

# Right to Convert is Not Included in Right to Freedom of Religion

Satwik Jain

BB.A LL.B 3<sup>RD</sup> YEAR, New Law College, BVDU, Pune, Maharashtra, India

**Abstract:** *This article explores the intricacies of religious conversion and its constitutional implications in India. It delves into the interpretation of the term propagate in Article 25(1) of the Indian Constitution, clarifying that it does not grant the right to forcibly convert individuals to one's religion but rather emphasizes the spread of religious teachings for the welfare of society. The article discusses the common misconception about inter-religion marriage and highlights the provisions of the Special Marriage Act that allow couples to marry without converting. Additionally, it provides insights into the implementation of anti-conversion laws in various Indian states and the debates surrounding their constitutionality. The article concludes by advocating for a central legislation against forced conversion, emphasizing the need for safeguards to protect individual's freedom of conscience while curbing coerced conversions.*

**Keywords:** Religious Conversion, Propagation, Inter-religion Marriage, Anti-Conversion Laws

## 1. Introduction

Religious Conversion is the adoption of different set of belief, faith and profess any religious activity of his/her choice.

Right to convert should be the part of Right to life and personal liberty i.e. Article 21, the person is given full liberty to convert his religion if the conversion is voluntary conversion i.e. conversion by free choice and because of change of person belief.

Right to convert of the person is restricted in case if the conversion is the forced conversion i.e. conversion of religion by coercion, undue influence etc. or marital conversion i.e conversion of religion due to marriage.

Article 25 of Indian Constitution includes the **Right to freedom of religion**

In,

### 1. Vasudev v. Vamanji, ILR 1881 Bom

It is the ancient doctrine in India that the state protects all religions but interferes with none.

### 2. St. Xavier's College v. State of Gujarat, AIR 1974 SC

Secularism is neither pro-god nor anti-god, it ensures that no one shall be discriminated against on the ground of religion

Article 25(1)<sup>1</sup> – 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, practise and propagate religion**

The freedom of 'conscience' is absolute inner freedom of the citizen to mould his own relation with god in whatever manner he likes. When freedom becomes articulate and expressed it is 'to profess and practise religion'. To 'profess' a religion means to declare freely and openly one's faith and belief. He has the right to practise his belief by practical

expression in any manner he likes. To 'practise' religion is to perform the prescribed religious duties, rites and rituals.

### Actual Interpretation of Word Propagation in Indian Constitution

To "PROPAGATE" means to spread and publicize his religious view for welfare of the people of the society. This was added in the Article 25(1) so that good religious teachings and knowledge irrespective of religion should be spread in the society to maintain the peace and harmony in the society.<sup>2</sup>

The most of the people got confused with this phenomena that propagation here means that Article 25(1) gives the right to convert any person to one's own religion, but in fact the actual meaning of this word is that exchange of the certain set of belief and good religious teaching and knowledge for the welfare of the people of the society.

Any person cannot forcefully convert the religion of the other person i.e. there is no fundamental right to convert another person to one's own religion. They could just transmit and spread the teaching of their religion for the welfare of the people of the society.

### **In Rev. Stainislaus v. State of M.P., AIR 1977 SC**

In this case, the actual meaning of the word "Propagate" in Article 25(1) of the Indian constitution, so in this case Supreme Court held that word propagate does not grants right to convert other person to one's own religion because if the person forcefully or purposely undertakes the conversion of the another person to his religion, it would curtail the freedom of conscience guaranteed to all the citizens of the country.

### **In Ratilal Panachand Gandhi v. State of Bombay, AIR 1954**

The Hon'ble Supreme Court has made the provision of Article 25 clearer by confirming that every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his

<sup>1</sup> Bare Act – Constitutional Law of India

<sup>2</sup> Constitutional Law of India - Dr. J.N Pandey

judgement or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others.

### **In Digyadarsan Rajendra Ramdassji v. State of Andhra Pradesh**

The Hon'ble Apex Court decided that "the right to propagate one's religion means the right to communicate a person's beliefs to another person or to expose the tenets of that faith, but would not include the right to 'convert' another person to the former's faith.

Therefore, it came to be judicially established that although propagation enjoys constitutional protection under the right to freedom of religion but conversion does not.

With the help of the example we will understand the meaning of the word *Propagate*

Jainism teaches, transmits and spreads the five doctrines of its religion i.e. **Ahimsa, Satya, Asetya, Aparigraha, Brahmacharya** to the society so that by following such doctrines the individual could improve his life and have a proper mental peace and which enhances the peace and harmony in the society as well. So According to article 25(1) of Indian Constitution the religion is free to spread its teaching in the society but any religion is not free to convert the people of other religion into their one's own religion because it would be impinging their freedom of conscience which is guaranteed to all the citizens of the country.<sup>3</sup>

### **What is the myth among the people of Indian society about inter-religion marriage?**

People of India think that if they have to perform marriage inter-religiously, then one of the spouses has to convert his religion. It is the common myth that both of the spouses have to follow the belief of the same religion in order to solemnize their wedding.

### **True Fact:**

In order to perform inter-religion marriage, neither of the parties has to renounce their religion, they can still marry under the provisions of Special Marriage Act and can still be affiliated with their particular religion.

### **Implementation of Anti-Conversion Laws in various states**

In India, there is no central law for Anti-conversion but nine out of 28 states have sanctioned their own laws including Chhattisgarh, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Madhya Pradesh, Odisha, Uttarakhand and Uttar Pradesh.

These Anti-conversion legislations prohibit the conversion from one religion to another religion if the conversion is not due to change in belief but it is the forceful conversion as it is curtailing the freedom of conscience of the particular individual or a group.

<sup>3</sup> <https://www.drishtiiias.com/to-the-points/paper1/jainism-3#:~:text=Five%20Doctrines%20of%20Jainism,Brahmacharya%3A%20Observe%20contenance>

The first state to enact an anti-conversion law was the government of Odisha (then Orissa). **The Orissa Freedom of Religion Act, 1967** was enacted by the state government to deal with the forced conversions. Section 3 of the Act provided 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 or by inducement or by any fraudulent means nor shall any person abet such conversion."<sup>4</sup>

The following year, Madhya Pradesh also came up with the **Madhya Pradesh Dharma Swatantra Adhiniyam of 1968**, which was almost parallel to the act passed by Odisha. Instead of going with the term 'inducement,' the legislators used the term 'allurement' which was defined under Section 2(a) as an "offer of any temptation in the form of any gift or gratification, either in cash or kind; (ii) grant of any material benefit, either monetary or otherwise."<sup>5</sup>

For the State of Uttar Pradesh the legislation is **The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021** which came into force on 27<sup>th</sup> November 2020 through an ordinance. This is an act to provide for prohibition of unlawful conversion from one religion to another by **misrepresentation, force, undue influence, coercion, allurement** or by any **fraudulent** means or by **marriage** and for the matters connected therewith or incidental thereto.

After the coming of anti-conversion laws in various states, many issues came into limelight one of them is that such laws are unconstitutional as they are violating Article 25 (i.e. Freedom of Religion) of Indian Constitution and the main criticism that these anti-conversion laws attract is that they breach the right to privacy of an individual. A person changing their religion would like to make public their conversion on their own terms or when they think it is the right time to make public the same. However, almost all the states which have enacted anti-conversion laws requiring a person converting to give notice to the competent authority and public of the same. It is understood by some people of the society that these procedures deeply infringe the individual's right to privacy which had not been well developed in Indian jurisprudence at the time of the decision in **Rev. Stanislaus case**, but is now clearly explained in **K.S Puttaswamy v. Union of India case**.<sup>6</sup>

As per my opinion the person who is wilfully converting his religion as his personal belief and faith are changed should have no effect if the people of the society and the public get the knowledge about his Religion Conversion, hence the procedure established by law in these Anti-Conversion laws that the individual converting his religion has to make an application to District Magistrate is not violating his Right to Privacy, these all measures have to be compulsorily taken in order to avoid any kind of forced conversion taking place in

<sup>4</sup> <https://theleaflet.in/a-pan-indian-law-against-forced-conversions-should-respect-right-to-privacy-and-not-appear-to-be-arbitrary/>

<sup>5</sup> <https://theleaflet.in/a-pan-indian-law-against-forced-conversions-should-respect-right-to-privacy-and-not-appear-to-be-arbitrary/>

<sup>6</sup> <https://cprindia.org/journalarticles/evaluating-indias-new-anti-conversion-laws/>

the society as every citizen is guaranteed with Freedom of Conscience.

### **Central Legislation on Anti-conversion: Needed or not?**

That against the increasing forced conversions and the gap in criminal legal system to persecute the perpetrators of the crime of forceful conversion, special central law must be enacted against forced conversion, or the such an act should be made an punishable offence under the Indian Penal Code.

In the Central Legislation for the Anti-Conversion there should be the clause and provision that individual people who are converted by forced conversion can return back to their basic religion by just going under some verification by the appropriate authority and such people should be given rehabilitation facility so that they could revive back there mental health.

Therefore, if the Central Government goes ahead with formulating a special central law on the subject of 'forced conversion,' all the problems and issues regarding the state-enacted anti-conversion laws must be taken into consideration. The special law should be in accordance with the fundamental rights guaranteed under the constitution. The law should not appear to be arbitrary or targeting a particular community in furtherance of political motives or ideologies.<sup>7</sup>

## **2. Conclusion**

Right to convert should be the part of the Article 21(i.e. Personal life and liberty) , any person wilfully converting his religion due to change in his religious belief and faith should not be stopped doing so as India is a democratic country and people of the democratic country should not be deprived of their Freedom of conscience.

If the person is forcefully converted to another religion by means of coercion, undue influence, misrepresentation, fraud or for the marriage purpose then such conversion should be null and void and proper legal action should be taken against such forceful conversion by the appropriate authority.

### **Declaration**

This is to declare that the Article titled as Right to convert is not included in right to freedom of religion- is bonafide work submitted at New Law College, Pune is an outcome of my work and is undertaken by me. I, further declare that present work is bonafide one and outcome of my own efforts, this article or any part thereof, has not been submitted in part or full to this or any other university for any degree or diploma or any similar title.

## **References**

- [1] <https://thewire.in/law/right-to-freedom-of-religion-doesnt-include-fundamental-right-to-convert-union-govt-to-sc>

- [2] <https://www.thequint.com/news/law/government-says-right-to-religion-doesnt-include-right-to-convert-but-is-that-true#read-more>
- [3] <https://blog.ipleaders.in/right-to-freedom-of-religion-articles-25-28/>
- [4] <https://theleaflet.in/a-pan-indian-law-against-forced-conversions-should-respect-right-to-privacy-and-not-appear-to-be-arbitrary/>
- [5] <https://www.business-standard.com/about/what-is-love-jihad-law>
- [6] Constitutional Law of India - Dr. J.N Pandey

<sup>7</sup> <https://cprindia.org/journalarticles/evaluating-indias-new-anti-conversion-laws/>