



#MINORMATTERS

INDIAN CASE LAW ON RELIGIOUS FREEDOM RELATED ISSUES

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Rev. Stainislaus V. State Of Madhya Pradesh & Ors (977 AIR 908, 1977 SCR (2) 611) Decided on 17th January 1977

The Madhya Pradesh Dharma Swatantraya Adhinyam Act 1968, which prohibits forcible conversions and penalises such conversions, was challenged in the Madhya Pradesh High Court and the Court upheld the validity of the Act. A similar anti-conversion Act known as the Orissa Freedom of Religion Act, 1967 was challenged in the Orissa High Court. In this instance the Court stated that Article 25(2) of the Indian Constitution provides for the propagation of religion and that conversion is an integral part of Christianity, and therefore that the State Legislature has no power to enact this legislation.

Thereafter, both were brought before the Supreme Court of India. The Supreme Court had to decide whether:

- a) these two Acts were in violation of the Fundamental Right guaranteed in Article 25(1) of the Indian Constitution which reads that:
"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."
- b) the State Legislature was competent to enact these two Acts.

The appellants challenging the Acts argued that the right to propagate, included the right to convert, and hence, the right to convert a person was a fundamental right.

The Supreme Court however was of the opinion, that the right to propagate was the right to spread the teachings of one's religion and not the right to convert, as, if not, the fundamental right to conscience guaranteed to all citizens will be infringed. The Court made reference to the case of *Ratilal Panachand Gandhi v. The State of Bombay & Ors.* where it was held as follows:

"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."

Therefore, in this case the Supreme Court held that "It has to be appreciated that the freedom of religion enshrined in the Constitution is not guaranteed in respect of one religion only, but covers all religions alike...and there can therefore be no such thing as a fundamental right to convert any person to one's own religion."

With regards to the State Legislature's Competence, the appellants argued that these Acts amounted to the regulation of religion and therefore can only be enacted by the Central Legislature. However, the Supreme Court held that as these Acts sought to prohibit conversion through fraud, force and allurement, it amounted to the maintenance of public order and hence fell within the competence of the State Legislature and that freedom of religion guaranteed in the Constitution was subject to the maintenance of public order. The Supreme Court held that public order will be breached should communal tensions arise over conversions. The Court also made reference to the case of *Ramjilal Modi v. State of U.P.* where it was held that the right of freedom of religion guaranteed by Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health, and that "it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order".



Evangelical Fellowship of India and Act Now for Harmony and Democracy V. State of Himachal Pradesh (CWP No. 438 of 2011)

This was a writ application challenging the Himachal Pradesh Freedom of Religion Act, 2006 on the grounds that it was in contravention of certain provisions of the Indian Constitution, including Article 25, which provides for the freedom of religion.

The Court extensively looked at the judgment of the Supreme Court in the case of *Rev. Stanislaus versus State of Madhya Pradesh and others*, AIR 1977 Supreme Court 908.

One of the parties to the case argued including by using excerpts of an interview with Mahatma Gandhi, that conversions are against Hindu philosophy. The Court was of the view that whether conversions should not be permitted is not for the Court to decide and that the Court should restrict itself to legal submissions. Further, the Court stated that "Conversions in our country are permissible if the conversion is by the free will of the converttee. We are also of the opinion that each and every citizen has a right not only to follow his own belief but also has a right to change his beliefs."

Those opposing the Act argued that the definition of the words 'fraud', 'force' and 'inducement' were vague and liable to be misused. However, the Court stated that an Act cannot be struck down merely because it can be misused. Further, it was argued by those opposing this law that proselytization was an integral part of the Christian and Islamic religions and hence, that the State cannot restrict this. However, the Court responded that while there is a fundamental right to propagate, there was no fundamental right to convert. The Court reiterated that a person cannot be made to convert by way of fraud, force or inducement. The Act included provisions which stated that 30 days notice should be given to the relevant District Magistrate before conversion takes place and failure to abide by these rules can result in a penalty. However, no such notice was needed to revert to the former religion. At this juncture, the Court underscored each individual's right to privacy and the right to keep their beliefs secret.

The Court went on to pose these questions: "Why should any human being be asked to disclose what is his religion? Why should a human being be asked to inform authorities that he is changing his belief? What right does the State have to direct the converttee to give notice in advance to the District Magistrate about changing his rebellious thought?"

The Court was also cognizant of the consequences of an individual disclosing her belief: "We are of the considered view that in case of a person changing his religion and notice being issued to the so called prejudicially affected parties, chances of the converttee being subjected to physical and psychological torture cannot be ruled out. The remedy proposed by the State may prove to be more harmful than the problem."

Furthermore, the Court highlighted that a specific date cannot be put to when a person decides to convert, as it is a long drawn out process and hence requiring a notice 30 days prior to conversion was not feasible. The Court further stated that the stipulation that no notice need to be given if the person reverts to her original religion, lacked rationale. The Court stated that the fine of 1000 rupees would further inconvenience the poor who are the ones often susceptible to conversion by force, fraud or inducement, and that instead the law should deal with those who convert others using force, fraud or inducement.

Therefore, the Court struck down Section 4 (which stipulated that 30 days notice should be given and that the District Magistrate can enquire into conversions), Rule 3 (which stipulated that notice should be given to the District Magistrate where he is a permanent resident) and Rule 5 (if the District Magistrate opines that conversion has taken place through fraud, force or inducement without giving notice, the case can be referred to the police for registration of a case and investigation and the Magistrate can sanction prosecution). The other parts of the Act were held to be in force.



Chirag Singhvi V. State of Rajasthan & Anr (D.B. Habeas Corpus No. 149 / 2017) Decided on 15th December 2017

This case was concerning the alleged forcible conversion of Payal Singhvi belonging to the Jain community to Islam and the consequent marriage of Payal Singhvi to Faiez Modi belonging to the Islam faith.

Payal Singhvi's family who were the Petitioners, filed a writ of habeas corpus for Payal Singhvi to be produced in court and returned to them, and also argued that Payal Singhvi was forcibly converted. Reference was also made to the Rajasthan Dharma Swatantrya Act, 2006 which sought to regulate conversions and which at that time was pending the assent of the Governor and the President of India. The Petitioners therefore requested the Court to issue guidelines on conversion until this Act was brought into force. The Petitioners alleged that members of minority communities were targeting young girls belonging to the Hindu and Jain communities, forcing them to convert and thereafter solemnising marriages using forged documents.

However, the counsel for the Respondent stated that Payal Singhvi and Faiez Modi were friends since childhood and thereafter decided to get married, and hence a Nikah ceremony was held to solemnize the marriage, after Payal Singhvi voluntarily converted to Islam. Further, it was argued that Payal Singhvi's family was pressurizing her to end her marriage.

The Supreme Court noted that the conversion and the Nikah ceremony were concluded within 30 minutes and that the Moulawi obtained an affidavit from Payal Singhvi regarding her willingness to convert, having realised that she belonged to the Hindu community, though such an affidavit was not a necessary requirement.

The Court recognised that it has been given wide powers under Article 226 of the Constitution in issuing writs to corrective administration and therefore recognised the argument of the respondent that the Court cannot issue guidelines on this matter whilst the Act was still pending the assent of the Governor and the President. The court went on to state that "...we are of the firm opinion that there is no power left with the courts to legislate the law because it is the duty of the Legislature to frame the law to protect peace in the society because courts are having jurisdiction to interpret the law, so also, it is the duty of the court under Article 226 of the Constitution of India to protect the fundamental rights of the citizen of every religion because framers of the Constitution purposely included Article 25 of the Constitution of India in which provides right to freedom of religion..."

The Court was of the opinion that the framers of the Con-

stitution while granting the freedom of religion were also conscious of the fact that this freedom was subject to public order.

The Court went on to say that conversions only for the purpose of marriage were not true conversions and that such Acts were brought about to curb such conversions. Therefore, until the Legislature decides on whether the Act will be enacted or not, the Supreme Court decided that it has the power to issue guidelines on the subject. The Court stated that "Upon consideration of the entire facts and Articles 25 and 26 of the Constitution of India, we are of the opinion that right to freedom of religion is fundamental right, which cannot be curtailed in any manner. Every citizen has a right to follow the religion as per his will, but at the same time, it is the duty of the court to see that public order should not be disturbed due to forcible conversion of religion for the purpose of solemnizing marriage only." The Court went on to issue the following guidelines:

1. Religion can be voluntarily changed after attaining the age of majority.
2. Those who intend to convert should satisfy themselves about niceties of conversion of religion.
3. The voluntariness of the conversion should be ascertained by the authority/person, who facilitates the conversion ceremony, and any attempt at forceful conversion should be brought to the attention of the District Collector/SDO/SDM.
4. Information should be given to the District Collector/SDM/SDO of the concerned city and Sub-Divisional Area before conversion of religion by the person who wishes to convert.
5. The District Collector/SDM/SDO shall put such information upon the Notice Board of its office on the same day.
6. The Nikah ceremony can only be held after one week of conversion.
7. District Collector upon receiving information of forceful conversion shall take legal action.
8. Publication of change of religion can be made in the Gazette if so desired.
9. Any marriage in contravention of the above guidelines will be considered voidable.
10. The guidelines will remain operative until the Act of 2006 or any other act governing the subject matter came into existence in the State of Rajasthan.

The Court concluded however, that as Payal Singhvi and Faiez Modi are adults, the guidelines will not affect their rights and that they are at liberty to live their lives according to their choice.