A STUDY OF

COMPATIBILITY OF ANTI-CONVERSION LAWS WITH RIGHT TO FREEDOM OF RELIGION IN INDIA

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CONTENTS

CHAPTER I

INTRODUCTION

In India, like most other traditional societies, *Religion* has been the foundation of the society and whole of its machinery throughout all ages in the process of her transition to a democratic nation. It is pointed out that in India "If life can be likened to a pie, religion is not one piece of that pie alongside the pieces labeled politics, economics, social structure, education and law. Rather, religion is the fruit found in each and every piece of the pie."[1] This religious India not only is a place of birth of many religions but also provided shelter for various other religions that came from different parts of the world. All these religions and their followers, hand in hand, had a major role in building the modern secular India where an individual, as per the constitutional guarantee, is free to profess, practice and propagate religion subject to public order, morality and health[2]. This right, under our constitutional scheme**,** may also be restricted for eliminating untouchabilty, and to bring about social welfare and reform. These restriction imposed on freedom of conscience and its associated rights not only manifest the conflict of interest that may arise in the exercise of freedom of religion in plural India but also clearly shows the concern of the founding fathers of our Constitution to maintain total harmony so that all the religions can exist side by side without hampering the peace and progress of society and the nation. Thus, while equality of religion and religious freedom are manifested in our Constitution, the latter has been expressly made subject to the larger interest of the society.

However, despite the fact that the Constitution of India has been built on such secular edifice, it appears that the spirit of secularism could not displace the importance of religion the people of India give in their lives. 'Religion' has still been a volatile subject in our secular country. The aggressive measures adopted by certain religious groups for proselytization of their faith have thrown up challenges to our polity. The issue of conversion from one religion to another – one of the major controversies associated with

[1] Robert D Baird, *Religion and Law in India: Adjusting to the Sacred as Secular* in Religion and Law in Independent India (Ed.) Manohar 2005 p.7.
[2] Article 25 of the Constitution of India.

freedom of religion, leads to conflict of interest of inter religious groups and followers thereof.

The Constitution of India has guaranteed freedom of religion to all, not just to followers of any particular faith. 'Freedom of conscience' envisages freedom of an individual either to follow any particular faith or to follow none, as he desires. 'Freedom to propagate', on the other hand, envisages liberty, within limits, to transmit or spread one's religion by exposition of its tenets or his own ideas and convictions. Unless, they are understood in the right perspective and construed accordingly, it is difficult to maintain harmony between the two. It is more so when followers of any faith claim to have freedom to convert another to their own faith in whatsoever manner, as a concomitant right of freedom of propagation. Such a situation warrants the interference of the State to regulate the exercise of such freedoms in the larger interest of the society. And, such an interference of the State has been contemplated under our constitutional scheme by expressly subjecting those freedoms to the larger interest of the society.

Thus, acting under the scheme of our Constitution, many states have enacted laws to regulate conversion from one religion to another and to prohibit conversion through means reprehensible to the conscience of the community in order to preserve public order and to protect the larger interest of society. It appears some of them have gone to the extent of extinguishing the freedom of religion in their enthusiasm to insulate 'indigenous religions'. Thus, the present study has been undertaken to examine whether the provisions of these legislations are in consonance with the freedom of religion as envisaged under Article 25 and other relevant provisions of the Constitution or whether they have in fact extinguished right to freedom of religion.

What is looked into, in this study, is the constitutionality of these Acts in general as well as provisions in all the legislations in particular. The report of the entire study has been divided into four chapters. The first chapter being introductory, second chapter has been titled as *'Constitutional Framework of Right to Freedom of Religion In India'*. In this chapter, the scope and ambit of freedom of religion and the permissible restrictions

thereon have been discussed in the light of relevant judicial pronouncements, which appear to be very pertinent in the context. The questions whether 'right to conversion' is envisaged in our Constitution and who has the legislative competence to regulate the exercise of the said freedom have also been addressed in the chapter. Reference has also been made to the Constituent Assembly Debates wherever necessary.

The third chapter, being the most cardinal part of the study, has been titled as *'Anti-conversion Laws in India: An Analysis in the Light of Constitutional Guarantee of Freedom of Religion'*. In this chapter all the provisions of anti-conversion laws of various states and their implications on Constitution have been examined. Important cases where the constitutional validity of some of these laws have been challenged, have also been discussed at appropriate places.

Chapter IV is the concluding part of the study. In this chapter, the decision of the apex court in *Rev. Stainislaus* has been analyzed in the light of legislative history, constitutional philosophy and relevant provisions in UDHR, and ICCPR, etc., the findings and remedial legal measures have also been suggested wherever it appears to be necessary.

CHAPTER II

CONSTITUTIONAL FRAMEWORK OF RIGHT TO FREEDOM OF RELIGION IN INDIA

The founding fathers of the Constitution gave unto themselves, 'we the people of India', the fundamental rights and directive principles of state policy to establish an egalitarian social order for all sections of the society in the supreme law of the land itself[3]. The principle of 'equality of religion', being an essential facet of egalitarianism, has, thus, found a place in the Constitution of India. Religious tolerance and equal treatment of all religious groups are essential parts of secularism. Indian Constitution has been built, *inter alia*, on such secular edifice. Though the term 'secularism' has not found expression in the original Constitution as adopted in 1950[4], the principles of secularism were embedded in various parts of our Constitution, in particular, the preamble, fundamental rights and directive principles of state policy. More particularly Articles 25, 26, 27 and 28 provide guarantee to various facets of right to freedom of religion with inbuilt restrictions and limitations thereof.

1. Scope and Ambit of Right to Freedom of Religion:

The Constitution of India is an embodiment of both passive as well as positive contents of secularism. It is passive in the sense that state neutrality in matters of religion is envisaged in the Constitution. India being a secular state, there is no state or preferred religion as such. An element of religious tolerance is implicit in it. At the same time, India is not an irreligious state. It equally treats all religious groups, provides protection, freedom to practice, profess and propagate religion and to manage religious affairs, etc., which are positive dimensions of secularism, so that every religion can flourish freely without impediments. These secular credentials of the Indian Constitution are explicit, mainly, in Articles 25, 26, 27 and 28 of the Constitution. For the purpose of convenience, the scope and ambit of these provisions can be discussed under different headings.

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[3] *S.R.Bommai* v. *Union of India*, (1994) 3 SCC 1 (Para 178 & 183)

[4] The term 'secular' was inserted to the Preamble of the Constitution by the Constitution (Forty – second Amendment) Act, 1976

Freedom of Conscience and free profession, practice and propagation of religion:

Article 25 of the Constitution of India deals with these core concepts of freedom of religion. It is the most basic of various other concomitant rights of religious freedom. It reads:

25. (1) 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.

(2) 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 religious practices;**
- **(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, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.**

Article 25 of the Constitution guarantees the right to every person, whether citizen or non-citizen, freedom of conscience and right to freely profess, practice and propagate religion. However, the Constitution has not granted these freedoms in absolute terms. They are made subject to: (i) Public order, morality and health; (ii) Other provisions of Part III i.e., other fundamental rights (iii) any law, whether existing or future, providing for regulation or restrictions of an economic, financial, political or other secular activity which may be associated with religious practice, and (iv) any law, whether existing or future, providing for social welfare and reform.

It was after deep thought and great deliberations, in the Constituent Assembly, that freedom of conscience and right freely to profess, practice and propagate religion has been guaranteed in India subject, of course, to the limitations defined in the Constitution itself. It is pertinent to note, as it is evident from the debate in the Constituent Assembly, that the phrase 'freedom of conscience' and 'right freely to profess and practice religion' got incorporated into the Constitution without much controversy. The incorporation of the word 'propagate'[5] was the subject matter of great controversy over which, more or less, the entire debate on the article was centered on. Mr. Tajamul Hussain, for instance, opposed the very idea of guaranteeing the 'right to propagate religion'. While agreeing that the people should have the right to freely profess and practice religion, he vehemently argued that religion is a private affair between oneself and his Creator. It has nothing to do with others. One should honestly profess and practice religion at home without demonstrating it for the sake of propagation. Propagation of religion, according to him, would become a nuisance to others. Thus, he moved an amendment for the deletion of the word 'propagate' from the draft constitution[6]. The same view was endorsed by Mr. Lokanath Mishra, albeit, for different reasons. He too had drastically opposed the idea of according the status of fundamental right to propagate religion and thereby encouraging the same[7]. However, many other members[8], *per contra*, have opposed the amendment suggesting deletion of the word 'propagate' from the draft constitution. A common point made by some of them was that the right to propagate religion, as formulated in the article, was not absolute; it was circumscribed by certain conditions that the state would be free to impose in the interests of public order, morality and health. It had also been laid down that the exercise of the right should not conflict with the other provisions relating to fundamental rights. In particular, the article did not give an unlimited right of conversion, for if any attempts were made to secure mass conversions through undue influence either by money or through pressure, the state had

[5] The expression 'propagate' was not there in the Draft Report of the Fundamental Rights Sub-committee submitted on April 3, 1947 (see Select Documents II, 4(iv), pp. 140). 'Right to propagate religion' was later incorporated into the Draft Constitution at the instance of the Minorities Sub-committee (see B. Shiv Rao's, *Framing of India's Constitution*, at. 261)

[6] *C.A.D.*, Vol. VII, at. 817 & 818

[7] *C.A.D.*, Vol. VII, at. 822 - 824

[8] *Viz*., Pandit Lakshmi Kanta Maitra, Mr. L. Krishnaswami Bharathi, Mr. K. Santhanam, Mr. Rohini Kumar Chaudhari, Mr. T.T. Krishnamachari and K.M Munshi. (See C.A.D. Vol. VII, at. 831 – 831)

the right to regulate such activity. In view of the safeguards, the inclusion of the word "propagate" could not possibly have any "dangerous implications", especially since under the secular set-up envisaged in the Constitution there would be no particular advantage to a member of one community over another, nor would there be "any political advantage by increasing one's fold". T.T. Krishnamachari stressed the point that the right was not given to any particular community and could be exercised by everyone so long as the conditions laid down were respected. K. Santhanam and K.M. Munshi asserted that even if the word "propagate" was not included in draft article 19, under the right to freedom of speech and expression guaranteed by draft article 13, it would still be open to a religious community to persuade other people to join its faith[9]. Further, K.M. Munshi finally submitted that the compromise achieved by the Minority Committee, which led to the insertion of the expression 'propagate' should not be disturbed and the harmony and confidence should always be maintained. Thus, the expression 'propagate' was retained in the draft article 19, which was approved by the Constituent Assembly on 6th December 1948. The said article was later renumbered as Article 25 in the Constitution.

For the better understanding of the scope and ambit of Article 25, the religious freedom guaranteed therein may conveniently be divided into two: (i) Right to freedom of conscience; (ii) Right freely to profess, practice and propagate religion. However, limitations on the said freedoms are discussed under a different heading altogether.

(i) *Right to Freedom of Conscience*: Freedom of Conscience envisages a freedom of an individual to hold or consider a fact, viewpoint, or thought regardless of anyone else's view. To deny a person's freedom of thought is to deny what can be considered one's most basic freedom – to think for one's self. Since the whole concept of 'freedom of conscience or thought' rests on the freedom of the individual to believe whatever one thinks is best (freedom of belief), the notion of freedom of religion is closely related and inextricably bound up with these[10]. The freedom of conscience guaranteed under

[9] B. Shiv Rao's, *Framing of India's Constitution,* at. 267
[10] http://en.Wikipedia.org/wiki/Freedom_of_thought.

Article 25 intended to prevent any degree of compulsion in matter of belief. Everyone is entitled to believe or not to believe a particular tenet or to follow or not to follow a particular practice in matters of religion. No one can, therefore, be compelled, against his own judgement and belief to hold any particular creed or follow a set of religious practices. The Constitution has left every person free in the matter of his relation to his Creator, if he believes in one. It is, thus, clear that a person is left completely free to worship God according to the dictates of his conscience, and that his right to worship as he pleased is unfettered so long as it does not come into conflict with any restraints, imposed by the State in the interest of Public order, etc., A person is not liable to answer for the verity of his religious views, and he cannot be questioned as to his religious beliefs, by the State or by any other person[11]**.** It is, however, not implied that liberty of conscience is reckless freedom from moral obligation, but is it rather that responsibility of a free spirit, which alone can recognize and meet a moral obligation[12]. Our Constitution therefore guarantees that all persons are equally entitled to freedom of conscience, but this right is subject to public order, morality and to the other provisions contained in Part III.

(ii) *Right freely to profess, practice and propagate religion:* Religion is a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism, which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it will not be correct to say that religion is nothing else but a doctrine or belief. 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 integral parts of religion, and these forms and observances might extend even to matters of food and dress. Thus, the guarantee under the Constitution of India not only protects the freedom of

[11] *Sardar Syedna Taher Saifuddin Saheb* v. *State of Bombay*, AIR 1962 SC 853 (872)
[12] Rawls, *A Theory of Justice*, at. 214 -215

religious opinion but it protects also acts done in pursuance of a religious belief[13]. The apex court, while dealing with the scope of Article 25, in *Ratilal Panachand Gandhi* v. *State of Bombay*[14], has reiterated the wide amplitude of the provision and observed:

> "…Subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgement or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others".

Thus, the Constitutional guarantee of freedom of religion in India is very wide, though not absolute. It includes freedom to profess – i.e., to acknowledge publicly and to follow a particular faith; to practice – i.e., to act according to the belief and customs of religion including performances of ceremonies, rituals and observances which are regarded as integral parts of religion[15]; and to propagate – i.e., to transmit or spread one's religion by exposition of its tenets. What is guaranteed by Article 25 is right to entertain, exhibit and propagate and disseminate a religious belief based on the person's judgement and conscience. But whether a person propagates his personal views or the tenets of the religious institution or whether propagation takes place in a temple or in any other meeting is immaterial for the purpose of Article 25[16]. The term 'propagate' has, however, been the subject matter of controversy as to whether it includes right to convert a person to one's own religion. The apex court, in *Digyadarsan* v. *State of A.P.*[17], answered the issue negatively by holding that the right to propagate one's religion means the right to communicate a person's beliefs to another person or to expose the tenets of that faith, but

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[13] *Commissioner, Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt*, AIR 1954 SC 282, Para 17 & 18.
[14] AIR 1954 SC 388
[15] What really constitutes an essential or integral part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion (See *N. Adithyan* v. *Travancore Devaswom Board*, (2002) 8 SCC 106; *H.H. Srimad Perarulal Ethiraja Ramanuja Jeeyar Swami* v. *State of Tamil Nadu*, AIR 1972 SC 1586). The right to worship, however, does not include any and every place of worship (See *M. Ismail Faruqhi (Dr.)* v. *Union of India*, (1994) 6 SCC 360)
[16] *Sri Sri Sri Lakshamana Yetendrulu* v. *State of A.P.,* (1996) 8 SCC 705
[17] AIR 1970 SC 181 (188)

would not include the right to 'convert' another person to the former's faith. In *Rev. Stainislaus* v. *State of Madhya Pradesh*[18], relying on dictionaries[19], the court has reiterated that: "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".

Thus, the religious freedom is confined to religious belief, which binds spiritual nature of men to super-natural being. It includes worship, belief, faith, devotion, etc. and extends to rituals. Religious right is the right of a person believing in a particular faith to practice it, preach it and profess it[20].

Other Facets of Freedom of Religion:

As mentioned above, the Constitutional guarantee of freedom of religion is not just confined to freedom of conscience and to freely profess, practice and propagate religion, it is very wider. Every religious denominations or any section thereof have been given the right (a) to establish and maintain institutions for religious and charitable purposes; (b) to manage its own affairs in matters of religion; (c) to own and acquire movable and immovable property; and (d) to administer such property in accordance with law. These rights are subject to public order, morality and health[21]. Further, Article 27 provides immunity from payment of taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination. These provisions, however, do not require elucidation in the context.

The restriction on providing religious instructions and freedom as to attendance at religious instruction or religious worship in certain educational institutions, envisaged

[18] AIR 1977 SC 908
[19] The Court relied on the meaning of the expression 'propagate' given in Shorter Oxford Dictionary (i.e., "to spread from person to person, or from place to place, to disseminate, diffuse a statement, belief, practice, etc.,") and Century Dictionary (which is an Encyclopedic Lexicon of the English Language) Vol. VI. (i.e., "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").
[20] *P.M.A. Metropolitan* v. *Moran Mar Marthoma*, AIR 1995 SC 2001 at. 2026
[21] Article 26.

under Article 28, appears to be pertinent to the context in view of the fact that it imposes constructive restriction on 'propagation of religious belief or tenets' in educational institutions. It is the constitutional imperative that no religious instructions[22] shall be provided in any educational institution wholly maintained out of State funds[23]. Further, Clause (3) of Article 28 confers freedom as to attendance at religious instruction or religious worship in certain educational institutions. It clearly mandates that no person attending any educational institution recognized by the State or receiving aid out of the State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

The rationale for imposing such a blanket ban on providing religious instructions in educational institutions wholly maintained out of the state fund is probably that India being a secular country, utilization of public revenue for the purpose of imparting religious instructions, which may result in conversion from one religion to another would not be in consonance with its secular credentials. This is to ensure the religious neutrality of public institutions wholly maintained out of the public revenue. Similarly, the rationale

[22] The expression "religious instruction" has been narrowly construed by the apex court, in *D.A.V. College* v. *State of Punjab*, [(1971) 2 SCC 269 at 281], to mean, "that which is imparted for inculcating the tenets, the rituals, the observances, ceremonies and modes of worship of a particular sect or denomination". The definition has confined the meaning to the essential doctrines of religion and the necessary ceremonies associated with it and not to extend it to secular or cultural activities. Again, in *Aruna Roy (Ms.)* v. *Union of India* [(2002) 7 SCC 368], the apex court has further reiterated the position by holding that: "Article 28 (1) conveys that teaching of customs, ways of worships, practices or rituals cannot be allowed in educational institutions wholly maintained out of State funds. But. Article 28 (1) cannot be read as prohibiting study of different religions existing in India and out side India. If that prohibition is read with the words 'religious instructions', a study of philosophy which is necessarily based on study of religions would be impermissible. That would amount to denying children a right to understand their own religion and religion of others, with whom they are living in India and with whom they may like to live and interact. Study of religions, therefore, is not prohibited by the Constitution and the Constitutional provisions should not be read so, otherwise the chances of spiritual growth of human being, which is considered to be the highest goal of human existence, would be totally frustrated. Any interpretation of Article 28 (1), which negates the fundamental right of a child or a person to get education of different religions of the country and out side the country and of his own religion would be destructive of his fundamental right of receiving information, deriving knowledge and conducting his life on the basis of philosophy of his liking". (at Para. 76)

[23] Article 28, Clause (1). However, under Clause (2) an exception was made to the effect that the mandate of Clause (1) shall not apply to educational institutions, which is administered by the State but has been established under endowment or trust which requires that religious instructions shall be imparted in such institution.

for Clause (3), which confers freedom as to attendance at religious instruction or religious worship in educational institutions recognized by the State or receiving aid out of State funds, is that in such institutions, there is every likelihood of exercising undue influence to convert pupils from one religious faith to another. Further, any exercise of compulsion or undue influence would result in infringement of 'freedom of conscience' – the very essence of religious freedom. Unlike Clause (1), Clause (3) does not impose a blanket ban on providing religious instructions; it confers only freedom as to attendance at religious instruction or religious worship. In other words, there is no prohibition on imparting religious beliefs or tenets or conducting rituals or ceremonies in institutions recognized by the State or receiving aid out of the State funds, but such institutions shall not compel pupils to be part of it. Students can attend such instructions or rituals or ceremonies out of their own will or, at the instance of their guardians in case of minors.

2. **Limitations on the Freedom:**

No rights in an organized society can be absolute. So the freedom of religion guaranteed, under the Indian Constitution, is. 'Freedom of conscience and right freely to profess, practice and propagate religion' has been expressly made subject to: (i) Public order, morality and health; (ii) Other fundamental rights (iii) any law, whether existing or future, providing for regulation or restrictions of an economic, financial, political or other secular activity which may be associated with religious practice, and (iv) any law, whether existing or future, providing for social welfare and reform. Some of these limitations require more elaboration in the context.

Public Order, Morality and Health:

Both individual freedom, under article 25, and the freedom of religious denominations, under article 26, has been expressly made subject to public order, morality and health in the Indian Constitution. The expression "public order" is of wide connotation signifying a state of tranquility prevailing among the members of a political society as a result of the

internal regulations enforced by the government instituted by them[24]. It can be postulated that 'public order' is synonymous with public peace, safety and tranquility[25]. It is the first and the most fundamental duty of every Government to preserve order, since order is the condition precedent to all civilization and advance human happiness[26]. Having realized that it is in the interest of liberty itself, that it should be restricted, the framers of the Constitution have subordinated religious freedom to public order. Thus, the freedom of conscience and right freely to profess, practice and propagate religion, and freedom to manage religious affairs can be curtailed either in the interest or for the maintenance of public order. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot, under any circumstances, be said to have been enacted in the interest of public order[27]. The expression 'Public order', here, refers to the disorder of more gravity than those affecting mere 'law and order'[28]. However, the difference between 'law and order' and 'public order' is one of degree and nothing else. At times, a mere problem of 'law and order' may become grave and cause 'public disorder'. This has been clearly pointed out in the following observation of the apex court[29]:

> "A criminal act hitting a private target such as indecent assault of a woman or slapping a neighbor or knocking down a pedestrian while driving, may not shake up public order. But a drunk with a drawn knife chasing a woman in a public street and all women running in panic, a Hindu or Muslim in a crowded place at a time of communal tension throwing a bomb at a personal enemy of the other religion and the people, all scared, fleeing the area, a striking worker armed with a dagger stabbing a blackleg during a bitter strike spreading terror – these are invasions of public order although the motivation may be against a particular private individual. The nature of the Act, the circumstances of its commission, the impact on the people around and such like factors constitutes the

[24] *Romesh Thappar* v. *State of Madras*, AIR 1950 SC 124
[25] *Superintendent, Central Prison* v. *Ram Manohar Lohia*, AIR 1960 S.C. 633
[26] *Niharendu Dutt Majumdar* v. *Emperor*, AIR 1942 F.C. 22
[27] *Ramji Lal Modi* v. *State of U.P.,* AIR 1957 SC 620
[28] The apex court, in *Ram Manohar Lohia* v. *State of Bihar*, (AIR 1966 SC 740), has distinguished between 'public order' and 'law and order'. The Court held the contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. The Court said, there are three concentric circles. 'law and order' represents the largest circle within which the next circle representing public order and the smallest circle represents security of state. Thus, an act may affect law and order but not public order just as an act may affect public order but not security of state.
[29] *Golam Hussain* v. *Commissioner of Police*, (1974) 4 SCC 530

> pathology of public disorder. One cannot isolate the fact from its public setting or analyze its molecules as in a laboratory but take its total effect on the flow of orderly life. It may be a question of the degree and the quality of the activity, of the sensitivity of the situation and the psychic response of the involved people".

The apex court, in several cases, has upheld the curtailment of freedom of religion guaranteed under Articles 25 and 26 on the ground of 'public order'[30]. In addition, public morality and health are the two other grounds to which freedom of religion is subjected under our Constitution. The expression 'public morality' is an abstract one that can only be described, not exhaustively, on the basis of societal standards but difficult to define. However, it is the core moral order capable of transforming into public morality, which has a nexus with the state affairs, which is the concern of the law and, therefore, to which religious freedom is subjected. *The Commissioner of Police* v. *Acharya Jagadishwarananda Avadhuta*[31] is the classical example where the apex court upheld the restriction on the ground of 'public order and morality'. In *Church of God (Full Gospel) in India* v. *K.K.R. Majestic Colony Welfare Association*[32], the apex court upheld the restrictions on use of loudspeaker for conducting religious prayers by holding that: "activities that disturb the peace in the name of religion cannot be permitted in a civilized society as rights are closely related to duties. The rights of babies, children, students, the aged and the mentally and physically infirm to be protected from noise pollution, in the form of amplified broadcasts of prayers, music or religious recitation, are required to be honored. More so as regular exposure to noise leads to many kind of medical problems, including high blood pressure, deafness and mental stress".

Other Fundamental Rights:

The religious freedom guaranteed under Article 25 of the Constitution of India has been made subject to all other fundamental rights envisaged in Part – III. By virtue of its

[30] For example, *State of Karnataka* v. *Praveen Bhai Thogadia* (Dr.), (2004) 4 SCC 684; *Gulam Abbas* v. *State of U.P.,* (1984) 1 SCC 81; *Acharya Jagadishwarananda Avadhuta* v. *Commissioner of Police*, (1983) 4 SCC 522; etc.,
[31] (2004) 12 SCC 770
[32] (2000) 7 SCC 282

subordination to all other fundamental rights, in case of conflict between freedom of religion and any other fundamental right/s, the former should always give way to the latter. Thus, a person can exercise his religious freedom so long as it does not come into conflict with the exercise of Fundamental Rights of others. Insertion of the expression "the other provisions of this part" in Article 25 is understandable when we find the particular rights, which are taken care of in this article, namely, the right to freedom of conscience and the right freely to profess, practice and propagate religion. Bearing in mind the overlapping nature of the sensitive rights in Article 19 (1) (a) with reference to citizens and in Article 25 (1) with reference to all persons the founders of the Constitution left no room for doubt in expressly subjecting Article 25 (1) to the other provisions of Part – III[33].

Further, Article 25 (1) guarantees freedom of religion to every citizen and not to the followers of any one particular religion. A person can properly enjoy it if he exercises his right in a manner commensurate with the like freedom of persons following other religions. What is freedom for one is freedom for others, in equal measure. Thus, in *Rev. Stainislaus* v. *State of Madhya Pradesh*[34], the apex court ruled that the fundamental right to propagate does not include right to convert another person to one's own religion because if a person purposely undertakes to convert 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 in the country alike.

Secular Activities:

The term 'religion' has not been defined in the Constitution, and it is a term, which is not susceptible of any precise definition. No doubt, religion is a matter of faith. A religion, undoubtedly, has its basis in a system of beliefs and doctrines, which are regarded by those who profess that religion as conducive to their spiritual well being, but it is also

[33] *Acharya Maharajashri Narendra Prasadji Anandprasadji Maharaj* v. *State of Gujrat*, (1975) 1 SCC 11, Para 25
[34] *Supra* note.

something more than merely doctrine or belief. A religion, as aforesaid, may not only lay down a code of ethical rules for its followers to accept, but may also prescribe rituals and observances, ceremonies and modes of worship which are regarded as an integral part of that religion. Thus, the religious freedom guaranteed under Article 25, as its language amplifies, assures to every person subject to public order, health and morality, freedom not only to entertain his religious beliefs, as may be approved of by his judgement and conscience, but also to exhibit his belief in such outwardly act as he thinks proper and to propagate or disseminate his ideas for the edification of others[35]. The protection under Article 25 extends for rituals and observances, ceremonies and modes of worship which are integral parts of religion and so to what really constitutes an essential part of religion or religious practice has to be decided by the courts with reference to the doctrine of a particular religion or practices regarded as parts of religion[36]. However, economic, financial, political or other secular activities associated with religious practices of any particular religion clearly falls out side the purview of the protective umbrella of Article 25 of the Constitution[37]. That means purely secular activities, which may not be an essential and integral part of a religion, are not protected and can be abrogated by legislation subject to other Fundamental Rights. The management or administration of a temple[38]; appointment of Priests or Poojaris to Hindu temples[39]; rendering of religious service by archaks, which is separate from performance of the religious service which is an integral part of the religion[40]; management, administration and maintenance of Math, safeguarding interest and fulfillment of the objects of Math[41]; management of

[35] *Sri Lakshmana Yatendrulu* v. *State of Andhra Pradesh*, AIR 1996 SC 1418
[36] *N. Adithyan* v. *Travancore Devaswom Board*, (2002) 8 SCC 106; Also see, *Tailcoat Shri Govindlalji Maharaj* v. *State of Rajasthan*, AIR 1963 SC 1638, where the apex court has held that: "In deciding the question as to whether a given religious practice is an integral 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. This question will always have to be decided by the Court and in doing so, the Court may have to enquire whether the practice in question is religious in character and if it is, whether it can be regarded as an integral or essential part of the religion and the finding of the Court on such an issue will always depend upon the evidence adduced before it as to the conscience of the community and the tenets of its religion".
[37] Art. 25 (2) (a)
[38] *M.P. Gopalakrishnan Nair* v. *State of Kerala*, (2005) 11 SCC 45
[39] *N. Adithayan* v. *Travancore Devaswom Board*, (2002) 8 SCC 106; Also see *E.R.J. Swami* v. *State of Tamil Nadu*, AIR 1972 SC 1586
[40] *A.S. Narayana Deekshitulu* v. *State of A.P.*, (1996) 9 SCC 548
[41] *Supra* not. 33

international cultural township of Auroville by Sri Aurobindo Society[42]; etc., have been considered to be secular activities associated with religious practices.

Social Welfare and Reform:

Article 25 involves a separation between 'religious' activities, on the one hand, and 'secular' and 'social' activities, on the other. While the former are protected the latter are not[43]. Sub-clause (a) of Clause (2) of Article 25 reserves the right of the State to regulate or restrict any economic, financial, political or other secular activities, which may be associated with religious practices and there is a further right given to the State by Sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices[44]. Social reform measures are always permissible under our constitutional scheme and would not be void on the ground of interfering with freedom of religion. Thus, the Hindu Marriage Act, for instance, which introduces the principle of monogamy for the Hindus, is undoubtedly a law providing for social welfare and social reform[45].

However, by the phrase "laws providing for social welfare and reform" it was not intended to enable the legislature to "reform" a religion out of existence or identity. Article 25 (2) (a) having provided for legislation dealing with "economic, financial, political or secular activity, which may be associated with religious practices", the succeeding clause proceeds to deal with other activities of religious groups and these also must be those which are associated with religion. Just as the activities referred to in Article 25 (2) (a) are obviously not of the essence of the religion, Similarly the saving in Article 25 (2) (b) is not intended to cover the basic essentials of the creed of a religion which is protected by Article 25 (1)[46].

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[42] *S.P. Mittal* v. *Union of India*, (1983) 1 SCC 51
[43] Krishna Singh v. Mathura Ahir, AIR 1980 SC 707
[44] *Supra* note. (Shirur Mutt case)
[45] *State of Bombay* v. *Narasu*, AIR 1952 Bom. 84
[46] *Syedna Taher Saifuddin Saheb* v. *State of Bombay*, AIR 1962 SC 853

Further, by virtue of Article 25 (2) (b), the State can throw open Hindu religious institutions of a public character to all sections of the Hindus. Thus, when the vision of the founding fathers of the Constitution to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Article 17, the protection under Article 25 extends to a guarantee for rituals and observances, ceremonies and modes of worship, which are integral parts of religion[47].

Thus, as a whole, the protective umbrella of Article 25 of the Constitution does not cover economic, financial, political or other secular activities associated with religion nor it prevents the State from bringing about social welfare and reform. And even the essential religious beliefs, convictions and practices, which may form an integral part of religion, are also subject to public order, morality and health.

3. **Whether 'right to conversion' is envisaged under Article 25?**

One of the most controversial substantial questions associated with freedom of religion for the last several decades in India is, whether 'right to freedom of conversion' is concomitant of 'right to freedom of religion' envisaged in Article 25 of the Constitution.

Unlike some of the International Instruments[48], which expressly recognize freedom of conversion, there is no express provision referring to the 'conversion' in the Constitution of India[49]. Yet, the plain reading of Article 25 implies that the 'freedom of conversion' emerges from 'freedom of conscience'.

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[47] *N. Adithayan* v. *Travancore Devaswom Board*, (2002) 8 SCC 106

[48] See for example, Article 18 of UDHR; Article 18 of ICCPR, 1966. Right to Conversion, under these instruments, connotes individual right of a person to quit one religion and embrace another voluntarily. They do not envisage right of a person to convert another to one's own religion.

[49] However, it does not follow that the issue of conversion had never been given a thought in the process of making Indian Constitution. Perhaps it is one of the most controversial issues that were deliberated upon in the Constituent Assembly. The report of the Sub-committee on fundamental rights headed by J.B. Kripalani submitted to the Chairman of the Advisory Committee Sardar Vallabhai Patel on April 16, 1947 contained two provisions, one to the effect that: "no person under the age of 18 shall be made to join or profess any

Article 25 of the Constitution guarantees, subject to limitations, right to freedom of conscience and right freely to profess, practice and propagate religion. In our constitutional scheme 'freedom of conscience' is an edifice on which the consequential right to profess, practice and propagate religion has been built. 'Freedom of conversion' emerges directly from 'freedom of conscience' and consequential 'right to profess', but not from 'freedom to propagate'.

By 'freedom to propagate' one has a liberty, within limits, to transmit or spread one's religion by exposition of its tenets or his own ideas and convictions. Such, an exposition of religious tenets and ideas may sometimes lead to conversion. But conversion as a matter of right does not emerge from freedom to propagate. The reason is obvious because no one is duty bound to convert oneself at the instance of other person. Not even to attend religious instructions or propagations. Any compulsion to attend religious instructions or to convert any person, against his own wishes, violates, apart from other rights, freedom of conscience itself, which is the basis of freedom of religion. Thus, no one can claims to have 'right to convert other' as a necessary corollary of 'freedom to

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religion other than the one in which he was born or be initiated into any religious order involving a loss of civil status", and another to the effect that: "Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law and the exercise of such coercion shall be an offence" [See B. Shiv Rao, *The Framing of India's Constitution*, Vol. II, Page 173 – 174]. Members such as K.M. Munshi, F.R. Antony, D.R. Thakur, Rev. J.J.M. Nicholas-Roy, D.N. Dattu et al., have expressed different opinion over the issue of retaining such provision as a part of fundamental right. The issue of conversion of minor has caused much fury in the course of deliberations. (See *Ibid*. Vol. III. Pages, 488 – 503). On persistent demand by some of the members, the matter was again refereed to Advisory Committee for reconsideration. Upon such a reconsideration, the Advisory Committee opined that: "It seems to us on further consideration that this clause enunciates a rather obvious doctrine which it is unnecessary to include in the Constitution and we recommend that it is dropped altogether" [See *Ibid*. Vol. II, Page 305]. The matter again came up for consideration before the Constituent Assembly on 30th August 1947. Speaking on the subject Sardar Patel said that the Advisory Committee came to the conclusion that it is not necessary to include this as a fundamental right. It is illegal under the present law and it can be illegal at any time. Some of the Members, even thereafter, advocated that absence of a provision in this regard may encourage people to go in for large scale conversions to bring about increase in the population of particular sections and once again efforts may be made to further divide this country [See *Ibid*. Vol. V, Page 364]. Finally Sardar Patel in clear terms expressed that "there is no difference of opinion on the merits of the case that forcible conversion should not be or cannot be recognized by law". But the same cannot become a justifiable fundamental right. There after, the Constituent Assembly adopted the motion that the clause should not be put in the Fundamental Rights. The idea behind deletion of such a provision from the Constitution was that the issue of forced conversion or conversion by undue influence or fraud could very well be dealt with by an ordinary legislation and there is no need to make provisions in the Constitution for every conceivable things.

propagate' religion. Freedom of propagation should always be exercised in a manner commensurate with the freedom of conscience of persons following other religion. What is to be remembered and honoured is that the Article 25 guarantees freedom of religion to every person and not to the followers of any one particular religion.

On the other hand, if a person by exercise of his 'free conscience' chooses to convert himself to some other religious faith and starts professing it by openly acknowledging it, the State cannot prevent him. To do so would also amount to infringement of 'freedom of conscience' and 'right freely to profess' religion.

Thus, though, Article 25 (1) of the Constitution of India implies freedom of conversion from one religious faith to another by exercise of free conscience or free will, the very idea that the right to conversion emerges from freedom to propagate religion is a misconceived one. Any attempt to endorse such an idea would amount to giving primacy to the rights of one religious group over the other, which indeed is unsecular and undemocratic. The apex court, when confronted with such a question, in *Rev. Stainislaus* v. *State of Madhya Pradesh*[50], has observed:

> "What Article 25 (1) grants is not the right to convert another person to one's own 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"[51].

The above said proposition of the apex court is in consonance with UDHR and ICCPR, which recognize 'freedom of conversion', to which India is a party. Thus, the Constitution of India, too, recognizes 'freedom of conversion' as an individual right of a person to quit one religion and embrace another voluntarily. But, under our

[50] *Supra* note.
[51] *Ibid.* Para 19

constitutional scheme, by no stretch of imagination, the right to convert another can be derived.

4. Legislative Competence to Regulate Freedom of Religion:

As mentioned above, the protective umbrella of Article 25 is very wide, it covers not only freedom of conscience and belief, but also to profess, practice and propagate religion. However, the constitutional protection envisaged under Article 25 is not absolute. Even the essential belief, convictions and practices, which are integral part of religion, are also subject to Public order, morality and health. The power of the State to regulate religious freedom on those grounds has, thus, been reserved under the Constitution.

Under our constitutional scheme, the power to legislate has been clearly demarcated between the Union and the State legislature. Article 245 deals with territorial extent of the application of laws made both by Parliament and by the Legislatures of the State. Article 246 of the Constitution, which is pertinent in the context, speaks about subject matter jurisdiction of both Parliament and State legislatures to make laws. Various subject matters of legislation have been enumerated in three different lists of Schedule VII. By virtue of Clause (1) of Article 246, the Parliament has got power to legislate on the subject matter enumerated in List – I viz., Union List. Under Clause (3) State legislatures have exclusive power, subject to Clause (1) and (2), to make laws with respect to any of the matter enumerated in List – II i.e., State List. Clause (2) of Article 246 authorizes both Union and State Legislature to make laws on all the entries enumerated in List – III i.e., Concurrent List. However, in case of conflict between Union and State legislations, by virtue of Article 254, Law made by Union shall prevail. Thus, under the scheme, the Parliament has exclusive/superior power to legislate on any of the entries in Schedule VII, except those enumerated in List – II. Thus, if any particular matter falls within the exclusive competence of the States, that represents the prohibited field for the Centre.

Though, the Indian Constitution contains a very elaborate scheme of distribution of legislative powers in three lists, the subject matter 'religion' is not enumerated in any of the lists. The absence of relevant legislative entry does not mean that the profession, practice and propagation of religion or any other activities predominantly associated with religion cannot be regulated in any manner. Under scheme of distribution of legislative power, the Constitution has devised 'residuary legislative power' and conferred it on the Union Legislature to take care of such a situation. The scope of residuary power is very wide. The only condition precedent to exercise residuary legislative power is to clearly establish the legislative incompetence of the State legislature[52]. Thus, by virtue of Article 248 read with entry 97 of List – I of Schedule – VII, the Parliament can, subject to the entries in List – II, enact a comprehensive legislation governing the various facets of 'religion'. It is needless to mention that even the issue of conversion from one religion to another may well be dealt with by Union legislation.

However, it is to be noted that the 'freedom of religion' guaranteed under Article 25 is not absolute, it is made subject, *inter alia*, to public order, morality and health. Two relevant entries i.e., 'public order' and 'public health', to which the freedom of religion is subjected, have been enumerated, respectively, in entry 1 and entry 6 of List – II of Schedule VII. By virtue of Clause (2) of Article 246, as mentioned above, it is the State legislature, subject to clause (1) and (2), which has the exclusive power to make laws, either in the interest or for the maintenance of public order and public health. It is the well settled principle of interpretation of legislative entries that "none of the entries should be read in a narrow, pedantic sense; that the 'widest possible' and 'most liberal' construction be put on each entry, and that each general word in an entry should be held to extend to all ancillary or subsidiary matters which can fairly and reasonable be said to be comprehended in it"[53]. Thus, the State legislature has got power to make laws to regulate any activities, which, in the opinion of such legislature, have tendency to disturb public order or affect public health. If the freedom to profess, practice and propagate religion is exercised in a manner, which is likely to disturb the public order or affects the

[52] *International Tourist Corporation* v. *State of Haryana*, AIR 1981 SC 774 at. 778
[53] *Hans Muller* v. *Superintendent, Presidency Jail, Calcutta*, AIR 1955 SC 376; *Navinchandra Mafatlal* v. *Commissioner of Income Tax, Bombay*, AIR 1955 SC 58.

public health, the State legislature is competent to enact the law to regulate the same. As long as such State legislation, in pith and substance, relates to the preservation of public order or protection of public health, they are *intra vires*.

Thus, both Union Legislature, by virtue of residuary legislative power under Article 248 read with entry 97 of List – I, and the State legislature, only for the purpose of preservation of public order and protection of public health, are competent to make laws for the purpose of regulation of activities associated with religion.

CHAPTER III

ANTI CONVERSION LAWS IN INDIA: AN ANALYSIS IN THE LIGHT OF CONSTITUTIONAL GUARANTEE OF FREEDOM OF RELIGION

Anti-conversion laws were in operation in several princely states before independence. After independence many states enacted such laws with a view to prevent conversion by use of 'force', 'fraud' or allurement/inducement. The former do not call for a detailed analysis whereas the latter need deeper examination.

Anti-conversion Laws of Pre-Independence era:

British India has had no anti-conversion laws probably because the British themselves professed a proselytizing religion. However, many princely states had enacted such laws. Prominent among them were Rajgrah State Act, 1936, the Patna freedom of Religion Act, 1942, Surguja State Apostasy Act, 1945 and the Udaipur State Anti Conversion Act 1946. Similar legislations were promulgated in *Bikaner, Jodhpur, Klahanadi* and *Kota etc,*. Specifically against conversion to Christianity.

The first anti conversion law was the Rajgrah State conversion Act, which was enacted in 1936. This enactment banned the preaching of Christianity and prohibited the entry of Christian missionaries in the former Kingdom of *Rajgrah, Jodhpur, Surguja etc*. of *Chhotanagpur* areas. The Surguja State Apostasy Act, 1945 was the second enactment to prohibit 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. Similarly the Udaipur State Conversion Act, 1946 required all conversions from Hindu religion to other faiths to be registered officially. The basic purposes of all these laws were to insulate Hindus from the onslaught of Christian missionary activities. Most of these laws required individual converts to register their conversion with specified government agencies. Those who secured conversion of a person by fraud, misrepresentation, coercion, intimidation, undue influence or the like, were made liable to punishment. Minors could not have been

converted and children of convert would not automatically get their parents new faith. Conversion to another religion was thus legally sought to be regulated by the Hindu rulers of princely states[54].

Anti-Conversion Laws in Post Independent India:

During the process of Constitution making, there was a lot of sound and fury in the Constituent Assembly over the issue of religious conversion. Though, there was no difference of opinion on the merits of the case that forcible conversion should not be or cannot be recognized by law, it was strongly felt not to make an express provisions in the Constitution for all such conceivable things, which could well be regulated by an ordinary legislation[55].

Since the adoption of the Constitution of India, many attempts were made to enact a central legislation to regulate religious conversions in India. In 1954, Mr. Jethalal Harikrishna Joshi, Member of the then ruling party moved in Parliament the 'Indian Converts (Regulation and Registration) Bill, 1954' 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 the then Prime Minister of India[56]. In 1960 another Bill was introduced in Parliament viz., the

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[54] Faizan Mustafa's, '*Conversion: Constitutional and Legal Implications'*, Kanishka Publishers, (2003) at. 108 & 109

[55] See, *Supra* note. 47, Chapter - II.

[56] Reference can be made to the important provisions of the Bill, which were as follows:

2. Definitions. – In this Act, unless the context otherwise require:-

I. "convert" means a person who has voluntarily relinquished his relation by birth and adopted another religion and includes a re-convert; and cognate expressions shall be construed accordingly;

II. "licensing authority" means the District Magistrate for the area comprised in his District;

III. "licensee" means a person to whom a license has been granted under section 8;

IV. "prescribed" means prescribed by rules made under this Act;

V. "religion by birth" means-

(a) the religion which, at the time of birth of any person,-

(i) the parents of such person were profession, or

(ii) the father of such person was profession if the parents were professing different religions, or

(iii) the mother of such person was professing if such person is illegitimate, or

(b) the religion in which a person is brought up by the person who or institution which looked after the welfare of such person of such person, neither of whose parents is known.

3. Method of becoming convert. - No person shall become a convert, without making a declaration to that effect in such manner as may be prescribed or without performing religious rites or ceremonies with the aid of persons possessing license granted by the licensing authority for this purpose.

4. Notice by convert. - (1) Any person intending to become a convert as provided in section 3 shall give notice thereof to the licensing authority in such form as may be prescribed.

(2) The licensing authority shall keep all notices given under sub-section (1) with the records of his office and shall also forth-with enter a true copy of every such notice in a book prescribed for that purpose to be called the Convert Notice Book and such book shall be open for inspection at all reasonable times without fee by every person desirous of inspecting the same.

(3) The licensing authority shall cause every such notice to be published immediately by affixing a copy thereof to some conspicuous place of his office and in such other manner as may be prescribed.

(4) After the expiration of thirty days from the date on which such notice has been furnished under sub-section (3), the intended conversion may take place.

5. Registration of converts. - Every convert and licensee shall, within three months of the date on which conversion takes place, furnish to the licensing authority of the area in which the convert was residing at the time of his conversion, such particulars as may be prescribed, so as to enable that authority to enter the name of the convert in the register to be maintained for the purpose.

6. Register of records concerning converts.- Every licensing authority shall maintain a register in the prescribed form setting forth the following particulars concerning a convert and publish annually a list of converts in such manner as may be prescribed:-

1. Name of the person before conversion.
2. Name of the person after conversion, if the name is changed.
3. Age, sex and occupation.
4. Religion by birth.
5. Place of domicile.
6. Place and date of conversion.
7. Religion adopted.
8. Name of the licensee.
9. Such other particulars as may be prescribed.

7. License for effecting conversion. - No person shall perform any religious rite or ceremony, or do any other act, for the purpose of converting any minor, or any other person who is not a minor without obtaining a written license from the licensing authority.

8. Application for license. - (1) An application for obtaining a license under section 7 shall be made in writing to the licensing authority in such form, and containing such particulars, as may be prescribed.

(2) On receipt of an application made under sub-section (1), the licensing authority may, after making such inquiry as may be considered necessary, grant a license in the prescribed form, subject to such terms and conditions as may be prescribed and as it may think fit to impose. The licensing authority may, for reasons to be recorded in writing, refuse to grant the license to any person.

(3) A license granted under sub-section (2) shall remain in force for two years only, unless it is renewed by the licensing authority on an application made to it in the prescribed form at least sixty days before the date of expiration of such license:

Provided that if an application for renewal of license is made within the time fixed, the license shall continue to be in force until orders are passed on such application.

(4) The licensing authority may, after giving notice to the licensee and making such inquiry as may be considered necessary, revoke, suspend or cancel any license granted under sub-section (2) or renewed under sub-section (3) if it is satisfied that the terms and conditions of the license are not property complied with.

(5) Any person who is aggrieved by the order of the licensing authority, refusing to grant or renew or revoking, suspending or canceling the license may, within sixty days from the date of communication of such order, appeal to Government whose decision shall be final.

9. Penalty. - (1) Any person who contravenes, or abets the contravention of the provisions of section 3, sub-sections (1) and (4) of section 4 or section 7, shall be punishable with fine which may extend to three hundred rupees.

(2) Any person who contravenes the provision of section 5 or rules made there under shall be punishable with fine which may extend to two hundred rupees and to a further fine of ten rupees for each day on which such contravention continues.

(3) Any person who contravenes any of the terms and conditions of license granted or renewed under the provision of this Act or of any of the rules made there under shall be punishable with fine which may extend to one hundred rupees, in addition to the cancellation of his license.

1. **Offences cognizable and bailable. -** Notwithstanding anything contained in the Code of Criminal Procedure, 1898, offences under this Act shall be cognizable and bailable.
2. **Rules**. - (1) The Government may make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision such rules may provide for all or any of the following matters, namely:-

(i) manner of declaration to be made by a person desiring to become a convert;

'Backward Communities (Religion) Protection Bill', which aimed at checking conversion of Hindus to "non-Indian religions" which, as per the definition in the Bill, included Islam, Christianity, Judaism and Zoroastrianism. It was soon rejected by Parliament for its apparent affront on specific religious faiths. Again in 1979, the house had witnessed introduction of 'Freedom of Religion Bill', by O.P. Tyagi, seeking official curbs on inter-religious conversion, which was opposed among others by the Minorities Commission[57]. Thereafter no such attempts were made in this direction to enact central law to regulate religious conversion.

However, in some of the States due to the overwhelming presence of the problem and persistent demand to ban conversion by force, fraud or allurement, the issue had been given serious thought. The State of Madhya Pradesh was first in order, which appointed a committee called 'Christian Missionary Activities Committee' on April 16, 1954 headed by Dr. Bhavani Shankar Niyogi, former Chief Justice of the Nagpur High Court to have a thorough inquiry made into the whole issue through an impartial committee[58]. Mr. K.C. George, a Professor in the Commerce College at Wardha, represented the Christian Community. The Report of the Committee (called as Niyogi Committee Report) was published by the Government of Madhya Pradesh in 1956[59].

(ii) form and manner of publication of notice;
(iii) particulars to be furnished to the licensing authority by a convert or a licensee;
(iv) form of register to be maintained, and the manner of annual publication of a list of converts by the licensing authority; and
(v) form of, and particulars to be entered in, an application for license.

[57] *Supra* note. 1 at. 109

[58] The Press note issued by the Government of Madhya Pradesh, while notifying the appointment of the Committee stated that: 'Representations have been made to Government from time to time that Christian Missionaries either forcibly or through fraud and temptations of monetary and other gain convert illiterate aboriginals and other backward people thereby offending the feelings of non-Christians. It has further been represented that Missions are utilized directly or indirectly for purposes of extra-religious objectives. As agitation has been growing on either side, the State Government consider it desirable in the public interest to have a thorough inquiry made into the whole question through an impartial Committee'.

[59] The Report exposed the conversion activities of Christian Missions and Missionaries in Madhya Pradesh in the years immediately preceding and after independence. The Committee came to the following conclusions:

i. The aim of many of the Christian Missions is to resist the progress of national unity;
ii. Their aim is to emphasize the difference in the attitude toward the principle of co-existence between India and America;
iii. Their aim is to take advantage of the freedom accorded by the Constitution of India to the propagation of religion and to create a Christian Party in the name of Indian democracy on

Relying on the recommendations of the Niyogi Committee, the State of Madhya Pradesh had enacted Madhya Pradesh Dharma Swantantraya Adhiniyum, 1968. By then the State of Orissa had passed a similar legislation called Orissa Freedom of Religion Act, 1967. Subsequently many other States have followed the suit. Similar legislations of other states are Chattisgarh Freedom of Religion Act, 1968 (The Madhya Pradesh Act was adopted by the State of Chattisgarh after its formation); Arunachal Pradesh Freedom of Religion Act, 1978; Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002; Gujarat Freedom of Religion Act, 2003; Rajasthan Dharma Swatantraya (Freedom

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lines of the Muslim League ultimately to make out a claim for a separate State, or at least to create a 'militant minority';

iv. The bulk of the foreign money received ostensibly for educational and medical institutions is spent on proselytism. Most of the amount is utilized for creating a class of professional proselytizers, both foreign and Indian. There is a great disparity between the scales of salaries and allowances paid to foreign Missionaries on the one hand and to their native mercenaries on the other';

v. The Committee also noted various methods of propagating Christianity. Many Missionary publications attacked Hindu Idol Worship in rather offensive terms.

vi. Evangelization in India appears to be part of the uniform world policy to revive Christendom for re-establishing Western supremacy and is not prompted by spiritual motives. The objective is to disrupt the solidarity of the non-Christian societies, and the mass conversion of a considerable number of Adiwasis with this ulterior motive is fraught with danger to the security of the State. The Christian Missions are making a deliberate and determined attempt to alienate Indian Christian Community from their nation. It was made clear by the Niyogi Committee that the Christian Missions worked in such a way as to provide a clear proof that religion was being used for political purposes. Evangelization was not a religious philosophy but a force for politicization. The Church in India was not independent but was accountable to those who paid for its upkeep. That is why the umbrella concept of 'Partnership in Obedience' covered the flow of foreign finances to the Church and its Missions in India.

Against the above background, the Niyogi Committee made the following landmark recommendations:

a) Those Missionaries whose primary object is proselytism should be asked to withdraw and the large influx of foreign Missionaries should be checked and regulated;

b) The use of medical and other professional services as a direct means of making conversions should be prohibited by law;

c) Attempts to convert by force or fraud or material inducements, or by taking advantage of a person's inexperience or confidence or spiritual weakness or thoughtlessness, or by penetrating into the religious conscience of persons for the express purpose of consciously altering their faith, should be absolutely prohibited;

d) The Constitution of India should be amended in order to rule out propagation by foreigners and conversions by force, fraud and other illicit means;

e) Legislative measures should be enacted for controlling conversions by illegal means;

f) Rules relating to registration of Doctors, Nurses and other personnel employed in hospitals, should be suitably amended to provide a condition against evangelistic activities while rendering professional service;

g) Circulation of literature meant for religious propaganda without approval of the State Government should be prohibited. (Extracted from V. Sundaram's, *'Lurid Drama of Proselytism after 1947 – III'*, at. http://www.newstadynet.Com/2006sud/06apr/2904 ss1.htm, visited on 01:05:2007)

of Religion) Act, 2006; and recently, the State of Himachal Pradesh too had passed Himachal Pradesh Freedom of Religion Bill, 2006, which is still pending for Governor's assent.

Thus, eight of twenty-eight States in India have enacted laws regulating Conversions in their respective jurisdictions. However, the Tamil Nadu legislation has been repealed in 2006. The State of Madhya Pradesh had introduced few changes to the 1968 Act through Madhya Pradesh Dharma Swantantraya (Sanshodhan) Vidheyak, 2006. The State of Chattisgarh had recently passed a bill to amend Chattisgarh Freedom of Religion Act, 1968, which is yet to receive the consent of the Governor.

Important provisions of all these legislations have been analyzed in the light of relevant constitutional provisions hereunder:

1. Orissa Freedom of Religion Act, 1967[60]:

The State of Orissa had enacted the Orissa Freedom of Religion Act, 1967 in the Eighteenth Year of the Republic of India in order to provide legislative framework for prohibition of conversion from one religion to another by the use of force or inducement or by fraudulent means and for other incidental matters. The main object of the Act is to check such activities, which, besides creating various maladjustments in social life, also give, rise to problems of law and order[61]. The Act extends to the whole of the State of Orissa[62]. It contains 7 sections in all. Section 1 of the Act deals with short title, extent and commencement of the Act. The remaining provisions of the Act are very pertinent in the context of the study. They are as follows:

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[60] Act No. 2 of 1968. It had received the assent of the Governor on January 9, 1968 and published in Orissa Gazette, Ext.,No. 28, Dated: January 11, 1968.

[61] See, **object:** Conversion in its very process involves an act of undermining another's faith. The process becomes all the more objectionable when this is brought about by recourse to methods like force, fraud, material inducement and exploitation of one's poverty, simplicity and ignorance. Conversion or attempts to conversion in the above manner, besides creating various maladjustments in social life, also give rise to problems of law and order. It is, therefore, of importance to provide for measures to check such activities, which also indirectly impinge on the freedom of religion. The Bill seeks to achieve the above objectives. [*vide* Statement of Objects and Reasons, Orissa Gazette, Ext. No. 1592, Dated December 13, 1967]

[62] Sec. 1 (2)

Section 2. Definitions: **In this Act unless the context otherwise requires:**

(a) "Conversion" means renouncing one religion and adopting another;

(b) "Force" shall include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication;

(c) "Fraud" shall include misrepresentation or any other fraudulent contrivance;

(d) "Inducement" shall include 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;

(e) "Minor" means a person under eighteen years' of age.

In this definitional clause, the expressions "conversion", "fraud", and "minor" have been defined precisely and are more or less unambiguous. The definitions of the words "force" and "inducement" are, however, considered to be ambiguous. It is said that they are open to wide interpretations, which render the legislation liable to be misused. It is the use of the words 'divine displeasure' in the definition of 'force', which was objected.

It is submitted that the expression 'divine displeasure' is not novel. There are provisions in the Indian Penal Code, 1860[63] as well as in Representation of People Act, 1951[64], where this expression is used without defining it. In a number of cases the apex court has considered the expression to decide whether a particular act would amount to 'divine displeasure' or not[65]. Though the Court has not given any precise definition to the expression, each time it has decided the issue in the light of fact and circumstances of the case. Such an approach of the Court has not been subjected to any scrutiny. Nor has its interpretation led to any controversy. Thus, it is not proper to say that the expression 'divine displeasure' is very vague only in this context so as to render the law liable to be abused. If it is vague here, it is vague else where also. Precision in the use of any expression in statutes is always desirable, but mere lack of precision would not automatically result in the abuse of law. It is more so when we have independent judiciary to decide such issues.

[63] See for example, Section 177 (C) and Section 508

[64] Section 122 (2)

[65] See for example, Lakhi Prasad v. Nathmal Dokania, AIR 1969 SC 583; Baburao Patel v. Dr. Zakir Hussain, AIR 1968 SC 904; etc.,

Further, it was also feared that the definition of the expression 'inducement' is very wide and that it can also be used against charitable activities undertaken by religious groups, which could be portrayed as a form of temptation to convert. The definition of the term 'inducement' under the Act is inclusive one. It has two parts. Part one states, *"it shall include the offer of any gift or gratification, either in cash or in kind"*. Part two states, *"it shall include the grant of any benefit, either pecuniary or otherwise"*. There is reference to 'monetary benefit' twice in the definition both in the first part as well as in the second part. It appears that the first part of the definition is sufficient to include all forms of inducement, thus, the second part could have been avoided altogether. The inclusion of second part particularly adds to the vagueness of the definition. However, in view of Article 26 of the Constitution, which empowers religious denominations to establish and maintain institutions even for charitable purposes, the definition should be given very restrictive meaning so as to exclude purely charitable activities carried on by any religious denominations or any section thereof so long as their prime motive is not conversion. Otherwise it would offend the spirit of Article 26 of the Constitution.

Section 3. Prohibition of forcible conversion: **No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.**

Section 3 is one of the cardinal provisions of Act. It clearly mandates that no person shall convert or makes any attempt, either directly or otherwise, to convert any person or abets any other person to convert any person by use of force, inducement or through fraudulent means. Thus, under Section 3 of the Act following acts by use of *'force'*, *'inducement'* or by *'fraud' are* strictly prohibited:

(i) Conversion of any person;
(ii) Any direct or indirect attempt to convert any person;
(iii) Abetment to convert any person.

The definition appears to be very clear in view of the objective of the statute, which is to prevent conversion, by use of force, fraud or inducement. In the present form it stands the test of Article 25.

Section 4. Punishment for contravention of the provisions of Section 3:**Any person contravening the provisions contained in Section 3 shall, without prejudice to any civil liability, be punishable with imprisonment of either description which may extend to one year or with fine which may extend to five thousand rupees or with both.**

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes the punishment shall be imprisonment to the extent of two years' and fine up to ten thousand rupees.

Section 4 prescribes punishment for commission of any act prohibited under Section 3. The provision, while laying down a sentencing guideline by prescribing maximum punishment, has left sufficient space for the Court to exercise discretion in awarding punishment. The punishments prescribed under the provision are:

(i) Imprisonment of either description which may extend to one year; or
(ii) Fine which may extend to five thousand rupees; or
(iii) Both Imprisonment as well as fine subject to the maximum limit prescribed.

The provision makes it very clear that the punishment prescribed under the act for contravention of Section 3 is without prejudice to the civil liability that could be imposed on such person for commission of any such acts. Thus, the provision prescribes common punishment for conversion, attempt to conversion as well as for abetment to conversion by use of force, inducement or fraud without any distinction. Direct and indirect attempt to convert and abetment to convert any person through any of the above said means are equally punishable as conversion through such means.

However, *Proviso* to Section 4 doubles the quantum of punishment for any act of conversion or attempt to conversion or abetment to conversion in respect of a minor, a woman or a person belonging to Scheduled Castes and Scheduled Tribes. Further, the

discretion of the Court in awarding the punishment had been curtailed to some extent since both imprisonment and fine are mandatory and not alternative.

It appears that the different punishments have been prescribed in case of commission of an offence in respect of a minor, a woman or a person belonging to Scheduled Castes and Scheduled Tribes keeping particularly in view the vulnerability of such groups. Further more, such a special provision can reasonably be justified in view of Article 15 (3) and (4) of the Constitution. Thus, there is nothing in the provision, which makes it *ultra vires* the Constitution. It may however be said that the commission of the act, attempt and abetment of the act are treated alike for punishment.

Section 5. Offence to be cognizable: **An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.**

Section 5 of the Act deals with two things. It declares the nature of offence under this Act as cognizable. Secondly, it mandates that offence under the Act shall not be investigated by an officer below the rank of an Inspector of Police.

This section signifies the importance the legislature attaches to prohibition of conversion by use of force, fraud or allurement. It is treated as a serious offence in as much as it has been prescribed that only a senior officer is authorized to investigate.

Section 6. Prosecution to be made with the sanction of District Magistrate: **No prosecution for an offence under this Act shall be made without the sanction of the Magistrate of the District or such other authority, not below the rank of a Sub-divisional Officer, as may be authorized by him in that behalf.**

Section 6 makes sanction of a District Magistrate or such other authority, not below the rank of a Sub-divisional Officer, authorized by him in that behalf, a condition precedent to prosecute the offence under the Act. Section 6 is a legislative safeguard against the possible misuse or abuse of the provisions of the Act.

Section 7. Power to make rules: **The State Government may make rules for the purpose of carrying out the provisions of this Act.**

Section 7 delegates the rule making power to the State Government. The provision does not require the Rules so made to be laid before the legislature for its consideration and approval. However, since the *vires* of the Rules so made are always open to be challenged before the Court of law[66], Section 7 cannot be said to be *ultra vires* the Constitution.

2. Madhya Pradesh Dharma Swantantraya Adhiniyum, 1968[67]: [As amended by the Madhya Pradesh Dharma Swatantrya (Sanshodhan) Adhiniyum, 2006]

Pursuant to the recommendations of Justice Niyogi Committee, the State of Madhya Pradesh had enacted Madhya Pradesh Dharma Swantantraya Adhiniyum, 1968 in the nineteenth year of Republic of India. The Act was enacted subsequent to the enactment of similar legislation in Orissa. The main object of the Act was similar to that of the Orissa Freedom of Religion Act, 1967[68]. The Act was recently amended in the year of 2006 by the Madhya Pradesh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006. The important provisions of the Act as amended in 2006 are as follows:

***Section 2. Definitions*: In this Act unless the context otherwise requires:**
(a) "Allurement" means offer of any temptation in the form of:
(i) Any gift or gratification either in cash or kind;
(ii) Grant of any material benefit, either monetary or otherwise;
(b) "Conversion" means renouncing one religion and adopting another;
(c) "Force" shall include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication;
(d) "Fraud" shall include misrepresentation or any other fraudulent contrivance;
(e) "Minor" means a person under eighteen years of age.

The definitions of the words 'conversion', 'force', 'fraud' and 'minor' under the Act are similar to the definitions in Orissa Act both in substance as well as in form. However, in this Act, the term 'allurement' is used in place of 'inducement'. The definition of allurement given under the Act is similar to that of the one given for inducement under the Orissa Act except that the term 'material' is used in the second part of the definition,

[66] See for example, *Satya Ranjan Majhi* v. *State of Orissa* [(2003) 7 SCC 439], where Rule 4 and 7 were challenged as *ultra vires*. However, the Court upheld them as valid.
[67] Act No. 27 of 1968. It had received the assent of the Governor on October 19, 1968.
[68] Refer to the statement of object and reasons of M.P. Act.

which is absent in Orissa Act. However, it appears that the specific incorporation of the word 'material' would not make difference in the scope and ambit of the definition since the first part of the definition itself is wide enough to include all forms of inducement or allurement.

It is submitted that for the reasons stated above for Section 2 of the Orissa Act, the definition of allurement in this Act may also be modified to bring it strictly in conformity with Article 26 of the Constitution.

Section 3. Prohibition of forcible conversion: **No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by allurement or by any fraudulent means nor shall any person abet any such conversion.**

Section 3 of the Act prohibits conversion, attempt to conversion and abetment to conversion by use of force, allurement or by any fraudulent means. This provision is fully identical, both in form as well as in substance, with Section 3 of Orissa Act.

Section 4. Punishment for contravention of the provisions of Section 3: **Any person contravening the provisions contained in Section 3 shall, without prejudice to any civil liability, be punishable with imprisonment of either description, which may extend to one year or with fine, which may extend to five thousand rupees or with both;**

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes the punishment shall be imprisonment to the extent of two years and fine up to ten thousand rupees.

Section 4 of the Act is also fully identical, both in form and in substance, with Section 4 of the Orissa Act. Thus, for the reasons stated therein, the provision is said to be *intra vires* the Constitution.

[69]**[*Section 5. Declaration before conversion and prior intimation of ceremony:* (1) Any person intending to convert his religion shall give a declaration before the District Magistrate or before an Executive Magistrate specifically authorized by the District**

[69] As substituted by Section 2 of the Madhya Pradesh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006

Magistrate of the concerned district, prior to such conversion to the effect that he intends to convert his religion on his own will.

(2) The concerned religious priest, who intends to convert any person from one religious faith to another, either by performing himself the ceremony necessary for such conversion or by taking part directly or indirectly in such ceremony, shall intimate the date, time and place of the ceremony in which conversion shall be made along with the name and address of he person to be converted, to the concerned District Magistrate one month prior to the date of said ceremony, and the intimation shall be in such form and shall be delivered or caused to be delivered by the priest to the concerned District Magistrate in such manner as may be prescribed.

(3) On receiving the intimation under sub-section (1) and (2), the District Magistrate shall inform the details of proposed conversion to the concerned Superintendent of Police, who shall ascertain through the officer in-charge of the concerned police station regarding the objections, if any, to the proposed conversion by local inquiry and intimate the same to the District Magistrate.

(4) Whoever fails to comply with the provisions contained in sub-section (1), shall be punishable with fine, which may extend to one thousand rupees.

(5) Whoever fails to comply with the provisions of sub-section (2), shall be punishable with imprisonment, which may extend to one year or with fine, which may extend to five thousand rupees or both]

The present section is substituted for the old section 5 of the 1968 Act[70]. According to the old provision, any person who had performed the necessary ceremony of conversion as a Priest or had taken part in such ceremony, either directly or indirectly, was under an obligation to intimate the District Magistrate subsequent to such ceremony within the time limit prescribed for the purpose. The failure, without sufficient cause, to comply with it was made punishable with imprisonment, which may extend to one year or with fine, which may extend one thousand rupees or with both.

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[70] Section 5 before amendment read as follows:
Intimation to be given to District Magistrate with respect to conversion: (1) 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.
(2) If any person fails without sufficient cause to comply with the provisions contained in sub-section (1), he shall be punished with imprisonment, which may extend to one year or with fine, which may extend to one thousand rupees or with both.

The present section, as amended in 2006, had introduced some major changes into the Act. The Provision makes it mandatory for any person intending to convert from his religion to any other religion or religious faith to declare, before the District Magistrate or an Executive Magistrate specifically authorized by the concerned District Magistrate, that he intends to convert his religion on his own will. Such a declaration has to be made prior to actual conversion. Any failure to make such prior declaration is made punishable with fine, which may extend to one thousand rupees.

Unlike the earlier provision where religious priest was expected to intimate the District Magistrate subsequent to the conversion ceremony, under the present Act, it is mandated that religious priest who performs the conversion ceremony or takes part in it, either directly or indirectly, shall intimate the date, time and place of the ceremony in which conversion shall be made along with the name and address of the person to be converted, to the concerned District Magistrate one month prior to the date of such ceremony. Any failure to give such prior intimation with necessary details is made punishable with imprisonment, which may extend to one year or with fine, which may extend to five thousand rupees or with both.

Further Clause (3) of Section 5 imposed an obligation on the District Magistrate to inform the Superintendent of Police the details of the proposed conversion, who shall in turn, ascertain through an officer in charge of the concerned police station having jurisdiction over the local area, any objections, if any, to such conversion and report back to the District Magistrate concerned.

Thus, section 5 of the Act prescribes a regulatory mechanism to ensure that no conversion by use of force, allurement or by any fraudulent means takes place. Thus, even though the person who is intending to convert his religion by exercise of his free conscience without any compulsion or allurement is also expected to make prior declaration of the same, the provision cannot be said to be *ultra vires* the Constitution. The provision has not prohibited conversion, but it is regulating the same in order to confirm that the person is converting himself out of his own will. In the same way the

obligation imposed on the priest to give intimation to the District Magistrate is also justifiable.

Section 6. Offence to be cognizable: **An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.**

Section 6 of the Act is identical, both in form and substance, with Section 5 of the Orissa Act. Thus, for the reasons stated therein, Section 6 cannot be considered as *ultra vires*.

Section 7. Prosecution to be made with the sanction of District Magistrate: **No prosecution for an offence under this Act shall be made without the sanction of the Magistrate of the District or such other authority, not below the rank of a Sub-divisional Officer, as may be authorized by him in that behalf.**

This provision is also fully identical, both in form and substance, with Section 6 of the Orissa Act.

[71][*Section 8. Power to make rules:* (1) The State Government may make rules for the purpose of carrying out the provisions of this Act;

(2) All rules made under this section shall be laid on the table of the State Legislative Assembly]

Clause (1) of Section 8 is identical with section 7 of the Orissa Act. Clause (2) of the Act provides legislative scrutiny of the Rules made by the State Government, which provision is not there under the Orissa Act.

<u>Challenges to the Constitutionality of Orissa and Madhya Pradesh Legislations</u>

The Constitutional validity of the Orissa Freedom of Religion Act 1967 was challenged before the High Court of Orissa in *Yulitha Hyde* v. *State of Orissa*[72] in the year 1969. The main contention of the Petitioners before the high court were: (i) The State Legislature has no legislative competence to legislate on matters covered by the Act; (ii) The Act infringes the fundamental right guaranteed under Article 25 of the Constitution. While answering the questions, the hon'ble Division Bench of the Orissa High Court had

[71] As amended by Section 3 of the Madhya Pradesh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006
[72] AIR 1973 Ori. 116

observed that although the phrases 'force' and 'fraud' were well-understood phrases as defined by the Indian Penal Code, the phrase 'inducement' was vague. However, the Division Bench negatived the petitioner's contention with reference to Article 25 (1) of the Constitution and held that the restriction was covered by the limitation subject to which the right was guaranteed under Article 25 (1) of the Constitution. Regarding the phrase 'inducement', their Lordships held that the definition is capable of covering some of the methods of proselytizing and though the concept of inducement can be a matter referable to 'morality', the wide definition is indeed open to reasonable objection on the ground that it surpasses the field of morality. As regards the legislative competence of the Orissa State Legislature to enact the impugned statute, it was observed that the subject matter of the Act could not be said to be covered by Entry No. 1 of List II or Entry No. 1 of List III of the Seventh Schedule. But, in fact it would be covered by Entry No. 97 of List I of the Seventh Schedule and as such, the Parliament alone had the power to legislate on such subject-matter. Accordingly, the high court declared Orissa Freedom of Religion Act, 1967 as *ultra vires* the Constitution.

Similarly, the constitutional validity of the Madhya Pradesh Dharma Swantantraya Adhiniyum, 1968 was challenged before the High Court of Madhya Pradesh, in *Rev. Stainislaus* v. *State of Madhya Pradesh*[73], on similar grounds. But, contrary to the rulings of the Orissa High Court in *Yulitha Hyde,* the High Court of Madhya Pradesh in the instant case had negatived all the contentions of the Petitioners and held that[74]:

> What is penalised is conversion by force, fraud or by allurement. The other element is that every person has a right to profess his own religion and to act according to it. Any interference with that right of the other person by resorting to conversion by force, fraud or allurement cannot, in our opinion, be said to contravene Article 25(1) of the Constitution of India, as the Article guarantees religious freedom subject to public health. As such, we do not find that the provisions of Sections 3, 4 and 5 of the M.P. Dharma Swatantrya Adhiniyam 1968 are violative of Article 25(1) of the Constitution of India; on the other hand it guarantees that religious freedom to one and all including those who might be amenable to conversion by force, fraud or allurement. As such, the Act, in our opinion,

[73] AIR 1975 MP 163
[74] *Ibid.* Para 16

> guarantees equality of religious freedom to all, much less can it be said to encroach upon the religious freedom of any particular individual.

Accordingly, the High Court of Madhya Pradesh upheld the constitutionality of M.P. Dharma Swantantraya Adhiniyum, 1968.

Both the order of the Orissa High Court as well as Madhya Pradesh High Court were subsequently challenged before the apex court. Since both the appeals have raised common questions of law relating to interpretation of Constitution, they were heard together by the apex court, in *Rev. Stainislaus* v. *State of Madhya Pradesh*[75]. It was contended by the appellant before the apex court that the right to 'propagate' one's religion means the right to convert a person to one's own religion. On that basis, counsel has argued further that the right to convert a person to one's own religion is a fundamental right guaranteed by Article 25 (1) of the Constitution. While negating the contention, the court observed[76]:

> 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 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.

As regards the legislative competence of the state legislatures in this regard, the apex court has observed that[77]:

> It is not in controversy that the Madhya Pradesh Act provides for the prohibition of conversion from one religion to another by use of force or allurement or by fraudulent means, and matters incidental thereto. The expressions "allurement" and "fraud" have been defined by the Act. Section 3 of the Act prohibits conversion by the use of force or by

[75] AIR 1977 SC 908
[76] *Ibid*. Para 19
[77] *Ibid*. Para 22 - 24

> allurement or by fraudulent means and Section 4 penalizes such forcible conversion. Similarly, Section 3 of the Orissa Act prohibits forcible conversion by the use of force or by inducement or by any fraudulent means, and Section 4 penalizes such forcible conversion. The Acts, therefore, clearly provide for the maintenance of public order for, if forcible conversion had not been prohibited, that would have created public disorder in the States.
>
> The expression "Public order" is of wide connotation. It must have the connotation which it is meant to provide as the very first Entry in List II. It has been held by this Court in Ramesh Thappar v. The State of Madras (1950) S.C.R. 594 that "public order" is an expression of wide connotation and signifies state of tranquility which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established. Reference may also be made to the decision in Ramjilal Modi v. State of U.P. (1957) SCR 860 where this Court has held that the right to freedom of religion guaranteed by Articles 25 & 26 of the Constitution is expressly made subject to public order, morality and health, and that "it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interest of public order". It has been held that these two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference may as well be made to the decision in Arun Ghosh v. State of West Bengal (AIR 1970 SC 1228) where it has been held that if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the 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 the 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 in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule.

Thus, the apex court has finally upheld the constitutional validity of both Orissa Freedom of Religion Act, 1967 and Madhya Pradesh Dharma Swatantraya Adhiniyum, 1968.

3. The Chhattisgarh Dharma Swatantrya Adhiniyum 1968[78]: [As proposed to be amended by the Chhattisgarh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006]

After the formation of the State of Chhattisgarh, by virtue of the power conferred under section 79 of the M.P. Reorganization Act, 2000, the Government of Chhattisgarh had adopted Madhya Pradesh Dharma Swantantraya Adhiniyum, 1968, which was in operation in the State of Madhya Pradesh immediately before the formation of Chhattisgarh. However, the said Act has now been proposed to be amended by the Chhattisgarh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006. The important provisions of the Act, as they stand after amendment, are as follows:

Section 2. Definitions: **In this Act unless the context otherwise requires:**

(a) "Allurement" means offer of any temptation in the form of:

(i) Any gift or gratification either in cash or kind;

(ii) Grant of any material benefit either monitory or otherwise;

(b) "Conversion" means renouncing one religion and adopting another;

[79][Provided that the return in ancestor's original religion or his own original religion by any person shall not be construed as 'conversion']

(c) "Force" shall include a show of force or a threat of injury of any kind including threat of divine displeasure or social excommunication;

(d) "Fraud" shall include misrepresentation or any other fraudulent contrivance;

(f) "Minor" means a person under Eighteen years of age.

As stated above, Section 2 of the M.P. Act was adopted without any changes. However, in the year 2006, a *proviso* was proposed to be added to Section 2 (b) of the Act, which defines conversion. The *Proviso* states that the *"return to ancestor's original religion or his own original religion by any person shall not be construed as 'conversion"*.

The *Proviso* proposes to exclude the cases of reconversion not only to one's own religion but also to the religion of one's ancestor's. It appears that the *proviso* seems to be inappropriate in the context of the legislation in view of the object sought to be achieved by it. If the purpose of the Act is to prohibit conversion from one religion to another by

[78] Act No. 27 of 1968.

[79] Proposed to be inserted by Section 2 of Chhattisgarh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006

use of force or allurement or by any fraudulent means, but not free conversion, what was the need for excluding reconversion from the purview of the Act?

Such an express exclusion of reconversion from the purview of the Act, would necessarily imply that reconversion by use of force, fraud or allurement is not punishable under the provisions of the Act.

It appears that the legislatures have failed to appreciate that both conversion and reconversion by use of force, fraud or allurement are equally bad and infringes upon the 'freedom of conscience' of a person so converted/reconverted.

Though one could make out an intelligible differentia between 'conversion' and 'reconversion', the said differentia does not have a reasonable nexus with the object sought to be achieved by the legislation. Thus, the classification between 'conversion' and 'reconversion' for the purpose of application of the Act is not reasonable, therefore, infringes Article 14 of the Constitution.

Section 3. Prohibition of forcible conversion: **No person shall convert or attempt to convert, either directly or otherwise, any person form one religions faith to another by the use of force or by allurement or by any fraudulent means nor shall any person abet any such conversion.**

This provision is identical, both in form and substance, with Section 3 of both Orissa and Madhya Pradesh Acts.

Section 4. Punishment for contravention of the provisions of section 3: **Any person contravening the provisions contained in section 3 shall, without prejudice to any civil liability, be punishable with imprisonment, which may extend to [three years] [80] or with fine, which may extant to [twenty thousand][81] rupees or with both.**

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes the punishment shall

[80] Substituted by Section 3(1) of 2006 Amendment for the words 'one year'.
[81] Substituted by Section 3(1) of 2006 Amendment for the words 'five thousand'

be imprisonment to the extent of [four years][82] and fine up to [twenty five thousand][83] rupees.

Section 4 of the Act, which was adopted from the M.P. Act without any changes, is now proposed to be amended by Chhattisgarh Dharma Swantantraya (Sanshodhan) Vidheyak, 2006. The quantum of punishments prescribed earlier have been largely increased. Though, it could possible be argued that punishments are on the higher side, the provision is not *per se* unconstitutional.

[84][*Section 5. Prior permission, contravention and punishment:* (1) Whoever intends to convert 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 apply for permission at least thirty days before the intended date of such conversion, to the District Magistrate in whose jurisdiction the ceremony is intended to be performed, in such form, as may be prescribed.
(2) The District Magistrate may after an inquiry, by an order, permit or refuse to permit any person to convert, any person from one religious faith to another and such permission shall be valid for two months from the date of its order.
(3) Any person aggrieved by the order passed under sub-section 2 may appeal within thirty days from the date of the order to the District Judge whose decision shall be final.
(4) The person so permitted by the District Magistrate under the provision of Sub-section 2 shall intimate within one month from the date of the ceremony to such District Magistrate, of the fact of such conversion, in such form, as may be prescribed.
(5)Whoever converts any person in contravention of the provisions of Sub-section 2 shall be punished with imprisonment for a term, which may extend to three year and shall also be fine which may extend to twenty-thousand rupees.
(6) Whoever, does any thing in contravention of the provision of Sub-section 4 shall be punished with imprisonment of either description for a term which may extend to one year and also with fine which may extend to ten thousand rupees]

Under Section 5, an obligation has been imposed on the person intending to convert another either by performing himself the necessary ceremony as a religious priest or by taking part, directly or indirectly, in such ceremony, to obtain one month prior permission from the concerned District Magistrate. Under clause 2, the District Magistrate has been authorized, after conducting an inquiry, either to grant or not to grant such permission. In

[82] Substituted by Section 3(2) of 2006 Amendment for the words 'two years'
[83] Substituted by Section 3(2) of 2006 Amendment for the words 'ten thousand'
[84] Substituted by Section 4 of the Chhattisgarh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006

case of grant of such permission, that would be valid for a period of two month within which the conversion ceremony should be held. The order of the District Magistrate, either granting or refusing to grant such permission, has been made appealable to the District Judge, whose order shall be final in this regard.

Further, the person who has converted the other by virtue of the permission so granted, should intimate the District Magistrate about the fact of such conversion within one month from the date of such conversion. Both conversion without obtaining the requisite permission and failure to give subsequent intimation are made punishable.

Unlike the other Acts, which require either prior permission/intimation or subsequent intimation from the person converting another, this Act requires both. Thus, the regulatory mechanism appears to be somewhat cumbersome. Though, a person had converted the another with the requisite permission, non-intimation of the fact of conversion subsequent to such conversion is made punishable with imprisonment of either description for a term which may extend to one year and also with fine which may extend to ten thousand rupees.

Further, the District Magistrate has the discretion either to grant or refuse to grant such permission. The Act has not laid down any guidelines to exercise such discretion. However, the Order of District Magistrate has been made appealable to District Judge, whose decision shall be final. Nevertheless, the 'finality clause' shall not be interpreted so as to exclude the power of High Court and Supreme Court under Article 226 and Articles 32 respectively.

[85][*Section 5-A. Punishment for attempt to commit offences:* Whoever attempt to commit any offence punishable under this Act or to cause such offence to be committed and in such attempt does any act towards the commission of the offence shall be punished with punishment provided for the offence]

[85] Inserted by Section 5 of Chhattisgarh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006

Section 3 of the Act itself prohibits attempt to conversion by use of force, fraud or allurement. Thus, it appears that this provision is capable of punishing only an attempt to convert another without requisite permission contemplated under section 5 of the Act[86].

[87]***[Section 5-B. Bar of Jurisdiction:*** **No civil court shall entertain any suit or proceeding against any decision made or order passed by any officer or authority under the Act or any rule made there under]**

Section 5-B of the Act oust the Jurisdiction of the Civil Courts to entertain any suit or proceedings against any decision or order made or passed under the provisions of the Act or rules made under it. However, under Section 5 (3), District Judge has got the power to hear an appeal against the order passed by the District Magistrate under Section 5 (2). The collective reading of both Section 5 (3) and Section 5-B of the Act give an inference that, though no civil suit or proceedings can be instituted against any decision or order passed under this Act, the District Judge, in his executive capacity, can entertain appeal from such orders.

[88]**[*Section 5-C. Protection of action taken in good faith:*** **No suit, prosecution or other legal proceedings shall lie against State Government or any Officer of the State Government or any other person exercising any powers or discharging any functions or performing any duties under this Act, for any thing done in good faith or intended to be done under the Act or any rule made thereunder]**

Section 5-C absolves the State Government, its officers and any other persons exercising any powers or discharging any functions from both civil and criminal liability for any thing done or intended to be done, in good faith, under the Act or the rules made under it. Similar provision is not found in any other legislation on *pari materia.*

[89]**[*Section 6. Offence to be cognizable*: (1) Every offence punishable under this Act shall be cognizable.**

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[86] There is a difference between 'attempt to convert by use of force, fraud or allurement', which is prohibited under Section 3 and 'attempt to convert another without prior permission' required under section 5 of the Act. Even if the conversion is voluntary, prior permission is required to perform conversion ceremony. Any attempt to convert without such prior – permission is made punishable under section 5A.
[87] *Ibid.*
[88] *Ibid.*
[89] Substituted by Section 6 of the Chhattisgarh Dharma Swatantrya (Sanshodhan) Vidheyak, 2006

(2) No person accused of an offence punishable under this Act shall be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity to oppose the application for such release]

Clause (1) is identical with the similar provisions in other state Acts. Clause (2) propose to be incorporated by 2006 amendment Bill, provides that the bail shall not be granted *ex parte* without hearing the public prosecutor. It clearly shows the seriousness attached to the offences under this Act by the legislature.

***Section 7. Prosecution to be made with the sanction of District Magistrate*:- No prosecution for an offence under this Act shall be instituted except by or with the previous sanction of, the District Magistrate or such other authority, not below the rank of a sub-Division Officer, as may be other authorized by him in that behalf.**

***Section 8. Power to make rules*: The State Government may makes rules for the purpose of carrying out the provisions of this Act**.

Section 7 and 8 are identical with the similar provisions in other state legislations.

4. Arunachal Pradesh Freedom of Religion Act, 1978[90]:

The Union Territory of Arunachal Pradesh, as it then was, had enacted the Arunachal Pradesh Freedom of Religion Act, 1978 in the twenty-ninth year of Republic of India. The main object of the Act was similar to those legislations discussed above. The Act contains seven sections in its entirety. Main provisions of the Act are discussed as follows:

***Section 2. Definitions*: In this Act, unless the context otherwise requires:**

- **(a) "Government" means the Government of the Union Territory of Arunachal Pradesh.**
- **(b) "Conversion" means renouncing an indigenous faith and adopting another faith or religion.**
- **(c) "Indigenous" means such religions, beliefs and practices including rites, rituals, festivals, observances, performances, abstinence, customs as have been found sanctioned, approved, performed by the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism as prevalent among Monpas, Menbas, Sherdukpens, Khambas, Khamtis and Singaphoos, Vaishnavism preached by Noctes and Akas, and Nature worship including worship of**

[90] Act no. 4 of 1978. Received the assent of President of India on October 25, 1978.

Dogi-polo, prevalent among other indigenous communities of Arunachal Pradesh.

(d) "Force" shall include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication;

(e) "Fraud" shall include misrepresentation or any other fraudulent contrivance;

(f) "Inducement" shall include the offer of any gift, or gratification, either cash or in kind and also include grant of any benefit, either pecuniary or otherwise.

The words 'force', 'fraud', and 'inducement' have been defined in the same way as they were defined in the Acts discussed above. The words 'government' and 'indigenous' have been defined in the Act, which were not defined in the other Acts. The definition of the term 'conversion' has, however, been given a restrictive meaning when compared to other Acts. Unlike the other Acts, where conversion has been defined as *'renouncing one religion and adopting another',* the present Act defines it as *'renouncing an indigenous faith and adopting another faith or religion'.*

Thus, the definition restricts the application of the Act only to cases of conversion from indigenous faith to any other faith or religion. The conversions from any religion, other than indigenous faith, have been specifically excluded from the purview of the Act. The term 'indigenous' had been defined to mean and include such religions, belief and practices… of the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism and Vaishnavism as practiced by some of the indigenous communities in Arunachal Pradesh. The definition specifically excludes Islam and Christianity, etc., which are not indigenous by their origin.

If a person from non-indigenous faith has been converted by use of force, fraud or allurement to any other religious or religious faith, the Act does not penalize such conversions. Thus, the protective umbrella of the Act to exercise free conscience in choice of religious faith has not been extended to persons belonging to non-indigenous faith. Thus, it appears to be in apparent conflict with Article 14 and 25 of the Constitution of India.

Though, it could possibly be contended that the people belonging to non-indigenous groups are less in number in the State that cannot be a valid ground to justify the denial of equal protection of law.

Section 3. Prohibition of forcible conversion: **No person shall convert or attempt to convert, either directly or otherwise, any person from indigenous faith by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.**

Section 3 of the Act is identical with Section 3 of all the Acts discussed above except that it is only conversion from indigenous faith by means of force, fraud and inducement that is prohibited under this Act whereas other legislations prohibit conversions from any religion to another by use of force, fraud and inducement. Its implications have been discussed above under Section 2 itself.

Section 4. Punishment for contravention of the provisions of Section 3: **Any person contravening the provisions contained in Section 3 shall, without prejudice to any civil liability, be punishable with imprisonment to the extent of two years and fine up to ten thousand rupees.**

Unlike the other Acts, Section 4 of this Act has not prescribed different punishment for conversion of children, woman and other weaker section of the society. The Act makes it mandatory to impose both imprisonment as well as fine subject to maximum limits prescribed. Imprisonment and fine are not alternative here.

Section 5. Intimation of conversion to the Deputy Commissioner and Punishment: **(1) Whoever converts any person from his indigenous faith to any other faith or religion 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 Deputy Commissioner of the district to which the person converted belongs, of the fact of such conversion in such form as may be prescribed.**
(2) If any person fails without sufficient cause to comply with the provisions contained in sub-section (1), he shall be punished with imprisonment, which may extend to one year or with fine, which may extend to one thousand rupees or with both.

This provision is identical with the unamended section 5 of the M.P. Act. 1968. The provision imposes an obligation on the person who converts the other either by

performing the necessary ceremony himself as a religious priest or by taking part in such ceremony, either directly or indirectly, to intimate the same with the necessary details to the Deputy Commissioner of the District to which the person converted belongs.

Though, the words *'by taking part in such ceremony, either directly or indirectly'*, appears to be vague, it has to be given restrictive interpretation keeping in view the context of the provision so as not to include all those who are taking part in such ceremony. It is only the person 'who converts another' either by performing the necessary ceremony as a priest or takes part in it, directly or indirectly, who is responsible to intimate the Deputy Commissioner.

Section 6. Offence to be cognizable: **An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.**

Section 7. Sanction for Prosecution: **No prosecution for an offence under the Act shall be instituted except by or with the previous sanction of the Deputy Commissioner or such other authority, not below the rank of an Extra Assistant Commissioner as may be authorized by him in his behalf.**

Section 8. Power to make rules: **The Government may make rules for the purpose of carrying out the provisions of the Act.**

Section 6, 7 and 8 of the Act are identical with Section 5, 6 and 7, respectively, of the Orissa Act except that in place of 'Sub-divisional Commissioner' in Section 6 of Orissa Act, the 'Extra Assistant Commissioner' is used in Section 7 of the present Act.

5. The Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002[91]:

[Now Repealed by the Tamil Nadu Prohibition of Forcible Conversion of Religion (Repeal) Act, 2006[92]]

The State of Tamil Nadu had initially issued the Tamil Nadu Prohibition of Forcible Conversion of Religion Ordinance, 2002[93], which become an Act after two months[94]. The Act had, however, been repealed in the year of 2006. The Act, before its repeal, had contained 8 sections in all. They are reproduced as hereunder:

Section 1. Short title and commencement: **(1) This Act may be called the Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002.**
(2) It shall be deemed to have come into force on 5th Day of October 2002

Clause (2) of Section 1, gives retrospective effect to the provisions of the Act from the day when ordinance was first issued. It appears that the retrospective effect was given to protect the acts done or actions taken under the ordinance before the enactment of this Act as indicated in Section 8 (2) of the Act.

Section 2. Definitions: **In this Act, unless the context otherwise requires:**
(a) "Allurement" means offer of any temptation in the form of:
(i) Any gift or gratification either in cash or kind;
(ii) Grant of any material benefit, either monetary or otherwise;
(b) "Convert" means to make one person to renounce one religion and adopt another religion;
(c) "force" includes a show of force or a threat of injury of any kind including threat of divine displeasure or social ex-communication;
(d) "Fraudulent means" includes misrepresentation or any other fraudulent contrivance;
(e) "minor" means a person under eighteen years of age.

Section 2 was fully identical with the definition clauses in Orissa and M.P. Acts except that the term 'inducement' is used in Orissa Act in place of 'allurement'.

Section 3. Prohibition of forcible conversion: **No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the**

[91] Act No. 56 of 2002.
[92] Act No. 10 of 2006
[93] Ordinance No. 9 of 2002, issued on October 5, 2002.
[94] It had received assent of the Governor on December 2, 2002

use of force or by allurement or by any fraudulent means nor shall any person abet any such conversion.

This provision is fully identical Section 3 of Orissa, M.P. and Chhattisgarh Acts both in form and substance.

Section 4. Punishment for contravention of provisions of section 3: **Whoever contravenes the provisions of section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which may extend to three years and also be liable to fine, which may extend to fifty thousand rupees:**

Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to Schedule Caste or Schedule Tribe shall be punished with imprisonment for a term which may extend to four years and also be liable to fine which may extend to one lakh rupees.

This provision was also identical with Section 4 of other Acts discussed above except that the quantum of punishment under the Act was very high.

Section 5. Intimation to be given to District Magistrate with respect to conversion: **(1) Whoever converts any person from one religion to another either by performing any ceremony by himself for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period 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.**

(2) Whoever fails, without sufficient cause, to comply with the provisions of sub-section (1) shall be punished with imprisonment for a term, which may extend to one year or with fine, which may extend to one thousand rupees or with both.

Section 5 of the Act is similar to section 5 of the Arunachal Pradesh Act, 1978 except that: (i) the term 'indigenous faith' is used in Clause (1) of Section 5 of Arunachal Pradesh Act, 1978; and (ii) the intimation under the Arunachal Pradesh Act had to be given to the Deputy Commissioner of the district to which the person converted belongs whereas under the present Act intimation had to be given to the District Magistrate of the district where conversion ceremony takes place.

Section 6. Prosecution to be made with the sanction of District Magistrate: **No prosecution for an offence under this Act shall be instituted except by or with the**

previous sanction of the District Magistrate or such other authority, not below the rank of a District Revenue Officer, as may be authorized by him in that behalf.

This provision was identical with Section 6 of Orissa Act as well as Section 7 of M.P. Act except that in place of 'Sub-divisional Officer', the 'District Revenue Officer' has been used in T.N. Act.

Section 7. Power to maker rules: **(1) The State Government may make rules for the purpose of carrying out the provisions of this Act.**
(2) Every rule made under this Act shall as soon as possible after it is made be placed on the table of the Legislative Assembly, and if before the expiry of the session in which it is so placed or the next session, the Assembly makes any modification in any such rule or the Assembly decides that the rule should not be made, the rule shall thereafter have effect only in such modified form, or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Clause (1) of Section 7 is identical with Section 7 of Orissa Act and Section 8 (1) of M.P Act. Whereas Clause (2), though identical with Section 8 (2) of the M.P. Act, had made explicit what was implicit there.

Section 8. Repeal and saving: **(1) The Tamil Nadu Tamil Nadu Prohibition of Forcible Conversion of Religion Ordinance, 2002 (IX of 2002) is hereby repealed.**
(2) Notwithstanding such repeal anything done or any action taken under the said ordinance shall be deemed to have been done or taken under this Act.

Section 8 of the Act had repealed the earlier ordinance. However, all acts done and actions taken prior to such repeal were saved.

In 2006, the whole Act had been repealed with retrospective effect from May 18, 2004 by the Tamil Nadu Prohibition of Forcible Conversion of Religion (Repeal) Act, 2006. At present, no such special law is in operation in the State of Tamil Nadu.

6. The Gujarat Freedom of Religion Act, 2003[95]:

The State of Gujarat had enacted the Gujarat Freedom of Religion Act, 2003 with a view, *inter alia*, to maintain public order and to nip in the bud the attempts by certain subversive forces to create social tension. Act has contained 8 sections in all. Section 1 deals with Short title and commencement of the Act. Important provisions are as follows:

Section 2. Definitions: **In this Act, unless the context otherwise requires:**

(a) "Allurement" means offer of any temptation in the form of:

(i) Any gift or gratification, either in cash or kind;

(ii) Grant of any material benefit, either monetary or otherwise;

(b) "Convert" means to make one person to renounce one religion and adopt another religion;

(c) "Force" includes a show of force or a threat of injury of any kind including a threat of divine displeasure or social excommunication;

(d) "Fraudulent means" includes misrepresentation or any other fraudulent contrivance;

(e) "Minor" means a person under eighteen years of age.

This definitional clause of the Act is identical with the definitions given in other statutes discussed above.

Section 3. Prohibition of forcible conversion: **No person shall convert or attempt to convert, either directly or otherwise, 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.**

This provision is also identical with the similar provisions of other legislations discussed above, both in form as well as in substance.

Section 4. Punishment for contravention of provisions of Section 3: **Whoever contravenes the provision of Section 3 shall, without prejudice to any civil liability, be punished with imprisonment for a term, which may extend to three years and also be liable to a fine, which may extend to rupees fifty thousand**

Provided that whoever contravenes the provisions of section 3 in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe shall be punished with imprisonment for a term which may extend to four years and also be liable to a fine which may extend to rupees one lakh.

[95] Act No. 22 of 2003. Received the assent of Governor on April 7, 2003.

The provision is identical with the similar provisions of other State laws, as far as the form is concerned. The quantum of punishment prescribed under the Act is identical with the Tamil Nadu Act, which is now repealed. Though, the amount of punishment prescribed appears to be very high when compared to few other legislations, the provision cannot be said to be *ultra vires*.

Section 5. Prior permission to be taken from District Magistrate with respect to conversion: **(1) 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 ceremony shall take prior permission for such proposed conversion from the District Magistrate concerned by applying in such form as may be prescribed by rules.**
(2) The person who is converted shall send an intimation to the District Magistrate of the District concerned in which the ceremony has taken place of the fact of such conversion within such period and in such form as shall be prescribed by rules.
(3) Whoever fails, without sufficient cause, to comply with the provisions of subsections (1) and (2) shall be punished with imprisonment for a term, which may extend to one year or with fine, which may extend to rupees one thousand or with both.

The regulatory mechanism prescribed in the section is somewhat different from the other legislations. Under Clause (1), it is specifically mandated that the 'prior permission' is required for a person who converts any person from one religion to another whereas under M.P Act, the person who converts another is required to give 'prior intimation' to the District Magistrate. Further in Arunachal Pradesh and Tamil Nadu legislations, it is only subsequent intimation, which was contemplated. Thus, no other legislations discussed above expressly require a prior permission as has been required under this Act.

Under Clause (2), the person who is converted is required to intimate the District Magistrate subsequent to such conversion ceremony. In Arunachal Pradesh and Tamil Nadu, no such intimation is required from the person converted whereas in M.P, 'prior declaration' that he is converting out of his own will is made mandatory.

Clause (3) of the Act imposes a penalty for failure to comply with Clause (1) and (2) of Section 5.

It is submitted that, though prior permission is required under the present legislation for converting any person from one religion to another, it cannot be said to be *ultra vires* the Constitution. Requirement of prior permission is not a prohibition on free conversion. Though, the Act has not laid down any guidelines for the District Magistrate to issue such permission, it is implied that after satisfying himself that the conversion is not through force, fraud or allurement, the District Magistrate has to grant the required permission.

An important thing to be noticed is that, the Act has not prescribed any time limit within which such permission has to be granted after receipt of an application. It is desirable to prescribe the time limit to grant such permission.

Section 6. Prosecution to be made with the sanction of District Magistrate: **No prosecution for an offence under this Act shall be instituted except by or with the previous sanction of the District Magistrate or such other authority not below the rank of a Sub-Divisional Magistrate as may be authorized by him in that behalf.**

Section 7. Offence to be cognizable: **An offence under this Act will be cognizable and shall not be investigated by an officer below the rank of a Police Inspector.**

Section 6 and 7 of the Act are identical with similar provisions in other statutes discussed above.

Section 8. Power to make rules: **(1) The State Government may, by notification in the *Official Gazette*, make rules for carrying out the provisions of this Act.**
(2) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as may be after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.
(3) Any rescission or modification so made by the State Legislature shall be published in the *Official Gazette*, and shall thereupon take effect.

The provision delegates the rule making power to State Government and requires that the rule so made shall be laid before the State Legislature at least for thirty days for its consideration. Thereafter, such rules shall take effect subject to such changes or modifications as suggested by such legislatures. The provision, in substance, is similar to M.P and Tamil Nadu Acts.

7. Rajasthan Freedom of Religion Bill, 2006[96]:

The Rajasthan State Assembly has passed Freedom of Religion Bill, 2006 in April 2006 with a view to prohibit conversion from one religion to another by use of force, fraud or allurement. The object of the Bill is similar to other legislations on *pari materia*, which are discussed above. The Bill contains 6 sections in all. Section 1 deals with the short title, extent and commencement of the Act. Other provisions are as follows:

***Section 2. Definitions*: In this Act, unless the context otherwise requires:**

(a) "Unlawful" means which is in contravention of the provision of this Act;

(b) "Allurement" means offer of any temptation in the form of:

(i) Any gift or gratification, either in cash or kind;

(ii) Grant of any material benefit, either monetary or otherwise;

(c) "Conversion" means renouncing one's own religion and adopting another; (Explanation: Own religion means [the] religion of one's forefathers);

(d) "Force" includes a show of force or a threat of injury of any kind including threat of divine displeasure or social excommunication;

(e) "Fraudulent" means and includes misrepresentation or any other fraudulent contrivance.

The definition of the words 'allurement', 'force' and 'fraudulent' are similar to other legislations. The term 'unlawful' has been defined to mean any act in contravention of the provisions of the Act and it is clear. However, the explanation added to the definition of the term 'conversion' appears to be ambiguous. The definition of the word 'conversion' read with the explanation given, reads as follows:

> "Conversion means renouncing the religion of one's forefathers and adopting another".

Unlike the other Acts, where conversion has been defined to mean renouncing one religion and adopting another, here renouncing one's own religion and adopting another is not considered to be conversion. It is only renouncing of one's forefathers religion adopting another, which is considered to be conversion.

[96] Bill No. 12 of 2006.

Suppose in a given (hypothetical) situation, if a person had already been renounced his forefather's religion and embraced another, and later on if he had been forced to convert again to any other religion including his forefathers religion, that is not considered to be conversion and the Bill does not cover such a situation.

It is submitted that the freedom of religion guaranteed under Indian Constitution is an individual freedom. Every individual has got a freedom to choose his own religion by exercise of his free conscience. He may, at his own will, choose to profess or not to profess any religion also. Conversion by use of force, fraud or allurement from one's own religion (in case if it is different from his forefather's religion) is equally bad as conversion from one's forefather's religion (if he is professing the same). The Act covers only the second situation but not the former. Thus, it appears to be in conflict with Article 14 of the Constitution.

Section 3. Prohibition of conversion: **No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by use of force or by allurement or by fraudulent means, nor shall any person abet any such conversion.**

The provision is identical with similar provisions of other Acts discussed above.

Section 4. Punishment for contravention of provisions of Section 3: **Whoever contravenes the provisions of Section 3 shall, without prejudice to any other civil or criminal liability, be punished with simple imprisonment for a term which shall not be less than two years but which may extend to five year and shall also be liable to fine which may extend to fifty thousand rupees.**

This provision is different from the similar provisions in the other Acts discussed above. Unlike the other Acts, the provision prescribes both minimum as well as maximum period of imprisonment leaving very less discretion for the court. The amount of fine proposed to be imposed by the Bill is not an alternative to the imprisonment but it is in addition to the imprisonment. Thus, the Bill propose to impose the following punishment:

(i) Simple imprisonment for a term which shall not be less than two years but which may extend to five years; and

(ii) Fine which may extend to fifty thousand rupees.

The most shocking feature of Section 4 is that, the punishment prescribed above is in addition to *'any other civil or criminal liability'*. Similar provisions in the other Acts have prescribed punishments without prejudice to any other civil liability only. It is a well-established principle of law that both civil and criminal liabilities are concurrent and not alternative. But, there cannot be two criminal liabilities for the same act. That would amount to double jeopardy, therefore, infringes Article 20 (2) of the Constitution of India.

Section 5. Offence to be cognizable and non-bailable: **Any offence under this Act shall be cognizable and non-bailable and shall not be investigated by an officer below the rank of Deputy Superintendent of Police.**

Unlike the other Acts, the offences under this Act are not only cognizable but also non-bailable. Further, power of investigation has been conferred on a high-ranking officer, who shall not be below the rank of a Deputy Superintendent of Police.

Section 6. Power to make rules: **(1) The State Government may make rules for the purpose of carrying out the provisions of this Act.**
(2) All rules made under this Act shall be laid, as soon as may be, after they are so made, before the House of the State Legislature, while it is in session, for a period of not less than fourteen days which may be comprised in one session or in two successive session and if, before the expiry of the session in which they are so laid or of the session immediately following, the House of the State Legislature makes any modification in any of such rules or resolves that any such rule should not be made, such rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done there under.

Like other Act, Section 6 delegates rule making power to the State Government and a provision has been made for the legislative control of such delegated legislative power.

8. The Himachal Pradesh Freedom of Religion Act, 2006[97]:

The legislative Assembly of Himachal Pradesh had on December 29, 2006 passed the Bill to provide for prohibition of conversion from one religion to another by the use of force, fraud or inducement. The object of the Bill is similar to the other Acts discussed above. It has been given the assent of the Governor on February 19, 2007. The Act contains 8 sections in all. Important provisions are as follows:

Section 2. Definition: **In this Act, unless the context otherwise requires:**

a. **"Conversion" means renouncing one religion and adopting another;**
b. **"Force" shall include show of force or threat of injury or threat of divine displeasure or social ex-communication;**
c. **"Fraud" shall include misrepresentation or any other fraudulent contrivance;**
d. **"Inducement" shall include the offer of any gift or gratification, either in cash or in kind or grant of any benefit either pecuniary or otherwise; and**
e. **"Minor" means a person under eighteen years of age.**

The definition clause is fully identical with Orissa and M.P. Acts both in form and substance.

Section 3. Prohibition of Conversion: **No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by inducement or by any other fraudulent means nor shall any person abet any such conversion.**

Provided that any person who has been converted from one religion to another, in contravention of the provisions of this section, shall be deemed not to have been converted.

The main provision of this section is also identical with similar provisions in other legislations. However, the novel feature of the section is that the *proviso* declares that the conversion made in contravention of the section shall be deemed not to have been taken place. There is no such express provision to this effect in any of the legislations discussed above. It is submitted that the provision to that effect would not make the section unconstitutional.

[97] Bill No. 31 of 2006.

Section 4. Notice of intention: **(1) A person intending to convert from one religion to another shall give prior notice of at least thirty days to the District Magistrate of the district concerned of his intention to do so and the District Magistrate shall get the matter enquired into by such agency as he may deem fit:**

Provided that no notice shall be required if a person reverts back to his original religion.

(2) Any person who fails to give prior notice, as required under sub-section (1), shall be punishable with fine, which may extent to one thousand rupees.

Section 4 of the Act imposes an obligation on the person intending to convert his religion to give at least one month prior notice to the District Magistrate concerned. However, such notice is not required to be given in case a person who wants to reconvert to his original religion.

It appears that the regulatory mechanism has been made only for conversion to ensure that there is no force, fraud or allurement behind it and proceeded on the presumption that force, fraud or allurement would not be used for reconversion. No prior intimation needs to be given in case of reconversion to ensure that it is not done through force, fraud or allurement. Thus, the provision seems to be violative of Article 14 of the Constitution.

Section 5. Punishment of Contravention of the Provisions of Section 3. **Any person contravening the provisions contained in section 3 shall, without prejudice to any civil liability, be punishable with imprisonment of either description, which may extend to two years or with fine, which may extend to twenty five-thousand rupees or with both:**

Provided that in case the offence is committed in respected of a minor, a woman or a person belonging to Scheduled Castes or Scheduled Tribes, the punishment of imprisonment may extend to three years and fine may extend to fifty thousand rupees.

The provision is identical with similar provisions of other legislations. The quantum of punishment, however, appears to be on the higher side when compared to few other legislations.

Section 6. Offence to be cognizable: **An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of an Inspector of Police.**

Section 7. Prosecution to be made with the Sanction of District Magistrate: **No prosecution for an offence under this Act shall be made without the sanction on the District Magistrate or such other authority, not below the rank of a Sub-Divisional Officer, as may be authorized by him in that behalf.**

Section 8. Power to make rules: **(1) The State Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.**
(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislation Assembly, while it is in session for a total period of ten days, which may be comprised in one session or in two or more successive sessions, and if, before expiry of the session in which it is so laid or the successive sessions aforesaid, the Legislative Assembly agrees in making any modification in the rule or agrees that the rules should not be made, the rule shall, thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Section 6,7 and 8 are identical with similar provisions in other legislations except that the procedure laid down in section 8 to pace the rules before the house for its consideration.

Generally speaking, the tenor of the provisions of all the legislations is same; aim seems to be the same. The reason de etre for all the legislations is the same. Difference is reflected in the reach. Some states have shown more concern for the insulation of 'indigenous religion' or 'ancestor's religion', thus, conversion from these religions is made cumbersome whereas reconversion to them made easier. The expression 'inducement' and 'allurement' have been used interchangeably. Thus, interestingly and astonishingly, these state laws present similarities in approach and workings apparently mutually borrowed.

CHAPTER IV

CONCLUSION

The ruling of the apex court in *Rev. Stainislaus* v. *State of Madhya pradesh*[98], has answered two important questions raised against the then existing anti-conversion laws enacted by Orissa and Madhya Pradesh state legislatures. Important principles enunciated by the Court are: (i) Right to 'propagate religion' doest not include right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets; (ii) 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 under-takes 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; and (iii) as regards legislative competence, the Court observed that the impugned Acts fall within the purview of the 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 in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule.

It is submitted, with due respect to the views of critics[99] that, the opinion of the apex court that "right to propagate religion does not include right to convert another person to

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[98] *Supra* note.

[99] H.M. Seervai, in his celebrated book *'Constitutional Law of India'*, [Universal Law Publishing Co. Pvt. Ltd. 4th Edn.], has criticized *Rev. Stainislaus* on certain grounds. Main grounds of criticism have been summed up as follows:

(i) Legislative history of Article 25 has been overlooked;

(ii) The Court did not ask the central question which was involved in the appeal viz., whether conversion is a part of the Christian religion;

(iii) To propagate religion is not to impart knowledge and to spread it more widely, but to produce intellectual and moral conviction leading to action, namely, the adoption of that religion.

(iv) Freedom of conscience gives a person freedom to choose or not to choose any one of the many religions, which are being propagated. On his deciding to choose a particular religion, which is being propagated with a view to its acceptance, and on his being prepared to comply

one's own religion, but merely to transmit or spread one's religion by an exposition of its tenets" appears to be fully in consonance not only with the Constitutional philosophy of 'right to freedom of religion' but also with Article 18 of Universal Declaration of Human Rights[100] as well as Article 18 of International Covenant on Civil and Political Rights,[101] where 'right to conversion' found express mentioning. Right to conversion, under these instruments, connotes individual right of a person to quit one religion and embrace another voluntarily. They do not envisage right of a person to convert another to one's own religion. Indeed, Clause (2) of Section 18 of ICCPR contains a specific provision against use of coercion, which would impair freedom to have a religion or belief of one's choice. Arcot Krishnaswami's study of *'Discrimination in the Matter of Religious Rights and Practices*[102]*'* commissioned by the U.N. ESCOR, Sub-commission on Prevention of Discrimination and Protection of Minorities, also supports this view[103]. Further, the legislative history of Article 25 also suggests that the framers of Indian Constitution have contemplated legislation to deal with the issue of conversion[104]. After all what is prohibited and penalized by these legislations is conversion by use of force, fraud or allurement but not conversion by exercise of free conscience. Even if, conversion is considered to be a part of some religion, no person belonging to that religious faith can claim to have a right to convert another in a manner reprehensible to the conscience of

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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 any way interfere with the freedom of conscience but is a fulfillment of it and gives meaning to it.

[100] Article 18: "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, practicing, worship and observance".

[101] Article 18: (1) Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his own choice and freedom, either individually or in community 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 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 freedom of others.

(4) The States parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

[102] U.N. Doc. E/CN.4/Sub.2/200/Rev.1, U.N. Sales No. 60. XIV. 2

[103] See, Part I (3) of the 'Draft Principles on Freedom and non-discrimination in the matter of religious rights and practices' (Annex I of Arcot Krishnaswamy's report), which reads: "No one shall be subjected to material or moral coercion likely to impair his freedom to maintain or to change his religion or belief".

[104] See, discussion in Chapter II.

the community. The other element is that every person has a right to profess his own religion and to act according to it. Any interference with such right of a person by resorting to conversion by use of force, fraud or allurement would certainly offend Article 25 (1) of the Constitution.

The Constitution of India impliedly recognizes freedom of conversion from one religious faith to another by exercise of free conscience. Recognition of voluntary conversion gives meaning to freedom of conscience enumerated in Article 25 (1) of the Constitution. Neither, the impugned legislations nor the courts have denied such right of conversion by exercise of free conscience. Therefore, the observation of the apex court upholding the validity of impugned legislation as not violative of Article 25 (1) of the Constitution seems to be fully justified.

As regards legislative competence of the state legislature, the apex court while observing that: "it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order", has held that the impugned Acts fall within the purview of the 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 in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule.

Thus, the apex court upheld the legislative competence of the State legislatures to penalize offences relating to religion in the interest of public order.

As discussed in Chapter II, freedom of conscience and right freely to profess, practice and propagate religion have been expressly made subject, *inter alia*, to public order. By virtue of Article 246 read with Entry 1 of List II of Schedule VII, it is only the State legislature, which is competent to make law on 'public order'. Thus, any activities

having a tendency to cause public disorder, falls within the area enumerated for the state legislature.

Religion is a very volatile subject in India. If an attempt were 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. Thus, the apex courts ruling that the state legislature has got the requisite legislative competence to regulate religious conversion in the interest of 'public order' appears to be correct.

Subsequent to the rulings of the apex court, various other states viz., Arunachal Pradesh, Chhattisgarh (adopted the M.P Act), Tamil Nadu (now repealed), Gujarat, Rajasthan (Bill) and Himachal Pradesh (Bill) have enacted anti-conversion laws on similar lines. Some of the states have amended their respective laws very recently. As it is stated in Chapter III, the provisions, aims and objectives of all these legislations are similar. The difference is only of the reach. In some legislations, the regulatory mechanism prescribed appears to be somewhat stringent and the punishment prescribed seems to be on the higher side. But, that difference would not make legislations *ultra vires*. However, classification between conversion and reconversion; indigenous religions and other religions, etc in some of the Acts appear not only unwarranted but also in conflict with Article 14 of the Constitution. Further, the definition of 'inducement/allurement' in all the legislations appears to be very wide and may infringe Article 26 of the Constitution. The provision dealing with punishment in Rajasthan Bill seems to be in conflict with Article 20 (2) of the Constitution. Thus, they need to be suitably modified.

Another substantial question that requires special consideration in the context is whether the union legislature has got requisite competence to enact a law regulating 'religious conversion' or since the state legislatures are competent to regulate 'religious conversion' in the interest of 'public order', would it be a prohibited field for the union legislature?

Before proceeding to answer the question, it is pertinent to analyze the relevant portion of the ruling of the apex court, in *Rev. Stainislaus*, to understand whether the Court had already answered the issue. It reads as follows[105]:

> [R]eference may also be made to the decision in Ramjilal Modi v. State of U.P. (1957) SCR 860 where this Court has held that the right to freedom of religion guaranteed by Articles 25 & 26 of the Constitution is expressly made subject to public order, morality and health, and that "it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interest of public order". It has been held that these two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference may as well be made to the decision in Arun Ghosh v. State of West Bengal (AIR 1970 SC 1228) where it has been held that if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the 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 the Entry 1of 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 in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule.

It indicates that, after discussing at length the constitutional provisions and relevant case laws, the apex court had come to the following conclusions:

i. Right to freedom of religion guaranteed under Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health. Thus, these two articles in terms contemplate that restrictions may be imposed on them in the interest of public order.
ii. The fact that some one had been forcibly converted to another religion, would, in all probability, give rise to an apprehension of a breach of the public order.
iii. The impugned Acts fall within the purview of the Entry 1 of List II of the Seventh Schedule as they are meant to avoid disturbances to the ‘public order’

[105] AIR 1977 SC 912 para 24.

by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community.

iv. The two Acts do not provide for the regulation of religion and do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule.

The above conclusions make it amply clear that the apex court was of the opinion that impugned laws 'do not regulate religion', they are meant to 'avoid disturbance to the public order', thus, they fall within the purview of the entry 1 of List II but not under entry 97 of List I. It only conveys that laws meant to avoid disturbance to the public order would be within the exclusive competence of the state legislature by virtue of entry 1 of List II. The apex court, has not denied, either expressly or by necessary implication, the power of the union legislature to regulate 'religion' or 'religious conversion' on any permissible ground other than preservation of 'public order', over which the state has got exclusive power. Thus, the issue is still open to be considered.

As discussed in chapter II and stretching the argument further, it is submitted that under the scheme of distribution of legislative power in the Indian Constitution, the union legislature enjoys primacy over the state, *inter alia*, for the following reasons:

i. Non-obstinate clauses in clause (1) and clause (2) of Article 246 and subordination of state power to the power of union *vide* clause (3) of Article 246 lay down the principle of federal supremacy. They envisage that in case of inevitable conflict between union and state powers, the union powers as enumerated in List I shall prevail over the state powers as enumerated in List II[106] and III[107], and in case of overlapping between Lists III and II, the former shall prevail.
ii. In case of inconsistency between law made by parliament and law made by the legislatures of states, the former shall prevail over the latter [*vide* Article 254].
iii. Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List [*vide* Article 248 (1)].
iv. Parliament is competent to legislate on matters included in List II, in so far as the same may be necessary for the implementation of international treaties and agreements[108] [*vide* Article 253]

[106] *Sudhir Chandra Nawn* v. *WTO*, AIR 1969 SC 59 at 62
[107] *Indu Bhushan Bose* v. *Rama Sundari Debi*, (1969) 2 SCC 289: AIR 1970 SC 228
[108] *Maganbhai* v. *Union of India*, AIR 1969 SC 785 at 798

Proceeding further, it is submitted that though the subjects 'religion' and 'religious conversion' were prominently present to the minds of the framers of our Constitution, as is clear from the debates in the constituent assembly and from the provisions of Articles 25 to 30, 'religion' or 'religious conversion' were not expressly placed in any of the three legislative lists in Schedule VII. Next important question is, does this absence of specific entry envisage that 'religion' is not made a subject matter of legislation? If so, how can right to freely profess, practice and propagate religion be subjected to public order, morality and health and other fundamental rights as envisaged in Article 25 itself?

Even if we concede to the views of H.M Seervai[109], who argued that 'religion' itself was not intended to be the subject matter of legislation, it does not necessarily follow that freedom of religion is absolute and can have no bearing even on maintenance of public order, morality and health, etc., to which it has been expressly subjected under Article 25 of the Constitution. H.M. Seervai himself has noted that the freedom conferred in Article 25 (1) is subject to "public order, morality and health". 'Public order' is the subject of a specific legislative entry in entry 1 of List II; 'public health' is a subject of entry 6 of List II. However, 'public morality' is not the subject of any specific entry, though it plays a larger role both in civil and criminal law. Thus, 'public morality' being one not found expression in any list; it would well be covered under entry 97 of List I.

All these entries enable parliament and state legislature to put restriction on the freedom of religion. Since the subjects 'public order' and 'public health' are specified in the State List, state legislature, subject to the power of parliament, has got the requisite competence to put restriction on the freedom of religion in the interest of public order and health whereas the union legislature can put restriction in the interest of public morality by virtue of entry 97 of List I, read with Article 248 of the Constitution. This, proposition necessarily follows that while the state legislature can regulate religious conversion in the interest of public order, since conversion by force, fraud or allurement tends to disturb public order, the union legislature can regulate the same in the interest of

[109] H.M. Seervai, *Constitutional Law of India*, (Vol. 3), Universal Law Publishing Co. Pvt. Ltd. (4th Edn.) at. 2534.

public morality[110]. It is because depriving any person, by force or fraud or allurement, of his fundamental right to freedom of conscience, that is, the right to choose any religion, can reasonably be looked upon as immoral. Thus, both the union legislature and the states legislatures can legislate on the subject of religious conversion, but for different purposes. In case of inconsistency, the law made by the union legislature shall, to the extent of inconsistency, prevail over the one made by the state legislature for the reason pointed out above.

In addition, it is also to be noted that religious conversion has got wide implications on institutions of marriage, adoption and succession, etc. These are covered under entry 5 of List III *viz.,* concurrent list. As stated above, the union legislature has got primacy over the states legislature to make laws on any of the entries in the concurrent list. This, places the parliament in a better position to make laws dealing with the implications of conversion on marriage, adoption and succession. Reference may also be made to, *Sarala Mudgal*[111], where the apex court has suggested the Union Government to appoint a committee to enact a Conversion of Religion Act to check the abuse of religion by any person. This only envisages that 'religious conversion' can be a subject matter of union legislation for these purposes as well. But, conceivably there would not be any conflict between law made by the state legislature for the purpose of preservation of public order and the law made to define the implications of conversion on marriage, adoption and succession.

Thus, under the scheme of our Constitution both the union legislature as well as the states legislatures can regulate religious conversion, but for different purposes.

In the light of the above discussions, as to the specific terms of reference it is briefly submitted as follows:

[110] In this context it may be reiterated that since religious conversion involves the freedom of conscience the law may have to be made in such a manner that it does not empower anyone to make another a convert to his religion. He can only preach.
[111] AIR 1995 SC 1531

- **Whether the state anti-conversion laws impinge on the right to freedom of religion guaranteed under Article 25 of the Constitution?**

The above discussion makes it amply clear that the anti-conversion laws that are in force in various states are not violative of Article 25 of the Constitution. Article 25 does not envisage right to convert another to one's own religion by use of force, fraud or allurement. The impugned legislations have only prohibited conversion through these means but not voluntary conversion by exercise of free conscience.

However, as indicated in chapter – III, the definition of 'inducement/allurement' in all the Acts appears to be very vague requiring modification to ensure that right of religious denominations to carry on charitable activities as contemplated under Article 26 is not violated. Further, classification between conversion and reconversion or indigenous religion/ancestor's religion and other religions for the purpose of application of the provisions of the Act as done in Chhattisgarh, Arunachal Pradesh, Rajasthan and Himachal Pradesh laws appears to be in conflict with Article 14 of the Constitution. These provisions are severable from the rest of the provisions, thus, they do not affect the validity of legislations as a whole.

- **What remedial legal measures can be taken by the Union Government to repeal these Acts, in case they are found to be violative of Article 25?**

As the discussions clearly suggest, none of the Acts as such violate Article 25 of the Constitution[112]. However, even if we assume otherwise, the Union Government has no authority to repeal these Acts.

Under the scheme of our Constitution, the Parliament can repeal the state laws only if they relate to any of the entries in the concurrent list under the *proviso* to clasuse (2) of Article 254 of the Constitution. Except this, no other provision authorizes the Parliament to repeal the state laws. The impugned laws are not the one relating to any of the entries in the concurrent list, but to entry 1 of State List. Thus, even if they are being considered as violative of Article 25, Parliament has no authority to repeal them. The proper course

[112] But at the stage of implementation because of vagueness in the definition as discussed above right to propagate (if takes any strident form) could be affected.

of action would be to approach the high court or the Supreme Court to get them declared as unconstitutional.

However, as indicated above, Parliament has the requisite competence to enact similar law. In case of conflict and to the extent of such conflict, the law made by Parliament would prevail over the state laws. That would not, however, amount to repealing of state laws.

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