

NEED FOR ANTI-CONVERSION LAWS IN INDIA: BRAINSTROM OF A DEVIL'S ADVOCATE

Arpan Kamal*

“(And) if a change of religion could be justified for worldly betterment, I would advise it without hesitation. But religion is matter of heart. No physical inconvenience can warrant abandonment of one's own religion.”
- Mahatma Gandhi¹

*India has a long history of religious pluralism, and compulsions towards mutual respect and violent intolerance continue to exist in parallel. Religious thoughts and beliefs are the focal point in the day to day life; the right to freedom of conscience, practice, profession and propagation of religion are therefore, fundamental to the development of humans. The drafters of Indian Constitution had deliberately distanced itself from issues of religion but the law makers after two and half decade, having being evolved the conception of secularism by various judicial activism, incorporated it in the preamble. The Indian Constitution has enshrined right to freedom of religion as fundamental right running in parallel to that of Article 18 of the Universal Declaration on Human Rights. It is pertinent to provide here that in the Constituent Assembly debates on the scope of Article 25, it was recognized that this right must be subject to some limitations, so as to prevent forced conversions. Religious conversions have been debatable since time immemorial but has gained grave importance in modern day context when religion is getting more and more intrinsically mired in the lives of people in general as well as in the policy making process of nations. The source of Anti-Conversion Laws in India dates back to the colonial period incepting from The Raigarh State Conversion Act 1936, among others. Even in the Independent India there has been various attempts made to bind the issues of conversion by various state legislatures as freedom conferred to Ar. 25 (1) is subject to "public order, morality and health" which are State subjects.² Though there has been more criticism from the international media undermining the objective to protect religious adherents only from attempts to induce conversion by improper means, but it had failed to clearly define what makes a conversion improper bestows governments with unfettered discretion to accept or reject the legitimacy of religious conversions. The judiciary in the case of **Rev. Stainislaus v. State of Madhya Pradesh, AIR 1977 SC 908** validating the legislations provided that "in the name of propagation, no one has a right to convert a person to another religion under pressure or inducement". In the absence of judicial activism in this regard, this lead to a crossroad, either to relent before the issues of 'Gharwapsi' and enact a legislation as against conversions or let the right be dissolved in this process. But in a democracy, every law is a resultant of a parallelogram of forces.³*

Key words: Conversion, Constitution, Fundamental Right, Religion, Propagation.

* Student-CNLU Patna

¹ *Young India*, 27-10-20; (18:376)

² H.M. Seervai, *Constitutional Law of India*, (Vol. 3), Universal Law Publishing Co. Pvt. Ltd (4th Ed.)p.2534

³ V. P Sarthi, *Interpretation of Statutes*, 10 (Eastern Book Company, Lucknow, 4th edn, 2003).

INTRODUCTION

“Religion as it is generally taught all over the world is said to be based upon faith and belief and in most cases consists only of different sets of theories and that is the reason why we find all religions quarrelling with one another. These theories are again based upon faith and belief.”

Swami Vivekananda on Religion⁴

There never was a word, more responsible, in history, for causing such amount of disruption in society than ‘Religion’. Passion defies logic and emotion overpowers reason, when the subject of discourse is religion and when there is a question of conversion involved, the complexity and peculiarity of the situation gives the issue a dynamic character. “ 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 would 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.”⁵

In India, like most other orthodox 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.”⁶

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

Religious Conversion, in the sense we use, is not the dramatic religious experience that is so often equated with an intense state of emotionalism. Often these experiences occur within the framework of one particular religion; or intra-religious conversion experiences.⁷To define, conversion is a “*break with a person’s past ideas, attitudes, values, or behavior, more generally all four of these, accompanied by intense feeling...*”⁸Religious conversion has

⁴ <http://lawcommissionofindia.nic.in/reports/report235.pdf>, last accessed on 06.03.2015.

⁵ *The commissioner, Hindu religious endowments, Madras vs. Sri Shirur Mutt.*, (AIR 1954 SC 282), Para. 18.

⁶ 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.

⁷ Joshua Russo, *Religious Conversion as a Resolution of Cognitive Dissonance*, Brown University, 2004.

⁸ W.H.Clark, *Intense Religious Experience*, pg. 531

become the focus of intense debate in modern India, surfacing in the realm of politics, the media and the judiciary.⁹

There are laws enacted by various states aimed at restricting religious conversions have become the subject of much dispute and scrutiny.¹⁰ On the one hand, there are those who advocate a restriction on conversion, so as to preserve peace and harmony in plural India. This view is common amongst various Hindu groups, who are averse to the proselytizing drive of minority Christian and Islamic communities. On the other hand, there are those who believe such a restriction results in an infringement of the Right to Freedom of Religion, as guaranteed by the Constitution of India.

The right to "propagate" enshrined under Constitution is subject to public order, morality and health and the politico-religious quagmires has resulted in another round of debate as to requirement of a nationwide legislation in this regard; as the creditability of enactments of various states under State subject of 'public order' has been doubted.

THE MELTING POT OF RELIGION AND LAW

1 OBLIGATION UNDER INTERNATIONAL LAW

India has made a commitment in its Constitution to international law, especially in regard to Human Rights. Article 51 of the Constitution states that India will "*foster respect for international law and treaty obligations.*"¹¹ India has acceded to the **United Nations International Covenant on Civil and Political Rights (ICCPR)**, and is therefore bound by its provisions. Article 18 stipulates that:

"Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching."

The Universal Declaration of Human Rights also provides in Article 18 for:

"the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."

⁹ Sarah Claerhout, Jakob de Roover, The Question of Conversion in India, 40 *Economic and Political Weekly* 3048, 3048 (2005)

¹⁰ South Asia Human Rights Documentation Centre, *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights*, 43 *Economic and Political Weekly* 63, 63 (2008) available at <http://www.jstor.org/discover/10.2307/40276904?uid=2134&uid=2129&uid=2&uid=70&uid=4&sid=21101445849673> [accessed 2 March 2015]

¹¹ Susan L. Karamanian, India and International Law, Edited by Bimal N. Patel. Leiden: MartinusNijhoff Publishers, 2005, 101 AM. J. INT'L L. 538, 540 (2007)(book review).

Article 5 (d) (vii) of the International Convention on Elimination of Racial Discrimination (1966) recognized the “*right to freedom of thought, conscience and religion.*” Recognizing that the freedom of religion and belief, among other things, also contribute to the attainment of goals of world peace, social justice, friendship among people, the General Assembly of United Nations proclaimed in 1981 “The Declaration on the Elimination of all forms of Intolerance and of Discrimination based on Religion”.

2 CONSTITUTIONAL PRESCRIPTIONS

The principle of ‘equality of religion’, being an essential facet of egalitarianism, has, thus, found a place in the Constitution of India.¹² 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. Constitutionally, India is a secular nation with no preferred religion. However, over the years it has developed its own unique concept of secularism; one which is very different from the American notion of secularism, requiring complete separation of church and state, as also from the French model, where religion is relegated completely to the private sphere and has no place in the public one.¹³

Article 25 of the Indian Constitution provides for free practice and propagation of belief and religion, which the Freedom of Religion Acts violate as they restrict the right to propagate and ask to intimate all conversions or to seek prior permission. Article 26 concerns the freedom to manage religious affairs, which would include religious ceremonies such as baptism. Article 27 provides that no tax proceeds shall go towards the promotion or maintenance of any particular religion. Moreover, Article 19 (1) (a) states that all citizens shall have the right to the freedom of speech and expression.

This right is violated by the Acts, which include divine displeasure in the definition of *force*. Besides, the mandatory furnishing of details of conversions sought by the Acts violate Article 19 (1)(b) and (c) which give every citizen the right to assemble peaceably...

In interpreting the scope of this provision, the Supreme Court of India has held in ***Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*** (1962) AIR SC 853, that while an individual’s right to hold religious beliefs is absolute, that is, no person can be compelled, against his own judgment and belief, to hold any particular creed or follow a set of religious practices. However, his actions are subject to public order, morality and health, restrictions enumerated in Article 25 itself. Therefore, any restrictions on an individual’s freedom to practice or propagate his religion must be made on these grounds.

¹²Dr. Furquan Ahmed, P. Puneeth, Vishnu Konoorayar K, A Study of Compatibility of Anti-Conversion Laws with Right to Freedom of Religion in India, The Indian Law Institute, New Delhi, 2009.

¹³ Tahir Mahmood, *Religion, Law and Judiciary in Modern India*, 1 Brigham Young University Law Review 755, 256 (2006)

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”.

These rights are not absolute and are restricted to public order, morality and health. As defined by Supreme Court of India in **Commr. H.R.E. v. L.T. Swaminar (AIR 1954SC 282)** “a religion 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 is not correct to say that religion is nothing else but a doctrine of belief. A religion may only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral part of religion, and those forms and observances might extend even to matters of food and dress.”¹⁵

The apex court, in **Digyadarsan v. State of A.P.**¹⁶, 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 would not include the right to ‘convert’ another person to the former’s faith. In **Rev. Stainislaus v. State of Madhya Pradesh**¹⁷, relying on dictionaries, 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.¹⁸

ANALYSIS OF ANTI-CONVERSION LAWS IN INDIA

In 1955, the Indian Parliament rejected an Indian Converts Bill, applicable to all of India, after members of the legislature warned of the harassment that would ensue because of the unfettered control local authorities would have gained.¹⁹ However, the desire to regulate conversion gained the support of state governmental officials by 1956. Anti-conversion laws prohibit attempts to convert any person from one religious faith to another by use of force,

¹⁴ AIR 1954 SC 388

¹⁵ Dr. J.N. Pandey, *Constitutional Law Of India*, Central Law Agency, 42nd ed, 2005, 350.

¹⁶ AIR 1970 SC 181 (188)

¹⁷ AIR 1977 SC 908

¹⁸ *P.M.A. Metropolitan v. Moran Mar Marthoma*, AIR 1995 SC 2001 at 2026

¹⁹ Chang Hwan Kim, “Freedom of Religion Legislation in India: The Hindu-Christian Debate on Religious Conversion, MISSION AND THEOLOGY”, Vol. 9, Presbyterian College and Theological Seminary, June 2002, Available at <http://www.earticle.net/FileArticle/200707/633192048482031250.pdf>, pp.231-232

inducement, allurement, or any fraudulent means; aiding any person in such conversion is also prohibited.

As 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.

Henceforth, in 1967-68, Orissa and Madhya Pradesh enacted local laws called the Orissa Freedom of Religion Act 1967 and the Madhya Pradesh Dharma Swatantraya Adhiniyam 1968. Along similar lines, the Arunachal Pradesh Freedom of Religion Act, 1978 was enacted to provide for prohibition of conversion from one religious faith to any other by use of force or inducement or by fraudulent means and for matters connected therewith. Similarly one was legislated in Gujarat in 2003; certain amendments were made to enactments of Madhya Pradesh, Chhattisgarh in 2006 and then in Himachal Pradesh in 2007.

These laws made forced conversion a cognizable offence under sections 295 A and 298 of the Indian Penal Code that stipulate that malice and deliberate intention to hurt the sentiments of others is a penal offence punishable by varying durations of imprisonment and fines. Before discussing the constitutionality and other nuances of the seven statutes created till that in this regard, which are euphemistically called "Freedom of Religion laws", we shall first succinctly sift some historical background.

1 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.²⁰

2 NUANCES OF ANTI CONVERSION LAWS OF VARIOUS STATES

Today, anti-conversion laws are in force in the states of Orissa, Madhya Pradesh, Chhattisgarh, Himachal Pradesh, Arunachal Pradesh and Gujarat as state of Tamil Nadu repealed its act so created. While these laws do not prohibit religious propagation, they aim to protect against 'forcible conversion'²¹ using the following terms: '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 inducement or by any fraudulent means, nor shall any person abet any such conversion.' A major criticism of these Acts is the use of uncertain terminology; while the various terms used are statutorily defined, these definitions remain vague.²²

Force refers to 'show of force or threat of injury or threat of divine displeasure or social ex-communication.'²³ The broad definition so provided delimits exchanges between a potential converts and propagators of a religion. Inducement is defined as inclusive of '*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.*'²⁴ Since charitable acts are a feature of numerous religions, this definition might cause an infringement upon followers in the practice of their religious beliefs. Further, as numerous missionaries engage in activities providing education and medical facilities among various others, may be construed as 'temptations' within the ambit of the above definition.

The broad terminology in these Acts delimits even legitimate methods of proselytizing and facilitates abuse of these laws by enforcement agencies, as it provides them with a wide margin of discretion in assessing whether or not a conversion is legitimate.²⁵ The Acts impose

²⁰ Faizan Mustafa's, 'Conversion: Constitutional and Legal Implications', Kanishka Publishers, 2003, 108 & 109.

²¹ Li-Ann Thio, *Caesar, Conscience and Conversion: Constitutional Secularism and the Regulation of Religious Profession and Propagation in Asian States*, available at <http://www.juridicas.unam.mx/wcc/ponencias/11/357.pdf>, 20. [accessed 12 March, 2015]

²² *Supra*, note 21.

²³ Section 2(b), Himachal Pradesh Freedom of Religion Act, 2006; Section 2(b), Orissa Freedom of Religion Act, 1967; Section 2(c), Madhya Pradesh Freedom of Religion Act, 1968; Section 2(c), Gujarat Freedom of Religion Act, 2003; Section 2(d), Arunachal Pradesh Freedom of Religion Act, 1978

²⁴ Section 2(d), Himachal Pradesh Freedom of Religion Act, 2006; Section 2(d), Orissa Freedom of Religion Act, 1967; Section 2(f), Arunachal Pradesh Freedom of Religion Act, 1978.

²⁵ South Asia Human Rights Documentation Centre, *Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights*, 43 Economic and Political Weekly 63, 65 (2008) available at

an onerous burden on converts and persons seeking to propagate their faith, in the sense that, some of them require persons carrying out conversion or potential converts to give prior or subsequent notice of conversion to an official.²⁶ The Gujarat Freedom of Religion Act goes so far as to explicitly require that 'prior permission' be sought from the District Magistrate, before conversion, by any person carrying out conversion ceremonies.²⁷ Further, these Acts mandate harsh penalties for persons found guilty of forcibly converting others, with some Acts imposing a maximum imprisonment period of up to three years and a fine up to twenty-five thousand rupees.²⁸ Failure to give notice of intended conversion is also punishable.²⁹

Another vague feature of some of these Acts is the exclusion of re-conversion to one's native faith, from the definition of conversion. The Chhattisgarh Dharma Swatantraya Act specifically excludes 'returning to one's forefather's religion or his original religion' from the ambit of conversion.³⁰ Since Hindus constitute a majority of India's population, it is reasonable to assume that the religion of one's forefather would be Hinduism. Hence, while conversion is regulated, potential re-conversion, often into Hinduism, is acceptable which make the various 'Ghar-Wapsi' events within the legal prescriptions. In principal, induced reconversion should be prohibited in the same manner as induced conversion. The distinction between the two, is indicative of the fact that these Acts fails to employ a clear distinctions of various subjects, often ambiguous and also might be seen adopting an anti-secularist approach.

3 CONSTITUTIONALITY OF ANTI CONVERSION LAWS

Undoubtedly there is no ground justifying conversions brought about by violence or other illegitimate means of coercion. Also, there is no justification as regards the religious conversions for the purpose of escaping law or defrauding legal system. But on examining the statutes existing on the subject we realise their impropriety as the language adopted by these legislations goes far beyond the protection of this right and indeed, in no way appear to be motivated by the desire to protect the freedom of conscience.³¹

In the 1957 case of *Ratilal v. Bombay*³², the Supreme Court interpreted the ambit of Article 25 to include "the right to propagate one's religious views for the edification of others'. The Constitutional validity of the Orissa Freedom of Religion Act, 1967 was challenged before the

<http://www.jstor.org/discover/10.2307/40276904?uid=2134&uid=2129&uid=2&uid=70&uid=4&sid=21101445849673> [accessed 2 March 2015]

²⁶ *ibid.*

²⁷ Section 5, Gujarat Freedom of Religion Act, 2003

²⁸ Section 3, Chhattisgarh Freedom of Religion (Amendment) Act, 2006; Section 4, Gujarat Freedom of Religion Act, 2003

²⁹ Section 4, Himachal Pradesh Freedom of Religion Act 2006; Section 5, Gujarat Freedom of Religion Act 2003; Section 5, Arunachal Pradesh Freedom of Religion Act 1978, Section 5, Madhya Pradesh Freedom of Religion Act 1968 .

³⁰ Proviso to Section 2(b), Chhattisgarh Freedom of Religion (Amendment) Act 2006.

³¹ *Supra* note at 25

³² *Ratilal Panachand Gandhi v. The State of Bombay* 1954 AIR 388

High Court of Orissa in *Yulitha Hyde v. State of Orissa*³³ in the year 1969, wherein it was held to impinge upon many legitimate methods of proselytizing by reason of its overly vague nature and wide scope.

Twenty years later to the *Ratilal Case*³⁴, the same issues arose in the Supreme Court in the case of *Stainislaus v. State of Madhya Pradesh*³⁵, where the decision of *Yulitha Hyde Case*³⁶ was overruled and the Court upholding the validity of the Anti- Conversion Acts on the grounds that it guaranteed religious freedom to all, including those who are subject to conversions by ‘force, fraud and allurement’ observed that³⁷:

"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 apexcourt has observed that:³⁸

"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 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....

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 *Stainislaus Case* has been widely criticized. H.M Seervai, an Indian Constitutional law authority, agonized over the Supreme Court's failure to consider the legislative history behind the drafting of Article 25, as well as its failure to analyze the importance of missionary activities in the Christian religion.³⁹ He argued that often, the purpose of religious propagation was not merely to spread knowledge of one's religion but also, ‘to produce intellectual and moral conviction leading to action, namely, the adoption of that

³³ AIR 1973 Ori. 116

³⁴ Supra, note 32.

³⁵ AIR 1977 SC 908

³⁶ Supra, note 33

³⁷ Supra note 33, Para 19

³⁸ Ibid. Para 22 - 24

³⁹ M SEERVAI, CONSTITUTIONAL LAW OF INDIA: A CRITICAL COMMENTARY, 4th ed. 1991 , cited in V. Venkatesan, *Conversion Debate*, 25 Frontline (Sept. 2008), 1287.

religion⁴⁰ and that by propagating one's religion to another person with a view to its being accepted by the other person, one gives the other person an opportunity to exercise his freedom of choice of religion.

Seervai concluded by stating that the decision in the *Stanislaus case* is “*productive of the greatest public mischief and ought to be overruled.*”⁴¹

In another development, the High Court of Himachal Pradesh struck down portions of the Himachal Pradesh Freedom of Religion Act 2006 as violative of the Constitution of India.⁴² The World Evangelical Alliance Religious Liberty Commission challenged the validity of the Act, as well as the Himachal Pradesh Freedom of Religion Rules, 2007.⁴³ In its verdict delivered on August 30th, 2012, the Court struck down Sec. 4 of the Act, which made it compulsory for anyone seeking to convert from his/her religion to give a 30-day notice to the District Magistrate prior to conversion. The Bench observed that ‘*A person not only has a right of conscience, the right of belief, the right to change his belief, but also has the right to keep his beliefs secret.*’⁴⁴

NEED FOR ANTI-CONVERSION LAWS: ATTEMPTING PROPAGATION WITHOUT PROSELYTISATION

Religion in India is sensitive matter yet debatable though the concept has evolved eventually. Religion is out of reach and understanding of the masses since its portrayal nonetheless is incomprehensible and abstruse for a common man. The Anti conversion laws in India have a historical background but after Independence there was rather an aggressive approach of people towards the Anti-Conversion laws which were enacted by states leading to a socio-political uproar where the Supreme Court had to intervene and justify the laws in a Secular country like India.

Secularism to begin with, was never an inherent part of the Constitution of India prior the 42nd Amendment⁴⁵ since the drafters wanted to clear any misgivings that India was to adopt the western model of secular country. Indian concept of secularism was ‘*Neutrality and Impartiality towards all religion*’ which was founded on the concept of States concern with man to man relation and not man to God relation⁴⁶.

Now, the issue regarding whether Anti-Conversion laws in India is violative of Article 25(1) and that whether freedom of propagation of religion includes freedom to convert are still crucial point of debate

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² RavinderMakhaik, *HC partially strikes down Himachal's anti-conversion law* (31 Aug 2012) available at http://articles.timesofindia.indiatimes.com/2012-08-31/india/33520613_1_anti-conversion-law-subramanian-swamy-notice [accessed 12 March, 2015]

⁴³ *Evangelical Fellowship of India v. State of Himachal Pradesh* CWP No. 438 of 2011

⁴⁴ Ibid.

⁴⁵ Constitution (42nd Amendment) Act, 1976.

⁴⁶ Dr. Basu, Durga Das, “Introduction to the Constitution of India”, 19th Edition, Reprint 2004, Wadhwa and Co. Law Publishers, Nagpur, Pg-114.

which has been discussed previously where in the case of *Stainslaus v. State of Madhya Pradesh*⁴⁷, the Supreme Court deciding the case in the favour of State gave a remarkable judgement governing the laws and validating the anti-conversion Acts till date, distinguishing the freedom to propagate religion and right to convert. Court pointed out that where freedom of propagation of religion is a Fundamental Right, the latter is merely a component to the Fundamental Right and opposed to imposing of one's religious tenets on the other which would be equal to violation of right to *freedom of conscience*, one can merely transmit or spread ones religion by an exposition of its tenets giving others the choice to *purposely undertake* conversion or not. And also provided that the definition of the term 'inducement' impinged legitimate means of proselytizing because of its ambiguous nature and wide scope⁴⁸.

Further, where the statutory backing is there for the protection of religion and its propagation, there are limitations to that propagation and practice too which is inclusive of not exercising ones Fundamental Rights vis-a-vis others. Converting to another religion willfully or voluntarily portrays presence of free conscience where one has the right of choice based on his ethics and any sort of allurement or inducement may that be for a better life, unsolved religious queries, better education, housing, lifetime facilities etc. does amount to affecting the free conscience which would then amount to violation of the Fundamental Right to practice a religion of one's own choice. Hence, the state's interference, where conversion is done by any form (Force, Fraud, Inducement or Allurement), authorized under the Anti-Conversion laws is the most effective mechanism for protecting Secularism.

Right to convert should be a subject of freewill and any limitation to conversion in this sense should amount to violation of Human Rights. Nonetheless where this freewill too is manipulated by any sort of inducement, allurement, force, the forces of state shall play the role of protector of religion and religious beliefs and not let them succumb to opposite forces at play. Further where the Anti-Conversion laws are said to be violative under the International Charters in freedom to convert must look through Article 18(1) and Article 18(2) on the International Covenants on Civil and Political Rights, 1966, according to which impairment of freedom of religion by any form of Coercion i.e., force, fraud, inducement or allurement would amount to not free resultant choice of religion, the freedom of which is the right of all, so such contention overall is at an uneven ground.

Also we see that International Charters have been specifically complied with by the Indian Statutory provisions, thus proving anti conversion laws are not an extra imposition rather the need of the hour since protecting religion in a country which itself has no religion is a heavy burden which must be borne by the bearer in compliance of the legal bindings imposed under the Preamble.

And to further state religion is a matter of uproar in not just India but countries across the globe and as per a recent survey laws restricting apostasy and blasphemy are most common in the Middle East and North Africa, where 14 of the 20 countries criminalize blasphemy and 12 out of 20 Countries criminalize Apostasy. The liberals would most critically provide that the such contentions are inadequate as the nation-states are either having a State religion or is not a democracy like ours. But the argument ends up to the cross-roads as to where the nation would like to end up. The politico-

⁴⁷ *Stainslaus v. State of Madhya Pradesh* 1977 (1) SCC 677.

⁴⁸ Correa, Preethi Maria, "Anti-Conversion Laws in India and their Conflict with Freedom of Religion", UNILU Centre for Comparative Constitutional Law and Religion, Working Paper Series, 2013, Pg-6-8.

religious quagmires has resulted in a great social imbalances and if an effective instrument such as this not devised could lead to detrimental effect in a country like ours as here the things are needed to be thronged upon as a legislation to inculcate a social change. Hence Anti-Conversion laws in India like other countries is essential to protect the Secular nature of our Constitution.

CONCLUSION WITH SUGGESIONS

It is said that “*a person cannot choose if he doesn't know what choices are open to him*”⁴⁹ and this perfectly applies in cases of religion too. However, choice of religion cannot be equated with that of a choice between political and other kinds of opinions. Taking into consideration reasons of individual converts for adopting and manifesting a specific belief it may literally be a choice between heaven and hell. Right to choose is implicit in the freedom of conscience. As humans, we are born free with a natural right of choice; nevertheless none is able to exercise this right freely due to various reasons. It may be one's compelling surroundings, ignorance as to the comparative tenets of the various religious faiths or lack of availability of free and fair opportunity.⁵⁰ Hardly anybody is adequately informed as to the exercise of his rights relating to freedom of choice of religion.

It is clear that in this environment of politico-religious quagmires, as they stand, pose a serious threat to the pluralistic nature of Indian society as well as the secularism, which forms the bedrock of the Indian constitution. As an increasing number of state governments continue to deliberate on the passing of these laws creating another rounds of debates, it is the need of the hour for either the legislative or the judiciary to intervene, in order to ensure that the India Constitution and its principles of secularism, tolerance and equality are upheld.

On the matters such as these it's the thoughts of Father of our Nation which needs to be revisited who believed in **Sarva Dharma Sambhav** and provided that “*Religion is not like house or cloak which can be changed at will*” and that conversion for fear greed or any compulsion cannot be a conversion at all.

- Remedial legal measures need to be taken by the Union Government
- As in a democracy, every law is a resultant of a parallelogram of forces., the executive and legislature, both have to be sensitive to these forces
- Legislations had failed to provide guidance as to how such should be constructed which need to be incorporated
- A law need to be created which would curb not only forced conversions but also issues of religious aggressions.

⁴⁹ H.M. Seervai, *Constitutional Law of India*, Universal Law Publishing Co. Pvt. Ltd., New Delhi, 4th ed., 2005.

⁵⁰ Bimal Kumar Chatterjee, “Prosletysation and Indian Constitution” in B.K. Chatterjee (ed.), *Law is not an Ass and Other Essays*, Eastern Law House, New Delhi, 2006, 93.