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ANTI-CONVERSION LAWS IN INDIA – A JURISPRUDENTIAL CRITIQUE

Dr. Vijay Prabhakarrao Maknikar *

Indian subcontinent has its own kind of unique history. It has nourished human civilizations for thousands of years. The glorious *Harappa, Mohenjo Daro* civilizations, ancient sixteen *Mahajanapadas, Sangam era*- culture flourished here itself. This land also gave birth to various religions and cultivated them as well. Not only this, it also welcomed religious philosophies originated outside India. Jurisprudentially freedom of religion is closed related to principle of liberty, equality. It also plays lead role in development of human personality to some extent. Religion can be defined as 'a personal set or institutionalized system of religious attitudes, beliefs, and practices.' [1] According to the section 2 (1) (k) [2] of the Karnataka's Anti-conversion bill, the term religion means any organized system of worship pattern (observance of particular form of *pooja*), faith, belief (may be in *Nirankar*-formless God), worship (the *pooja,* may be of idols/symbols/deities) or lifestyle (may include food habits), as prevailing in India or any part (region) of it, and defined under any (existing)law or custom. Diverse ideas, philosophies existed simultaneously and nourished Indian civilization with nectar of tolerance. On the contrary, plurality of religions proved to be a curse too. The partition of India on religious lines, underlined the necessity of secular state. That ultimately led to adoption of dynamic Indian constitution. The Constitution of India, secularism being its basic structure, guarantees freedom of conscience and free profession, practice and propagation of religion. The religious conversion is often linked with the right to free 'propagation of religion.' Unfortunately, we the Indians have not learnt from our divisive history. In recent years, move for Anti-conversion laws by some states has challenged the very principle of secularism. In this paper the research aims to study critically the jurisprudential foundation for freedom of religion, freedom of conscience, right to liberty, right to conversion in the light of Indian constitution.

Freedom of Religion – Jurisprudential Aspects

The human reason has been always at the foundation of natural law theories. It considered reason as a capacity for rational thinking possessed by human being

by virtue of the nature. John Locke regarded Liberty as inalienable natural right. Jean Jacques Rousseau argued that the state and the law are the product of general will of the people. In that sense he is also emphasizing upon free will-liberty of human beings. Freedom, liberty to choose one's own religion, philosophy is quintessence of modern democratic societies. Immanuel Kant, opined that law is an aggregate of conditions under which arbitrary will of one individual is combined with (will of) another under a general inclusive law of Freedom. On this basis we can come to the conclusion that freedom of conscience, religion is dependent upon guarantee of liberty under any legal system. While the combining diverse wills of people under the law is a sign of tolerance towards others' religious beliefs. In secular constitution like ours the law aims to take every care of these aspects of freedom of religion. While articulating the idea of social engineering, Roscoe Pound has emphasized upon protection of the social interest in the security of social institution like religious institution. That necessarily includes freedom of religion.

Right to equality is also a natural right. Guaranteeing right to equality to those who believe in any religious philosophy is part of this right. If one wish to change her/his belief/ religious philosophy, s/he must be given that liberty as a matter of principle of equality. Conversion is also an exercise of freedom of expression as well as right to dissent. Hence, we find jurisprudential justification to religious conversion with the support of liberty, freedom of religion as well as right to equality.

Freedom of Religion and the International Human Rights Law

History of European imperialism in America, Africa has been the history of religious conversions as well as annihilation of native religion by forceful conversions. Apart from that, two brutal world wars are also directly or indirectly related to the issue of religious freedom. Persecution of religious minorities (holocaust) at the hands of Nazis is self-explanatory. In recent years Yazidis in Iraq-Syria, Rohingyas in Myanmar and Uyghurs in China are few examples of persecution of religious minorities. The International Human Rights law anticipated such issues. Hence after the World War II, the world leaders expressed serious thoughts and laid foundation of modern global legal system.

Article 18 of the Universal Declaration of Human Rights, 1948 provides that every human being has the right to freedom of thought (an exercise of liberty), conscience (based on rationality) and religion. The article further encompasses the guarantee of the freedom to change one's own religion or belief. This connotes right to freedom of conversion. It is to be noted that this freedom could be exercised either as an individual's private or community's public act. This is in consonance with one's own freedom of religion or belief in specific teaching, way of practice,

worship pattern and observance. An act of conversion also constitutes as an essential element of freedom of expression. Article 18 (1) of the International Covenant relating to Civil and Political Rights speaks the same language as that of Article 18 of UDHR. Further it also provides that no one shall be subjected to coercion (against free will of that person) which would impair his freedom to convert to any religion/belief of her/his choice. This provision has surely taken in to account the history of forceful conversions. Up to certain extent this aspect is also relevant in Indian context.

Freedom of Religion in India: Constitutional Perspectives

India, throughout its history witnessed conversions, reconversions many a times. The *Shramanic* tradition became popular as it was based on freedom of conscience as well as liberty to convert. *Chandragupta Maurya* embraced Jainism while his grandson *Asoka* embraced Buddhism. The kings of foreign origin like *Kanishka* also converted in to native religion. Mughal emperor Akbar also exercised his freedom and formulated the idea of *Din-i-Ilahi*. The issue of conversion came at centre stage during British rule. The Caste Disabilities Removal Act, 1850 was aimed to legalise conversions in India by protecting certain property rights of converted persons. The states like Bihar, Jharkhand, Orissa, Madhya Pradesh, Chhattisgarh and North Eastern States have notable population of tribal people. Since colonial rule these areas have witnessed missionary activities and religious conversion too. Southern states also witnessed conversions. Social revolutionaries like *Mahatma Jyotirao Phule* (Phule-Ambedkarite thinker Raja Dhale calls him *Krantiba*- the father of social revolution) founded *Satyashodhak Samaj*. Similarly, Pandit Iyothee Thass led mass conversion of Dalits in south India in 19th century. These events laid great impact upon making of modern India. Immediately after independence, the champion of human rights of modern India, Dr. B. R. Ambedkar led mass conversion embracing Buddhism. The makers of the modern India and framers of the constitution considered this history positively. Therefore, we see principle of secularism, which is considered as an essential basic structure of the constitution and fundamental right to freedom of religion go hand in hand. Taking in to account the divisive social structure, communalism the makers of modern India crafted the existing dynamic constitution. The preamble to the constitution expresses resolution by the Indians to constitute India as a secular as well as democratic state. To materialise this, it also guarantees '*liberty of thought, expression, belief, faith and worship*.' These words draw our attention towards the ideas propounded by the natural lawyers. Article 25 guarantees fundamental right to freedom of conscience as well as freedom to profess one's own religion, freedom to practice and propagate the religion subject certain restriction mentioned under Article 25 (1). includes public

order, morality and health as well as other provisions of part III. The term *propagation* is often related to religious freedom relating to conversion. At the same time if the exercise of freedom of conscience, freedom regarding free profession, practice and propagation of religion adversely affects public order, morality or health or other fundamental rights, the state can curtail this right judiciously. This balancing effect of interest recalls us Roscoe Pound. It has to be noted that this right is not limited to Indian citizens only but the very word 'person' under the said article encompasses any human being.

Secularism, Freedom of Religion *vis a vis* Anti Conversion Laws

In India, religious conversion history has another dimension. The caste-verna social system accords a person social status as per one's birth. It was based on graded inequality. The person has to die in the same caste-verna. Those who had lowest social status tried to find escape routes. The vent was found in the form of conversion. Due to this reason the religious conversions have been witnessed by Indian society. The principle of secularism and fundamental right to freedom of religion enshrined under Article 25 of the constitution positively provided constitutional guarantee. The History tells that though the land was conquered by invaders, native Indians hardly surrendered their religious freedom. The Indians did not welcome interference in their religion during British rule. Rather majoritarian religion viewed the conversions as a threat to its very existence. These religious confrontations, politicization of religion, religious fundamentalism have adversely affected the very idea of secularism and religious freedom in India in post constitutional era.

As per the World Bank's religious freedom scale India's position is dismal. Neighbouring countries like Bangladesh, Nepal, Sri Lanka stands at better position to that of India in this regard. Only the countries like Pakistan and Afghanistan are lagging behind India amongst neighbouring states. India also lags behind world median benchmark. The said data is for the period between 1975 to 2019. The most unfortunate fact is that India stood at better position to the world median till 1989. But since 1989 India's position is deteriorating. Since last three decades religious fundamentalism, communalism have posed bigger threat to religious freedom that too in the name of freedom of religion. The worries are aggravated by the report of UNICEF regarding religious freedom in India. According to its official website the UNICEF has shown displeasure towards condition of religious minorities. In the words of John Stuart Mill tyrannical acts of religious majority are being tolerated by the state.

According to above-mentioned arguments we can conclude that the exercise of right to freedom of religion and constitutional guarantee sometimes proved to be

bone of contention between followers of different religions. Anti-conversion laws like Orissa's Freedom of Religion Act, 1967, the Madhya Pradesh's Dharma Swatantrya Adhiniyam of 1968 are few examples. Both the Acts aimed to prohibit forced conversion and made forced conversion a criminal offence. To be precise, the Madhya Pradesh' anti conversion law aimed to prohibit conversion from one religion to another by means of use of force, allurement/ fraud. While the Orissa's Freedom of Religion Act (1967) aimed to prohibit conversion from one to another religion by means of use of force/ inducement/fraud. The High Court of Madhya Pradesh, while upholding the said Act as constitutionally valid, also held that the Act aims to establish equality of religious freedom for all citizens by way of prohibiting the conversion by means of force, allurement, fraud. Contrary to this judgement, when Orissa's Freedom of Religion Act, 1967 was challenged before the High Court of Orissa, which declared the Act as *ultra vires*. The court also held that the definition of 'inducement' was vague. Further, taking in to account the legislative competence in consonance with Union list and State list, the court held that religious matter does not fall within the states' jurisdiction. Hence, the matter must be left to the Parliament. This judgment was challenged shortly.

Therefore, the issue regarding validity of these Acts in the context of these judgments came before the Hon. Supreme Court in *Rev. Stainislaus v. State of Madhya Pradesh* (1977). The Supreme Court opined that Article 25 (1) refers the term ***propagate*** conveys that the provision does not grant any person the right to facilitate conversion of another person to one's own religion. Rather it grants and ensures the right to transmit/spread one's religion by way of an exposition of its tenets. The court also opined that converting any person to one's own religion also violates 'freedom of conscience' guaranteed under Article 25 (1). In brief, the court viewed the religious conversions have potential to affect 'public order.' It is to be noted that legendry constitutionalist H. M. Seervai has described this judgment of the Supreme Court as "clearly wrong', as "productive of the greatest public mischief." Therefore, he strongly believed that this verdict ought to be overruled.

As we have seen the scale of religious freedom in India has steadily decreased in last three decades, Anti-conversion laws passed by various states have made the situation very serious. The concepts like 'Love Jihad' are being violently discussed all over India. Very recently the State of Karnataka introduced the Protection of Right to Freedom of Religion Bill (2021) with an aim to prohibit unlawful conversions. According to its section 2 (1) (c) conversion means renouncing (giving up/ quitting) one's own religion and adopting another religion.' Unlike earlier Anti-conversion laws, this bill discusses reasonable restriction to conversion in the form of 'allurement' under section 2 (1) (a), which includes (iii) promise to remarry. This provision seems to be an aim to provide legal

opposition to the controversial love jihad. Section 3 prohibits conversion by means of misrepresentation, force, fraud, undue influence, coercion, allurement or by *promise of marriage*. This provision aims to prohibit inter faith marriages. Section 5 discusses in length punishment for this crime. Further as per section 6, the marriages took place in contravention of the prohibition shall stand null and void. That means civil law of marriage has been transformed in to criminal law. The person who desires to convert shall have to give declaration at least 30 days in advance about the same to the District Magistrate or ADM. Section 9 provides for declaration by the converted person in post conversion period. This is also a time bound procedure. Any contrary act to the procedure invites penal action. In a nut shell, the religious conversion has become affair of state's scrutiny. In case of any fetters, as mentioned above, the freedom or liberty ceases to exist as freedom/liberty in true sense. The constitutional guarantee of fundamental right is being threatened to be weaken. This also legitimises religious intolerance through the agency of state. It has been alleged that such laws are being introduced in the interest of majoritarian population. This may deny right to equality of religious minorities. Therefore, Anti-conversion laws are being accused of violating the right to equality.

It is to be noted that in the recent past the Madhya Pradesh, Himachal Pradesh and Uttar Pradesh have introduced Anti-conversion laws. They have common provisions regarding declaration of inter-faith marriages, took place after unlawful conversion as null and void. Such conversions are penalised but there is no uniformity in quantum of punishment. However the Bill introduced by the Karnataka State is being viewed as more stringent.

Conclusion

Since centuries religion is being considered as a way to attain salvation. It has been also viewed as a tool to achieve emancipation from oppression and slavery. Such salvation or emancipation is expected to be attained as per the principles of liberty and equality. Freedom of religion encompasses freedom to propagate one's own religion. Conversion is one of such tools that facilitates propagation. Jurisprudentially religious conversion can be justified with the support of principles of liberty as well as equality. The principle of secularism also legitimises this freedom subject to reasonable restrictions. But in recent couple of decades religion and religious conversion has become sensitive issue in India. Not only India, but the whole world is witnessing religious intolerance. Therefore, Anti-conversion laws are being enforced by different states. Even after four decades the judgment in *Rev. Stainislaus v. State of Madhya Pradesh & Ors* (1977) has not yet been overruled. That has indirectly shielded Anti-conversion laws. The fetters in any

form take away the freedom, liberty. The effect of these laws is denial of freedom of religion, freedom of conscience, right to liberty as well as equality. Such move may also change the course of marriage laws. This would be surely detrimental to the very future of secularism and democracy in India. Therefore, the Anti-conversion laws as well as judgment in *Rev. Stainislaus v. State of Madhya Pradesh & Ors* (1977) needs judicial scrutiny in the light of changed circumstances.

Endnotes

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1 https://www.merriam-webster.com/dictionary/religion.

2 The Karnataka Protection of Right to Freedom of Religion Bill, 2021. (Emphasis supp)

3 Article 18(2) of the International Covenant on Civil and Political Rights.

4 It was a *non-Vedic* philosophical-religious movement of ancient India. Jainism, Buddhism popularised this tradition.

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6 https://govdata360.worldbank.org/indicators/hd6a18526?country=IND&indicator=41930&countries=BGD,NPL,LKA,PAK&viz=line_chart&years=1975,2019.

7 https://www.uscirf.gov/countries/india, (last seen on 10/03/2022).

8 John Stuart Mill, in his work *On Liberty* (1859) has referred the concept of tyranny of majority.

9 Mrs. Yulitha Hyde and Ors. v. State of Orissa and Ors, AIR 1973 Ori 116.

10 1977 AIR 908, 1977 SCR (2) 611.

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