



Religious Practice In India And The Issues Of Forceful Conversions: An Analysis With Reference To Indian Constitution

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Abstract

In order to maintain public order and to safeguard the larger interests of society, many states have passed laws that regulate conversion from one religion to another and prohibit conversion through methods that offend the community's conscience. These laws were implemented in accordance with the framework of our Constitution. In their zeal to protect "indigenous religions," it appears that some of them have gone so far as to put an end to religious freedom. The goal of the current study is to determine whether or not the provisions of these laws are consistent with the freedom of religion guaranteed by Article 25 of the Constitution and other pertinent clauses, or if the right to freedom of religion has actually been curtailed.

Key words: Untouchability, Freedom of conscience, Preferred Religious.

INTRODUCTION

Religion has consistently played a key role in Indian culture, much as in other traditional communities, even as India has transitioned into a democratic state. The assertion that "In the context of India, religion does not constitute one of the components, such as politics, economy, social structure, education, and law, that can be likened to pieces of a pie when considering life" is being made. Religion, on the other hand, is a ubiquitous element present in every aspect of life. India, known for its rich religious heritage, not only gave birth to many religions but also provided refuge to other religions that migrated from different parts of the world. Collectively, these religions and their followers have had a substantial influence on shaping contemporary, non-religious India. In line with the constitutional assurance, individuals are granted the freedom to openly express, observe, and propagate their religious beliefs, provided it does not disrupt public ethics, well-being, or stability. According to our constitutional structure, this freedom can also be restricted in order to eradicate untouchability, advance social welfare, and bring about change. The restrictions imposed on the freedom of conscience and its associated rights not only reveal the possible conflicts of interest that may arise when exercising religious freedom in diverse India, but also clearly demonstrate the founders of our Constitution's intention to maintain absolute harmony, allowing all religions to peacefully coexist without hindering social harmony or the progress of the nation. Although our Constitution guarantees religious equality and freedom, it specifically states that these rights are subject to the greater benefit of society.

Despite the secular basis on which the Constitution of India was built, it seems that the Indian people still value religion more than the ideals of secularism. Religion remains a subject of disagreement in our non-religious country. The challenges our society is encountering stem from the concerted endeavors of certain religious factions to propagate their beliefs. An inherent challenge with religious freedom is the issue of religious conversion, which creates conflict between inter-religious communities and their followers.

The constitution of the country ensures that all individuals in India, regardless of their religious affiliation, are entitled to the freedom of religion. The term "freedom of conscience" pertains to an individual's entitlement to exercise any religious belief of their choosing, or to abstain from any practices altogether. Conversely, "freedom to disseminate" pertains to the liberty, with some limitations, to communicate or propagate one's religious beliefs by presenting its core principles or personal perspectives and convictions. Maintaining harmony between the two is difficult unless they are understood in the correct context and interpreted accurately. Furthermore, when followers of any religion declare their entitlement to freedom of dissemination, this encompasses the liberty to persuade others to adopt their beliefs using any method they see appropriate. To safeguard the wider welfare of society, it is justified for the government to intervene and impose restrictions on the utilization of these freedoms. Furthermore, as our constitutional structure directly connects these freedoms to the wider concerns of society, such government interference has been regarded as.

CONSTITUTIONAL FRAMEWORK OF RIGHT TO FREEDOM OF RELIGION IN INDIA

In accordance with the supreme legislation of the nation, the framers of the Constitution bestowed upon themselves, "we the people of India," the essential entitlements and governing principles of state policy in order to establish a fair and equitable societal structure, including all sections of the population. The Indian Constitution includes the principle of religious equality as a basic component of egalitarianism. The fundamental tenets of secularism encompass the notions of religious tolerance and reverence for all religious communities. An essential basis for the creation of the Indian Constitution is the presence of a secular foundation. While the term "secularism" was not explicitly included in the original Constitution of 1950, the ideals of secularism were integrated into several sections of the text, such as the preamble, basic rights, and guiding principles for governance. Articles 25, 26, 27, and 28 provide protection for various components of the right to freedom of religion while also incorporating inherent limitations and restrictions.

THE PURPOSE AND AMBITION OF RELIGIOUS FREEDOM

Both the passive and productive aspects of secularism are encompassed under the Indian Constitution. The Constitution mandates governmental neutrality in religious affairs, making it passive in nature. India, being a secular nation, does not have an official state religion or a favorite religion. There is a fundamental element of religious tolerance present. India is not a secular state. For the unhindered growth of any religion, it is imperative to uphold equal respect for all religious groups. This entails providing safety, freedom to practice, profess, and propagate religion, as well as the freedom to govern religious matters. These are among the advantageous characteristics of secularism. The Indian Constitution's dedication to secularism is explicitly stated in Articles 25, 26, 27, and 28. For the sake of ease, the comprehensive scope of these regulations may be analyzed across many categories.

Article 25 of the Indian Constitution pertains to the fundamental principles of religious liberty, encompassing the right to have personal beliefs and the ability to openly express, practice, and promote one's religion. It is the primary and essential right among a set of interconnected rights pertaining to religious freedom. The text indicates the number "25." (1) Every individual possesses the entitlement to exercise their religious beliefs and express, observe, and disseminate their religion without restraint, while considering public order, morality, and health, as well as other stipulations outlined in this Article.

(2) This article does not impede the functioning of any current law or prohibit the state from passing laws that (a) control or restrict any economic, financial, political, or other non-religious activity that may be associated with religious practices; (b) advance social well-being and improvement; or (c) allow Hindu religious institutions that are accessible to the public to be open to all classes and sections of Hindus.

Similarly, when referring to Hindu religious organizations, the same interpretation applies. Article 25 of the Constitution guarantees every individual, regardless of their citizenship status, the fundamental rights to freedom of conscience and the ability to openly express, observe, and advocate for their religious beliefs. Nevertheless, the Constitution does not specifically provide these liberties. They are bound by the following laws: The restrictions on religious practice include: (i) maintaining public order, morality, and health; (ii) upholding other provisions in Part III or other fundamental rights; (iii) complying with any current or future laws that regulate or limit economic, financial, political, or other non-religious activities connected to religious practice; and (iv) adhering to any current or future laws that promote social welfare and reform.

ADDITIONAL DIMENSIONS OF RELIGIOUS FREEDOM

As previously determined, the constitutional assurance of freedom of religion encompasses more than only the rights of free expression and the ability to declare, practice, and propagate one's religious beliefs. Each religious sect or subdivision has been given the liberty to: (a) create and sustain institutions for religious and philanthropic purposes; (b) govern its own religious matters; (c) own and get property; and (d) oversee such property in accordance with the law. These liberties are subject to limitations imposed by law, morality, and health. Furthermore, Article 27 provides a provision that allows for the exclusion of tax payments on earnings that are explicitly allocated for the purpose of supporting or upholding a certain religion or religious group.

Article 28 imposes a constructive limitation on the dissemination of religious beliefs or principles inside educational institutions. Consequently, several educational institutions impose limitations on the teaching of religion as well as the right to participate in religious instruction or worship. The Constitution mandates that no religion teaching be provided in any educational institution that is fully funded by the state. Moreover, the right to participate in religious teaching or worship is provided under Paragraph 3 of Article 28 in various educational establishments.

Providing religious teaching using public monies in India, a secular nation, would contradict its secular principles if such training promotes conversion from one faith to another. The probable rationale behind the extensive prohibition on offering religious education at educational institutions that are fully funded by the state. The purpose of this is to ensure that public institutions, which are fully funded by public monies, preserve complete religious neutrality. Clause (3) justifies the freedom to attend religious instruction or worship in educational institutions recognized by the state or receiving state funds by highlighting the risk of students being unduly influenced to change their religious beliefs in such institutions. Moreover, the utilization of compulsion or excessive persuasion would infringe upon an individual's "freedom of conscience," which serves as the fundamental basis for religious liberty. Article (3) does not explicitly prohibit the provision of religious instruction. Instead, it merely guarantees the freedom to choose whether to participate in religious teaching or religious service.

LEGISLATIVE COMPETENCE TO REGULATE FREEDOM OF RELIGION:

Within our constitutional system, the Union and State legislatures possess separate and independent legislative jurisdiction. Article 245 of the Constitution addresses the geographical extent in which legislation enacted by Parliament and State Legislatures are applicable. The constitutional provisions regarding the legislative authority of both the Parliament and State legislatures are outlined in Article 246. This article is pertinent to the present issue since it addresses the subject matter jurisdiction of enacting legislation. Schedule VII comprises three distinct lists, each delineating a separate area of legislative subjects. Under Clause (1) of Article 246, the Parliament possesses the jurisdiction to enact legislation concerning the subjects enumerated in List I, often known as the Union List. As per Article (3), the exclusive power to pass laws related to any of the subjects included in List II, also known as the State List, is with the State legislatures, with the exception of Clauses (1) and (2). Article 246's Clause (2) grants the authority to both the Union and State Legislatures to enact legislation pertaining to any of the subjects included in List III, also known as the Concurrent List. However, according to Article 254 of the Constitution, the laws of the Union have priority over the legislation of the States in the event of a conflict. Hence, the design confers the Parliament with exclusive and superior jurisdiction to enact laws pertaining to any of the entries included in Schedule VII, save for those specified in List II. Therefore, the prohibited domain for the Centre is any subject that falls exclusively under the jurisdiction of the States.

Despite the intricate structure of assigning legislative jurisdiction among three lists in the Indian Constitution, the concept of "religion" is not encompassed under any of these categories. The profession, practice, and promotion of religion, along with any other activities primarily associated with religion, can nevertheless be regulated even without a specific statutory requirement. The Constitution's allocation of legislative authority grants the Union Legislature the right to handle situations that fall under the category of "residuary legislative power". Residuary authority has a very broad range. In order to exercise residual legislative authority, it is necessary to establish, with a high degree of certainty, that the State legislature is incapable of enacting laws. Consequently, the Parliament has the authority to enact comprehensive laws that address many areas of "religion" as specified in List II under Article 248, in conjunction with entry 97 of List I in Schedule VII. Undoubtedly, Union law may potentially tackle the issue of religious conversion.

Article 25 guarantees the right to freedom of religion, although this right is not absolute. It is limited by considerations such as public order, morality, and health. The freedom of religion is contingent upon two crucial factors, namely "public order" and "public health," which are specifically enumerated in items 1 and 6 of List - II of Schedule VII. As previously mentioned, Clause (2) of Article 246 grants exclusive legislative power to the State legislature to pass laws for the purpose of promoting public order and health. However, this authority is subject to the limitations outlined in Clauses (1) and (2). The prevailing principle for interpreting legislative entries is that they should not be interpreted narrowly or pedantically. Instead, they should be given the broadest and most liberal interpretation possible. Additionally, each general word in an entry should be understood to include all related and subsidiary matters that can be reasonably considered to be encompassed by it. Therefore, the State legislature possesses the power to pass laws to regulate any actions that, in its judgment, are likely to disrupt public order or have an adverse effect on public health. If the exercise of the right to profess, practice, and propagate religion is likely to disturb public order or harm public health, the State legislature has the authority to enact laws to regulate it. Such State law is *intra vires* as long as it specifically targets maintaining public order or defending the people's health.

CONCLUSION

Before the nation achieved independence, some princely kingdoms implemented restrictions that prohibited conversion. After the country gained independence, some states enacted comparable legislation in an effort to prohibit conversions that were conducted via coercion, deception, or enticement. Further examination of the latter is necessary, but not of the former. Conversion has never been prohibited in British India due to the fact that the British, who were adherents of a religion that promoted conversion, were themselves part of the ruling class. Conversely, some monarchies have adopted regulations that resemble these. Notable legislations include the Rajgrah State Act of 1936, the Patna Freedom of Religion Act of 1942, the Surguja State Apostasy Act of 1945, and the Udaipur State Anti-Conversion Act of 1946. All of these laws were enacted in the state of Udaipur. Bikaner, Jodhpur, Klahanadi, and Kota are among the cities that have enacted comparable legislation. Strongly against the idea of embracing Christianity.

The Rajgrah State Conversion Act, enacted in 1936, was the inaugural legislation specifically designed to restrict conversion. Moreover, this edict prohibited the dissemination of Christianity and the entry of Christian missionaries into former Kingdom of Chhotanagpur areas such as Rajgrah, Jodhpur, Surguja, and others. The Surguja State Apostasy Act of 1945 was the second legislation that prohibited Hindus from embracing Islam or Christianity. This was achieved by granting the Rajas' Darbar the power to authorize or forbid conversion in order to maintain law and order and promote public peace. Under the Udaipur State Conversion Act of 1946, it was mandatory to have written documentation for all conversions from Hinduism to other religions. This was similar to the last example. The primary impetus behind implementing these rules was to safeguard Hindus against the expansion of Christian missionary endeavors. The vast majority of these legislative measures mandated individuals who had undergone religious conversion to officially record their conversion with different governmental entities. If an individual was converted by the use of deceptive methods, such as deceit, coercion, intimidation, undue influence, or any other tactics, legal penalties would be imposed. Individuals under the age of majority are ineligible for conversion, and the children of converts do not automatically embrace their parents' newly adopted religion. Transfers between individuals under the age of majority are prohibited. Consequently, Hindu monarchs who governed princely countries endeavored to enforce legal restrictions on persons'

conversion to different religions.

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