

Freedom Of Religion With Special Reference To The Right Of Propagation

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Abstract: The right to freedom of religion/faith is not a conferred right, but it is a natural right. Law does not assign it to a human being, it is something that needs to be asserted, protected and insured by law. The freedom of religion and freedom of conscience has been recognized under the constitutional law as well as international law. In this sense freedom of religion and freedom of conscience is a fundamental right both constitutionally and conventionally. India is well known for its “Unity in Diversity as in Indian Constitution freedom of religion is ensured as a fundamental right. The Constitution of India further provides that the freedom of practicing any religion peacefully and harmoniously without hurting the religious sentiments of the people of other religion is a fundamental right. One of the aspects of freedom of conscience that has attained a controversial dimension in India is the right to propagate or the right to proselytize. This Paper is an endeavor to understand the meaning and ambit of the term religion. It also tries to ascertain whether proselytism or the right to propagate is a manifestation of freedom of religion or belief and therefore, encompassed within the concept of the right to freedom of conscience.

I. INTRODUCTION

The right to freedom of religion/faith is not a conferred right, but it is a natural right. Every individual has a natural right of religious faith and freedom of conscience, a right to espouse or abandon any faith by his own choice. Law does not assign it to a human being, it is something that needs to be asserted, protected and insured by law. The freedom of religion and freedom of conscience has been recognized under the constitutional law as well as international law. In this sense freedom of religion and freedom of conscience is a fundamental right both constitutionally and conventionally. In Indian Constitution freedom of religion is ensured as a fundamental right. The Constitution of India further provides that the freedom of practicing any religion peacefully and harmoniously without hurting the religious sentiments of the people of other religion is a fundamental right. This is the reason why India is well known for its “Unity in Diversity”.

One of the aspects of freedom of conscience that has attained a controversial dimension in India is the right to propagate or the right to proselytize. Undoubtedly, neither there is any ground justifying conversions brought about by violence or other illegitimate means nor there is any

justification as regards the religious conversions for the purpose of escaping the rigour of law or defrauding legal system or for securing various benefits.

Whether proselytism or the right to propagate is a manifestation of freedom of religion or belief and therefore, encompassed within the concept of the right to freedom of conscience, needs to be answered, as there are certain religions which are proselytizing by nature, whereby the propagation of religion is an integral part of the basic religious duties.

II. CONCEPT AND MEANING OF RELIGION

Religion has been a powerful social factor in all phases of human history and in all parts of the world. It remains so, everywhere on the globe, also in the present. A global survey conducted by Transparent Network Substrate (TNS), a leading group of information-providers reports that an overwhelming majority of over six billion inhabitants of the earth are faith oriented and religious-minded. As per this report, Africa with 91% of its people being religious-minded is on the top, followed by Latin American and Middle East. Country-wise, the two top positions in respect of religiosity are occupied by

Philippines and India-90% and 87% respectively of their citizens having a religious way of life.

A common misconception about religion is that religion has always to do with God, Spiritual or Supernatural dimensions. But this is not true as there exist religions that are without these elements. Religion has been one of the important social institutions throughout the history of human society. It shapes human behaviour in a major fashion. Religion is a system of belief in the existence of supernatural beings. Religion has been defined by various social scientists.

According to *Karl Marx*, religion is “the sigh of the oppressed creature ... a protest against real suffering ...it is the opium of the people... the illusory sun which revolves around man for as long as he does not evolve around himself” . According to *James J. Fraser* religion is “a propitiation or conciliation of powers superior to man which are believed to direct and control the course of nature and of human life”. According to a well known French sociologist *David Emile Durkheim*, religion is, “a unified system of beliefs and practices relative to sacred things which unite into one single moral community called a church, all those who adhere to them.” This definition is a functional one that focuses on the unification function of the religion.

III. CONSTITUTIONAL MANDATE AND JUDICIAL APPROACH

Religion has been a very volatile subject in India both before and after independence. The Constitution therefore seeks to ensure State neutrality in this area. India is a federal country consisting of people professing and practicing different religions. It was, therefore, imperative for founding fathers of the Indian Constitution to frame a Constitution which must guarantee freedom of religion. Article 25 (1) of the Indian constitution guarantees freedom of religion, it says:

“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, practice and propagate religion”.

Apart from guarantee of freedom of religion in Articles 25 to 28, there are other provisions such as Articles 14, 15, 16, which prohibit discrimination only on the ground of religion.

The right to freedom of religion was always considered a necessary component of the constitution. In the constituent assembly, both Dr. Ambedkar and K.M. Munshi Submitted draft Articles, and a mixture of the two was adopted. A noteworthy clause that was not adopted was one preventing the State from recognizing any religion as the State religion. The preamble of the Indian constitution provides for paramount consideration of secularism notion. The Indian model of granting religious freedom as a matter of Fundamental right is based on the ‘secular principles’ and the concept of secularism is implicit in the Preamble of the Constitution which declares the resolve of the people to secure to all its citizens “Liberty to thought, belief, faith and worship”. The 42nd Amendment Act, 1976 has inserted the word ‘secular’ in the Preamble. In India, a secular state was never considered to be irreligious or atheistic state. It only means that in the matters of religion it is neutral. Explaining

the secular character of Indian Constitution the Supreme Court said, there is no mysticism in secular character of the state. Secularism is neither anti-God nor pro-God, it treats alike the devout, the antagonistic and atheist. It eliminates God from the matter of the state and ensures that no one shall be discriminated against the ground of the religion.

Further in *S.R. Bommai case* the Supreme Court has held that “secularism is the basic feature of the Constitution” and State treats equally all religions and religious denominations. Religion is a matter of the individual faith and cannot be mixed with secular activities. Secular activities can be regulated by the state by enacting the laws. Justice Ramaswami observed that secularism is not anti-God. In the Indian context Secularism has positive content. Justice Dharmadhikari has observed that secularism can be practiced by adopting a complete neutral approach towards religions or by positive approach by making one section of religious people to understand and respect religion and faith of the other section of people. Based on such mutual understanding and respect for each other’s religious faith mutual distrust and intolerance can be gradually eliminated.

RIGHT TO PROPAGATION

According to the Constitution of India, every individual has a fundamental right to freedom of religion. It conceives freedom of conscience and free profession, practice and propagation of religion (Article 25-28). The meaning of propagation is to promote, spread and publicize one’s religion relating to his own faith for the edification of others, for which the logical culmination is the conversion of others to one’s own religion. The term propagation implies persuasion and exposition without any element of fraud, coercion and allurement for conversion. The right to propagate gives meaning to choice of religion. It may be pointed out that the right to convert other person to one’s own religion is distinct from an individual right to get converted to any other religion out of his own choice. The latter is undisputedly in conformity with the freedom of religion and freedom of conscience under Article 25 of the constitution while the former is the subject of long prevailing controversy with reference to propagation of faith.

Indian Courts are forever grappling with the competing strains of ‘no concern secularism’ which advocates a strict ‘wall of separation’ between the functions of the State and religious practices and that of ‘equal respect secularism’ which is comparable to the idea of ‘*Sarva Dharma Sambhava*’ that mandates due recognition and acceptance of religious practices. In India, everyone is free to choose a religion and practice that religion. Freedom of religion also includes the freedom of conscience. This means that a person may choose to follow any religion or may choose not to follow any religion. Freedom of religion includes the freedom to profess, follow, preach and propagate any religion. Freedom of religion is subject to certain limitations. The government can impose restrictions on the practice of freedom of religion in order to protect public order, morality and health. This means that the freedom of religion is not an unlimited right. The government can interfere in religious matters for rooting out certain social evils.

In *Rev Stainislaus v M.P* an important question of interpretation of Article 25 in general and the right to propagate in particular was decided by the Supreme Court. Ray C.J., considering the meaning of the word “propagate”, quoted the following definitions:

Propagate: “to spread from person to person, or from place to place, to disseminate, diffuse (a statement, belief, practice, etc.)”: *Shorter Oxford Dictionary*.

Propagate: “To transmit or 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”; *Century Dictionary*, Vol IV.

Having given the definitions of the word “propagate”, Ray C.J.,

We have no doubt that it is in this sense that the 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 citizens of the country alike.

Commenting on the above passage H.M Seervai is of the view that it fails to analyse several concepts embodied in Article 25, with the result that the conclusion reached above is untenable.

According to H.M. Seervai it is unfortunate that the legislative history of Article 25 was not brought to the attention of Supreme Court in *R v. Stainislaus*. When the matter was debated in the Constituent Assembly, there was considerable discussion on the word “propagate”. The speech of K.M Munshi gave the historical background of Article 25(1) in which he pointed out that the insertion of the word “propagate” was the result of a compromise to reassure the minority communities, particularly the Indian Christian community. He added that the Christian community laid the greatest emphasis on the word “propagate” not because they wanted to convert people aggressively but the word propagate was a fundamental part of their tenet. He further added that if the word “propagate” were not there, it would be open, under the guaranteed right to freedom of speech, to any religious community to persuade other people to join their faith.

Benegal Shiva Rao in his book “The Framing of India’s Constitution - A Study” has observed that the minority sub-committee while considering clause (1) of Article 25 accepted the suggestion of M. Ruthnaswamy that certain religions like Christianity and Islam were proselytizing religions and that they be allowed to propagate their faith.

In *Yulitha Hyde v. State* the provisions of the Orissa Freedom of Religion Act, 1968 were impugned, as beyond the legislative competence of the State Legislature and as violating Article 25(1). In upholding these contentions the court held that:

“(1) Article 25(1) guarantees propagation of religion, and conversion is a part of the Christian religion. (2) Prohibition of conversion by ‘force’ or ‘fraud’ as defined by the Act would be covered by the limitations 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. (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.

IV. INTERNATIONAL PERSPECTIVE

The right of freedom of religion is recognized in International law and in all major human rights systems. Often, the most pervasive infringements of rights emanating from the state’s action towards religion are not viewed as issues of religious freedom. Proselytism is a concept within the larger genus of the protection of religious rights and freedoms, and lends itself to differing opinions. Religions interact with one another in various ways, however, proselytism indisputably is one of the most sensitive/complex issue in inter-religious affairs. Proselytism seems to attract singular antagonism in many parts of the world. Conflicting views regarding proselytism have given rise to considerable tensions between other religions. In light of these conflicting perspectives; it is not surprising that the shaping of international norms in this domain has become a prickly issue in the international arena. Through the Universal Declaration of Human Rights (1948) and subsequent legal instruments, the United Nations and its member states have recognized that every person has certain inviolable human rights that all governments must acknowledge and respect.

The right to freedom of religion or belief is a fundamental human right recognised in all the major human rights treaties. The substance of international rules pertaining to proselytism are mentioned below:

A. UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948 (ARTICLE 18)

Article 18 of the Universal Declaration of Human Rights of 1948 provides that everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 18 states that freedom of religion or belief is a fundamental right which may not be derogated from, even in times of public emergency. It protects traditional, non-traditional and new religious beliefs and practices, as well as numerous beliefs not associated with divine or transcendent powers, or not of a religious nature. Everyone has the freedom to manifest their religion or belief, either alone or together with others, publicly or privately. Nobody is to be subject to coercion that would impair the individual’s freedom to have or

adopt a religion or belief of their choice, nor is discrimination on the grounds of religion or belief permissible.

B. ARTICLE 9 OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS 1950

The text of paragraph 1 of Article 9 specifically refers to “teaching” as a recognized form of “manifestation” of belief. The right to try to persuade others of the validity of one’s beliefs is also implicitly supported by the reference in the text to the right “to change [one’s] religion or belief”. The right to proselytize by attempting to persuade others to convert to another’s religion is thus clearly encompassed within the scope of Article 9. But this right is not absolute, and may be limited where it can be shown by the State that this is clearly based upon considerations of public order or the protection of vulnerable individuals against undue exploitation.

In *Kokkinakis v. Greece*, a Jehovah’s Witness had been sentenced to imprisonment for proselytism, an offence specifically prohibited both by the Greek Constitution and by statute. The Strasbourg Court at the outset accepted that the right to try to convince others to convert to another faith was included within the scope of the guarantee, “failing which ... “freedom to change [one’s] religion or belief”, enshrined in Article 9, would be likely to remain a dead letter”. While noting that the prohibition was prescribed by law and had the legitimate aim of protecting the rights of others, the Strasbourg Court, though, could not in the particular circumstances accept that the interference had been shown to have been justified as “necessary in a democratic society”. In its view, a distinction had to be drawn between “bearing Christian witness” or evangelicalism and “improper proselytism” involving undue influence or even force.

C. INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1966 (ICCPR)

Article 18 of the UDHR arguably became a preemptory norm of international law in 1966 with the passing of Articles 18, 19, 20, and 27 of the International Covenant on Civil and Political Rights (“ICCPR”). The covenant concretized the basic freedoms of religion and conscience articulated in the UDHR and made its signatories legally bound by it.

The final form of Article 18 of the ICCPR differs from Article 18 UDHR in that the right to “freedom to change religion or belief” is replaced by “freedom to have or to adopt a religion or belief”. It also includes Article 18(2) which states that “No one shall be subject to coercion which would impair his freedom to have or adopt a religion or belief of his choice”, thereby alleviating fears of those state representatives who were concerned about aggressive and overzealous proselytising.

The ICCPR provides that the Human Rights Committee has the authority to interpret the ICCPR in order to clarify its provisions. The Human Rights Committee has elucidated the meaning of Article 18 of the ICCPR, stating that: “The freedom to “have or to adopt” a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one’s current religion or belief with another or to adopt atheistic views, as well as the right to retain one’s

religion or belief. Article 18.2 bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert.”

The HRC (Human Rights Committee) has confirmed that the provisions on the “right to change religion or belief” in Article 18 UDHR are fully embraced by the ICCPR, noting in its General Comment 22 Paragraph 5.

The 1966 International Covenant on Civil and Political Rights and the 1965 International Convention on the Elimination of All Forms of Racial Discrimination follow in the direction set by the 1948 Declaration but do not explicitly restate the right to change religion.

D. THE 1981 DECLARATION ON THE ELIMINATION OF ALL FORMS OF INTOLERANCE AND OF DISCRIMINATION BASED ON RELIGION OR BELIEF (1981 DECLARATION)

The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief (1981) provides additional protection for the right to choose one’s religious beliefs and the right change one’s religion.

Article 1 of the Declaration provides: 1. everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever 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, practices and teaching. 2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice. 3. Freedom to manifest one’s religion or belief 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 others.

The Declaration prohibits discrimination on the grounds of religion or belief, which it describes as “an affront to human dignity and a disavowal of the principles of the Charter of the United Nations.

E. FUNDAMENTAL AGREEMENT BETWEEN THE HOLY SEE AND THE STATE OF ISRAEL (1993)

According to the provisions of the Fundamental agreement (1993 Fundamental Agreement) both parties are obligated to respect the human right to freedom of religion. However, the agreement does not specifically define this important obligation. Instead, the agreement includes certain rules pertaining to the freedom of religion that has been set out in other international instruments. The obligations of the parties’ regarding freedom of religion are defined in separate provisions and are not equally balanced. Israel’s obligations in this regard are enumerated in Article 1(1) of the 1993 Fundamental Agreement. While as obligations of the Holy See have been given in Article 1(2). These provisions clearly bind both parties to protect the freedom of religion as provided under the 1948 Universal Declaration of Human Rights (1948 Universal Declaration). Yet the application of additional

international rules depends upon whether a particular party, and not both, is a party to a certain international instrument. Thus, apart from the mutual obligations established by the 1948 Universal Declaration, each, party to the 1993 Fundamental Agreement is bound to protect the freedom of religion only to the extent that it is a party to another international instrument. Therefore, beyond the mutual obligations under the 1948 Universal Declaration, the parties' duties regarding the freedom of religion are not necessarily symmetrical.

The evolution of the texts of the universal documents shows that the emphasis has shifted from the freedom to change a religion toward an emphasis on the individual freedom to retain a religion without interference.

This shift does not indicate that the freedom to change one's religion on the internal level is not protected under international law, or that proselytism is not included within the freedom of religion on the external level." However, the tendency to emphasize the freedom to maintain a religion and to weaken, or obscure, the freedom to change a religion should not be underestimated. Rather, this trend should be given due weight when delineating the border between the freedom of proselytism and the individual's freedom to maintain a religion without interference. The boundary between the freedom of proselytism and the freedom to maintain a religion without interference may be drawn in various locations alongside a continuum. At one end of the continuum, the freedom to maintain a religion is completely protected by the prohibition against proselytism, at the other, an absolute protection is accorded to the freedom of proselytism by a norm that prohibits any restriction on such activities.

From the Universal Declaration of Human Rights 6 and the European Convention on Human Rights it is clear that freedom of thought is a basic right of "everyone". There is no age limit at which people begin to enjoy such a legal right. Article 5(1) (b) of the Convention against Discrimination in Education places the emphasis on the protection of a person's (or group's) convictions as well as the protection of the liberty of parents to have their children morally educated in accordance with their convictions.

V. CONCLUSION

Right to freedom of religion which includes freedom of conscience is a fundamental right recognized under the Indian constitution as well as under international law. One of the essential aspects of the freedom of religion is the right of propagation. Propagation for the purpose of conversion is an essential /integral part of certain proselytizing religions e.g Christianity and Islam. The intention of the Constituent Assembly in inserting the word "propagation" in Article 25(1) of the Constitution can be drawn from the speeches of the members of the constituent assembly. Hence, it can be said that the word "propagate" includes within its ambit conversion as the word conversion is a fundamental part of the tenet of some proselytizing religions. It gives a religious community a right to persuade the people of other religions to join their faith. Though this right is not absolute and is subject to certain limitations in case of fraud, force or coercion. This right has

also been recognized under the various international agreements/conventions. Therefore, the right to freedom of religion including the right to propagate is a fully recognized right at the domestic as well as international level although it has always been a matter of controversy. Hence, in order to end the controversy the provisions need to be harmoniously constructed in order to strike a balance between the right to convert and the right to follow one's faith.

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