular character of the Indian Constitution thus⁶ :

There is no mysticism in the secular character of the state. Secularism is neither anti-God nor pro-God, it treats alike the devout the antagonistic and the atheist. It eliminates God from the matters of the state and ensures that no one shall be discriminated against on the ground of religion.

In famous *S.R. Bommai*⁷ the Supreme Court held that secularism is a basic feature of the Constitution. Earlier in *Kesavananda Bharti*⁸ the amending power to convert India from a 'secular' state to a theocratic one was denied to the Parliament for that being violative of the basic structure of the Constitution.

A 'secular' state means that state should not promote any religion, it has no religion of its own, and it remains neutral in matter of religion. But it does not mean the state shall stand aloof in all matter of religion. The religious activities or practices arising out of or linked with freedom of conscience and which affect adversely law and order cannot be permitted by the state and state intervention in the form of the imposition of restriction on such behaviour becomes inevitable. The state is empowered to place reasonable restriction, on the following grounds, namely –

1. Public order, morality and health
2. Other provision of the constitution (Part III)
3. Regulation of non-religious activity associated with religious practice
4. Social welfare and reforms.

It may be reiterated that the Indian society has nurtured different cultures from immemorial days and has homed a majority of the world religions, such as Hinduism, Islam, Christianity, Buddhism, Jainism, Sikhism and so on. The Constitution, thus, aims at securing freedom of conscience and at the same time seeks to create a harmony amongst all religions. Being suitable to the polity and having a historical lineage such a freedom needs to be continued. Any other policy will not only be unconstitutional

⁶ *St. Xavier's College v. State of Gujarat*, AIR 1974 SC 1389, 1414.

⁷ *S.R. Bommai v. Union of India* (1994) 3 SCC 1, 232, 397.

⁸ AIR 1973 SC 464.

but also extremely harmful and suffocating for public. It, however, needs to be realized that an incessant process of transformation and change is naturally going on. Ideas, faith, psyche, behaviour and attitudes of people have always been subject to change, though the factors of change vary with time and place.

An important aspect to be looked into with respect to the change of faith is the 'state of one's awareness and ignorance'. More awareness and enlightenment does definitely have an impact on the thought, belief and action of a person restructuring one's faith and element of conscience. Thus, as regards conscience, the state of knowledge of a person is a determinative factor.⁹ Since knowledge is in itself a continuing process every human being is undergoing a 'metamorphosis' with continuing experience of life and learning. It is because of this reason that no two person even belonging to the same religion show total conscience in their ideas and faith. It, therefore goes without saying that it is inadvisable to tie up someone to a particular faith for all times. Doing so tantamounts to going against the natural process of experience and change which are basic incentives for life, and hence components of the right to life. Thus, every human being has a natural entitlement to freedom of conscience and a right to adopt or abandon any faith is his own choice. This being so, the freedom of conscience, i.e. profession, practice and propagation of any faith has been recognized as a basic human right both constitutionally and conventionally.

In addition to its duties under domestic law, India is also party to several international treaties that impose human rights obligations. The General Assembly of United Nations, on 10th December, 1948, adopted the Universal Declaration of Human Rights recognizing that the entire humanity enjoy certain inalienable rights which constitute foundation of freedom, justice and peace in the world. Article 18 of the International Covenant on Civil and Political Rights, 1966 establishes the right to freedom of thought, conscience, and religion. It provides that –

1. Everyone shall have the right to freedom of thought, conscience and religion. The right shall include freedom to have or to adopt a religion or belief of his choice and freedom, either individually or in community

⁹ Afzal Wani, *Freedom of Conscience : Constitutional Foundation and Limits*, 42 JILI, 2000, 289 at 291.

with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of the others.

Articles 2 and 26 bar discrimination on the ground of religion, while Article 27 dictates that "in those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of the their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language."

The right to freedom of religion and prohibitions on discrimination on the ground of religion are further elaborated upon the Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on Religion or Belief. Although not a treaty, this declaration, proclaimed by the General Assembly of the United Nations in 1981, provides authoritative guidelines to U.N. member states on ways to eliminate religious intolerance and discrimination. Article 4 of the declaration proclaims that, "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life," and that "all States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other belief in this matter."

The **Preamble** to the Indian Constitution which contains the ideals and aspirations or the objects which the Constitution makers intended to be realized clearly proclaims that the people of India have solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC. The expression "Socialist, Secular" was inserted in the Preamble by the Constitution (42nd Amendment) Act, 1976. The object of inserting the expression was to spell out expressly the high ideas of socialism and secularism and the integrity of the nation. In short,

the object of the Government in making this amendment was to make explicit what was already provided in the Constitution.

Even before the word 'secular' was inserted in the Preamble in 1976, in 1973 the Supreme Court in *Keshvananda Bharti*¹⁰ observed that secularism was a basic feature of the Constitution. Article 25 to 30 envisage this basic principle. In *Keshavanada v. State of Kerala*¹¹ and in *Indra Nehru Gandhi v. Rajnarian*¹² the Supreme Court has observed that by secularism it is meant that the state shall not discriminate against any citizen on the ground of religion only and that the state shall have no religion of its own and all persons shall be equally entitled to the freedom of conscience and the right freely to profess, practice and propagate religion. To spell out the above idea which in fact existed even prior to 1976, the Preamble to the Constitution was amended in 1976.

The freedom of religion conferred by Article 25 of the Constitution is not confined to citizens of India alone but extends to all persons including aliens and individual exercising their rights either in their individual capacity or on behalf of some church or institutions.

III. CONCEPT OF RELIGION

The term 'Religion' is not defined in the Constitution and indeed it is a term which is hardly susceptible to any rigid definition. Etymologically the expression religion is the combination of the two Latin expressions 're' meaning back and 'ligare' meaning to bind.¹³ According to Webster's comprehensive Dictionary 'religion' means a belief binding the spiritual nature of man to a super natural being as involving a feeling of dependence and responsibility, together flow from such a belief.

The Oxford dictionary defines religion as the belief in a superhuman controlling power, especially in a personal God or Gods entitled to obedience and worship. The Supreme Court has defined it broadly. Religion is a matter of faith with individuals or communities and it is not necessarily theistic. A religion has its basis in "a system of belief or doctrines

¹⁰ AIR 1973 SC 1461.

¹¹ *Ibid.*

¹² AIR 1975 SC 2299.

¹³ A. Parthasarthy, VEDANTA TREATISE, at 106, quoted by Justice M.N. Rao in Lecture on *Freedom of Religion and Right to Conversion* delivered at Hyderabad on 22.03.2003.

which are regarded by those who profess that religion as conducive to their spiritual well being”, but it will not be correct to say that religion is nothing else but a doctrine of belief. A religion may only lay down a code of a doctrine of belief. A religion may only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion, and those forms and observances might extend even to matters of food and dress.¹⁴ Religion is thus essentially a matter of personal faith and belief. Every person has right not only to entertain such religious belief and ideas as may be approved by his judgment or conscience but also exhibit his belief and ideas by such overt acts which are sanctioned by religion. Thus under Art.25(1) a person has a two fold freedom :-

- (a) Freedom of conscience
- (b) Freedom to profess, practice and propagate religion.

The expression “freedom of conscience” means the inner freedom of person to mould his relations with his God in whatever manner he likes. It connotes a person’s right to entertain beliefs and doctrines concerning matters which are regarded by him to be conducive to his spiritual well being. Every person in India, therefore, has the freedom to have faith and belief in religious tenets of any sect or community.

“Freedom of conscience”, simply speaking, means the freedom to entertain religious beliefs. Any belief which is genuinely and conscientiously attracts protection of Article 25 but subject, of course, to the inhibitions contained therein.¹⁵ It means the freedom of religious opinion, the right to hold or to entertain religious beliefs as may be approved by his judgement or conscience.¹⁶ Until this inner belief is expressed in any outward form, it is merely the “freedom of conscience”. Also 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 or to bring to any religion at all.¹⁷ A person has freedom to believe in the religious tenets of any sect or community. The right is not

¹⁴ *Commr., H.R.E. v. L.T. Swamiar*, AIR 1954 SC 282 at 290; *S.P. Mittal v. Union of India*, AIR 1983 SC 1.

¹⁵ *Bijoe Emmanuel v. State of Kerala*, AIR 1987 SC 748.

¹⁶ *Ratilal v. State of Bombay*, AIR 1954 SC 388.

¹⁷ AIR 1965 SC 1179.

only to entertain such religious beliefs as may be approved by his judgement or conscience but also to exhibit his sentiments in overt acts as are enjoined by his religion. According to this Article, he may profess, practice, and propagate his religion.

To 'profess' means 'to avow publicly'; "to make an open declaration of ; to declare one's belief in; as to profess Christ; to accept into religious order".¹⁸ Thus, to profess a particular religion means to declare freely and openly one's faith or belief in. When the inner 'freedom of conscience' becomes articulate and expressed in an outward form it amounts to profess religion. It is to declare one's belief in such a way that it would be known to those to whom it may concern.¹⁹

To 'practice' religion means to perform religious duties, rites or rituals. The expression "Practice of Religion" signifies acts done in pursuance of religious belief. The guarantee contained in Article 25(1), not only, protects the freedom of religious opinion, but it protects also acts done in pursuance of religion.²⁰

But, this right does not extend to the right of worship at any and every place. Therefore, while offer of prayer or worship is a religious practice, its offering at every location where such prayers can be offered would not be an essential or integral part of such religious practice and not protected under Article 25.²¹

Modes of worship considered by a religion to be its *integral and essential part* are also secured. He has right to practice his belief by practical expression in any manner he likes.

However, religious practices to which Article 25(i) refers, includes practices which are an integral part of the religion itself.²² The integral and essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself.²³ For example, for Hindus, these may include offerings of food to the idol; Performance of periodical ceremonies;

¹⁸ WEBSTER'S NEW WORLD DICTIONARY, quoted in *Punjab Rao v. D.P. Meshram*, AIR 1965 SC 1179.

¹⁹ *Stainlaus v. State of M.P.*, AIR 1975 MP 463.

²⁰ *Supra* note 13.

²¹ *M. Ismail Faruqui v. State of Mysore*, AIR 1958 SC 255.

²² *Venkatramana Devaru v. State of Mysore*, AIR 1958 SC 255.

²³ *Commr. H.R.E. v. L.T. Swamiar*, AIR 1954 SC 282.

recital of sacred texts; offering oblation to the sacred fire.²⁴ For Sikhs, the wearing of Kara²⁵, the wearing and carrying of kirpans²⁶, recital of Holy Guru Granth Shaib, are the integral part of their religion. For Muslims, calling Azan, performance of Majj are some of the essential practices which are integral part of their religion.

Article 25(1) protects those rituals and observances, ceremonies and modes of worship which are considered by a religion to be its integral and essential part. Whether a religious practice constitutes essential part of the religion or not, the test always would be whether it is regarded as such by the community following the religion or not. Applying this test the Calcutta High Court in *Masood Alam v. Commissioner of Police*²⁷ held that the use of a loudspeaker for calling the Azan was not an integral part of Muslim faith. The view of the Calcutta High Court was approved by Supreme Court in *M.H. Quaresi v. State of Bihar*²⁸ banning the sacrifice of cows on the occasion of Bakrid, not being essential part of Mohmadean faith.

According to Oxford Advanced learner's Dictionary, the word propagate means to spread (views, knowledge, belief etc.) more widely.

According to Random House Dictionary of English language, the word propagate means 'to spread' (information behaviour etc.) from person to person; disseminate or to cause to increase.²⁹

To 'propagate' means to spread and publicise his religious view for the edification of others. But the word 'propagation' only indicates persuasion and exposition without any element of coercion.³⁰ The right to propagate one's religion does not give a right to convert any person to one's own religion. There is no fundamental right to convert any person to one's own religion. What Article 25(1) guarantees is not right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. Article 25 guarantees "freedom of conscience"

²⁴ *Ibid.*

²⁵ *Surjeet Singh Chhabra v. Union of India*, AIR 1997 SC 2560.

²⁶ Explanation 1 to Article 25, Constitution of India.

²⁷ AIR 1956 Cal.9.

²⁸ AIR 1958 SC 731.

²⁹ THE RANDOM HOUSE, DICTIONARY OF ENGLISH LANGUAGE (Reprint 1974) at 4-5.

³⁰ *Supra* note 20.

to every citizen and not merely to the followers of one particular religion. It, therefore, 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 effect 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.³¹

IV. CONSTITUENT ASSEMBLY DEBATES ON RIGHT TO PROPAGATE RELIGION

The Article 19 (now Article 25 of the Constitution) was incorporated in the Draft Constitution after detailed discussion in the Fundamental Rights Committee of the Constitution Assembly at three levels and adopted in its final form in 1949 after intensive debates. The main point at issue was the right to propagate. It will be of interest to note that the Constituent Assembly which framed our Constitution first met in the undivided India on 9th December 1946. Its total strength was 389 of whom 205 was elected on the congress vote which included 30 non-congress men of great eminence like Dr. Radha Krishnan, Dr. B.R. Ambedkar, Dr. Alladi Krishnaswamy Ayyar, Pandit Hridayanth Kunzhru and N. Gopaldaswamy Iyengar. The basic preparatory work in the form of collection of background material and a draft comprising 244 Articles was done by Sir B.N. Rau and the Drafting Committee elected by the Constituent Assembly prepared the draft Constitution. The Drafting Committee consisted of seven men and Dr. Ambedkar was unanimously elected as the chairman.

The Constituent Assembly had setup an Advisory Committee consisting of 72 members and the Advisory Committee in turn appointed Sub-Committees to study and submit reports on important matters like fundamental rights and rights of minorities etc. Those reports were studied by the Drafting Committee and debated by the constituent Assembly before finally approving them.

The constituent history of the freedom of thought, expression, belief, faith and worship virtually began with the 1946 resolution of the Expert Committee of the Constituent Assembly specifying its objectives.³² This was preceded by a note on fundamental rights, containing an article

³¹ *Rev. Stainislaus v. State of M.P.*, AIR 1977 SC 308.

³² B. Shiva Rao, *THE FRAMING OF INDIANS CONSTITUTION – SELECT DOCUMENT*, Vol.II (Bombay, 1967) at 3-4.

insisting on the incorporation of right to freedom of conscience implying freedom of belief, worship or profession of any religion, faith or doctrine and of negation thereof, submitted in December, 1946 by K.T. Shah, a member of the Sub-Committee on fundamental rights.³³ Many draft articles were later presented by the members of the said committee when the issue was debated by the Constituent Assembly.

The term 'propagate', as used in article 25 of the Constitution, owes its origin to the recommendation made by the Sub-Committee on minorities for adoption by the Constituent Assembly. In the draft article, the term 'conversion' was as such used by the drafters, but in the final article the term was dropped leaving the question open whether the term 'propagate' includes conversion or not. It was B.R. Ambedkar's draft that introduced the words "the right to profess, to preach and to convert within limits compatible with public order and morality."³⁴ Earlier, K.M. Munshi's draft had made penal any conversion brought about by coercion, undue influence, and inducement of a minor without the permission of the guardian.³⁵ The recommendations of the Sub-Committee on fundamental rights also did not contain the express right to propagate. It was the recommendation of the minorities Sub-Committee (M. Ruthnaswamy) that certain religions like Christianity and Islam were proselytizing faiths and hence should be permitted to propagate their faith.³⁶ The advisory committee accepted this proposal and incorporated the right in its draft. F.R. Anthony gave thanks for retaining the word 'to propagate', "a right which is regarded as perhaps the most fundamental of Christian rights."³⁷ He was against conversion by undue influence, coercion or fraud, which should not be recognized by law³⁸, but he opposed the amendment derecognizing any conversion of a minor (under eighteen years) on the ground that it cut the family root.³⁹ Purushottamdas Tandon, surprised at the speeches, said : "We Congressmen deem it very improper to convert from one to another religion or to take part in such activities and we are not in favour of this." He further said : "But we agreed to keep the word

³³ *Id.* at 50.

³⁴ *Supra* note 32 at 87.

³⁵ *Id.* at 76.

³⁶ *Id.* at 208-09.

³⁷ CONSTITUENT ASSEMBLY DEBATES, Vol.III (1947) at 489-90.

³⁸ *Id.* at 489.

³⁹ *Id.* at 490.

‘propagate’ out of regard for our Christian friends.” He continued to say that ‘coercion’, ‘fraud’ and ‘undue influence’ were included as provisos to cover the cases of adult converts. According to him, conversion of minors was coercion and undue influence under all circumstances.⁴⁰ Algu Rai Shastri, also dealt in detail with the coercive methods of conversion in tribal areas and among low caste people.⁴¹ Most of the discussion at this stage reverted upon conversion of minors. Sardar Patel also regretted that force, coercion and influence were widely used for mass conversion. He suggested that issue of minor conversion should be referred back to the Advisory Committee, which was done.⁴²

Having witnessed the country’s partition, majority of members of the Constituent Assembly were determined to ensure that religion remained a private activity and favoured the adoption of a Secular Constitution for the country. With respect to ‘propagation of religion’ and ‘conversion’ two proposals came up. One proposal was supported by the Christians, who then constituted 1.5 percent of the population of the country, seeking to make ‘propagation’ of religion a ‘fundamental right’ which they consider a part of their religious tenets. Another proposal was supported by Hindus, who put forth a demand for an article explicitly banning conversions by coercion and undue influence, which was, however, dropped for ‘technical reasons’. Both these proposals were originally found in the interim report of the Advisory Committee headed by S.V. Patel, submitted to the Constituent Assembly in April-May 1947. The formal proposal of S.V. Patel, before the Constituent Assembly was as follows : “Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law.”⁴³ Partly against this, K.M. Munshi set out that the persons under eighteen years of age would not be free to convert without parental consent and the conversions brought about by coercion, undue influence or material inducement be made punishable by law. He proposed the substitute clause in the following words : “Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognized by law.”⁴⁴

⁴⁰ *Id.* at 492-93.

⁴¹ *Id.* at 498-99.

⁴² *Id.* at 503.

⁴³ CONSTITUENT ASSEMBLY DEBATES, Vol.III at 488.

⁴⁴ *Ibid.*

When the Draft Constitution was circulated for eliciting opinion, some members reiterated objection to the right to propagate.⁴⁵ When the Constituent Assembly took up for discussion of draft article 19 (now article 25) on December 3, 1948, Tajamal Hussain feared that it would "be wrong to allow people to propagate religion in this country." He further said : "If you start propagating religion in this country, you will become a nuisance to the other. So far it has become a nuisance."⁴⁶ Loknath Mishra had a point when he said, "in no constitution of the world a right to propagate religion is a fundamental right and justifiable."⁴⁷ Religious propaganda, he said was, a weapon in the arsenal of power politics; and once an 'inalienable fundamental right' to propagate was admitted, it would create a bad blood. He further observed : "This unjust generosity of tabooling religion and yet making propagation of religion a fundamental right is somewhat uncanny and dangerous."⁴⁸

Pandit Lakshmi Kant Maitra strove to remove any misconceptions about the Christian community and urged the retention of the right.⁴⁹ K. Santhanam reminded of the importance of the restrictions on the right on the ground of "public order, morality and health." He interpreted 'propagation' as "merely a freedom of expression." T.T. Krishramchari also 'felt' that 'undue influence' would not be brought to bear in converting, and also hoped that if the social discrimination on account of caste were not practised by the Hindu society, the vast number of 'untouchables' seeking conversion to Christianity would loose the incentive to convert. Moreover, he pointed out the right to propagate belonged to all communities, including Aryasamajis performing Suddhi.⁵⁰ K.M. Munshi sought to dispell the fear the word 'propagate' caused, by pointing out that unlike before, during British rule when district collectors wielded influence in favour of Christian missionaries for acquiring converts, in the new secular set-up the absence of any particular or political advantage on community basis would neutralise any dangerous implications of conversion. Moreover, he emphasised that right to propagate was a result of a "compromise with the

⁴⁵ B. Shiva Rao, THE FRAMING OF INDIA'S CONSTITUTION : A STUDY (Bombay, 1968) at 265.

⁴⁶ CONSTITUENT ASSEMBLY DEBATES, Vol. III (1947) at 817-18.

⁴⁷ *Id.* at 824.

⁴⁸ *Id.* at 823.

⁴⁹ *Id.* at 832-33.

⁵⁰ *Id.* at 836-37.

minorities.”⁵¹ He pointed out that the right to freedom of expression would otherwise cover this right also, but the compromise must be respected.⁵² Alladi Krishnaswami Aiyar also thought that inclusion of the word ‘propagate’ was unnecessary in view of the freedom of expression.⁵³

The Constituent Assembly in its wisdom accepted the clause granting freedom of conscience and right to profess, practice and propagate religion and referred back to the Advisory Committee the statement on conversions by coercion and under influence. The draft constitution prepared by the Constitutional Advisor, submitted to the Drafting Committee in October, 1947 made no explicit mention of conversion, although it is implicit in right to propagate.⁵⁴

K. Santhanam interpreted ‘propagation’ as “merely a freedom of expression”. He pointed out⁵⁵ :

The word ‘convert’ is not there. Those who drafted this constitution have taken care to ‘see that no unlimited right of conversion has been given. People have freedom of conscience and if any man in converted voluntarily owing to freedom of conscience, then well and good. No restrictions can be placed against it. But if any attempt is made by one religious community on another to has mass conversions through undue influence either by money or by pressure or by other means the state has every right to regulate such activity.

From, the proceeding statement, it is obvious that the intention of the framers was not to grant specific fundamental right to convert as such, but also not to exclude conversion from the ambit of propagation.⁵⁶

Accordingly the article in question was adopted by the Constituent Assembly. The given accounts of facts shows that the right to convert is implicit in the right to propagate. But this right is to be exercised without any element of force or coercion.

⁵¹ *Id.* at 837.

⁵² *Ibid.*

⁵³ Alladi, CONSTITUTION AND FUNDAMENTAL RIGHTS (1955) at 45 quoted in N.A. Subramaniam, *Freedom of Religion*, 3 JILI, 1964, 323 at 328.

⁵⁴ *Id.* at 316-38.

⁵⁵ CONSTITUTION ASSEMBLY DEBATES, Vol. VII at 823.

⁵⁶ V.P. Bhartiya, *Propagation of Religion : Stains!ous v. M.P.*, 19(3) JILI (July-Sept.1977), 321 at 324.

V. ANTI-CONVERSION LAWS

A. *Position in Pre-Independence India*

The legislative history relating to the issue of conversion in India underscores the point that the authorities concerned were never favourably disposed toward conversion. The British rulers in India never imposed any restriction on the right to propagate one's religion and converting others. They themselves professed a proselytizing religion and kept away throughout their rule from any measure that would have any adverse effect on their missionary activities.

On, the contrary, they greatly encouraged the evangelists and facilitated conversion to Christianity by introducing new measures in the domain of private law in order to remove hurdles in the way of conversion of others to Christianity. But outside the British India number of princely states did enact Anti-conversion laws. It was recorded fact that there were as many as seventeen⁵⁷ princely states which introduced Anti-conversion laws in their regimes. Among these, the prominent laws were Rajgarh State Conversion Act, 1936 ; The Patna Freedom of Religion Act, 1942; The Sarguja State Apostasy Act, 1945 and the Udaipur State Anti-conversion Act, 1946. Similar legislations were also promulgated in Bikaner, Jadhpur, Kalahandi and Kota".⁵⁸

To prevent conversion to Islam or Christianity during the regime of princely States, a number of Anti-conversion steps were taken up. The first Anti-conversion law was the Rajgarh State conversion Act which was enacted in 1936. It was actually a threat from the government officials, Rajgarh and Maharajas to the missionaries and the oppressed classes of Hindus such as Adivasis not to adopt other religion. That enactment banned the preaching of Christianity and prohibited the entry of Christian missionaries into the former kingdom of Rajgarh, Jodhpur, Surguja etc. of Chhotanagpur areas. Under this Act, an application was required to be made by person wishing to change and adopt another religion. The significant aspect of the Act was that it made those liable to punishment, who were found guilty of misrepresentation, fraud, intimidation, coercion or undue influence in connection with any conversion. In Patna State

⁵⁷ D.E. Smith, *INDIA AS A SECULAR STATE*, (N.J., 1973).

⁵⁸ See B.N. Banerjee, *RELIGIOUS CONVERSION IN INDIA* (New Delhi, 1982) at 188.

similar, Freedom of Religion Act was promulgated in 1942. The purpose of the Act was to preserve the 'freedom of conscience'. Thus, the provision under this Act required an affidavit to be submitted before the Registrar of Conversion by the person wishing Conversion. This legislation gave emphasis on the age of the person wishing to convert. Sarguja State Hindu Apostasy Act, 1945 was another enactment regulating conversion from Hinduism to Islam and Christianity by vesting the power to allow or disallow conversion in the darbar of the Rajas under the guise of maintaining law and order and establishing public peace. Udaipur State conversion Act, 1946 required all conversions from Hindu religion to other faiths to be registered officially.

The known purpose of all these local laws was to protect Hindus against the "onslaught" of Christian missionary activities. All these laws required individual converts to register their conversion with specified government agencies by filling an application or affidavit. Those agencies being legally empowered to ascertain if conversion in a particular case was in fact bonafide and willful. Those who secured conversion of a person by fraud, misrepresentation, coercion, intimidation, undue influence or the like, were made liable to punishment. Minors (those under the age of 21 yrs.) could not convert, and children of converts would not automatically get their parents new faith. Conversion to Christianity (and by implication to Islam) was thus legally sought to be regulated by the rulers of princely states.

B. Legislative Actions in Post-Independence India

In 1954, a member of the then ruling party moved in Parliament the 'Indian Converts Regulation and Registration Bill' providing for compulsory licensing of the missionaries and for registration of conversion with government functionaries. It was opposed mainly by Christians, the Bill was eventually dropped at the behest of Prime Minister Mr. Jawaharlal Nehru. In 1960, another bill was introduced in Parliament the Backward Communities (Religion), Protection, Bill... aimed at checking conversion of Hindus to "non Indian religions" which, as per the Bill, included Islam, Christianity, Judaism and Zoroastrianism. It was soon rejected by Parliament for its apparent affront on specific religious faiths. No further attempt in this direction was made in Parliament till 1979, when the House witnessed introduction and an imminent fall of a "Freedom of religion Bill" seeking official curbs on inter-religious conversion, which was opposed among

others by the Minorities Commission. As regards the states, Freedom of Religion Acts have been passed by Orissa and Madhya Pradesh in 1967 & 1968 respectively. Ten years later, similar law was enacted in the third state Arunachal Pradesh. The three state laws on conversion have more or less identical provisions. They prohibit conversion by force, allurement, inducement and fraud-defining conversion as 'renouncing one religion and adopting another.' They thus, apply to all cases of change of religions. Contravention of the Act is a cognizable offence punishable with imprisonment, fine or both. Those who convert a person-by performing or participating in the necessary ceremony are required to send an 'intimation' of conversion to the District Magistrate of the locality, failure to do so is also a cognizable offence as per these laws. Section 2 of the Orissa Freedom of Religion Act, 1967 defines 'conversion' as renouncing one religion and adopting another. According to the definitions given in the Act 'force' includes a show of force or a threat of injury of any kind including threat of divine displeasure, or social ex-communication; and 'inducement' includes 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. 'Fraud' under the Act, includes misrepresentation or any other fraudulent contrivance.

Section 3 of Orissa Act provides that, "No person shall convert, either directly or otherwise any person from one religious faith to another by use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion." Any person contravening these provisions can according to section 4, be, without prejudice to any civil liability, be punishable with imprisonment which may extend to one year or with fine which may extend to fine thousand rupees or with both.

If the offence is committed in respect of a minor, a woman or a person belonging to the scheduled castes or tribes the punishment shall be imprisonment to the extent of two years and fine up to ten thousand rupees.

Section 5 of the Act requires that "whoever converts any person from one religious faith to another either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the ceremony as may be prescribed, send an intimation to the District Magistrate of the District in which the ceremony has taken place, of the fact of such

conversion in such form as may be prescribed. If any person fails without sufficient cause to comply with these provisions ... he shall be punishable with imprisonment which may extend to one year or with fine, which may extend to one thousand rupees or with both. Section 6 declares that an offence under the Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police. However, Section 7 requires that for prosecution to be made under the Act "No prosecution for an offence shall be instituted except by, or with the previous sanction of the District Magistrate or such other authority, below the rank of a Sub-District Officer, as may be authorized by him in that behalf."⁵⁹

Like provisions are found in the Madhya Pradesh Freedom of Religion Act, (M.P. Dharma Swantantry Adhiniyam), 1968 which, however, in section 3 uses the word 'allurements' instead of inducement. It defines "allurements" 'as an offer of any temptation in the form of gift or gratification either in cash or kind; or grant of any material benefit, either monetary or otherwise'.⁶⁰ The definition is the same as that of 'inducement' under the Orissa Act.

Arunachal Pradesh, Freedom of Religion Act, 1978 has been passed for protection of indigenous faith. It has emerged out of the Arunachal Pradesh Freedom of Indigenous Faith Bill. Its main content is like those of Orissa and Madhya Pradesh Acts but with difference in object. Section 2 (b) of the Act defines conversion as "renouncing an indigenous faith and adopting another faith or religion".

Section 3 provides that "no person shall convert or attempt to convert either directly or otherwise any person from indigenous faith by use of force or by inducement or any fraudulent means nor shall any person abet such conversions."

The definition of 'force', 'fraud' and 'inducement' provided by various clauses of Section 2 are similar to all those Acts. In terms of punishment, the Arunachal Pradesh Act is more severe. The Maximum punishment under that Act extends to two years imprisonment and a fine up to rupees ten thousand. For prosecution under the Act, Section 7 requires the previous sanction of the Deputy Commissioner or such other authority, not below

⁵⁹ THE CURRENT INDIAN STATUTES, Vol. VI (1968) at 4-5.

⁶⁰ THE MADHYA PRADESH LAW TIMES, 1969 at 1-3.

the rank of an Extra Assistant Commissioner, as may be authorized by him in this behalf.

Definition of the terms indigenous people, fraud, inducement, prohibition of forcible conversion and punishment of contravention of the provision of section were actually very close to denial of freedom of conscience, guaranteed by the Constitution.

The Gujarat Freedom of Religion Bill 1999 was aimed at prohibiting conversion from one religion to another by use of force or allurement. The Bill stated that “No person shall convert or attempt to convert neither directly or otherwise, any person from one religion to another, by use of force or allurement or by fraudulent means nor shall any person abet such conversion.” It said that person contravening the provision shall be punishable with imprisonment which could extend up to Rs.2000 or both. It proposed that the punishment shall be doubled in case the offence is committed in respect of a minor or a woman. Moreover it suggested that in case of offence is committed in respect of a person belonging to a scheduled caste or scheduled tribe, that offence will be regarded as an atrocity on a scheduled caste or scheduled tribe and the punishment will be three years imprisonment or a fine of Rs.5,000/-. The Bill proposed that the cases will be heard by a special judicial bench appointed by the state government in whom all powers will be vested. The Taluka Magistrate will be obliged to report on the person who convert and those persons involved in the conversions directly or indirectly. It laid down that the offence shall be cognizable and shall not be investigated by a police officer below the rank of an Inspector of Police. No prosecution of an offence under this Bill shall be made without the sanction of the District Magistrate.

As a Private member, Mr. G.M. Banatwala introduced a Bill entitled Freedom of Religion (Removal of Restriction Bill, 2000). The Bill was on religious freedom which provided for widening of religious freedom which has been unduly restrained by anti-conversion laws of Orissa, Madhya Pradesh and Arunachal Pradesh. The Bill sought to repeal there local legislations which had placed undue restrictions on the right to freely profess, practice and propagate religion.

The *Tamil Nadu Prohibition of Forcible conversion of Religion Act, 2002* bans use of force, allurement, inducement etc. for the purposes of conversion. It states that anyone contravening Section 3 (prohibiting the

conversion or attempt to convert from one religion to another), shall without prejudice to any civil liability, be punished with imprisonment for a term, which may extend to three years and also liable to fine, extending upto Rs.50,000. There is another provision for an enhanced punishment of four years and fine up to Rs.100,000 if the conversion relates to women, minors or scheduled castes and scheduled tribes. The Act also makes the priests liable who preside over the conversion with an imprisonment of one year if they fail to report such incidents to the District Administration. The Governmental press release justifying the Act said that the legislation would have a deterrent effect on anti-social and vested interest groups, and prevent them from exploiting innocent people belonging to depressed classes. The Act was welcomed by Kanchi Sankracharya Jayendra Saraswati and BJP. But all the minorities groups have criticised the draconian Act. The All India Christian People's Forum appealed to the State Government to repeal the Act. Moreover since the Act has come in the wake to conversion to Christianity, it must be noted that the Christian population in the country had come down to 2.3% in 2001 from 2.6% in 1991. Had forced conversions taken place, Christianity would have emerged as a major religion.

The latest anti-conversion law was passed in Gujarat in April, 2003. The Freedom of Religion Act, 2003 in fact virtually denies freedom of religion under Article 25 of Indian Constitution and is a bolt on the democracy and pluralist ethos underpinning our society.

Ostensibly aimed at putting an end to religious conversions accompanied by force, allurement and fraudulent means, the Gujarat Act, is both in spirit and content, similar to the infamous Tamil Nadu Law of 2002. Betraying a total lack of sensitivity to religious doctrines in general, the Gujarat Freedom of Religion Act construes all references to divine displeasure, basic to most religions, as use of force. Such a provision is absurd insofar as the application of this law would depend entirely upon the audience to which a pronouncement of divine displeasure is addressed.

The Act defines "allurement" as may "gift" or gratification in cash or kind or grant of any material benefit, either monetary or otherwise, and 'force' as a show of force or a threat of any injury of any kind, including "misrepresentation or any other fraudulent contrivance" would attract the provisions of the Act. Section 3 of the Act stated, "No person shall convert or attempt to convert, either directly or indirectly, any person from

one religion to another by use of force or by allurement or by any fraudulent means nor shall any person abet such conversion.”

Penalties for people convicted of carrying out conversions using allurement or force could incur imprisonment for a term extending to three years or a fine of Rs.50,000.

Then we have a draconian clause 5(1) which provides –

“Whoever converts any person from one religion to another either by performing any ceremony by himself for such conversion as a religious priest or takes part directly or indirectly in such a ceremony shall take prior permission for such proposed conversion from the district magistrate concerned by applying in such a form as may be prescribed by rules.”

The National Minorities Commission took note of this clause and requested the Gujarat government to delete it from the Bill as it clearly violates Article 25 of the Constitution but the government paid no heed to it. It must be noted that though Orissa, Madhya Pradesh, Arunachal Pradesh and Tamil Nadu have a similar legislation in place, none of them stipulate that prior permission of the District Magistrate be sought for carrying out a conversion. The laws in these states as discussed above only insist that the District Magistrate be intimated by the person about his/her decision to convert to another faith. Conversion which are found to be genuine and voluntary but where prior permission was not secured from the District Magistrate could also be punished with imprisonment upto one year and a fine of Rs.1,000.

Moreover, by the introduction of the Act, the state has tried to restrict the right of a person to voluntarily convert according to his choice. The Act introduces a sense of licensing in the state and of pre-emptive permission. So under this Act, “unless the state desires, you can’t change your religion.”⁶¹

The aims and objects of these Conversion Acts, were to prevent conversion by force, fraud and inducement but not to make genuine conversions illegal and therefore punishable though in effect genuine conversion were also made difficult.

⁶¹ FRONTLINE, April 24, 2003 at 50-51.

VI. JUDICIAL RESPONSE TO CONVERSION LEGISLATIONS

The most important cases relating to the conversions and Article 25 of the Constitution of India are *Mrs. Yalitha Hyde and others V. State of Orissa and others*⁶² and *Rev. Stanislaus V. State of M.P.*⁶³ and In these cases the validity of M.P. Dharma Swatantrata Adhiniyam, 1968 and Orissa Freedom of Religion Act, 1967 were under challenge.

In *Yalitha Hyde's case* the petitioner, a Christian nun along with other priests expressly averred that propagating conversion was a part of the Christian religion. The Orissa High Court noted the argument of the petitioner thus :

Counsel for the several petitioners have freely quoted from several Christian scriptures of undoubted authority to show that propagating religion with a view to its spreading is a part of religious duty for every Christian and therefore must be considered as a part of religion. Learned Government Advocates did not dispute this assertion of fact. We, therefore proceed on the basis that it is the religious duty of every Christian to propagate his religion.⁶⁴

The court rule that the entire legislation concerned with the topic of religion, it falls within the ambit of the residuary powers of the union under Entry 97 of List I of Seventh Schedule, but not under Entry I of List III which deals with Criminal law. The Pith and substance of the Act according to the court, was not creation of offences but the matter of religion. The Orissa High Court recorded its findings as under :

1. Article 25(1) guarantees propagation of religion and conversion as a part of Christian religion.
2. Prohibition of conversion by 'force' or by 'fraud' as defined by the Act would be covered by the limitation subject to which the right is guaranteed under Article 25(1).
3. The definition of the term 'inducement' is vague and many proselytizing activities may be covered by the definition and the restriction in Article 25(1) cannot be said to cover the wide definition.

⁶² AIR 1973 Ori.116.

⁶³ AIR 1973 M.P. 163.

⁶⁴ *Ibid.*

4. The state legislature has no power to enact the impugned legislation which in pith and substance is a law relating to religion. Entry No. 1 of either List II or List III does not authorize the impugned legislation.
5. Entry 97 of List I applies

On the other hand, the M.P. High Court in *Rev. Stanislaus*⁶⁵, reached the opposite conclusion and upheld the validity of Act. While interpreting Article 25(1) the court held:

The 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.⁶⁶

Holding that penalization of conversion by force, fraud or allurement would not fall within the ambit of problem of Article 25(1) sustaining the constitutionality of the Act. The court observed “the Act in our opinion guarantees religious freedom to all much less can it be said to encroach upon the religious freedom of any particular individual”

The court viewed the matter from the point of public order in respect of which the state is competent to legislate under Entry I, List II of Seventh Schedule. The M.P. High Court did not agree with the view taken by the Orissa High Court in *Mrs. Yalitha Hyle*.⁶⁷

Freedom of Religion in the words of the M.P. High Court “as liberty cannot be construed to be a license, so also freedom of religion cannot be construed to be the right of an individual to encroach upon similar freedom of other individuals by questionable methods. It is only from this point of view that the state legislature has prohibited conversion by practising force, fraud or by offer of allurement.”

Leave it Special Appeal against the decisions of the high courts of Madhya Pradesh and Orissa were filed in the Supreme Court and came up for consideration before the Supreme Court. The Supreme Court clubbed these matters together in *Rev. Stanishlaus* case⁶⁸. It had to consider whether these state legislations prohibiting conversions are violative

⁶⁵ *Supra* note 63.

⁶⁶ *Supra* note 55.

⁶⁷ *Supra* note 62.

⁶⁸ *Rev. Stainislaus v. State of M.P.*, AIR 1977 SC 908.

of Article 25 of the Constitution of India as they were hindrance in the propagation of one's religion. It was argued before the court by the appellants that the right to "propagate" one's religion means the right to convert a person to one's own religion and it is a fundamental right guaranteed by Article 25(1) of the Constitution. Referring to the meaning of the term "propagation" given by different dictionaries as "to transmit or spread from person to person or place to place, carry forward or onward, diffuse, disseminate, extend...", the court held thus :⁶⁹

We have no doubt that it is in this sense that word propagate has been used in Article 25(1), for what the article grants is not the right to convert another person to one's own religion but 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.

With reference to its earlier decision in *Ratilal Panachand Gandhi v. The State of Bombay*⁷⁰ the court said that it finds no justification for the view that article 25 grants a fundamental right to convert person to one's own religion. The court observed :

"It has to be appreciated that freedom of religion enshrined in the article is not guaranteed in respect of one religion only but covers all religion alike and it can be properly enjoyed by a person if he exercises his right in the manner commensurate with the alike freedom of person following other religion. What is freedom for one, is freedom for the other in equal measure, and there can, therefore, be no such thing as a fundamental right to convert any person to one's own religion."⁷¹

As to the question of legislative competence of state legislature in passing the two Acts, since the court observed that the two Acts prohibit

⁶⁹ *Ibid.*

⁷⁰ AIR 1954 SC 388.

⁷¹ *Id.* at 911.

conversion by use of force, allurements, inducement or by fraudulent means and provide penalties for such conversion, the impugned Acts, therefore, in pith and substance, provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the states.⁷² Following its earlier opinion in *Ramesh Thapar v. State of Madras*⁷³, the court explained “public order is an expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established”. The court also reiterated its earlier view taken in *Arun Ghosh v. State of West Bengal*⁷⁴, in the following terms⁷⁵ :

If a thing disturbs the current of life of the community, and does not merely affect an individual, it would amount to disturbance of public order. Thus, if an attempt is made to raise communal passions e.g., on the ground that some one has been “forcibly” converted to another religion, it would in all probability, give rise to an apprehension of a breach of the public order, affecting the community at large. The impugned Acts, therefore, fall within the purview of entry I of list II of the seventh schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another religion in a manner reprehensible to the conscience of the community. The two Acts do not provide for the argument that they fall under entry 97 of List I of the seventh schedule.

The Supreme Court upheld the validity of the M.P. Dharma Swatantrata Adhiniyam, 1968 and Orissa Freedom of Religion Act, 1967 in so far as they prohibit forcible conversion to another religion in the interest of public order.

The Supreme Court accordingly reversed the judgement of the Orissa High Court but made no attempt to reason its decision that the view of the Orissa High Court was wrong. It is submitted that the court needs to reconsider the view expressed in this case in appropriate case sooner than

⁷² *Supra* note 13.

⁷³ AIR 1950 SC 124.

⁷⁴ AIR 1970 SC 1228.

⁷⁵ *Supra* note 59.

later and an effort must be made by the court to expand the meaning of religious freedom as has been done by the apex court with regards to other fundamental rights. It is further submitted that the judgement certainly deserves reconsideration. In fact, all considerations applicable to freedom of speech and expression, Article 19(1)(a) should be applicable to right to propagate. The right to propagate one's idea is inherent in the concept of freedom of speech and expression. The restrictive meaning given to freedom of religion in the case seems out of tune with the changing concept of fundamental rights. Thus it is clear, these Anti-conversion Acts and upholding of their constitutional validity by Supreme Court truly deny the freedom of conscience because freedom of religion has no meaning without freedom of conscience and the freedom of conscience is the freedom to choose between competing values.

Lamenting on the judgement, *H.M. Seervai*, well know constitutionalist has remarked thus ⁷⁶ :

It is unfortunate that the legislative history of Art.25 was not brought to the attention of the Supreme Court ... Art.25(1) confers freedom of Religion ... a freedom not limited to the religion in which a person is born. Freedom of conscience harmonizes with this, for its presence in Art.25(1) shows that our Constitution has adopted 'a system, which allows a free choice of religion'. The right to propagate religion gives a meaning to freedom of choice, for choice involves not only knowledge but an act of will. A person cannot choose if he does not know what choices are open to him. To propagate religion is not to impose knowledge and to spread it more widely, but to produce intellectual and moral conviction leading to action, namely the adoption of that religion ... On his deciding to choose a particular religion which is being propagated with a view to its acceptances, and on his being prepared to comply with the requirements necessary to be a member of that religion, he has the freedom to be converted to that religion ... Therefore, conversion does not in anyway interfere with the freedom of conscience but it is a fulfilment of it and gives meaning to it.

⁷⁶ H.M. Seervai, CONSTITUTIONAL LAW OF INDIA, Vol.II (Delhi, 2002) at 1259, 1287.

VII. CONCLUSION

Right to freedom of Religion is a fundamental right guaranteed under Article 25 of Indian Constitution. According to this Article, a person may 'profess, practice and propagate his religion.'

To 'profess' a religion means the right to declare freely and openly one's faith. Modes of worship considered by a religion to be its integral and essential part are also secured. He may propagate freely his religious views for the edification of others. Thus, freedom of conscience would be meaningless unless it is supplemented by the freedom of unhampered expression of spiritual conviction in word and action.

In this context, Supreme Court has upheld the validity of the Acts passed by the Madhya Pradesh and Orissa legislations, which prohibited forcible conversion from one religion to another in a manner reprehensible to the conscience of the community and which made conversions by force, fraud or allurement an offence.

The resultant position is that Article 25(1) of the Constitution does not guarantee the right to convert but only the right freely to profess, practice and propagate one's religion. Forcible conversion which is likely to give rise to an apprehension of breach of public order and which is reprehensible to the conscience of the community is not permissible under this Article.

In the Post-independence era, it is absolutely impossible to forcibly convert any person against his will. The said Article unequivocally states that people have the freedom to freely profess and practice, the religion of their choice. This means that if a person propagates his faith to another person and the person to whom the faith is propagated is convinced and wants to profess or practice it, he has the right to do so. If this is not allowed then the right to propagate religion guaranteed by the Constitution will be meaningless.

Freedom of Religion and freedom of conscience are obviously interrelated, profession and practice of religion is but an external manifestation of the call of conscience. No external authority – political, religious or social can peep into conscience or presume to regulate it, monitor it or stand guard over it. No external authority has the right to go into the question whether an individual is true to his conscience. It is the individual's declaration which is final and the last word. It is significant that Article 25 uses the word 'freely' to qualify rights of profession, practice and propagation of religion. This implies

the individuals unhindered freedom unfettered by an ecclesiastical or political authority.

Freedom of conscience includes, the right to have religion of his choice and right to change his religion. Why do people convert from one religion to another religion? The reasons are many like illiteracy, ignorance, poverty and social inequalities including untouchability to which dalits are subject in the Hindu society.

Right to conversion connotes individual right of a person to quiet one religion and embrace another voluntarily. An important aspect to be looked into with respect to the change of faith is the 'State of one's awareness and ignorance'. More awareness and enlightenment does definitely have an impact on the thought, belief and action of a person restructuring his faith and elements of conscience. What is required is the acceptance of the idea that a human being has the inherent human right not to die in the religion he was born in, but to change his religion as and when he so decides. What is also needed is the political will to protect this fundamental and human right against any social pressure or any political interference or administrative harassment. This kind of change from one religion to another religion must necessarily be in consequence of one's conviction that the religion in which he was born into has not measured upto this expectations, spiritual or rational. Sometimes it may also be the result of losing faith in one's own religion because of the rigidity of its tenets and practices. Sometimes one may even lose total faith in the very concept of the existence of God and turn to Atheism. A change of religion as a consequence of any of the above reasons, in my view, fall within the ambit of the 'Right to conversion.'

In India, the society under the influence of some religious doctrines has established a well-defined caste system and the people are divided by unpierceable horizontal septas categorising each person as belonging in perpetuity to a particular group, in which he was born. Since, it is well known that the low-caste people, because of their sufferings under the traditional systems, always think of alternatives to this system or at least vehemently seek a remedy through concessions within the system. Many low-caste people, therefore, find it convenient to change their faith and at least be in a casteless community. Such conversions from a caste-religion to a casteless religion cannot be stopped by the state because no person can be denied his right to follow a religion which in his view confers upon him dignity and makes his life socially compatible.

It is fundamental right of every person to shun that is against his conscience and embrace what looks close to him or what provides him exist from discomfort. Most of conversion, if not all, particularly in the post-independence period, have been for social upgradation, the opportunity for which was perceived as denied in the Hindu society. It could be said legitimately that such conversions were out of the free volition of the converted. It could also be equal legitimately said that if there was an incitement, it came more from the atrocities from member of the Hindu society, itself who made a mockery of equal treatment and respect of dalits.

It is true that large segment of Hindu population because of its hierarchical structure suffers from illiteracy, poverty, ignorance and social disabilities and inequalities including untouchability. If they voluntarily decide to renounce the Hindu faith and embrace another religion no law prohibits that; indeed there can be no law which can take away such a right from them. But, if they fall victims to monetary allurements or inducement of any nature in the form of immediate material gain the same cannot be said to be a genuine change of religion responding to the call of the conscience. In the past, large numbers from these sections left the Hindu faith and even now some are leaving the social inequality, the stigma of untouchability are the primary reasons. If a person says because of there two reasons, he is renouncing the Hindu faith he is not liable for any action under any law.

If atrocities on dalits and other socially disabled castes continue and if the Hinduism does not change its hierarchical approach based upon birth there is a real risk of people belonging to the depressed classes voluntarily embracing other faiths. No law, no legislation and no constitutional provision can stop them.

It is submitted that any attempt to impose a ban on religious conversions would interfere with one's right to propagate one's religion under Article 25(1), apart from infringing the right to freedom of speech guaranteed under Article 19(1) of the Constitution. The Supreme Court in *Stainislaus case*⁷⁷ has held that everyone has Fundamental Right to propagate religion but there is no fundamental right to convert another person to one's religion as such a right would infringe on the right to freedom of conscience guaranteed to all citizens of the country alike. It merely meant the right to transmit or spread one's religion by an exposition of its tenents.

⁷⁷ *Supra* note 59.

The existing law as contained in the Indian Penal code provide for situations contemplated in the anti-conversion laws. The Indian Penal Code contains an exclusive chapter concerning offences relating to religion. The six sections comprising that chapter and two other sections 153A and 153B relate to the problem.

Moreover, a need for central legislation on the subject, which will be made after immense debate on in parliament is felt. Past experience shows that some of state anti-conversion laws are politically motivated and have made genuine and voluntary conversion more difficult. A question can be asked whether such enactments are within the spirit of Article 25 of the Constitution. Sometimes answer is in negative. There is need to overcome this kind of situations and it is only possible, if there is any central legislation on the subject.