

EXAMINES THE NATIONS OF ELIGIOUS LIBERTY HUMAN RIGHTS IN INDIA

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Abstract

Nearly every nation on earth protects the right of its citizens to practice their religion freely, although in somewhat different ways. A guarantee of this kind takes on an especially vital role in a society as religiously diverse as India, a nation that owes its multi-religious make up more to its long and illustrious past than to any historic or modern phenomenon. In India, spirituality is a contentious topic, and religious converts make the topic much more contentious; as a result, different state governments have implemented anti-conversion legislation, ostensibly with the in tension of preventing conversions that are the result of compulsion or seduction. These regulations have been the target of vehement criticism, and it has been said that they violate the right of individuals to exercise their religious freedom. The topic of religious conversion is investigated in this article from the perspectives of the current constitutional provisions, court declarations, and secularism, as well as through the prism of modern political ideology.

Introduction

"The term human birth refers to an ascription of sorts, an ascription to a certain race, rank, caste (in the context of India), and religion. The question of whether or not such ascriptions are possible of revision, and if they are, then to what degree, has been a topic of human research, a social goal (for example, backward caste movements to get rid of caste-based injustices in India), as well as modern political philosophy". Whenever the raise conversation about religious in the public are Nain India (as compared to religion just being a part of human existence), the topic of secularism, and more especially the Indian form of secularism, is always brought into the forefront.¹ Since there is no such thing as a worldwide religion, there cannot possibly be a general framework of secularism.

According to Donald E. Smith, "To most Indians, secular implies non-communal, or non-sectarian, but it does not imply non-religious." It is not a "wall of separation" among the government and church that forms the foundation of a secular nation; rather, it is the "no preference doctrine," which mandates that no particular religion be given any kind of preferential treatment. The idea that the government should not promote any one religion's part of its mission is vital to the idea of a state that maintains its secular status.

The Indian constitution guarantees a level of religious tolerance that is commensurate with the country's rich religious diversity. Important constitutional amendments on freedom from religion may be found in articles 25 through 28, respectively. It is also important to point out at this juncture the phrase "religion" is not defined anywhere in the Indian Constitution; rather, the phrase's wide meaning has been established via various court declarations.

Religious has been a contentious topic in our nation, and it has the potential to stir up feelings that may easily be turned into violent outbursts in the public domain. This has made it a potentially dangerous problem. An excellent illustration of this can be seen in India's anti-conversion legislation, which seem to be the topic of numerous unresolved discussions and are also the focus of the present piece.

II "Right to freedom of religion in India"

The third section of the Indian constitution guarantees the country's citizens the right to freely practice their faith. This liberty is not just granted to citizens of India; rather, it is extended to anybody who maintains a permanent residence in the country. Article 25, which reads that "Subject to public order, morality, and health and to the other provisions of this Part, all individuals are equally entitled to freedom of conscience and the right freely to profess, practise, and propagate religion," makes this quite obvious. The highest court in the land has elaborated on the restrictions that have been imposed on this right in the accompanying words: There is little doubt that religious belief is a question of faith for people as well as societies, yet religion does not always include theism. The right to liberty has been stated in unlimited language without any restriction whatever for both American Constitution and the Australian Constitution. This is the case in both countries' respective founding documents. Because of this, the legal systems in many nations' have imposed restrictions in order to preserve morality, maintain order, and provide for the safety of society. On the other side, the people who drafted the Constitution are being discussed., have incorporated within the Constitution itself for the constraints that have been developed by court decisions in the United States or Australia, and also the dialect of articles 25 and 26 is reasonably clear of facilitates to ascertain, without the assistance of foreign governments, what issues are considered to be inside the scope of religious practice and what issues are not considered to be inside the purview of faith. In addition, the Indian state has the authority to control

topics that are tangential to religions, or in other terms, the secular activities that are linked with religious rituals. However, the state is not entitled to intervene with the religious affairs itself. The actions that are truly of an economical, financial, or political nature even if they may be belinked with religious beliefs are the ones that comprise the scope of the item in question 25(2)(a) and may be regulated by the state. Additional religious major religions have even been granted the rule to develop and maintain organizations for religious and charitable reasons; to handle its own relations in matters pertaining to religious practice; to own and obtain adjustable and immovable property; and to administrate such estate in conformance with the law. To summarize, the Indian view on the religious liberty includes that the state should not meddle in subjects pertaining to religions, and the only kind of intervention that is acceptable is meddling in areas that are incidental to religion. This is a simplified version of this colorist approach in India. Continual observation will be utilized to determine how well this skeletal model functions after it is supplied with a supply of vitality and circulation. It is essential to keep in mind that secularism did not become a part of the Indian constitution until much later. In India, there have been efforts undertaken to foster secularism, including the following: There have been several unsuccessful efforts to modify the Indian Constitution in order to make its proclamation of secularism more explicit and robust. The Constitutional (Eightieth Amendment) Bill, 1993 was an attempt to give Parliament the authority to outlaws subunits and groups that foster religious strife and to expel members who engage in such improper behavior. Ultimately, the measure did not get enough votes to pass.

The reality that there is still a section in the Indian Penal Code called "Of Offences Relating to Religion" is another indication of how significant the Indian government considers spirituality to be. This section makes it a crime to intentionally insult a group's religious beliefs or practice in such a way that it causes the group's members to feel insulted, and those who commit this crime face the possibility of serving time in prison. As a result, it is only reasonable for a nation that is home to more than one faith to pursue the matter of conversions carefully.

III Religious conversion

Concerning the topic of religious conversion, the concept of religious freedom begins to become more unclear. The problem is made even more complicated by the fact that the parts of the Constitution that are related to the basic right in question do not include any express right to convert. The highest court was provided the chance to investigate is not whether the correct to propagate includes the ability to transform in a number of instances that were brought before it. That's because the privilege to perpetuate is a basic human right, whereas the privilege to convert someone against their will is against the law. "In the case of *Ratilal Panachand Gandhi v. State of Bombay*, which was heard in 1954, the Supreme Court of India made the provision of article 25 clearer by affirming that every individual possesses a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgement or conscience but also 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 his fellow beings." However, "in a different judgment regarding the case of *Digvijayadasan Rajendra Ramdasji v. State of Andhra Pradesh*, the supreme court decided 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 faith of the former. "As a result of this, the legal system came to the conclusion that the rights to religious freedom only protects the promotion of a faith, but not really the act of converting individuals from one faith to another. Orissa was among the states that passed the "Freedom of Religion Act" in 1967, making it one of the first states to do so. "An act to provide for prohibition of conversion from one faith to another by use of force or persuasion or by fraudulent methods and for things ancillary thereto," is how the aim of the Orissa Act, which was passed in 1967, is described. The Orissa Act of 1967 said that the offender was subject to either a one-year jail term or a fine in the amount of Rs. 5,000, or both, if found guilty of converting another person using undesirable methods. It is interesting to note that the fine for conversion of a youngster, a woman, or a person of a Tribal Area or Tribe was either 2 years in jail, a penalty of Rs. 10,000, or perhaps both. It is reasonable to assume that the state placed these extra sanctions in the Act in order to safeguard "weaker parts of society," as they saw them to be. The concept that even those who transfer members of Tribal communities or castes do so by taking advantage of their "poor, simplicity, and ignorance" was the rationale for the decision to enhance the penalty for transferring a juvenile, a woman, or a representative of one of the Tribal communities or castes. The "Madhya Pradesh Dharma Swatantrya Adhiniyam" was the name given to the statute that came into effect in 1968 when the state of Madhya Pradesh passed its very ornate conversion law. The terminology that issued in Adhiniyam is remarkably close to the terminology that was used in the Orissa Act of 1967. In addition, the severity of the penalty, which included the imposition of a fee, was the same for conversions that were accomplished using questionable methods. In the particular instance of *Yulitha Hyde v. The Government of Orissa*, the Orissa Act of 1967 was questioned on the following grounds: "(a) The State Legislature has no legislative competence to legislate on the matters covered by the Act, and (b) The Act infringes the fundamental right guaranteed under article 25 of the Constitution." 16 Despite the fact that the Act was ultimately ruled to be outside the government's authority, several very insightful insights on the interconnectedness of propagation and conversions were made. First and foremost, the practice of conversions was seen to be a right that was automatically included in the religious freedom that was given by the Indian Constitution. 17 The court remarked: Consequently, the full extent of the assurance outlined in Article 25 (1) of the Constitution needs to be considered to include all the ability to perpetuate faith. Furthermore, as a required natural consequence of this proposal, the right to convert into one's own religious needs to include that in place to safeguard the rights of residents who identify as Christians.

"The court gave three reasons for declaring the Act to be unconstitutional: article 25 (1) guarantees conversion as part of the Christian religion, the definition of inducement is too vague, and the State has no power to enact the legislation envisioned by the Act since the Act deals with religion and not public order. 18 These three reasons were the basis for the court's decision to declare the Act to be unconstitutional". The "Madhya Pradesh Adhiniyam" was also contested 2 years later, much as the Orissa Act that had been passed in 1967. Given that when both Acts were, in many respects, of a similar character, a great

amount of reliance was placed on the previous *Yulithaverdict* that had been handed down by the "Orissa High Court". The shocking aspect of this, however, is that the intention of the references was all along to plead against the previous verdict. Because the court believed that conversions that were carried about using banned methods were concerns of civil safety and not religious matters, it ruled that the state government possessed the authority to pass the statute at issue in this particular instance 19 and upheld that authority. The "Supreme Court of India, in *Rev. Stanislaus v. State of Madhya Pradesh*", produced judgment on the constitutionality of two of the oldest pieces of anti-conversionary forms in India: the "Andhra Pradesh Dharma Swatantrya Adhiniyam", 1968, a law that prohibits the conversion of Hindus to other religions; and the "Uttar Pradesh Dharma Swatantraya Adhiniyam", a law that prohibits the conversion of Muslims to 20 The words of Justice Ray, 21. It is significant to mention that "liberty of sense of morality" is guaranteed to each and every citizen by Article 25(1), and not simply the adherents of a certain faith in particular. The above, in turn, leads one to the conclusion that there really is no fundamental human right to convert another person to its own belief. This is due to the fact that if a contributor undertakes the conversion of another participant to his religious practice, as opposed to his effort to transmit or broaden the tenets of his belief, it would also constitute an infringement on the concept of 'freedom of religious expression,' which should be a fundamental human right. "Commenting on the preceding ruling, a large number of academics have pointed out that the supreme court has further obscured the issue, which has made it even more difficult and susceptible to misuse on the part of the majority. In response to other decision in *Stanislaus*, constitutional law scholar H.M. Seervai made the observation that to propagate religion is not to impart knowledge and to make it more widely available, but rather to produce intellectual and moral conviction that results in action, namely the adoption of that religion. Conversion would occur if the dissemination of religious information was successful. 22 The logic that leads one to the conclusion that propagation should be confined solely to the edifying of religious doctrines is one that satisfies the interest of the majority, and the interests of the majority alone. 23 Religions like Islam and Christianity are proselytizing in nature, and the Supreme Court's ruling that edification rather than conversion can only be protected as the aim of religious propagation under article 25 of the Indian Constitution nothing but interference by the state with the freedom of conscience. Edification rather than conversion can only be protected as the aim of religious propagation. Or, as Seervai put it, conversion does not in any way conflict with freedom of conscience; rather, it is a fulfillment of it and lends significance to it". In the years that followed the decision made by the supreme court in the case of *Stanislaus*, additional anti-conversion laws were passed into law. In 1978, a week after the Superior Human Court's decision of the court of Reverend *Stanislaus v. Andhra Pradesh*, and in the aftermath of substantial anti-Christian conflict in India's northern region, the quarter of the preliminary portion of Government Religious Freedom Act was implemented in what became the Union Territory of Himachal Pradesh. This act protected the rights of individuals to practice their religion without interference from the government. 25 It is also significant to mention that anti-conversion provisions of the act were managed to make by Protectorate though in the pre-Independence era. Examples of these statutes include the Palghar State Converting Act of 1936, the Patna Religious Liberty Act of 1942, the Sarguja Government Religion Act 1945, and the Udaipur Government Anti-Conversion Act of 1946. All of these statutory provisions were particularly against religion. 26 Anti-conversion laws are enacted on the basis of the presumption that it is necessary to take precautions against the practice of coerced or induced religious conversions. These kinds of legislation are contentious because there is a possibility that majoritarian elements in the nation would use them in an improper manner. Because the parliamentary purpose of such legislation can be clearly established by having to read the law holistically with the assistance of different tools of explanation, but there are no tools available to verify the intention behind that act of converting, which is intensely personal (and for some people, even spiritual). How, therefore, can the state tell the difference between a transformation that would be the result of a real act of consciousness and one that is the result of exhibits a significant means? The situation is compounded even worse in the case of mass conversions (as compared to personal conversions), and the authenticity of such acts is frequently called in question due to the fact that they are frequently carried out for the purpose of furthering a particular agenda and have very little to do, if anything at all, with belief or consciousness. Because the act of transformation, in and of itself, is incompatible with the establishment of any reasonable criteria against which declarations about its sincerity may be established. Religion speaks more to the emotional side of a human's body than it does to the logical side of their existence.

"Door-to-door religious conversion in USA"

"In the United States of America, the federal Supreme Court has been presented with a number of issues relating to door-to-door solicitation in recent years. *Martin v. the City of Struthers* is an example of such a case. 27 In the case involving Jehovah's Witnesses, the court overturned an ordinance that prohibited solicitors or distributors of literature from knocking on residential doors in a community. The goals of the ordinance were to protect people's privacy, to protect the sleep of many people who worked night shifts, and to protect against burglars who posed as canvassers. However, the court found that these goals were not adequately met by the ordinance. The majority decision, which was reached by a vote of five to four, came to the conclusion that the dangers of distribution can so easily be controlled by traditional legal methods, leaving to each householder the full right to decide whether he will receive strangers as visitors, that stringent prohibition can serve no purpose other than that which is prohibited by the Constitution, the naked restriction of the dissemination of ideas. This was reached in light of the fact that the dangers of distribution can so easily be controlled by traditional legal 28". In the case "*Watchtower Bible and Tract Society v. Village of Stratton*", 29 the court overturned a bylaw that had made it a violation of the law to interact in door-to-door activism of any kind—religious, diplomatic, or commercial—without initially signing up with the governor and obtaining a license. The ordinance had made it a misdemeanor to participate in door-to-door advocating of any kind. It is insulting to the very concept of a democratic society, the judge decided to write in its opinion, that a civilian should first inform the authorities of her interest in speaking to her neighbors and then acquire a permission to do just that. Citizens should not be required to obtain permission from the government before speaking to their neighbors. 30 Therefore, the mindset of the judicial system in the United States makes it abundantly clear that the privilege to perpetuate, which would be a component of the religious rights, does

not exclude the option to convert a someone (through the exhibition of one's religious tenets just not through push, forgery, temptation, or coercion) or request additional someone to join one's religious practice. Even worldwide legal documents such as the "Universal Declaration of Human Rights (UDHR), the European Convention on Human Rights (ECHR), and the International Covenant on Civil and Political Rights (ICCPR)" acknowledge that the privilege to transformation is an inherent component of the liberty of the individual.

Reasons for conversion

Why do individuals believe the need to convert? This topic has been extensively discussed in other academic fields, such as sociology and psychology, but not in legal studies. The court is concerned primarily with whether or not the causes are lawful or illegal; it does not look at the reasons themselves. Despite this, it is necessary to make a quick note of the many different factors that precede conversions. "Relative deprivation" is considered to be among the most major elements that is attributed with pushing persons to switch to other religions. According to the findings of a number of sociological research on converting that were carried out in the 1960s and 1970s, insufficiency on a variety of fronts—including the financial, interpersonal, moral, religious, and psychological—has been identified as the primary driving force behind a human's move to change their religious identities. Most crucially, conversion to other faiths could also be the result of brainwashed or other forms of influence that are accomplished via the use of force.

Libertarian debate

The libertarian philosophy places an emphasis on the individual above achieving one's goals. This indicates that a person is free, reasonable, and competent of self-determination. Furthermore, the person retains the right to ask, rewrite, and dismiss his or her most strongly held beliefs about the essence of the great life, if it is discovered that these beliefs are no longer worth investigating. In other terms, culturally and community-based identity come after the person, and there is a gap between both the person and the society identity. Because of this, libertarianism as a political ideology is dedicated to the concept of reversibility. As a consequence its proponents advocate a neutral state. According to the discussion around liberals, a person has the right to change any aspect of his great life, especially his religions, if he or she believes that the aspect is not worthwhile to continue or pursue.

CONCLUSION

People can't be separated from the extended social, economical, political, and cultural situations in which they find themselves. The dilemma is whether or not people are totally free to act whatever they like, or whether or not they are required to utilize their liberty within the constraints of society. This problem, which seems to have no solution, has been the focus of discussions in modern political philosophy, which has led to the conflict between communitarians and libertarians. On the one hand, there are some who advocate for personal liberty and independence, while on the other; there are others who stress the importance of communal relationships in national politics. This discussion centers primarily on this tension. The development of the collective is approach coincided with the release of Michael Sandel's book, *Liberals and the Boundaries of Justice*, which became an important text in the field of political philosophy. In this work, Sandel provides one of the most strong criticisms of Rawlsian liberals, the formulation of which can be seen in "John Rawls's *A Theory of Justice*". Sandel argues that Rawlsian liberal ideology is fundamentally flawed. The belief that an user's society is the central influence on the formation of their character, the cultivation of their abilities, and the pursuit of their ambitions is central to collectivism. In communitarianism, the concept of the self does not play an autonomous role and does not come before the goals. Humans, in the view of collectivists, do not exist in total and unbroken solitude; rather, they are produced and formed as a result of their participation in certain groups. As fellow humans, we are fundamentally part of a family, faith, tribal, ethnicity, and country. As a result, instead of being disconnected from the goals and ideals of our communities and societies, we have a past and are situated in particular social situations. According to the individual is argument, the freedom to change one's religious beliefs does not seem to be a fundamental right since isn't always open to "revocability." The fact that the issue of state religion is, in certain ways, unique in its genre and that no western model can fully fit in makes religion demographics an important topic in India. In the conclusion, one might draw the conclusion that the rights to religious freedom would have been an illusion if someone were not entitled to change their religious affiliation, of obviously without the use of any kind of force or desire. The rights to conversions are clearly included in all of the largest global documents, and it is seen to be an inherent part of the right to religious freedom. Even solicitations have been deemed to be within legal bounds in the United States, and any laws or directives that have been made to prohibit it have been challenged in the courts.

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4. *Ratilal Panachand Gandhi v. State of Bombay*, AIR 1954 SC 388.6 Article 26 of The Constitution India.
5. The word secular was inserted later in the Preamble of the Indian Constitution vide 42nd Amendment to the Constitution in 1977.
6. *Supra* note 1 at 2.
7. *The Indian Penal Code*, 1860, s. 295 A.
8. *Supra* note 5.
9. 1970 AIR 181.