



**IN THE SUPREME COURT OF INDIA**

**CIVIL ORIGINAL JURISDICTION**

**WRIT PETITION (CIVIL) NO ..... OF 2021**

**(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)**

**IN THE MATTER OF:**

**ASHWINI KUMAR UPADHYAY**

**...PETITIONER**

**VERSES**

**UNION OF INDIA & OTHERS**

**...RESPONDENTS**

**PAPER BOOK**

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**(ADVOCATE FOR PETITIONER: ASHWANI KUMAR DUBEY)**

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**SYNOPSIS & LIST OF DATES**

Petitioner is filing this writ petition as PIL under Article 32 seeking appropriate writ order or direction to Centre and States to control black magic, superstition and religious conversion by intimidating, threatening deceptively luring through gifts and monetary benefits. Religious conversion by *"carrot and stick"* and *"by hook or crook"* not only offends Articles 14, 21, 25, but also against the principles of secularism, which is integral part of basic structure of Constitution. Petitioner states with dismay that the Centre and States have failed to control the menace of black magic, superstition & deceitful religious conversion, though it's their duty under Article 51A.

Cause of action accrued on 10.5.1995, when Court directed to ascertain the feasibility of enacting Anti Conversion Law in Sarla Mudgal Case [(1995) 3 SCC 635, para-46] but Centre did nothing to stop deceitful religious conversions. It is necessary to state that Centre is empowered to make special provisions for the benefit of women and children under Article 15(3) and freedom of conscience, free profession, practice & propagation of religion under Article 25 is subject to public order, morality, health and other provisions of Part-III. Moreover, directive principles are affirmative instructions



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to the Centre to secure social, economic and political Justice; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity and to promote among them fraternity, assuring the dignity of individual, unity, and integrity. But, Centre has not taken steps to secure high ideals outlined in Preamble and Part-III. Incidents are reported every week throughout the country where religious conversion is done by intimidating, threatening, deceivingly luring through gifts and monetary benefits and by using black magic, superstition, miracles and hypocrisy but Centre has not taken appropriate steps to stop these menaces of society. It is necessary to state that under Article 51A, it is duty of the Centre to: abide by the Constitution and respect its ideals and institutions; uphold and protect unity and integrity; promote harmony and spirit of brotherhood; renounce the practices derogatory to dignity of women; value and preserve rich heritage of our composite culture; develop scientific temper, humanism & spirit of inquiry and reform; and strive towards excellence in all individual & collective activities.

The Directives are an amalgam of diverse subjects embracing the life of nation and include the principles, which are statements of socio-economic rights and policy. Article 46 directs the Centre to

take steps to protect SC-STs from social injustice and other forms of exploitation. Religious conversion by intimidating, threatening, deceivingly luring through gifts monetary benefits and by using black magic superstition is an injustice and exploitation.

India is a Socialist, Secular, Democratic, Republic having a vast majority of followers of Hinduism, Islam, Christianity etc. With reference to Human Rights, every individual is free to profess any religion of his choice. Article 25 secures religious freedom that *“all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health.”* Thus it's crystal clear that religious conversion by using miracles, superstition, black magic and hypocrisy is not protected under Article 25. Due to inaction of Centre-States, many individuals, NGOs and institutions are involved in conversion of poor people to other religions by intimidating, threatening, deceivingly luring through gifts and monetary benefits.

Article 18 of International Covenant on Civil-Political Rights protects individuals from coercion that affects freedom to choose religion. Article 18(2) States: *“No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or*

*belief of his choice.” Article 18(3) states that: “Freedom to manifest one’s religion or beliefs may subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others.”*

The Declaration on Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief under Article 1(2) also states that: *“No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.”* The 1981 declaration, passed by the UN General Assembly carries a significant influence as it is entirely devoted to religious freedom. It is further stated that the situation is alarming as many individuals and organizations are carrying mass conversions of SC-STs in rural areas. The mass religious conversion of socially and economically under privileged people, particularly belonging to the SC-ST is on a steep rise for the last two decades. These organizations operate very smoothly targeting the socially and economically underprivileged sections particularly belonging to the SC-ST community.

India is birthplace of Hinduism, Buddhism, Jainism, Sikhism; home to the third-largest Muslim population in the world and has provided a haven to the Jewish. Indeed, India welcomes all who

respect others' beliefs and ways of life e.g the Parsis. Hinduism has survived the onslaught of aggressive, supremacist faiths and nurtured religious pluralism and this must always be considered while questioning religious freedom in a country like India.

The intimidation and exploitation of the most vulnerable segments of society are primarily rooted in a surge of international conversion campaigns. In 2010 alone, Houston-based Central India Christian Mission 'proselytized' over 3,20,000 people and 'converted' over 19,600 in Central India. In October 2010, Joyce Meyer Ministries (an International NGO based in Fenton, Missouri) conducted one-week medical outreach in Kolkata in which over 2,200 people were treated and 1,300 people were converted. At Source Light Ministries (an International NGO based in South Africa), 25 child evangelists and 100 "church planters" are trained monthly. Church planting is a process that results in a new (local) church being established.

Several unethical predatory conversion strategies are commonly used. One method is material enticement in which humanitarian aid or economic, educational, medical or social assistance is offered on the condition that the person converts.



Another is the denigration of the person's religion to make a new religion appear superior. A third unethical, a predatory method is the promotion of 'bigotry' i.e. knowingly and intentionally promoting religious hatred & violence. Predatory proselytization tears apart the fabric of the communities where it occurs and has led to the annihilation of cultures.

The power conferred by Article 32 of the Constitution of India is in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constrained to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to *"forge new tools and device new remedies"*.

For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may

be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by the Supreme Court. Being the protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by part-III in general and under Article 21 in particular, zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. **[ML Sharma (2014) 2 SCC 532]**

It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the 'right' and 'power', but the 'duty' and 'obligation' of the Court to ensure that the petitioners fundamental right is protected and safeguarded. **[Ramchandran, Law of Writs, 6<sup>th</sup> Edition, 2006, Pg. 131, Vol-1]**

The power is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as

the other phrase "of the nature of". The former emphasis as essential in nature, latter is content with mere similarity. (2006) 8 SCC 2012] Supreme Court cannot refuse an application under Article 32, merely on the grounds: (i) that such application have been made to Supreme Court in the first instance without resort to the High Court under Article 226 (ii) that there is some adequate alternative remedy available to petitioner (iii) that the application involves an inquiry into disputed questions of fact / taking of evidence. (iv) that declaratory relief i.e. declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for (v) that the proper writ or direction has not been paid for in the application (vi) that the common writ law has to be modified in order to give proper relief to the applicant. [AIR 1959 SC 725 (729)] (vii) that the article in part three of the Constitution, which is alleged to have been infringed, has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke particular article. [PTI, AIR 1974, SC 1044]

Article 32 of the Constitution provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right

because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory processes of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Court is the protector defender & guarantor of fundamental rights of the people. It was held: *"the fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself."* [AIR 1961 SC1457].

In another case, the Supreme Court held: *"the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In*



*discharging the duties assigned to it, the Court has to play the role of a "sentinel on the qui vive" and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly."* [Prem Chand Garg, AIR 1963 SC 996].

Language used in Articles 32 and Article 226 is very wide and the powers of the Supreme Court as well as of the High Court's extends to issuing orders, writs or directions including writs in the nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ are observed [AIR 1954 SC 440].

An application under Article 32 of the Constitution cannot be thrown out simply because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is

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sought in a particular form, nothing bars the Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. [AIR 1951 SC 41] Even if petitioner has asked for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to [Rambhadriah, AIR 1981 SC 1653].

The Supreme Court has power to grant consequential relief to do full and complete justice even in favour of those persons who may not be before the Court or have not moved the Supreme Court. [AIR 1985 SC 167]

For the protection of fundamental right and rule of law, the Court under this article can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of a special nature. [Paramjit Kaur, AIR 1999 SC 340]

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Simply because a remedy exists in the form of Article 226 for filing a writ in High Court, it does not prevent or bar an aggrieved person from directly approaching the Supreme Court under Article 32. It is true that the Court has imposed a self-restraint in its own wisdom on the exercise of jurisdiction where the aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative remedy is a rule of convenience and a matter of discretion rather than rule of law. It does not oust the jurisdiction of the Court to exercise its writ jurisdiction under Article 32. [ (2009) 12 SCC 748]

The Supreme Court is entitled to evolve new principle of liability to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person. It was held that the court was not helpless and the wide powers given to the Court by Article 32 of the Constitution, which is fundamental right imposes a constitutional obligation on the Supreme Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables award of monetary compensation in appropriate cases, where that is the only redress

available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the wherewithal for enforcement of their right in private law, even though its exercise is to be tempted by judicial restraint to avoid circumvention of private law remedies, which are more appropriate. Under Article 32, the Court can pass appropriate orders to do complete justice between parties even if it is found that writ petition filed is not maintainable in law. [Saihba Ali, (2003) 7 SCC 250]

15.5.1995: The Supreme Court passed the historic judgment in Sarla Mudgal Case and directed the Centre to ascertain the feasibility of enacting anti conversion law(s).

22.3.2021: There is not even one district in the Country which is free of black magic, superstition and religious conversion by the carrot and the stick. Many incidents are reported every week throughout the country where religious conversion is done by intimidating, threatening, deceivingly luring through gifts and monetary benefits but Centre has not taken appropriate steps to stop these menaces of our country till date. Hence this PIL in the larger public interest.

**IN THE SUPREME COURT OF INDIA****CIVIL ORIGINAL JURISDICTION****WRIT PETITION (CIVIL) NO .....OF 2021****(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)****IN THE MATTER OF:****Ashwini Kumar Upadhyay**

...Petitioner

**Verses**

1. Union of India  
Through the Secretary,  
Ministry of Home Affairs, North Block, New Delhi-110001,
2. Union of India  
Through the Secretary,  
Ministry of Law & Justice (Legislative Department)  
Shastri Bhawan, New Delhi-110001,
3. Government of Andhra Pradesh  
Through the Chief Secretary  
A.P. Secretariat Office, Velagapudi - 522503
4. Government of Arunachal Pradesh  
Through the Chief Secretary  
Civil Secretariat, Itanagar - 791111
5. Government of Assam  
Through the Chief Secretary  
Assam Sachivalaya, Dispur - 781006,
6. Government of Bihar  
Through the Chief Secretary  
Main Secretariat, Patna - 800015
7. Government of Chhattisgarh  
Through the Chief Secretary  
Mahanadi Bhawan, Mantralaya, Raipur - 492002
8. Government of Goa Secretariat  
Through the Chief Secretary  
Porvrim, Bardez, Goa - 403521
9. Government of Gujarat  
Through the Chief Secretary  
Sachivalaya, Gandhinagar - 382010

10. Government of Haryana  
Through the Chief Secretary  
Haryana Civil Secretariat, Sector-1, Chandigarh - 160019
11. Government of Himachal Pradesh  
Through the Chief Secretary  
H.P. Secretariat, Shimla - 171002
12. Government of Jammu & Kashmir  
Through the Chief Secretary  
Civil Secretariat, Jammu - 180001
13. Government of Jharkhand  
Through the Chief Secretary  
Project Building, Dhurwa, Ranchi- 834004
14. Government of Karnataka  
Through the Chief Secretary  
Vidhana Soudha, Bengaluru - 560 001
15. Government of Kerala  
Through the Chief Secretary  
Secretariat, Thiruvananthapuram - 695001
16. Government of Madhya Pradesh  
Through the Chief Secretary  
Mantralaya, Vallabh Bhavan Bhopal - 462004
17. Government of Maharashtra  
Through the Chief Secretary  
Main Building, Mantralaya, Mumbai - 400032
18. Government of Manipur  
Through the Chief Secretary  
South Block, Old Secretariat, Imphal-795001
19. Government of Meghalaya  
Through the Chief Secretary  
Rilang Building, Secretariat, Shillong - 793001
20. Government of Mizoram  
Through the Chief Secretary  
New Secretariat Complex, Aizawl - 796001
21. Government of Nagaland  
Through the Chief Secretary  
Civil Secretariat, Kohima- 797004
22. Government of Odisha  
Through the Chief Secretary  
Odisha Secretariat, Bhubaneswar - 751001

23. Government of Punjab  
Through the Chief Secretary  
Secretariat, Chandigarh - 160001
  24. Government of Rajasthan  
Through the Chief Secretary  
Secretariat, Jaipur - 302005
  25. Government of Sikkim  
Through the Chief Secretary  
New Secretariat, Gangtok - 737101
  26. Government of Tamil Nadu  
Through the Chief Secretary  
Secretariat, Chennai - 600009
  27. Government of Telangana  
Through the Chief Secretary  
Adarsh Nagar, Hyderabad-500063
  28. Government of Tripura  
Through the Chief Secretary  
New Secretariat Complex, Agartala-799010
  29. Government of Uttar Pradesh  
Through the Chief Secretary  
Lalbahadur Sastri Bhawan, Lucknow - 226001
  30. Government of Uttarakhand  
Through the Chief Secretary  
Subhash Road, Secretariat, Dehradun - 248001
  31. Government of West Bengal  
Through the Chief Secretary  
Nabanna, Sarat Chatterjee Road, Howrah - 711102
  32. Union Territory Andaman & Nicobar  
Through the Chief Secretary  
Secretariat, Port Blair - 744101
  33. Union Territory of Delhi  
Through the Chief Secretary  
Delhi Secretariat, IP Estate, New Delhi - 110002
  34. Union Territory of Puducherry  
Through the Chief Secretary  
Chief Secretariat, Puducherry - 605001.
  35. Law Commission of India  
Through the Chairman/Secretary  
Loknayak Bhawan, New Delhi-110003
- .....Respondents
- PIL TO STOP BLACK MAGIC, SUPERSTITION & DECEITFUL RELIGIOUS CONVERSION**

THE HON'BLE CHIEF JUSTICE  
AND LORDSHIP'S COMPANION JUSTICES  
OF THE HON'BLE SUPREME COURT OF INDIA  
HUMBLE PETITION OF ABOVE-NAMED PETITIONER  
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this writ petition as PIL under Article 32 seeking appropriate writ order or direction to Centre and States to control black magic, superstition and religious conversion by intimidating, threatening, deceivingly luring through gifts and monetary benefits. Religious conversion by "*carrot and stick*" and "*by hook or crook*" not only offends Articles 14, 21, 25, but also against the principles of secularism, which is integral part of basic structure of Constitution. Petitioner states with dismay that the Centre and States have failed to control the menace of black magic, superstition and deceitful religious conversion, though it's their duty under Article 51A.
2. The PIL is not guided by self-gain or for gain of any other person, institution or body. There is no other motive than public interest. Petitioner has no personal interest, individual gain, private motive or oblique reasons in filing this. It is bonafide with the sole purpose of larger public interest. The sources of averments made in this petition are personal knowledge and information collected from various sources, including newspapers and government websites.

3. The present petition is for the benefit of poor, economically weaker and socially-economically downtrodden sections of the society that particularly shall include the scheduled castes and scheduled tribes. They are incapable of approaching this Hon'ble Court themselves; hence, petitioner is filing this PIL to secure their right to life liberty and dignity, guaranteed under Articles 14 and 21 and right to freely profess the religion, guaranteed under Article 25 of the Constitution.
4. The Centre, States and Law Commission is likely to be affected by the orders sought in this petition and they have been impleaded as Respondents. No other persons, bodies and institutions are likely to be affected by the order/direction sought in this writ petition.
5. Petitioner's full name is Ashwini Kumar Upadhyay and the office is:

The petitioner is an Advocate, practicing in this Hon'ble Court and also a social-political activist striving for gender justice, gender equality and dignity of women and contributing his best for the development of socially politically and economically underprivileged sections of the society.

6. Petitioner has not filed any other petition either in this Court or in any other Court seeking same or similar direction as prayed.
7. Petitioner has not submitted any representation to Centre. There is no requirement to approach Centre for the relief sought in this PIL. There is no other remedy available, except approaching this Court.
8. Cause of action accrued on 10.5.1995, when Court directed to find out the feasibility of enacting Anti Conversion Law [para-46] but Centre did nothing to stop deceitful religious conversions. Judgment in Sarla Mudgal Case [(1995) 3 SCC 635] is **Annex P-1 (pg. 57-75)**
9. It is necessary to state that Centre is empowered to make special provision for the benefit of women and children under Article 15(3). Also, freedom of conscience, free profession, practice & propagation of religion under Article 25 is subject to public order, morality, health and other provisions of Part-III. Moreover, the directive principles are affirmative instructions to the Centre to secure social, economic and political Justice; Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity and to promote among them fraternity, assuring the dignity of individual, unity, and integrity. However, Centre has not taken appropriate steps to secure the high ideals outlined in Preamble and Part-III.

10. Injury caused to the public is extremely large because there is not even one district in the Country which is free of black magic, superstition and religious conversion by the carrot and the stick. Incidents are reported every week throughout the country where conversion is done by intimidating, threatening, deceptively luring through gifts and monetary benefits and by using black magic, superstition, miracles and hypocrisy but Centre has not taken appropriate steps to stop these menaces of society. It is necessary to state that under Article 51A, it is duty of the Centre to: abide by the Constitution and respect its ideals and institutions; uphold and protect unity and integrity of India; promote harmony and spirit of brotherhood; renounce the practices derogatory to dignity of women; value and preserve rich heritage of our composite culture; develop scientific temper, humanism & spirit of inquiry and reform; and strive towards excellence in all individual & collective activities.
11. Also, Centre-States are obligated under Article 46 to protect SC-ST community from social injustice and other forms of exploitation. Undoubtedly, religious conversion by intimidating, threatening, deceptively luring through gifts and monetary benefits and by using black magic and superstition is an injustice and exploitation.

12. India is a Socialist, Secular, Democratic, Republic having a vast majority of followers of Hinduism, Islam, Christianity & other faiths.

With reference to Human Rights, every individual is free to profess any religion of his choice. Article 25 secures religious freedom that *"all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health."* Thus it's crystal clear that religious conversion by using miracles, superstition, black magic and hypocrisy is not protected under Article 25. Due to inaction of Centre-States, many individuals, NGOs and institutions are involved in conversion of poor people to other religions by intimidating, threatening, deceptively luring through gifts and monetary benefits.

13. Article 18 of International Covenant on Civil-Political Rights (ICCPR) protects individuals from coercion that affects freedom to choose religion. Article 18(2) States: *"No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice."* Article 18(3) states that: *"Freedom to manifest one's religion or beliefs may subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedom of others."*

14. The 1981 Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion or Belief under Article 1(2) also states that: *"No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice."* The 1981 declaration, passed by the UN General Assembly carries a significant influence as it is entirely devoted to religious freedom.
15. It is further stated that the situation is alarming as many individuals and organizations are carrying mass conversions of SC-STs in rural areas. The mass religious conversion of socially and economically under privileged people, particularly belonging to the SC-ST is on a steep rise for the last two decades. These organizations operate very smoothly targeting the socially and economically underprivileged sections particularly belonging to the SC-ST community.
16. India is birthplace of Hinduism, Buddhism, Jainism, Sikhism; home to the third-largest Muslim population in the world and has always provided a haven to the Jewish people. Indeed, India welcomes all who respect others' beliefs and ways of life e.g the Parsis. Hinduism has survived the onslaught of aggressive, supremacist faiths and nurtured religious pluralism and this must always be considered while questioning religious freedom in a country like India.

17. The intimidation and exploitation of the most vulnerable segments of society are primarily rooted in a surge of international conversion campaigns. In 2010 alone, Houston-based Central India Christian Mission 'proselytized' over 3,20,000 people and 'converted' over 19,600 in Central India. In October 2010, Joyce Meyer Ministries (an International NGO based in Fenton, Missouri) conducted one-week medical outreach in Kolkata in which over 2,200 people were treated and 1,300 people were converted. At Source Light Ministries (an International NGO based in South Africa), 25 child evangelists and 100 "church planters" are trained monthly. Church planting is a process that results in a new (local) church being established.
18. Several unethical predatory conversion strategies are commonly used. One method is material enticement in which humanitarian aid or economic, educational, medical or social assistance is offered on the condition that the person converts. Another is the denigration of the person's religion to make a new religion appear superior. A third unethical, a predatory method is the promotion of 'bigotry' i.e. knowingly and intentionally promoting religious hatred & violence. Predatory proselytization tears apart the fabric of the communities where it occurs and has led to the annihilation of cultures.



19. Several evangelical groups have taken the challenge of evangelizing India: (a) A missionary group has started a movement to mobilize various new missionaries to reach and evangelize the unreached groups of people. (b) A Church planting movement is initiated, targeting the unreached masses. They are sending out numerous workers from different training centers. (c) Missionary groups are executing a plan to saturate India with the Gospel carrying the aim of planting village churches (Christ groups) at least in half of India's 6,00,000 villages through 5000 native missionaries. (d) Some evangelical group fund and oversee a daily evangelism and church planting work to the unreached villages of India. Their goal is to 'plant a church a day' targeting about 4,80,000 unreached villages.
20. Missionaries place tribal belt within the 'unfinished task' of evangelization. 'AD 2000 Beyond' is the world-wide evangelical movement that co-ordinates the work on such areas where people have not come under the influence of gospel. Among the unreached people, India's Hindi belt is focused as a core area. Every evangelical group is activated to take part in 'the great unfinished task' of world evangelization by forming a Church for every individual. Further those, to a missionary enthusiast, the Hindu teachings and the

Hindu world are perverted and implacable. According to the Christian missionaries, the cure and remedy to this disorder is the light of the gospel for the Hindus. Hence, the Church planting efforts are accentuated to convert the Hindus.

21. The tribal belts are mostly illiterate regions. According to IMA research statistics, the conditions of health, education, diet and drinking water are rated as poor among the tribals who inhabit these areas. These areas are the most socially backward. This social backwardness opens opportunities for missionaries to work among deprived classes for their socio-economic cultural and educational development and through that spread the message of the gospel which eventually results in conversion. A study was conducted in the tribal areas of Bastar, Bilaspur, Jagadalpur, Raipur and Sihora in Madhya Pradesh and Raigada, Phulbani and Khariar in Orissa. In addition to the Catholic and protestant Churches, there are more than twenty evangelical mission groups active in the tribal-dominated Bastar district to convert the tribals. India has been a victim of the practice of religious conversions for many centuries. Therefore, the State must take appropriate steps to prevent the religious conversion of socially and economically underprivileged

sections of the society particularly belonging to the scheduled castes and scheduled tribes. This is done by intimidating, threatening, deceivingly luring through gifts and other monetary benefits, and also by the practice of superstitions like miracles black magic.

22. Missionaries are using inducements to convert ignorant tribals from their faith. The missionaries advise the new converts to give up the worship of their deities. Their participation in traditional religion-cultural celebration has declined. Most missionaries say: *'You cannot worship two gods, you cannot be a Hindu as well as a Christian'*. The missionaries insist that if one becomes a Christian then that person must not participate in Hindu festivals or worships. This creates friction at village and family levels. Sometimes, certain Christian families stop contributing /participating in tribal festivals. Such behavior of a few, in a small village household isolates them and ruptures the social fabric. Further, the missionaries, through their proselytizing activities may succeed in converting one or two members of a family. Missionaries, through these converted members, try to influence other members of the family. This creates tension within families and eventually leads to intervention by religious organizations. Tribal's worship

many gods as their deities. Those who become Christians in a family throw away their deities and village people get divided and invite the intervention of village leaders, which often accentuates communal rivalry. Another reason for the conflict is related to identity. Christian tribal's hide their religious identity to get government jobs reserved for scheduled tribes. Christian evangelists insult Hindu saints and gods through leaflets published by evangelical groups.

23. The evidence of deceitful religious conversion can be accessed through social media, primarily on YouTube and Facebook. The Foreign-funded individuals and NGOs are provided with a road map and a monthly target about the number of religious conversions that shall be carried out. It is necessary to state that as per 2011 census, Hindus are 79% and down from 86% in 2001, (*most importantly 79% including millions converted continue to record them as Hindus to get a reservation in jobs and other benefits*). Presently, Christians are a majority in Mizoram (90%), in Nagaland (90%), in Meghalaya (84%) and also there is significant population in Manipur (42%), Arunachal Pradesh (31%), Goa, Kerala, Tamil Nadu, and West Bengal. Muslims are a majority in Lakshadweep (96.20%), J&K

(68.30%) and also there is a significant Muslim population in Assam (34.20%), West Bengal (27.5%), Kerala (26.60%), Uttar Pradesh (19.30%), Bihar (18%). If the religious conversions are continuously carried out at this rate with non-interference and complete ignorance, the Hindus shall gradually become a minority in India, which was at a time, considered a Hindu majority country.

24. Recently, a boy from a minority community befriended a scheduled caste girl posing as a Hindu for five years. One day, he revealed his real identity and forced the girl to convert so as to get married. When the girl negated for conversion, the boy threatened her to expose their relationship & threatened with physical assault. There are many similar incidents and surprisingly such incidents are on the rise because the Government has no persisting laws controlling the mal-practices under the name of religious freedom.
25. In Hyderabad the family of a watchman fell prey to the practice of 'conditional help'/proselytism. When their young daughter was ill, they got medical assistance from a local church. Unfortunately, the help from this church (which has ties to the US) came with conditions attached and they were asked to convert to Christianity. Not having other means to obtain treatment for their daughter, they

complied. The church people visited the family every Christmas season to be certain that they are still Christian. The visible symbol being a 'lighted star' hung over their home. Seethamma (the wife of the watchman) continues to wear her traditional sari, her '*Mangala sutra*' (the Hindu symbol of marriage) and the red mark of '*sindoor*' on her forehead but her daughters now wear Western clothing, seeking to be more like the Christians who converted them. The Hindu Dalits who are converted to other religions lose their affirmative action benefits. They are no longer entitled to the seats reserved for them in Government offices and Government funded educational institutions. Jobs and admissions granted to them under the reserved quota enshrined in the Constitution of India are also extinguished on conversion.

26. There are many methods by which the Centre may control the forceful and deceitful conversion of the underprivileged. Centre may enact a Law with minimum imprisonment of 3 years that may extend upto 10 years and a hefty fine may be imposed. Additionally, the Centre may empower the NHRC to deal with the affairs of religious groups and keep a check by carrying out an in-depth analysis of religious discrimination among them.

27. Anti-conversion laws first came into existence in the 1930s in the princely states. After Independence, the Parliament considered several anti-conversion bills but ultimately dropped all of them. However, due to India's federal structure, State legislatures have been able to pass anti-conversion measures. During the British Rule, India had no anti-conversion laws probably because British themselves professed a proselytizing religion. However, many princely States had enacted anti conversion laws. Prominent among them were: (i) The Rajgrah State Act, 1936 (ii) The Patna Freedom of Religion Act, 1942 (iii) The Surguja State Apostasy Act, 1945 (iv) The Udaipur State Anti-Conversion Act, 1946.

28. Basic purpose of these laws was to insulate Hindus from onslaught of missionary activities. These laws required individual converts to register their conversion with specified government agencies. Those who secured conversion by fraud, misrepresentation, coercion, intimidation, undue influence or the like, were made liable to punishment. Minors could not have been converted, and children of convert would not automatically get their parent's new faith. Conversion to another religion was thus legally sought to be regulated by the Hindu rulers of princely states.

29. That long before the Independence of India, various States had followed anti-conversion laws. For instance, The Raigarh State Conversion Act 1936 and the Sarguja State Apostasy Act 1945 were implemented to tackle malpractices relating to conversions. Likewise, many other States i.e. Bikaner, Jodhpur, Kalahandi and Kota enacted the anti-conversion policies. The idea was to prevent religious conversions taking place in the States. After independence, there was an urgent requirement to establish laws to protect the allured religious conversions. Many Hindus were reported to be forcefully converted either into Christianity or Islam. Further, in 1960, it was reported in Madhya Pradesh, that a large population of SC-ST community was forcefully converted into Christianity against their will. It brought the Government into enormous pressure to act against such unlawful acts. Upon this, the Government made a Judicial Commission led by Justice Dr. Bhavani Shankar Niyogi, a retired Judge of the Madhya Pradesh High Court. The report of the commission confirmed that Christians for a very long time had been involved in religious conversions. Such conversions disturb the faith and also create chaos throughout the country by disturbing the public order mechanism.

30. Gandhi ji's views from Bihar notes (8-10-1925) show that:

*"Christian missionaries have been doing valuable service for generations, but in my humble opinion, their work suffers because at the end of it they expect the conversion of these simple people to Christianity. How very nice it would be if the missionaries rendered humanitarian service without the ulterior aim of conversion."*

Further, Gandhi ji clarified his views on the role of foreign missionaries in India. (23.4.1931): *"If instead of confining themselves purely to humanitarian work such as education, medical services to the poor and the like, they would use these activities of theirs for the purpose of proselytizing, I would certainly like to withdraw. Every nation considers its own faith to be as good as that of any other. Certainly, the great faiths held by the people of India are adequate for her people. India stands in no need of conversion from one faith to another... Let me now amplify the bald statement. I hold that proselytizing under the cloak of humanitarian work is, to say the least, unhealthy. It is most certainly resented by the people here. Religion, after all, is a deeply personal matter, it touches the heart. Why should I change my religion because a doctor who professes Christianity as his religion has cured me of some disease or why*

*should a doctor expect or suggest such a change whilst I am under his influence? Is not his medical relief its own reward and satisfaction? Or why should I, whilst I am in a missionary educational institution, have Christian teaching binding upon me? In my opinion, these practices are not uplifting and give rise to suspicion if not even secret hostility.....I am, then, not against conversion. But I am against the modern method of it. Conversion nowadays has become a matter of business like any other. I remember having read a missionary report saying how much it cost per head to convert and then present a budget for 'the next harvest.....Yes, I do maintain that India's great faiths all suffice for her. Apart from Christianity and Judaism, Hinduism and offshoots, Islam and Zoroastrianism are living faiths. No one faith is perfect... It follows from what I have said above that India is in no need of conversion of the kind I have in mind. Conversion in the sense of self-purification, self-realization is the crying need of the times. That, however, is not what is ever meant by proselytizing."*

- 31.** The Himachal Pradesh by enacting "The Freedom of Religions Act" in 2006 has controlled the issue of forceful and deceitful religious conversion. The law was accepted in 2007 and it states that "No

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person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by way of the use of force or by inducement or by any other fraudulent means nor shall any person abet any such conversion.” Defining the Anti-Conversion Law in simple terms, it is the practice by which a person can convert from his religion to another of his own will and no one shall impose a religion upon other by false means such as by threat or by way of constructing fear of punishment in the afterlife.

32. On 15.01.2019, the then Home Minister expressed grave concern over the mass religious conversion and said: *"If someone accepts a religion out of his choice, then nobody should raise an objection. However, mass conversion is a matter of concern for any country including India. If you are a Hindu be a Hindu; if you are a Muslim, be a Muslim; if you are a Christian, be a Christian; but why do you want to convert the whole world? All six sects of Christianity are found here. All 72 sects of Islam are not found even in Islamic countries but are found in India. I support the freedom to follow any religion but of the opinion that a debate is needed as mass conversions are matter of concern for any country. I have never discriminated on the basis of caste, creed, and religion in my life.*

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*Whether or not we get votes. Whether or not we form the government, whether we win or lose, but we will never discriminate among people. This is what our Prime Minister feels. One cannot be in power and rule without love. I would also say one thing about the Christian community. We do not want to level allegations against anybody. You may have also heard, "If somebody wants to accept a religion, he should do that". There should not be any objection to it, but if mass conversion starts happening, a large number of people start changing their religion, then it could be a matter of concern for any country. There are attempts by many to spread fear and rumors about the government, to defame it. Recently, stones were pelted at the churches. Some priests came and met me to demand security. I assured them all that those behind it will be punished. I also assured security to them, but it started a month before the Assembly elections and stopped a month after that. What would you say about that? Whose conspiracy is that? As far as the government is concerned there will not be discrimination against anybody".*

33. It is submitted that eight states across India have enacted the anti-conversion laws: Orissa (1967), Madhya Pradesh (1968), Arunachal Pradesh (1978), Chhattisgarh (2000), Gujrat (2003),

Himachal Pradesh (2006), Jharkhand (2017) and Uttarakhand (2018). In Gujrat, one has to take permission from District Magistrate, 30 days before conversion. Orissa and Madhya Pradesh have been following Anti-Conversion Law since the 1960s. They do not require the converter to take any kind of permission from the Magistrate. Madhya Pradesh allows the converttee to inform the magistrate soon after the conversion. The idea of informing the Magistrate is to control the forceful conversion. In this manner, the local authority shall be able to know the reason behind conversion.

34. Centre must enact a Law and get it implemented throughout India. The Law should have in-depth scrutiny on foreign funds as many individuals operate under the veil of NGOs. The Law should also include provisions to restrict foreign NGOs from entering India during national calamities. Initially, the NGOs extend help but gradually, they start converting affected poor people, finding an opportunity as they are vulnerable and need help during calamity.
35. The Supreme Court in *Rev. Stanislaus v. State of Maharashtra* [AIR1977 SC 908] considered Anti-Conversion Laws of Maharashtra and Orissa and upheld the laws constitutional, stating that Article 25 “grants not the right to convert another person to one’s own

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religion, but the right to transmit or spread one's religion by an exposition of its tenets. It would be a violation of freedom of conscience, granted in Article 25(1) to allow a person to try to convert others. The Court also cited the "public order" exception in Article 25 as a justification for limiting religious freedom.

36. The requirement in some States is that a person planning to convert must apply for permission from a magistrate subjects the intended convert to the will of an official. Even having only to notify rather than request permission from a magistrate in advance of conversion may deter potential converts, especially if magistrate is unfavorable to conversion. Magistrates may pass on names of potential converts to extremists who then may intimidate the potential convert to prevent conversion. People have been arrested in various states for allegedly participating in forced conversions. But, despite numerous arrests, fewer than a dozen people have been prosecuted. Therefore the State Laws on conversion have failed to serve the purpose. Hence, a nationalized law on conversion needs to be passed for practical enforceability. State anti-conversion laws do not narrowly define fraud, coercion, and inducement. Therefore, there is a dire need for a anti conversion law on national level.

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37. Anti conversion laws were primarily formulated to prevent vulnerable populations or populations without power, such as children and those that are poor, uneducated, and illiterate from being preyed upon and falling victim to predatory efforts seeking religious conversion in exchange for or with the allurements of medical and humanitarian aid, education, or employment.

38. Centre must enact a Law applicable throughout the country because State's anti-conversion laws are overly broad, given the lack of detailed definitions, particularly of the terms under which conversions are not allowed, including "force", "allurement", "inducement", and "fraud". The ICCPR recognizes in Article 19 the freedom to express one's beliefs, and in combination with Article 18's guarantee of freedom of religion, people must be allowed to share their religious beliefs. The Anti-Conversion laws passed by numerous State legislatures aim to criminalize a wide range of speech by those sharing their religious beliefs with others, whether they hope their listeners to convert or not. Praying for healing of a sickness or offering help in the form of food or water after a natural disaster could be allurement or inducement in order to adopt the beliefs of the other religion.

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39. It is submitted that India happens to be a Socialist Secular Democratic Republic, and Rule of Law is the basic dictum of our democracy. The Preamble of the Constitution of India secures social economic and political justice to every citizen thus it is the duty of the Government to take steps to prevent religious conversions by way of intimidation and luring monetary benefits to socially and economically underprivileged people, particularly belonging to the scheduled castes and scheduled tribes. Therefore, it is prayed that the Centre must constitute a Judicial Commission or an Expert Committee to examine the anti-conversion laws and policies of the developed nations and the best provisions of the Anti-Conversion Laws of the States and enact a law to control forceful and deceitful religious conversion. Alternatively, the Law Commission of India may be directed to prepare a report on religious conversions in India within a period of three months.

40. Heiner Bielefeldt, the United Nations Special Reporter on the Freedom of Religion or Belief, in his report Bielefeldt concluded that: *"To guarantee freedom from coercion to convert, States must ensure that the specific authority of State agents and State Institutions is not used to coerce people to convert or reconvert, such*

as in schools, the police force, the military, and prisons. Likewise, States must protect against third-party coercive conversion practices which may require legislation” The United Nations Human Rights Committee also outlines in General Comment No. 22, the acceptable limitations on the right to try to convert: “The Article 18(2) ICCPR bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by Article 25 and other provisions of the Covenant, are similarly inconsistent with Article 18(2). The same protection is enjoyed by holders of all beliefs of a non-religious nature.”

41. It is submitted that in the context of raging controversies on the scope and impact of propagation and rights of religious freedom, it becomes necessary to work-out a dual approach on the role of law in these areas. One shall be to enhance positivity for religious tolerance and religious freedom and the other to progressively

reduce the scope for judicial intervention in the matters of propagation and practices of religion. There is an integral connection between the two facets of religion, though religion can exist without any need for its expressed propagation. All the dimensions of religion must be seen as facets of the right to personal autonomy of an individual and the domain of choices exercisable on knowledge, appeal and convictions. It appears that the public order and peace can be preserved only by the wise fusion of this approach, facilitated by the non-state actor's role. The wiser minds who appreciate the universality of spiritual experiences also understand the need for a common protective framework for faiths with the foundations of equality and non-discrimination. The need to protect various truths lie in the essence of the truth itself. This must proceed on the premise that those who wish to propagate their faith shall do so not out of ignorance or contempt to other faiths; nor because the converting faith believes in propagation as a competitive vocation of soul-saving and mandated by their faith; also not because sans propagation, religious freedom itself will be at peril; but essentially because the authenticity of the core values of all faiths, in so far as they constitute the discoveries of all soul

searching, or voyages of truth, must be freely exchanged. If there can be propagation without denigration, so be it. A person in need will be happy to hold on to even a straw, and may see no wrong in accepting engagement of selfless service of a converter, the material benefits offered, and the spiritual solace; all done under the banner of religious conversion.

42. This Hon'ble Court must consider the plight of those who were offered "conditional help" in South India, Sri Lanka, and Indonesia after the 2004 tsunami, and later in Haiti after the earthquake. In Aceh (Indonesia), missionaries from the Virginia-based organization "World Help" reported that the catastrophe "provided entrance to the gospel" and that by placing tsunami orphans in a Christian home "their faith in Christ could become the foothold to reach the Aceh people". (This statement was later removed from their website.) In Haiti, tensions between religious groups have increased after the earthquake that happened in 2010, since much of the desperately needed aid was provided by evangelical groups having ulterior motives under the veil of "helping the needy" but was more of a "conditional help" which resulted in the surrender of their inborn religious beliefs.

43. With respect to Religious conversions various questions arise as, can there be an ideal 'converttee', who may first insist upon spiritual solace of higher value and meaning, and then consider the relevance of material benefits? These concerns are, that all truths and claims to truths of faiths and religion are to be received as of equal validity; truth comparisons are odious and wrong; and exchanges of love, compassion, empathy and being in joy with differences, shall promote these concerns. All discourses on faith should identify and choose meanings and interpretations that coalesce and displace colonial and hegemonic attributes and eschew denigrations. The concerns themselves are not new; they have been profoundly stated, in the past and are being voiced by minds which have felt and perceived humanity's commonweal and common yearnings. Every restatement of such values is yet another brick laid, to resolve, to promote universal humanhood and dissolves differences while maintaining distinctions. No constitutional right can avoid debates on its meaning and scope, assertion and denial. Judicial statements on rights can be both matters of reinforcement, as well as fodder for a later day cinder. Wise statesmanship, critical understandings, and elevated thought processes have however

managed debates on several constitutional rights, say, for example, right to free speech. Some rights are more problematic than others because entrenched and contested social claims are so entangled. The domain of faith, conscience, religion is one such constitutional area. The ability of the State to deal with the tension-ridden layers of this domain lies in the competence to enact wise definitions, caring spaces, equality of concern and the concern for equality. This demand on the State is to require it to walk on the razor edges. The hope is to make reasonable constitutional statements, with eyes focused firmly on the community peace and public order.

44. Every claim to communicate an idea or thought in value-neutral terms touching upon issues concerning religion, morality, ethics and even aesthetics and culture, demands scrutiny. Both objectivity and neutrality are elusive dimensions of social debates. Frank acknowledgement of elusive dimensions would, however, open greater areas of accommodation, tolerance, and goodwill. The above prelude has been chosen particularly keeping in mind the extremities in points of view in debates concerning conversion. The need to use language and formulation of thoughts and ideas, which must endeavor to nourish the intrinsic values immanent in every

system of belief, faith, worship, religion deserve very close attention.

As we proceed upon the debate on propagation and conversion, we will slowly learn that the solutions offered, the measures suggested and the understandings that must be promoted, are, enormously goodwill exercises, and must be far removed from impenetrable German walls forever dividing people. Sociological, anthropological and other historical studies may be relevant if one is engaged in confronting claims made about exclusive superiority of one faith or other. Discourses on proof in this connection, will then necessarily enter the contentious areas. Religious proofs will then claim to have a special status beyond scientific or philosophical evidence. One set of Religious truths can claim superiority over the other and condescendingly too. A wide range of comments are made on even honest attempts made to explain the entangled web of issues concerning religious superiority, propagation, and proselytism.

45. Affirmation and assertion of only one set of religious truths as exclusive truths will be one manner of propagation, perhaps lopsided. Presentation of experiences, spiritual, unique revealing, as mere sharing and stimulus for common human evolution, can be another propagation venture. If however, both modes of conveying

ideas and thoughts neither constitute propagation and neither on philosophical basis nor on political principles, clear lines of distinction, be drawn, can there be a problem in the State remaining neutral, avoiding any entanglement or mediation or in entering into the debate, endeavoring to draw lines, to secure valuable social or community ends? How far can propagationists travel unhindered in their propagation agendas? What if the propagationist claims that there can be no propagation without conversion and that conversion is the most satisfactory self-consoling achievement without which propagation would be a mere empty conception? Task of answering these questions is not merely political. Any attempted answer with a 'State involvement' need not be necessarily communal, as it was noticed that objectivity/neutrality are difficult values in practice and delicate attainments. If assertions towards exclusive religious truths are themselves antithetical to human freedom/liberty and diverse claims, historically well stated tested and founded, the State would not be turning a wrong chapter by asking of propagationists to practice moderation, accommodation and be willing to be subjected to reasonable restraints. Reasonable restrictions are a commentary on human nature and its untamable audacities.

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46. Well-known theologian Hendrik Kraemer in his address to International Missionary Conference at Tambaram on the theme 'Christian message in non- Christian World' emphasized uniqueness of Christ, the necessity of the Church, and the obligation to proclaim the gospel to world. Kraemer's interpretation is negative judgment on native religions claiming his religion to be right and the best. This became the basis for the Christian missionary approach to other faiths and resulted in a narrow and exclusivist approach to other religions in India. This is a perfect example of the "*denigration of a particular religion to make another religion appear superior.*"
47. Treating religious neutrality with profound understanding and the impasse involved in US, it is suggested: "*the courts should monitor legislative output, not inputs. Citizens may make whatever religious arguments they like in favor of a law, so long as the law that is ultimately passed is justifiable in non-religious terms. Because the government may not take a position on religious truth, a law that can be justified only in religious terms is invalid. The requirement that a law has a secular purpose will, of course, prevent some people from getting what they want in the political process, but any meaningful constitutional restriction will do that.*"

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48. Nepal has Anti-Conversion Law. Part 4, Chapter 19, Number 1.512 of the General Code, which is Nepal's criminal code, states that: *"No one shall propagate any religion in such a manner as to undermine the religion of others nor shall cause others to convert his or her religion. If a person attempts to do such act, the person shall be liable to imprisonment for a term of three years, and if a person has already caused the conversion of other's religion, the person shall be liable to imprisonment for a term of six years, and if such a person is a foreign national, he or she shall also be deported from Nepal after the service of punishment by him or her."*
49. Nepal has criminalized religious conversions. The President of Nepal signed the bill on 20.10.2017. The Criminal Code 2074, Section 9, Clause 158 reads: (1) *No one should involve or encourage the conversion of religion* (2) *No one should convert a person from one religion to another religion or profess their own religion and belief with similar intention by using any means of attraction and by disturbing religion or belief of any ethnic groups or community that being practiced since ancient times* (3) *If found guilty; there will be a punishment of five years of imprisonment and a penalty of fifty thousand rupees* (4) *If foreigners are found guilty; they will have to*

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*be deported within 7 days after completing the imprisonment in the third clause. Further, the Nepal Ministry of Federal Affairs and Local Development directed the District Development Committees to refuse to register NGOs that preached or promoted conversion.*

50. Article 34 of the Constitution of Myanmar recognizes religious freedom and the right to freely profess and practice religion but also at the same time, the preamble claims that transparency is needed to ensure the freedom to choose religion and convert. As such, the law lists several requirements for conversions, ostensibly to ensure the freedom to convert. The law also prohibits application *"for conversion to a new religion with the intent of insulting, degrading, destroying or misusing any religion."*

51. Article 7.4 of Bhutan's Constitution, enacted in 2008, states: *"A Bhutanese citizen shall have the right to freedom of thought, conscience, and religion. No person shall be compelled to belong to another faith by means of coercion or inducement"* Bhutan amended its Penal Code in 2011, adding section 463 A, which states: *"A defendant shall be guilty of the offence of compelling others to belong to another faith if the defendant uses coercion or other forms of inducement to cause the conversion of a person from one religion or*

*faith to another.”* Section 463 B of the Bhutan Penal Code makes compelling others to convert a misdemeanor. Article 5(g) of Bhutan Religious Organizations Act 2007 states *“No religious organizations shall compel any person to belong to another faith, by providing reward or inducement for a person to belong to another faith”*

52. From the level of perennial and universal value of exchange and communication, propagation can be a noble pursuit. At a different level, of calling the other faith a lesser entity, it can be akin to dominion and power and thus would result in religious colonialism. Is there a room for religious colonialism in contemporary times? The rights under Human Rights instruments extending right to choose of belief or religion is against State or other religions dictating against free choice and deserve not to be used by conscious conversion agenda. If otherwise understood, the right of choice to abandon or change faith will stand on its head. In the market place of choices, there is no room for bullish trading. The acuteness of the problem of dealing with propagation sliding into conversion, and conversion promising liberation from undeserving faiths and religions is not made easy by blurring the lines between propagation and conversion. The earnest hope of Rawls that we should generalize

*“the principle of religious toleration to a social form”,* with all its profundity, is webbed by persistent contrary understandings, agendas, and executions of religious conversions, which are far removed from nobler conceptions and ‘embracing’ perceptions and practices. As long as the State does not impede the right to profess and practice religion, there is no controversy. By now the meaning and scope of these expressions, profess & practice have attained some element of stability. Propagation, however, continues to have some controversies, since contested stretches of meanings are canvassed for protection. For instance it is said that successful propagation would result in conversion thus stating ends of propagation? Does the constitution protect all ends of propagation? *(as there can be no human activity sans ends and purposes)* or keeps at bay those ends which are fundamentally in conflict with equal validity of all faiths? Saner, wiser and understanding minds will say that propagation has no ends beyond propagation. Whatever follows propagation should be left to matters beyond the propagationist. This is absolute and stern detachment. What does history tell us about why constitutions should care about propagation? The free hand of all colonizers– mind, region and religion– and the unbridled

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authority exercised on peoples on grounds of high scriptural authority, tells us that an inviolable and sacred space should be left untouched and the freedom of the movement of the mind in its profound and compassionate mold is as inviolable as the freedom of the mind itself. Constitutions and human rights instruments generally protect propagation as part of the right to faith. But why propagation? Why should it be a right? What autonomy rights, identities of individuals and grounds are involved in it? Will the right to practice one's faith wilt, if propagation is curtailed?

53. Can we compare the need of organic elements of nature, trees, plants- for earth and water as sustaining elements, to propagation as a need for practicing one's faith? Practicing one's faith will not wilt if propagation is not a part of it. Every faith or claim to truth does not thrive on propagation. People can draw fences and live comfortably within. But there is an innate urge of the human mind to share. If sharing of the beauty of one's practice is seen more as the preservation of the beauty, and dissemination of beauty, propagation shall make sense. Poetry, philosophy science, morality are all parts of sharing and the joy of sharing is the noblest aspect of human consciousness.

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53. Rumi puts it beautifully when he says: *"The human soul is a meeting place of doubt and difficulty, and there is no way for it to be read of doubt and difficulty except by being in love."* Being in love is sharing. Again, when he says *"every prophet and every saint have a way, each leads to God, all are one"*, he talks about sharing and not destroying or denigrating. Human urges, however, are not like mathematical categories, easily grouped and can stand in splendid isolation. Urges can become impulses, sharing can lead to control and cohabiting can lead to subjugation.

54. Patanjali talks of negation of all tendencies of mind towards division and distortion, like Yoga. The domain of conviction about one's faith is beyond penetration by the State and so by other faiths. Emerging out of the womb of this conviction and with nobility of urges to share truths that can be shared and experiences that can be transmitted can be another independent domain. Within pure urge domain of propagation, when comparisons/denigrations of other's faiths occur, the road to lapses is inevitably laid and propagation loses its holy mantle. It is felt therefore, that propagation is Joy domain of human sharing and conversion is spiritual or religious colonialism and built only on hegemony and decimation of other

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faiths. The constitutional protection of propagation is to be confined to the noble engagement of detached sharing. *"Talking to dolphins is propagation; catching fish is conversion"*.

55. Laws relating to conversion are said to be unsustainable. Several reasons are cited; one is the problem involved in State enquiries into the imponderables of personal identity which is a matter of choice and the awkwardness of the State trying to discern and evaluate personal qualities; that the conversion debates leave the convert out of analysis, as she can be an independent choice making agent and not a victim; and the anti-conversion laws re-enforce social hierarchies by portraying existing social economically disadvantaged groups as innately weak and credulous; the right to convert is thus so convoluted, and that this right remains un-discussed. Marc Galanter quoted: *"certain aspects of what is claimed to be religion are given recognition, support, encouragement; others are subject of indifference; finally some are curtailed & proscribed."* These are important observations in so far as they are neutral. They need to be addressed not dismissively, but by looking at several anxieties and concerns which are truly and perceived to be driving sources or persuasions behind the no conversion debate. A disinterested

propagationist, however, would be a rarity. The law should care of and be concerned about disinterested propagation and yet may persuade itself to delicately deal with propositions that see no distinction between propagation and conversion, or those which vote for the thesis that propagation without ends, particularly conversion, would be empty rhetoric and wasteful.

56. Five categories of proselytism have been noticed: (i) *Openness to people who want to join the group*; (ii) *Inviting and convincing others to join the group*; (iii) *Seeking to run others from their present allegiance because of the error of their position*. (iv) *Reaching out to save others from the danger and evil that surrounds their present membership*; and (v) *Coercing others to accept membership in the group*.

57. While all three major monotheistic religions accept converts they deny the right of their followers to leave the religion. Apostasy is regarded as a severe offence by all three religions. Attempts made to deal with the subject of moderation suggest that law can prescribe limitations to secure non-coercive material and moral space. Constituent Assembly debates and the provisions sought to be included in the constitution, throw light on how a final balance was

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struck, retaining propagation as protected right and not conversion.

It was decided that the Constitution will make no statement on conversion. But constitutional meanings & contents of propagation are not finally or conclusively dictated by the Constituent Assembly debates. We need not get into the original intent debate as subtle coercions, and other modes of conversion take liberal avatars, the State can take a call.

58. If a provision against conversion was not acceded to, it does not mean, conversion was favored. Such provision in Constitution would have produced several Marcus Aurelius of whom it is said: *"Few emperors of Rome possessed the learning and refinement of Marcus Aurelius. Power and pomp meant little to him; his great passion was for justice. Marcus was an energetic persecutor of Christians and for zealous intolerance was a star of first magnitude in a galaxy of persecuting emperors. Aurelius the persecutor makes an especially interesting study because his intolerance was resulted not of crude barbarism but sophisticated political thinking infused with religious fervor."* Writing in the context of propagation and persecution of Protestantism in Germany, it is said, *"Jews and heathens have persecuted Christians, Christians have persecuted*

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*Jews and heathens, Romanists have persecuted Protestants, Protestants have persecuted Romanists, and every state-church has more or less persecuted dissenters and sects. It is only within a recent period that the sacred rights of conscience have been properly appreciated, and that the line is clearly and sharply drawn between church and state, religious and civil offenses, heresy and crime, spiritual and temporal punishments."*

59. Propagation was included worthy of Constitutional protection but it also does not mean that demands can be made on propagation exercises to practice high virtues and moderation. Public order and peace can be the ultimate signals in this regard. Debates have been carried out, in defining conversion and the difficulties in infringing a person's right to conversion. The point however is to understand propagation. All stratagems of conversion are still conversions. There is no holy conversion versus unholy conversion. Law has struggled to deal with the unholy part, on a benevolent and tolerant premise that there can be a holy part. Freedom of religion and belief must not be used to frustrate freedom of religion or belief itself. An argument against conversion or in its favor is not simply answered by suggesting that the convert is not a victim and that the

State being indifferent to the right to convert oneself, cannot claim any neutral position. The question is not as to whether within the conversion play, the targets are victims because of their vulnerable positions but whether there can be any activity of conversion which does not involve a challenge to religious identities, and disruption of demography, culture, social practices, and social institutions. This gives rise to serious political entanglement and conversion inevitably lands into political process.

60. A Conversion has never been and no longer is a mere domestic happening in a country without an external ramification. It is a trans-boundary involvement. It trifles national concerns & teases the intelligence and humane constitutional safeguards as well as governance credentials. It is thus evident that conversion is not a mere battle of wits but a serious constitutional question. The Constitutional fabrics can withstand pin-pricks, but not sledgehammers, though the great strength and maturity of the Indian mind is not easily shaken. We are thus truly confronted with a question as to whether the State can resort to legal measures to deal with the issue of conversion without being accused of being partisan or subjected to peril, bonafide pursuits of propagation.

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How is it valid that, one can engage in conversion, giving it robust justifications, and blame the State for defining his activities? The moment one trespasses, duels are hard to avoid. But why only burden the State with neutrality roles? If we understand and stand committed to the nobler concept of propagation and the joy of sharing as the highest human value, then beyond these legitimate domains, if there is a demand for poaching into the other's domains, there is no reason why the State cannot be called upon to deal with the problematic dimension of poaching.

61. Ronald Dworkin talks about the general right of ethical independence as a constraint on the State rather than special rights to certain things: *"If we deny a special right to free exercise of religious practice, and rely only on the general right to ethical independence, then religions may be forced to restrict their practices so as to obey rational nondiscriminatory laws that do not display less than equal concern for them. Do you find that shocking? The last of these requirements – equal concern requires a legislature to notice whether any group regards the activity it proposes to prohibit or burden as a sacred duty." .....* *"That priority of non-discriminatory collective government over private religious exercise seems inevitable*

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*and right.*” Dworkin’s voice is one among several sane voices. There can be thus no sacred duty to convert. The only sacred duty is to honor unconditionally, all faiths and beliefs.

62. If we are honest to accept that conversions are by and large hegemonic activity of religious exercise with no sacredness involved in it but the public in its impact with all its disruptive elements, then dialogue on conversions need not even reach the stage of legal regulation. Since conversion is, however, touted as a nobler pursuit and is sought to be legitimized, legal regulation cannot be shunned. What the international instruments and the Constitution expect is a voluntary code of conduct, defining and eschewing conversion voluntarily, and a voluntary reporting system, which is only a small price to be paid in honor of every faith’s freedom.

63. Petitioner respectfully submits that the population explosion and the religious conversion by “the carrot and the stick” is a national problem hence Centre must enact a strong and effective population control law and anti conversion law on top priority. Due to population explosion and deceitful religious conversion, Hindus have become minority in nine States and UTs and the situation is worsening day by day.

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64. The power conferred by Article 32 of the Constitution of India is in the widest terms and is not confined to issuing the high prerogative writs specified therein, but includes within its ambit the power to issue any directions or orders or writs which may be appropriate for enforcement of fundamental rights. Therefore, even when the conditions for issue of any of these writs are not fulfilled, the Supreme Court would not be constrained to fold its hand in despair and plead inability to help the citizen who has come before it for judicial redress. The Court is not helpless to grant relief in a case of violation of right to life and liberty and it should be prepared to *"forge new tools and device new remedies"*.
65. For purpose of vindicating these precious fundamental rights, in so far as the Supreme Court is concerned, apart from Articles 32 and 142, which empower the Court to issue such directions as may be necessary for doing complete justice in any matter, Article 144 also mandates all authorities civil or judicial in the territory of India, to act in aid of the order passed by the Supreme Court. Being the protector of civil liberties of citizens, the Supreme Court has not only the power and jurisdiction, but also an obligation to protect the fundamental rights, guaranteed by part-III in general and under

Article 21 in particular, zealously and vigilantly. The Supreme Court and High Courts are the sentinels of justice and have been vested with extra ordinary powers of judicial review to ensure that rights of citizens are duly protected. **[ML Sharma (2014) 2 SCC 532]**

66. It is not merely right of individual to move the Supreme Court, but also responsibility of the Court to enforce fundamental rights. Therefore, if the petitioner satisfies the Supreme Court that his fundamental right has been violated, it is not only the 'right' and 'power', but the 'duty' and 'obligation' of the Court to ensure that the petitioners fundamental right is protected and safeguarded.

**[Ramchandran, Law of Writs, 6<sup>th</sup> Edition, 2006, Pg. 131, Vol-1]**

67. The power is not confined to issuing prerogative writs only. By using expression "in the nature of", the jurisdiction has been enlarged. The expression "in the nature of" is not the same thing as the other phrase "of the nature of". The former emphasis as essential in nature, latter is content with mere similarity. **(2006) 8 SCC 2012]** Supreme Court cannot refuse an application under Article 32, merely on the grounds: (i) that such application have been made to Supreme Court in the first instance without resort to the High Court under Article 226 (ii) that there is some adequate

alternative remedy available to petitioner (iii) that the application involves an inquiry into disputed questions of fact / taking of evidence. (iv) that declaratory relief i.e. declaration as to unconstitutionality of impugned statute together with consequential relief, has been prayed for (v) that the proper writ or direction has not been paid for in the application (vi) that the common writ law has to be modified in order to give proper relief to the applicant. [AIR 1959 SC 725 (729)] (vii) that the article in part three of the Constitution, which is alleged to have been infringed, has not been specifically mentioned in petition, if the facts stated therein, entitle the petitioner to invoke particular article. [PTI, AIR 1974, SC 1044]

68. Article 32 of the Constitution provides important safeguard for the protection of the fundamental rights. It provides guaranteed quick and summary remedy for enforcing the fundamental right because a person complaining of breach of any of his fundamental rights by an administrative action can go straight to the Court for vindication of his right without having to undergo directory processes of proceeding from lower to the higher court as he has to do in other ordinary litigation. The Court is the protector defender & guarantor of fundamental rights of the people. It was held: "the

*fundamental rights are intended not only to protect individual rights but they are based on high public. Liberty of the individual and protection of fundamental rights are very essence of democratic way of life adopted by the Constitution and it is the privilege and duty of this Court to uphold those rights. This Court would naturally refuse to circumscribe them or to curtail them except as provided by Constitution itself.” [AIR 1961 SC1457]. In another case, Court held: “the fundamental right to move this Court can therefore be described as the corner stone of the democratic edifice raised by Constitution. That is why it is natural that the Court should regard itself as the protector and guarantor of fundamental rights and should declare that it cannot consistently with the responsibility led upon it, refuse to entertain application seeking protection against infringement of such right. In discharging the duties assigned to it, the Court has to play the role of a “sentinel on the qui vive” and it must always regard it as its solemn duty to protect the said fundamental right zealously and vigilantly.” [Prem Chand Garg, AIR 1963 SC 996].*

69. Language used in Articles 32 and Article 226 is very wide and the powers of the Supreme Court as well as of the High Court’s extends to issuing orders, writs or directions including writs in the

nature of habeas corpus, mandamus, quo warranto, prohibition and certiorari as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provision of the Constitution, there is no need to look back to procedural technicalities of the writs in English Law. The Court can make and order in the nature of these prerogative writs in appropriate cases in appropriate manner so long as the fundamental principles that regulate the exercise of jurisdiction in matter of granting such writ are observed [AIR 1954 SC 440].

70. An application under Article 32 of the Constitution cannot be thrown out simply because the proper direction or writ has not been prayed for. Thus, where an order in the nature of mandamus is sought in a particular form, nothing bars the Court from granting it in a different form. Article 32 gives a very wide discretion in the matter of framing the writ to suit the exigencies of particular cases. [AIR 1951 SC 41] Even if petitioner has asked for wider relief which cannot be granted by Court, it can grant such relief to which the petitioner is entitled to [Rambhadriah, AIR 1981 SC 1653].

71. The Court has power to grant consequential relief to do complete justice even in favour of those persons who may not be before the Court or have not moved the Court. [AIR 1985 SC 167] For the protection of fundamental right and rule of law, the Court under this article can confer jurisdiction on a body or authority to act beyond the purview of statutory jurisdiction or function, irrespective of the question of limitation prescribed by the statute. Exercising such power, Supreme Court entrusted the NHRC to deal with certain matters with a direction that the Commission would function pursuant to its direction and all the authorities are bound by the same. NHRC was declared not circumscribed by any condition and given free hand and thus act *sui generis* conferring jurisdiction of a special nature. [Paramjit Kaur, AIR 1999 SC 340]
72. Simply because a remedy exists in the form of Article 226 for filing a writ in the High Court, it does not prevent or bar an aggrieved person from directly approaching the Supreme Court under Article 32. It is true that the Court has imposed a self-restraint in its own wisdom on the exercise of jurisdiction where the aggrieved person has an effective alternative remedy in the form of Article 226. However, this rule which requires the exhaustion of alternative

remedy is a rule of convenience and a matter of discretion rather than rule of law. It does not oust the jurisdiction of the Court to exercise its writ jurisdiction under Article 32. [ (2009) 12 SCC 748]

73. The Supreme Court is entitled to evolve new principle of liability to make the guaranteed remedy to enforce fundamental rights real and effective, to do complete justice to aggrieved person. It was held that the court was not helpless and the wide powers given to the Court by Article 32, which is fundamental right imposes a constitutional obligation on the Court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enables award of monetary compensation in appropriate cases, where that is the only redress available. The remedy in public law has to be more readily available when invoked by have-nots who are not possessed of the where withal for enforcement of their right in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, which more appropriate. Under Article 32, the Court can pass appropriate orders to do complete justice between parties even if it is found that writ petition filed is not maintainable in law. [Saihbha Ali, (2003) 7 SCC 250]

**PRAYER**

Keeping in view the above stated facts and circumstances; it is the most respectfully prayed that this Hon'ble Court may be pleased to issue an appropriate writ(s), order or direction to:

- a) direct the Centre and States to take appropriate steps to control black magic, superstition and religious conversion by intimidating, threatening, deceivingly luring through gifts and monetary benefits;
- b) direct the Centre to ascertain the feasibility of appointing a Committee to enact a Conversion of Religion Act to check the abuse of religion in spirit of the direction in Sarla Mudgal Case. (para-46)  
(Page-75)
- c) Alternately, direct the Law Commission of India to prepare a Report on Black Magic, Superstition and Religious Conversion within three months in spirit of the Judgment in Sarla Mudgal Case.(para-46)  
(Page-75)
- d) Alternatively, being custodian of the Constitution and protector of fundamental rights, the Court may use its plenary constitutional power to pass direction to stop conversion by carrot and the stick;
- e) pass such other direction(s) as this Hon'ble Court deems fit in facts and circumstances of the case and allow the cost to petitioner.

New Delhi

Advocate for petitioner

22.03.2021

(Ashwani Kumar Dubey)

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- a not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the courts the unpleasant duty. We say no more.
- b

21. The contempt proceedings are disposed of in the above terms.

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(BEFORE KULDIP SINGH AND R.M. SAHAL, JJ.)

- c Writ Petition (Civil) No. 1079 of 1989  
SARLA MUDGAL (SMT), PRESIDENT,  
KALYANI AND OTHERS .. Petitioners;

*Versus*

- d UNION OF INDIA AND OTHERS .. Respondents.  
Writ Petition (C) No. 1079 of 1989† with Nos. 347 of 1990,  
509 and 424 of 1992, decided on May 10, 1995

- e A. Penal Code, 1860 — S. 494 — Bigamy — Husband already married under Hindu Law, by embracing Islam, solemnising a second marriage under Muslim Law — Held, that would not result in dissolution of the first marriage under Hindu Law — Unless and until the first marriage is dissolved by a decree under Hindu Marriage Act, the second marriage during subsistence of the first one would be in violation of the Hindu Marriage Act which strictly professes monogamy — Marriage in violation of any law would be 'void' within the meaning of the word used in S. 494 — Word 'void' in S. 494 is wider in amplitude than that used in S. 11 of the Hindu Marriage Act — Such second marriage would therefore amount to bigamy punishable under S. 494 — Second marriage would also be in violation of principles of natural justice — Moreover, matrimonial dispute between the apostate and his first wife cannot be decided on the basis of Muslim Personal Law but on the basis of justice, equity and good conscience — On these bases also the second marriage would be void — This interpretation would advance interest of justice being in harmony with two systems of law viz. Hindu Law and Muslim Law — Hindu Marriage Act, 1955, Ss. 5(i), 11, 13 and 15 — Conflict of laws
- f

*Held :*

- g *Per curiam*  
The second marriage of a Hindu husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate husband would be guilty of the offence under Section 494 IPC. (Para 39)  
The necessary ingredients of Section 494 are : (1) having a husband or wife living; (2) marries in any case; (3) which such marriage is void (4) by reason of its taking place during the life of such husband or wife. All the four ingredients of
- h

† Under Article 32 of the Constitution of India

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Section 494 IPC are satisfied in the case of a Hindu husband who marries for the second time after conversion to Islam. He has a wife living, he marries again. The said second marriage is void by reason of its taking place during the life of the first wife. (Paras 17 and 26)

The Hindu Marriage Act strictly enforces monogamy. A marriage performed under this Act cannot be dissolved except on the grounds available under Section 13 of the Act. In that situation, parties who have solemnised the marriage under this Act remain married even when the husband embraces Islam in pursuit of another wife. Till the time a Hindu marriage is dissolved under the Hindu Marriage Act none of the spouses can contract a second marriage. Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Hindu Marriage Act. A second marriage by an apostate under the shelter of conversion to Islam would nevertheless be a marriage in violation of the provisions of the Hindu Marriage Act by which he would be continuing to be governed so far as his first marriage under that Act is concerned despite his conversion to Islam. The second marriage of an apostate would, therefore, be illegal marriage *qua* his wife who married him under the Hindu Marriage Act and continues to be a Hindu. Though the marriage solemnised by a Hindu husband after embracing Islam may not strictly be a void marriage under the Hindu Marriage Act because he is no longer a Hindu, but between the apostate and his Hindu wife the second marriage is in violation of the provisions of the Hindu Marriage Act and as such would be non est. (Paras 17, 21 and 18)

*Ram Kumari, Re*, ILR (1891) 18 Cal 264; *Budansa v. Fatima*, (1914) 22 IC 697 : 26 MLJ 260 : 1914 MWN 278; *Budansa v. Fatima*, (1914) 22 IC 697 : 26 MLJ 260 : 1914 MWN 278; *Gul Mohd. v. Emperor*, AIR 1947 Nag 121 : 48 Cri LJ 43 : 228 IC 1; *Nandi v. Crown*, LR 1920 Lah 440; *Emperor v. Ruri*, AIR 1919 Lah 389 : 48 IC 493 : 20 Cri LJ 3; *Sayeda Khatoon v. M. Obadiah*, 9 CWN 745; *Andal Vaidyanathan v. Abdul Allam Vaidya*, AIR 1946 Mad 446 : (1946) 1 MLJ 402 : 227 IC 417, *approved*

The expression 'void' defined under Section 11 of the Hindu Marriage Act has a limited meaning within the scope of the definition under that section. On the other hand the same expression has a different purpose under Section 494 IPC and has been used in the wider sense. A marriage which is in violation of any provisions of law would be void in terms of the expression used under Section 494 IPC. The real reason for the voidness of the second marriage is the subsistence of the first marriage which is not dissolved even by the conversion of the husband. The second marriage by a convert, therefore, being in violation of the Hindu Marriage Act, would be void in terms of Section 494 IPC. Any act which is in violation of mandatory provisions of law is *per se* void. (Paras 19, 20, 22 and 21)

*Attorney General of Ceylon v. Reid*, (1965) 1 All ER 812, *distinguished*

The conduct of a spouse who converts to Islam has to be judged on the basis of the rule of justice and right or equity and good conscience. A matrimonial dispute between a convert to Islam and his or her non-Muslim spouse is not a dispute "where the parties are Muslims" and, therefore, the rule of decision in such a case was or is not required to be the "Muslim Personal Law". In such cases the court shall act and the Judge shall decide according to justice, equity and good conscience. The second marriage of a Hindu husband after embracing Islam being violative of justice, equity and good conscience would be void on that ground also and attract the provisions of Section 494 IPC. (Para 23)

*Robasa Khanum v. Khodadad Bomanji Irani*, (1946) 48 Bom LR 864; *Waghela Rajsanji v. Sheikh Masludin*, (1887) LR 14 IA 89; *Muhammad Raza v. Abbas Bandi Bibi*, (1932) LR 59 IA 236, *approved*

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a Further, assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Hindu Marriage Act to marry again without getting his earlier marriage under that Act dissolved. The second marriage after conversion to Islam would, thus, be in violation of the rules of natural justice and as such would be void. (Para 24)

b The above interpretation of Section 494 would advance the interest of justice. It is necessary that there should be harmony between the two systems of law just as there should be harmony between the two communities. The result of the interpretation, would be that the Hindu law on the one hand and the Muslim law on the other hand would operate within their respective ambits without trespassing on the personal laws of each other. Since it is not the object of Islam nor is the intention of the enlightened Muslim community that Hindu husbands should be encouraged to become Muslims merely for the purpose of evading their own personal laws by marrying again, the courts can be persuaded to adopt a construction of the laws resulting in denying the Hindu husband converted to Islam the right to marry again without having his existing marriage dissolved in accordance with law. (Para 25)

c **B. Conflict of laws — Marriage — Dissolution of — Marriage solemnised under a particular statute and according to one personal law cannot be dissolved according to another personal law on conversion of one of the parties to that religion — Hindu Marriage Act, 1955 — Ss. 13, 13-B — Dissolution of Muslim Marriages Act, 1939, S. 2 — Parsi Marriage and Divorce Act, 1936, Ss. 5 and 32 — Indian Divorce Act, 1869, S. 10** (Para 11)

d **C. Constitution of India — Arts. 44 and 25 to 27 — Need for uniform civil code in matters of marriage, inheritance, succession etc. stressed — Fundamental rights relating to religion of members of any community would not be affected thereby — Personal law having been permitted to operate under authority of legislation, the same can be superseded by a uniform civil code — Meaning of ‘religion’ in the context — Permissibility of bigamy under the Muslim personal law of being inconsistent with the laws governing other communities in India and also being opposed to public morals should be superseded or supplemented by uniform civil code — Govt. therefore directed to implement the Directive of Art. 44 and to file affidavit indicating the steps taken in the matter — Measures to be adopted by the Govt. for implementation suggested — Appointment of Committee to enact a Conversion of Religion Act also suggested**

f **Held :**

***Per Kuldip Singh, J.***

g Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of the Hindus, such as relating to marriage, succession and the like have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a “common civil code” for the whole of India. Bigamous marriage has been made punishable amongst Christians by Act XV of 1872, Parsis by Act III of 1936 and Hindus, Buddhists, Sikhs and Jains by Act (XXV of 1955). (Paras 33 and 34)

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*Mohd. Ahmed Khan v. Shah Bano Begum*, (1985) 2 SCC 556 : 1985 SCC (Cri) 245 : AIR 1985 SC 945; *Jordan Diengdeh v. S.S. Chopra*, (1985) 3 SCC 62 : AIR 1985 SC 935, referred to

It has been judicially acclaimed in the United States of America that the practice of polygamy is injurious to "public morals", even though some religions may make it obligatory or desirable for its followers. It can be superseded by the State just as it can prohibit human sacrifice or the practice of 'Suttee' in the interest of public order. The Legislation — not religion — being the authority under which personal law was permitted to operate and is continuing to operate, the same can be superseded/supplemented by introducing a uniform civil code. In this view of the matter no community can oppose the introduction of uniform civil code for all the citizens in the territory of India. The successive Governments till date have been wholly remiss in their duty of implementing the constitutional mandate under Article 44. (Paras 34, 35 and 36)

The Government of India is therefore requested through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and "endeavour to secure for the citizens a uniform civil code throughout the territory of India". The Government of India through Secretary, Ministry of Law and Justice is further directed to file an affidavit of a responsible officer in the Supreme Court in August 1996 indicating therein the steps taken and efforts made, by the Government of India, towards securing a "uniform civil code" for the citizens of India. Brother Sahai, J. in his short and crisp supporting opinion has suggested some of the measures which can be undertaken by the Government in this respect. (Paras 37 and 38)

*Per Sahai, J. (concurring)*

When the Constitution was framed with secularism as its ideal and goal, the consensus and conviction to be one, socially, found its expression in Article 44 of the Constitution. But religious freedom, the basic foundation of secularism, was guaranteed by Articles 25 to 28 of the Constitution. Article 25 is very widely worded. Religion is any faith or belief. The Court has expanded religious liberty in its various phases guaranteed by the Constitution and extended it to practices and even external overt acts of the individual. Religion is more than mere matter of faith. The Constitution by guaranteeing freedom of conscience ensured inner aspects of religious belief. And external expression of it were protected by guaranteeing right to freely practise and propagate religion. (Para 43)

Marriage, inheritance, divorce, conversion are as much religious in nature and content as any other belief or faith. Reason and logic have little role to play. The sentiments and emotions have to be cooled and tempered by sincere effort. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders. (Para 44)

No religion permits deliberate distortions. Much misapprehension prevails about bigamy in Islam. To check the misuse many Islamic countries have codified the personal law, wherein the practice of polygamy has been either totally prohibited or severely restricted. But ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. "But religious practices violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression." Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity. But the first step should be to rationalise the personal law of the minorities to develop religious and cultural amity. The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine

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a the matter and bring about a comprehensive legislation in keeping with modern day concept of human rights for women. The Government may also consider feasibility of appointing a Committee to enact a Conversion of Religion Act, immediately, to check the abuse of religion by any person. The law may provide that every citizen who changes his religion cannot marry another wife unless he divorces his first wife. The provision should be made applicable to every person whether he is a Hindu or a Muslim or a Christian or a Sikh or a Jain or a Buddhist. Provision may be made for maintenance and succession etc. also to avoid clash of interest after death. (Paras 45 and 46)

b R-M/14454/CR

The Judgments of the Court were delivered by

c KULDIP SINGH, J.— “The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India” is an unequivocal mandate under Article 44 of the Constitution of India which seeks to introduce a uniform personal law — a decisive step towards national consolidation. Pandit Jawaharlal Nehru, while defending the introduction of the Hindu Code Bill instead of a uniform civil code, in Parliament in 1954, said, “I do not think that at the present moment the time is ripe in India for me to try to push it through.” It appears that even 41 years thereafter, the rulers of the day are not in a mood to retrieve Article 44 from the cold storage where it is lying since 1949. The Governments — which have come and gone — have so far failed to make any effort towards “unified personal law for all Indians”. The reasons are too obvious to be stated. The utmost that has been done is to codify the Hindu law in the form of the Hindu Marriage Act, 1955, the Hindu Succession Act, 1956, the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1956 which have replaced the traditional Hindu law based on different schools of thought and scriptural laws into one unified code. When more than 80% of the citizens have already been brought under the codified personal law there is no justification whatsoever to keep in abeyance, anymore, the introduction of “uniform civil code” for all citizens in the territory of India.

f 2. The questions for our consideration are whether a Hindu husband, married under Hindu law, by embracing Islam, can solemnise a second marriage? Whether such a marriage without having the first marriage dissolved under law, would be a valid marriage *qua* the first wife who continues to be a Hindu? Whether the apostate husband would be guilty of the offence under Section 494 of the Indian Penal Code (IPC)?

g 3. These are four petitions under Article 32 of the Constitution of India. There are two petitioners in Writ Petition No. 1079 of 1989. Petitioner 1 is the President of “KALYANI” — a registered society — which is an organisation working for the welfare of needy families and women in distress. Petitioner 2, Meena Mathur was married to Jitender Mathur on 27-2-1978. Three children (two sons and a daughter) were born out of the wedlock. In early 1988, the petitioner was shocked to learn that her husband had solemnised second marriage with one Sunita Narula @ Fathima. The

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marriage was solemnised after they converted themselves to Islam and adopted Muslim religion. According to the petitioner, conversion of her husband to Islam was only for the purpose of marrying Sunita and circumventing the provisions of Section 494 IPC. Jitender Mathur asserts that having embraced Islam, he can have four wives irrespective of the fact that his first wife continues to be a Hindu.

4. Rather interestingly Sunita alias Fathima is the petitioner in Writ Petition No. 347 of 1990. She contends that she along with Jitender Mathur who was earlier married to Meena Mathur embraced Islam and thereafter got married. A son was born to her. She further states that after marrying her, Jitender Mathur, under the influence of his first Hindu wife, gave an undertaking on 28-4-1988 that he had reverted back to Hinduism and had agreed to maintain his first wife and three children. Her grievance is that she continues to be a Muslim, and is not being maintained by her husband and has no protection under either of the personal laws.

5. Geeta Rani, petitioner in Writ Petition No. 424 of 1992 was married to Pradeep Kumar according to Hindu rites on 13-11-1988. It is alleged in the petition that her husband used to maltreat her and on one occasion gave her so much beating that her jaw bone was broken. In December 1991, the petitioner learnt that Pradeep Kumar ran away with one Deepa and after conversion to Islam married her. It is stated that the conversion to Islam was only for the purpose of facilitating the second marriage.

6. Sushmita Ghosh is another unfortunate lady who is the petitioner in Civil Writ Petition No. 509 of 1992. She was married to G.C. Ghosh according to Hindu rites on 10-5-1984. On 20-4-1992, the husband told her that he no longer wanted to live with her and as such she should agree to divorce by mutual consent. The petitioner was shocked and prayed that she was his legally wedded wife and wanted to live with him and as such the question of divorce did not arise. The husband finally told the petitioner that he had embraced Islam and would soon marry one Vinita Gupta. He had obtained a certificate dated 17-6-1992 from the Qazi indicating that he had embraced Islam. In the writ petition, the petitioner has further prayed that her husband be restrained from entering into second marriage with Vinita Gupta.

7. Marriage is the very foundation of civilised society. The relation once formed, the law steps in and binds the parties to various obligations and liabilities thereunder. Marriage is an institution in the maintenance of which the public at large is deeply interested. It is the foundation of the family and in turn of the society without which no civilisation can exist.

8. Till the time we achieve the goal — uniform civil code for all the citizens of India — there is an open inducement to a Hindu husband, who wants to enter into a second marriage while the first marriage is subsisting, to become a Muslim. Since monogamy is the law for Hindus and the Muslim law permits as many as four wives in India, errand (*sic errant*) Hindu husband embraces Islam to circumvent the provisions of the Hindu law and to escape from penal consequences.

9. The doctrine of indissolubility of marriage, under the traditional Hindu law, did not recognise that conversion would have to the effect of dissolving a Hindu marriage. Conversion to another religion by one or both the Hindu spouses did not dissolve the marriage. It would be useful to have a look at some of the old cases on the subject. In *Ram Kumari, Re*<sup>1</sup>, where a Hindu wife converted to Muslim faith and then married a Mohammedan, it was held that her earlier marriage with a Hindu husband was not dissolved by her conversion. She was charged and convicted of bigamy under Section 494 of the IPC. It was held that there was no authority under Hindu law for the proposition that an apostate is absolved from all civil obligations and that so far as the matrimonial bond was concerned, such view was contrary to the spirit of the Hindu law. The Madras High Court followed *Ram Kumari*<sup>1</sup> in *Budansa v. Fatima*<sup>2</sup>. In *Gul Mohd. v. Emperor*<sup>3</sup> a Hindu wife was fraudulently taken away by the accused, a Mohammedan, who married her according to Muslim law after converting her to Islam. It was held that the conversion of the Hindu wife to Mohammedan faith did not ipso facto dissolve the marriage and she could not during the lifetime of her former husband enter into a valid contract of marriage. Accordingly the accused was convicted for adultery under Section 497 of the IPC.

10. In *Nandi v. Crown*<sup>4</sup> Nandi, the wife of the complainant, changed her religion and became a Mussalman and thereafter married a Mussalman named Rukan Din. She was charged with an offence under Section 494 of the Indian Penal Code. It was held that the mere fact of her conversion to Islam did not dissolve the marriage which could only be dissolved by a decree of court. *Emperor v. Ruri*<sup>5</sup> was a case of Christian wife. The Christian wife renounced Christianity and embraced Islam and then married a Mahommedan. It was held that according to the Christian marriage law, which was the law applicable to the case, the first marriage was not dissolved and therefore the subsequent marriage was bigamous.

11. In India there has never been a matrimonial law of general application. Apart from statute law a marriage was governed by the personal law of the parties. A marriage solemnised under a particular statute and according to personal law could not be dissolved according to another personal law, simply because one of the parties had changed his or her religion.

12. In *Sayeda Khatoon v. M. Obadiah*<sup>6</sup> Lodge, J. speaking for the court held as under :

- "The parties were originally Jews bound by the Jewish personal law.

<sup>1</sup> ILR (1891) 18 Cal 264

<sup>2</sup> (1914) 22 IC 697 ; 26 MLJ 260 . 1914 MWN 278

<sup>3</sup> AIR 1947 Nag 121 48 Cri LJ 43 : 228 IC 1

<sup>4</sup> ILR 1920 Lah 440

<sup>5</sup> AIR 1919 Lah 389 : 48 IC 493 20 Cri LJ 3

<sup>6</sup> 49 CWN 745

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The Plaintiff has since been converted to Islam and may in some respects be governed by the Mahommedan Law.

The Defendant is not governed by the Mahommedan Law.

If this were an Islamic country, where the Mahommedan Law was applied to all cases where one party was a Mahommedan, it might be that Plaintiff would be entitled to the declaration prayed for. But this is not a Mahommedan country; and the Mahommedan Law is not the Law of the Land.

Now, in my opinion, is it the Law of India, that when any person is converted to Islam the Mahommedan Law shall be applicable to him in all his relationships?

I can see no reason why the Mahommedan Law should be preferred to the Jewish Law in a matrimonial dispute between a Mahommedan and a Jew particularly when the relationship, viz. marriage, was created under the Jewish Law.

As I stated in a previous case there is no matrimonial law of general application in India. There is a Hindu Law for Hindus, a Mahommedan Law for Mahommedans, a Christian Law for Christians, and a Jewish Law for Jews. There is no general matrimonial law regarding mixed marriages other than the statute law, and there is no suggestion that the statute law is applicable in the present case.

It may be that a marriage solemnised according to Jewish rites may be dissolved by the proper authority under Jewish Law when one of the parties renounces the Jewish Faith. It may be that a marriage solemnised according to Mahommedan Law may be dissolved according to the Mahommedan Law when one of the parties ceases to be a Mahommedan. But I can find no authority for the view that a marriage solemnized according to one personal law can be dissolved according to another personal law simply because one of the two parties has changed his or her religion."

*Sayeda Khatoon case*<sup>6</sup> was followed with approval by Blagden, J. of the Bombay High Court in *Robasa Khanum v. Khodadad Bomanji Irani*<sup>7</sup>. In this case the parties were married according to Zoroastrian law. The wife became Muslim whereas the husband declined to do so. The wife claimed that her marriage stood dissolved because of her conversion to Islam. The learned Judge dismissed the suit. It would be useful to quote the following observations from the judgment:

"We have, therefore, this position — British India as a whole, is neither governed by Hindu, Mahomedan, Sikh, Parsi, Christian, Jewish or any other law except a law imposed by Great Britain under which Hindus, Mahomedans, Sikhs, Parsis, and all others, enjoy equal rights and the utmost possible freedom of religious observance, consistent in every case with the rights of other people. I have to decide this case

7 (1946) 48 Bom LR 864 : 1948 Bom 223

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according to the law as it is, and there seems, in principle, no adequate ground for holding that in this case Mahomedan law is applicable to a non-Mahomedan.

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Do then the authorities compel me to hold that one spouse can by changing his or her religious opinions (or purporting to do so) force his or her newly acquired personal law on a party to whom it is entirely alien and who does not want it? In the name of justice, equity and good conscience, or, in more simple language, of common sense, why should this be possible? If there were no authority on the point I (personally) should have thought that so monstrous an absurdity carried its own refutation with it, so extravagant are the results that follow from it. For it is not only the question of divorce that the plaintiff's contention affects. If it is correct, it follows that a Christian husband can embrace Islam and, the next moment, three additional wives, without even the consent of the original wife."

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Against the judgment of Blagden, J., the appeal was heard by a Division Bench consisting of Sir Leonard Stone, Chief Justice and Mr Justice Chagla (as the learned Judge then was).<sup>7a</sup> Chagla, J. who spoke for the Bench posed the question that arose for determination as under: "What are the consequences of the plaintiff's conversion to Islam?" The Bench upheld the judgment of Blagden, J. and dismissed the appeal. Chagla, J. elaborating the legal position held as under:

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"We have here a Muslim wife according to whose personal law conversion to Islam, if the other spouse does not embrace the same religion, automatically dissolves the marriage. We have a Zoroastrian husband according to whose personal law such conversion does not bring about the same result. The Privy Council in *Waghela Rajsanji v. Shekh Masludin*<sup>8</sup> expressed the opinion that if there was no rule of Indian law which could be applied to a particular case, then it should be decided by equity and good conscience, and they interpreted equity and good conscience to mean the rules of English law if found applicable to Indian society and circumstances. And the same view was confirmed by their Lordships of the Privy Council in *Muhammad Raza v. Abbas Bandi Bibi*<sup>9</sup>. But there is no rule of English law which can be made applicable to a suit for divorce by a Muslim wife against her Zoroastrian husband. The English law only deals and can only deal with Christian marriages and with grounds for dissolving a Christian marriage. Therefore we must decide according to justice and right, or equity and good conscience independently of any provisions of the English law. We must do substantial justice between the parties and in doing so hope that we have vindicated the principles of justice and right or equity and good conscience.

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<sup>7a</sup> *Id*, Bom LR p 877, AIR 1947 SC 272  
<sup>8</sup> (1887) LR 14 IA 89, 96  
<sup>9</sup> (1932) LR 59 IA 236, 246

It is impossible to accept the contention of Mr Peerbhoy that justice and right requires that we should apply Muslim law in dealing this case. It is difficult to see why the conversion of one party to a marriage should necessarily afford a ground for its dissolution. The bond that keeps a man and woman happy in marriage is not exclusively the bond of religion. There are many other ties which make it possible for a husband and wife to live happily and contentedly together. It would indeed be a startling proposition to lay down that although two persons may want to continue to live in a married state and disagree as to the religion they should profess, their marriage must be automatically dissolved. Mr Peerbhoy has urged that it is rarely possible for two persons of different communities to be happily united in wedlock. If conversion of one of the spouses leads to unhappiness, then the ground for dissolution of marriage would not be the conversion but the resultant unhappiness. Under Muslim law, apostasy from Islam of either party to a marriage operates as a complete and immediate dissolution of the marriage. But Section 4 of the Dissolution of Muslim Marriages Act (VIII of 1939) provides that the renunciation of Islam by a married Muslim woman or her conversion to a faith other than Islam shall not by itself operate to dissolve her marriage. This is a very clear and emphatic indication that the Indian legislature has departed from the rigour of the ancient Muslim law and has taken the more modern view that there is nothing to prevent a happy marriage notwithstanding the fact that the two parties to it professed different religions.

We must also point out that the plaintiff and the defendant were married according to the Zoroastrian rites. They entered into a solemn pact that the marriage would be monogamous and could only be dissolved according to the tenets of the Zoroastrian religion. It would be patently contrary to justice and right that one party to a solemn pact should be allowed to repudiate it by a unilateral act. It would be tantamount to permitting the wife to force a divorce upon her husband although he may not want it and although the marriage vows which both of them have taken would not permit it. We might also point out that the Shariat Act (Act XXVI of 1937) provides that the rule of decision in the various cases enumerated in Section 2 which includes marriage and dissolution of marriage shall be the Muslim personal law only where the parties are Muslims; it does not provide that the Muslim personal law shall apply when only one of the parties is a Muslim."

*(The Single Judge judgment and the Division Bench judgment are reported in 1946 Bombay Law Reporter 864.)*

13. In *Andal Vaidyanathan v. Abdul Allam Vaidya*<sup>10</sup> a Division Bench of the High Court dealing with a marriage under the Special Marriage Act, 1872 held: (AIR Headnote, p. 446)

<sup>10</sup> AIR 1946 Mad 446 · (1946) 1 MLJ 402 · 227 IC 417

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a "The Special Marriage Act clearly only contemplates monogamy and a person married under the Act cannot escape from its provisions by merely changing his religion. Such a person commits bigamy if he marries again during the lifetime of his spouse, and it matters not what religion he professes at the time of the second marriage. Section 17 provides the only means for the dissolution of a marriage or a declaration of its nullity.

b Consequently, where two persons married under the Act subsequently become converted to Islam, the marriage can only be dissolved under the provisions of the Divorce Act and the same would apply even if only one of them becomes converted to Islam. Such a marriage is not a marriage in the Mahomedan sense which can be dissolved in a Mahomedan manner. It is a statutory marriage and can only be dissolved in accordance with the Statute: (1941) AIR 1941 Cal 582 and (1917) 1 KB 634, Rel. on; (1935) AIR 1935 Bom 8 and 18 Cal 264, Disting."

c 14. It is, thus, obvious from the catena of case-law that a marriage celebrated under a particular personal law cannot be dissolved by the application of another personal law to which one of the spouses converts and the other refuses to do so. Where a marriage takes place under Hindu law the parties acquire a status and certain rights by the marriage itself under the law governing the Hindu marriage and if one of the parties is allowed to dissolve the marriage by adopting and enforcing a new personal law, it would tantamount to destroying the existing rights of the other spouse who continues to be a Hindu. We, therefore, hold that under the Hindu Personal Law as it existed prior to its codification in 1955, a Hindu marriage continued to subsist even after one of the spouses converted to Islam. There was no automatic dissolution of the marriage.

d 15. The position has not changed after coming into force of the Hindu Marriage Act, 1955 (the Act) rather it has become worse for the apostate. The Act applies to Hindus by religion in any of its forms or developments. It also applies to Buddhists, Jains and Sikhs. It has no application to Muslims, Christians and Parsis. Section 4 of the Act is as under:

f "Overriding effect of Act.— Save as otherwise expressly provided in this Act,—

g (a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to have effect in so far as it is inconsistent with any of the provisions contained in this Act."

h 16. A marriage solemnised, whether before or after the commencement of the Act, can only be dissolved by a decree of divorce on any of the grounds enumerated in Section 13 of the Act. One of the grounds under

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Section 13(1)(ii) is that "the other party has ceased to be a Hindu by conversion to another religion". Sections 11 and 15 of the Act are as under :

"11. *Void marriages.*— Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of Section 5.

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15. *Divorced persons when may marry again.*—When a marriage has been dissolved by a decree of divorce and either there is no right of appeal against the decree or, if there is such a right of appeal the time for appealing has expired without an appeal having been presented or an appeal has been presented but has been dismissed, it shall be lawful for either party to the marriage to marry again."

17. It is obvious from the various provisions of the Act that the modern Hindu law strictly enforces monogamy. A marriage performed under the Act cannot be dissolved except on the grounds available under Section 13 of the Act. In that situation parties who have solemnised the marriage under the Act remain married even when the husband embraces Islam in pursuit of another wife. A second marriage by an apostate under the shelter of conversion to Islam would nevertheless be a marriage in violation of the provisions of the Act by which he would be continuing to be governed so far as his first marriage under the Act is concerned despite his conversion to Islam. The second marriage of an apostate would, therefore, be illegal marriage *qua* his wife who married him under the Act and continues to be a Hindu. Between the apostate and his Hindu wife the second marriage is in violation of the provisions of the Act and as such would be non est. Section 494, Indian Penal Code is as under :

"494. *Marrying again during lifetime of husband or wife.*— Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

The necessary ingredients of the section are : (1) having a husband or wife living; (2) marries in any case; (3) in which such marriage is void; (4) by reason of its taking place during the life of such husband or wife.

18. It is no doubt correct that the marriage solemnised by a Hindu husband after embracing Islam may not strictly be a void marriage under the Act because he is no longer a Hindu, but the fact remains that the said marriage would be in violation of the Act which strictly professes monogamy.

19. The expression 'void' for the purpose of the Act has been defined under Section 11 of the Act. It has a limited meaning within the scope of the definition under the section. On the other hand the same expression has a

different purpose under Section 494 IPC and has to be given meaningful interpretation.

- a 20. The expression 'void' under Section 494 IPC has been used in the wider sense. A marriage which is in violation of any provisions of law would be void in terms of the expression used under Section 494 IPC.

21. A Hindu marriage solemnised under the Act can only be dissolved on any of the grounds specified under the Act. Till the time a Hindu marriage is dissolved under the Act none of the spouses can contract second marriage.

- b Conversion to Islam and marrying again would not, by itself, dissolve the Hindu marriage under the Act. The second marriage by a convert would therefore be in violation of the Act and as such void in terms of Section 494 IPC. Any act which is in violation of mandatory provisions of law is per se void.

- c 22. The real reason for the voidness of the second marriage is the subsisting of the first marriage which is not dissolved even by the conversion of the husband. It would be giving a go-by to the substance of the matter and acting against the spirit of the statute if the second marriage of the convert is held to be legal.

- d 23. We also agree with the law laid down by Chagla, J. in *Robasa Khanum v. Khodadad Irani case*<sup>7</sup> wherein the learned Judge has held that the conduct of a spouse who converts to Islam has to be judged on the basis of the rule of justice and right or equity and good conscience. A matrimonial dispute between a convert to Islam and his or her non-Muslim spouse is obviously not a dispute "where the parties are Muslims" and, therefore, the rule of decision in such a case was or is not required to be the "Muslim Personal Law". In such cases the court shall act and the Judge shall decide according to justice, equity and good conscience. The second marriage of a Hindu husband after embracing Islam being violative of justice, equity and good conscience would be void on that ground also and attract the provisions of Section 494 IPC.

- f 24. Looked from another angle, the second marriage of an apostate-husband would be in violation of the rules of natural justice. Assuming that a Hindu husband has a right to embrace Islam as his religion, he has no right under the Act to marry again without getting his earlier marriage under the Act dissolved. The second marriage after conversion to Islam would, thus, be in violation of the rules of natural justice and as such would be void.

- g 25. The interpretation we have given to Section 494 IPC would advance the interest of justice. It is necessary that there should be harmony between the two systems of law just as there should be harmony between the two communities. The result of the interpretation, we have given to Section 494 IPC, would be that the Hindu law on the one hand and the Muslim law on the other hand would operate within their respective ambits without trespassing on the personal laws of each other. Since it is not the object of Islam nor is the intention of the enlightened Muslim community that Hindu husbands should be encouraged to become Muslims merely for the purpose

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of evading their own personal laws by marrying again, the courts can be persuaded to adopt a construction of the laws resulting in denying the Hindu husband converted to Islam the right to marry again without having his existing marriage dissolved in accordance with law. a

26. All the four ingredients of Section 494 IPC are satisfied in the case of a Hindu husband who marries for the second time after conversion to Islam. He has a wife living, he marries again. The said marriage is void by reason of its taking place during the life of the first wife.

27. We, therefore, hold that the second marriage of a Hindu husband after his conversion to Islam is a void marriage in terms of Section 494 IPC. b

28. We may at this stage notice the Privy Council judgment in *Attorney General of Ceylon v. Reid*<sup>11</sup>. A Christian lady was married according to the Christian rites. Years later she embraced Islamic faith and got married by the Registrar of Muslim Marriages at Colombo according to the statutory formalities prescribed for a Muslim marriage. The husband was charged and convicted by the Supreme Court, Ceylon of the offence of bigamy under the Ceylon Penal Code. In an appeal before the Privy Council, the respondent was absolved from the offence of bigamy. It was held by Privy Council as under: c

“In their Lordships’ view, in such countries there must be an inherent right in the inhabitants domiciled there to change their religion and personal law and so to contract a valid polygamous marriage if recognised by the laws of the country notwithstanding an earlier marriage. If such inherent right is to be abrogated, it must be done by statute.” d

29. Despite there being an inherent right to change religion the applicability of penal laws would depend upon the two personal laws governing the marriage. The decision of Privy Council was on the facts of the case, specially in the background of the two personal laws operating in Ceylon. *Reid case*<sup>11</sup> is, thus, of no help to us in the facts and legal background of the present cases. e

30. Coming back to the question “uniform civil code” we may refer to the earlier judgments of this Court on the subject. A Constitution Bench of this Court speaking through Chief Justice Y.V. Chandrachud in *Mohd. Ahmed Khan v. Shah Bano Begum*<sup>12</sup> held as under: (SCC pp. 572-73, para 32) f

“It is also a matter of regret that Article 44 of our Constitution has remained a dead letter. It provides that : ‘The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India’. There is no evidence of any official activity for framing a common civil code for the country. A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter g

<sup>11</sup> (1965) 1 All ER 812

<sup>12</sup> (1985) 2 SCC 556 : 1985 SCC (Cri) 245 : AIR 1985 SC 945

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a of reforms of their personal law. A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue. It is the State which is charged with the duty of securing a uniform civil code for the citizens of the country and, unquestionably; it has the legislative competence to do so. A counsel in the case whispered, somewhat audibly, that legislative competence is one thing, the political courage to use that competence is quite another. We understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But, a beginning has to be made if the Constitution is to have any meaning. Inevitably, the role of the reformer has to be assumed by the courts because, it is beyond the endurance of sensitive minds to allow injustice to be suffered when it is so palpable. But piecemeal attempts of courts to bridge that gap between personal laws cannot take the place of a common Civil Code. Justice to all is a far more satisfactory way of dispensing justice than justice from case to case."

c 31. In *Jordan Diengdeh v. S.S. Chopra*<sup>13</sup> O. Chinnappa Reddy, J. speaking for the Court referred to the observations of Chandrachud, C.J. in *Shah Bano Begum case*<sup>12</sup> and observed as under : (SCC pp. 62-3, para 1)

d "It was just the other day that a Constitution Bench of this Court had to emphasise the urgency of infusing life into Article 44 of the Constitution which provides that : 'The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India'. The present case is yet another which focusses ... on the immediate and compulsive need for a uniform civil code. The totally unsatisfactory state of affairs consequent on the lack of a uniform civil code is exposed by the facts of the present case. Before mentioning the facts of the case, we might as well refer to the observations of Chandrachud, C.J., in the recent case decided by the Constitution Bench (*Mohd. Ahmed Khan v. Shah Bano Begum*<sup>12</sup>)."

f 32. One wonders how long will it take for the Government of the day to implement the mandate of the Framers of the Constitution under Article 44 of the Constitution of India. The traditional Hindu law — personal law of the Hindus — governing inheritance, succession and marriage was given a go-by as back as 1955-56 by codifying the same. There is no justification whatsoever in delaying indefinitely the introduction of a uniform personal law in the country.

g 33. Article 44 is based on the concept that there is no necessary connection between religion and personal law in a civilised society. Article 25 guarantees religious freedom whereas Article 44 seeks to divest religion from social relations and personal law. Marriage, succession and like matters of a secular character cannot be brought within the guarantee enshrined under Articles 25, 26 and 27. The personal law of the Hindus, such as

h 13 (1985) 3 SCC 62 : AIR 1985 SC 935

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relating to marriage, succession and the like have all a sacramental origin, in the same manner as in the case of the Muslims or the Christians. The Hindus along with Sikhs, Buddhists and Jains have forsaken their sentiments in the cause of the national unity and integration, some other communities would not, though the Constitution enjoins the establishment of a "common civil code" for the whole of India.

34. It has been judicially acclaimed in the United States of America that the practice of polygamy is injurious to "public morals", even though some religions may make it obligatory or desirable for its followers. It can be superseded by the State just as it can prohibit human sacrifice or the practice of 'Suttee' in the interest of public order. Bigamous marriage has been made punishable amongst Christians by Act (XV of 1872), Parsis by Act (III of 1936) and Hindus, Buddhists, Sikhs and Jains by Act (XXV of 1955).

35. Political history of India shows that during the Muslim regime, justice was administered by the *Qazis* who would obviously apply the Muslim scriptural law to Muslims, but there was no similar assurance so far litigations concerning Hindus were concerned. The system, more or less, continued during the time of the East India Company, until 1772 when Warren Hastings made regulations for the administration of civil justice for the native population, without discrimination between Hindus and Mahomedans. The 1772 Regulations followed by the Regulations of 1781 whereunder it was prescribed that either community was to be governed by its 'personal' law in matters relating to inheritance, marriage, religious usage and institutions. So far as the criminal justice was concerned the British gradually superseded the Muslim law in 1832 and criminal justice was governed by the English common law. Finally the Indian Penal Code was enacted in 1860. This broad policy continued throughout the British regime until independence and the territory of India was partitioned by the British Rulers into two States on the basis of religion. Those who preferred to remain in India after the partition, fully knew that the Indian leaders did not believe in two-nation or three-nation theory and that in the Indian Republic there was to be only one nation — Indian nation — and no community could claim to remain a separate entity on the basis of religion. It would be necessary to emphasise that the respective personal laws were permitted by the British to govern the matters relating to inheritance, marriages etc. only under the Regulations of 1781 framed by Warren Hastings. The Legislation — not religion — being the authority under which personal law was permitted to operate and is continuing to operate, the same can be superseded/supplemented by introducing a uniform civil code. In this view of the matter no community can oppose the introduction of uniform civil code for all the citizens in the territory of India.

36. The successive Governments till date have been wholly remiss in their duty of implementing the constitutional mandate under Article 44 of the Constitution of India.

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a 37. We, therefore, request the Government of India through the Prime Minister of the country to have a fresh look at Article 44 of the Constitution of India and “endeavour to secure for the citizens a uniform civil code throughout the territory of India”.

b 38. We further direct the Government of India through Secretary, Ministry of Law and Justice to file an affidavit of a responsible officer in this Court in August 1996 indicating therein the steps taken and efforts made, by the Government of India, towards securing a “uniform civil code” for the citizens of India. Sahai, J. in his short and crisp supporting opinion has suggested some of the measures which can be undertaken by the Government in this respect.

c 39. Answering the questions posed by us in the beginning of the judgment, we hold that the second marriage of a Hindu husband after conversion to Islam, without having his first marriage dissolved under law, would be invalid. The second marriage would be void in terms of the provisions of Section 494 IPC and the apostate-husband would be guilty of the offence under Section 494 IPC.

d 40. The question of law having been answered we dispose of the writ petitions. The petitioners may seek any relief by invoking any remedy which may be available to them as a result of this judgment or otherwise. No costs.

e R.M. SAHAI, J. (*concurring*)— Considering the sensitivity of the issue and magnitude of the problem, both on the desirability of a uniform or common civil code and its feasibility, it appears necessary to add a few words to the social necessity projected in the order proposed by esteemed Brother Kuldip Singh, J. more to focus on the urgency of such a legislation and to emphasise that I entirely agree with the thought-provoking reasons which have been brought forth by him in his order clearly and lucidly.

f 42. The pattern of debate, even today, is the same as was voiced forcefully by the members of the minority community in the Constituent Assembly. If, “the non-implementation of the provisions contained in Article 44 amounts to grave failure of Indian democracy” represents one side of the picture, then the other side claims that, “logical probability appears to be that the code would cause dissatisfaction and disintegration than serve as a common umbrella to promote homogeneity and national solidarity”.

g 43. When the Constitution was framed with secularism as its ideal and goal, the consensus and conviction to be one, socially, found its expression in Article 44 of the Constitution. But religious freedom, the basic foundation of secularism, was guaranteed by Articles 25 to 28 of the Constitution. Article 25 is very widely worded. It guarantees all persons, not only freedom of conscience but the right to profess, practise and propagate religion. What is religion? Any faith or belief. The Court has expanded religious liberty in its various phases guaranteed by the Constitution and extended it to practices and even external overt acts of the individual. Religion is more than mere matter of faith. The Constitution by guaranteeing freedom of conscience h ensured inner aspects of religious belief. And external expression of it were

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protected by guaranteeing right to freely practise and propagate religion. Reading and reciting holy scriptures, for instance, Ramayana or Quran or Bible or Guru Granth Sahib is as much a part of religion as offering food to deity by a Hindu or bathing the idol or dressing him and going to a temple, mosque, church or gurdwara.

44. Marriage, inheritance, divorce, conversion are as much religious in nature and content as any other belief or faith. Going round the fire seven rounds or giving consent before *Qazi* are as much matter of faith and conscience as the worship itself. When a Hindu becomes a convert by reciting *Kalma* or a Muslim becomes Hindu by reciting certain *Mantras* it is a matter of belief and conscience. Some of these practices observed by members of one religion may appear to be excessive and even violative of human rights to members of another. But these are matters of faith. Reason and logic have little role to play. The sentiments and emotions have to be cooled and tempered by sincere effort. But today there is no Raja Ram Mohan Rai who single-handedly brought about that atmosphere which paved the way for *Sati* abolition. Nor is a statesman of the stature of Pt. Nehru who could pilot through, successfully, the Hindu Succession Act and Hindu Marriage Act revolutionising the customary Hindu law. The desirability of uniform code can hardly be doubted. But it can concretize only when social climate is properly built up by elite of the society, statesmen amongst leaders who instead of gaining personal mileage rise above and awaken the masses to accept the change.

45. The problem with which these appeals are concerned is that many Hindus have changed their religion and have become convert to Islam only for purposes of escaping the consequences of bigamy. For instance, Jitendra Mathur was married to Meena Mathur. He and another Hindu girl embraced Islam, obviously because Muslim law permits more than one wife and to the extent of four. But no religion permits deliberate distortions. Much misapprehension prevails about bigamy in Islam. To check the misuse many Islamic countries have codified the personal law, "wherein the practice of polygamy has been either totally prohibited or severely restricted. (Syria, Tunisia, Morocco, Pakistan, Iran, the Islamic Republics of the Soviet Union are some of the Muslim countries to be remembered in this context)". But ours is a Secular Democratic Republic. Freedom of religion is the core of our culture. Even the slightest deviation shakes the social fibre. "But religious practices violative of human rights and dignity and sacerdotal suffocation of essentially civil and material freedoms, are not autonomy but oppression." Therefore, a unified code is imperative both for protection of the oppressed and promotion of national unity and solidarity. But the first step should be to rationalise the personal law of the minorities to develop religious and cultural amity. The Government would be well advised to entrust the responsibility to the Law Commission which may in consultation with Minorities Commission examine the matter and bring about a comprehensive legislation in keeping with modern day concept of human rights for women.

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a 46. The Government may also consider feasibility of appointing a Committee to enact a Conversion of Religion Act, immediately, to check the abuse of religion by any person. The law may provide that every citizen who changes his religion cannot marry another wife unless he divorces his first wife. The provision should be made applicable to every person whether he is a Hindu or a Muslim or a Christian or a Sikh or a Jain or a Buddhist. Provision may be made for maintenance and succession etc. also to avoid clash of interest after death.

b 47. This would go a long way to solve the problem and pave the way for a unified civil code.

ORDER OF COURT

c 48. For the reasons and conclusions reached in separate but concurring judgments the writ petitions are allowed in terms of the answers to the questions posed in the opinion of Kuldip Singh, J.

(1995) 3 Supreme Court Cases 653

(BEFORE P.B. SAWANT AND S.B. MAJMUDAR, JJ.)

Civil Appeal No. 6001 of 1994

d DR RASHMI SRIVASTAVA .. Appellant;  
*Versus*  
VIKRAM UNIVERSITY AND OTHERS .. Respondents.

*With*

Civil Appeal No. 6002 of 1994

e DR B.D. SRIVASTAVA AND OTHERS .. Appellants;  
*Versus*  
VIKRAM UNIVERSITY AND OTHERS .. Respondents.

Civil Appeals Nos. 6001-02 of 1994†, decided on April 20, 1995

f A. Service Law — Seniority — Direct recruits and promotees — Ex cadre promotees — Claim for parity with direct recruits for determining inter se seniority — Merit Promotion Scheme for University Teachers introduced in M.P. and other Universities in 1982 on the basis of recommendations of UGC for promotion from Lecturer to Reader and from Reader to Professor — But S. 49 of M.P. Vishwavidyalaya Adhiniyam, 1973 providing direct recruitment as the only source of appointment to these posts, thus recognizing the direct recruits as the only regular cadre — Held, the merit promotees would accordingly fall outside the cadre under the M.P. Adhiniyam or Acts of other States having similar provision — Unless the Act is amended introducing such promotion as an additional source of recruitment, even ordinances and statutes issued by the university providing for promotion as a new source of recruitment and determination of inter se seniority would be ultra vires the Act and of no effect — Scheme would not affect any expansion of the cadre of

h

† From the Judgment and Order dated 23-2-1994 of the Madhya Pradesh High Court in M.P. No. 208 of 1989