

**Unfreedom in Practising Religion: The Case of Restrictive Legislation in
Madhya Pradesh**

*Thesis submitted to Jawaharlal Nehru University
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DOCTOR OF PHILOSOPHY

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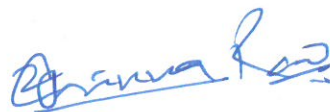
DECLARATION

I declare that the thesis entitled “Unfreedom in Practising Religion: The Case of Restrictive Legislation in Madhya Pradesh” submitted by me for the award of the degree of Doctor of Philosophy of Jawaharlal Nehru University is an original work. The thesis has not been submitted for any other degree of this university or any other university.


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CERTIFICATE

We recommend that this thesis be placed before the examiners for evaluation.



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Dedicated

**The scores who are the victims of
communal violence, and the millions
holding the fort, struggling everyday
against communalism.**

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Introduction

The Constitution of India was drafted by the Constituent Assembly. There were several committees formed under the leadership of Dr Rajendra Prasad. He led the steering committee and committees on finance and rules of procedure. Dr B.R. Ambedkar led the Constitution drafting committee and Rau was the chief constitutional advisor. The advisory committee which dealt with the fundamental rights, minorities, and tribal and excluded areas was led by Vallabhai Patel. The Fundamental Rights which included in part III of the constitution provides every citizen of India certain Fundamental rights including, the right to equality, right to freedom, right against exploitation, right to freedom of religion, cultural and educational rights and right to constitutional remedies. In the right to freedom of religion, four different freedoms are guaranteed; one is the freedom of conscience and free profession, practice and propagation of religion. Second is the freedom to manage religious affairs. The third is the freedom as to the payment of taxes for the promotion of any particular religion and the fourth is the freedom to attend to religious instruction or religious worship in educational institutions. Every state legislature of the Union of India, as well as the Parliament of India itself, has to ensure that not only the laws they pass do not violate any of these rights, but they should also make these rights real for every citizen of India, irrespective of their social status.

The job of the judiciary was to protect these fundamental rights from legislative overreach. The fundamental rights are unique because any citizen who feels that his/her fundamental right has been violated can apply directly to the

Supreme Court. Article 13, of the Indian constitution in two parts states, “(a) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void. (b) The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void.” Article 32, under the right to constitutional remedies states, “(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed. (2) The Supreme Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part. (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.” Taken together, Article’s 13 and 32 gives every citizen the right to challenge the constitutionality of any law passed either in British India or Independent India that they feel violates one of their fundamental rights.

Though British India had no anti-conversion laws, several princely states enacted anti-conversion legislation such as the Raigarh State Conversion Act 1936, the Patna Freedom of Religion Act 1942, Saraguja State Apostasy Act 1945, and the Udaipur State Anti-Conversion Act 1946. These acted as precedents for the post-

colonial Indian state to take up the issue of religious conversion. The Constituent Assembly (1946-1950) debated in detail the clauses regarding religious conversions. These debates later laid the foundations for future enactments. The 1954 Indian Conversion (Regulation and Registration) Bill and the 1960 Backward Communities (Religious Protection) Bill, both of which were placed in the parliament had to be dropped because of lack of consensus. Though the Parliament failed in enacting such laws, the state legislatures of Orissa and Madhya Pradesh successfully enacted local laws in the name of the Orissa Freedom of Religion Act 1967, and the Madhya Pradesh Dharma Swatantraya Adhiniyam 1968. The thesis details the Constituent Assembly debates (1946-1950) and traces the socio-political developments which led to the enactment of Madhya Pradesh Freedom of Religion Act in 1968.

Article 25 of the Indian constitution states, “All the people are equally entitled to freedom of conscience and the right to profess, practice and propagate religion” which implies that all the people i.e. citizens, as well as non-citizens, are entitled to freedom to mould his/her relation with supposed divinity; declaration of one’s religious beliefs and faith openly; performance of religious worship, rituals, ceremonies; exhibition of beliefs and ideas; and the right of transmission and dissemination of one’s religious beliefs to others. These freedoms exclude the right to forcibly convert as this impinges on the ‘freedom of conscience’.

It is alleged that the conversions are brought through violence, illegal means or coercion. Conversion according to these laws means, ‘renouncing one religion for the other’. It brackets everyone to be the followers of one religion, i.e. Hinduism without taking into consideration all other sects and other pantheons which are there

or which are covered under the broad umbrella of 'Hinduism'. The language in the anti-conversion legislation forbids conversion stating that. '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.' Whereas there is no clarity provided over the terms such as inducement, fraudulent etc and these terms are left open to vague interpretations. These laws are given legitimacy on the ground that they were formulated to protect the freedom of religion and to maintain the social order. The broad definitions and interpretation associated with the legal usage of the words such as force, inducement, allurement etc intrude into the communications between the converters and the people introducing them into the new religion.

As the ambit of these terms is left vague, the various donations and contributions made by various religious groups whether in charity also came under the scanner; restricting the followers from practising their religion and religious beliefs. Freedom of religion acts is legalized on the pretext of upholding the public order.

The anti-conversion laws, laws claim to prohibit conversions by force, fraud, inducement and allurement. The curtailment of the freedom of religious beliefs is legalised on the pretext of upholding the public order. These acts state that 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, inducement or by fraudulent means. These laws come into place with the assumption that certain groups, mainly from

the downtrodden and marginalized sections, fall prey to allurements and are easily tricked into conversion.¹

Scope of Research

This study will examine the scope, nature and reality of this promise in the way the Republic of India has been constituted. This thesis is a study of laws known as the freedom of religion laws passed by some state assemblies of the country. Specifically, it will look at the first freedom of religion law, passed by the state of Madhya Pradesh (Madhya Pradesh Dharma Swatantrya Adhiniyam) in 1968, its history and the emergence of these laws and the socio-political impact.

The anti-conversion laws are justified by the state, as they tend to assume that group conversions are not acts of wilful decisions and conscious thinking but rather are forced conversions. The language in the anti-conversion laws is vague and used intransitive sense where the rights of individuals to convert are not discussed. These laws evade the question of judging the cases of conversion on an individual basis and are formed on the assumption that certain sections particularly marginalised groups are deceived and converted. The marginalized groups are considered to be 'naive' and 'susceptible to conversion'.

The act of conversion is perceived by the Scheduled Castes and Scheduled Tribes as a means of upward social mobility and also as one of the ways of protest. For these subaltern communities, the conversion is not seen barely as a religious

¹ Laura Dudley Jenkins, "Legal Limits on Religious Conversion in India", *Law and Contemporary Problems*, Vol. 71, No. 2, Galanter-Influenced Scholars (Spring,2008),

event but also as a fight for equality in society. Laura Dudley Jenkins argues that religious conversion is not only religious but also a political act since the act of conversion is complicated because of various personal laws. She further contend that the deed of conversion is political, because of the state's role in defining religious boundaries of a secular state and the boundaries between religions?

The people who are found to be violating this law are punished with fine and imprisonment, and in cases where the person is found to be violating the law from the downtrodden castes or tribes, the fine and punishment is thrice the amount. "Any person contravening the provision contained in section 3 shall, without prejudice to any civil liability be punishable with imprisonment 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 Schedules Castes or Scheduled Tribes the punishment shall be imprisonment to the extent of two years and fine up to ten thousand rupees."² This thesis will focus on the point as to how despite such constitutional rights, state assemblies peopled by elected representatives pass legislation that is designed to discriminate certain groups of citizens. The concept of the legislation itself as an agency of discrimination is examined.

Conversion is not an event in any individual, group or a collective's life but a process in which the convert, questions and critically assess the religion which he/she leaves and the religion he/she desires to join. Ban on any organized attempt to propagate and persuade others of ones owns views and beliefs, whether religious,

² Madhya Pradesh Dharma Swathantra Adhiniyam, 1968

political, or cultural would be a curtailment of civil liberties and democratic rights of the people.³

Religious conversions involve three interlocking and interdependent dominant symbols God, world and human beings and their various interrelationships are believed to have been reconstituted in a way that is optimally acceptable to the converts.⁴ Conversion is a flexible process of changing associations with certain religious beliefs and traditions. There are various religions; some are proselytizing whereas some other religions expand only through natural reproduction. Some religions accept converts from other religions at the same time there are others which are closed religions and do not accept any conversions because people have to be born into these religions.

Conversion is a process where the converts disassociate from one religion, its dogma, traditions and practices and are initiated into a new religion where they have to exclusively adhere to the beliefs and practices propagated by the new religion into which they seek to enter. Conversions could happen at both levels, individual level or at the mass level where a group or complete section of people following certain pantheons convert to a new religion.

³ Rudolf C Heredia., *Religious Disarmament: Rethinking Conversion in India*, Gyan Publishing House, New Delhi, 2014.

⁴ Rowena Robinson and Sathianathan Clarke (ed), *Religious Conversion in India: Modes, Motivations and Meanings*, Oxford University Press, New Delhi, 2014.

Exploring the Intellectual Paradigms

In India, conversions fall into three major chronological periods; pre-British, British and post-Independence period.⁵ Religious conversions never happen in abstraction, they are always facilitated by other persons, social institutions, groups and community members.⁶ Though a religious commitment is a personal choice, it still affects the individual's life and the society around them which they are associated with. Conversion is also perceived sometimes as acts of the ultimate betrayal by some religious groups.

Neena Vyas argues that the high caste Hindus fear that they will lose grip over the society if more marginalized sections convert to another religion from Hinduism. As such, they oppose any acts of conversion. Nivedita Menon and Sumit Sarkar argue that the attack on the minorities by the Hindutva groups is rampant because they use conversion as a convenient pretext to adhere and further their agenda of Hindu nationalism.⁷

Biswamoy Pati argues that common perceptions around religious conversion operate on flawed logic, as there exists an understanding that Hindus can only be born as Hindus and conversion has to be from Christianity, Islam or Buddhism. All sections of the Scheduled Tribes are homogenised and considered to be born Hindus and Hindu identity is ascribed to them. Though the Hindu religious identity is

⁵ Rowena Robinson and Sathianathan Clarke (ed), *Religious Conversion in India: Modes, Motivations and Meanings*, Oxford University Press, New Delhi, 2014.

⁶ Rudolf C Heredia., *Religious Disarmament: Rethinking Conversion in India*, Gyan Publishing House, New Delhi, 2014.

⁷ Sarah Claerhout and Jakob De Roover, "The Question of Conversion in India", *Economic and Political Weekly*, Vol. 40, No. 28, Jul. 9-15, 2005.

imposed on the Scheduled Tribes, they continue to be treated as outcastes within the Hindu social order. Pati says that this process involves establishing power over both the Adivasis and the outcastes so as to exploit them.⁸

Rudolf Heredia argues that a conversion is a multi-faceted act and it can be understood in terms of four different levels of understanding. These levels are distinct but not separate and they overlap and interrogate each other. At the psychosocial level, the conversion is understood as a personal choice, where the individuals reject their earlier identity and try to change or adapt a new identity. Personal quest may not be just religious or spiritual but conversion is seen as an opportunity to gain liberation. At the socio-cultural level, there is a collective adaptation of a new belief system on the question of social advantage or disadvantage. The question of collective dignity and a sense of privilege or disadvantage are associated with these forms of conversion. In the eco-political approach, though there is an over-simplistic explanation of conversion, there is a need to question the logic of such a phenomenon simply as matters of political concerns or economic interests. In fact, there are several issues that need to be resolved, like these related to economic opportunity and equality, political participation both in the centre and the margins, which all are to be seen in mass conversions involving subaltern as well as dominant social groups. At the socio-religious understanding level, religious conversion involves a change in the religious worldview. There is a change as to how the individual understands the

⁸ Biswamoy Pati, *Resisting Domination: Peasants, Tribals and the National Movement in Orissa (1920-50)*, Manohar, Delhi, 1993.

world and the approach he/she undertakes to comprehend the society. All these undergo changes which are reflected in the converts' religious belief system.⁹

Conversion is also regarded as an assimilative act, where the converters get assimilated into the dominant belief system. Gauri Viswanathan argues conversion as a form to attain equality, discussing while the conversion of Ambedkar, who rejected the religious dogma in Hinduism and converted to Buddhism as a form of dissent. Ambedkar's conversion is not understood as a knee-jerk reaction but a carefully planned exercise, born out of the discussions with the Hindu leaders and out of deliberations with the Muslim, Sikh and Christian organizations. Viswanathan argues that conversion by the marginalised sections is not fuelled by any change in their spiritual or religious beliefs but conversion by them was more a mark of dissent, who wanted to get out of the constraints which these religions had put on their lives.¹⁰ Rudolf Heredia argues that, the Freedom of religion acts, which argue that they are concerned to protect the Dalits from 'force, fraud, inducement' create several constraints for the marginalised sections curtailing their freedom of religion guaranteed by the constitution. Conversion as an atrocity has been singled out by such laws and enforced with the understanding and concern not to protect the converted, but to prevent the conversion of the marginalised so as to confine them to a situation where there is no 'entry' or 'exit' for them. Consequently, the upward

⁹ Rudolf C Heredia., *Religious Disarmament: Rethinking Conversion in India*, Gyan Publishing House, New Delhi, 2014.

¹⁰ Gauri Viswanathan, *Outside the Fold: Conversion, Modernity and Belief*, Princeton University Press, New Jersey, 1998.

mobility in the caste structure is socially confined and their escape from these structures is legally obstructed.¹¹

Padmanabh Samarendra has highlighted how the Constitution (Scheduled Castes) Order, 1950 and the two amendments of 1956 and 1990 take the markers of caste and religion identity as the benchmark to provide reservations. It makes the point that only the lower castes practising Hinduism, Sikhism and Buddhism would benefit the fruits of reservation. The Supreme Court orders also conformed to the opinion that caste being contingent of religion is perceived to be connected with but yet separable from religion and in some cases autonomous of religion.¹² The judicial pronouncements were made with the assumption that caste is a feature only among the Hindus whereas there is enough literature to suggest that there are stratifications in other religions too.¹³ The Hindu right and its affiliated organizations have started a virulent campaign called ‘Ghar Vapasi’ and in recent times have raised the ante. Ghar Vapasi is not conversion, but is meant ‘Ghar Vapasi’ or ‘returning to home’ for those who are lured by an ‘alien faith’ or are forcibly converted to an alien faith and this is nothing but reconversion on a voluntary basis. Arguments of lure, force, fraudulence and material gains have been constantly made in anti-conversion laws and by the Hindu Right in opposing conversions. Reconversion, however, is claimed as a voluntary return, by choice. Ghar Vapasi campaign is a political programme

¹¹ Rudolf C. Heredia., “No Entry, No Exit: Savarna Aversion towards Dalit Conversion”, *Economic and Political Weekly*, Vol. 39, No. 41, Oct. 9-15, 2004.

¹² Padmanabh Samarendra, “Religion, Caste and Conversion: membership of a Schedule Caste and Judicial Deliberations”, *Economic and Political Weekly*, Vol. LI, No. 4, Jan. 23, 2016.

¹³ See Imtiaz Ahmad (ed) *Caste and Social Stratification Among the Muslims*, Manohar Book Service, New Delhi, 1973. Rowena Robinson, “Minority Rights Versus Caste Claims: Indian Christians and Predicaments of Law”, *Economic & Political Weekly*, Vol XLIX, No 14, 2014.

carried out by the rightwing groups to increase hostility among various religious groups and to make religious conversion the focal point of conflicts.¹⁴ The campaign of Ghar Vapasi is formulated by these groups to increase the numerical strength of Hindus and with the understanding that India is the only homeland of the Hindus.¹⁵

(Re) conversion, the process involves people who have converted from Hinduism into other religion are taken back into the fold of Hinduism with purification and initiation ceremonies. Arya Samaj was probably the first to develop this form of Shuddhi purification ceremony. This was started in contrast with the missionary activities, more in terms of a mimetic reaction.¹⁶ This movement was initially started as a purification ritual to cleanse the caste Hindu's affected from 'pollution' of the lower castes. Later Arya Samaj has used on a larger scale to reconvert i.e. to reinstate the estranged people back to Hinduism and into their own caste. *Shuddhi* came to be touted as a movement to reclaim the 'victims' and protect the 'faithful'.

Hypothesis

To sum up, this thesis looks at the phenomenon of religious conversion, through the lens of history. To that end, it looks at the many so-called freedom of religion acts passed by state legislatures across India since independence, like the one enacted by the state of Madhya Pradesh in 1968. By taking up the case of this

¹⁴ Rudolf Heredia, "Ghar Wapsi: Political agenda, Religious Garb", *Economic and Political Weekly*, Vol L., No 3, January 17, 2015,.

¹⁵ Manjari Katju, "The Politics of Ghar Wapsi", *Economic and Political Weekly*, Vol L, No 1, January 3, 2015.

¹⁶ Christopher Jafferlot, *Religion, Caste & Politics in India*, Primus Books, New Delhi. 2011.

law, it looks at the debates both inside and outside the Madhya Pradesh legislature to find the real reasons for the passing of such a law and the rationale provided by proponents of the law to mask the real reasons. It also looks at the rationale offered by the judiciary, namely the Madhya Pradesh High Court and the Supreme Court, for declaring the law as constitutional, thereby effectively undermining the right to the freedom of religion, one of the fundamental rights of Indian citizens. In other words, the judiciary failed to fulfil its task to protect the people from the exactions of the state by enforcing the impunity of the

Cultural Nationalism is articulated as a unique, distinct and superior culture and that this culture is the 'legitimate repository of collective and determinative power.' The three dimensions of cultural nationalism where, 'Vedic Brahmanism as a cultural core, territorially pan-Indian and antagonistic polarity with the West/modernity are the sacred tenets of the right-wing groups.¹⁷ This thesis investigates the demand and formulation of the law, the phenomenon of how the distinctive and assorted beliefs systems followed by different groups of people amalgamated into one belief system called as Hinduism. The various divergent sects and pantheons in Hinduism were being overshadowed and one kind of system was imposed on the people and how the recourse of law is used in this case to benefit their political ends. The Brahmanic beliefs followed by the caste groups in Hinduism were imposed as the singular form of Hinduism and the various other belief systems were either enforced or dismissed. This thesis reflects upon how there

¹⁷ See Aloysius, G., *Nationalism Without a Nation in India*, Oxford University Press, New Delhi, 2014.

are trials and the law was fostered upon the citizens to claim the superiority of Hinduism over the other religions on one hand and for the strengthening of the pantheonic form of Hinduism on the other hand.

Prima facie, this study reveals the anxiety of the Hindu majority in Madhya Pradesh prompted the passage of such legislation. It deals with the historical roots of this anxiety that makes many of them, especially those who claim to speak for Hindus, believe that their numbers are dwindling every year and that if this decline continues then the community will one day be reduced to a minority in their “own” country. It shows that the fall in the number of Hindus is not a consequence of a concerted campaign led by Christian missionaries to convert those who were historically not been treated as Hindus and were discriminated, namely Adivasis and Dalits. The need also arises from the widespread belief among such leaders that Adivasis and Dalits are gullible and, as such, incapable of understanding the conspiracies hatched by Christian missionaries to fraudulently convert them to Christianity. Therefore, the Hindus need to protect them in their own interest. In other words, what is revealed is an undercurrent of condescending paternalism rooted in a historic sense of superiority which later transcended the religion frontier to the secular sphere of law and jurisprudence.

Research Questions

- 1) To examine how a fundamental right has been undermined to exclude and discriminate marginalised sections of the citizenry by representatives of the people elected through an adult franchise?

- 2) How in law-making conversion was conceptualised prior to the Indian Independence by practitioners of different intellectual traditions?
- 3) Why and how was the law of conversion envisioned and passed? What were the socio-political dynamics that shaped and resulted in the enactment of these laws? What were the different ideological and interest groupings that were involved with this process?
- 4) Why did the Constituent Assembly choose to include the right to convert as a fundamental right? How did it arrive at this idea?
- 5) Despite the right to convert, why did Madhya Pradesh state legislature choose to enact a law that criminalised the act of conversion? How was the issue of criminalising conversion debated in the Indian public sphere?
- 6) Why did the Supreme Court despite the right to conversion uphold the constitutional validity of Madhya Pradesh Dharma Swatantra Adhiniyam, 1968?
- 7) What have the perceptions been within the judiciary on the constitutional validity of this law?
- 8) What are the varied political and social assumptions which have underpinned the responses of the judiciary?
- 9) How has the Madhya Pradesh High Court dealt with the cases pertaining to Madhya Pradesh Dharma Swatantra Adhiniyam that came before it?

Chapterisation

Introduction

The introductory chapter reviews the literature available on conversion and the freedom of religion acts. It provides a historical overview of the available literature belonging to different social science disciplines.

Chapter I: Conversions: Modes, Motifs and Motives

This chapter looks into how conversion as a social phenomenon came into existence. It investigates the different intellectual traditions and debates centring around conversion. This chapter involves the 19th and 20th-century debates on conversion. This chapter attempts to explore how the ideas of conversion were perceived by the missionaries, orthodox and liberal Indian scholars and political activists for their different perspectives

Chapter II: Constitution, Legal Practitioners and Conversion

This chapter deals with the Constituent Assembly Debates centring around conversion. This chapter attempts to locate the changes the right to conversion has undergone in the sub-committees on fundamental rights, minority rights and advisory committee on fundamental rights etc, and the drafting committee, before it was finally placed for deliberations in the Constituent Assembly. This chapter focusses on the stances of political leaders belonging to the different political background and the nature of the deliberations with which they were involved.

Chapter III: Anti Conversion Law: A Case Study of Madhya Pradesh Dharma Swatantra Adhinyam, 1968.

This chapter narrates in details the law which came into place in Madhya Pradesh. This chapter focusses on the debates and discussions which took place in the Madhya Pradesh State Legislative Assembly. It deals with the various amendments and proceedings in The Madhya Pradesh Assembly during the formulation of the law. This chapter also deals in detail with the government-commissioned reports on whose basis the law is proposed and drafted.

Chapter IV: Interpretation and Enforcement of the law

This chapter analyses the court cases and judgements. It looks into the reasons as to how and why the Supreme Court upheld the constitutionality of the law. This chapter examines how the law in itself exemplifies exclusion and discrimination. This chapter also deals in detail with the reports of law commission, Judicial Pronouncements of Madhya Pradesh High Court, Orissa High Court and Supreme Court of India pertaining to the law.

Conclusion

The final chapter shall provide concluding remarks on the theme and chart out the future scope of further study.

Chapter I:

Conversions: Modes, Motifs and Motives

Introduction

Conversion or religious conversion simply put is to discontinue the religious faith one is practising and embrace the new religion. Conversion by an individual to another religion can be carried out for various reasons. They might be because of spiritual, economic, losing faith in the religion participating, disbelief in the customs and practices, to relieve oneself from the constraints of overwhelming practices or as an act of resistance against exclusion.

This chapter will look at the debates of conversion. This chapter will deal in detail about how different groups see and understand conversion. It would try to understand the reasons for the clashes in the name of the conversion. This chapter will also look into detail the different viewpoints shared by different individuals and leaders over the years on the issue of conversion and how they saw, understood and written about this particular issue.

Religion is not a separate arena of human life. It is not isolated from the aggregate human living.¹ The religious life of a people is inevitably enmeshed in the complex interrelationship of all aspects of personal and group living and religious conversion can never be completely isolated from any of these.² Religious

¹ Rowena Robinson and Sathianathan Clarke (ed), *Religious Conversion in India: Modes, Motivations and Meanings*, Oxford University Press, New Delhi, 2014. p.285.

² Rudolf C Heredia., *Religious Disarmament: Rethinking Conversion in India*, Gyan Publishing House, New Delhi, 2014. p. 19

conversions can never happen in isolation, it is always mediated by other persons, social institutions, peer groups, group and community interactions. Every religious tradition has a community of believers that live in greater or lesser solidarity among themselves and any entry or exit affects the communities concerned in multiple ways, precipitating changes on both sides. Religious commitment is essentially a matter of personal conscience and choice, it inevitably impacts other areas and levels of individual and social life.³

The Conversion Question

The positions of the people who differ are flawless. The proponents who demand conversion to be banned state that this will disturb the society. It is against pluralistic India. Mainly Hindus are proponents of this thought. They are averse to the idea of conversion and this group are mainly the followers of Sangh Parivar. It sometimes includes moderate Gandhians as well. The other group argue that conversion is provided by the constitution as a fundamental right and this should be protected in a democracy.

The people who support and demand the right to conversion are Christians and secularists. These positions have remained intact and the debate has been continuing since the last century. There is resentment between the two groups and are strongly governed by their emotions. The Sangh Parivar group also sees political benefits because of the continuing debate on conversions. The Indian Constitution had tried to address the issue of conversion of more than half a century ago. They

³ Ibid. p. 20

have been serious debates during the forming of the constitution on the right of conversion and the right of propagation.⁴ In Article 25, it is stated that “all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.”

In 1954, the state government of Madhya Pradesh launched an inquiry into the proselytising activities of missionaries, which resulted in a report that recommended legal restrictions on conversion.⁵ The outcome of these recommendations is the Madhya Pradesh Dharma Swatantrya Adhiniyam.⁶

The continuing arguments to the present day suggest that the question of conversion is very contentious and has raised many fault lines. Conversion had played a role in many conflicts and communal tensions mainly in the states of Madhya Pradesh, Jharkhand, Chattisgarh and Orissa. The continuing hostilities and enmity between these groups had led to communal clashes on different occasions. The conversion of the marginalised communities, i.e. the lower castes led to fear among the Hindu groups and created tensions. They feared that they might be losing the majority, as the converts may be moving away from Hinduism. Many times, not the issue of conversion in itself but the agenda of these groups had led to these prevailing tensions.⁷

Conversion is used as a convenient pretext to attack the Christian communities as this fits neatly into the agenda of Sangh Parivar, which sees benefits

⁴ The next chapter covers the debates in detail.

⁵ Niyogi Committee, Madhya Pradesh Gazette date 14th April, 1954.

⁶ The Madhya Pradesh Dharma Swatantrya Adhiniyam (MPDSA), Madhya Pradesh Gazette, dated 21 October 1968.

⁷ Neena Vyas, 'When Their Gods Failed Them' in *The Hindu*, Sunday October 20.

from this polarisation. It feeds into their agenda of Hindu Nationalism as such there is continuing vilification of the minorities in the name of the conversion. The debates in the last 70 years have revolved on the question of why conversion and why did it become the reason for these clashes.⁸

The debates on conversion in the early 20th century, Gandhi has commented on this issue. He had discussed the role of foreign missionaries. In the interview with *The Hindu* in 1931, he stated that he would request the foreign missionaries to cease with the activities of proselytising. He also added that if the missionaries have been using the means of education and health for their activities conversion, they should immediately withdraw from these activities. He argued that “Every nation's religion is as good as any other. Certainly, India's religions are adequate for her people. We need no converting spiritually.”⁹

In an open letter, an American missionary, E Stanley Jones, he agreed with Gandhi that centres of education i.e. schools and hospitals should not become centres of conversion and they should not be used for the activity of proselytising, but he said that “It is a fundamental human right and fundamental human duty to share what one finds in spiritual realm.” He said that religious truth is universal and criticised Gandhi for asking Christians to withdraw from these activities and said they have the right to share the truth with others.¹⁰

⁸ Kim Sebastian *In Search of Identity: Debates on Religious Conversions in India*, Oxford University Press, New Delhi, 2003.

⁹ Mohandas Gandhi, *The Collected Works of Mahatma Gandhi*, Government of India, Publications Division, New Delhi, 1960-1993.

¹⁰ Kim Sebastian *In Search of Identity: Debates on Religious Conversions in India*, Oxford University Press, New Delhi, 2003.

The Christians insist that conversion is a fundamental right, as freedom of conscience is a universal right. Demanding the right to convert, they state. “The right of an individual to convert to another religion must be considered a universal human right and should be vigorously defended by Christians and other religious leaders. No state, church, or institution should stand in the way of an individual's pursuit of religious truth.”¹¹

Swami Dayanand Saraswati in an open letter to the pope states that conversion is also a violent activity as it disrupts families and communities. It is also against the age-old religious traditions. He writes, “Religious conversion destroys centuries-old communities and incites communal violence. It is violence, and it breeds violence.”¹²

For the Christians, the conversion is something that is obviously central to their religion and at the heart of their faith, whereas Hindus do not see as to how this can possibly be the case when it comes to the idea of conversion. The participant in an internet discussion on the matter states how this entire idea of conversion seems entirely wrong. What is it they are converting? Why is it that someone who wishes to practise Christianity, not do it without engaging in conversion? Religion according to him for the Hindus is something totally different from that Christians call their religion. One should look at the way Christians have ascribed particular traits to their religion all through history and whenever they've to encounter Hindu traditions.

¹¹ Protecting the Right to Convert in *Christianity Today*, 43(3), 1999 p 28.

¹² Swami Dayananda Saraswati, *Open Letter to His Holiness The Pope John Paul II*, 1991 at URL:http://hindunet.org/conversions/pope99/to_pope_from_swami_dayananada_sa.htm

These traits are the reasons as to why, Christian way of religion seem to defer upon their members, the right and the duty to convert other people and bring them into their fold. Hindus, on the other hand, have prescribed a different set of characteristics to their faith and are reflected in their encounter with the Christian religion. From this viewpoint, the incredulity they display towards the declared link between conversion and religion becomes clear. Christians and Hindus don't have the same idea in mind while discussing religion. If this is the case, the present conversion debate is fated to remain at a dead-end even today.

Even from the first encounters, the manner in which the Christians from Europe approached Hindu traditions characterised the missionary zeal. The typical Christian stance was first put into practice on the customs and traditions of the Indian subcontinent by the Portuguese Catholics. They had captured the isle of Goa in the year 1545. The then ruler of Portugal, King John III gave detailed instructions to the Goa governor on dealing with Indian heathens: The king in this brief gave orders that neither private nor public 'idols' should be permitted in Goa and commanded severe punishment to be meted out to anyone who continues in keeping them. The homes of individuals suspected of keeping hidden idols were ordered to be searched. Heathen festivals were also not permitted and all Brahman were to be banished from the region, Diu and Bassein Public offices were given over not to heathens but to neophytes. It was ordered that Christians should be freed from any form of heavy labour at the port. These tasks were to be reserved exclusively for heathens in the future. Portuguese were even forbidden to sell heathen slaves to Muslims and could face heavy punishments. As heathens could be more easily converted to Islam under Muslim rule and Christianity under the

Portuguese. The revenues previously used for supporting of temples and mosques were to be diverted to help spread the gospel.¹³

The future of indigenous traditions was clear under the Portuguese rule: they had to be eliminated. Neither the heathen festivals nor the 'idols' would be tolerated. Steps were to be taken to promote the conversion of heathens to the Christian religion and to spread the gospel. For them, Christianity was to be spread, if not peacefully then by force. The Lutheran missionary Bartholomeus Ziegenbalg in the initial part of the 18th century prepared a pamphlet titled *Abominable Heathenism* that contained a clear formulation of the reasons for conversion. Written in Tamil originally, the pamphlet was spread to convince the local Hindus in Tamil Nadu that their lives were rooted in error. The word *ajnana* was used to put forward the idea of error or sin, Hindus were told the following by Ziegenbalg: "We have come to you to save you from a-jnana. ... Make a study of the Christian precepts and accept them in faith, and so become the people of God". Through eight chapters in the pamphlet, he informed heathens how the heathens would be saved from their ignorance by the gospel¹⁴

Few officials from the East India Company, for example, gave more understanding narrative on Hindoo religion'. Alexander Dow was one among them who wrote a dissertation- *History of Hindustan* in which he talks about 'the

¹³ Donald Lach, *Asia in the Making of Europe, Vol I: The Century of Discovery*, The University of Chicago Press, Chicago, 1965, pp 239-240.

¹⁴ Hugald Grafe , *Hindu Apologetics at the Beginning of the Protestant Mission Era in India*, in the *Indian Church History Review*, Vol 6(1), 1972, pp. 43-69.

Hindoos'.¹⁵ The fact that struck him most about them was that they didn't try to convert: In contradiction to practices seen among all other religious sects, they do not admit converts; but allow that every person may go to heaven their own way, However they do perhaps suppose, that their way is the aptest method to reach that important end. Their choice is to rather make their religion a mystery and unlike the Mohammadans, they do not impose it on the world with the sword, or by with the stake, in the manner of some 'righteous' Christians. Instead of craving to gain converts, they always make a mystery of their religion. They say heaven is like a palace with many doors and every person may enter their own way.¹⁶

The London Missionary Society's evangelistic missionaries already knew in the early 19th century what to expect when they came to the land of India. One among them, George Gogerly, narrates "an unusual feeling of solemnity" slowly crept over his mind as he caught the first sight of India: There lay a land of idolatry about which I had read and heard a lot. I was going to contact that mighty land of cruelty and superstition which held millions in its bonds of slavery; by the exhibition of the truth, to see its hateful rites and to feel its dreadful power.¹⁷ The expectations of the missionaries had been confirmed everywhere in stories of the Indians and the traditional practices. When they were faced by "the vaunted holy books of the Hindus," the strongest forms of condemnation could not be enough. In William

¹⁵ Alexander Dow, A Dissertation Concerning the Customs, Manners, Language, Religion and Philosophy of the Hindoos in P J Marshall (ed), *The British Discovery of Hinduism in the Eighteenth Century*, Cambridge University Press, Cambridge, 1970 pp 107-39.

¹⁶ Alexander Dow, A Dissertation Concerning the Customs, Manners, Language, Religion and Philosophy of the Hindoos in P J Marshall (ed), *The British Discovery of Hinduism in the Eighteenth Century*, Cambridge University Press, Cambridge, 1970 pp 107-39.

¹⁷ Lawrence Kitzan, 'The London Missionary Society and the Problem of Conversion in India and China, 1804-1834' in *Canadian Journal of History*, Vol 5(2), 1970, pp 13-41.

Campbell's words: What terms can I use to explain Hindu mythology? There was never in any country or any age a superstition so diabolical, atrocious and so cruel as that which reigned over these people and is evil personified.¹⁸

The honouring of the false gods must be replaced by the worship of the true God. For example, as Christian Wolff arrived on October 31, 1833, at Goa and saw the cross planted and heard the church bells ringing, he couldn't but help exclaim: "Behold! the triumph of the cross over idolatry".¹⁹ William Carey, another missionary to reminds Christians of their religious obligations in his work 'An Enquiry into the Obligations of the Christians' to utilise the tools for Converting the Heathens. He rhetorically asks: in place of affording an objection against preaching the gospel, the uncivilised state of the heathen would be an argument enough. Can we as Christians or men, hear that a big part of our fellow creatures, who are as capable as ourselves and whose souls are as immortal as ours, contribute by their practices, writings or preaching to the glory of our Redeemer's name adorn the gospel. Can the good of the church be developed in barbarism and ignorance? Can we "heart that they are without the gospel, without government, without laws, and without arts, and sciences; and not exert ourselves to introduce amongst them the sentiments of men and of Christians"?²⁰ This background enables us to make sense of the claims of both European and Indian Christians that, the conversion is a duty and a right of the religious. Religion's truth should be spread among all the nations and the universal truth of Christ must be shared with humankind.

¹⁸ Ibid, pp. 13-41.

¹⁹ H K Kaul, *Travellers' India: An Anthology*, Oxford University Press, Delhi. 1979.

²⁰ William Carey, *An Enquiry into the Obligations of Christians, to Use Means for the Conversion of the Heathens*, Leicester, 1792.

The attacks from the missionaries of Christian faith on the indigenous traditions lead to a reaction from the Indians. This surprisingly wasn't in the form of a request for the truth of the Hindu religion. Neither was it a counter-attack on the Christian teachings. A flavour of Hindu resistance to the missionary zeal can be traced back to the 18th century. Reports of some conferences were published in 1719 by Ziegenbalg which had discussed the truth about the Christian religion with the 'Malabarian' natives. Ziegenbalg's attempt to convince a local brahmin on the fallacy of his religion can be found in the first conference. When he and his fellow Hindus were urged to "break off the Cords of inveterate Errors, and save your own Souls, seeking diligently the knowledge of the One only True God, the Brahmin gave the following retort; "Our Religion is Venerable for its Antiquity, and has been professed by many pious Kings and holy prophets through an Uninterrupted Succession of many in circling Ages ...".²¹

His deduction that Hindu religion must be 'true' as it had existed for so long a time, was "altogether illogical and an unjust Way of arguing," according to Ziegenbalg.²² Nonetheless, they continuously defended their customs and tradition in terms of antiquity, then on arguments of truth. Ziegenbalg, in another conference, while ridiculing the Hindu deities. "a Venerable Old Man stood up and said:... that we have no True, but false gods in our Country, this you are still to demonstrate:

²¹ Ziegenbalg Bartholomeus, *Thirty Four Conferences between the Danish Missionaries and the Malabarian Bramans in the East Indies, Concerning the Truth of the Christian Religion*, Trans by Philipps, London. 1719, pp 4-5

²² *Ibid.*, p. 6

For tho' the Christians call us Heathens, we are not so in reality; but we are a very Ancient Nation, whose Religion is as Old as the World itself...".²³

John Muir, the East India Company's orientalist and servant in 1839 published the *Matapariksa*, which was a Sanskrit tract that in its attempts to prove Christianity as the true religion and Hinduism as false. This had seen rejoinders written by three Hindu scholars to this tract wherein the idea was opposed that a single religion was to be followed by all persons. Nilakantha Goreh one of the writers, pointed out different ways to attain 'moksha': "If someone located in Gaya wants to go to Kasi, he asks people there and they tell him, 'You must go west,' whereas an inhabitant of Prayaga, wanting to go to Kasi, asks people there and is told, to the contrary, 'Go east'. Going both east and west, which is, by all means, contradictory, yields one result on account of being located in different places. By the same token, one way (to salvation) would not be rewarding to (all) men, whose aptitudes are different, on account of the unarguable maturation of their good and bad deeds."²⁴

Mahatma Gandhi elucidating his position in *Young India*, 1928, after a 'discussion on fellowship' with members of the 'Council of International Federation' writes, "I came to the conclusion long ago, after a prayerful search and study and discussion with as many people as I could meet, that all religions were true and also that all had some error in them, and that whilst I hold my own, I should hold others as dear as Hinduism, from which it logically follows that we should hold

²³ Ibid., p. 103.

²⁴ Richard Young, *Resistant Hinduism: Sanskrit Sources on Anti-Christian Apologetics in Early Nineteenth-Century India*, Publications of the De Nobili Research Library, Vienna. 1981, pp. 123

all as dear as our nearest kith and kin and that we should make no distinction between them. So we can only pray, if we are Hindus, not that a Christian should become a Hindu, or if we are Musselman's, not that a Hindu or a Christian should become a Musselman, nor should we ever secretly pray that anyone should be converted, but our inmost prayer should be that a Hindu should be a better Hindu, a Muslim a better Muslim and a Christian a better Christian".²⁵

He further states that all religions are true and they have errors in them and as such, there is no point in conversion. He tried to address the question of 'religion' and 'truth' posed by Christians, wherein he states all the religions are true. Looking at all the religions in the same boat he argues: "Religions are different roads converging to the same point. What does it matter that we take different roads so long as we reach the same goal? Wherein is the cause for quarrelling?"²⁶

Ramakrishna also argued in the same lines wherein he states, "God can be realised through all paths. It is like your coming to Dakshineswar by carriage, by boat, by steamer or on foot. You have chosen the way according to your convenience and taste, but the destination is the same. Some of you have arrived earlier than others, but all have arrived."²⁷

He also states that when all the roads lead to God, what is the point of leaving one and taking the other. He argues about all religions being true stating that, "God

²⁵ Mohandas Gandhi, *The Moral and Political Writings of Mahatma Gandhi*, Vol I, Raghavan Iyer (ed), Clarendon Press, Oxford., 1986, p. 536.

²⁶ Mohandas Gandhi, *To the Hindus and Muslims*, Anand T Hingorani (ed), Hingorani, Karachi. 1942, p.2.

²⁷ R W Neufeldt, The Response of the Ramakrishna Mission in Harold G Coward (ed) , *Modern Indian Responses to Religious Pluralism*, State University of New York Press, Albany, 1987, pp 65-84.

can be realised through all paths. All religions are true. The important thing is to reach the roof. You can reach it by stone stairs or wooden stairs or by bamboo steps or by a rope. You can also climb up by a bamboo pole.”²⁸ According to Ramakrishna, “The Hindu attitude to religion is interesting. While fixed intellectual beliefs mark off one religion from another, Hinduism sets itself no such limits. Intellect is subordinated to intuition, dogma to experience, outer expression to inward realisation.”²⁹

Swami Vivekananda states that people who don't understand religion correctly only want to decide which is a better one. According to him, religion is “the great universal truth”. All the religions are not contradictory but complementary to each other. He states “each religion, as it were, takes up one part of the great universal truth and spends its whole force in embodying and typifying that part of the great truth.”³⁰

He further states, “Perfection can be had by everybody, and what is the proof? Because we see the holiest of man in all countries, good men and women everywhere, whether born in our faith or not. Therefore it cannot be held that ours is the only way to salvation. Like so many rivers flowing from different mountains, all coming and mingling their waters in the sea, all the different religions, taking their births from different standpoints of fact, come unto Thee.”³¹

²⁸ Ibid., p.68

²⁹ Sarvepalli Radhakrishnan, *Radhakrishnan Reader: An Anthology*, P Nagaraja Rao, K Gopalaswami and S Ramakrishnan (eds), Bharatiya Vidya Bhavan, Bombay, 1969, pp. 131

³⁰ Swami Vivekananda, *The Complete Works of Swami Vivekananda*, Volume II, Advaita Ashrama, Kolkata, 1963, p. 365

³¹ Swami Vivekananda, *The Complete Works of Swami Vivekananda*, Volume II, Advaita Ashrama, Kolkata, 1963, p. 210

Vivekananda gave the message of universal brotherhood. He states, “it was unfortunate that the Hindus should have at some point of time acquired the notion of the 'mleccha', the uncultured outsider.” He argued that there is no point Christians preaching to Hindus and says, “Hinduism acknowledged reverence for all religions and was, therefore, the superior faith. Vedanta is the wonderful voice of god.”³²

Dayanand Saraswati considered that freedom of Hindu to convert to the other religions, Christianity or Islam is only servitude and started the ‘Shudhi Mission’ where he reconverted the people who left Hinduism or converted to other religions. Gandhi argued for the freedom to convert should be an inalienable right of the individual but considered that the work to convert will only be done by someone who does not understand the true essence of religion. He states, “If the conversion is the work of God, why should that work be taken away from him?”³³

Sarvepalli Radhakrishnan disagreed with the notions of ‘true’ and ‘false’ and considered one religion for entire humanity is illogical. He states, “The illogical idea of one single religion for all mankind, one set of dogmas, one cult, one system of ceremonies which all individuals must accept on pain of persecution by the people and punishment by God, is the product of unreason and intolerance. Religion represents the soul of the people, its peculiar spirit, thought, and temperament. It is not a mere theory of the super-natural which we can put on or off as we please. It is

³² Shamita Basu, *Religious Revivalism as Nationalist Discourse*, Oxford University Press, New Delhi, 2002, p. 56

³³ Sudhir Chandra, 'An Unresolved Dilemma: Gandhi on Religious Conversion' in *Continuing Dilemmas: Understanding Social Consciousness*, Tulika Books, New Delhi, 2002, p. 284

an expression of the spiritual experience of the race, a record of its social evolution, an integral element of the society in which it is found.”³⁴

The Hindus in 1946, heads of various Hindu institutions attended a conference and gave a memorandum to the Constituent assembly. It stated, “Social peace and political stability can best be secured by allowing cultural and religious groups to live their own life, unhampered by external interference and aggression, letting the people continue in the faith in which they were born, free-from proselytising interference.”³⁵

Swami Dayanand Sarawati considered that religious conversion is disturbing interference in the life of the community. Religious conversion does not curtail the right and freedom to practise religion freely but it was the reason for interference and it should be considered as an aggression against the freedom of religion of others.

The study of religious conversion has undergone a research renaissance in recent years. In the wake of the worldwide wave of "new religions" and the resurgence of traditional religions, social scientific and journalistic enquiry into this phenomenon has blossomed. As is to be expected, investigators have stressed different aspects of the conversion process. Focusing on how organized group activities can induce conversion, some employ such concepts as ‘affective bonds,’ ‘programming,’ or even ‘mind control.’ Others highlight the individual convert's subjective life and what is seen as the "self-guiding" and "self-induced" side of

³⁴ Radhakrishnan, Sarvepalli, *Radhakrishnan Reader: An Anthology*, P Nagaraja Rao, K Gopaldaswami and S Ramakrishnan (eds), Bharatiya Vidya Bhavan, Bombay, 1969, pp. 81-82.

³⁵ Kim Sebastian, *In Search of Identity: Debates on Religious Conversions in India*, Oxford University Press, New Delhi, 2003, p. 42

conversion. Yet others attempt to encompass all these aspects and point to various additional facets.

The conversion experience in itself is shaped by the expectations of what conversion is about and how it would be to convert. Because it is probable that they reflect 'raw reality' (the first level of social reality), it is our intention here, in part, to delineate the variety of conversion accounts (the second level of social reality). The efforts of analysts may be thought of, indeed, as a third level of social reality - one that tries to keep pace, often unsuccessfully, with the ever-changing character of the first two levels. In the words of Richard Travisano, the conversion is "a radical reorganization of identity, meaning, life."³⁶ In Max Heirich's felicitous phrases, the conversion is "the process of changing a sense of root reality" or "a conscious shift in one's sense of grounding."³⁷

In overview, it is worthwhile to distinguish six 'motifs' of conversion. The five major variations that appear most salient in the "raw reality" of conversions, in the conversion accounts, and in our 'bracketing' of those accounts, encompass the traditional trinity of the intellectual, physical, and emotional. The first variation is quite physical in asking the degree to which the actor is subjected to and experiences external social pressure to convert. The second is also physical in looking into the duration of the conversion experience. The third and fourth focus on affect, the former seeking to gauge the degree of emotional arousal accompanying the

³⁶ Richard Travisano, *Alternation and conversion as qualitatively different transformations*, in G. P. Stone and H. Farberman (eds.), *Social Psychology Through Symbolic Interaction*. Waltham, Mass.: Ginn-Blaisdell. 1970, pp. 594

³⁷ Max Heirich, *Change of heart: A test of some widely held theories about religious conversion*, *American Sociological Review* Vol 83, 1977, p. 674

experience, the latter concerned with its content. The fifth dimension seeks to determine the order in which people adopt the framework of other religion and actually participate in its ritual and organizational activities. It is common for the new converts to practise and participate in the advancement of their cognitive assent to its theological implications. This a significant and conscious aspect of the motifs of conversion. The debates about conversion between the Hindus and Christians is not just about the conversion or its nature but about the religion itself.

There is a new emphasis on the conversion not seen as an ‘event’ but as a ‘Career’. Conversion careers are a person’s religious passage “within his or her social and cultural context, through levels, types, and phases of participation.”³⁸ Looking at conversion as a career rather than an event helps in understanding it clearly. It also helps understand conversion as they take place over a period of time and in stages. “Conceiving of conversion as a career also helps avoid the progress-oriented, almost teleological assumptions that I would argue are implied in conceiving of conversion either primarily as ‘up’ or ‘over’.” In their conversion careers, most people advance only a little. Only some of them move faster. In the conversion career model, it can be easily understood that conversions are not just ‘up’ or ‘down’ but also all-around. Conversion for i.e. conversion in part is motivated because of material benefit.³⁹

The Hindu Nationalist critique of Dalit and Mass conversions as because of ‘allurements’ or ‘inducements’ shows certain bias. Historically, there have been

³⁸ Henri Gooren, ‘Conversion Narratives’, *Studying Global Pentecostalism: Theories and Methods*, ed. Allan Anderson, et al, University of California Press, Berkely, 2010, p. 94.

³⁹ Chad M Bauman, ‘Conversion Careers, Conversion-For, and Conversions in the study of Religion’,

many communities who have changed religious sects and have realigned.⁴⁰ The emergence of Sampradayas is linked to the growth of the ‘mathas’ and ‘temples’ and their institutionalism. There has been continuous patronage over the years. Different Sampradayas have distinct texts i.e. a canon they might be Puranas or the books by the founders of the sampradaya.⁴¹

The Britishers have administered from the 1770s according to Hindu or Islamic sacred texts. They have consulted the Brahman pandits and Muslim ulema, the two major religious traditions. This forced the people to declare from one of these religions. The Mughals never interfered into this sublevel. The British created a systematic hierarchy of appellate jurisdictions, which they developed over the years. The impact of the census wherein people had been bracketed into two major religions, other than the rest of the minorities, whose impact is even felt till this day.⁴²

The census had made the distinctions of religion, caste, language and others which the administrators had decided. The enumeration of communities had increased mutual competition and which laid bare the questions of unfair representation in education, jobs, administration or politics. This had stimulated fears about being left behind in numbers games.⁴³

⁴⁰ Susan Bayly, *Saints, Goddesses and Kings: Muslims and Christians in South Indian Society 1700-1900* Cambridge University Press, Cambridge, 1989.

⁴¹ Angelika Malinar, Religious Pluralism and process of individualisation in Hinduism, *Religion*, vol 45, No 3, 2015, pp. 386-408.

⁴² Sumit Sarkar, Conversions and Politics of Hindu Right, *Economic and Political Weekly*, Vol. 34, No. 26 (Jun. 26 - Jul. 2, 1999), pp. 1694

⁴³ Ibid, p. 1694

Under British colonial rule, as noted above, the policy of non-interference of its earlier period was abandoned early in the 19th century, ironically in the name of religious liberty. Thereafter, the association between the government and the church was closed, more openly so in some places, and at certain points of time, than at others. The alleged religious 'causes' of the 1857 uprising did, however, result in an emphatic restatement of the official policy of the neutrality of the state. The 'royal proclamation of 1858, on the occasion of the assumption of the responsibility of the governance of British India by the British sovereign, declared that "none be any wise favoured, none molested or disquieted, by reason of their religious faith or observances"; "all interference with the religious belief or worship" of any 'subjects' was strictly prohibited. But the same proclamation also affirmed at the outset 'the Truth of Christianity'.⁴⁴

Emphasising on the relationship of conversions with desire and intimacy, Charu Gupta studied the representation of the Dalit women in print, cartoons, police records and missionary literature in the United Provinces (present-day Uttar Pradesh) during the colonial period. While agreeing in part to the notion that Dalit women, after conversion into Christianity, tended towards adopting norms similar in practice by their contemporary upper-caste Hinduism and Christian values, that leads to a contraction in their wide range of activities, Charu Gupta shows that the women often moulded conversions to their needs and desires. Alongside, he argued that newer perspectives emerged such as the Dalit women adoption of newer acts to

⁴⁴ Donald E Smith, *India as a Secular State*, Oxford University Press, Mumbai, 1963, pp. 71-72

subvert the norms passed upon by newer religion, which in turn produced increasing anxieties among caste Hindus.⁴⁵

Conversion to Christianity, the study finds, assisted Dalit women to move upward in clothing hierarchy. For instance, the lower-caste women could adopt newer dress and ornaments which were earlier forbidden among them. As the period of Dalit women conversions into Christianity and Islam also intersected with the rise of Hindu reformists. however, the newer acts evolved from conversions, however, were subverted by the then existing structures of power.⁴⁶

In Hindu society, since the hierarchy is determined by birth, the lower castes share a bond in terms of experiencing similar ritual, economic and socio-political deprivations. In Maharashtra's case, Scheduled Caste groups such as Mahar, Mang, Chambhar, Bhangi, Dhor and Holar share a similar bond argues Sunanda Patwardhan. With attempts for social mobility, each caste group attained different social situation among the cluster. Among the above castes, historical records show that Mahars upward social mobility was driven by factors such as their majority among the Cluster, Ambedkar's leadership, Gandhi's Harijan Movement and the group's mass conversion into Buddhism.⁴⁷

⁴⁵ Charu Gupta, Dalit Women and Religious Conversions in Colonial India, *The Journal of Asian Studies*, Vol. 73, No. 3 (August 2014), pp. 665-669

⁴⁶ Ibid., pp. 672-675

⁴⁷ Sunanda Patwardhan, Social Mobility and Conversion of the Mahars, *Sociological Bulletin*, Vol. 17, No. 2 (September 1968), p. 189

Ambedkar On Conversion

B.R. Ambedkar looking at whether the Hindu religion was a missionary religion or not and whether Hindu religion was amicable to conversion/reconversion states that Caste system had made the Hindu Religion in amicable to conversion. The prevalence of the caste system, wherein people the status of a person is decided by his caste and a person is born into their caste, it renders conversion into Hinduism impossible. What caste will a convert be converted into, if any person wishes to convert their religion will be the first question for which there can be no answers. He writes, "Whether the Hindu religion was or was not a missionary religion has been a controversial issue. Some hold the view that it was never a missionary religion. Others hold that it was. That the Hindu religion was once a missionary religion must be admitted. It could not have spread over the face of India if it was not a missionary religion. That today it is not a missionary religion is also a fact which must be accepted. The question, therefore, is not whether or not the Hindu religion was a missionary religion. The real question is why did the Hindu religion cease to be a missionary religion? My answer is this. Hindu religion ceased to be a missionary religion when the Caste System grew up among the Hindus. Caste is inconsistent with a conversion. Inculcation of beliefs and dogmas is not the only problem that is involved in the conversion. To find a place for the convert in the social life of the community is another and a much more important problem that arises in connection with the conversion. That problem is where to place the convert, in what caste? It is a problem which must baffle every Hindu wishing to make aliens converts to his religion. Unlike the club, the membership of a caste is not open to all and sundry. The law of caste confines its membership to a person born in the

caste. Castes are autonomous and there is no authority anywhere to compel a caste to admit a new-comer to its social life. Hindu Society being a collection of castes and each caste being a close corporation there is no place for a convert. Thus it is the caste which has prevented the Hindus from expanding and from absorbing other religious communities. So long as caste remains, Hindu religion cannot be made a missionary religion and *Shudhi* will be both a folly and a futility.”⁴⁸

On the subject matter whether conversion from Hinduism can solve the problem of Untouchability, B.R. Ambedkar argues in the affirmative. When a large majority of Mahars, Untouchables, have unanimously passed a resolution to abandon Hinduism in Bombay, now Mumbai, on 31st May 1936, there have been four principal objections urged by the opponents against the conversion. “(1) What can the Untouchables gain by conversion? Conversion can make no change in the status of Untouchables. (2) All religions are true, all religions are good. To change religion is futility. (3) The conversion of the Untouchables is political in nature. (4) The conversion of the Untouchables is not genuine as it is not based on faith.”⁴⁹

Ambedkar categorically refutes all the four objections by questioning their validity and substantiating his arguments referring to the historical records by Rev. Reichel, Prof. Tiele, Prof. Robertson Smith and Prof. Charles A Ellwood. On the fourth objection, he calls the conversion of Untouchables from the Hindus would be the first case in the history of genuine conversion as he says: “Today religion has become a piece of ancestral property. It passes from father to son so does inheritance. What genuineness is there in such cases of conversion? The conversion

⁴⁸ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, p.102.

⁴⁹ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.403.

of the Untouchables, if it did take place, would take after full deliberation of the value of religion and the virtue of the different religions. How can such a conversion be said to be not a genuine conversion?”⁵⁰

Ambedkar calls the third objection that the conversion is political in nature as an ill-considered one and equates it like a wild charge by pointing out that nobody has ever proved that any political gain is a direct inducement to conversion and asserts that there is nothing criminal in conversion if the political gain is only an incidental one.⁵¹

On the second objection that all religions are good, Ambedkar argues that the Hindus opposition was based on the premise that all religions teach the same thing. He calls that the premise is false as the pursuit of ‘good’ differs from religion to religion as Caste and Untouchability are good for Hindus.⁵²

Ambedkar calls the objection that conversion can make no change in the status of Untouchability as “supernatural” and has nothing to do with “social” and that its foundations as false. “At any rate, it is a one-sided view of religion and that too based on aspects of religion which are purely historical and fundamental. To understand the function and purposes of religion it is necessary to separate religion from theology. The Primary things in religion are the usages, practices and observations, rites and rituals. Theology is secondary.”⁵³

⁵⁰ Ibid., pp. 404-405

⁵¹ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.405.

⁵² B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.406.

⁵³ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.407.

Furthermore, Ambedkar points out two main reasons for Untouchables to quit Hinduism as a lack of hope for them within the religion and secondly, the fact that Untouchability is part of Hinduism. On the subject of the general social status of the Untouchables through conversion, he emphasises on the implications of name changing of Untouchables with conversion and the role played by the caste system in Hinduism. “The name ‘Untouchable’ is a bad name. It repels, forbids, and stinks. The social attitude of the Hindu towards the Untouchable is determined by the very name ‘Untouchable’. There is a fixed attitude towards ‘Untouchables’ which is determined by the stink which is embedded in the name ‘Untouchable’. People have no mind to go into the individual merits of each Untouchable no matter how meritorious he is. There is a general attempt to call themselves by some name other than the ‘Untouchables’. The Chamars call themselves Ravidas or Jatavas. The Doms call themselves Shilpakars. The Pariahs call themselves Adi-Dravida, the Madigas call themselves Arundhatyas, the Mahars call themselves Chokhamela or Somvamshi and the Bhangis call themselves Balmikis. All of them if away from their localities would call themselves Christians. The Untouchables know that if they call themselves Untouchables they will at once draw the Hindu out and expose themselves to his wrath and his prejudice. That is why they give themselves other names which may be likened to the process of Undergoing Protective disclosure.”⁵⁴

Therefore, Ambedkar stresses that for The Untouchables, there is no possibility of a rise in their social status without a name change. On the other side, Ambedkar stress on the point that the change of name within Hinduism will bring

⁵⁴ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.419.

on the change in social status. He concludes: “The name matters and matters a great deal. For, the name can make a revolution in the status of the Untouchables. But the name must be the name of a community outside Hinduism and beyond its power of spoliation and degradation. Such name can be the property of the Untouchable only if they undergo religious conversion. A conversion by the change of name within Hinduism is a clandestine conversion which can be of no avail.”⁵⁵

Ambedkar looking at the growth of Christianity terms it as slow growth and lays down the reasons. All this, after tracing the history of religion in the region and with regard to the census data of 1931. At that time, the Christian population in India was 62,96,763 of the total figure 35,28,18,557. This is only 17 per cent of the total population.⁵⁶

Tracing down how old is Christianity in India, he points out: “There is no credible evidence to show that the Gospel was even preached in India during the first century. There is some evidence to show that in the second century the Gospel had reached the ears of the dwellers on the Southern Indian Coast, among the pearl fishers of Ceylon and the cultivators on the coasts of Malabar and Coromandel.... “The voyage of Vasco de Gama in the year 1497 to India marks the beginning of a new epoch in the history of Christian Missionary effort and the most serious and determined effort commenced with the arrival of the great Missionary Francis Xavier in the year 1542.”⁵⁷

⁵⁵ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.420.

⁵⁶ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.427.

⁵⁷ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.429.

In spite of this long-run Christian propaganda of more than four centuries, the 17 per cent of the religion's population (in 1931), Ambedkar terms it as slow growth and points out three main reasons which had impeded the growth. The first reason was "the bad morals of the early European settlers in India by the East India Company," (page 430) the second impediment in the progress of Christianity in India was the struggle between the Catholic and Non-catholic Missions for supremacy in the field of proselytization" (page 435) and the third reason was the "wrong approach made by the Christian Missionaries in charge of Christian propaganda."⁵⁸

On the matter of raising the status of the untouchable convert into Christianity, Ambedkar pointed out that to the general mass if the Hindus the untouchable remains the untouchable even though he becomes a Christian. Defining a change in the social status of a convert two-fold, he argues "There must be a change in the attitude of the Hindus. Secondly, there must be a change in the mentality of the convert. Status is a dual matter, a matter *inter se* between two persons and unless both move from their old position there can be no change."

The conversions of marginalised communities, Scheduled Castes and Scheduled Tribes has always been a bone of contention. These groups are considered to be gullible and easily fall prey to allurements and inducements. In Hindu society, attempts to go higher in the traditional system have been complicated because hierarchy is determined by birth. These attempts range from fighting for

⁵⁸ B.R. Ambedkar, *Selected Works of Dr B.R Ambedkar*, Vol 5, p.438.

positions within the caste cluster to the imitation of higher castes and conversion to other religion.

Throughout the history of the national independence struggle, religion has occupied central space in the mainstream discourses on nationalism, citizenship and social justice. Today in India, the issue of religious conversion has been debated between the zealous promoters of Hindutva and a feeble Christian minority. B R Ambedkar has contributed enormously in shaping the Dalit perspective over the issue of religion. He insisted on the necessity of religion for a civilised society; however, he asked his followers to judge the viability of any religion in society on four main parameters. According to him, social ethics, rationality, peaceful and fraternal cohabitation, and opposition to supernaturalism should be the essential elements of religion in modern society. Prior to Ambedkar conversion, the question of caste was understood as an internal affair of Hinduism and its solution was largely restricted within the boundaries of internal social and religious reform.⁵⁹

“Throughout the 19th century, there were numerous polemical encounters between missionaries and Hindu or Muslim spokesmen, in public debates as well as through the press. These could be full of theological rancour and verbal violence, and yet were not, perhaps, all that qualitatively different from what is today's perspective would be termed intra-community debates; the 'shastratha' of Brahman pandits, or the 'bahas' among Bengal Muslims. Unlike the bulk of 20th-century communal discourses, such polemics had intellectual content, turning around questions of religious doctrines.”

⁵⁹ Harish Wankhade, The Political Context of Religious Conversion in Orissa, *Economic and Political Weekly*, Vol. 44, No. 15 (Apr. 11 - 17, 2009), p. 33

“The last quarter of the 19th century was marked by a surge in the number of Christian conversions, so much so that it has been described in mission histories as the era of "mass movements". Whole families, villages or sub-castes came over en masse in a manner that possibly reduced the aspect of conflict at local levels, but heightened fears elsewhere. Repeated famines could have had something to do with this - the phenomenon of 'rich Christians', relief work by missions accompanied by baptisms, at times of small children, which emphasised many Christians at times. But, in some areas at least, there were also links with lower caste/ class discontent. The Christian conversions issue fell somewhat into the background in the 1930s and 1940s, with communalism turned into an obsessively Hindu-Muslim affair, culminating in the blood-baths of 1946.”⁶⁰

The question of conversions was vigorously debated in the Constituent Assembly, where many Congressmen had also opposed the conversions. The use of the word, ‘propagate’ in the article was given as a concession to the Christian members. The core of the debate is discussed in the following chapter.

⁶⁰ Sumit Sarkar, Conversions and Politics of Hindu Right, *Economic and Political Weekly*, Vol. 34, No. 26 (Jun. 26 - Jul. 2, 1999), pp. 1696

Chapter II:

Constitution, Legal Practitioners and Conversion

Introduction

The Constituent Assembly is a body elected by the people for considering and adopting a constitution. The Union constitution committee, Union Powers Committee, Committee on Fundamental Rights, Minorities have drafted the recommendations. The recommendations by these committees were later considered by the Drafting Committee of the constitution. The constitution was signed by the members of the constituent assembly on 24 January 1950, the last day of the assembly. The Constitution commenced on 26th January 1950.¹ The Constituent Assembly first met on 9th December 1946 and continued till 24th January 1950.

This chapter seeks to make a detailed analysis of Article 25 of the Constitution, from the time it is introduced as Article 19 in the draft constitution. It describes in detail the change Article 25 has gone through in the advisory committee and minority committee. It also looks at the proposal to introduce Article 18 A into the constitution. The chapter chiefly focuses on and elaborates on the deliberations in the Constituent Assembly about the right to convert and the right to propagate.

¹ Subhash C Kashyap, *Our Constitution*, National Book Trust, Delhi, 2007, pp.. 38-45

Rights Relating to Religion

The Constitution contains a separate chapter on individual rights which are 'fundamental' in the sense that in case of their alleged infringement, the aggrieved person can move the Supreme Court under and the High Courts under Article 32² and Article 226³ respectively for a legal remedy.

The Justiciable Fundamental Rights were introduced in the draft constitution, to every citizen and other people residing within its boundaries. The rights relating to religion was introduced in five clauses, which included the

² Article 32 of the Constitution, 'Remedies for enforcement of rights conferred. Part (I): The right to move to Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this is guaranteed. (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by the part. (3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within its local limits of the jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2). (4) The right guaranteed by this Article shall not be suspended except as otherwise provided for by this Constitution.

³ Article 226 of the Constitution, Power of High Courts to issue certain writs.- (1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including (writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose). The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is within those territories. (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or proceedings relating to, a petition under clause (1), without-a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and b) giving such party an opportunity of being heard, to make an application to the High Court for the vacation of such order and furnishes a copy of such application to the party such order has been made or the counsel of such High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.] (4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

entitlement to freedom of conscience and to freely profess, practice and propagate religion; a right to manage its own affairs in religion; no compulsion of paying taxes; no compulsion to take part in religious instructions and importantly the right to convert but not under coercion or undue influence. The Justiciable Fundamental rights provided in the draft are as follows:⁴

“13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this Chapter.

Explanation 1.-The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.-The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3.-The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform.

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and, -subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination,

⁴ *Constituent Assembly Debates (Proceedings)*, 12 vols. 5 books. (1950; repr. New Delhi: Lok Sabha Secretariat, 2014), Book 1 (Annexure), p. 442 (Hereafter cited as CAD).

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.”

The members of the constituent assembly deliberated on each of the clauses which were provided as the rights relating to religion. The deliberations were made keeping in mind the necessity to define the right to religion in the context of establishing a new ‘secular India.’

The proceedings of the Constituent assembly state that clause 15 was put for voting and passed without any changes and much discussion. The clause 16 was put up for voting but it was referred back to the advisory committee.⁵

Clause 14 is on the right to manage affairs in matters of one's own religion. The clause was moved by Sardar Vallabhbhai Patel.⁶ The three amendments given below relating to the clause were moved by K.M Munshi,⁷ M. Anandashaynam Ayyangar⁸ and Sir Alladi Krishnaswamy Aiyar.⁹

⁵ CAD., May 1, 1947, p. 488.

⁶ CAD., May 1, 1947, p. 486.

⁷ Kanhaiyalal Maneklal Munshi (30 December 1887 – 8 February 1971) was an Indian independence movement activist and educationist from Gujarat Munshi. He was a governor of Uttar Pradesh.

⁸ Madabhushi Ananthasayanam Ayyangar (4 February 1891 – 19 March 1978) was the first Deputy Speaker and then Speaker of Lok Sabha in the Indian Parliament. He was a Governor of Bihar.

⁹ Sir Alladi Krishnaswamy Iyer (14 May 1883 – 3 October 1953) was a lawyer. He served as the Advocate General of Madras State from 1929 to 1944.

K.M Munshi's amendment was moved as an addendum: "Every religious denomination shall have the right to manage its own affairs in matter of religion and, subject to the general law. To own, acquire and administer property movable and immovable and to establish and maintain institutions for religious or charitable purposes. There is a little addition by way of an amendment which Munshi will move. I move this clause for the acceptance of the House".¹⁰

The proposal was to add a part "or a section thereof" be added between the word "denomination" and the word "shall". Concerns were raised on the use of the term "religious denomination" in the sense that, it may hinder the protection of a section of a denomination. Queries on the definition of the term "general law" were given as "There is a general law of the country as apart from any special legislation. When the word 'law' is used, it means the law of either the Unit or the Union according to the power which is being exercised. If it is a Union subject, it is Union law. If it is a Unit subject, it is Unit law". The word "general" was given special significance with an intention to exclude any specific legislation as there are certain legislations intended specifically for certain sections of people.¹¹

The omission of the word "general" from the clause was opposed by Sri M. Ananthasayanam Ayyangar citing it "opposed to special or local laws which are defined in the Indian Penal Code as relating to a particular subject or a particular part of British India." It was also added that there should be no restriction on acquisition of property and rights by any religious institution under any special law.

¹⁰ CAD., May 1, 1947, p.486.

¹¹ CAD., May 1, 1946, p. 487

Similar definition relating to local and special laws can also be found in the General Clauses Act.¹²

Sri C. Rajagopalachariar¹³ points out that, apart from the question of how words should be interpreted, it is essential that the special right we give to religious denominations should be subject to all laws that are to be enacted and therefore, the expression should be kept only as 'law' and not any specific portion of the law.¹⁴

The various amendments were put to vote and finally, the cause 14 was adopted as:

"Every religious denomination or a section thereof shall have the right to manage its own affairs in matters of religion and, subject to law, to own, acquire and administer property movable and immovable, and to establish and maintain institutions for religious or charitable purposes."

The Conversion Debate

Clause 17 of the draft put forth by Sardar Vallabhbhai Patel saw intense debates on the use of the word 'conversion', its socio, political and historical context and impact it'll have on the people of the nation. The clause goes as follows:

"Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law."

¹² Ibid

¹³ C. Rajagopalachariar (10 December 1878 – 25 December 1972) was an Independence activist, historian and statesman. He was the first Indian-born governor-general and the last Governor-General of India. He also served as leader of the Indian National Congress and Premier of the Madras Presidency, Governor of West Bengal, Minister for Home Affairs of the Indian Union and Chief Minister of Madras state.

¹⁴ CAD., May 1, 1946, p. 487

The ensuing discussions and varying opinions from the members of the assembly resulted in several amendments being moved on the matter leading to a long and intense debate.

The first of these amendments were moved by K. M. Munshi asking the clause itself to be substituted with: “Any conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law.”¹⁵

It included certain additions to the original clause. Firstly, the word “fraud” was added to the clause before ‘coercion and undue influence’. The second matter with regard to conversion was in regard to incorporating the word “minor”. He argued the substitution by pointing out that the aspect of the clause he put forth, had been proposed by one of the committees of the assembly. The argument was to place emphasis on dealing with any conversion of a minor under 18 years of age and how it shouldn’t be recognised by law. The purpose of non-recognition by law was, even if a person is converted by coercion, undue influence, fraud or converted when he/she is a minor will still by law consider continuing to belong to their previous religion and their legal rights will remain unaffected due to conversion. The idea behind the proposal was that, in case of conversions by the means like fraud, undue influence or when an individual is underage will lead to certain changes in the legal status resulting in loss of rights. i.e. the rights will remain the same as at the moment a person was converted by fraud or coercion or undue influence and in the case of a minor at the time of conversion. The clause in the whole was put as, “Any

¹⁵ CAD., May 1, 1946, p. 489

conversion from one religion to another of any person brought about by fraud, coercion or undue influence or of a minor under the age of 18 shall not be recognised by law.”¹⁶

An explanation to the meaning of the words “undue influence” and whether it is used in the sense laid down in the general sense of Contract Act was sought by Srijut Rohini Kumar Chaudhury from Assam. The reply to this put forward by K. M. Munshi was put as "fraud is fraud all the world over and in all systems of jurisprudence". He further added how there exists no difference between the words “undue influence” and “coercion” as understood in any other country or in India. There currently may be very little shades of difference however a free India will form its definitions and yet still may not be different from the Oxford dictionary meaning.¹⁷ The ensuing discussions saw proposals like “conversion by coercion should be made an offence.”¹⁸ being put forward as an amendment by the member Phool Singh.

The debate on the impact it might have on minors saw another amendment being moved by F. R. Anthony¹⁹ proposing an adding to the part "or of a minor under the age of 18" the words, “except when the parents or surviving parents have been converted and the child does not choose to adhere to its original faith”. He pointed out that this was the form more or less in which the particular clause was

¹⁶ Ibid.

¹⁷ CAD., May 1, 1946, p. 489

¹⁸ Ibid., p.490

¹⁹ Frank Anthony (25 September 1908 – 3 December 1993) was a prominent leader of the Anglo-Indian community in India and was until his death their nominated representative in the Parliament of India. He was also the founder of the Council for the Indian School Certificate Examinations (CISCE) which operates the ICSE board of Education in India.

accepted by the Minorities Sub-Committee. He too expressed agreement on the aspect that conversion by coercion, conversions under undue influence or conversion by fraud should not be recognised by law.²⁰

“I want to congratulate the major party for having, in spite of its contentious character, retained the words ‘right to practise and propagate their religion’. Having done that, I say that after giving with one hand this principal fundamental right a right which is regarded as perhaps the most fundamental of Christian rights, do not take it away by this proviso, or of a minor under the age of 18.”

He, however, adds that these particular provisions and the absolute embargo if placed on the conversion of minors will in turn place an embargo on the right of conversion.²¹

“We will be virtually taking away the right to convert as not even a single adult who is a parent however deeply they may feel and however deeply one is convinced will ever adopt Christianity. This would be because through this clause we will be cutting off children from their parent(s). The clause in effect means that although the parents may be converted to Christianity, the children shall not be brought up by these parents in the faith of the parents. You will be cutting at the root of family life. I say it is contrary to the ordinary concepts of natural law and justice. You may have your prejudices against conversion; you may have your prejudices against propagation. But once having allowed it, I plead with you not to cut at the root of family life.”

²⁰ CAD., May 1, 1946, p. 490

²¹ CAD., May 1, 1946, p. 490

It was elaborated how this was a right conceded in every part of the world, the right of parents to bring up their children in the faith that the parents want them to pursue. “You have placed your safeguards and provided that conversion by coercion, conversion by fraud or undue influence shall not be recognised by law.”²²

Going a step further a proposal was also made to give discretion to a child provided he/she has attained the age of discretion, to adhere to their original faith. The necessity to add the word "surviving parent" as restricting it to both the parents would obviously exclude the right of sections like widows. For example, the clause would mean that if a widow adopts Christianity and she wants to bring up her child or children in the Christian faith and in case of the children themselves wanting to be brought up in the Christian faith, we would be placing an embargo on this. The deep concerns which certain sections of the House felt on the question of conversion was acknowledged. But the final point he made was that having once conceded the right to religious propagation “to concede this in consonance with the principles of family law and in consonance with the principles of natural law and justice.”²³

The importance of the clause from the standpoint of the ‘depressed classes’ was raised by P. R. Thakur, who identified himself as a member of the depressed classes. He emphasises the significance of thorough deliberations on the clause before inclusion into the Fundamental Rights, especially for his community. He states the reason as “the victims of these religious conversions is ordinarily from the Depressed Classes. The preachers of other religions approach these classes of

²² Ibid.

²³ Ibid

people, take advantage of their ignorance, extend all sorts of temptations and ultimately convert them. I want to know from Munshi whether "fraud" covers- all these things. If it does not cover, I should ask Munshi to re-draft this clause so that fraud of this nature might not be practised on these depressed classes. I should certainly call these frauds."²⁴

A rebuttal from the spiritual viewpoint was placed by Rev. J. J. M. Nichols-Roy²⁵ from Assam. Following up on Anthony's arguments, he elaborates as to how this part of the amendment about minors is "wrong" from a spiritual standpoint. He argues that from the standpoint of conscience it should be considered absolutely wrong to not allow youth between the age of twelve - eighteen to exercise her/his own conscience before God and states²⁶:

"The clause as it came out of the Advisory Committee is sufficient and should not be amended at all. The amendment seeks to prevent a minor, who is of twelve years of age, or thirteen years of age, up to eighteen years of age from exercising his own conscience. The age limit may be quite right in law. But to think that a youth under the age of eighteen does not have a conscience before God and, therefore, he cannot express his belief is wrong. That side of the question must be appropriately considered. There is a spiritual side in conversion which ought to be taken notice of by this House. Conversion does not mean only that a man changes his form of religion from one religion to another or adopts a different name of religion, such as a Hindu becomes a Christian. But there is the spiritual aspects of conversion, that is, the connection of the soul of man with God, which must not be overlooked by

²⁴ CAD., May 1, 1946, pp. 490-491.

²⁵ Ibid, pp. 491-492

²⁶ Ibid, pp. 492-493

this House. I know there are those who change their religion being influenced by material considerations, but there are others who are converted being under the influence of spiritual power. When a boy feels that he is called by God to adopt a different faith, no law should prevent him from doing that. The consciences of those youths who want to change their religion and adopt another religion from a spiritual standpoint should not be prevented from allowing these youths to exercise their right to change their legal status and change their religion. We know, Sir, in the history of Christianity, there have been youths, and I know personally, there have been many youths, who, have been converted to Christianity, who are ready to die for their conviction and who are ready to lose everything. I myself was converted when I was about fifteen years old when I heard the voice of God calling me. I was ready to lose anything on 'earth. I was ready to suffer death even. I did not care for anything save to obey and follow the voice of God in my soul. Why should a youth who has such a call of God be prevented by law from changing his religion and calling himself by another name when he feels before God that he is influenced by the Spirit of God to do that end is ready even to sacrifice his life for that.”

The argument was that Munshi’s amendment will only serve to oppress the consciences of those youths who wish to exercise their faith or religiosity before God as:

“Why should anyone be prevented from being in a religion of choice and how can their consciences be oppressed. This freedom should be considered a Fundamental Right of the Youth and no law be made which works against good spiritual forces”.²⁷

²⁷ CAD., May 1, 1946, pp. 491

Thus he concluded his arguments citing how it is based on a principle of forcing youths by not preventing them to exercise their religious conviction on the basis of their consciences. He makes a suggestion to add a part to the amendment moved by Anthony, in effect adding the words:” or save when the minor himself wants to change his religion. The purpose of his arguments was to ensure that when a law was made against conversion by fraud, coercion or undue influence, it shouldn’t oppress the consciences of the youths who also deserve freedom.

This line of argument put forward by the Christian members of the house was also countered by Shri Purushottamdas Tandon²⁸. He refuted the argument that the Assembly had admitted the right of every individual to propagate their religion and for religious conversion. It was added, many Congressmen deem it “improper” to convert from one religion to others or to take part in such activities and aren’t in favour of the practice. An opinion on behalf of the Congress party was put considering it absolutely futile to be keen on converting others to one's faith unless at the request of some individual if he/she has to be kept in the national endeavour. He further states:²⁹

“they have a right to convert young children to their faith. What is this? Really this surprises me very much. You can convert a child below eighteen by convincing and persuading him but he is a child of immature sense and legally and morally speaking this conversion can never be considered valid. If a boy of eighteen executes a transfer deed in favour of a man for his hut worth only Rs. 100, the transaction is considered unlawful. But our brethren come forward and say that the boy has

²⁸ CAD., May 1, 1946, pp. 492

²⁹ CAD., May 1, 1946, p. 493

enough sense to change his religion. That the value of religion is even less than that of a hut worth one hundred rupees. It is proper that a boy should be allowed to formally change his religion only when he attains maturity. One of my brethren has said that we are taking away with the left hand what we gave the Christians with our right hand. Had we not given them the right to convert the young ones along with the conversion of their parents, they would have been justified in their statement. What we gave them with our right hand is that they have a right to convert others by an appeal to reason and after honestly changing their views and outlook. The three words, 'coercion', 'fraud' and 'undue influence' are included as provisos and are meant to cover the cases of adult converts. These words are not applicable to converts of immature age. Their conversion is coercion and undue influence under all circumstances. How can young ones change their religion? They have not the sense to understand the teachings of your scriptures. If they change their religion it is only under some influence and this influence is not fair. If a Christian keeps a young Hindu boy with him and treats him kindly the boy may like to live with him. We are not preventing this. But the boy can change his religion, legally only on attaining maturity. If parents are converted why it should be necessary that their children should also change their religion. If they are under the influence of their parents they can change their religion on maturity.”

He explains how Congress agreed to keep the word "propagate" in regard to its Christian friends. However, any further compliance to allow minors also to be converted would be going too far. It can be the case that parents with a number of children convert them into some faith, but why should it be necessary that these children without understanding the religion to be treated as converts. He opined how the law of guardianship can see about it. And Guardians may be appointed to look

after them and as they grow up and if they feel a religion appeals to their minds, they would have the liberty to embrace it.³⁰

“When we say that minors cannot be converted, that implies that when parents go to another faith and they have a number of children to look after, the law of the country will take care of those children. You can always enact a law of guardianship and you can, if necessary, add to the laws which at present exist on the subject so that in such cases the minors should be taken care of. I do not, Sir, therefore, see that there is any legal difficulty in the way of the amendment which Munshi has proposed being accepted. I heartily support. Munshi's amendment.”

A point of order was raised by Sri Ramnath Goenka that under clause 13 which was discussed in the house earlier, every individual is equally entitled to freedom of conscience. "All persons" referred in the clause must necessarily include those persons who have attained the age of discretion. It need not be necessary they attain the 18 years of age before developing a conscience, When clause 17 is passed and prescribe the age of 18, will mean an inconsistency with clause 13.³¹

Sri Ananthasayanam Ayyangar³² poses the point of order in a different way. It had stated no objection to persons who are of the age of discretion being converted and since the age of discretion is still undefined. Means, it is still open to the Assembly to define that age of discretion as 18.

A suggestion was also made to send the whole of clause 17 to the Fundamental Rights Committee by D. N. Datta. Consideration about deleting the

³⁰ CAD., May 1, 1946, p. 493

³¹ CAD., May 1, 1946, p. 494

³² CAD., May 1, 1946, p. 495

whole clause and about enumerating this under Fundamental Rights was also given as the house was working under the present setting of intense and contradicting opinions. Ensuing discussions which pointed out that the clause was already enumerated in the fundamental rights, resulting in Datta asking for a decision to be made between Munshi's amendment or Anthony's.³³

Concerns were raised in the house over the turn which discussion had taken and Rev. Jerome D'Souza from Madras drew attention to the fact that the issue was being portrayed almost exclusively as a minor problem and resulting in heated debates. Attention was drawn to the fact that, committee at the drafting stage had discussed the matter independently from the question of minorities. It was also pointed out how the legal difficulties on which these questions arose in the house were deliberated upon by men of the highest authority like Sir Alladi. He states "The way in which the house handled clause 13 was so encouraging and reassuring to minorities that they have no reason to ask for stronger assurances". He implores the minorities to have an equally trustful attitude which will inspire future discussions and future relations.

The question of converting minors may affect not merely majorities in relation to minorities but also minorities among themselves, as in relation to different Christian groups among themselves. He goes on to place the issue as:³⁴

"There are certain constitutions where the wish of the State to protect and encourage the family is explicitly declared. I hope in the second part, among these fundamental

³³ CAD., May 1, 1946, p. 495

³⁴ CAD., May 1, 1946, p. 496

rights which are not justiciable, some such declaration or approbation of the institution and rights and privileges associated with family We will be introduced. It may perhaps be thought that in our country such a declaration is not necessary because among us the strongest family feeling is universal; we have not merely individual or unitary families but we have also joint families.- I believe the discussion on this point has been partly influenced by that background of the joint family system. I am sure that Tandonji, if I may be permitted to refer to him by name when he was speaking of the minor child of converted parents, was thinking really in terms of the joint family where there are people ready to take over and bring up such children. But we are legislating for all sections of our people, for those also who are not in joint families but in unitary families. We are legislating for them, and, therefore, some provisions must be made which, in the last analysis, will safeguard the authority of the parent, both parents or the surviving parent in particular, as Anthony has said. It is to introduce into our legislation an element which certainly weakens the concept of the authority and sanctity of the family. On this ground, as well as on the legal implications to which attention has been drawn. I mean difficulties in connection with the death, the marriage, the succession rights, of these minors, I oppose Munshi's amendment as it stands. Take the question of marriage. Marriage is permitted before 18 years. Now Munshi has carefully explained that his amendment does not prevent the minor children from going with the parents. But if they are to be married, under what law, by the ceremonies of which religion will they be married? If they follow their conscience and the religion they have adopted, whether they be Hindus, Muslims, or Christians, the question of the validity of that marriage will come in. All this is bristling with legal and juridical difficulties, quite apart from those other considerations into which, as I said, I regret we have entered with undue warmth.”

Stating this argument he tried to substantiate the motion put forth by Anthony'. However, realising the need to treat the issue with the utmost significance saw him taking the same line as the preceding speaker and suggested referring the entire clause back to the Advisory Committee. The need to word and weigh the clause more carefully before being brought back to the House along with other controversial matters was emphasised.

The first amendment put forward by Munshi's was brought back into the discussion and Shri Algu Rai Shastri with his position that, "the amendment shall be doing justice to minors who will be forced to enter the religion which their parents choose out of greed too"³⁵. The analogy used in this context was of the transactions of land where 'trees go with the land'. The case is similar when minor children who not understanding coercion or what change of religious practises or religion mean. He calls this an "evil practise" and might have a very bad effect on the strength of India's population. Indian society/s dynamic conditions make it crucial that the house incorporates such a provision in its Constitution as will prevent such practices. Citing the example of the colonial nations he elaborates "how wherever the white races of Europe who rule over the whole world have gone, had as Missionaries shown that 'cross was followed by the sword'. The missionary was followed by the batons, the swords and the guns, It was in this way that they employed coercion for spreading their religions and for extending their Empire. At the same time, they put economic and political 'pressure on the indigenous tribes and consolidated the foundations of their dominion. We want such an amendment

³⁵ CAD., May 1, 1946, pp. 493

in this clause of Fundamental Rights that a person who wants to change his religion should be able to do so only after he is convinced through cool deliberation that the new religion is more satisfactory to him than the old one. For example, it is only when I am convinced that Sikhism is preferable to Hinduism, that I should be able to change my religion.”³⁶

In view of such conditions and similar conditions that may arise, it was suggested that conversion brought about through allurements and temptation should not be treated as a conversion in the real sense of the term. Mentioning personal experiences extending over 24 years as to how elders of families are induced through allurements like a financial gain to change their and their children's religion. It was described how a particular part of India had been declared as "Excluded Area" so a specific sect alone may carry on its propaganda. Another area was reserved for the "Criminal tribes" and similarly other areas have been reserved where missionaries alone can carry their activities. The example of tribes in Chattisgarh and other similar forest areas which follow primitive faiths was also mentioned in this context. The Hindu missionaries cannot carry forward their activities here and are called "Excluded and Partially Excluded Areas" where religious propaganda cannot be carried in these regions except by the missionaries. This policy was baneful on the part of the Government. And it's time that this policy of religious discrimination is done away with and references from different works were also cited in support.

³⁶ CAD., May 1, 1946, p. 497

The book "Census of India-1930" by Dewton shows how the Christian population in Assam has been 300 times and is attributed to certain evils in Hindu Society.³⁷ Alga Rai opines how these evils have given other missionaries opportunities for conversions. S. Kamath's work "Census of India-1911" is also referenced citing that, missionaries of a particular religion are reducing the number of another religion by exploiting the evils of that group and a way in which this is done is by converting a few influential individuals by persuasion and inducement. The bitterness that was emanating in the discussions were attributed as being consequences to such activities.

The work done by Christian missions for the backward classes was commended in the assembly however, the discussions also mention how to dispute which occurred between members of such castes as the chamars or the sweepers on one side and landlords or certain other influential sections on the other were used to create bitterness among them. There has not been any effort made to effect a compromise and this policy has been adopted to convert members of the former. It was also pointed out how similar attempts were made by people of other faiths too and how it too has intensified with time, exploiting differences in order to increase their own numbers. The results being that people in such castes as Bhangies and chamars are converted and along with them the children too. It was raised how, they "ideally should have been asked/ to live as brothers as taught by angels, prophets and leaders. However, this isn't the practise today and we are in search of

³⁷ CAD., May 1, 1946, p. 498

opportunities to indulge in underhand dealings. Hence, everyone needs to realise the use of all possible unfair means to trample the majority community”.³⁸

Foreign bureaucracy work in this manner over the land and its attempt to create vested interests in order to preserve its political hold over people was also put forward to supplement the argument. Hence, the need to remove this foundation was elaborated in order to give citizens Fundamental Rights in a practical sense. He states, “If minors are permitted to be transferred like trees on land with the newly adopted religion of parents, injustice would be done”.³⁹ Thus attempts were made to justify that, any failure of the part of the house to stop conversion under coercion would result only in injustice. The house was reminded, a person has the right to change her/his religion and even in cases where a person realises that “God is a farce and an then, they could become an atheist”.⁴⁰

It was described how the religious proportion of the land had been altered to enable the British bureaucracy to retain its hold on the country. He emphasised. “I am saying all these things deliberately but I am not attacking anyone community in particular. The sole interest of the government in the illusory web of the census lies in seeing a balance in the population of the communities so that these may continue to quarrel among themselves and thereby strengthen its own rule. This amendment of Munshi is directed against such motives”⁴¹. He, however, echoed the opinion that everybody can have an opportunity to propagate their religion but, only those that

³⁸ CAD., May 1, 1946, pp. 497

³⁹ CAD., May 1, 1946, pp. 498

⁴⁰ CAD., May 1, 1946, pp. 499

⁴¹ CAD., May 1, 1946, p. 499

agree should be converted. The opposition was raised on how, "You tempt the innocent little ones whom you take in your lap, by a suit of clothes, a piece of bread and a little toy and thus you ruin their lives. Later, they repent that they did not get an opportunity to have a religion of their choice... What does religion mean? Does the mother feed her baby so that the child's religion might change? If the mother's love is true she will surely feed her baby. Does the mother's milk change the religion? We do not wish to snatch away the child from the mother's lap, but we wish to give to the baby a right to record his (natal) religion in the report of the Census. But the change in the religion of the children may be considered (only) on their declaration at reaching majority. This is the purpose of the amendment and I support it, and I strongly oppose the view that this right should not be given to children."⁴²

A point that no constitutions considered best of the modern world has in them the right to propagate is put forth by Jagat Narain Lal. An example is cited of Article 50 in the Swiss Confederation which states that "the free exercise of religion is guaranteed within limits compatible with public order and morality."⁴³ Similarly, Article 44 sub-clause (2) 1 of the Irish State, shows that "Freedom of conscience and the free profession and practice of religion are subject to public order and morality, guaranteed to every citizen."⁴⁴ Article 124 of the Constitution of Union of the Soviet Socialist Republics states "In order to ensure to citizens freedom of conscience, the Church in the U.S. S.R. is separated from the State and the school

⁴² CAD., May 1, 1946, p.500

⁴³ CAD., May 1, 1946, p. 500

⁴⁴ CAD., May 1, 1946, p. 501

from the Church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens."⁴⁵ Citing these cases he puts forth a submission that: "This House has gone to the farthest limit possible with regard to the minorities, knowing well the fact that there are a few minorities in this country whose right to carry, on propaganda extends to the point of creating various difficulties. The fact is that we desire to make the minorities feel that the rights which they had been enjoying until now shall be allowed to continue within reasonable limits by the majority. We have no desire to curtail them in any way. But we do not concede the right to do propaganda. I want to appeal to those who profess to speak for the minorities not to press for too much. I think that the amendment tabled by. Munshi becomes essential if the right to propagate is conceded. The House should, therefore, accept it."⁴⁶

Dr B. R. Ambedkar at this juncture raises his disagreement with the amendment moved by Munshi relating to the question of the conversion of minor children.

"The clause, as it stands, probably gives the impression to the House that this question relating to the conversion of minors was not considered by the Fundamental Rights Committee or by the Minorities Sub-Committee or by the Advisory Committee. It was, after examining the whole question in all its aspects and seeing the difficulties, which came up, that the advisory committee came to the conclusion that they should adhere to the clause as it now stands.

⁴⁵ Ibid

⁴⁶ CAD., May 1, 1946, pp. 500

Sir, the difficulty is so clear to my mind that I find no other course but to request Munshi to drop his amendment. With regard to children, there are three possible cases which can be visualised. First of all, there is the case of children with parents and guardians. There is the case of children who are orphans, who have no parents and no guardians in the legal sense of the word. Supposing you have this clause prohibiting the conversion of children below 18, what is going to be the position of children who are orphans? Are they not going to have any kind of religion? Therefore, such a class of subjects shall have to be excepted from the operation of the amendment proposed by Munshi.⁴⁷

In order to give clarity to the second category he mentioned, Dr Ambedkar explains how the class of children with parents and guardians. Needs to be broken down into two categories and considered separately for clarity. Firstly, when children are converted with consent and knowledge of parents and guardians. Secondly, children of parents who are converts. The discussions till then make it obvious that there need not be a restriction on the conversion of children with legal guardians when a conversion occurs without knowledge and consent of the guardians. No missionary has the right to convert a child under lawful Guardianship who is entitled to control and regulate the faith and religion of the particular child without the consent of the guardians themselves. Dr Ambedkar on the second case of parents who are converts elaborate:⁴⁸

“If you are going to say that, although parents may be converted because they are majors and above the age of 18, minors below the age of 18, although they are their

⁴⁷ CAD., May 1, 1946, pp. 501

⁴⁸ Ibid

children, are not to be converted with the parent, the question that we have to consider is, what arrangement are we going to make with regard to the children. Suppose a child of such a parent dies. The parent, having been brought up in the Christian faith, gives the Christian burial to the dead child. Is that act on the part of the parent in giving a Christian burial to the child, to be regarded as an offence in law? Take another case. Suppose a parent who has become converted has a daughter. He marries that daughter according to Christian rites. What is to be the effect of that marriage? Is that marriage legal or not legal ?”

He pointed out that if the desire is to prevent children from being converted, the house has to make some other kind of law with regard to guardianship in order to prevent the parents from exercising their rights to influence and shape the religious life of their children. He poses the question of whether the House would accept a small child should be separated from his parents merely because the parents have adopted a religion different from the one earlier they belonged to. The references to these difficulties were made in order to show how the difficulties faced by the Minorities Committee, the Advisory Committee and the Fundamental Rights Committee led them to reject this proposition. It was done with the acceptance of the proposition, namely:⁴⁹

“that a person shall not be converted below the age of 18, would lead to many disruptions, to so many evil consequences, that we thought it would be better to drop the whole thing altogether. (Hear, hear). The mere fact that we have made no such reference in clause 17 of the Fundamental Rights does not in my judgment

⁴⁹ CAD., May 1, 1946, pp.501-502

prevent the legislature when it becomes operative from making any law in order to regulate this matter”.

Hence he put forth a submission that another reference back to a committee of this clause for further consideration will not produce better results. He further went on to opine that all three Committees had given utmost attention to the subject. Ambedkar, therefore, came to the conclusion that “having regard to all the circumstances of the case, the best way would be to drop the clause altogether. He also raised no objection to incorporate a provision that children with legal guardians shouldn't be converted without the notice and knowledge of parents.

Vallabhbhai Patel in reply commented on how this matter wasn't free from difficulties and emphasised why there couldn't be any point in introducing an element of heat in this controversy. He added how the country has seen conversions by force, conversions by coercion, undue influence and mass conversions. The house during the course of its discussions didn't go into the reasons or the forces that led to these conversions. Nonetheless, Patel states that “we who have to live in this country and find a solution to build up a nation, we need not introduce any heat into this controversy to find a solution. What is the best thing to do under the circumstances? There may be different points of view. There are bound to be differences in the viewpoints of the different communities, but, as Dr Ambedkar has said, this question has been considered in three Committees and yet we have not been able to find a solution acceptable to all. Let us make one more effort and not

carry on this discussion, which will not satisfy everybody. Let this be therefore referred to the Advisory Committee. We shall give one more chance.”⁵⁰

Following long and intense debates, the President after taking consensus from the House referred the clause back to the Advisory Committee for further considerations. After due deliverance, the advisory committee sent the Supplementary Report on Fundamental Rights back to the constituent assembly on 30th August 1947. The committee after reconsideration had come to a decision that, even though the clause enunciates an obvious principle, it was necessary to include the clause as a fundamental right as the Clause 17 was illegal under the present law and may be deemed illegal at any point in time.

The Minorities Sub-Committee, however, introduced some changes in it and made two recommendations:⁵¹

(1) No person under the age of 18 shall be made to join or profess any religion other than one in which he was born, except when his parents themselves have been converted and the child does not choose to adhere to his original faith, nor shall such person be initiated into any religious order involving a loss of civil status; and

(2) No conversion shall be recognised unless a change of faith is attested by a magistrate after a due enquiry. Significantly the Minorities Sub-Committee did not find it necessary to make coercion or fraud in conversion a cognisable offence, though it intended to empower a magistrate to make an enquiry into such an affair.

⁵⁰ CAD., May 1, 1946, p. 496.

⁵¹ Patel, R., The Right to Freedom of Religion, *The Modern Review*, November 1991.

Discussions on the day were started off by M. Ananthasayanam Ayyangar from Madras: on how it is unfortunate religion was used for disintegrating society and not for the purpose of saving. He drew attention to several incidents of a number of conversions since the announcement of the Cabinet Mission and later by the British and points out how it was dangerous to hand over power to the Provincial Governments He describes how religion should not have anything to do with a secular State. Questions were raised on the communal nature of minorities for whom several provisions had been made in the country and whether this was seen as an opportunity to increase their numbers for the purpose of getting more seats in Legislatures. He emphasises on how all individuals had come to the same opinion to establish a secular State. Hence conversion from one community to another should not be allowed and therefore demand was made from his part to incorporate “a positive fundamental right “which would prohibit conversions. Furthermore, he put forward the need in case of any such incidents occurring, the person concerned should appear before a Judge and swear his wish to be converted. A demand was made to consider this matter and the question referred back for a final draft for consideration at a later sitting.”⁵²

This opinion was also shared by V. Dhulekar and put forward the request to retain clause 17 as Munshi had put it. He too commented upon how the various efforts are made by a particular section to increase the population at that juncture in the country and can be seen as efforts made to divide this country further. Those responsible for the division of the land still desire that India be further divided. He

⁵² CAD., May 1, 1946, p. 364

states how there is enough proof within and outside the House that many who live here aren't prepared to be its citizens and echoes the opinion to retain the clause and even goes on to state:⁵³

“It is necessary that full attention should be paid to this. While on tour, I see every day refugees moving about with their children and I find them at railway stations, shops, hotels, bakeries and at numerous other places. The men of these bakeries abduct these women and children. There should be legislation to stop this. I would request you that an early move should be made to stop all this and millions of people would be saved. I submit that we cannot now tolerate things of this nature. We are being attacked, and we do not want that India's population, the numerical strength of the Hindus and other communities to reduce so much that after ten years the other people may again say that "we constitute separate nation". These separatist tendencies should be crushed. Therefore I request that Section 17 may be retained in the same to as is recommended by the Advisory Committee.⁵⁴

It was pointed out that, there wasn't much difference in the opinion raised on the merits of the case by Vallabhbhai Patel and he placed emphasis that, “forcible conversion should not be or cannot be recognised by law. On that principle, there is no difference of opinion. The question is only whether this clause is necessary for the list of fundamental rights”.⁵⁵ If the objective was for the government to act, the clause may be given a place in the Second Part made up of non-justiciable rights. The proposal was put forward to transfer the clause to the

⁵³ CAD., May 1, 1946, p. 364

⁵⁴ CAD., May 1, 1946, p 364

⁵⁵ *ibid*

Second Part of the Schedule as the then the law of the land prohibited forcible conversion. He draws attention to another complication by asking “suppose one thousand people are converted, that is not recognised. Will you go to a court of law and ask it not to recognise it? It only creates complications, it gives no remedy.”⁵⁶

He deemed it unnecessary to carry on further debates on the matter as there is no difference of opinion on the merits of the case and requested the proposal be put as a seventh clause in the Second Schedule, The proposal was also supported by Shri R. V. Dhulekar.

Certain concerns were raised about the clause and the manner of the discussion by Hussain Imam :⁵⁷

“Sir I very much regret the attitude of certain Members who are in the habit of bringing in controversial matters without any rhyme or reason. It was really a most uncalled for the attack which the last speaker made on the Mussalmans, without mentioning names. But I regret that in the atmosphere which we are trying to create of amity such intrusions should be allowed to intervene and mar the fair atmosphere. Sir, what I came to suggest was that this is such a fundamental thing, that there is no need to provide for it. According to the law, everything which has been done under coercion is illegal. Anything done by reason of fraud can never stand. Forcible conversion is the highest degree of undesirable thing. But it is not proper, as the Sardar himself has admitted, to provide it in the justiciable fundamental rights. The only place which it can occupy is in the annals of High Court judgements.”

⁵⁶ CAD., May 1, 1946, pp. 364-365

⁵⁷ CAD., May 1, 1946, p.365

It was pointed out that several judgements existed which have declared that anything done by coercion or reason of fraud is illegal. Hence, it becomes non-justiciable to any sensible person. He too strongly advocated against the inclusion of Clause 17... Subsequently, a motion was adopted on this basis and the amendments suggested by Munshi was dropped from the lists of Fundamental Rights.

Right to Propagate

The motion on clause 13 which comes within the rights relating to religion was put forth by Sardar Vallabhbhai Patel for adoption as follows:⁵⁸

"All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion, subject to public order, morality or health, and to the other provisions of this part.

Explanation 1-The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2-The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3-The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform."

The constituent assembly was witness to intense debate following the placement of the clause. Following the draft of the above explanation, discussions ensued on the

⁵⁸ Constitution of India,,Lexis Newis, p.26

need to ensure the referred practice of religion not to be of such character as will affect the right of the Legislature to legislate on social issues. It brought to the fore a clash of ideas on concepts like secular state, practise of religion in public sphere, the definition of public spaces and most notably to debates lasting days on the definition and use of the term “propagate” in the clause.

The first amendment moved relating to the clause was put by K.M Munshi to add a section to the last part of the explanation. The amendment numbered 573 was of two parts and it was the first part which reads "and for throwing open Hindu religious institutions of a public character to any class of section of Hindus."⁵⁹ that was put forward by him.

The question was also raised on opening all temples to every section of Hindus, citing concerns on ‘religious practice’ in itself. Hence in an attempt to prevent any, such clauses being constructed, a decision was taken that opening of Hindu religious institutions may not be held in disregard to the practice of Hindi religion. The necessity to define "places of public worship" was raised in connection by H. J. Khandekar. It was added that, even in the case where admission to all classes of people is given, the depressed classes might not still be allowed. Furthermore, even a written record that a particular temple should be open to worship, the pujaris often obstruct access to depressed classes stating temples as private and hence, not open to them. Explanation No. 3 was put to vote and amended as follows:

⁵⁹ CAD., 30 August, 1947, pp.364

"That the words 'and for throwing open Hindu religious institutions of a public character to any class or section of Hindus be added at the end of- Explanation No. 3'

The second part of Amendment No. 572 corresponding to Article 19 was put forward by Tajamul Husain in which the words "practise and propagate religion" was proposed to be replaced by "and practise religion privately"

Clause (1) of the article details how all individuals are entitled to the right to freely practise, progress and propagate religion and the right to freedom of conscience. He states no qualms with the right to freely practise and profess religion but differs with the part which gives the right to propagate religion and states:⁶⁰

"I feel, Sir, that (religion is a private affair between oneself and his Creator. It has nothing to do with others.) My religion is my own belief, and your religion, Sir, is your own belief. Why should you interfere with my religion and why should I interfere with your religion? Religion is only a means for the attainment of one's salvation. Supposing I honestly believe that I will attain salvation according to my way of thinking, and according to my religion, and you Sir, honestly believe that you will attain salvation according to your way, then why should I ask you to attain salvation according to my way, or way, should you ask me to attain salvation according to your way? If you accept this proposition, then, why propagate religion?) As I said, religion is between oneself and his God. Then, honestly profess religion and practise it at home. Do not demonstrate it for the sake

⁶⁰ CAD., 30 August, 1947, pp. 364

of propagating. Do not show to the people that this is your religion for the sake of showing. (If you start propagating religion in this country, you will become a nuisance to others.) So far it has become a nuisance. I submit, Sir, that this is a secular state, and a secular state should not have anything to do with religion. I commend my amendment to the Honourable House and especially to the Honourable Dr Ambedkar, hoping that he will accept it.”

The discussion on the article was carried forward by Prof. K. T. Shah and opines that no propaganda of any particular religion should be carried out with the intent to change faith of people affected in any educational institutions like colleges or schools or in institutions like hospitals or any place where persons of a tender age and/or of unsound mind or body are exposed to undue influence from people of authority. It should include all institutions wholly or partially receiving public revenues or is in any way aided or protected by the Government of the Union, any State or public authority therein. The condition placed on the right of freedom to propagate was that this freedom should not be misused like been in the past. He adds, “In places or institutions, where people of tender age or those suffering from any bodily or mental infirmity, are exposed to undue influence, they are liable to be influenced more by the personality of those in authority above them than by the inherent advantages and unquestionable reasoning in favour of a particular religion and as such result in conversion. That is not a genuine change of opinion, but is the result of undue influence that ought to be stopped”⁶¹. It is outlined how most religious beliefs in the world aren't without any flaws and aren't a matter of

⁶¹ CAD., may 1st, 1947, pp. 502

reasoned conviction. They are more like an inherited prejudice or an acquired habit which may not stand strains of conviction in the face of reasoning or opposition from controverting sides.

Accordingly, anyone who desires the public to be open to conviction and free from prejudice will not object permitting such freedom of propaganda which might lead to conversion. He also comments on, the institutions or places carrying out such propaganda resulting in conversion is to be objected when they are maintained partly or wholly by public revenues. Placing these restrictions, he requests to at the least observe this much self-restraint, viz. ⁶²

“that any institutions maintained by any form of public assistance or receiving any form of public encouragement should not be utilised by them for propaganda or proselytisation so that the minds not quite free from other influences, minds suffering from some kind of handicap, shall not be unduly influenced.”

He suggests that those suffering from disabilities be excluded from activities of conversion and posed no objection to people adhering to their beliefs and even propagating but shouldn't indulge in this illicit form of religious activity. This may be left as a purely personal concern but, should not be carried out in social gatherings and should only be reliant upon the convincing arguments.

A suggestion was made by Ghanshyam Singh Gupta to substitute the word “profession” with “practice” in the explanation to clause (1) of Article 19. He explains how “freedom of conscience” can mean an individual is free to either have

⁶² CAD., 3 December 1948, pp. 815 .,

a religion or not. Subsequently, he/she then should be free to profess the religion he likes. This amendment too, however, does not get moved successfully in the house.

A suggestion to include the section "and for the matter of that of any other religion" to the end of Explanation to clause (1) of Article 19 was put forward by Shri Lokanath Misra through amendment no 591. He adds that:⁶³

“If article 13 of this Draft Constitution is a Charter for liberty, article 19 is a Charter for Hindu enslavement. I do really feel that this is the most disgraceful Article, the blackest part of the Draft Constitution. I beg to submit that I have considered and studied all the constitutional precedents and have not found anywhere any mention of the word `propaganda' as a Fundamental Right, relating to religion”.

He goes on to argue that propagation of religion was the reason the country was brought into this unfortunate state of division into India and Pakistan and that if Islam hadn't imposed its will on the land, it would have been a secular and homogenous state. He puts forward the point that to put the right to propagate as a fundamental right is not right. As India has several religions like Sikhism, Islam, Hinduism and Christianity, one cannot decide which to accept and hence it is better to have no religion. He adds if this cannot be the case and if religion is accepted, Hinduism should be taken as it is the one practised by an overwhelming major of India.

The discussions in the assembly move towards the debate on the idea of “Secular India” and how a new India should envisage it. It is Shri Lokanath Misra

⁶³ CAD., 3 December, 1948, pp. 822

who points out how the notion of a new 'secular State' is in a slippery phrase and should be treated as a device to by-pass the ancient culture of the land. He considers this to be an absurd position that gets manifest in articles 19 to 22 of the Draft Constitution and states:⁶⁴

“Do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion. If we find it necessary, let us be brave enough and say what it should be. But this unjust generosity of tabooing religion and yet making propagation of religion a fundamental right is somewhat uncanny and dangerous. Justice demands that the ancient faith and culture of the land should be given a fair deal, if not restored to its legitimate place after a thousand years of suppression. We have no quarrel with Christ or Mohammad or what they saw and said. We have all respect for them. To my mind, Vedic culture excludes nothing. Every philosophy and culture has its place but now (the cry of religion is a dangerous cry.) It denominates, it divides and encamps people to warring ways. (In the present context what can this word 'propagation' in article 19 mean? It can only mean paving the way for the complete annihilation of Hindu culture. Islam has declared its hostility to Hindu thought. Christianity has worked out the policy of peaceful penetration by the back-door on the outskirts of our social life. This is because Hinduism did not accept barricades for its protection. Hinduism is just an integrated vision and a philosophy of life and cosmos, expressed in organised society to live that philosophy in peace and amity. But Hindu generosity has been misused and politics

⁶⁴ CAD 3 September, 1948, p.823

has overrun Hindu culture. Let us not raise the question of communal minorities anymore”.

He goes on to point out how the Constitution gives the right to propagate but not to any antireligious propaganda. He states that let the people's wish to propagate their religion remain but the Constitution shouldn't encourage it and put it as a fundamental right. Fundamental rights being inalienable means their admission will create bad blood. Hence a proposal is put forth by him to drop the word 'propagate' from article 19.

This line of argument leads to the proposal that a sub-clause be added after clause (1) which would clearly define as to what the role of the state would be. It was put forth as amendment no. 593 by Kamath as: “The State shall not establish, endow, or patronize any particular religion. Nothing shall, however, prevent the State from imparting spiritual training or instruction to the citizens of the Union.”⁶⁵ The amendment was made up of two parts, the first of which related to the separation of the Church from the State (in western parlance) and the second relating to the deeper import of religion (the eternal values of the spirit). The amendment didn't get the required number of votes and was not passed in the house.

An amendment was placed to change certain sections that would enable the state to have its authority in relation to any Religion, which carries on practices of a secular kind whether it is political or economic. Prof. K. T. Shah was the member who moved to replace the words "regulating or restricting any economic, financial, political or other secular activity" with the words "regulating, restricting or

⁶⁵ CAD, 6 December, 1948, p. 825

prohibiting any economic, financial political or other secular activity' in sub-clause (a) of clause (2) of Article 19. The amended clause was read as: "Nothing in this article shall affect the operation of any existing law or preclude the State from making any law (a) regulating, restricting or prohibiting any economic, financial, political or other secular activity which may be associated with religious practice;.....".⁶⁶ It was based on the viewpoint that the state should have the power "to prohibit" such practice. This amendment too wasn't passed in the house. He went on to place to the house another amendment which added "Jain, Buddhist or Christian" after the words "or throwing open Hindu" in sub-clause (b) of clause (2) of Article 19 and it read ".....for social welfare and reform or for throwing open Hindu, Jain, Buddhist or Christian religious institutions of a public character to any class or section of Hindus."⁶⁷ The question was posed as to why this obligation or rights be restricted to Hindu Religious institutions to be thrown open to the public. The amendment too wasn't accepted by the required number of members in the house and got rejected.

The necessity to clear whether article 19 will preclude people from observing their personal law was raised by Mohamed Ismail Sahib. The proposal was to bring the practice of personal law under the secular activities associated with religion. Therefore, it was cleared that, when personal law is concerned, the article shall not affect the observance thereof by the individuals concerned. As the house had adopted a directive endeavouring to evolve a uniform civil code the above

⁶⁶ CAD, 6 December, 1948, p. 826

⁶⁷ CAD, 6 December, 1948, p. 827

amendment could be a direct negation of that directive. It was thus argued that based on this ground the section becomes inappropriate in this connection.

Dr B. R. Ambedkar in reply to the point states that the discussion was disposed of already while discussing the Directive Principles and also in another amendment already discussed. The ensuing discussions saw the amendment being placed as wherein a new clause was proposed to be added after clause (2) of Article 19 and went: "(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong."

The purpose of this amendment was put forward as, only to recognise the age-long right of the people to follow their personal law, within limits of their respective communities and families and in no way would affect the members of other communities. It will not entail any sacrifice on the part of any other community. He adds how practising, professing and propagating one's faith had been a right which humans had from the beginning of time which had always been recognised as an inalienable right throughout the world.

A need to bring some clarity and in order to direct the discussions back to the ambit of the clause was felt and it was Lakshmi Kanta Maitra who attempted to explain how article 19 in itself confers on all individuals the right to practice, profess and propagate any religion of choice, yet this right is also circumscribed by conditions which the State would be free to impose in interest of public order, Public health and public morality. Furthermore, it was clarified that the right conferred does not conflict with other provisions elaborated under this part of the Constitution.

He also goes back to the previous discussions on the concept of 'Secular State' and explains it as merely meaning, the State will not discriminate on the ground of community or religion and in essence no particular religion will receive any State patronage. The Vice President also adds by pointing out that, the article in effect would give power to the State to intervene when required and by way to subvert chances of cataclysmic events. This aspect was further explained by Lakshmi Kanta Maitra from a different point of view as:

“I feel that every single community in India should be given this right to propagate its own religion. Even in a secular state, I believe there is a necessity for religion. We are passing through an era of absolute in religion. Why is there so much vice or corruption in every stratum of society; because we have forgotten the sense of values of things which our forefathers had inculcated. We do not at all care in these days, for all these glorious traditions of ours with the result that everybody now acts in his own way, and justice, fairness, good sense and honesty have all gone to the wilderness. The right to profess and practise any particular religion. In this connection, I think I may remind the House that the whole matter was discussed in the Advisory Council and it was passed there. As such I do not see any reason why we should now go back on that. Sir, the clause as it is has my whole-hearted support.”

The concern should not be about compromises between communities or whether certain advantage might be derived later by some communities from the wordings of the article to further their religious practices and beliefs. The idea was also supported by T. T. Krishnamachari who was the next to speak on the article. The emphasis should be on the fact that a new government with its new Constitution have to take things as they are and unless the status quo offends all ideas of decency, ideas of equity and justice have to be provided for in the Constitution. The people

coming under a new government should feel that these changes aren't for the worse. Inclusion of the word "propagate" does not mean this right to propagate one's religion is only given to particular sections or people who follow any specific religion and is open to all like the Arya Samajists. The article does not take away anybody's rights but. confers them to all citizens.

Shri K. M. Munshi through Amendment No. 607, requests the word 'Hindu' used in the section to be widely defined. He suggests incorporating a definition in the interpretation clause on the term. He also goes on to speak on the objections raised in the house on the word "propagate" and argues that this objection to the word is resultant from thoughts in "terms of the old regime". The Christian missionaries were obviously at an advantage in the old regime and this influence which was derived from their political position and power has disappeared. An example was cited from 1937 when the first Congress Ministry came to power in Bombay and the Christian missionaries, who had great influence until then with the Collectors of the Districts acquired converts. This ability was lost and since then the conversions that took place there were only a result of persuasion and not through material advantages or allurements. He goes on:

"The word "propagate" was a fundamental part of their tenet. Even If the word were not there, I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by the free exercise of the conscience has to be recognised. The word 'propagate' in this clause is nothing very much out of the way as some people think, not is it fraught with dangerous consequences. Speaking frankly, whatever it's results we ought to respect the

compromise. The Minorities Committee the year before the last performed a great achievement by having a unanimous vote on almost every provision of its report. This unanimity created an atmosphere of harmony and confidence in the majority community.”

He thus concludes by emphasising the word `propagate' to be in this article so that the compromise so laudably achieved by the Minority Committee is not disturbed.

Dr Ambedkar added nothing more to the various amendments put in favour of article 19 and stated his agreement to only accept amendment No. 609. Subsequently, all amendments related to the article were put to vote and only the following amendments to the article procured the votes necessary to be passed.

- a) "That at the end of Explanation to clause (1) of Article 19, the words 'and for the matter of that any other religion' be inserted."
- b) "That in clause (2) of Article 19, for the word "preclude" the word "prevent" be substituted."
- c) "That in sub-clause (b) of clause (2) of Article 19 for the words "any class or section" the words 'all classes and sections' be substituted."

Article 19 was amended, passed and formed part of the constitution on 6th December 1948 as:⁶⁸

“Freedom of conscience and free profession, practice and propagation of religion.”

⁶⁸ The Constitution of India, *LexisNexis Butterworths Wadhwa*, Nagpur, p. 26

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 practice;

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.”

The 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 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.

The final article that will be discussed in the chapter was moved as Amendment No. 566 by Prof. K. T. Shahas and introduced as a new article to be inserted after article 18 also came under the heading "Rights relating to Religion" and stated that: “The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.”

It was proclaimed multiple times in the house that India is secular and as such should have no concern with affairs of any religion or with the profession of any particular creed, belief or faith. It was cleared in the ensuing discussions that, this, however, should not mean the neutrality of State in matters of religion and result in neglect or utter ignorance of services or institutions which may in the name of belief or religion be conducted by people professing a particular faith. The state should have no concern with the actual profession of belief or faith and Shastri stated the case as follows:⁶⁹

“The State in India being secular shall have no concern with any religion, creed or profession of faith. I am again and again emphasising this aspect of religion because that is by its very essence a non-worldly activity and as such the State which is—may I say it without any disrespect--essentially an earthly organization, should have no concern. One could dilate upon this matter for an indefinite period. I do not regard occasions of this kind, or debates of this nature to be opportunities for unconscious self-revelation or deliberate professions of one's own attitude. I, therefore, will not take the time of the House is going further into this subject which I am sure would interest everybody sufficiently, at any rate, to consider favourably my amendment.”

According to the article, the should not take any action or give indications of partiality to any religion. All sections of citizens should be treated equally in matters mundane from the State and should be the case even for those who may not be citizens of the State, but living within it. The assembly recognised that citizens of the Union belong to a wide variety of faiths, professions and religious beliefs and it

⁶⁹ Ibid., p.

shouldn't favour any section nor should it aid or assist in their mundane affairs at any time. The opinion was emphasised that this tendency would be objectionable for a secular organisation. The amendment, however, could not garner the required votes and Article 18-A wasn't passed in the house.

The chapter after introducing the various tenets of the Constituent Assembly had introduced the rights relating to religion in brief. The section gave the outline as to how a nation in its formative years envisioned to define the right to religion. The chapter goes on to situate and contextualise the intense debate that occurred in the Constituent Assembly on Article 19 of the constituent assembly. The section for this purpose thematically separates the clauses that deal with the Right to Convert and the Right to Propagate into two parts. The debate on conversion saw the house divided on its opinion and the major point which fuelled the dispute was on the question of explicitly bringing minors within the ambit of the clause. Socio, cultural and spiritual aspects of this inclusion were thoroughly deliberated upon. The discussions around the right to propagate also went along these lines and it too saw a sharp difference of opinion among certain members of the assembly. An area which elucidated the conflict of ideas was on whether religion should only be practised privately and the other was on the question of religious propagation itself, with contentions arising on the usage of undue means, propaganda in public places or institutions funded by governments etc. The proceedings also elaborate on how this debate even goes on to lead the members in shaping the model for a secular state in its formative stage and contextualising the effect of providing a constitutional right to propagate religion. The final part of the chapter continues this discourse and utilising the proceedings on Article 18-A attempts to define the concept of the secular state and subsequently describe what it should characterise.

These deliberations which shaped a crucial aspect of India's constitution were described to provide both the background and foundation for the study as a whole.

Chapter III:

Anti-Conversion Law: A Case Study of Madhya Pradesh Dharma

Swatantrya Adhiniyam, 1968.

Introduction

The Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 was passed in the Madhya Pradesh Assembly (Act 27 of 1968). It received the assent of the Governor on 19th October 1968 and was published in the 'Madhya Pradesh Gazette Extraordinary on 21st October 1968.¹

The chapter would deal with the Madhya Pradesh Dharma Swatantrya Adhiniyam, the later amendments and the rules formulated by the government. It would be a detailed analysis of the formulation of the Niyogi Committee and M.B Rege committee to enquire into the activities of the missionaries, the conditions for the formulation of the committee and what were the recommendations of the respective committees. It would also include the deliberations and arguments placed in the Madhya Pradesh State Assembly during the formulation of the legislation and the reasons for the passage of the act.

¹ The Madhya Pradesh Dharma Swatantrya Adhiniyam (MPDSA), Madhya Pradesh Gazette, dated 21 October 1968.

The Madhya Pradesh Dharma Swatantrya Adhiniyam: A Misnomer

The Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 states that it is an act for the prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means. The act explains Conversion as ‘renouncing one religion and adopting others’. The act stipulates that “No person shall convert or attempt to convert, either directly otherwise, any person from one religious faith to another by the use of force or by allurement or by fraudulent means nor shall any person abet any such conversion”²

In the act, terms ‘allurement’, ‘force’ ‘fraud’ has been defined but they have been left open-ended, where anything can be contrived under these words. ‘Allurement’ is defined as an offer or any temptation in the form of ‘any gift or gratification either in cash or kind’, ‘grant of any material benefit, either monetary or otherwise’ Force is defined as ‘force shall include a show of force or a threat of injury of any kind including threat of divine displeasure or social excommunication’. Fraud includes ‘misrepresentation’ or ‘any other fraudulent contrivance’³

The law also stipulates that ‘any person contravening the provisions, shall without prejudice to any civil liability be punishable with imprisonment which may be extended to one year or with fine which may extend to five thousand rupees or with both’. In case the offence is committed in respect of a minor, a woman or a

² Ibid, p. 1055

³ Ibid, p. 1055

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.⁴

The law basically states that the person, who wish to convert other person or taking part in the ceremony of converting some individual or group has to inform the District Magistrate of the district in which the ceremony is taking place in advance. It reads, “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”.⁵

The act states that if any person fails to comply with the provisions, he/she will be punishable with imprisonment and/or fine. The act provides that, the offence should be investigated by any officer above the rank of inspector and the persecution for an offence under this act shall be instituted by or with the sanction of the District Magistrate or such authority not below the rank of the sub-divisional officer.

After the passing of the act, Madhya Pradesh government has formulated the rules published in the Gazette under the title “Madhya Pradesh Dharma Swatantrya Rules, 1969”.⁶

⁴ Ibid, p. 1056

⁵ “MPDSA”, Madhya Pradesh Gazette, dated 21 October 1968, p. 1056

⁶ Madhya Pradesh Dharma Swatantrya Rules, (MPDSR), Madhya Pradesh Gazette, dated 3 February 1969.

The government has prepared the rules and has prescribed a format for the person conducting the conversion to inform the District Magistrate. The person initiating the conversion has to take prior permission from the District Magistrate in the prescribed format to conduct the ceremony. The intimation needs to be sent to the District Magistrate of the district where the ceremony for conversion would be conducted prior to seven days before the ceremony. It needs to be delivered personally to him/her or by registered post with due acknowledgement. The District Magistrate would give an acknowledgement receipt, a certificate stating the details of time and date of the conversion ceremony, which was mandatory to conduct any conversion activity.⁷

The person initiating the conversion needs to submit Form (A) and the District Magistrate making a record of the details, will give a receipt of Form (B), which the District Magistrate would give as an acknowledgement receipt. The Form (A) requires the details such as 'Name of person converted', Name of the Father of person converted', 'Address', 'Age', 'Sex', 'Occupation', 'Married or Unmarried' 'Any Dependents' 'If Minor, full name and address', 'If the person belongs to Scheduled Caste or Tribe and particulars', 'Place of conversion', 'Date of Conversion', 'Name of the person conducting conversion' and importantly, 'Names of two persons other than priest/the person intimating the conversion ceremony. Form (B) is a form which gives a receipt of intimation of the conversion including

⁷ Ibid, p. 106

the details such as the faith of the person converting from and to, which is mandatory for the conversion ceremony to take place.⁸

The District Magistrate needs to maintain a register of Conversion, which is filled in Form (C), wherein the particulars of intimation received have to be maintained as a register. The Form (C) is a register wherein the details such as 'Name of person converted', Name of the Father of person converted', 'Address', 'Age', 'Sex', 'Occupation', 'Married or Unmarried' 'Any Dependents' 'If Minor, full name and address', 'If the person belongs to Scheduled Caste or Tribe and particulars', 'Place of conversion', 'Date of Conversion', 'Name of the person conducting conversion', 'Names of two persons other than priest/the person intimating the conversion ceremony' have to be maintained by the District Magistrate. The District Magistrate monthly by 10th has to submit a report to the state government with the details of conversions happened in the district, these details are submitted in Form (D). The particulars to be set as part of Form (D) are 'No of intimations received', 'persons converted from which religion to which religion', "no of prosecutions if any and the number of acquittal under the Adhinyam".⁹

⁸ Madhya Pradesh Dharma Swatantrya Rules, (MPDSR), Madhya Pradesh Gazette, dated 3 February 1969, pp. 107-108.

⁹ Ibid., p. 108.

Conversion as an Anti-National Act: Niyogi Committee

Recommendations

The Madhya Pradesh Freedom of Religion Act was based on the report prepared by the committee under the chairmanship of Dr Bhawani Shankar Niyogi. The Report of the Christian Missionary Activities Enquiry Committee, Madhya Pradesh. The committee was formed by the government through a government resolution dated 14th April 1954. The resolution passed by the state government states, “Whereas representations have been made to Government from time to time that Christian Missionaries, either forcibly or through fraud and temptations of monetary and other gains, convert illiterate aboriginals and other backward people thereby offending the feelings of non-Christians. And whereas it has further been represented that Missions are utilised directly or indirectly for purposes of political or extra-religious objectives. Whereas the Christian Missionaries have repudiated these allegations and have asserted on the other hand that their activities are confined solely to religious propaganda and towards social, medical and educational work.”¹⁰

The Committee was formed with “Dr Bhawani Shankar Niyogi, ex-Chairman, Public Service Commission, Madhya Pradesh, and Retired Chief Justice, High Court of Judicature at Nagpur as the Chairman; Ganshyam Singh Gupta, ex-speaker Madhya Pradesh Legislative Assembly, Durg; Seth Govind Das, MP Jabalpur; Kritimant Rao MLA Ahiri, district Chanda; Prof S.K. George, Professor,

¹⁰ Niyogi Committee, Madhya Pradesh Gazette date 14th April, 1954.

Wardha; and B.P. Pathak Secretary to Government as members of the committee. B.P. Pathak worked as Secretary to the committee.”¹¹

The committee was mandated to enquire into the questions raised by the different groups and submit a report to the government on the facts. It was also supposed to look at historically and make recommendations to the government as to the role and action of the government. The committee was given a free hand to decide on the questionnaire and frame its own procedures to conduct the enquiry. The report was later titled, “Report of the Christian Missionary Activities Enquiry Committee, Madhya Pradesh, 1956. It was submitted on 18th April 1956.”¹²

The committee conducted enquiries in 14 districts, where the committee decided to meet the representatives of all the concerning parties. The committee conducted its tour in Rajgarh, Surguja, Raipur, Bilaspur, Amravati, Ninar, Yeotmal, Akola, Mandla, Jabalpur, Betul, Chindwara and Balagarh.¹³ The committee worked on a voluntary basis, it neither had the power to compel anyone to appear before it nor demand written statements.¹⁴

The committee had recognised the work carried out by the missionaries in the fields of education and medical relief. It was unanimously accepted across that the services were excellent. It had also acknowledged the complaint by various sections that, there were allegations that the schools and medical relief

¹¹ Niyogi Committee, Madhya Pradesh Gazette date 14th April, 1954.

¹² M.B. Niyogi, “Report of the Christian Missionary Activities Enquiry Committee”, 1956 (Hereafter Niyogi Committee Report)

¹³ Ibid., p. 2

¹⁴ Ibid., p. 4

camps/hospitals run by the missionaries were used as centres for conversion. The complainants said the missionaries were using illegitimate methods giving allurements to the people such as free education and other facilities to convert them. There were general apprehensions raised about the works of the missionaries because they received foreign aid. The motives if the missionaries were questioned to be more than religious, i.e. ulterior political and extra-religious. The concentration of work by the missionaries in the interiors; remote and inaccessible areas; amongst the hill tribes was seen with suspicion and was interpreted as “preparing the ground for a separate independent state on the lines of Pakistan.”¹⁵

As part of the circumstances leading to the appointment of the committee, the report states, the activities of the missionaries historically have been seen as trouble makers. The movements of the missionaries have been restricted even by the Political Department, held by the European Christians. In the states of Sarguja, Udaipur and Raigarh act to regulate conversions have been passed. The Missionaries even opposed the schools started by the Madhya Pradesh Government under the backward area welfare scheme. The commissioner of Chhattisgarh had to contact the Father superior of Roman Catholics at Jashpurnagar to explain to him, the secular nature of the Indian Union. He explained to him that there was no problem in conducting missionary activity but politics and religion should not be mixed and they would lose the natural sanctity given to the religious organisations.¹⁶

¹⁵ Niyogi Committee Report, p. 3.

¹⁶ Niyogi Committee Report, p. 7.

The Niyogi committee in its report lays down critical points on the activities of the Christian missionaries in the state of Madhya Pradesh which entail towards identifying their acts as those against national interests, in other words ‘anti-national’. The report makes references to different cases where missionaries were found guilty or convicted by the local administration. It also refers to the complaints raised by the locals considering the missionary activities as alarming and creating panic. The report highlights the role played by the different parties- church, government, non-Christian organisations, and the ensuing debates and opinion on those acts amongst the different sections. These opinions, arguments and debates allow one to gain an in-depth understanding of the contexts and situations that shaped laws on religious conversions in the state. In the following section one tries to outline, through reference to cases, the opinion of the different stakeholders that built towards the narrative of conversions as anti-national activities.¹⁷

Government actions and policies aimed at monitoring the activities of the missionaries were seen critically by the church. In his letter to the Commissioner, Father Vermiere, from the Jashpur Roman Catholic Mission wrote how the government had been spending time in the months of May and June over Adult Education, which according to him was conducted in a farcical manner. The programme driven by Hindu propaganda was aimed at bringing the Christians to the Hindu fold. The Christians refused to be part of it and ultimately the programme came to an end. According to him, the Inspectors were primarily involved in the same task. Further, Vermiere goes on to talk of the officials who were sent to the

¹⁷ Ibid.p.7

region. Amongst the two who had come to spy on the Catholic institutions, one had the means to work for the upliftment of the backward people. He had sufficient government budget to do the same. However, their aim lies in preventing conversions and not in the upliftment of the people, he stated.¹⁸ The opinion of the missionaries is reflected in this letter. Government activities towards the people were seen to be less of those driven towards welfare but those that monitor and inhibit the work of the missionaries in the state.

Later, during one of his visits to the Premier at Nagpur, Verriere, was confronted with the letter. He was also made to give an undertaking stating that he had no objections with Government schools being set up in the different states. The missionaries were then gradually made to limit themselves in religious activities and isolate from acts that were construed political in nature.

The activities of the missionaries were found to become increasingly political due to their involvement in the Jharkhand movement. The agitation for the inclusion of certain districts in the state of Bihar instead of Madhya Pradesh and moreover the movement for a new province was considered to be similar to that of the demand for a separate state of Pakistan. It was seen as an act that was inherently ‘anti-national’, the ideas showing resemblance to the two-nation theory that divided India.¹⁹

Different districts in the state of Madhya Pradesh where missionary activities existed were analysed. With respect to the Merged States of Surguja and Udaipur,

¹⁸ Ibid., pp.8-9

¹⁹ Ibid., p.9

the report highlighted the activities of the missionaries towards the isolation of the Aborigines from other communities and sowing seeds for the Jharkhand movement. Previously when the states existed as separate princely states the rulers had made consistent efforts to restrict the entry of Missionaries in the respective territories. The Anti-Conversion Acts were passed with the full knowledge and consent of the Political Department then²⁰.

The missionaries were furthering the Adiwasi movement. In Ranchi, the Christian community backed by the missionaries organised themselves into “Raiyat Warg” in order to propagate the movement under the garb of social work. In order to counter the ‘isolationist doctrine of this organization’, the Praja Mandal was formed by the non-Christians.²¹ The two separate organisations were working counter to each other however on learning that the states were being merged with Madhya Pradesh, they came together and started a pro-Bihar agitation.

The report mentions that two members of the party consisting of some Bihar Congressmen, Rev. Lakra and a Jamidar that visited Sarguja in January 1948, had informed the District superintendent of the Police that they had disagreements with the other members of the party. They mentioned it to be a ‘conspiracy between Pakistan and some American and German Missionaries to instigate the aborigines to take possession of their own land, commonly known as Jharkhand’.²²

In Jashpur, between the months of January and May, the activities were found to be carried out by Indian Christians and sponsored by Missionaries to gain

²⁰ Niyogi Committee Report, p. 10.

²¹ Niyogi Committee Report, p. 10

²² Niyogi Committee Report, p. 10

a strong footing in Udaipur and Surguja. The movement for inclusion of Jashpur, Udaipur, Surguja and Changbhakar in Bihar continued and several prominent people from Ranchi visited the region. Rev. Lakra who was the head of the German Lutheran Mission was propagating the agenda for a separate Jharkhand province, administered by Christians. There were about three meetings of Christians held in Jashpur to carry out this propaganda in January 1948.²³

In February 1948, three more meetings were held to carry forward the propaganda. In these meetings, it was stated that the inclusion of the districts with the Central Provinces would lead to the economic and social backwardness and the 'Jharkhand' would be a distant dream. In one such meeting held on February 13th in Ichkelah, Jashpur the announcement of starting an Adiwasi fund to defend the interests of the Adivasis was made. Several leaders visiting the region were reprimanded by the district administration for indulging in objectionable activities. It was believed that Rev. Lakra had been dissuading the Christians in Jashpur from participating in Mahatma Gandhi's Ashes Immersion Ceremony on February 12th. Similarly, Julius Tigga, secretary of the Adiwasi Sabha was given a warning by the District Magistrate for his activities.²⁴

The intense political activities by the Christian spearheaded by the Missionaries led to a sense of fear amongst the non-Christian organisations. This resulted in the mobilisation of the non-Christians under the Praja Mandal to counter the movement of the Christians. There thus emerged a divide among the tribal

²³ Niyogi Committee Report, p. 11

²⁴ Ibid., p.11

people. This was criticised by leaders like Jaipal Singh, President of the Maha Sabha who emphasised on a separate state for the Adivasis.

The activities of the Christians and missionaries were met with strict action from the district administration. One such case was of a Gaonthia of Surguja who was charged under the Public Safety Act for objectionable activities. He was found to be an active worker of the Jharkhand movement. In Udaipur, the Anti-conversion Act was put in practice in 1948 and there were guidelines laid down to check on the activities of the missionaries. The entry of missionaries in the region as per the order of February 28, 1914 [D.O. No. G-59-CR/37 (III)] was under the following conditions:²⁵

“(1) Priests could be allowed to enter the State when called to the bedside of a dying or dangerously ill person. The Priest concerned must in such cases personally give information about his visits at the Police Station nearest to the route by which he travelled.

(2) Priests may be permitted to enter the State once every quarter to celebrate Mass at some village near the border. Previous permission for obtained from the Superintendent of the State on each occasion. The Priests should not tour in the State but their parishioners should come to them at the. a place which was selected for the celebration of Mass.

13) A Priest should not stay more than 48 hours in the State on any occasion unless unavoidably delayed by circumstances over which he has no control, provided firstly that in such a case he informed in writing the Officer-in-charge of a Police Station nearest to his route when leaving the State, giving particulars of the obstacle

²⁵ Niyogi Committee Report, p.12-13

which caused the delay and secondly that no visit was extended to more than 96 hours without previous sanction of the Superintendent of the State. Priests should not do any religious propaganda or proselytization while in the State.

(4) Only Ordained Priests and not lay Preachers from outside should be allowed to enter the State.”

Missionaries visiting the place had to abide by these rules. However, after Integration, there were instances in which priests violated these given conditions. For instance, Rev. Tigga, a Catholic missionary made several visits to the place and paid no heed to the warning given by the sub-Divisional Officer against the same. Following this, he was prosecuted under Section 188 of the IPC and charged a fine. This and similar events marked by the intensive activity of missionaries was met with a sharp reaction of the local people who appealed to the Government and local administration to discourage the setting up of Centres by missionaries and thereby prevent the mass conversion of Uraons carried on by them. The government taking cognizance of the situation, fearing disturbance in the region and fearing Communists from the neighbouring states taking advantage of the situation made restrictions in the region. An order under section 144 of the CPC was passed restricting the entry of Christian missionaries except for religious purposes, in Udaipur. The restrictions put were in place in 1949 despite repeated attempts by the missionaries to get permission to set up Centres. The government, having information, was of the opinion that the political activities undertaken by the missionaries were ‘reminiscent of the two-nation theory’ which had a catastrophic impact in the country in the past.²⁶ On March 29, 1949, a conference of the Premier

²⁶ Ibid., p.13

with three leaders of the Roman Catholics was held. This conference was crucial as it marked the leaders assuring an unflinching loyalty to the Government and thereby seeking permission for the Catholic priests to reside in Udaipur. The outcomes of the conference were later reflected in the opinion and words of the Catholic Bishop of Ranchi. The Bishop sought immediate permission for the priests to reside in Udaipur and gave an assurance that missionaries would not undertake any political activity and neither had the Catholic priests indulged in the Jharkhand movement in the past. He further stated that he had not entertained the Bihar Congressmen when they sought support for the Jharkhand movement. This statement by the Bishop was, of course, met with severe criticism from several Catholics in Ranchi and Lutherans in Jashpur. He wrote in his letter:²⁷

“If we, Catholic Priests, had chosen to urge them on in the direction of joining the Jharkhand movement the situation in Jashpur and Udaipur would have been much worse than it is now, considering that very close to one-fourth of the population of Jashpur is Catholic”.

This statement by the Bishop, apart from denying participation in the movement, reflected the stronghold of the Catholic church over matters outside of religion and existence of the political agitation for a separate province. Apart from this, the Bishop had outlined the grievances of the Catholics in Jashpur, significant amongst which was the hostile attitude of the leaders of the Backward Area Welfare Sabha towards Catholics.²⁸

²⁷ Ibid. p. 15

²⁸ Ibid., p.15

Despite strong demand from different quarters of the Christian missionaries, the restrictions continued, on the evidence of involvement of priests in political activities, till the promulgation of the Constitution in 1950. It is to be noted that all this while non-Christian bodies continued to oppose the relaxation of the ban on missionaries in Udaipur. Post the promulgation of the Constitution the missionaries undertook intensive activity in the region to convert the Uraons to Christianity. The Preachers visited the region, settled and in due course of the time appointed assistants from the Christians to carry out mass conversions. In government reports the method adopted by the Christian missionaries was pointed out. An excerpt from the reports states the following;²⁹

“They would gradually start advising the village folk in their local problems and very often make out applications and complaints to be presented to the authorities. They would personally follow the matter in courts and thus gain the confidence of the party... Meanwhile earlier converts from Bihar would be brought down to the Centres to move amongst the village folk to propagate the benefits of conversion.. recent converts at the Centre would receive special attention, new clothes, personal advice on agriculture, free chemical manures and attention at home to make the houses look distinct from others in the village. They would open schools wherein only prospective converts would be admitted. Free medicine would be distributed on bazar days, prospective converts being treated free while others were charged... Loans were advanced and the borrower was told directly or indirectly that if he became a convert he need not repay the money.”

²⁹ Niyogi Committee Report, pp. 17-18

Through all of the above means of preferential treatment of converts and providing special facilities, the atmosphere of conversion was being created. In some other situations, there were also reports of forced conversions.

The massive conversions had created a situation of alarm amongst the non-Christians which ultimately led to the members of the Rashtra Swayamsevak Sangh and the Arya Samaj come together with the propaganda against missionary activities. There were reconversions carried out. A conference of the Virat Hindu Rashtriya Sammelan in Ambikapur took place where non-Christian organisations were asked to unite against the Christians and the Jharkhand movement.³⁰

The tension amongst the different groups built. One of the significant episodes was that of a foreign missionary, Burdett taking out a procession with provocative slogans against Hinduism in the village Chando in May 1951. Other similar activities precipitated the tension between the missionaries and the government which was prosecuting missionaries on complaints. There were cases where missionaries were asking people to join hands against the government. Villagers were asked to refrain from paying Malguzari dues to the government, cut government forests and assault officers who checked them.³¹ The period saw several cases being registered against the missionaries. There were several cases filed on Christian missionaries by the non-Christian groups for which there were convictions. Later on, enquiry however the cases were found to be false. There were cases in which missionaries were convicted for exporting rice outside the state of

³⁰ Ibid., p.18

³¹ Ibid., p .9

Madhya Pradesh. The case of one Rev. Christy was such who was charged for exporting rice to Bihar. Christy, however, wrote numerous letters to authorities across the country and there was serious criticism in the foreign press over the treatment meted out to missionaries in Madhya Pradesh. Following the conviction of the priest, the National Christian Council wrote to the Prime Minister of India. The complaint letter talked of the harassment of Christian missionaries by the local officials. The government of Madhya Pradesh made an enquiry into the complaints of Rev. Christy and the National Christian Council and found the allegations to be untrue. According to the government, there was severe resentment amongst the people of Sarguja over the activities carried out by the missionaries which were both 'anti-religious and anti-national'.³² These complaints of 'anti-national' activities carried out by the Christian missionaries were made by the members of the Legislative Assembly and other public figures. There were also allegations of exploitation of tribals raised against the missionaries. The peculiarity of Madhya Pradesh in matters of conversion was found in its population composition was 57.4 per cent of the population consisted of Scheduled Castes, Scheduled Tribes and Other Backward Classes. These were the social groups that the missionaries focused upon. While the allegations on the missionaries continued, they outrightly denied all allegations of 'proselytism and anti-national activities' and they made complaints against the officials who enquired these charges.³³

The report recognised that missionary activities in Madhya Pradesh were primarily carried out amongst the tribes. The report looks at the social customs and

³² Niyogi Committee Report, p. 22

³³ Ibid., p.23

economic activities of the tribes. The important tribes were the Uraon, Baiga, Marias and the Gonds. They were referred to as the Adivasis or Adimjatis claimed to be the original inhabitants of India. With the advent of the Aryans, they were pushed from the Indo-Gangetic plains to the forests and hilly tracts of the states of Bengal, Bihar, Orissa and Madhya Pradesh. The Adivasis were primarily marginal farmers or agricultural labourers who faced exploitation at the hands of the zamindars, businessmen etc. They were pushed further into the interiors and there was a negligible effort made to improve economic, educational, medical conditions for them. The British Indian government had passed laws in Santhal Parganas of Bengal and Ranchi area of Bihar prohibiting the sale of aboriginal land to non-aboriginals as a protective measure. The Christian missionaries, with the objective of upliftment of the aboriginals and to undertake conversions, set up schools and hospitals in the region. For the longest time missionary hospitals and schools were the only ones that existed in the area apart from the few government institutions. The report mentions that the work of the Christian missionaries led to the conversion of several tribes. It mentions that the aboriginals had started to view the Christian missionaries as their friends and Hindus as their foes.

The report notes that the Uroan due to their apparent characteristics and customs were the ones who were significantly converted. Their customs and practices were studied by the missionaries. The minimal interference with their practices and customs created conditions for their easy conversion. The case of liquor is such. Liquor was important in the festivities. The Roman Catholics managed to carry out

more conversions than the Lutherans as the former did not advocate prohibition on liquor consumption.³⁴

The report identifies the Protest missions into five different categories.³⁵

- i) Economic, which covered agricultural settlements, co-operative societies, printing presses, literature distributing centres, miscellaneous industries
- ii) Educational which covered colleges, high schools, middle schools, teachers' training institutions, industrial schools, schools for Missionaries' children
- iii) Evangelistic covering theological colleges and seminaries, pastoral and evangelistic workers training institutions, Bible correspondence course, Christian Ashrams
- iv) Medical covering hospitals, dispensaries, leprosy institutions, a tuberculosis sanatorium
- v) Philanthropic and General covering homes for the blind and deaf, etc., homes for women, homes for converts, orphanages, social and welfare organisations, missionary homes of rest, Christian retreat and study centres

The report identified how there emerged problems amongst the Christian aboriginals and the Zamindars. The zamindars who previously were not the owners

³⁴ Ibid., p 25

³⁵ Ibid., pp.32-33

of the land got ownership rights under the Permanent Settlement. While introducing the Bhuinhari Bill in the Bengal Council on November 16, 1868, Dampier stated:³⁶

“... the Kols who embraced Christianity imbibed more independent notions, and in several instances successfully asserted their rights. From this, the belief unfortunately spread through the district that when the Kols go to the Court as Christians they are more uniformly successful than those who have not changed their religion. It was stated in the report on the Census of India 1911, Volume V., page 220: "Another attraction is the hope of obtaining assistance from the missionaries in their difficulties and protection against the coercion of the landlords... it must not be imagined that the Christian Missionaries held out such offers as inducement to the aboriginals to enrol themselves in the Christian ranks but the knowledge that the Missionaries do not regard their duties as confined to cure souls but also see to the welfare of their flock and the agrarian legislation which is the Magna Charta of the aboriginal was largely due to the influence of the Missionaries.”³⁷

The activities of the missionaries were considered by the government The report while highlighting the role of the Christian missionaries in the post-War period identified the following as the aim of the accelerated conversions.³⁸

“(1) to resist the progress of national unity in the colonial countries after their independence. That can be gathered, as pointed out in the New Statesman and

³⁶ Ibid., pp.43-44

³⁷ Ibid., pp 43-44

³⁸ Ibid.,pp 59-60

Nation, dated November 26th, 1955, from the "rival" Russian policy of strengthening the nationalism of these countries.

(2) To emphasise the difference in the attitude towards the principle of co-existence between India and America. India desires peaceful co-existence whereas the policy of the World Council of Churches as expressed in the report of its "Commission on Christian social action" is to regard co-existence as amounting to mere appeasement which it does not favour in view of the divisions existing particularly between the totalitarian powers and Free Nations' with diverse economic and political systems. The World Council of Churches recommends that the correct policy should be that of 'Peaceful competition with a sincere commitment to growing co-operation.'³⁹ . Light is thrown on this idea of "Peaceful competition" in an article which describes the present contest as "competitive co-existence".⁴⁰ On the other hand, Mr Kaganovitch made it clear in his speech on the anniversary of the Russian revolution that co-existence meant that the struggle between Communism and Democracy was to be waged by competition.

(3) 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 Indian democracy on the lines of the Muslim League ultimately to make out a claim for a separate State, or at least to create "militant minority."

It was inferred that the missionaries, particularly the Catholic Church, in the post-War period were working together with America to combat the growth of Communism. The Church was working to expand its reach and America wanted to

³⁹ Blue Book Annual Report of the Evangelical and Reformed Church, 1955, p.114

⁴⁰ World Conquest Soon', *God's Kingdom*, p.4

gain world dominance. The largescale proselytization was seen as the means to achieve the same.

Promulgation of the Constitution gave the Christian missionaries free hand to carry out their activities. It was stated that after the Constitution guaranteed religious freedom increased conversions at an accelerated rate were carried out.⁴¹ This was met with severe criticism with the non-Christian organisations that argued that Constitutional guarantee was being used to subvert the very Constitution itself. The report also refers to several ‘separatist tendencies’⁴² that was evident in the different movements and agitations taking place in the region. The Tana Bhagat movement and the Unnati Samaj are two such agitations. The Tana Bhagat movement was one amongst the Uraons to discard Hinduized practices and go back to the former animistic practices and beliefs of the people. Similarly, the Unnati Samaj was one undertaken by the Lutheran Christians amongst the Munda tribals for social upliftment. These two according to the report were started as religious movements but they soon gained political colour after being influenced by the non-cooperation movement. These movements merged to act against the landlords as well as the Government.⁴³

The Niyogi Committee having made a detailed analysis of the events surrounding activities of Christian missionaries in the state of Madhya Pradesh put forth certain recommendations. These recommendations laid the blueprint for the

⁴¹ Niyogi Committee Report, p.54

⁴² Ibid., p. 49

⁴³ Ibid., p. 49

laws formulated on the freedom of religion in the states of Madhya Pradesh and Orissa.

The committee made the following several conclusions, the following two being crucial:⁴⁴

“47. Now as to Christian Orphanages, they are undoubtedly being run to multiply the population of Christians. A large number of such orphans were gathered into the Christian fold during the famine, natural calamities like the floods and the earthquakes.

There can thus be little doubt that special emphasis on spreading Christianity is given in dealing with young immature minds or those temporarily disabled by physical ailments. No wonder that the largest number of converts are from such backward classes living in areas where due to various causes only Mission schools and hospitals exist. Most conversions have been doubtless insincere admittedly brought about in expectation of social service benefits and other material considerations.”

The report sought to identify the underlying reasons that caused the largescale conversions in the state. The work of the missionaries amongst the people in the form of running schools, orphanages, clinics etc. were found to be crucial.⁴⁵

⁴⁴ Niyogi Committee Report, p. 113

⁴⁵ Ibid., pp. 113-114.

“48. Among the various devices employed for proselytization one is *money-lending* carried on by the Roman Catholic Missions. In our exploratory tour, there was everywhere the complaint in the districts of Surguja and Raigarh that the Roman Catholic Missionaries advanced loans on condition that the debtor agreed to chop off his top-knot (Choti) and that those who did not accept the condition had to repay the loan with interest.

In Mandla district also, the loans were advanced to the aboriginals as stated by Rambharose Agrawal, (Mandla, No. 1). Rev. Dilraj, (Mandla, No. 2), who is a Missionary of the Gondwana operating in the Mandla district and whose main work is evangelistic, received complaints of this nature. He, however, thought that it might be just to help poor men as the Roman Catholics reached the places where Government help was not available. He emphatically declared that his own Mission never adopted such methods of conversion. Rev. A. I. George, (Mandla, No. 5), is the Secretary of the Patpara Mission. People often approached him for conversion to Christianity with the expectation of financial help. Shri Umeshdutta Pathak, (Mandla, No. 6), stated that people were converted by offering inducements of loan and help in litigation. Beohar Rajendrasingh, (Jabalpur, No. 5), was a proprietor of the Malguzari village in Mandla district, inhabited mostly by Gonds. He was President of Mahakoshal branch of the All-India Harijan Sevak Sangh, as also the Vice-President of Vanvasi Seva Mandal at Mandla. He claims to have a direct knowledge of moneylending being one of the means of inducing conversions. Daduram, (Jabalpur, No. 7), is a Gond agriculturist who stated that he had been induced by Hansa, Peter and Mohan to become a Christian so that he might get some monetary benefit, but as he failed to get it even after conversion he reverted to Hinduism. Shri Shankar Datta Shastri, of Dharamjaigarh, (Raigarh, No. 1), had owned as Raj-Purohit two Mafi villages inhabited by Uraons and other Adivasis.

To his knowledge .one Balchy Uraon went to Ludeg and got a loan from the Padri and became converted.”

Apart from the work carried out by missionaries in the field of education, healthcare one significant reason that was highlighted time in again was identified as financial help or money lending in return for conversions. Drawing from several examples, the committee identified the reasons which featured in the recommendations made by the committee.

The committee made the following recommendations:⁴⁶

“(1) Those Missionaries whose primary object is proselytization should be asked to withdraw. The large influx of foreign Missionaries is undesirable and should be checked.”

“(2) The best course for the Indian Churches to follow is to establish a United Independent Christian Church in India without being dependent on foreign support.”

“(3) The use of medical or other professional services as a direct means of making conversions should be prohibited by law.”

“(4) To implement the provision in the Constitution of India prohibiting the imparting of religious education to children without the explicit consent of parents and guardians, the Department of Education should see that proper forms are prescribed and made available to all schools.”

“(5) Any attempt by force or fraud, or threats of illicit means or grants of financial or other aid, or by fraudulent means or promises, or by moral and material

⁴⁶ Niyogi Committee Report, pp. 163-165.

assistance, or by taking advantage of any person's inexperience or confidence, or by exploiting any person's necessity, spiritual (mental) weakness or thoughtlessness, or, in general, any attempt or effort (whether successful or not), directly or indirectly to penetrate into the religious conscience of persons (whether of age or underage) of another faith, for the consciously altering their religious conscience or faith, so as to agree with the ideas or convictions of the proselytizing party should be absolutely prohibited.”

“(6) Religious institutions should not be permitted to engage: in occupations like recruitment of labour for tea gardens.,”

“(7) It is the primary duty of Government to conduct orphanages, as the State is the legal guardian of all minors who have no parents or natural guardians.”

“(8) Government should issue an appeal to authoritative, and. representative Christian Missionary Organisations and to Christians come. together and to form an authoritative.in general, to an organization which should lay down and inform Government in clear terms the policy which the Missions and Christians, in general, will follow in respect of propagating their religion, the methods to be followed in conversions, the type of propaganda which will be promoted and the attempts which will be made to confine their evangelistic activities within the limits of public order, morality and health.”

“(9) An amendment of the Constitution of India may be sought, firstly to clarify that the right of propagation has been given only to the citizens of India and secondly that it does not include conversion brought about by force, fraud or other illicit means.”

“(10) Suitable control on conversions brought about through illegal means should be imposed. If necessary Legislative measures should be enacted.”

“(11) Advisory Boards at State level, regional level and district level should be constituted of non-officials, minority communities like Tribals and Harijans being in a majority on these boards.”

“(12) Rules relating to the registration of Doctors, Nurses and other personnel employed in hospitals should be suitably amended to provide a condition against evangelistic activities during professional services.”

“(13) Circulation of literature meant for religious propaganda without the approval of the State Government should be prohibited.”

“(14) Institutions in receipt of grants-in-aid or recognition from the Government should be compulsorily inspected every quarter by officers of Government.”

“(15) Government should lay down a policy that the responsibility of providing social services like education, health, medicine, etc., to members of scheduled tribes, castes and other backward classes will be sole of the State Government, and adequate

services should be provided organizations being permitted to run institutions only for members of their own religious faith. as early as possible, non-official”

“(16) A separate department of Cultural and Religious affairs should be constituted at the State level to deal with these matters which should be in charge of a Minister belonging to a scheduled caste, tribe or other backward classes and should have specially trained personnel at various levels.”

“(17) No non-official agency should be permitted to secure foreign assistance except through Government channels.”

“(18) No foreigner should be allowed to function in a scheduled or a specified area either independently or as a member of a religious institution unless he has given a declaration in writing that he will not take part in politics.”

“(19) Programmes of social and economic uplift by non-official or religious bodies should receive prior approval of the State.”

Inducements for Conversion: Rege Committee Recommendations

A non-official resolution tabled in the Madhya Bharat Legislative Assembly led to the formation of “The Christian Mission Enquiry Committee” under the chairmanship of M.B. Rege, Retired High Court Judge; Madhya Bharat. The committee was formulated in 1954 and it submitted its report in 1956.⁴⁷ Babu Ramshaji, Ex-Speaker, Madhya Bharat Legislative Assembly; Dr Devsingh, MLA; Hiralalji Sharma, MLA; Swaisnghji Mandoli, MLA; Sitaramji Sadho, MLA; Prof R.K. Yarday and K.L. Malviya, Assistant Director, Harijan & Tribal Welfare were members of the committee. K.L. Malviya acted as the Secretary of the Committee.⁴⁸

The committee initially met on the premises of Indore Premier Co-operative Bank Limited on 12th June 1954. The committee decided to formulate a questionnaire and issued it to the missionaries; political, religious and social institutions; and to the prominent individuals and government officials. The committee did not receive a positive response from any private individuals other than the missionaries.⁴⁹

After careful consideration, the committee decided to make an enquiry with the reservation that a witness can also be examined on camera while considering the public interest. However, there wasn't any occasion wherein an inquiry on camera was required and examination of all the witnesses were done in open sittings. The committee

⁴⁷ M.B. Rege, “The Christian Mission Enquiry Committee Report”, 1956. (Hereafter, Rege Committee Report).

⁴⁸ Ibid., pp. 1-2

⁴⁹ Rege Committee Report, p. 2.

had invited representatives and allowed the help of counsel to any party who required it. Nonetheless, the committee for obvious reasons was of the opinion that direct cross-examination of witnesses might lead to acrimony and controversies. It was on this account, a decision was taken wherein questions may be suggested which in turn would be put by the Committee to the witnesses. Except for some cases wherein evidence was recorded in extense and thereon signature of deponent taken mostly, oral evidence's were recorded as a memorandum. No Counsel appeared at any stage of the proceedings.⁵⁰

The committee during the course of its work identified utmost ignorance of the outer world and illiteracy as prominent features marking the Harijan an Adivasi community. Extreme need makes these communities amenable to religious change, as evident from quick conversions and equally swift reconversion when benefits are hoped for or promised. The change in religion, however, hasn't changed their outlook materially in religious or social matters.⁵¹

Religious Missions being sent to India was in fact prohibited by a clause in the Charter of the East India Company. As the monopoly of East India Company came to an end, the ban was removed in 1814. There was a subsequent increase in Protestant Missionary activities ebbed on by a rising spirit of evangelisation. The missions professing a spirit of service we're able to attract a large number of Indians from their own religion. The projection of its emancipatory power especially in relation to women

⁵⁰ Ibid, p.2

⁵¹ Ibid, p. 4.

was an added feature which was utilised to wean away from many people towards them.⁵²

The comparatively recent influx of Christians from different parts of the world and India can be traced to the establishment of missions in '*Madhya Bharat*'. This not only gave an advantage but, helped in the *de facto* subordination of Indian Rulers during the Independence struggle. The Southern parts of Central India from Ratlam, Mhow, Indore, Dhani, Ujjain, Khurdi and Jhabua with activities in other smaller centres were at first affiliated to the archdiocese from Agra.⁵³

There existed no protestant mission in Gwalior. However, when Ramswaroop Sharma and Bhawanishankar Goswami representing themselves as Chamars by caste approached a private school teacher, Mr T. D. Hide for conversion. Following the meeting, they claimed that one of the means which the mission adopts for the conversion is the lure of young girls. However, it is unimaginable that Mr Hide would give out such information at the first meeting and further doubts were raised about the evidence of these witnesses. Adoption of English Language gave a big impetus to the growth of Christian knowledge. Discarding age-old notions some bold, intelligent Indians began taking an active interest in their masters and engaged in the study of social Institutions and religion of Europe. Their democratic institutions, casteless society, the freedom of European women, larger emancipation from the ignorance and superstitions of the dark ages and monotheism...all greatly impressed these enquirers. Attempts were made to bring in a new era with the security of property and persons and

⁵² Ibid., p. 9

⁵³ Rege Committee Report, p. 10.

the general esteem and favour the missionaries enjoyed brought in a period of Christian Expansion in India coincided by the spread of English language⁵⁴.

A Christian convert could not marry a European sister. Moreover, there are pieces of evidence at Indore and Neemuch (vide statement of Miss Wever) where separate graveyards were built for Indian Christians and Europeans demonstrating how the Church was governed by political and racial considerations of superiority. However, the doctrines of Christianity are as noble as any other religion and the religion in itself cannot be blamed, but the intentions of men, lust for political power over religion and their instinctive domination for greed that has thrown the world into the dire state.⁵⁵ The Work of Christian Missionaries encompasses three aspects: a) educational, b) Evangelical and c) Medical, Relief and otherwise. Foreign missionaries initially handled the evangelical work of the protestant missions. A group of Indian nationals were later ordained and trained to handle social and evangelical work.⁵⁶

At Agar, there existed two methods for conversion: a. Instruct and then baptise. And b. Baptism and then give religious instructions. Entries done to the registers weren't ordered chronologically and had marks of overwriting, Except for the children baptised under Dr Dandel- the mission worker at Agar, no children who were born of Christian parents were entered in the Baptismal register, even though the centre was working from 1932. Students have periods specified for religious Instructions at the hostels. However, it was said to not be mandatory for Non-Christians.⁵⁷

⁵⁴ Ibid., p.11

⁵⁵ Ibid., p. 12

⁵⁶ Ibid., p. 14

⁵⁷ Ibid., p. 15.

Appointments of staff to Christian institutions were an internal matter of the Christian administration and it was made clear explicitly that bias existed in the selection process favouring Christians keeping in mind the primary aim of a Christian atmosphere. No evidence of direct conversion of its students could be found in these institutions except in the case of Prince Govind Sing Ji of Sitaman.⁵⁸

A complaint was recorded against the Lady Missionary from Madleshwar wherein a child was detained by a missionary school due to the parents' inability to pay the expenses for education and upbringing at a missionary school. The mission was adamant in releasing the girl until expenses were met fully.⁵⁹ A complaint was recorded against the Lady Missionary from Madleshwar wherein a child was detained by a missionary school due to the parents' inability to pay the expenses for education and upbringing at a missionary school. The mission was adamant in releasing the girl until expenses were met fully.⁶⁰

A large number of grains and a huge sum of money were supplied by protestant missions to needy people in Adivasi areas irrespective of religion. These missions not only provided medical relief and educational facilities but went a step further in providing them with an opportunity to serve in these areas. These could be taken as major factors contributing to the growth of Christianity in tribal belts. However, it is important to note that the language and behaviour of the missionaries who visit these areas are in such a manner which implies that these temporal benefits might only be available if considerations were taken. The evidence points to the fact that a whole lot of Christian converts in these regions are just Christians by name and not by their real-

⁵⁸ Ibid., p. 16

⁵⁹ Ibid., p. 17

⁶⁰ Ibid., p. 17

life practices. Conversion without enlightenment even though decreed wrong, has led to no action on the missionary workers who undertook the process. Even if conversions for pure material gains could not be called fraudulent, many of these cases can be deprecated as being unethical and non-spiritual as it isn't based on foundations of faith.⁶¹

An example of how material and medical benefits served as the impetus for the conversion is seen in an instance where Chamars and Balais who had been converted to Christianity together, continue in their refusal to eat or even sit together. Conversion to Christianity could not be directly proven as a prerequisite for medical aid, however, there are several narratives which show how villagers believe their access to several modern medical facilities is conditional to their religious status. This has directly as well as indirectly induced if not pressured many towards conversion.⁶²

There has been no palpable evidence of any anti-national propaganda by missions themselves. It is clear that the main appeal for the conversion is not to the educated (classes/castes), but to those who have very little or no hope from their larger communities. It is intrinsically connected to the material benefits of conversion and their expectations and hopes of status mobility. The Census Commissioner after the Census of India 1920 states "Christianity makes a little practical appeal to the caste Hindus and the Mohammadans and converts are drawn solely from the lower classes of Hindus and aboriginal tribes" In many cases the convert develops a feeling of elevation and being superior to the erstwhile community. There develops a sense of despising and can lead to a rift in the 'national life'. To an ignorant convert, the foreign missionary

⁶¹ Rege Committee Report, p. 18.

⁶² Ibid., p. 19

becomes a 'demi-god' who takes care of his/her needs. Thus it need not be surprising that they feel greater love and affinity towards him and in extension to his people. The community and country which gave him/her little or no chance for betterment in economic, social or political status no longer holds the same position to him.⁶³

Most of the work done by missionaries was among tribes and the backward and illiterate classes. In a sense lot of the large-scale conversions were direct outcomes of poverty, backwardness and utmost absence of sympathy for the Harijans and Adivasis. This has also lead to a situation wherein, except for the missionaries and few paid agents, most of the converts did not even have the basic understanding of Christianity nor Christ and the conversion did not much affect their religious credence or daily life.⁶⁴

The practice of untouchability, chronic poverty and the scope for improvement in social status and their conditions were some of the basic causes of conversions. This view is fortified by the Father Stephen's Fuchs observations in his work "The Children of Hari" (P. 226 & 227) where he states:

"They (Balahis) thought that by baptism they would acquire a right to help and assistance from the 'rich and charitable' missionaries, without, however, intending to give up the practice of their traditional religion. The missionaries, on the other hand, were at first deceived by the professions of faith and too busy with gathering in their rich harvest, neglected to give their converts a solid instruction in the tenets of the Christian religion and to demand from them change of heart and of their ways of living which a conversion to Christianity implies.

⁶³ Rege Committee Report, p. 20.

⁶⁴ Ibid., p. 21

Satisfied with the financial help and social protection which they asked for and partly obtained from the missionaries, the Balahis wanted nothing more. They proved very elusive and stubborn when at a later date the missionaries tried to bring them up to the standard of full Christians.

Another difficulty the missionaries faced in converting Balahis was their strong dependence on upper-caste employers and landowners. The Balahis naturally looked up to their social superiors who provided them with the means for lively-hood. They took direction and guidance from them in other aspects too. They mainly felt bound to follow their example in practices of religion.”

This has been a reason why Christian Missions could only make little headway among the Balahis despite their initial successes. The missionaries went on to realise that mass conversion without developing a sincere conviction about Christianity was a futile exercise. This is clear from the fact that only those Balahis who either went through missionary institutions or long training in Christian schools remained to practising Christians.

Another instance from Barwani shows how the Roman Catholic Mission there works entirely among the Adivasis. The mission within a period could convert 15 people from 1947 to 1953 but, weren't effective enough to change their customs and traditions. The mission here too engaged in activities like providing financial loans during famines.⁶⁵

Most of the conversions were not on the basis of spiritual indoctrination and even during prayer a converted Bhil would not interact with a Balai convert.⁶⁶

⁶⁵ Rege Committee Report, p. 26.

⁶⁶ Ibid, p.29

Converts from Dhani in their narration describe how assurances like the supply of cloth, money, service and medicine were put forth as inducements for conversion. Nevertheless, a panchayat ruling meant that five of the converts had to revert to Hinduism subsequently resulting in a denial of medical aid at Dhani.

Hospitals were set up not purely as a service but also as a means to an end. Christians always had a preference at these facilities and conversion became a viable option for consideration. Moreover, Christians had the opportunity to work at dispensaries and were portrayed as a service to mankind. This was a position which wasn't available to many sections ever before. Harijans who were always looked down by the Hindus saw conversion as a means to better their social status. Contrary to their status as untouchables, conversion gave them an avenue to being treated better.⁶⁷

Rev. Mac Donald explains how less than five per cent of converts truly follow and understand Christianity. He elaborates how conversions have been converted on a mass scale and the lack of staff in the church means that they aren't properly indoctrinated or trained. He further goes on to add that converts who continue following their old rites and traditions should be punished. The general secretary of the United Church of Canada, Rev. Dr R.M Clark also shared the same opinion about mass conversions deeming them as undesirable from a true Christians point of view as most do not even know the basic tenets of Christianity.⁶⁸

There also existed propaganda against Christian conversion like that carried out by Arya Samaj wherein people were detracted citing how the Harijans would miss out

⁶⁷ Ibid., p.30

⁶⁸ Rege Committee Report, p. 32.

of services from the government and denied scholarships if they got converted. This was also used for the purpose of reconversion to Hinduism.⁶⁹

Instances from Jhabua also serve as examples where free education with boarding and medical treatment were used as incentives for conversion. The region saw practices like offering and retention of children for payment of education. However, this hadn't resulted in complaints as the mission was backed by state rulers and authorities. In a sense, this should be seen as religion being forced on children. There are also instances of conversion through marriage as evident from a case in Thandla. A marriage to a Christian girl so the padre insisting the ceremony be conducted at the church and the bridegroom required to embrace Christianity.⁷⁰

One of the witnesses Shri Govind Singh of Sitmau, has given an account that he converted to Christianity because of conviction but, he thought it was wrong. As such he had become an atheist. The Rega Committee had found this witness to be of considerable importance because of his education, social status, clarity of thought and steadiness of ideas. He states:⁷¹

“Missionaries helped the poor, they make a sympathetic atmosphere and people get fooled like that. People think that the conversion of children is done with the purpose of making them humane and humble. The average person is lead to the thought that these people are better than other religions. We think they are very disciplined, however, there are many evil and corrupt practices within the

⁶⁹ Ibid, p. 34.

⁷⁰ Ibid, p. 35.

⁷¹ Ibid., p. 36

missionaries. The truth is different for everyone. Poor people convert solely for money.”

After his statement, the Rega Committee found his evidence to be confusing and doesn't accept him as a rational thinker on his account that truth is relative and the conception of it differs from individual to individual. His witness seems to extend support to the charge of inducement, yet his statement is incoherent wherein he says that missionaries create an atmosphere of sympathy for which people become victims. He uses the term like 'shikar', but at the same time claims to have reverence for missionaries.⁷²

The Arya Samaj citing that many of the Christian conversions were done 'improperly' and as it did not result in a change of faith, had undertaken at many places rituals of 'shudhi' and went forward with the task of reconversion to Hinduism. This was a result of the lapses by the heads of the missions who did not address the lapses in the conversion and later indoctrination.⁷³

Accounts from several non-Christians elaborate on how there existed shades of opinion about the work done by missionaries in 'Madhya Bharat'. The predominantly common opinion resonated how their spirit for service was unparalleled and undeniable. However, it was also a common understanding that their primary aim was proselytization. It was conveyed how the mission having both the means and money to reach even the most interior regions where Hindus could not reach with their limited resources. Religions have always emulated a spirit of faith and propagated aims like service to society, hence the motive in itself could not be deemed objectionable on

⁷² Rege Committee Report, p. 36.

⁷³ Ibid., p.38

several grounds. The REGA committee was emphatical of the opinion that, if other religions would have had the true spirit of service, these communities would have found the means by some way to reach out to sections hitherto untouched.⁷⁴

The help given by the missions as cash and kind or in the form of provisions exerts tremendous psychological pressure on the ignorant masses who were in dire need of these resources. A witness Shri Babulal in his account states that:⁷⁵

“In the days of famine, cash and grains were freely distributed by missionaries who went into distant villages for this purpose.” He also added that: “The government and the Congress party provided adequate facilities, but the even then villagers sought help from the missionaries.”

Enquiries into the matter and accounts of the Tehsil congress disproved his allegations, as it was made clear how there would have been deaths owing to starvation if not for the help from missionaries. The examination showed *prima facie* prejudice in the witness’s attitude towards Christian missionaries. Furthermore, another allegation made against the missionaries that they incited the villagers to not pay taxes was also dispelled. Enquiries in the village and statements from the Adivasi organiser and the Tehsildar proved that it was the Socialist party which had given the call.

The committee was of the opinion that an in-depth examination is required among the non-Christian communities, especially Hindus to comprehensively understand the reason as to why there is a tendency among ignorant masses to quit their fold so readily. Both the government and the people need to make a strong effort to raise the morale, intellectual and social standards of the social classes. The solution can

⁷⁴ Ibid., p. 39

⁷⁵ Ibid., p. 40

only be reached with a truly humane approach where Ernest attempts have to be made to do away with the intolerance and apathy these sections face.⁷⁶

The REGA committee on the basis of the comprehensive enquiry it took up, came to the following conclusions:⁷⁷

- a) There have been mass conversions in various parts of the country and even senior church authorities have gone on record to call the nature of these conversions as improper. These also include several cases of converting families as a whole and included children who were both minors and received no instructions in religion
- b) The conversions almost fully have been from the Adivasis in Tribal regions and from the Scheduled Castes in the other regions. Most of the conversions in the southern part of Madhya Bharat are from the 'Balai' on whom are prescribed the status of 'Begar' (Compulsory Service) and under the constant oppression of the landlords and 'Jagirdars'.
- c) Village preachers have little or no education and it is the prospect of material gains and not the evangelist spirit that determines their actions.
- d) Conversion among the Scheduled Tribes and Castes are mainly due to ignorance, extreme poverty and illiteracy. The ideals of purity and pollution central to the caste system superimposing the society and shaping the attitude of the caste Hindus, relegating them to a status similar to social lepers all serve as significant factors. It is this context that conversion with its allurements of bettering their social status and economic condition naturally appeals to them.

⁷⁶ Rege Committee Report, p. 40

⁷⁷ Ibid., p.41

- e) These converts, however, have the stamp of Christianity merely in name and except the ones closely attached to Missions, only a few give up their previous religion or faith. Their knowledge of Christianity is close to none and follow their traditional rites and customs displaying no change in real-life social or cultural situations.

The following were the recommendations by the REGA committee:⁷⁸

“The immediate need is for the spread of literacy and upgrading of the social and economic status of the classes from which the converts are mainly drawn. So that they may act with full consciousness of what they do. While the Government must be congratulated for taking legal and economic measures for the betterment of these classes, we doubt if the full benefit goes to those whom it is intended. There is, in our view, need for greater vigilance on the work done by the Government agency and for a greater sense of duty for its own sake on the part of the workers, so that the goal may be reached soon.”

“Mere Government help we feel would be of little avail unless society is alive to its own duties in this regard. It is true that the intelligentsia and the caste Hindus are now waking to a realisation that the strength of the nation depends on greater unity by closer association of all citizens on a footing of equality and that bars like caste by birth must be removed and merit be the foundation of social status, but in our view, the efforts in this direction must be intensified not by mere platform speeches and platitudes but by a direct contact with the millions of neglected people of the villages in the true spirit of religion-sympathy and love; and strong effort directed

⁷⁸ Rege Committee Report, p. 42

to the removal of the inferiority complex ingrained in them by centuries of servitude.”

“We recommend that conversions from one faith to another should be duly registered in the Office of the Collector of the District or some other Office on a prior notice of the intended conversion or on an application and affidavit of the convert and the priest solemnising the conversion within a month of his conversion. Some of the members of the Committee are of the opinion that a month's notice should be given of intended conversions. At present, the only means of ascertaining the conversions are the registers of Baptisms maintained at Missionary Centres and these as will appear from the body of our report, are not satisfactorily maintained.”

“The retention in the Register of Baptism of persons who do not adhere to their ostensibly adopted religion is in our view improper and we would earnestly suggest to the Mission that the Registers may be revised in view of their avowal that conversions should be on the basis of faith and faith alone. We would refer to the statement of Dr McNicol and Shri Cumarswamy quoted by Rolland Allen in the ‘The Spontaneous. Expansion of the Church.’”

“A hindrance to the Self-Realisation of the Indian Church that some at least of her leaders feel is.....the downward pull of the mass movements as these pours out year by year ignorant multitudes into Church. (Dr. McNicol).”

“There are many Indian Christian leaders of repute who look up the new movement with alarm and urge that the missions far from giving countenance to it should discourage it with all their power”(Shri Cumarswamy).”

“We would lay emphasis on the illegality of conversion of minors and its impropriety even on the assent of their guardians. It is possible to give education to a deserted or abandoned child in the real spirit of social service even in a Christian

Institution and in a Christian atmosphere without conversion till after its majority when it could bring a conscious and intelligent mind to bear on the acceptance of the faith. We would incidentally mention that there is a law in Madhya Bharat penalising the conversion of minors.”

“It will be proper for Missions to impress upon the minds of those village preachers that mass movement and mass conversions are against the mission creed and visit with a strong hand all departure from the principles Mass movement may, we fear, sterilise the Church and dim its glory.”

“The Independence of India and the Constitution adopted for her the People guarantees equality of opportunity and freedom of Religion all her citizens and a new era has dawned in which one may well hope to see all religions and creeds marching hand in hand on the path of faith and love towards the betterment of the world. With this hope and prayer, we conclude our report.”

The Assembly Debate

The Madhya Pradesh Legislative assembly debated on the Madhya Pradesh Dhaarrmma Swatantrya Adhiniyam bill. The assembly proceedings have been carried out on 19th September 1968.⁷⁹

Virendra Kumar Sakhlecha, the then Home Minister and also the deputy Chief Minister, introduced the ‘Madhya Pradesh Freedom of Religion Legislation, 1968’ bill, which later got passed has had severe implications on the subject of conversions in the state.⁸⁰ On this note, it is necessary to understand the in house

⁷⁹ The Madhya Pradesh Legislative Debates have been translated by the author of this thesis.

⁸⁰ “MPLAD”Madhya Pradesh Legislative Assembly Debates dated September 19, 1968 (Hereafter MPLAD), p. 973

debates on the particular legislation to get a wider understanding of the politics around religion. While proposing the bill, the minister emphasised the then government data that 33 local and 17 foreign Missionaries are working in the state that has a considerable majority of Forest Dwellers (Adivasis) and outcasted people, across a cluster of castes of Untouchables. He termed the proselytization of Adivasis and “Harijans” as a longstanding problem and that the Christian missionaries attempted it using “pressure, enticement and fear.”⁸¹

Emphasising on his point, Sakhlecha asserted that the Niyogi committee appointed by the previous government and the Rege committee appointed by the Central government in the 1950s necessitated the bill while quoting one of the reports that stated “Conversions are mostly.....to his country and State being undermined.” furthermore, he pointed the Niyogi committee’s findings and stated that the Missionaries were foreign to the country and by were already spread in Nagaland, Mizoram and border areas of Bihar and that they were using money and force to convert people, which in turn affected the Nationalism and unity of the entire country. He ridiculed that the laws in the state were tweaked and would need stringent ones to control the “problem”.⁸²

The bill, however, attracted criticism on several notes from the opposition parties. Opposition leader Yamunaprasad Shastri had proposed that the bill to be

⁸¹ “MPLAD”Madhya Pradesh Legislative Assembly Debates dated Sepetmber 19, 1968 (Herafter MPLAD), p. 973

⁸² MPLAD on September 19, 1968, p. 975

circulated so that the view of the public could be known.⁸³

The constitution is based on four fundamental ideals- Nationality, Secularism, Democracy, and Socialism. The constitution is made on the basis of these four ideals and we all take the pledge of keeping faith in constitution here. It is important that secularism remains the hallmark of the constitution. I will further say that in the society and the country, not one but many ideologies have been present, not just today but since ancient times and all were treated with sympathy.⁸⁴ He reminded the house the constitution's fundamental ideals- Nationality, Secularism, Democracy, and Socialism and urged the Assembly to have faith in it and reminded that Secularism must be the hallmark of the constitution. Furthermore, he added that in an ideal society, different ideologies have to co-exist. In a nutshell, Shastri called the legislation symbolises intolerance while giving examples of the peaceful co-existence of Buddhists, Muslims, Hindus and Jains in the country in ancient times.⁸⁵

It is to be noted that the responses from lawmakers have been diverse and some interruptive. Another member of the ruling party Vasant Rao Uike, who represented a reserved constituency asserted against the bill while showing the previously mentioned two reports. He questioned why the minister has only read the reports in parts and pointed out that the Niyogi report also praised the work done by

⁸³ MPLAD on September 19, 1968, p. 976

⁸⁴ MPLAD on September 19, 1968, p. 976

⁸⁵ MPLAD on September 19, 1968, p. 977

the missionaries.⁸⁶ furthermore, Ulke Emphasised on the poor living conditions of the Adivasis and questioned why the ruling party was not interested in feeding the young poor children but only feared by the work of other religions.⁸⁷

Furthermore, analysing the bill, Uike argued -- The objective behind tabling this Bill is not to stop religious conversions but it has been tabled so that it could serve the purpose of the Political Party of Mr Deputy CM. The objective of stopping religious conversions cannot be achieved by this Bill. It is due to this reason 2 Crores Harijan Adivaasis out of 6 crores embraced Buddhism on the call of Dr Ambedkar. If Hindus had allowed Harijan's access to the temples, well then Harijans would not have embraced Christianity in such a big number. Hence, look into your heart, get rid of your insensitivity, be tolerant so that the people from poor sections don't fall prey to the enticements. I know that people of Missionary section are preaching in Sarguja, Mandala and Baitul in a very organized manner. They have included Ranchi, Chhota Nagpur, Raigarh, Sarguja etc into their map and are working in an organized manner. Earlier, Statehood was demanded on the basis of languages. Now it is demanded on the basis of castes now, and it will happen only, and those areas are Jharkhand, Chhota Nagpur, Raigarh, Sarguja and Bilaspur where Santhals and Uraons reside. They are being converted and we all should think equally about it. We should not think only in legal terms. I am not opposing the putting an end to the religious conversions. It should be stopped because the Adivasi who converts into Christianity contests for Legislative Assembly seat, due to this not being prohibited the Adivasi doesn't hesitate to embrace Christianity. But at the same time, if a

⁸⁶ MPLAD on September 19, 1968, p. 980

⁸⁷ MPLAD on September 19, 1968, p. 981

Harijan embraces Christianity, Islam or any other religion then he is deprived of his constitutional benefits. The accepted criteria are Scheduled Tribe, Economic and Social.⁸⁸

In response, Mohanlal Shisir, then representing Bhudani constituency spoke in support of the bill. He asserted the institutions that are exploiting the poverty, superstition, and illiteracy and ensnaring them with the help of enticements into religious conversions through concerted efforts would get appropriate punishment and the legislation will help protect those poor people. It is true that religion is related to soul and faith but the religious structures also affect the social, family and personal life of people. They also put a restraint on the behaviour of humans to some extent. A human being inherits the form of worship, the faith and belief in God from the family that he is born into. We see that no human being renounces his religion easily. We see that no human being renounces their religion easily. They don't renounce their religion on trivial matters unless they are under some dire compulsion. We have some institutions that have come from outside and use money received from foreign to convert poor, illiterate superstitious people. Their way of thinking and faith in religion is undermined using various forms of enticements and then they are converted. Mr, Speaker the religious conversion is a crime not only according to the law but also according to the religion. Teachings of any religion don't say that any religious institution should use enticements and convert any person in the name of religion or faith into their own religion.⁸⁹

⁸⁸ MPLAD on September 19, 1968, p. 983

⁸⁹ MPLAD on September 19, 1968, p. 976

He continued, Mr Speaker, in the recent past it was told in this house in response to a question that 26 Indian and 17 foreign Christian Missionaries are working in this State. They operate in the entire MP. They have infiltrated in the villages. The areas in which they have infiltrated are mostly the ones where Adivaasis and Harijans reside. They are spread here and convert the poor and illiterate by enticing them in the name of religious education, money lending, health services, land etc. Mr Speaker, if a person, out of his own free will, changes his thinking or religion, brings about changes in his thinking about his own religion while following it, he adopts different ideology with respect to his religion, accepts other faith, then it is not sinning. Mr Speaker, Shastri Ji accepted just now that our Indian religion is so vast, so liberal that the pervasiveness, omnipotence of God has been accepted in such a form that accepts the presence of God in the four forms of life. Peepal Tree is considered to be the God of all trees.⁹⁰

The cow is considered to be the most useful among the four-legged, hence is accepted as God and it is so because of its superiority and usefulness. In our society, the person who happens to be the servant of the society(samaj Kaa Sevak), is superior, and that person is considered to be the part of God. Honourable Mr Speaker, if you look at our religion this way then you will find that it doesn't have narrowness, it is very open. Many such examples can be put forward. Our religion is so open there is complete freedom with respect to the worship of God. We have 6 Shastras, four Vedas, 18 Puranas, Geeta, Ramayana and Upnishads, which collectively mention many ways of worship of God, provisions to keep faith, belief

⁹⁰ MPLAD on September 19, 1968, p. 976

in God. They also contain very extensive teachings regarding food habits pertaining to religious matters. Despite so many divergences, there is unity. We all are one, we all are Hindus, be it Shaakts, Shaivs, or Vaishnavas. We all are one, we all are Hindus and follow the Hindu religion and make mistakes as well. It is due to this reason that our religion has pervasiveness.⁹¹

Another lawmaker, Suryadev Sharma asserted the bill is necessary and criticised that those opposing the bill were finding faults in the bill and that spoke about the character of Hinduism while questioning the spirit of other religions in this manner Hindu Sages always prayed for the entire human society not just for *Acharyas* which is why we had love towards our nation. Honourable Shastri Ji just said that Hindu Religion has accepted Buddha and Mahavir as Gods why it did not accept Jesus Christ and Muhammad Saahab as Gods. Shastri Ji is extremely wise. He has good knowledge of religion. I am not raising any doubt about that. But there is a difference between incarnation and messenger. The followers of Jesus Christ and Muhammad Saahab themselves have not considered them to be Gods. Muhammad Saahab is called Paigmabar by Muslims, the same is the case with Jesus Christ. The difference between Bhagwan Buddha and Muhammad Saahab is similar to that between a God and its messenger. We consider them as great persons and respect them as much as we respect our great persons.⁹²

Shastri continued and said one more thing that the Christian Missionaries has done a good deed by opening up schools for them and by helping them. They

⁹¹ MPLAD on September 19, 1968, p. 985

⁹² MPLAD on September 19, 1968, p. 986

have made poor people benefit. We could have considered these acts of theirs worthy of appreciation if they had done it with the intention to serve them, if they had not enticed them to convert, had not put them into difficult situations, had not exploited their poverty. Mr Speaker, there used to be dacoit named Maan Singh in our state who had done many dacoities. He killed thousands of people and looted lakhs of rupees. But the people in the area in which Maan Singh used to do dacoity would call him Raaja Maan Singh. The reason behind this was that he used to give some wealth to some people. He used to help some poor people out, help some poor marry off their daughter. But it doesn't mean we stop considering him a dacoit and start praising him because he helped those few people. But he looted lakhs of people, killed thousands of people. Would he be absolved of all his crimes and showered with praise only because he helped a few people? In a similar manner, those Christian Missionaries cannot be praised because they are converting lakhs of people in the name of helping them. Due to this not only their religion changes but the converted Christians' view towards the nation also changes the examples can be witnessed in the case of Nagaland and Mizoland. Not only this Mr Speaker, but the Christian Missionaries are also making them mentally inferior apart from changing their religion. They insult our God-Goddesses. I would like to give an example of the area that I have witnessed. The Christian Missionary over there misguides the illiterate people about our God-Goddesses and our religious texts.⁹³

Narayana Devi Jha, representing an upper-caste Hindu community has countered the bill stating that it would bring no change in the society. She put

⁹³ MPLAD on September 19, 1968, p. 986

forward her opposition in the following manner -- one cannot stop anyone bypassing the law. You can stop them from converting religiously by your work (Seva), goodwill and hard work but not by using the law. There is no much poverty in our country that people undergo religious conversions out of compulsion add misery. They are not happy to do so. The poor and labourers are forced to convert due to poverty. Where would they go when nobody helps the orphans and destitute? You open up Aashrams to bring up poor children. It is with the help of big institutions and Aashrams that you can successfully stop religious conversions. The definition of religion is extremely vast. All religions are equal, the entire world is based on superior Brahma. This is the all-encompassing religion. This narrow mindedness will provide you with success. National unity will never be built. The famine hits after every three years, there is a lack of rain, the situation of drought always looms. The government and society are incapable of taking care of them, they don't have adequate resources. This will spark a revolution in their minds, by this, I don't mean that everybody should convert to Christianity. I too belong to Hindu Sanskriti and Brahman clan (kul) in that, but in the present times, we don't have the means to take care of the poor and destitute. Hence, you should open up big Aashrams, institutions, hospitals and schools.⁹⁴

The debate was such that the majority of the lawmakers representing Adivasis and Dalit communities and not associated with the ruling party have

⁹⁴ MPLAD on September 19, 1968, p. 987

opposed the legislation. However, there were voices from the members even from the reserved communities and one among them was Foolchand Verma.⁹⁵

According to him, the population of the lower castes and Adivasis has been expanding across the country and that there were prone to the “vicious” campaign of the Christian missionaries. He claimed that through religious conversions and “anti-nationalism” were going hand-in-hand. Verma gave an example of a Village Khandwa located in Pandhava, his own constituency His accusations went this way They (missionaries) instil Jesus Christ into their minds and change their value system (sanskaar) into their own. They teach them that we all are the children of Christ and take them to church. These Christian open schools and hospitals in our state. I can even give examples. There are many such farmers in my area who borrowed money from them and their lands were auctioned off when they refused to undergo religious conversion. They are dragged in legal cases. Verma concluded in demanding imprisonment to those involve in forceful conversions. On the point of imprisonment, he stated this way the act of converting the women and children who don't the meaning of religion is not in the interests of the nation. Hence, the imprisonment of one year must be increased to 3 years of rigorous imprisonment and the fine must be fixed at five thousand rupees ending his view.⁹⁶

In the debate, among the lawmakers who asserted for the urgency of the law to become law was Suryadev Sharma. Suryadev Sharma had cautioned that the law was required as the number of people worshipping Hindu deities was getting

⁹⁵ MPLAD on September 19, 1968, p. 988

⁹⁶ MPLAD on September 19, 1968, p. 989

outnumbered due to conversions. He even claimed that Christian might demand land from the country for establishing their own state and termed the legislation to be “sacred.”⁹⁷

Sharma, however, was logically countered by lawmaker Mathur Prasad Dubey, a socialist by an ideologue, who opposed the bill. Dubey countered that the bill was brought in the name of Hindu Rashtra and urged the Speaker in the following manner -- I was requesting that you made arrangements for those who indulge in anti-religious activities in the name of religion. What have you done with regard to markets, *haat*, irreligious activities, unemployment? Unless you create a socialist system for the society, act according to the Ceiling Act and keep appropriating the land by registering it in the name of your brothers, nephews, brothers-in-law instead of getting it registered in the names of poor and Harijans, of what use would your religion be? According to me, religion is based on just foundation, just system. If these spirits are not there then it is not a religion.⁹⁸

Dubey stated that he opposed the bill since it was being brought to target other religions over the majoritarian one. He concluded in the following manner -- I was requesting that you made arrangements for those who indulge in anti-religious activities in the name of religion. What have you done with regard to markets, *haat*, irreligious activities, unemployment? Unless you create a socialist system for the society, act according to the Ceiling Act and keep appropriating the land by registering it in the name of your brothers, nephews, brothers-in-law instead of

⁹⁷ MPLAD on September 19, 1968, p. 993

⁹⁸ MPLAD on September 19, 1968, p. 994

getting it registered in the names of poor and Harijans, of what use would your religion be? ⁹⁹

The debate was nonetheless a heated one which however lasted only two hours. This manner points the urgency among the ruling party to enact the law who have, as historical records show have avoided answering the legitimate and constitutional questions on the bill. ¹⁰⁰

There were lawmakers who agreed in part of the bill. For instance, one lawmaker Devi Prasad Arya questioned why there were no provisions concerning the people who were allured into converting and who were cheated into converting and of those who have reconverted into their castes. ¹⁰¹

While there were numerous requests from lawmakers who urged the speaker to for chances to place their argument, the Home minister took over and asserted that the law would not create a communal atmosphere, but it would curb the “deadly tendency which is increasing.”¹⁰²

The speaker, however, called for a vote on the Shastri’s proposed amendment of circulating the bill among people to understand their views. For the speaker’s question to postpone the Freedom of Religion Bill, 1968 to August 31 to seek the

⁹⁹ MPLAD on September 19, 1968, p. 997

¹⁰⁰ MPLAD on September 19, 1968, p. 998

¹⁰¹ MPLAD on September 19, 1968, p. 999

¹⁰² MPLAD on September 19, 1968, p. 1002-1003.

views of the general public, 66 members voted in favour and 144 voted against leading to the denial of the motion.¹⁰³

The speaker's next question was -- whether the Freedom of Religion Bill, 1968, should be deliberated upon? In response the Home minister requested for the same and when the speaker.

In minutes, the speaker moved the motion: "the question is whether Freedom of Religion Bill, 1968 should be passed?" upon this, while 133 voted in favour while three opposed it and the remaining lawmakers walked out in protest of the motion.¹⁰⁴

This episode of passing the draconian bill pictures how the interests of Hindu majoritarian regimes tweaked constitution through power and propaganda.

¹⁰³ MPLAD on September 19, 1968, p. 1003.

¹⁰⁴ MPLAD on September 19, 1968, p. 1009.

Chapter IV:

Interpretation and Enforcement of the Law

Introduction

The Madhya Pradesh state legislature has passed the 'Madhya Pradesh Dharma Swatantrya Adhiniyam' in 1968 and Orissa State legislature passed 'Freedom of Religion Act in 1967¹ respectively prohibiting the conversion of people from one religion to another religion by the means of 'force' or 'allurement' or by 'fraudulent' means, where 'allurement' was defined as any (i) gift or gratification either in cash or kind; (ii) grant of any material benefit, either momentary or otherwise; 'inducement' was defined as the person converting giving offer of any gift or gratification either in the form of cash or in-kind, and it also included giving of any grant of benefit, either monetary or otherwise. 'Force' was defined as a show of any force or threat of injury of any kind including the threat of divine displeasure or social ex-communication. 'Fraud' included misrepresentation or any other fraudulent contraption. They have termed conversion under these conditions as a cognizable offence and any person contravening the provision without prejudice to any civil liability will be punishable with imprisonment which may extend to one year or fine which may extend to five thousand rupees or with both, which has been later increased. The civilians who wish to convert have to intimate within a stipulated time period and take the permission of the District Magistrate and in some

¹ Orissa Freedom of Religion Act, 1967.

cases prior permission for the conversion ceremony is mandatory² and the people who fail to do so or could not provide a valid reason are liable for prosecution.³ What were the valid reasons for the conversion, or what constitutes or does not amount to ‘allurement’ and ‘inducement’ has been left ambiguous. These laws, deceptively titled Freedom of Religion Acts, restrict the citizen’s right to convert from one religion to another, though they claim that they only prohibit conversions by force, fraud, inducement, and allurement.

This chapter deals with the judicial pronouncements passed by the High Court of Madhya Pradesh, High Court of Orissa and later by the Supreme Court of India. It would look into detail why and how the High Court of Madhya Pradesh upheld the Act passed by State of Madhya Pradesh, why the High Court of Orissa has held the Act passed by the state of Orissa against the constitution and later Supreme Court of India impugned the order of High Court of Orissa. It would also look at the various other judgements to corroborate and substantiate the orders.

Act Does Not Contravene the Constitution

The constitutionality of the freedom of religion acts was challenged in the High Court of Madhya Pradesh High Court. A report was filed by the Circle Inspector, Balodabazar, dated 9-3-1970, and a complaint on the said case was filed by him on 23-5-1970.⁴ Based on the complaint, the Sub-divisional Magistrate, Balodabazar,

² The Gujarat Freedom of Religion act makes prior permission from the local authorities mandatory before any conversion ceremony is performed.

³ The Madhya Pradesh Dharma Swatantrya Adhiniyam (MPDSA), Madhya Pradesh Gazette, dated 21 October 1968 (hereafter MPDSA).

⁴ Rev. Stainislaus vs State Of Madhya Pradesh And Ors. on 23 April, 1974 (hereafter AIR 1975 MP 163).

sanctioned the prosecution of the petitioner, “Rev. Stainislaus as he had allegedly committed offences under Sections 3, 4, 5 (2) and Section 6 of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968.”⁵ “The sub-divisional Magistrate by Order, dated 23-10-1970” as per the powers vested to him under Section 7 of the said Act had initiated the proceedings.⁶ An offence was registered against the petitioner and criminal case “No. 1195 of 1970 was initiated in the Court of the Magistrate, Balodobazar.”⁷

The petitioner had challenged the criminal case and raised the preliminary objection that the criminal case was not tenable as the “Act ultra vires the powers of the State legislature, as it did not fall within the scope of Entry No. I to List II and Entry No. 1 to List III of the Seventh Schedule and it only falls within Entry No. 97 of List I of the Seventh Schedule and as such, only the Parliament had the powers and right to enact legislation on this subject.” The petitioner also pointed out that in the name of public order, the state legislature cannot enact such legislation.⁸

The petitioner also raised the contention that the “provisions of Section 3, 4 and 5 (2) of the Act”⁹ are in contravention of Article 25 of the constitution, which

⁵ MPDSA, p. 1055

⁶ MPDSA, p. 1056

⁷ AIR 1975 MP 163.

⁸ Ibid

⁹ MPDSA, pp. 1055-1056

is guaranteed freedom of religion under the fundamental rights and the Act is in contravention of the constitution and as such his prosecution was untenable.¹⁰

The case was brought before the Magistrate, though he had in his order dated 28-10-1970 observed that, the contentions raised constituted a constitutional question, which only the High Court was competent to deal with, he did not refer it directly to the High Court. A revision of his order was filed before the “Additional Sessions Judge, which was registered as criminal revision No. 139 of 1970”. The Additional Sessions Judge did not find that the question to be of constitutional importance and refused to refer the case to High Court. The petitioner, therefore, filed a writ petition under Article 225¹¹ and 226¹² of the Constitution of India. The High Court of Madhya Pradesh accepted adjudicated on the petition.¹³

The Madhya Pradesh High Court dealing with the question of the violation of the article 25 of the constitution suggested in its judgement that, the very nomenclature of the Act,¹⁴ indicated that the “act had been passed to ensure that there is freedom of religion.” “The preamble of the act mentions that it is for

¹⁰ AIR 1975 MP 163.

¹¹ Article 225 of the Constitution, ‘Jurisdiction of existing High Courts’ states Subject to the Provision of this Constitution and to the provisions of any law of the appropriate Legislature made by the virtue of powers conferred on that legislature by this Constitution, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of Justice in the court, including any power to make members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.

¹² Article 226 of the Constitution, ‘Power of High Courts to issue writs’, states notwithstanding anything in Article 32, every High Court shall have the power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including inappropriate cases, any governments, within those territories directions, orders or writs, including (writs in nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by part III and for any other purpose).

¹³ AIR 1975 MP 163

¹⁴ MPDSA

providing prohibition of conversion from one religion to another by the use of force or allurement or by any fraudulent means.” The act clearly defines, ‘allurement’, ‘force’ and ‘fraud’. The act also ensures that the cases pertaining to the act have to be investigated not below the rank of the inspector and no prosecution in relation to the act can be sprung without the prior permission of the District Magistrate or any such authority. It also states that the persons converting any other person from one religion to the other have intimate the “District Magistrate within seven days of the conversion ceremony where the proforma has been provided in the Madhya Pradesh Freedom of Religion rules, 1969,¹⁵ failing which legal action would be initiated against that person.”

The Madhya Pradesh High Court citing that the “fundamental right of religious freedom of the citizens is subject to the public order, morality and health and the word ‘public’ necessarily implies that the word 'public' has to be read with the other two phrases as well.” Therefore, the restrictions will be public order, public morality and public health. It also insinuates that the “freedom of religion is not a monopoly of a single individual, but the freedom is to be enjoyed by a person commensurate with similar freedom to all other individuals.”

In its order, the Madhya Pradesh High Court recommends that since the act only penalises the conversion by force, fraud and through allurement, it does not impinge on the fundamental rights or it contravenes the constitutionality of Article 25 (1). It further states that “every person has the right to profess his own religion and to act according to it.” Any interference with the right of the other person by

¹⁵ Madhya Pradesh Dharma Swatantrya Rules, (MPDSR), Madhya Pradesh Gazette, dated 3 February 1969.

resorting to “conversion by force, fraud or allurement cannot be a contravention of the Article 25 (1) of the Constitution of India, as the Article guarantees religious freedom subject to public order, public morality and public health.” It also states that “this act guarantees there is religious freedom to one and all including those who might be amenable to conversion by force, fraud or allurement, i.e. it guarantees equality of religious freedom to all and cannot be said that it encroaches upon the religious freedom of any particular individual.” It opines that as “liberty cannot be construed to be a license, also freedom of religion cannot be construed to be the right of an individual to encroach upon similar freedoms of other by questionable methods.” It also maintained that the legislation is not referenced to any particular religion and the injunctions provided in the act apply to all the religions equally. The order of the High Court states,¹⁶

“It may be relevant to reproduce the pertinent provisions of the Act along with the provisions of the Madhya Pradesh Dharma Swatantrya Rules, 1969. The very nomenclature of the Act, namely, the M. P. Dharma Swatantrya Adhiniyam, 1968, (Religious Freedom Act) indicates that the Act had been passed to ensure freedom of religion. The preamble of the Act mentions that it is for providing prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means and for matters incidental thereto. Of course, it is true that the preamble of an Act is not relevant for interpreting the specific provisions of the statute. But, we have reproduced the preamble to show with what object the legislature enacted this legislation.”

¹⁶ AIR 1975 MP 163

“This Act came into force on 21-10-1968, as per publication in the Madhya Pradesh Rajpatra (Extraordinary), dated 21-10-1968, at page 1860. Section 2 of the Act defines ‘allurement’, ‘force’ and ‘fraud’, which are said to be objectionable methods of conversion. Sub-section (a) of this Section defines ‘allurement’ as follows:--

‘Allurement’ means an 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.

‘Force’ has been defined by Sub-section (c) as follows: ‘Force’ shall include a show of force or a threat of injury of any kind including the threat of divine displeasure or social ex-communication.

‘Fraud’ has been defined by subsection (d) as follows: ‘Fraud’ shall include misrepresentation or any other fraudulent contrivance.”

The “Section 3 of the Act prohibits conversion by ‘force’ or ‘allurement’ or by ‘fraudulent means’ and Section 4 which provides for punishment for the violation of Section 3 with imprisonment extending up to one year or with fine, which may extend to five thousand rupees or with both.”

The judgement has included the punishment committed against minors and people belonging to the marginal communities. It states, “The proviso states that if an 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 5 of the Act requires the person converting any other persons from one religious faith to another, to give intimation of the fact to the District Magistrate within such period after the

ceremony as may be prescribed in such form as may be prescribed. Sub-section (2) of Section 5 provides that if any person fails without sufficient cause to comply with the provisions contained in Sub-section (1), he shall be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both. Section 6 of the Act makes the offences under the Act cognizable, which shall not be investigated by an officer below the rank of an Inspector of Police. Section 7 provides that no prosecution shall be launched without the sanction of the District Magistrate or such other authority, not below the rank of a Sub-divisional Officer, as may be authorised by him in that behalf. Section 8 empowers the State Government to frame rules for carrying out the objects of the Act.”

The rules formulated by the government under the Madhya Pradesh Dharma Swatantrya Rules have been included in the judgement. It demands the person conducting the conversion has to intimate the District Magistrate in advance and has to take permission from him to conduct the ceremony.

“The Rule 3 of the M. P. Dharma Swatantrya Rules, 1969, provides that a person converting any other person from one religion to another shall send intimation to the District Magistrate within seven days after the date of such ceremony. Sub-rule (2) of Rule 3 provides that intimation shall be in Form A. Rule 5 requires the District Magistrate to maintain a register of conversion in Form C with all particulars. Rule 6 requires the District Magistrate by the 10th of each month to send a report to the State Government of intimations of such conversion.”

The learned judges have included the Form A in the judgement order which asks for details of the persons who are being converted. The judgment quotes:

“We may reproduce Form A, which requires the person converting another to intimate the fact of conversion to the District Magistrate within seven days of the ceremony. It is necessary to reproduce the entire form, as the petitioner challenges the provisions of Rule 3 (2) and Sub-sections (1) and (2) of Section 5 of the Act, as amounting to testimonial compulsion in contravention of Article 20 (3) of the Constitution of India. Form A is as follows:

'Form A' (See Rule 3 (2)) Intimation regarding conversion from one religious faith to another.

To The District Magistrate, District.....

Madhya Pradesh.

Sir,

I having performed the necessary ceremony for conversion as a religious priest/having taken part in the conversion ceremony of Shri.....s/o.....r/o from..... Religious faith to..... Religious faith, do hereby, give intimation of the conversion as required by Sub-section (1) of Section 5 of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (No. 27 of 1968) as follows:--

1. Name of the person converted.....
2. Name of the father of the person converted.....
3. Address of the person converted in House No.....Ward No.....
Mohalla..... Village.....Tah. District.....
4. Age.....
5. Sex.....
6. Occupation and monthly income of the persons converted.....

7. Whether married or unmarried.....
8. Name of persons, if any, dependent upon the person converted.....
9. If a minor, name and full address of the guardian, if any.....
10. Whether belongs to Scheduled Caste or Scheduled Tribe and if so, particulars of such Caste or Tribe
11. Name of the place where the conversion ceremony has taken place with full details.....House No..... Ward No..... Mohalla..... Village..... Tan..... District.....
12. Date of conversion.....
13. Name of the person who has performed the conversion ceremony and his address.....
14. Names of at least two persons other than a priest/the person giving intimation present at the conversion ceremony.....

Signature of the religious priest/the person taking part in the conversion ceremony.

VERIFICATION.

I, the undersigned do hereby declare that what is stated above is true to the best of my knowledge and belief. Place.....

Signature

Date.....”

The learned judges have used the Article 25 (1) of the constitution which asks for reasonable restrictions as the in the purview of public order, public health

and morality in order to state that the act passed by the Madhya Pradesh state legislature is not in contravention to the fundamental rights enshrined by the constitution. The judgement states:

“Taking up the first question, whether the provisions of Sections 3, 4, 5 (1), 5 (2) and Section 6 of the M. P. Dharma Swatantrya Adhiniyam, 1968, violate the petitioner's fundamental rights guaranteed by Article 25 (1) of the Constitution of India, we may usefully reproduce Article 25 (1), which is as follows :

‘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.’

What the Article guarantees is freedom of conscience and the right to profess, practice and propagate religion. This fundamental right is not restricted to the Indian citizen alone, but to every person living within the territory of India. Regarding freedom of religion, it is to be noted that the freedom of religion is not a monopoly of a single individual, but the freedom is to be enjoyed by a person commensurate with similar freedom to all other individuals. It was strenuously contended by the learned counsel for the petitioner that the provisions of Sections 3, 4 and 5 of the Act constitute an encroachment on the petitioner's freedom of religion. In this connection, we may observe that the freedom of religion has been guaranteed subject to four things, namely, public order, morality, health and the other provisions of this Part. As liberty cannot be construed to be a licence so also freedom of religion cannot be construed to be the right of an individual to encroach upon similar freedom of other individuals by questionable methods. It is only from this point of view that the State legislature has prohibited conversion by practising force, fraud or by the offer of an allurement. The contention of the learned counsel

for the petitioner was that force or fraud is well understood by phrases which have also been defined by the Indian Penal Code and the Indian Contract Act. But the introduction of the third phrase 'allurement' for the first time in an enactment is objected to on the ground that the phrase is too vague and is incapable of a precise definition.”

The High Court of Madhya Pradesh substantiating its order on the contravention of Article 25 and about public order, refers to the Ramji Lal Modi vs the State of UP case and state that the court has given importance to the ‘interests of public order’ in the case of Article 19 and the court states that even in the case of Article 25 also, ‘public order’ needs to be given importance and the words ‘maintenance of public order’ have wider connotations and there needs to have restrictions in the interests of public.¹⁷ It also substantiates about the difference of ‘interests of public order’ and ‘maintenance of public order’ by quoting from the judgements of in Ramesh Thappar v. the State of Madras,¹⁸ and Brij Bhushan And Another vs The State Of Delhi wherein the learned benches have directed for reasonable restrictions in the interest of the public.¹⁹

“In Ramji Lal Modi v. the State of U.P., AIR 1957 SC 620, wherein Section 295A of the Indian Penal Code was challenged as violative of Article 19(1) (a) of the Constitution of India. Their Lordships held that Clause (2) of Article 19 protected a law imposing reasonable restrictions on the exercise of the right to freedom of speech 'in the interests of public order' and not for maintenance of public order. If therefore, certain activities have a tendency to cause public disorder, a law

¹⁷ Ramji Lal Modi v. State of U. P on 5 April, 1957, (AIR 1957 SC 620)

¹⁸ Ramesh Thappar v. State of Madras, 26 May, 1950 (1950 AIR 124)

¹⁹ Brij Bhushan And Another vs The State Of Delhi on 26 May, 1950 (1950 AIR 129)

penalising such activities as an offence would amount to imposing reasonable restrictions in the interest of public order, although in some cases those activities may not lead to a breach of public order. In that view, their Lordships upheld the validity of Section 295A of the Indian Penal Code and dismissed the writ petition. This case brings out the distinction between 'in the interests of public order' and 'for maintenance of public order'. We may observe that the phrase used in Article 25(1) of the Constitution is 'subject to public order, morality and health and to the other provisions of this Part', which really means that the fundamental right of religious freedom is to be exercised subject to these four restrictions and the words 'public order' would have a wider connotation than the words 'maintenance of public order.'”

The petitioners have also challenged in the court stating the Act is in violative of Article 20 (3)²⁰ of the Constitution of India, on the ground of testimonial compulsion. The High Court bench had ordered that as per the Section 5 of the Act and Form A of the rules formulated by the government wherein, intimation regarding conversion from one religious faith to another is required to be given to the District Magistrate and states that compulsion in the understanding of the law is duress and the permission needs to be taken prior in advance. The bench had referred to the *R. K. Dalmia v. The Delhi Administration*, and made the following observations regarding the contravention of Article 20 (3).²¹

“We also hold that it is not inadmissible in view of clause (3) of Article 20 of the Constitution. It was not made by Dalmia at a time when he was accused of an offence, as is necessary for the application of that clause, in view of the

²⁰ Article 20 (3) of the Constitution, ‘Protection in respect of conviction for offences’, states no person accused of any offence shall be compelled to be witness against himself.

²¹ *R. K. Dalmia v. The Delhi Administration* on 5 April, 1962 (1962 AIR 1821)

decision of this Court in *State of Bombay v, Kathi Kalu Oghad*, AIR 1961 SC 1808, where the contention that the statement need not be made by the accused person at a time when he fulfilled that character was not accepted. Dalmia was not in duress at the time he made that statement and therefore was not compelled to make it. It was said in the aforesaid case states ' 'Compulsion', in the context, must mean what in law is called 'duress',

The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and therefore, extorted.' The various circumstances preceding the making of the statement, by Dalmia have all been considered and they fall far short of proving that Dalmia's mind had been so conditioned by some extraneous process as to render the making of this statement involuntary and therefore extorted.”

On the question of whether the state legislature had the right to pass a law as it is not in the scope of “Entry No. I to List II and Entry No. 1 to List III of the Seventh Schedule and it only falls within Entry No. 97 of List I of the Seventh Schedule”, the court had repudiated the question as it was a question of ‘public order’ and stating that the criminal law will be covered under the concurrent lists as such the state legislature was within its power to pass a legislation. The high court had observed in its judgement.²²

“Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.

²² AIR 1975 MP 163

The suggestion, therefore, is that the matter will be covered by the Entry relating to the residuary power of the Parliament. It is strenuously urged that the subject-matter will not be covered by Entry 1 of List II, i.e. the State List, which is as follows:

‘Public order (but not including the use of naval, military or air forces or any other forces of the Union in aid of the Civil power).’

It is also suggested that the subject-matter will not be covered by Entry 1 of List III of the Seventh Schedule, i.e. the Concurrent List, which is as follows:

Criminal Law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.”

The Act Contravenes the Constitution

The state government of Orissa had also passed a ‘Freedom of Religion Act’ in 1967.²³ The constitutionality of the act was challenged in the High Court of Orissa stating that this act contravenes Article 25 of the constitution impinging upon the Fundamental Rights of the citizens.²⁴

²³ Orissa Freedom of Religion Act passed in the legislature in 1967 and received assent of the Governor of Orissa on 9-1-1968.

²⁴ Mrs. Yulitha Hyde And Ors. vs State Of Orissa And Ors. on 24 October, 1972 (hereafter AIR 1973 Ori 116)

The petitioners, who were members of the Roman Catholic Church; Professor of Theological College of Cuttack and Utkal Christian Council President. The council was an organisation which was formed to aid and assist the Protestant Churches and Christians of Orissa; and Catholic Union of India, the Society to act as the exponent of the Catholic faith. The petitioners claimed that they have dedicated their lives for the propagation of Christianity and are engaged in education leading to the conversion of persons belonging to other faith through preaching. The petitioners have filed the petition under the rights provided by Article 226 of the Constitution raising the contentions that the act passed by the Legislative Assembly of Orissa infringes the fundamental right guaranteed under Articles 19 (1) (a)²⁵ Article 25 of the Constitution and the State Legislature has no power to legislate on matters covered by the Act.²⁶

The High Court of Orissa had admitted the petitions, there have been four petitions and they were clubbed as the contentions were of similar nature. The state of Orissa did not file the affidavits in two cases and said, they did not intent file any counter-affidavits. During the hearing of this case, though the counter-affidavits were not filed, the court admitted the case and decided to look into the accuracy of the allegations that “propagation and propagation by adopting some of the methods, which have been now made offences under the new legislation passed by the state legislature of Orissa.”²⁷

²⁵ The article 19 (1) (a) of the Constitution provides to the citizens, ‘Protection of certain rights regarding freedom of speech and expression.’

²⁶ AIR 1973 Ori 116

²⁷ Ibid.

The court had decided to look at what the scriptures of the Christian religion were saying, the scriptures will be referred to look into the contention, as some of the procedures followed in the Christian religion are made offences under the new law.²⁸

The court has also taken into consideration where the people intend to convert to Christianity, are provided religious instructions for at least six months or more. After the instructions are imparted for a period of time, care is taken by the Church to ensure that the "conversion-seeker" is well versed with the faith and is, therefore, is ready to be converted.²⁹ It has taken into consideration the methods which are followed by this particular community for conversion and how the new act will make these methods cognizable offences. It was looking into the spiritual and theistic part of the conversion where the fundamental right endowed under Article 25 (1) of the constitution gives the right to practice, profess and propagate any religion.

The High Court had referred to the scriptures presented by the counsel from the petitioners in order to look at the reasons for people to convert to Christianity. The judgement quotes the following reasons:³⁰

“It has been contended that conversion to Christianity is due to all or some of the following reasons:--“

²⁸ Ibid.

²⁹ AIR 1973 Ori 116

³⁰ AIR 1973 Ori 116

“(a) Christians believe that their religion is a Holy Gift and is particularly good; instead of selfishly keeping this divine gift all to themselves, they are willingly out to share the same with all others:”

“(b) Christ, the Holy Father, commanded every Christian to carry His message throughout the world irrespective of race caste and/or creed. Every Christian, therefore, takes it as a mandate of his religion that he must bring non-Christians into his religion,”

“(c) Though Christians do not deny salvation for non-Christians yet they believe that facilities available in their religion make the attainment of salvation smoother and more convenient and surer;”

“(d) Christians believe in the Fatherhood of God and Brotherhood of all men and, as such, they consider that all men are not only born equal but are entitled to live as equals in the kingdom of God;”

“(e) Christians believe that conversion takes place by extension of God's grace which is obtainable only by daily prayers devoted for the purpose; many non-Christians are attracted towards this religion on account of the Christian belief in God and life after death;”

“(f) Christians have a very high spiritual standard and aspire for maintaining also a dignified standard of living. They believe that those who receive the grace of God have a divine mandate to allow others in His kingdom who have not received such grace to share it Christians believe that satisfaction of the basic physical wants creates a wholesome basis for the effectiveness of religion. Therefore, the attempt is made to improve the economic condition of the "conversion-seekers" as an Initial process of conversion;”

“(g) The exemplary life led by Christian Priests and Nuns and their dedicated life of renunciation evokes admiration and attracts many into the fold of Christianity;”

“(h) People of the depressed classes in Society feel that they are hated and despised by the well-placed section of people. People of the depressed classes embrace Christianity voluntarily as an escape.”

The Orissa High Court has also stated in its order that religion is certainly a matter of faith with individuals or communities but not necessarily theistic. Religions such as Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. It also states that “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 would not be correct, to say that religion is nothing else but a doctrine or belief.”³¹

The judge talking about the Act being in contravention to the right to propagate the religion and the intrusion of the Magistrate would become a hindrance to religious liberty. The Chief Justice in the judgement states:³²

“In the Preamble of this Act religious freedom is defined: and after a recital that to suffer a civil magistrate to intrude his powers into the field of opinion and to restrain the profession or propagation of principles on supposition of their ill tendency is a dangerous fallacy which at once destroys all religious liberty', it is declared that 'it is time enough for the rightful purpose of civil government for its officers to interfere when principles break out into overt acts against peace and good

³¹ AIR 1973 Ori 116

³² Ibid

order.' In these two sentences is found that true distinction between what properly belongs to the church and what to the State.”

The High Court states that the true scope of the guarantee under Article 25 (1) of the Constitution includes to the extent to propagate religion and as a necessary consequence of this proposition, conversion into one's own religion, so far as the Christian faith is talked about. It states that the right to propagate religion also includes the right to convert a person from one religion to another. It further states that “prohibition of conversion by 'force' or by 'fraud' as defined by the Act would be covered by the limitation subject to which the right is guaranteed under Article 25 (1).” It also explains that the definition of the term 'inducement' is vague and many preaching activities may be covered by the definition and the restriction in Article 25(1) will not cover the wide definition. The judgement states:³³

“Under Article 25(1), subject to public order, morality and health and to the other provisions of Part III, all persons are equally entitled to freedom of conscience and their right freely to profess, practise and propagate religion. This freedom guarantees to every citizen not only the right to entertain such religious beliefs as may appeal to his conscience but also affords him the right to exhibit his belief in his conduct by such outward acts as may appear to him proper in order to spread his ideas for the benefit of others.”

“The true scope of the guarantee under Article 25(1) of the Constitution, therefore, must be taken to extend to propagate religion and as a necessary corollary of this

³³ AIR 1973 Ori 116

proposition, conversion into one's own religion has to be included in the right so far as a Christian citizen is concerned.”

“The right guaranteed under Article 25(1), however, is not absolute but has been expressly subject to 'public order', 'morality' and 'health' and 'to the other provisions of Part III of the Constitution', We must, therefore, now advert to the Act to find out whether its provisions which are alleged to infringe the right under this Article are covered by the limitations provided therein or do indeed infringe the right.”

“We shall now deal with the argument regarding the definition of 'inducement'. The attack is mainly on the ground that it is too widely stated and even invoking the blessings of the Lord or to say that 'by His grace, your soul shall be elevated' may come within the mischief of the term. Learned Government Advocate while agreeing that even holding out that an intangible benefit is to come may answer the definition, contends that the intention of the Legislature is not to transcend the ordinary concept of the term. We are of the view 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.”

The court also elucidates how criminal law deals with crimes. It is related to the crime and their punishment i.e. the crime or an offence is punishable by a criminal proceeding and the pith and substance of the statute is not the creation of offences and therefore this does not come under the criminal law. The realm is religion and not criminal law. It states that this act deals with the subject matter

of 'religion' and its provisions and necessarily does not relate to the 'public order'.³⁴

On the question whether the state legislature has the right to pass the act, the High Court of Orissa held that "Therefore to find out whether a piece of legislation falls within any entry its true nature and character must be in respect to that particular entry. The entries must, of course, receive a large and liberal interpretation because the few words of the entry are intended to confer vast and plenary powers. If, however, no entry in the three Lists covers it, then it must be regarded as a matter not enumerated in any of the three lists. Then it belongs exclusively to Parliament under Entry 97 of the Union List as a topic of legislation."

"We have, therefore, to examine whether legislative power has been vested in the State Legislature under any of the entries in List II in respect of this subject-matter or if it is a matter pertaining to an entry in List III. The two entries which have been placed before us by learned Government Advocate as alternates are as follows:

List II. Entry I provides:--'Public order (but not including the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power).'

The 1st Entry of List III runs thus: 'Criminal law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in

³⁴ AIR 1973 Ori 116

List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.”³⁵

The Orissa High Court found the Orissa Freedom of Religion Act to be in contravention to the Fundamental Rights enshrined in the Constitution. Keeping these considerations as the act impinges on the Fundamental rights provided under the Article 25 (1) and as the legislation in pith and substance is related to religion and the state has no right to enact such legislation. The Orissa High court has directed the government not to give effect to the act. The High Court looking into all the relevant contentions and prior judgements have come to the following conclusions.³⁶

“(1) Article 25(1) guarantees propagation of religion and conversion is a part of the Christian religion.”

“(2) Prohibition of conversion by 'force' or by 'fraud' as defined by the Act would be covered by the limitation subject to which the right is guaranteed under Article 25(1).”

“(3) The definition of the term 'inducement' is vague and many proselytizing activities may be covered by the definition and the restriction in Article 25(1) cannot be said to cover the wide definition.”

“(4) The State Legislature has no power to enact the impugned legislation which in pith and substance is a law relating to religion. Entry No. 1 of either Last II or List III does not authorise the impugned legislation.”

³⁵ AIR 1973 Ori 116

³⁶ AIR 1973 Ori 116

“On the conclusions, each of these three applications must succeed. We declare that the Act is ultra vires the Constitution and direct the issue of a writ of mandamus to the opposite-party-State Government not to give effect to the Act.”

Subject to Public Order

The constitutionality of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 and Orissa Freedom of Religion Act, 1967 was passed by the respective state legislative assemblies. These acts made conversions through ‘force’; ‘fraud’, allurements; and ‘inducement’ punishable criminal offences. The people who are converting need to inform the District Magistrate seven days in advance, furnish all the details and take prior permission before the ceremony. The constitutional validity of both these acts was challenged in their respective state High Courts i.e. High Court of Madhya Pradesh and High Court of Orissa. The High Court of Madhya Pradesh upheld the validity of the Act and the High Court of Orissa held that this Act was in contravention to Article 25 (2), Fundamental Rights of the citizens, enshrined in the Constitution. The Orissa High Court held that Art. 25(2) of the Constitution guarantees propagation of religion and conversion is a part of the Christian religion, and the State Legislature did not have the necessary power to enact the legislation. The Supreme Court had accepted the petitions and agreed to hear the cases together as both the cases raise common questions of law pertaining to the interpretation of the Constitution.

The Supreme Court in *Rev. Stainislaus vs State of Madhya Pradesh & Ors* on 17 January 1977 upheld the validity of both the Madhya Pradesh and Orissa

Freedom of Religion Acts, 1968 and 1967 respectively. Interpreting Article 25, the Supreme Court states that, the word 'propagate' used in the Article as meaning to transmit or spread from person to person or from place to place. It states “the Article does not grant the right to convert other people to one's own religion but to transmit or spread one's religion by an exposition of its tenets.” The freedom of religion enshrined in Article 25 (1) is not guaranteed in respect of one religion only but it covers all religions equally which can be properly enjoyed by a person if he exercises his right in a manner commensurate with the like freedom of persons following other religion. What is freedom for one person may not be freedom for the other in equal measure and as such, there can be no such thing as a fundamental right to convert any person to one's own religion.³⁷

The Supreme court in its judgement states, “the word 'propagate' has been used in Article 25 (1), for what the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees ‘freedom of conscience’ to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the “freedom of conscience” guaranteed to all the citizens of the country alike.”³⁸

³⁷ Rev. Stainislaus vs State Of Madhya Pradesh & Ors on 17 January, 1977 (Hereafter 1977 AIR 908)

³⁸ Ibid.

The Supreme Court delving into the matter about Article 25, quotes from the *Ratilal Panachand Gandhi v. The State of Bombay & Ors* further states that “Thus, 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 judgment 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.”³⁹

The Judgement states that both the Madhya Pradesh act and Orissa act prohibits converting from one religion to another by use of ‘force’, ‘fraud’ ‘allurement’, ‘inducement’ and fraudulent means, therefore, they clearly provide for the maintenance of ‘public order’ and if forceful conversions are not stopped, then it would lead to ‘public disorder’. Further, it also states that, if any attempts are made to raise communal passions citing that some person has been forcefully or some group has been forcefully converted, then it will inevitably lead to ‘public disorder’.⁴⁰

The Supreme Court discussing the legislative competence of the state legislative assemblies in passing the act, it held the view is contrary to the High Court of Orissa that, it comes under the purview of the state as the act had been enacted to ensure ‘public order’. The judgement states: “It was argued by counsel that the Legislatures of Madhya Pradesh and the Orissa States did not have legislative competence to pass the Madhya Pradesh Act and the Orissa Act

³⁹ *Ratilal Panachand Gandhi vs The State Of Bombay And Others* on 18 March, 1954 (1954 AIR 388)

⁴⁰ 1977 AIR 908

respectively because their laws regulate 'religion' and fall under the Residuary Entry 97 in List 1 of the Seventh Schedule to the Constitution. 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 use of force or by allurement or by fraudulent means and section 4 penalises 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 penalises such forcible conversion." "The Acts therefore clearly provide for the maintenance of public order for, if the 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."

In another case, *Ratilal Panachand Gandhi vs The State of Bombay and Ors*, which was referred by the learned judges in the *Rev. Stainlaius case vs the State of Madhya Pradesh & Ors*. The *Ratanlal Panachand Gandhi vs The State of Bombay & Ors* was looking into the constitutionality of the provision of a. 44 of the *Bombay Public Trust Act, 1950*, in relation to the appointment of Charity Commissioner as a trustee of any public trust by the court without any reservation in regard to religious institutions like temples and Maths. This provision was also challenged in

the court as it was in contravention to Article 25 and 26 of the constitution. This case has also referred to 'interests of public order' and 'right to propagate'.⁴¹

The learned judges in this case about the 'right to propagate' state that The Article 25, subject to the restrictions imposed by the article, provide every person, not just the citizens, the fundamental right to religious belief according to their judgement and conscience. They provide also the citizen right to propagate their religion for the education and enlightenment of others. They can do this propagation in an individual capacity or on behalf of the church or any institution. These rights also included the performance of outward acts in accordance with their religious beliefs. But these rights provided have limitations where they should not disturb the public order, public health and morale of the people. These rights as stated in sub-clause (a) of clause (2) of Article 25 contemplates that these regulations on the practice of religion are provided so that they are not in contrary to the public health, order or morality of the people. The order also states, "What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.". The order further states, "A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well."⁴²

⁴¹ Ratilal Panachand Gandhi vs The State of Bombay and Ors on 18 March, 1954 (1954 AIR 388).

⁴² Ratilal Panachand Gandhi vs The State of Bombay and Ors on 18 March, 1954 (1954 AIR 388).

In the case of *Arun Ghosh vs State Of West Bengal*, the court has given a clear definition of ‘public order’ and ‘maintenance of public order’. It has succinctly pointed out the difference between the disturbance and maintenance of public order. It states that public order should emphasise more on the community than law and order. Public order is required and it is the even tempo for the life of the community, taken whether in the case of the country as a whole or in the case of a specific locality. The public order is differentiated as the acts which are directed against any individual, which do not create any disturbance to the society, to the extent of creating any general disturbance to the public tranquillity.⁴³

The order states, “It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take, for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large Sections of the community and incite them to make further breaches of the law and order and to subvert the public order.”⁴⁴

⁴³ *Arun Ghosh vs State Of West Bengal* on 2 December, 1969 (AIR 1970 SC 1228)

⁴⁴ *Ibid.*

The act by itself does not determine its gravity. Its quality may not be different but the potentiality of the act makes the difference. The order providing an example states,⁴⁵

“Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chambermaids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities, girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity, there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community.”

Basically, the question is whether anyone has committed an offence and violated the law and order or the act was committed where it has created disturbance to the public order and to what degree that disturbance is and It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society.

The Supreme court without taking into consideration about the rights of the people who intend to convert to another religion nor clarifying what does the words

⁴⁵ Ibid.

such as ‘allurement’ or ‘inducement’ or has eroded the freedom of religion and helped in creating a space for the passage of ‘anti-conversion laws’ despite the right to ‘freedom of religion’ enshrined in the constitution. The petitioners have raised the question from the right of the person who is converting, whereas the right of the individual who wants to get converted is not raised by the petitioners. Though there have been restrictions on forceful conversions, the right to propagate would also stem to provide the right to conversion. The proceedings in the Supreme Court when this case came up for hearing was when Indian democracy was going through one of its darkest phases, Emergency period (25 June 1975 – 21 March 1977). The political conditions prevalent in the country would also have played a role in the outcome of the judgement.

Conclusion

The constitution of India provides the right to Freedom of religion to not only the citizens but to all the people residing in the union of India. These rights have been provided as Fundamental Rights. They include the right to profess, practise and propagate religion. The draft which was first written by the drafting committee also included a clause (clause 17), which restricted forceful conversions. This Constituent Assembly debated whether to include the clause, which states “Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law.”¹

The constituent assembly when debating upon this clause wanted to include that minors and there were intense debates to ensure that, the constitution includes the clause where forceful conversions will not be recognised by law. The Christian minority members have raised concerns that the inclusion of this clause would put a blanket ban on conversions and later after the clause was sent to the advisory committee and minority committee the clause was shifted to the seventh schedule and the clause and related amendments were dropped.²

The constituent assembly also witnessed intense debates for the inclusion of the word ‘propagate’. The members when placing their opinions said that this would lead to conversions and as the house discussed on making forceful conversions illegal, the word propagates to be removed from the clause. The minority members have pointed out that their religion directs them to spread the word of ‘god’ so they

¹ *Constituent Assembly Debates (Proceedings)*, 12 vols. 5 books. (1950; repr. New Delhi: Lok Sabha Secretariat, 2014), Book 1 (Annexure), p. 442 (Hereafter cited as CAD).

² CAD., May 1, 1946

should be having the right to propagate their religion. Later, as not having this word would not restrict the activities, and people have the right to choose their religion as per their conscience, and as this would be in contravention to the freedom of speech and expression, the word 'propagate' was included. Not just the citizens but the residents in India were provided with the right to freely propagate their religion.

The constitution also under Article 25 gave the people a fundamental right that no person shall be compelled to pay any tax for the promotion and maintenance of any particular religion.

The question to rights provided in the constitution was challenged when first Orissa in 1967 and Madhya Pradesh in 1968 passed 'Freedom of Religion Acts'. The Madhya Pradesh legislation was called as "Madhya Pradesh Dharma Swatantrya Adhiniyam'. The laws euphemistically called 'Freedom of Religion Acts' curtailed conversion. These laws were passed for the prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means. Conversion by these laws was explained as an act where the person will renounce one religion for another religion. The law stated that any person should not convert or attempt to convert any other person through 'force', 'fraud' 'allurements' or 'inducements'. The Laws had given an explanation to these words but they were left open-ended. These laws have made conversion through these means criminal offences. The act provides for punishments when the violation of these laws, were jailing and fines.

The marginalised communities, i.e Scheduled Castes and Scheduled tribes were considered to be gullible and in case they were found to be converted the fine

was three times more than for any other individual. The marginalised groups were discriminated, where they were not treated as equals even in this legislation.

The acts state that people who are wishing to convert others have to take prior permission from the government, they have to inform the district magistrate seven days in advance about the ceremony. There are forms, which have been prepared as the rules of this act, the forms include, one seeking permission and the other giving permission. The district magistrate has to keep a record of the conversions and inform the state every month about the conversions in his area.

The Madhya Pradesh government formed two committees, Niyogi Committee and M.B. Rege Committee to look at the activities of the Missionaries, the legislation passed by Madhya Pradesh and the state of Orissa was based on the recommendations of these committees. Both these committees were mentioned by the legislatures in the Madhya Pradesh during the formulation of the legislation. Both these committees have provided with examples, about various times when the Missionaries have forcefully or fraudulently by providing monetary or other gains have converted the tribals from their original religion.

The Niyogi Committee has stated that in their report that missionaries have many times participated in religio-political activities. They did not keep their activities only in the religious realm. The committee has even charged the missionaries that they have indulged in anti-national activities. They have made an allegation that the activities by the missionaries were towards forming a new nation. They have worked towards the breaking of the nation; basically a two-nation theory after the formation of Pakistan. They have also alleged that the missionaries were

one of the prime people behind the Jharkhand movement. They have alleged that the missionaries after the framing of the constitution have used the right to propagate to convert many people. They have used the constitutional safeguards provided to them for nefarious activities.

The committee in their recommendations has stated that the missionaries should not be receiving foreign funds as they found that, Missionaries are using foreign funds to fulfil their political endeavours. One of the prime allegations of the committee was that the missionaries have been using schools and hospitals as breeding grounds to conduct conversions. The missionaries also charged different rates for Christians and non-Christians. They have been doing this to lure the non-Christians into their faith. They discriminated not only in the schools but also in the hospitals, where they prayed in the side of the beds not to give comfort but to carry on their proselytising activities. They suggested that education even in the schools run by the missionaries, there should be no religious activities including the prayer, without the explicit consent of the parents who send their wards to school. The committee in one of its final recommendations stated clearly that, these are all illegal activities and if the required the state should pass legislation to control these activities.³ The outcome of this recommendation is the Madhya Pradesh Dharma Swatantrya Adhiniyam.

The Madhya Pradesh Dharma Swatantrya Adhiniyam and Orissa Freedom of Religion acts were challenged in the high courts of Madhya Pradesh and Orissa respectively. The High Court of Madhya Pradesh upheld the act stating that this is

³ Niyogi Committee Report, pp. 163-165.

not in contravention of the constitution because this may cause issues with the 'public order' and the article 25 of the constitution is subject to restrictions under 'public order' and 'public health'. The article needs to be read along with these restrictions. The court also states that, these restrictions under which the Article 19 functions, they will be applied for article 25 also. It also states that the state government is legislatively competent to pass such laws, which was one of the contentions of the petitioners.

The High Court of Orissa had given its judgement against the act and asked the state not to implement the act. The High Court of Orissa had referred to the scriptures to and said that propagation is one of the inalienable rights of the Christian. These are universal rights and it also contravenes Article 25 of the constitution. The Orissa High Court has quoted in its judgement what were the reasons for propagation by the Christian religion and they are duty-bound according to their religious scriptures to spread the word.

The Supreme Court had taken up both these petitions and upheld the High Court of Madhya Pradesh Judgement, It also accepted the argument that, it would disturb the public order. The supreme court had given a distinction about what constitutes the 'public order' and stated that when the activity of any individual if they create a problem and that problem if it affects the morale of the society then only it will constitute as public disorder and the activities of the individuals who are converting the problem might lead to disharmony in the society as there are mass conversions also. These acts might create disharmony in the society which will inevitably lead to public disorder as such the act was necessary and it is not in contravention of the constitution.

The court also upheld that, 'the right to propagate' does not necessarily and automatically give the right to conversion. There need to be reasonable restrictions for the maintenance of public order. As the right to propagate does not automatically give the right to convert, the state was within its right to pass the legislation against conversions carried out forcefully.

It also states that the act has defined the words 'force', 'allurement' 'inducement' 'fraudulent and has only put restrictions on these conversions, the act could be in the parlance. It also states that the act is not keeping a blanket ban on conversions. The people who wish to convert can inform the state, take its permission and would be able to perform the conversions.

It states that as it only needs to inform the state and the people who want to convert can carry on with their conversions. The court has said that, as people can follow any religion according to their conscience, they can convert to other religions. The court has mainly seen mass conversions as being hindrances to the public order.

The Supreme Court by upholding this law and stating that, the right to convert does not give the right to convert, it had inadvertently denied the people one of the fundamental rights of the constitution. As propagation is carried out to spread the word about their religion, they should also have the opportunity to convert people. The Supreme court is supposed to ensure that no rights of citizens and primarily the fundamental rights of the citizens should not be curtailed but in this case, the Supreme court in the name of public order had given an adverse judgement

and inadvertently have passed an order which is curtailing the rights of citizens. Basically, it appears in this case that the Supreme court had failed to uphold its duty.

The study was carried out in detail about the formulation of the act, the conditions and the recommendations on which the act has been based on. It also looks at how did the Act perform in the scrutiny of the courts, be it the High Courts or the Supreme court. The study has its own limitations where it could not look at the violent incidents which have happened over the years in relation to the incidents of conversion. The rightwing groups have over the years have used conversion as a tactic to bring in faultlines in the society. The study does not look into detail about these incidents by rightwing and how it uses this to spread the agenda. This is an important aspect which can be looked at in the future course of study.

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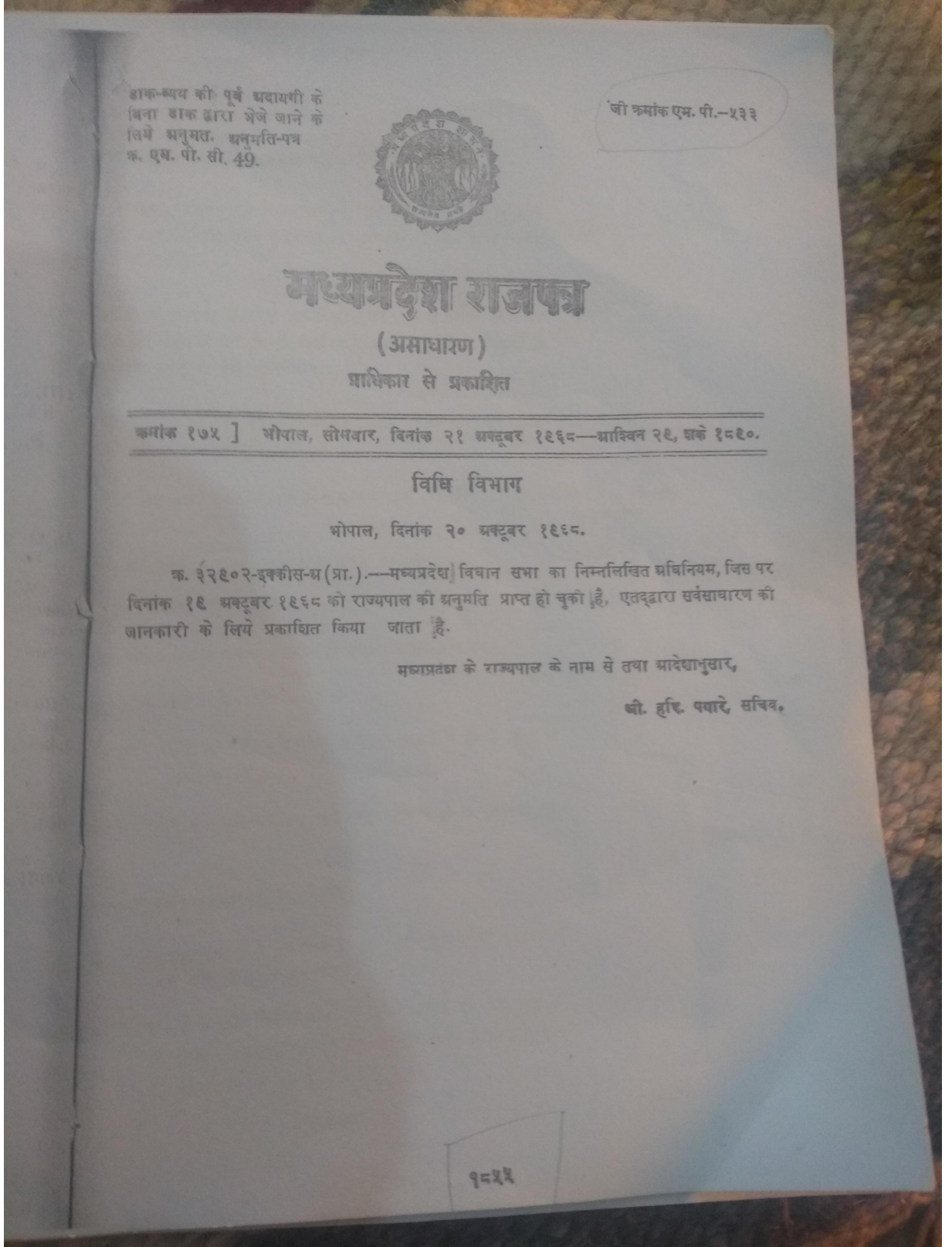
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Appendix I

Title: Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968.



मध्यप्रदेश अधिनियम

क्रमांक २० वर्ष १९६०

मध्यप्रदेश धर्म-स्वातन्त्र्य अधिनियम, १९६०

विषय सूची

आपण

१. संक्षिप्त नाम, विस्तार तथा प्रारम्भ.
२. परिभाषाएं.
३. धर्मसंपरिवर्तन का प्रतिषेध.
४. धारा ३ के उपबन्धों के उल्लंघन के विषये दण्ड.
५. धर्म-संपरिवर्तन के सम्बन्ध में बिना मजिस्ट्रेट की प्रज्ञापना की जायगी.
६. धराराज संश्लेष होंगे.
७. बिना मजिस्ट्रेट की मजूरी से अधिनियमन संस्थित किया जायगा.
८. नियम बनाने की शक्ति.

मध्यप्रदेश अधिनियम

क्रमांक २० वर्ष १९६०

मध्यप्रदेश धर्म-स्वातन्त्र्य अधिनियम, १९६०

[विशेष १६ अक्टूबर, १९६० की राजपत्र की अधूनियत द्वारा हुई; अधूनियत "मध्यप्रदेश राज्य" का अन्तर्गत में विस्तार २१ अक्टूबर, १९६० की राजपत्र प्रकाशित की गई.]

इस अधिनियम का प्रयोग इस अधिनियम के अधूनियत द्वारा एक काल के किसी अन्य काल में संश्लेषित करने के प्रयोग के लिये तथा इसी अधूनियत के लिये उपलब्ध करने हेतु अधिनियम.

आगत धराराज के अधूनियत में मध्यप्रदेश विधान सभाल द्वारा इसे निम्न-लिखित रूप में अधिनियमित किया गया—

१. (१) यह अधिनियम मध्यप्रदेश धर्म-स्वातन्त्र्य अधिनियम, १९६० संक्षिप्त नाम, विस्तार तथा प्रारम्भ.

(२) इसका विस्तार अधूनियत द्वारा राज्य पर होगा.

(३) यह तत्काल प्रवृत्त होगा.

२. इस अधिनियम में जब तक संदर्भ से धराराज अपेक्षित न हो,— परिभाषाएं.

(क) "प्रबोधन" से अभिप्रेत है—

(एक) किसी धर्म या परितोषण, चाहे वह नकदी में हो या धर्म के रूप में हो;

(दो) कोई सारकान धराराज, चाहे वह धार्मिक हो या धराराज हो, देने

के रूप में किसी सातव का दिया जाना;

(ब) "धर्म-संपरिवर्तन" से अभिप्रेत है एक धर्म त्याग देना तथा कोई अन्य धर्म स्वीकृत कर लेना;

(ग) "दल" के अन्तर्गत बल-प्रदर्शन या किसी प्रकार की शक्ति प्रदर्शन की धमकी, जिसमें देवी धराराज या सामाजिक जाति-बहिष्कार की धमकी सम्मिलित है, आती है;

(घ) "कपट" के अन्तर्गत दुर्व्यवहार या कोई अन्य कपटपूर्ण उपाय माता है;

(ङ) "अप्राप्त वय" से अभिप्रेत है अठारह वर्ष से कम आयु का व्यक्ति.

बल पूर्वक धर्म-सं परिवर्तन का प्रतिषेध. ३. कोई भी व्यक्ति बल प्रयोग द्वारा या प्रलोभन द्वारा या किसी कपटपूर्ण साधन द्वारा किसी भी व्यक्ति को एक धर्म से किसी अन्य धर्म में प्रत्यक्षतः या अन्यथा सं परिवर्तित नहीं करेगा या प्रत्यक्षतः या अन्यथा सं परिवर्तित करने का प्रयत्न नहीं करेगा और न ही कोई व्यक्ति ऐसे सं परिवर्तन का दुष्प्रेरण करेगा.

धारा ३ के उपबन्धों के अन्तर्गत क लिए किसी सिविल दायित्व पर प्रतिकूल प्रभाव डाले बिना, कारावास से, जो एक वर्ष तक का हो सकेगा, या जुर्माने से, जो पांच हजार रुपये तक का हो सकेगा, या दोनों से दण्डनीय होगा :

परन्तु उस दशा में जबकि अपराध किसी अप्राप्त वय, किसी स्त्री या अनुसूचित जाति या अनुसूचित जनजाति के किसी व्यक्ति के सम्बन्ध में किया गया हो तो दण्ड दो वर्ष तक का कारावास और दस हजार रुपये तक का जुर्माना होगा.

धर्म-सं परिवर्तन के सम्बन्ध में जिला मजिस्ट्रेट को प्रज्ञापना दी जायगी. ५. (१) जो कोई किसी व्यक्ति का एक धर्म से किसी अन्य धर्म में सं परिवर्तन करने में पर्याप्त कारण के बिना अयत्न रहेगा, तो वह कारावास से, जो एक वर्ष तक का हो सकेगा, या जुर्माने से, जो एक हजार रुपये तक का हो सकेगा, या दोनों से दण्डनीय होगा. (२) यदि कोई व्यक्ति उपधारा (१) में अन्तर्लिखित उपबन्धों का अनुपालन करने में पर्याप्त कारण के बिना अयत्न रहेगा, तो वह कारावास से, जो एक वर्ष तक का हो सकेगा, या जुर्माने से, जो एक हजार रुपये तक का हो सकेगा, या दोनों से दण्डनीय होगा.

अपराध संज्ञेय होंगे. ६. इस अधिनियम के अधीन अपराध संज्ञेय होगा और उसका अन्वेषण पुलिस-निरीक्षक के पद से निम्न पद के अधिकार द्वारा नहीं किया जायगा.

७. इस अधिनियम के अधीन अपराध के लिये कोई भी अधिकारी, जिना जिला मजिस्ट्रेट की मजिस्ट्रेट द्वारा या उसकी पूर्व मजूरी से ही या उपबन्ध अधिकार के पद से अतिरिक्त मजिस्ट्रेट के पद के ऐसे अन्य अधिकारी, जिसे कि वह (जिना मजिस्ट्रेट) उस संबंध में प्राधिकृत मान्यता प्राप्त किया जायगा. करे, द्वारा या उसकी पूर्व मजूरी से ही संस्थित किया जायगा अन्यथा नहीं.

८. राज्य सरकार इस अधिनियम के उपबन्धों को कार्यान्वित करने के प्रयोजन निबन्ध बनाने की शक्ति के लिये निबन्ध बना सकेगी.

भोपाल, दिनांक २० अक्टूबर १९६८.

क्र. ३२६०३-इलकीस-अ (प्रा).—भारत क संविधान के अनुच्छेद ३४८ के खंड (३) के अनुसरण में मध्य प्रदेश धर्म स्वातन्त्र्य अधिनियम, १९६८ (क्र. २७, सन् १९६८) का अंतिमी अनुवाद राज्यपाल के प्राधिकार से एतद्द्वारा प्रकाशित किया जाता है.

मध्य प्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
श्री. हरि. पगारे, सचिव

MADHYA PRADESH ACT
No. 27 of 1968.

THE MADHYA PRADESH DHARMA SWATANTRYA
ADHINIYAM, 1968.

TABLE OF CONTENTS

Sections

1. Short title, extent and commencement.
2. Definitions.
3. Prohibition of forcible conversion.
4. Punishment for contravention of the provisions of section 3.
5. Intimation to be given to District Magistrate with respect to conversion.
6. Offence to be cognizable.
7. Prosecution to be made with the sanction of District Magistrate.
8. Power to make rules.

MADHYA PRADESH ACT

No. 27 of 1968.

THE MADHYA PRADESHI DHARMA SWATANTRYA
ADHINIVAM, 1968.

(Repealed the Assent of the Governor on the 19th October, 1968; Assent first
received in the "Madhya Pradesh Gazette" Extraordinary, dated the
22nd October, 1968.)

An Act to provide for prohibition of conversion from one religion
to another by the use of force or allurement or by fraud-
ulent means and for matters incidental thereto.

Enacted by the Madhya Pradesh Legislature in the
Nineteenth Year of the Republic of India as follows:—

1. (1) This Act may be called the Madhya Pradesh
Dharma Swatantrya Adhinivam, 1968.

Short title, extent
and commence-
ment.

(2) It shall extend to the whole of the State of Madhya
Pradesh.

(3) It shall come into force at once.

Definitions.

2. 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 of
injury of any kind including threat of divine dis-
pleasure or social ex-communication;

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

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

3. 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 fraud-
ulent means nor shall any person abet any such conversion.

4. Any person contravening the provisions contained in
section 3 shall, without prejudice to any civil liability be punish-
able with imprisonment which may extend to one year or with
fine which may extend to five thousand rupees or with both:

Punishment for
contravention
of the provisions
of section 3

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

5. (1) Whoever converts any person from one religious faith to
another either by performing himself the ceremony given to be
necessary for such conversion as a religious rite or by taking part
directly or indirectly in such ceremony shall, within such period
after the ceremony as may be prescribed, send an intima-
tion 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 with sufficient cause to comply with
the provisions contained in sub-section (1), he shall be punish-
able with imprisonment which may extend to one year or with
fine which may extend to one thousand rupees or with both.

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

7. No prosecution for an offence under this Act shall be
instituted except by, or with the previous sanction of, the Dis-
trict Magistrate or such other authority, not below the rank of a
Sub-Divisional Officer, as may be authorized by him in that behalf.

8. The State Government may make rules for the purpose
of carrying out the provisions of this Act.

- ११२ मध्यप्रदेश राजपत्र, दिनांक ३ फरवरी १९६६
- 6 Occupation and monthly income of the person converted.
 - 7 Whether married or unmarried
 - 8 Name of persons, if any, dependent upon the person converted.
 - 9 If a minor, name and full address of the guardian, if any.
 - 10 Whether belongs to scheduled Caste or scheduled Tribe and ifso, particulars of such Caste or Tribe.
 - 11 Name of the place where the conversion ceremony has taken place with full details.
 House No. Ward No.
 Mohalla
 Village Tah.
 Distt.
 - 12 Date of conversion.
 - 13 Name of person who has performed the conversion ceremony and his address.
 - 14 Names of atleast two persons other than priest/the person giving intimation persent at the conversion ceremony.

FORM -D
(See Rule 6)

Report for the month of

- 1 No. of intimations received during the month.
- 2 Religionwise intimations.
 Break up the Religion from which converted. Religion to which converted.
- 3 No. of prosecutions, if any, instituted under the Adhiniyam.
- 4 No. of acquittals and convictions under the Adhiniyam during the month.

District Magistrate.

By order and in the name of the Governor of Madhya Pradesh,
K. C. C. RAJA, Add. Secy.

निर्यत्रक, मुद्रण तथा लेखन सामग्री, मध्यप्रदेश, द्वारा शासन केन्द्रीय मुद्रणालय, भोपाल से मुद्रित तथा प्रकाशित—१९६६

डाक-अध्याय की पूर्व-अदायगी को बना डाक द्वारा भेजे जाने के लिये अनुमत. अनुमति-पत्र क्र. एम. पी. सी. 49

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क्रमांक १५] भोपाल, शुक्रवार

क. ७६-अठारह-नगर-दो.—
२३ सन् १९५६) की धारा ४२२ के
३१०-५६४-अठारह-नगर-दो, दिनांक
नाम से निर्दिष्ट किया गया है) के अध
१९६८ से एक वर्ष की कालावधि

और चूकि, उच्च न्यायालय
आदेश दिनांक ३१ जनवरी १९६६
अतिष्ठान के आदेश को किसी भी

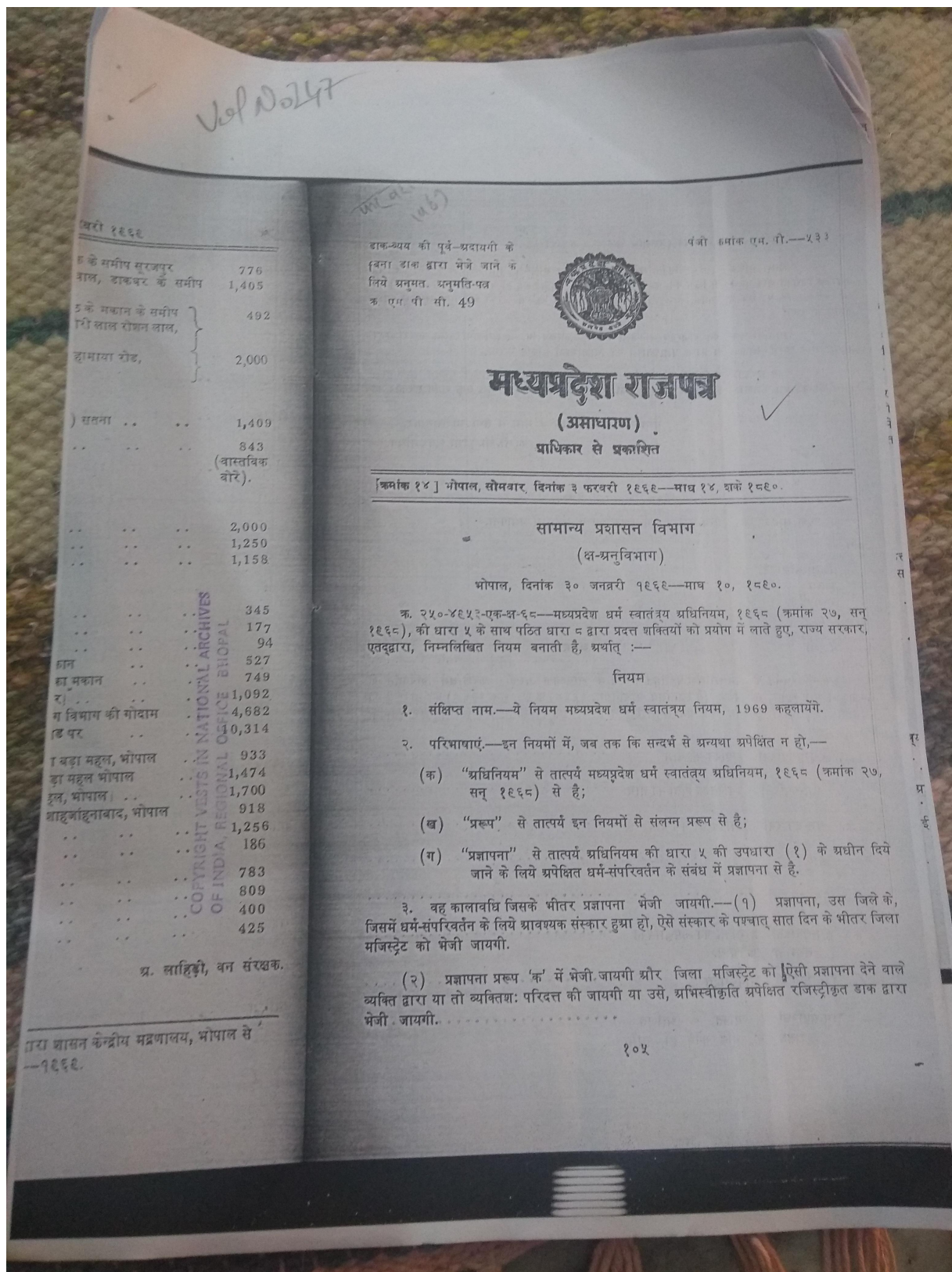
अतएव, मध्यप्रदेश नगरपालिका
४२२ की उपधारा (१) द्वारा प्रद

(क) नगरपालिका नि
और

(ख) यह निदेश देत
प्रत्यावर्तित

Appendix II

Title: Madhya Pradesh Dharma Swatantrya Rules, 1969



in one religious faith to

for conversion as a religious priest/
Shri
to
; conversion as required by sub-
dharma Swatantrya Adhiniyam

House No. Ward No.
Mohalla
Village Tah.
Distt.

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No. Ward No.
a Village
Tah.

- 12 Date of conversion
- 13 Name of person who has performed the conversion ceremony and his address.
- 14 Names of at least two persons other than priest/ the person giving intimation present at the conversion ceremony.

Signature of the religious priest/the person taking part in the conversion ceremony.

VERIFICATION

I, the undersigned do hereby declare that what is stated above is true to the best of my knowledge and belief.

Place :
Date

Signature

FORM B

(See Rule 4)

Received intimation under section 5 of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (27 of 1968) on 1969 from Shri s/o r/o with respect to conversion of Shri s/o from religious faith to religious faith.

Date

District Magistrate

FORM C

(See Rule 5)

Register of conversion

- 1 Name of the person converted
- 2 Father's Name of the person converted
- 3 Address of the person converted in full House No. Ward No.
Mohalla
Village Tah.
Distt.
- 4 Age
- 5 Sex

मध्यप्रदेश राजपत्र, दिनांक ३ जनवरी १९६९

- 2 Occupation and monthly income of the person converted.
- 7 Whether married or unmarried
- 8 Name of persons, if any, dependent upon the person converted.
- 9 If a minor, name and full address of the guardian, if any.
- 10 Whether belongs to scheduled Caste or scheduled Tribe and also, particulars of such Caste or Tribe.
- 11 Name of the place where the conversion ceremony has taken place with full details.

House No.	Ward No.
Mohalla	
Village	Tah.
Distt.	
- 12 Date of conversion.
- 13 Name of person who has performed the conversion ceremony and his address.
- 14 Names of atleast two persons other than priest, the person giving intimation present at the conversion ceremony.

FORM -D
(See Rule 6)

- Report for the month of
- 1 No. of intimations received during the month.
 - 2 Religion-wise intimations.

	Break up the	Religion from which converted.	Religion to which converted.
--	--------------	--------------------------------	------------------------------
 - 3 No. of persecutions, if any, instituted under the Adivinyam.
 - 4 No. of acquittals and convictions under the Adivinyam during the month.

District Magistrate.

By order and in the name of the Governor of Madhya Pradesh,
K. C. C. RAJA, Add. Secy.

नियंत्रक, मुद्रक तथा लेखन सामग्री, मध्यप्रदेश, द्वारा शासन केन्द्रीय मुद्रणालय, भोपाल से मुद्रित तथा प्रकाशित—१९६९

हाक-श्रव्य की पूर्व-सहायता के बना हाक द्वारा भेजे जाने के बिना धन्यत. अनुमति-पत्र क्र. एम. पी. सी. 49

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क्रमांक १५] भोपाल मुद्रणालय

क्र. ७६-अठारह-नगर-२०/२३ मन् १९६६ को धारा ४२२ ३१०-१६४-अठारह-नगर-बी, वि नाम से निर्दिष्ट किया गया है) के १९६८ में एक वर्ष की कालावधि

धौर चुकि, उच्च न्यायालय पादेश दिनांक ३१ जनवरी १९६९ प्रतिष्ठान के पादेश को किसी भी

धतरण, मध्यप्रदेश नगरपालिका ४२२ की उगधार (१) द्वारा प्र

(क) नगरपालिका धौर

(ख) यह निर्देश दे प्रत्यावर्तित

३. जिला मजिस्ट्रेट अभिस्वीकृति रसीद देगा.—जिला मजिस्ट्रेट, प्रज्ञापना प्राप्त होने पर, वह तारीख जिसको और वह समय जिस पर, वह प्रज्ञापना उसे परित्यक्त की गई हो या उसके द्वारा प्राप्त की गई हो, देते हुए उस पर एक प्रमाणपत्र हस्ताक्षरित करेगा और प्ररूप 'ख' में उसकी प्राप्ति की तत्काल अभिस्वीकृति देगा.

४. धर्म-संपरिवर्तन का रजिस्टर.—जिला मजिस्ट्रेट, प्ररूप 'ग' में धर्म-संपरिवर्तन का रजिस्टर रखेगा और उसमें उसके द्वारा प्राप्त प्रज्ञापनाओं की विशिष्टियाँ प्रविष्ट करेगा.

५. राज्य सरकार को रिपोर्ट की प्रस्तुति.—जिला मजिस्ट्रेट, पूर्ववर्ती मास के दौरान उसके द्वारा प्राप्त की गई प्रज्ञापनाओं की प्ररूप 'घ' में एक रिपोर्ट प्रत्येक मास की १० तारीख तक राज्य सरकार को भेजेगा.

मध्यप्रदेश के राज्यपाल के नाम से तथा आदेशानुसार,
क. सी. सी. राजा, अपर सचिव.

प्ररूप—क

[नियम ३ (२) देखिये]

एक धर्म से किसी अन्य धर्म में धर्म-संपरिवर्तन के संबंध में प्रज्ञापना.

प्रति,

जिला मजिस्ट्रेट,
जिला
मध्यप्रदेश.

महोदय,

मैं, श्री

निवासी के आत्मज
धर्म में धर्म-संपरिवर्तन के लिये धार्मिक पुरोहित के रूप में आवश्यक संस्कार करके/धर्म-संपरिवर्तन के संस्कार में भाग लेकर, मध्यप्रदेश धर्म स्वातंत्र्य अधिनियम, १९६८ (क्र. २७, सन् १९६८) की धारा ५ की उपधारा (१) द्वारा अपेक्षित किये गये अनुसार, एतद्वारा, धर्म-संपरिवर्तन की, निम्नानुसार प्रज्ञापना देता हूँ :—

१. धर्म-संपरिवर्तित व्यक्ति का नाम
२. धर्म-संपरिवर्तित व्यक्ति के पिता का नाम
३. धर्म-संपरिवर्तित व्यक्ति का पूर्ण पता
४. आयु
५. पुरुष या स्त्री
६. धर्म-संपरिवर्तित व्यक्ति की उपजीविका तथा मासिक आय.
७. विवाहित है या अविवाहित ?
८. धर्म-संपरिवर्तित व्यक्ति के आश्रित व्यक्तियों के, यदि कोई हों, नाम.

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६. यदि अप्रा
यदि
१०. क्या वह
जनक
तो र
विशि
११. उस स्थ
संस्का
१२. धर्म-सं
१३. उस व
संस्
का
१४. पुरोहि
के
सं
मं
मैं, निम्न ह
पूर्वोत्तम ज्ञान तथा
स्थान
दिनांक

मध्यप्रदेश ध
दिनांक
आत्मज
के
के संबंध में प्रज्ञापन
दिनांक

जिस्ट्रेट प्रज्ञापना प्राप्त होने पर, वह की गई हो या उसके द्वारा प्राप्त की गई हो, उसकी प्राप्ति की तत्काल अभि-

व 'स' में धर्म-संपरिवर्तन का रजिस्टर प्रविष्ट करेगा.

८. पूर्ववर्ती भाग के दौरान उसके द्वारा १० तारीख तक राज्य सरकार

नाम से तथा आदेशानुसार, के. सी. सी. राजा, अपर सचिव.

प्रज्ञापना.

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से
करके/धर्म-संपरिवर्तन के
न १९६८) की धारा ५ की
की, निम्नानुसार प्रज्ञापना

९. यदि अप्राप्त-व्य हो, तो अभिभावक का, यदि कोई हो, नाम तथा पता.
१०. क्या वह अनुसूचित जाति या अनुसूचित जनजाति का है और यदि ऐसा है, तो ऐसी जाति या जनजाति की विशिष्टियां.
११. उस स्थान का, जहां धर्म-संपरिवर्तन संस्कार हुआ है, पूर्ण व्योरे सहित नाम.
१२. धर्म-संपरिवर्तन का दिनांक
१३. उस व्यक्ति का, जिसने धर्म-संपरिवर्तन संस्कार किया है, नाम तथा उस का पता.
१४. पुरोहित और प्रज्ञापना देने वाले व्यक्ति को छोड़कर, धर्म-संपरिवर्तन संस्कार में उपस्थित कम से कम दो व्यक्तियों के नाम.

गृह क्रमांक वाडे क्रमांक
मोहल्ला ग्राम
तहसील जिला

धार्मिक पुरोहित धर्म-संपरिवर्तन संस्कार में भाग लेने वाले व्यक्ति के हस्ताक्षर.

सत्यापन

मैं, निम्न हस्ताक्षरकर्ता एतद्वारा, यह घोषणा करता हूँ कि जो कुछ भी ऊपर किया गया है, मेरे सर्वोत्तम ज्ञान तथा विश्वास से सत्य है.

स्थान

दिनांक

हस्ताक्षर.

प्ररूप--ख

(नियम ४ देखिये)

मध्यप्रदेश धर्म स्वातंत्र्य अधिनियम, १९६८ (क्रमांक २७, सन् १९६८), की धारा ५ के अधीन

दिनांक को श्री

आत्मज निवासी से श्री

के आत्मज निवासी धर्म में धर्म-संपरिवर्तन

के संबंध में प्रज्ञापना प्राप्त हुई.

दिनांक

जिला मजिस्ट्रेट.

FORM A
[See Rule 3 (2)]

Intimation regarding conversion from one religious faith to another

To
The District Magistrate,
District
Madhya Pradesh.

Sir,
I having performed the necessary ceremony for conversion as a religious priest/ having taken part in the conversion ceremony of Shri s/o r/o religious faith to religious faith, do hereby, give intimation of the conversion as required by sub-section (1) of section 5 of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (No. 27 of 1968) as follows :-

- 1 Name of the person converted
- 2 Name of the father of the person converted.
- 3 Address of the person converted in full. House No. Ward No.
Mohalla Village Tah.
Distt.
- 4 Age
- 5 Sex
- 6 Occupation and monthly income of the person converted.
- 7 Whether married or unmarried
- 8 Name of persons, if any, dependent upon the person converted.
- 9 If a minor, name and full address of the guardian, if any.
- 10 Whether belongs to scheduled Castes or Scheduled Tribe and if so, particulars of such Caste or Tribe.
- 11 Name of the place where the conversion ceremony has taken place with full details. House No. Ward No.
Mohalla Village
Tah.
Distt.

- 12 Date of conversion
- 13 Name of person of conversion ceremony
- 14 Names of all other than priest intimation post ceremony.

I, the undersigned best of my knowledge
Place :
Date :

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Received into
Swatantrya Adhiniyam
Shri
from
religious faith.
Date

- 1 Name of the
- 2 Father's Name
- 3 Address of the
- 4 Age
- 5 Sex

प्रकार—घ
(नियम ५ देखिये)

धर्म-संपरिवर्तन का रजिस्टर

- १. धर्म-संपरिवर्तित व्यक्ति का नाम
- २. धर्म-संपरिवर्तित व्यक्ति को पिता का नाम
- ३. धर्म-संपरिवर्तित, व्यक्ति का पूर्ण पता
- ४. आयु
- ५. पुरुष या स्त्री
- ६. धर्म-संपरिवर्तित व्यक्ति की उपजीविका तथा मासिक आय
- ७. विवाहित है या अविवाहित ?
- ८. धर्म-संपरिवर्तित व्यक्ति के आश्रित व्यक्तियों के, यदि कोई हों, नाम
- ९. यदि अज्ञात वय हो, तो अभिभावक का, यदि कोई हो, नाम तथा पूर्ण पता
- १०. क्या वह अनुसूचित जाति या अनुसूचित जनजाति का है और यदि ऐसा है, तो ऐसी जाति या जनजाति की विनिर्दिष्टियां
- ११. उस स्थान का, जहां धर्म-संपरिवर्तन संस्कार हुआ है, पूर्ण व्यौरे सहित नाम. गृह क्रमांक
वाड क्रमांक
मौहल्ला ग्राम
तहसील जिला
- १२. धर्म-संपरिवर्तन का दिनांक
- १३. उस व्यक्ति का, जिसने धर्म-संपरिवर्तन संस्कार किया है, नाम तथा उसका पता
- १४. पुरोहित और प्रज्ञापना देने वाले व्यक्ति को छोड़कर, धर्म-संपरिवर्तन संस्कार में उपस्थित कम से कम दो व्यक्तियों के नाम

प्रकार—घ

(नियम ६ देखिये)

मास की रिपोर्ट

- १. मास के दौरान प्राप्त प्रज्ञापनाओं की संख्या.
- २. धर्मानुसार } विश्लेषण—वह धर्म जिससे वह धर्म जिसमें संपरिवर्तित किया गया.
प्रज्ञापनाएं } संपरिवर्तित किया गया.
- ३. अधिनियम के अधीन सन्धिगत अभियोजनों की, यदि कोई हों, संख्या.
- ४. अधिनियम के अधीन दोषमुक्तियों तथा दोष-सिद्धियों की मास के दौरान संख्या.

क्र. २११-१९३-एक-अ-६०-१
में पर विभाग की अधिसूचना क्र. २१०-१
राजपत्र के प्राधिकार से एकद्वारा प्र

No. 250-4953-1-X-66.—In
the Madhya Pradesh Gazette
State Government hereby make

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- 1. Short title.—These r
Swatantrya Rules, 1960.
- 2. Definitions.—In the
(a) "Adhinyam" me
Adhinyam, 1960
(b) "Form" means a
(c) "Intimation" me
to be given us
- 3. Period within w
shall be sent to the District
for conversion has taken pl
- (2) The intimation sh
by the person giving such i
by registered post with ac
- 4. District Magist
Magistrate on receiving t
date on which and the h
or received by him and sh
- 5. Register of co
register of conversion in f
ions received by him.
- 6. Submission o
istrate shall, by the 10t
of intimations received t

By order an

क. २४१-२६४३-मु.अ-६८— भारत के संविधान के अनुच्छेद ३२० के खंड (३) के अनुक्रम में इस विभाग की अधिसूचना क. २४०-२६४३-मु.अ-६८, दिनांक ३० जनवरी १९६९ का अंशों अनुवाद राज्यपाल के प्राधिकार से पत्रद्वारा प्रकाशित किया जाता है.

मध्यप्रदेश के राज्यपाल के नाम से तथा सचिवानुसार,
क. सी. सी. राजा, अपर सचिव.

Bhopal, the 30th January 1969— Magha 10, 1890.

No. 250-4953-I-X-68. — In exercise of the powers conferred by Section 8 of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (No. 27 of 1968), the State Government hereby makes the following rules, namely:—

RULES

1. **Short title.**— These rules may be called the Madhya Pradesh Dharma Swatantrya Rules, 1969.

2. **Definitions.**— In these rules, unless the context otherwise requires,—

- (a) "Adhiniyam" means the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (No. 27 of 1968);
- (b) "Form" means a Form appended to these rules;
- (c) "Intimation" means the intimation with respect to conversion required to be given under sub-section (1) of section 5 of the Adhiniyam.

3. **Period within which intimation to be sent.**— (1) The intimation shall be sent to the District Magistrate of the district in which ceremony necessary for conversion has taken place within seven days after the date of such ceremony.

(2) The intimation shall be in Form A and shall be delivered either personally by the person giving such intimation to the District Magistrate or be sent to him by registered post with acknowledgement due.

4. **District Magistrate to issue acknowledgement receipt.**— The District Magistrate on receiving the intimation shall sign thereon a certificate stating date on which and the hour at which the intimation has been delivered to or received by him and shall forthwith acknowledge the receipt thereof in Form B.

5. **Register of conversion.**— The District Magistrate shall maintain a register of conversion in Form C and shall enter therein particulars of the intimations received by him.

6. **Submission of Report to State Government.**— The District Magistrate shall, by the 10th of each month, send to the State Government a report of intimations received by him during the preceding month in Form D.

By order and in the name of the Governor of Madhya Pradesh
K. C. C. RAJA, Ad

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क्यांक
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ग्राम
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की संख्या.

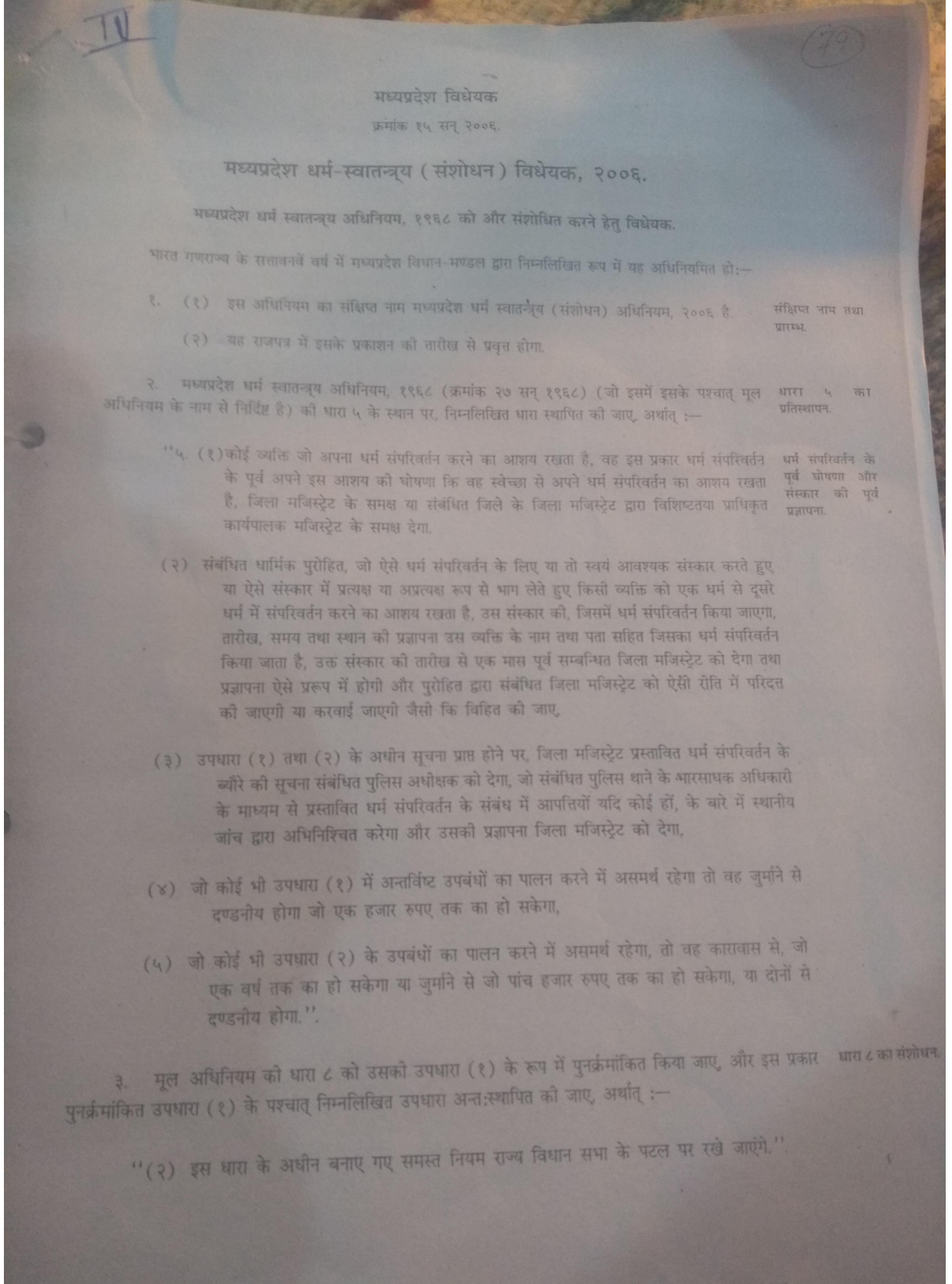
जिसमें संपरिचित किया गया.

स्था.

के दौरान संस्था.

Appendix III

Title: Madhya Pradesh Dharma Swatantrya Adhiniyam , Amendment, 2005



उद्देश्यों व कारणों का कथन

मध्यप्रदेश धर्म स्वातन्त्र्य अधिनियम, १९६८ (क्रमांक २७ सन् १९६८) २१ अक्टूबर, १९६८ से मध्यप्रदेश राज्य में प्रवृत्त है। अधिनियम में बल, प्रलोभन द्वारा या किन्हीं कपटपूर्ण साधनों के उपयोग द्वारा एक धर्म से दूसरे धर्म में संपरिवर्तन को प्रतिषिद्ध किया गया है। तथापि अधिनियम में ऐसे उपबंध अन्तर्लिखित नहीं हैं जिनसे उन धर्म संपरिवर्तन के बारे में पहले ही पता लगाये जाने में मदद मिल सके, जो अधिनियम के उल्लंघन में होते हैं। अधिनियम की विद्यमान धारा ५ की उपधारा (१) में धार्मिक पुरोहित द्वारा जिला मजिस्ट्रेट को प्रज्ञापना दी जाने का उपबंध है जो धर्म संपरिवर्तन का संस्कार करने के पश्चात् किसी व्यक्ति को एक धर्म से दूसरे धर्म में संपरिवर्तित करता है। ऐसे व्यक्ति से जिसका एक धर्म से दूसरे धर्म में संपरिवर्तन होता है किसी प्राधिकारी को पूर्व प्रज्ञापना अपेक्षित नहीं है। इन क्रमियों से अधिनियम का मुख्य प्रयोजन निष्फल हो जाता है, क्योंकि किसी धर्म संपरिवर्तन का जो अधिनियम के उल्लंघन में हो सकता है, पता लगाने और रोकने का कोई उपाय नहीं है। अतएव संबंधित जिले के जिला मजिस्ट्रेट को किसी प्रस्तावित धर्म संपरिवर्तन को पूर्व प्रज्ञापना संबंधी उपबंध करने हेतु पूर्वोक्त अधिनियम की धारा ५ को यथोचित रूप से संशोधित किया जाना प्रस्तावित है।

२. धारा ८ में यथोचित संशोधन द्वारा नियमों को राज्य विधान सभा के पटल पर रखे जाने के लिए भी उपबंध सम्मिलित किया गया है।
३. अतः यह विधेयक प्रस्तुत है।

भोपाल :
तारीख : १७ जुलाई, २००६

नागेन्द्र सिंह
भारसाधक सदस्य,

प्रत्यायोजित विधि निर्माण के संबंध में ज्ञापन

प्रस्तावित विधेयक के खण्ड-२ की धारा ५ की उपधारा (२) के द्वारा धर्म परिवर्तन संस्कार से संबंधित प्रज्ञापना का प्ररूप एवं रीति विहित करने की शक्ति प्रत्यायोजित की गई है।

उक्त प्रत्यायोजन सामान्य स्वरूप का है।

डॉ. ए. के. पयासी
प्रमुख सचिव,
मध्यप्रदेश विधान सभा।

Appendix IV

Title:Niyogi Committee Recommendations

CHAPTER III.—SUMMARY OF RECOMMENDATIONS

The following is a summary of the recommendations which we have made :—

(1) Those Missionaries whose primary object is proselytization should be asked to withdraw. The large influx of foreign Missionaries is undesirable and should be checked. (Paragraph 72, Chapter II, Part IV, Volume I).

(2) The best course for the Indian Churches to follow is to establish a United Independent Christian Church in India without being dependent on foreign support. (Paragraph 76 *ibid*).

(3) The use of medical or other professional services as a direct means of making conversions should be prohibited by law. (Paragraph 82 *ibid*). ✓

(4) To implement the provision in the Constitution of India prohibiting the imparting of religious education to children without the explicit consent of parents and guardians, the Department of Education should see that proper forms are prescribed and made available to all schools. (Paragraph 86 *ibid*). ✓

(5) Any attempt by force or fraud, or threats of illicit means or grants of financial or other aid, or by fraudulent means or promises, or by moral and material assistance, or by taking advantage of any person's inexperience or confidence, or by exploiting any person's necessity, spiritual (mental) weakness or thoughtlessness, or, in general, any attempt or effort (whether successful or not), directly or indirectly to penetrate into the religious conscience of persons (whether of age or underage) of another faith, for the purpose of consciously altering their religious conscience or faith, so as to agree with the ideas or convictions of the proselytizing party should be absolutely prohibited. (Paragraph 87 *ibid*). ✓

(6) Religious institutions should not be permitted to engage in occupations like recruitment of labour for tea gardens. (Paragraph 88 *ibid*).

(7) It is the primary duty of Government to conduct orphanages, as the State is the legal guardian of all minors who have no parents or natural guardians. (Paragraph 89 *ibid*).

(8) Government should issue an appeal to authoritative and representative Christian Missionary Organisations and to Christians in general to come together and to form an authoritative.

organization which should lay down and inform Government in clear terms the policy which the Missions and Christians in general will follow in respect of propagating their religion, the methods to be followed in conversions, the type of propaganda which will be promoted and the attempts which will be made to confine their evangelistic activities within the limits of public order, morality and health. (Paragraph 90 *ibid*).

(9) An amendment of the Constitution of India may be sought, firstly to clarify that the right of propagation has been given only to the citizens of India and secondly that it does not include conversion brought about by force, fraud or other illicit means. (Paragraph 91 *ibid*).

(10) Suitable control on conversions brought about through illegal means should be imposed. If necessary Legislative measures should be enacted. (Paragraph 92 *ibid*).

(11) Advisory Boards at State level, regional level and district level should be constituted of non-officials, minority communities like Tribals and Harijans being in a majority on these boards. (Paragraph 93 *ibid*).

(12) Rules relating to the registration of Doctors, Nurses and other personnel employed in hospitals should be suitably amended to provide a condition against evangelistic activities during professional services. (Paragraph 95 *ibid*).

(13) Circulation of literature meant for religious propaganda without approval of the State Government should be prohibited. (Paragraph 96 *ibid*).

(14) Institutions in receipt of grants-in-aid or recognition from Government should be compulsorily inspected every quarter by officers of Government. (Paragraph 97 *ibid*).

(15) Government should lay down a policy that the responsibility of providing social services like education, health, medicine, etc., to members of scheduled tribes, castes and other backward classes will be solely of the State Government, and adequate services should be provided as early as possible, non-official organizations being permitted to run institutions only for members of their own religious faith. (Paragraph 98 *ibid*).

(16) A separate department of Cultural and Religious affairs should be constituted at the State level to deal with these matters which should be in charge of a Minister belonging to a scheduled caste, tribe or other backward classes and should have specially trained personnel at the various levels. (Paragraph 99 *ibid*).

(17) No non-official agency should be permitted to secure foreign assistance except through Government channels. (Paragraph 100 *ibid*).

(18) No foreigner should be allowed to function in a scheduled or a specified area either independently or as a member of a religious institution unless he has given a declaration in writing that he will not take part in politics. (Paragraph 100 *ibid*).

(19) Programmes of social and economic uplift by non-official or religious bodies should receive prior approval of the State. (Paragraph 100 *ibid*).

(B. P. PATHAK)
Member-Secretary.

(M. B. NEROO)
Chairman.

(GHANSHYAM BHOOR GUPTA)
Member.

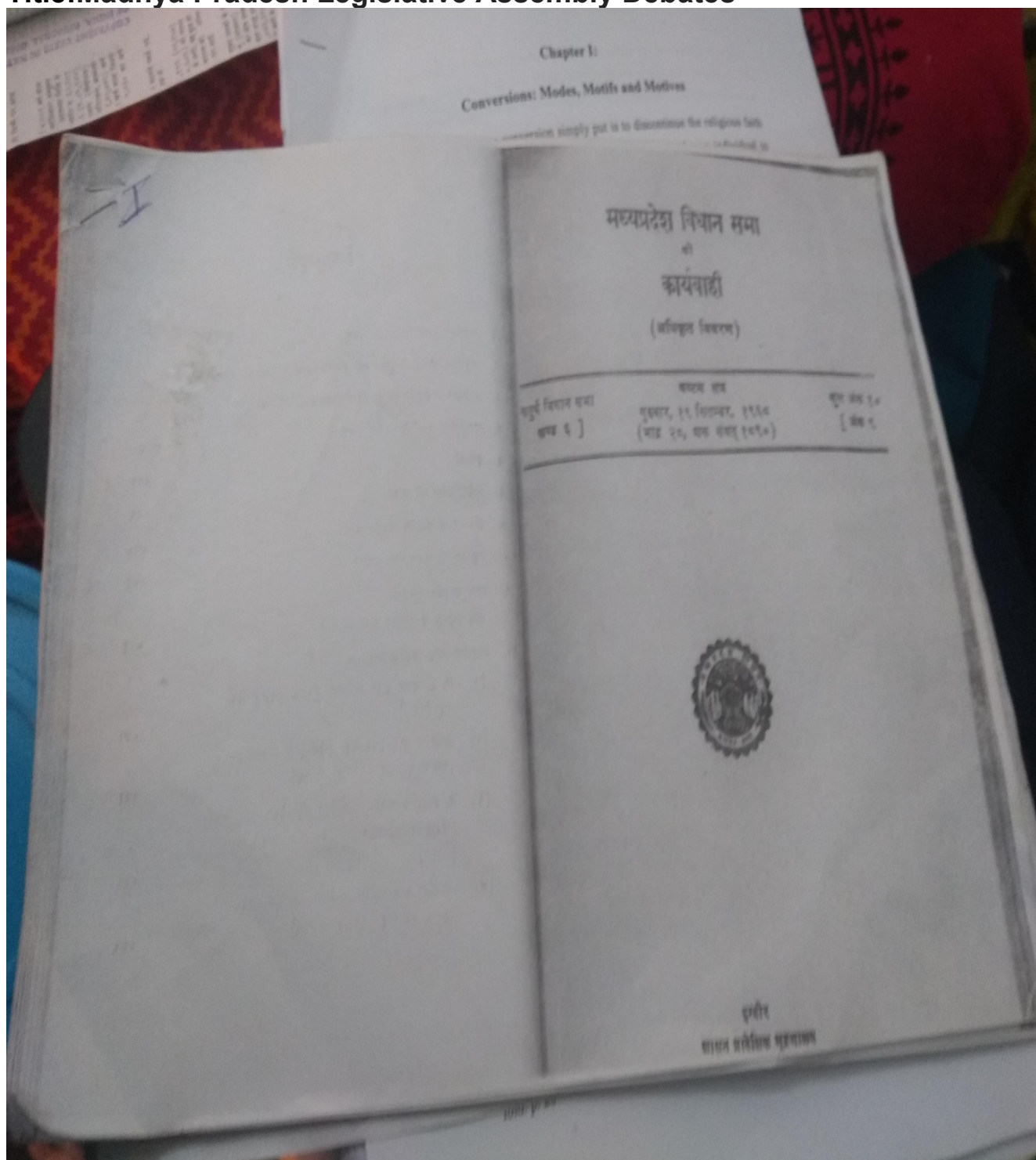
(S. K. GEORGE)
Member.

(RATANLAL MALVIYA)
Member.

(BHANU PRATAP SINGH)
Member.

Appendix V

Title: Madhya Pradesh Legislative Assembly Debates



विषय सूची

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(५) मध्यप्रदेश धर्म स्वातंत्र्य विधेयक, १९६८ (क्र. २१ सन् १९६८)	...	९७३
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(८) विशेषाधिकार समिति के पंचम प्रतिवेदन पर चर्चा	...	१०२२

श्री हरिमणोरम प्रतापसिंह : लेकिन कल सदन समाप्त होने के पश्चात मैं आई-विटनेस हूँ, मारपीट होत-होते बची, गाली गुप्ता हुआ।

पत्रों को पटल पर रखा जाना

शिक्षा मंत्री (श्री धर्मपालसिंह गुप्त) : अध्यक्ष महोदय, मध्यप्रदेश शासन साहित्य परिषद के संविधान की धारा १२ की अपेक्षानुसार मध्यप्रदेश शासन साहित्य परिषद का कार्य-विवरण एवं लेखा परीक्षक द्वारा जांचा गया हिसाब (दिनांक १ अप्रैल, १९६६ से ३१ मार्च, १९६७ तक) पटल पर रखता हूँ।

अध्यक्ष महोदय : पटल पर रखा गया।

विधान सभा सदस्य श्री हरिज्ञानसिंह बोहरे को दंडित किये जाने की सूचना

अध्यक्ष महोदय : मेरे पास श्री हरिज्ञानसिंह बोहरे, सदस्य को दण्डित किये जाने की सूचना प्राप्त हुई है जिसे मैं पढ़कर सुनाता हूँ—

“महोदय, मुझे आपको यह सूचना देनी है कि मध्यप्रदेश विधान सभा सदस्य श्री हरिज्ञानसिंह बोहरे आत्मज सुबालाल बोहरे विधान सभा क्षेत्र अटर पर धारा १८८ भारतीय दण्ड विधान के अंतर्गत दण्डनीय अपराध के सम्बन्ध में, विधान सभा भवन भोपाल के समक्ष, नियंत्रित क्षेत्र में नारे लगाने के अपराध में, इस न्यायालय के समक्ष प्रस्तुत किया गया।

उन्हें धारा १८८ भारतीय दण्ड विधान का अपराधी पाया गया और उन्हें सात दिवस का साधारण कारावास का दण्ड दिया गया। सूचनार्थ अंग्रेषित।

ह— के. च. जैन

१८-९-६८

ए. डी. एम. (जे) भोपाल

शासकीय विधि विषयक कार्य

मध्यप्रदेश विश्वविद्यालय विधेयक, १९६८ का पुरःस्थापन

शिक्षा मंत्री (श्री धर्मपालसिंह गुप्त) : अध्यक्ष महोदय, मैं मध्यप्रदेश विश्वविद्यालय विधेयक, १९६८ के पुरःस्थापन की अनुमति चाहता हूँ।

अध्यक्ष महोदय : प्रश्न यह है कि मध्यप्रदेश विश्वविद्यालय विधेयक, १९६८ के पुरःस्थापन की अनुमति दी जाय।

अनुमति प्रदान की गई।

श्री धर्मपालसिंह गुप्त : अध्यक्ष महोदय, मैं मध्यप्रदेश विश्वविद्यालय विधेयक, १९६८ का पुरःस्थापन करता हूँ।

अध्यक्ष महोदय : विधेयक पुरःस्थापित हुआ।

श्री चन्द्रप्रतापसिंह

मध्यप्रदेश वनस्पति रोग तथा विनाशी कीट विधेयक, १९६८ का पुरःस्थापन
कृषि मंत्री (श्री फतेहभानुसिंह चौहान) : माननीय अध्यक्ष महोदय, मैं मध्यप्रदेश वनस्पति रोग तथा विनाशी कीट विधेयक, १९६८ (क्रमांक ३३ सन् १९६८) के पुरःस्थापन की अनुमति चाहता हूँ।

अध्यक्ष महोदय : अनुमति दी गई।

श्री फतेहभानुसिंह चौहान : अध्यक्ष महोदय, मैं मध्यप्रदेश वनस्पति रोग तथा विनाशी कीट विधेयक, १९६८ (क्रमांक ३३ सन् १९६८) का पुरःस्थापन करता हूँ।

अध्यक्ष महोदय : विधेयक पुरःस्थापित हुआ।

मध्यप्रदेश नगर-निवेश (संशोधन) विधेयक, १९६८ (क्रमांक ३१ सन् १९६८)
पर चर्चा (पूर्वानुबद्ध)

स्थानीय शासन नगर मंत्री (श्री शारदाचरण तिवारी) : अध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि मध्यप्रदेश नगर-निवेश (संशोधन) विधेयक, १९६८ (क्रमांक ३१ सन् १९६८) पारित किया जावे।

अध्यक्ष महोदय : प्रस्ताव प्रस्तुत हुआ।

प्रश्न यह है कि मध्यप्रदेश नगर-निवेश (संशोधन) विधेयक, १९६८ (क्रमांक ३१ सन् १९६८) पारित किया जावे।

प्रस्ताव स्वीकृत हुआ।

विधेयक पारित हुआ।

मध्यप्रदेश कृषि उपज मण्डी (संशोधन) विधेयक, १९६८ (क्रमांक ३२ सन् १९६८)
पर चर्चा (पूर्वानुबद्ध)

कृषि मंत्री (श्री फतेहभानुसिंह चौहान) : अध्यक्ष महोदय, मैं प्रस्ताव करता हूँ कि मध्यप्रदेश कृषि उपज मण्डी (संशोधन) विधेयक, १९६८ (क्रमांक ३२ सन् १९६८) पारित किया जावे।

अध्यक्ष महोदय : प्रस्ताव प्रस्तुत हुआ।

प्रश्न यह है कि मध्यप्रदेश कृषि उपज मण्डी (संशोधन) विधेयक, १९६८ क्रमांक ३२ सन् १९६८) पारित किया जावे।

प्रस्ताव स्वीकृत हुआ।

विधेयक पारित हुआ।

मध्यप्रदेश धर्म स्वातंत्र्य विधेयक, १९६८ (क्रमांक २१ सन् १९६८)

उप-मुख्य मंत्री (श्री वीरेन्द्रकुमार सललेजा) : * अध्यक्ष महोदय, मैं मध्यप्रदेश धर्म-स्वातंत्र्य विधेयक, १९६८ (क्रमांक २१ सन् १९६८) के पुरःस्थापन की अनुमति चाहता हूँ।

अध्यक्ष महोदय : अनुमति दी गई।

* इस भाषण को माननीय उप-मुख्य मंत्री ने नहीं सुधारा।