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## Conversion: Legal Perspective

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Article 18 of the Universal Declaration of Human Rights proclaims that everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practise and teaching.

But the existing situation the world over reveals the fact that this right is far from being universally enjoyed. Religious persecution of minority faiths, forcible conversion, discretion of religious rites, pervasive discrimination, torture and killing on religious grounds constitute the major and gross violation of human rights even after fifty years of the proclamation of the Universal Declaration.

It is important to note that the right to freedom of religion and belief enjoys a legal status in most countries. However, the legal status of a right or its official pronouncement does not ensure its congruence with the societal realities and operational dynamics. In India there is a gap between the precept and practise of the right to freedom of religion and belief.

Religion is meant to hold people together. It must lead people out of their self-centredness, help foster an attitude

of oneness and good will towards all people. All religions, in their essential teachings, urge their followers to reach out in love to their fellow human beings irrespective of the faith they profess.

Politicians in their lust for power have used religion to set one group against another for political gains. Vested interests in politics and religion coming together have proved disastrous to the nation. Recently the problem over conversions has arisen not because there has been any sudden rise in conversions or because the activities of foreign missionaries have suddenly become alarming, but because the forces of Hindutva have decided to try to make political capital out of targeting a minority. A national debate over conversions had already taken place in the Constituent Assembly when the right to "propagate" one's religion was explicitly included in the fundamental rights because the Christian community had specifically stated that propagation of the Gospel was a sacred

duty conjoined on the community by their faith. It was the colleagues of Mahatma Gandhi, the freedom fighters who followed him, who incorporated the right to propagate one's faith into the Constitution. Conversion is an issue of grave legal and constitutional im-

plications that involves our standing as a signatory to the U.N. Charter on Human Rights. It is indeed a matter of irony that conversion has become a hated word for us, even though it was upheld in practise by none other than Dr. B.R. Ambedkar, architect of our Constitution. The most significant aspect of conversion is the right of a human being to choose his spiritual culture and destiny. The question is not if people should or should not convert. It is instead whether we should have a society in which people are frozen in the status quo, or free to fashion their own destiny.

### **Meaning of Conversion**

In both Hebrew and Greek the underlying concept of conversion is “to turn”. In other words, a turning from sin and returning to God. It is believed that by the grace of God a person turns from evil to God. In its original meaning conversion is voluntary. Real conversion means a change of religion from one faith to another with corresponding change in attitude, motivation, character and morality.

### **The Right of Religious Belief**

It is an essential human right for a man to be allowed to believe what he really believes. It is a matter bound up with a man’s personal integrity, his human dignity and honour. Deny it, and you have denied a man’s personality. Human nature is the basis of this right. This right should be asserted both on one’s own behalf and also on behalf of others. Since this right is an interior and spiritual one no question ought to arise of a clash with any other right.

### **The Right of Religious Expression**

Religious belief is an inward and spiritual thing, but all inward and spiritual things in their very nature have, or seek, outward and open expression. There is an inner urge of a person with religious beliefs to express them. As soon as a religious belief becomes a conviction it must be seen in word, fellowship and service.

The outer religious expression is an important right of a person, because it is linked with the inward right of religious belief. However, it is not an unqualified right. The right of religious expression is limited by similar rights of others and the principle of public interest and public peace. The right of religious expression is a fundamental human right and its exercises must be restrained only for some grave and open public reason.

### **The Right of Religious Conversion**

If the right of religious expression is granted, it is difficult to withhold some degree of recognition to the right of religious conversion, for the expression of a belief shades imperceptibly into the attempt to persuade others of it. Apart from this, the right to convert is an inherent right on its own account. It is a right that lays its own claim on a man’s sense of duty and integrity. Truth is universally true, and therefore good for all: hence, when it fully grips a man, it grips him not only as thing to hold, but as a thing to spread. And a man has a right to give due expression to so fundamental a conviction as this.

This right is a universal one. Any religion is entitled to it, if it cares to claim it. This right of religious conver-

sion, like the right of religious expression is not an absolute right, for it is concerned with externals, and therefore is liable to clash with other rights of other people. Like the right of religious expression, then, it too must not be allowed to be exercised when its exercise is anti-social. In addition, the exercise of the right of conversion must be limited by the ethics of sound propaganda. Not all means are fair in religious propaganda.

If any objections are to override the right of conversion they must be very serious indeed, for this right is one based on the principles of personal freedom and personal integrity. If despite conflicting claims, the right of conversion stands, then the law should guarantee it, for the function of law is to give sanction to rights.

### **Freedom of Religion Guaranteed by the Constitution of India**

The Preamble to the Constitution proclaims that it is designed to secure to every citizen liberty of thought, expression, belief, faith and worship. Articles 25 to 28 recognise the public and private aspects of religion. Article 25: Right to Freedom of Religion; Article 25 of the Constitution states: Subject to public order, morality and health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Nothing in this Article shall affect the operation of any existing law or prevent the State from making any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with re-

ligious practise; (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.

Explanation I:

The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II:

In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

What is emphasised by Article 25 is the practise of religious freedom by individuals. But it is also available even where the practise of religion by individuals is through institutions.

### **Religion**

Religion is not defined in our Constitution and it is not susceptible to any rigid definition. It is a matter of faith with individuals and communities and it is not necessarily theistic. It undoubtedly has its bases in a system of beliefs or doctrines which are held by those who profess that religion, but it is not correct to say that religion is nothing else but a doctrine or belief. In its broadest sense religion includes all forms of faith and worship, all the varieties of man's belief in a supreme being. Religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well. Hence religious practises or performances of acts in pursuance of religious belief are as much part of reli-

gion as faith or belief in particular doctrines. A religion may not 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 an integral part of religion, and these forms and observances might extend even to matters of food and dress.

The essential part of a religion is primarily to be ascertained with reference to the doctrine of that religion itself. A practise can be treated as a part of religion when it is regarded by that religion as its essential and integral part. Otherwise even purely secular practises which are not an essential or an integral part of religion are apt to be clothed with a religious form and make a claim for being treated as religious practises. Similarly practises though religious may have sprung from merely superstitious beliefs and in that sense it may be considered an extraneous and unessential part of religion.

What constituted an essential part of religion or religious practise has to be decided by the courts with reference to the doctrine of the particular religion and included practises, which are regarded by the community as part of its religion.

Article 25(1): Freedom of Conscience and Free Profession, Practise and Propagation of Religion According to Article 25 (1) all persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion.

### **Right to Profess and Practise**

“Profession” means to avow publicly; to make an open declaration of;

to declare one’s belief in. The term “to profess religion” means the right of the believers to state his faith freely and openly in public. The meaning of “a declaration of one’s belief” means a declaration in such a way that it would be known to those whom it may interest.

Therefore if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion “Practise of religion” signifies acts done in pursuance of religious belief. Religious practises to which Article 25(1) refers include practises which are an integral part of the religion itself. So a court is justified in rejecting a claim to be a religious practise where the practise in question is purely secular and not religious in character.

A community cannot conduct a religious worship in violation of an existing law or in a manner which violates statutory provisions made for the benefit of the public. As, for example, encroachment of a public street or footpath for offering prayers is contrary to the provisions of law. In a case the Calcutta High Court said that a sharp distinction must be drawn between religious faith and belief and religious practises. What the State protects is religious faith and belief. If religious practises run counter to public order, morality or health, then the religious practises must give way before the good of the people of the State as a whole.

### **Right to Propagate Religion**

Article 25 gives every person the right to propagate his religion. According to the Oxford Dictionary the word

“propagate” means to spread from person to person, or from place to place, to disseminate, diffuse. According to Century Dictionary Vol. VI propagate means to transmit or to spread from person to person, or from place to place, carry forward or onward, diffuse, extend, as to propagate a report, to propagate the Christian religion.

“Propagation of religion” means to communicate a person’s beliefs to another person or to expose the tenets (doctrine) of one’s religion. So an institution or corporation cannot practise or propagate religion. That could be done only by individual persons, and it is immaterial whether they propagate their personal laws or the tenets for which the institution stood. It is the propagation of belief that is protected whether it takes place in a Church or monastery, in a temple or a parlour. Anyone who preaches the benefits of his religion is likely to extol his own and, to some extent, dispute the truth and efficacy of another religion. Propagation of religion cannot otherwise be carried on, and within limits, every person is free to dispute the truth of another’s religion.

Restrictions can be imposed by the State in propagating one’s religion. The expression “public order, morality and health,” excludes everything undesirable in propagating one’s faith. Force and fraud are covered both by public order and morality. But an approach with a view to convincing others of the spiritual benefits to be acquired from the faith preached is a necessary foundation of the religious freedom guaranteed under the Constitution. That freedom cannot be taken away, except perhaps in the interests of public order, morality and health.

The State has the power to enquire whether methods adopted by a particular person or group to propagate religion in any way contravened “public order, morality and health” and whether any person is being harassed and whether the person or the group is transgressing the limits of law as to public order and morality. The right to practise and propagate religion does not include the right to insult the religion of other persons.

### **A Short Constitutional Debate for Formulating Article 25 (1)**

The formulation of the right to profess, practise and propagate one’s religion was processed by a prolonged debate in the Constituent Assembly. This debate centred around the following points:

- a) freedom to practise one’s religion;
- b) freedom to propagate one’s religion;
- c) restrictions on conversions.

#### **a) *Freedom to “practise” religion***

That there must be freedom of conscience, of belief and worship, subject to public order, morality and health was undisputed. The clause “right to freely profess and practise religion” was included in a draft submitted on 7 March 1947 by K.M. Munshi. This clause drew strong criticism from Rajkumari Amrit Kaur and other women members because they apprehended that the above clause might invalidate existing social legislations, so the word “practise” was later omitted by Sub-committee on Fundamental Rights. K.M. Munshi and Dr.

B.R. Ambedkar emphasised freedom of religion to "all citizens." The Fundamental Rights Sub-Committee then enlarged the scope of this phrase to embrace "all persons—(Citizens and non-citizens in India)". The Sub-Committee on Minorities recommended the restoration of the freedom to "practise" religion. Rajkumari Amrit Kaur and Sir Alladi Krishnaswami Ayyar opposed the revision. The issue was finally settled in a meeting of the Advisory Committee under the chairmanship of Sardar Vallabhbhai Patel. It drafted a proviso to the above clause "practise", which read: "The freedom of religious practise guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform."

#### *b) Freedom to "propagate" religion*

In his draft on fundamental rights submitted on 18th March 1947, Mr. 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. Dr. Ambedkar, in his draft of 24 March 1947, was more explicit. He wanted every Indian citizen to have "the right to profess, to preach and to convert." In a memorandum, on 1.3.1947, to the Sub-Committee on Minorities, Mr. M. Ruthnaswamy (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 like memorandum, on 3.4.1947, Mr. P.K. Salve said that every citizen must enjoy the right to freely propagate his religion in private and

'practise'. However, this right was not included in K.M. Munshi's draft (on 17.3.47) which was taken up for discussion by the Sub-Committee on Fundamental Rights. Objections were raised to this omission in the Sub-Committee on Minorities. Mr. M. Ruthnaswamy said that "certain religions, such as Christianity and Islam, were essentially proselytizing religions, and provisions should be made to permit them to propagate their faith in accordance with their tenets." Accordingly, the Minorities sub-Committee recommended (on 19.4.1947) to redraft of the disputed articles to include the right freely to "propagate religion."

The issue was then taken up by the Advisory Committee on 22 April 1947 under the Chairmanship of Vallabhbhai Patel. Rajkumari Amrit Kaur had already forwarded a note to the Committee, saying that propagation of religion was amply assured in the Article (19) which guaranteed freedom of speech and expression. In the meeting, Mr. C. Rajagopalachari observed: "propagation" comes under freedom of expression. There was a sharp difference of opinion on whether these words ("propagate religion") should be put separately. Mr. Ruthnaswamy said that the word "propagate" includes, not only preaching, but also other forms of propaganda like films and radio. But K.M. Munshi replied that the word might be used to cover even forced conversion. He added: "If the word 'propaganda' means something more than preaching, you must know what it is and therefore I am opposed to this introduction of the word 'propaganda'." Alladi Krishnaswami Ayyar declared: "I per-

sonally do not recognise the right to propagation.” Both he and K.M. Munshi stated that propagation of religion was covered by the “freedom of speech.” However, Govind Ballabh Pant (U.P.) referring to the word ‘propagate’ said: “At the worst it is redundant, and so many members want it we had better introduce it.” But when K.M. Munshi denied that it was a redundant word, the Chairman called for a vote through a show of hands. The result was that the word ‘propagate’ was retained.

In October 1948, the Drafting Committee together with the Constitutional Advisor examined some of the suggestions made by some members of the Constituent Assembly. Different Opinions and Suggestions were expressed. “The word ‘propagate’ must be deleted,” said Mr. R.R. Diwarkan (Bombay). “The right freely to profess, practise and propagate religion’ be deleted, or “practise and propagate religion be substituted by “practise religion privately,” opined Mr. Tajamul Hussain (Bihar). But these suggestions were rejected by the Drafting Committee.

When the Constituent Assembly met again during the first week of December 1948, the controversy centred chiefly around the right to “propagate” religion. In this meeting the following proposals were made:”The word “propagate” must be deleted. Religion is a private affair between oneself and his Creator. It has nothing to do with others... Each one should allow the other to attain salvation according to his own religion. If you start propagating religion in this country, you will become a nuisance to others. So far it has become a nuisance,” said Tajamul Hussain of

Bihar. Loknath Misra of Orissa said, “Partition of the sub-continent is caused by the propagation of Islam. ‘Propagation’ in the present article can only mean paving the way for the complete annihilation of Hindu culture, the Hindu way of life and manners. Religion was being propagated in order to swell the numbers of one’s own community as a means of political advantage. In no other constitution was the word ‘propaganda’ (religious) mentioned as a fundamental right.”

According to Mohammed Ismail Sahib of Madras, “Article 25 enshrines a right which human beings had from the very beginning of time; it is an inalienable right of every human being. It is not the propagation of religion as such but misunderstanding of religion, which causes troubles.”Lakshmi Kanta Maitra of West Bengal, said, “The accusation of the Christian community that it has committed excesses in its proselytizing zeal is wrong. The Indian Christian community happens to be the most inoffensive community in the whole of India. I have never known anybody contesting that proposition. If the Christian community, which spends crores of rupees every year on educational, medical and social work for all classes and communities, had utilized these funds for seeking converts, it would have been ten times more numerous than it is today.”

Supporting the views of the Christian community, L. Krishnaswami Bharathi of Madras said, “The expression ‘propagate’ refers not to the Christian religion alone. At any rate to hold that some people should not propagate their religious views, would amount to intolerance. The Christian community



has taken a 'thoroughly nationalist' decision to forgo reservation of seats in order to be more integrated with the nation. Therefore, in good grace, the majority community should allow this privilege (of propagating religion) for the minority communities and have it for themselves as well."

Striking a positive view, K. Santhanam of Madras said, "Article 25 is an article on religious tolerance. At the same time it rightly circumscribes freedom within certain limits." Removing the fear of forced conversions and possibility of abuse of the right by any religious group, T.T. Krishnamachari of Madras said, "I studied for about 14 years in a Christian institution. No attempt had been made to convert me to Christianity. 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. The Arya Samajists are as free to carry on their Shuddhi propaganda, as are Christians and others to propagate their own religion."

"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 one nation in the future but also doing injustice to their own religion and to their own community."

K.M. Munshi supported the idea of including the term "propagate" in the right to freedom of religion.

Emphasising this he said, "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 conversion. No such advantage accrues to any community today, "nor is there any political advantage by increasing one's fold." Even if the word were not there, the freedom of speech guaranteed by the Constitution would permit one to persuade others to join one's own religion." He further said: "Moreover, I was a party from the very beginning to the compromise with the minorities, which ultimately led to many of these clauses being inserted in the Constitution and 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. Even if the word was not there, I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of the conscience has to be recognised. The word "propagate" in this clause is nothing very much out of the way as some people think, nor is it fraught with dangerous consequences." After his address, a vote was taken: thus Article 25, passed into the Indian Constitution on 6.12.1948. It read: "Subject to public order, morality and health and to the other provisions of this part all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion."

In the Constituent Assembly, out of 296 members, only 7 were Christians. A large number of Hindu Members agreed to recognise propagation of religion, as a fundamental right, by way of compromise with some minority communities, especially the Christians. In reference to the acceptance of 'propagate' by the constituent Assembly Fr. Jerome D'Souza, S.J. told the House that this act of theirs, "is so reassuring and so encouraging to the minorities, that we have no reason at all to quarrel or to ask for stronger assurances. That attitude must provoke on the part of the minorities an equally trustful attitude which I hope will inspire future relations and future discussions."

### c) *Restrictions on Conversions*

K.M. Munshi's draft on fundamental rights (on 17-3-1947) contained the two following articles:

1) "No person under the age of eighteen shall be free to change his religious persuasion without the permission of his parents or guardian."

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."

We shall refer to these as clauses 1 and 2 respectively.

The Sub-committee on Fundamental Rights adopted (27-3-1947) an amended version of the above clauses:

"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 involv-

ing a loss of civil status. 2) Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law and the exercise of such coercion or undue influence shall be an offence."

These clauses were then circulated among the members of the sub-Committee, together with an explanatory note (8-4-1947) by the Constitutional Adviser, Mr. B.N. Rau. The note said: "these clauses are meant to stop certain practises which, it is feared, are becoming increasingly common." In its second discussion (15-4-1947) on the above clauses, the Sub-committee decided to substitute "converted to" in clause 1 with the words "made to join or profess". The Sub-Committee also rejected Dr. Ambedkar's proposal that the phrase "or undue influence" in clause 2 be omitted and that the said clause end with the words "recognised by law." When the above clauses came up before the Sub-committee on Minorities (18-4-1947), Mr. 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. Mr. 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 redraft of clause 1 as follows: 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....No conversion shall be

recognised unless the change of faith is attested by a Magistrate after due inquiry.”

Clauses 1 and 2, together with the recommendations of the Minorities Sub-Committee, were next discussed by the Advisory committee (22-4-1947). The chairman, Sardar Vallabhbhai Patel, expressed the opinion that clause 1 should be left to legislation. So, with the concurrence of the House, it was deleted. The Chairman felt that clause 2 was equally unnecessary and ought to be deleted. It was not a fundamental right. Besides, even under the present law, forcible conversion is an offence. The recognition of conversion is a matter for society and not for the law. He was supported by M. Ruthnaswamy. But some others disagreed, e.g. S.P. Mookerjee (President of All India Hindu Mahasabha) and Bakshi Tek Chand (Punjab), an ex-High Court judge. The Committee finally decided to shorten the clause so that it ended with the words “recognised by law.”

The amended clause became the subject of a heated debate in the Constituent Assembly on 1-5-1947, so that Frank Anthony (C.P. & Berar) remarked: “I realise how deeply certain sections of this House feel on this question of conversion.” The debate was chaired by Dr. Rajendra Prasad (Bihar), President of the Constituent Assembly and first President of India. K.M. Munshi wanted an amendment to the effect that any conversion “brought about by fraud, coercion or undue influence or of a minor below the age of 18 shall not be recognised by law.” He explained that the only effect of this clause would be that the convert “will

still in law be deemed to continue to belong to the old religion and his legal rights will remain unaffected.” We have, in this remark, an indication that opposition to conversion is chiefly based on the fact that it breaks up the social cohesion of the Hindu family or community in which the convert was born. Hence K.M. Munshi wanted the convert to continue under his old personal law, notwithstanding a change of faith. When asked by Rohini Kumar Chaudhari to explain ‘undue influence’, his only reply was: “It is difficult for me to say.” P.R. Thakur (Bengal), a member of the Depressed Classes, described the ‘fraud’ which the clause should cover: “The preachers of other religions approach these classes of people, take advantage of their ignorance, extend all sorts of temptations and ultimately convert them.” K.M. Munshi was supported by Jagat Narain Lal. Algu Rai Shastri (U.P.) viewed conversion as an attempt to increase one’s own fold. The British government saw in this a means of effecting a balance among the various communities, so that their quarrels might leave British rule intact. “Convert only those who can be legitimately converted,” he exclaimed. Purushottamdas Tandon said that a minor was too immature to understand the teachings of the Scriptures. So morally and legally his conversion can never be considered valid; it must therefore be ascribed to some unfair influence. All the above speakers, with the exception of K.M. Munshi, hailed from North India.

On the other hand, the Rev. J.J.M. Nichols-Roy (Assam), a Khasi and representative of Backward Tribes, stated

that he was converted at the age of 15. [His conversion is recounted in A.J. Appasamy, *The Christian Task in Independent India*, S.P.C.K., London (1951), pp.143-144] No law should prevent a boy from changing his faith, when he feels that God is calling him. "But to think that a youth under the age of eighteen does not have a conscience before God and, therefore, he cannot express his belief is wrong", he declared.

Ramnath Goenka (Madras) said that the impugned clause would be inconsistent with Article 25 which guarantees freedom of conscience to 'all persons'. Now, conscience may develop already at the age of 12. B.R. Ambedkar wanted Munshi to drop his amendment, as had already been suggested by three Committees. He pointed out that if the conversion of minors were prohibited, orphans below 18 might have to be brought up without any religious instruction. Further, why should not a child of 5 be brought up in the religion of its converted parents? He did not mind a proviso being added that children should not be converted without the knowledge of their lawful guardians. Jerome D'Souza, S.J. (Madras) and Sardar Vallabhbhai Patel regretted that a degree of heat had been imported into the controversy. They suggested that "one more effort" be made, and that the said clause be referred back to the Advisory Committee, "so that the wording of it may be most carefully weighed." This is what Rajendra Prasad did, with the concurrence of the House. It was one of three clauses which the Assembly referred back to the Advisory Committee for re-examination and report.

On 25th August, 1947, Sardar Vallabhbhai Patel 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. It was with great difficulty and after much effort, especially by representatives of the minorities, that the freedom "to profess, practise and propagate religion" was explicitly acknowledged in the Indian Constitution. The fact that this was acknowledged is remarkable, in view of the fact that even the best intentioned Hindus, like Mahatma Gandhi, disapproved of the efforts of Christian missionaries at conversion. 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. However, there was no genuine conviction concerning this aspect of religious freedom.

### **Conversion and Forced Conversion**

According to the Shorter Oxford Dictionary conversion means to cause to turn to a religion, or the fact of being converted to a religion, belief or opinion, especially to Christianity.

A conversion according to the law of this country could be defined as follows: "An adult person out of his religious conviction willingly and knowingly, without force, fraud or inducement, renounces his old religion and accepts another religion. Every person in India has a right to convert himself/

herself. No one has the right to prevent a person from genuine conversion if done with conviction. What can be prevented by the state is "forced" conversion by means of force, fraud, allurement etc. Conversion by force, fraud or allurement is prevented on the ground of morality or public order. It is presumed that if forced conversion is not prevented by the State, it may create social tension, riots or public disorder in society. Forced conversion may deprive a person of his freedom of religion or freedom of conscience.

So far Madhya Pradesh, Orissa and Arunachal Pradesh have enacted laws to prevent forced conversion. These laws prohibit conversion from one religion to another by use of force or allurement or by fraudulent means. The Constitutional validity of these laws were challenged in the Supreme Court of India. In *Rev. Stanislaus vs. M.P.* (1977)2 SCR 611 ('77) A.S.C. 908, Chief Justice Ray of the supreme Court held that "What Article 25(1) 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 his tenets. He further held that Article 25(1) guarantees 'freedom of conscience' to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the 'freedom of conscience' guaranteed to all citizens of the country alike." But it

was felt by many legal critics that the above judgement delivered by the then Chief Justice Ray was not in consonant with the Legislative History of Article 25(1).

Criticising the above judgement Ram Jethmalani said, "It is the Supreme Court of the emergency period which sustained the constitutional validity of those measures. As a student of law without committing contempt of court, I am free to say that the Supreme court is wrong. I have no doubt that some day the Supreme Court more properly and adequately informed about the legal provisions, will reverse that decision." "In my view the Supreme Court in the last case has put the narrow construction on the word 'propagate' and turned down the earlier case. With all respect, the right has not been given the full effect, but has only been reduced to a vanishing point. The case needs to be reconsidered." [Hidayatulla, former Chief Justice of India]

### **Legal Formalities to Prove Genuine Conversion**

When a person shows his desire to join your religion make sure that he/she is an adult (above 18 years of age) and is of sound mind. Enquire about the motivation for change of religion and check whether he is joining the new religion out of his personal conviction and without any force, threat, allurement or inducement. Ask him to make an affidavit, stating his disposition and reasons for joining the new religion, duly attested by the Oath Commissioner. In case the Oath Commissioner is not available then request the person concerned to produce two adult witnesses

who can give testimony to the circumstances and facts of his conversion.

### **Socio-Legal Implications of Conversion**

The debate on conversion offers an opportunity to reflect upon the historical encounter of the Christian message with the Indian people, the reasons for its limited impact, and the possibilities in the future, to more fully fulfill its mission and convey its message to India.

In the past, the studies of conversion concentrated on the change of heart and faith in Christ, very much ignoring the legal and social repercussions of this event. A religious issue such as conversion must be viewed pragmatically and objectively in the context of law. There should also be an interdisciplinary approach in dealing with the complex issue of conversion.

Conversion cannot remain merely a private personal spiritual experience. It affects familial and socio-cultural aspects of life of the convert in society. By becoming a member of a church or another religious community, the convert is sometimes drawn out of the community of his birth, thus rendering it difficult for him to remain fully indigenous to his community. Often he is considered to be an outcaste from his social group and family.

By conversion a person is forced to adapt himself to modes of worship, art forms and theological categories, which draws little from his own religious heritage. Transition from his traditional milieu into another social group is accorded firm judicial sanction by a

change of his personal law. The present practise of immediately throwing the convert into the control of Christian law which is of European origin is to compel him to be subjected to an alien law. The switch-over leads to legal repercussions which result in an uncalled for upheaval in the convert's family relationship.

When a Hindu is converted to Christianity he is excluded from his caste and is no longer under the Hindu law. In practise, this has often been accompanied by a break with the past in social and cultural life. The convert is seen as joining the community of Christians governed by another set of personal law in matters of marriage, divorce, inheritance, maintenance, guardianship and adoption of children.

Hence missionary activities are viewed by Hindus as a mode of communal and cultural aggression, a threat to the very existence of the Hindu society. Baptism is, in the eyes of Hindus, a symbol of a comprehensive shift of social alliance; it is devoid of spiritual significance and is an act of supreme disloyalty to the Hindu heritage. Symptomatic of this situation are the Bills introduced in various State Legislatures in order to control conversions.

### **Conclusion**

Christians should not be a closed group called away from the main stream of society. The Church must rise up within every religious group like an indigenous growth and not set itself up as a rival unit. We must explore the possibility whether a convert from Hinduism can remain within the framework of the

Hindu society whilst being fully committed to Jesus Christ. One must also discover methods to integrate the Christian communities more effectively into the cultural and social life of the country. We must reflect more how the Chris-

tian message can be propagated in the Indian context, to bring about real transformation (conversion) in the cultural, social, economic and religious structures, which have great impact on the lives of the poor and the oppressed.

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