

LEGAL THRESHOLDS ON RELIGIOUS CONVERSIONS IN INDIA

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ABSTRACT

The Indian debate over religious conversion has been going on for centuries. However, mutual understanding between conversion supporters and opponents has not advanced much. Religious conversion has become the subject of passionate debate in contemporary India. From the early 20th century onwards, it has surfaced again and again in the political realm, in the media, and in the courts. During the last few decades, the dispute has attained a new climax in the plethora of newspapers, journals, and books whose pages have been devoted to the question of conversion. Apparently, a large group of Indians considers this to be an issue of crucial import to the future of their country. This paper examines the issue of religious conversion in the light of existing constitutional provisions, judicial pronouncements, and secularism.

INTRODUCTION

Religion is a set of beliefs that ties people to what they consider to be transcendent through the integration of culture, teachings, rituals, life experiences, and artistic representations. Religion has two sides that, on the one hand, divide the world and, on the other, integrate it in unique ways. However, religion has always been a challenging topic to discuss. Religion in India is considered quite differently than it is in the rest of the world. In India, religion is more of a sentimental concern than a social, political, or economic one. Religion has a strong influence on political battles also. India has been well-known for its rich culture, language, and religious diversity. It is the cradle of four major religions- Hinduism, Buddhism, Jainism, and Sikhism. According to reported 2011 census data, 79.80% of the population of India is Hindu, 14.23% Muslim, 2.30% Christian, 1.72% Sikh, 0.70% Buddhist, and 0.37% Jain.ⁱ

RIGHT TO FREEDOM OF RELIGION IN INDIA

The Indian Constitution clearly states that India is a secular state, and it further strengthened the idea of secularism by granting Freedom of Religion to its citizens as a fundamental right, as enshrined in Articles 25-28 of the Constitution. The limitations placed on this freedom have been discussed by the apex court in the following words:

*Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. Both in the American as well as in Australian Constitutions the right to freedom of religion has been declared in unrestricted terms without any limitation whatsoever. Limitations, therefore, have been introduced by courts of law in these countries on grounds of morality, order and social protection. Our Constitution-makers, however, have embodied the limitations which have been evolved by judicial pronouncements in America or Australia in the Constitution itself and the language of articles 25 and 26 is sufficiently clear to enable us to determine without the aid of foreign authorities as to what matters come within the purview of religion and what do not.*ⁱⁱ

Furthermore, the Indian state has the authority to regulate matters incidental to religion, or secular activities associated with religious practices, but it is not permitted to interfere with religious matters themselves. What the state can regulate under article 25(2)(a) are activities

that are truly economic, commercial, or political in nature, even if they are associated with religious practices.ⁱⁱⁱ And religious denominations have been granted the right to establish and maintain institutions for religious and charitable purposes, to manage their own religious affairs, to own and acquire movable and immovable property, and to administer such property in accordance with the law.^{iv}

To summarise, the Indian position on religious freedom requires the state to refrain from interfering in religious matters, with the only permissible interference being in matters incidental to religion. This is a sketch of Indian secularism. It will be interesting to see how this skeletal model reacts when life and blood are infused into it. It is important to note that secularism was a late entrant to the Indian constitution and several attempts have been made to strengthen secularism in India.

The concept of 'Secularism' was not included in the Constitution from its inception, but it was later incorporated into the basic structure of the Constitution through the 42nd Amendment in 1976. As a result, the word "secular" was added to the Constitution's Preamble. However, in a landmark judgment, *S.R. Bommai v. Union of India*^v, the Supreme Court of India upheld that India was always a secular state since the constitution's inception. The Indian Constitution guarantees citizens the right to peacefully practice and professes their religion. Nonetheless, despite the religious freedom guaranteed by our Constitution, there have been numerous incidents of religious intolerance that have resulted in riots and violence, most notably the 1984 Anti-Sikh riots in Delhi, the 1990 Anti-Hindu riots in Kashmir, the 2002 Gujarat riots, and the 2008 Anti-Christian riots.

RELIGIOUS CONVERSION

Religious conversion is the acceptance of a set of beliefs associated with one religious denomination at the expense of others. Thus, "religious conversion" would refer to abandoning one denomination and affiliating with another. India does not have a state religion, nor does it favour any one faith. Religion is essentially a question of personal preference, faith, or a set of beliefs. According to Webster's Comprehensive Dictionary, Religion is a belief that connects man's spiritual essence to a supernatural being, involving a sense of dependency and obligation,

as well as the feelings and actions that naturally emerge from such a belief. Everyone should be free to practice their preferred religion. The Indian Constitution guarantees everyone the right to profess, practice, and propagate any religion. Religious conversion is one of the most contentious issues in society and politics, and it is defined as the adoption of another religion or set of beliefs at the expense of others, i.e. renouncing one religion and adopting the other. There are various reasons for why people do convert their religion like:

- Voluntary Conversions i.e. conversions by free choice or because of a change of beliefs.
- Forceful Conversions i.e. conversions by coercion, undue influence, or inducement.
- Marital Conversions i.e. conversions due to marriage.
- Conversion for convenience.

Religious conversions in India have been mentioned in ancient history literature. For example, when Brahmanism was spread in India, many others, such as Ashoka the Great and Mahavira, promoted Buddhism and Jainism. Emperor Ashoka dispatched ambassadors to various parts of the country and foreign kingdoms, and he himself went on religious pilgrimages to encourage others to practice Buddhism. Islam spread after the arrival of the Mughal emperors. Sikhism also emerged in the 15th century. Christianity in India dates back to around 48 AD, when Saint Thomas, the Apostle, arrived. Christianity was also promoted by the British government. Conversion has been common in India since time immemorial, some by choice and others due to threats.^{vi} In this modern age of science and technology, this has continued even today.

LEGAL PROCEDURE FOR RELIGION CONVERSION IN INDIA

Changing one's religion is not governed by any law. In a slew of cases, the Supreme Court has ruled that conversions do not require any special legal requirements, formalities, religious rituals, or ceremonies. In *Perumal Nadar (dead) by Legal Representative v. Ponnuswami Nadar (minor)*^{vii}, it was held that no formal ceremony of purification or expiration is necessary to effectuate conversion. In this case, the court held that no formal ceremony of purification or expiration is necessary to effectuate conversion.

With good faith, anyone can convert to another religion. A simple declaration, whether oral or written, does not constitute conversion. Credible evidence of a desire to convert, followed by specific overt acts to put that desire into action, is required.^{viii} A genuine intention, accompanied by subsequent actions unequivocally expressing that intention, would suffice to conclude that genuine conversion occurs.

Once the conversion of religion has taken place then it has to be notified in Government Gazette so that the converted religion can be mentioned in all the legal documents too. In *Kailash Sonkar v. Smt. Maya Devi*^{ix}, Supreme Court adopted the same approach for reconversion. In case if clergy wants to convert his religion, he can do so with the permission of the district magistrate. The absence of any statutory provision creates a legal vacuum that puts the burden on the Registration Officer to take a decision on whether the conversion that took place is genuine or not.

Anybody who is interested in the conversion of religion may do so by complying with the personal law of that religion. The various personal laws provide the rituals which need to be performed in a specified manner at the time of conversion. Anyone who wishes to convert to another religion may do so by following the personal law of that religion. The various personal laws specify the rituals that must be performed during the conversion process.

THE IMPACT OF RELIGIOUS CONVERSION

If a person converts to Islam from a non-Islamic faith for the purpose of polygamy, the conversion is not valid. In India, neither Islam nor the law recognises such conversion. In the case of *Sarla Mudgal v. Union of India*^x, a married Hindu male converted to Islam in order to marry again, as polygamy is permitted in Islam. The Supreme Court ruled that conversion to another faith Ipso-facto does not dissolve the first marriage because no one is permitted to profit from his own mistake. Furthermore, the court ruled that a married person who converts to Islam is not permitted to marry another woman after conversion. It was ruled that the second marriage was void because it violated Section 17 of the Hindu Marriage Act of 1955 and was punishable under Section 494 of the Indian Penal Code.

The court stated in *Vilayat Raj v Smt. Sunita*^{xi} that if both parties to the marriage were Hindu at the time of marriage, pre-nuptial law, i.e. Hindu Marriage Act, applied even after conversion to Islam. In *Lilly Thomas v Union of India*,^{xii} it was decided that an apostate husband is guilty of bigamy under Section 494 of the Indian Penal Code if he marries another woman after converting to Islam. It was determined that convicting such a person of bigamy is not a violation of religious freedom under Article 25 of the Constitution, and thus Section 17 of the Hindu Marriage Act, 1955 is applicable.

Following the pronouncement of the aforementioned judicial verdicts, it is clear that polygamy is no longer a valued person for religious conversion into Islam.

A person does not cease to be a Hindu simply because he declares his disbelief in his religion. Even if a person does not practice his religion, he is still a Hindu until he renounces his religion, begins living and behaving like an atheist or agnostic, begins eating beef, or insults God or Goddesses. He does not cease to be a member of the religion even if he begins to express his faith in another religion; he remains a Hindu. *Chandra Shekharan v. Kulundurivalu*^{xiii}.

If a person converts from Hinduism to Sikhism, Buddhism, or Jainism, he does not lose his Hindu identity because all of these religions do not fall outside the definition of 'Hindu' in the relevant section of the Hindu Marriage Act. He ceases to be Hindu if he converts to Islam, Christianity, Jews, or Zoroastrianism; conversion into these religions is grounds for divorce for the other spouse, not the spouse who converts^{xiv}. If the husband converts to a non-Hindu faith, the wife is entitled to live separately without forfeiting her right to maintenance under Section 80 of the Hindu Adoption and Maintenance Act, 1956; however, if she herself ceases to be Hindu, she loses her claim to maintenance under the section; however, she is entitled to pendente-lite and permanent alimony under Section 24 of the H.M.A in 1955. The Special Marriage Act of 1954 reflects the true spirit of Indian secularism because it is compatible with India's diversity and multiplicity of religious faiths. Conversion has no effect on matrimonial ties because the Act is secular legislation that contemplates inter-caste and inter-religious marriages.

The Indian Divorce Act of 1869 states that if the husband converts to a non-Christian faith, the wife is entitled to a divorce, but vice versa is not possible. If the wife converts to a non-Christian faith, the husband cannot file for divorce. According to Section 4 of the Dissolution of Muslim

Marriage Act of 1939, if a wife renounces Islam, the marriage does not Ipso-facto dissolve unless the circumstances warrant otherwise.^{xv} From these laws, we can understand that most of these laws are aimed to keep the low-caste Hindus within the fold of Hinduism. And so while the law prohibits conversion, 're-conversion' of low caste Hindus is permissible.

REASONS FOR CONVERSION

Why do people convert? Many disciplines, including psychology, sociology, and theology, have addressed this issue, but not law. Law only considers the legality or illegality of the reasons, not the reasons themselves. Nonetheless, it is necessary to briefly mention the various reasons that precede conversion.

"Relative deprivation"^{xvi} is one of the most important factors credited with motivating people to convert to another religion. Various social studies on conversion conducted in the 1960s and 1970s reveal that economic, social, moral, spiritual, and psychological deprivation has been described as the primary motivator for a person's decision to change religious identities.^{xvii} Most importantly, attraction to other religions may be the result of brainwashing or coercive persuasion.

CONCLUSION

Human beings are embedded in their immediate social, economic, political, cultural contexts. Are they absolutely free to do as they choose or the freedom is to be exercised within societal bounds, that is the question. Freedom of religion is listed as one of our essential rights in the Indian constitution, and religious conversion is legal in India. Changing religion (due to personal conviction, marriage, or divorce) is permissible in India as long as the decision is made voluntarily and without coercion or force.

ENDNOTES

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- ⁱ <https://censusindia.gov.in/census.website/> (Visited on 25.10.2022 at 12.22 PM).
- ⁱⁱ The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, AIR 1954 SC 282.
- ⁱⁱⁱ Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388.
- ^{iv} Article 26 of The Constitution of India.
- ^v AIR 1994 SC 1918
- ^{vi} <https://www.mapsofindia.com/my-india/society/conversions-to-what-extent-freedom-of-religion-holds-true-in-india> (Accessed on 16.03.2022 at 11.07 AM).
- ^{vii} AIR 1971 SC 2352
- ^{viii} 235th Law Commission Report on Conversion/ Reconversion to Another Religion.
- ^{ix} AIR 1984 SC 600.
- ^x AIR 1995 SC
- ^{xi} AIR 1983 SC
- ^{xii} AIR 2000 SC
- ^{xiii} AIR 1963 SC 185
- ^{xiv} Sec.13, Hindu Marriage Act ,1955
- ^{xv} https://www.legalserviceindia.com/articles/rel_rel.htm (accessed on 16.03.2023 at 10.06 AM)
- ^{xvi} H.A. Baer *A field perspective of religious conversion: The Levites of Utah* , 19(3) Review of Religious Research 279 (1978)
- ^{xvii} C.Y. Glock ,*The role of deprivation in the origin and evolution of religious groups* ,In R. Lee and M.E. Marty (Eds.), Religion and social conflict: Based upon lectures given at the Institute of Ethics and Society at San Francisco Theological Seminary 24-36 (OXFORD University Press, New York,1964)