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Ronald Neufeldt

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Ronald Neufeldt
University of Calgary

CONVERSION FROM ONE religion to another has been a thorny issue throughout the history of the Indian subcontinent. Recently the controversy over conversion has received new life, given a number of events which in effect resulted in a great deal of debate over the place of Christians within the State of India. Perhaps the two most recent controversial events were the gruesome murder of Rev. Staines and his two children in Orissa and the visit of the Pope to India.

Much of the ensuing discussion has been of the emotional variety, dealing not only with the killing of innocents, but also the justifiability of missionary work and conversions, and the place of minorities within India. In all of the discussion that has taken place, particularly on the ListServ, little attention has been given to legal and constitutional issues other than a lengthy reference to the celebrated *Rev. Stanislaus* case by Ashok Chowgule. This amounted to a lengthy quote from Dr Praveen Bhai Togadia, the Secretary-General of the Vishva Hindu Parishad. In that statement Dr Togadia claims that the Supreme Court in its ruling on the *Stanislaus* case rejected in toto the claims of the Christian community. The right pressed was presumably the right to convert. Whether the spin given to the judgement of the Court by Dr Togadia is correct or not, one thing is clear, conversion, and by implication the position of minorities in India, remains a controversial issue, both in public debate and in the courts. I will not attempt an overview of relevant cases in this short paper, although this is, it seems to me, needed badly. Rather, I will attempt to use the *Stanislaus* case and its background to address Hindu perceptions (misperceptions?) of Christians particularly with respect to propagation. Propagation is, I would argue, the single most important issue for the future of Hindu-Christian relationships.

The Context

In 1967 the State of Orissa enacted the Orissa Freedom of Religion Act. In the stated objectives for the Act, the State referred to maladjustments and threats to law and order which may be brought about by conversions of a certain kind.

> Conversion in its very process involves an act of undermining another's faith. The process becomes all the more objectionable when this is brought about by recourse to methods like force, fraud, material inducement and exploitation of one's poverty, simplicity and ignorance. Conversion or an attempt to conversion in the above manner, besides creating maladjustments in social life, also give rise to problems of law and order.[1]

The Act was ostensibly aimed at conversions brought about by force, fraud, material inducements, and exploitation. Important for our consideration is the meaning given to some of these items. Conversion, for example, means "renouncing one religion and adopting another". Force includes the "threat of divine displeasure". Fraud includes "misrepresentation or any other fraudulent contrivance."[2] Interesting as well is the reference to the conversion of minors, women, and members of scheduled castes or tribes. These sections of society were seen as being in need of special protection. Therefore the penalties for conversion in such cases were much more severe than were the penalties for

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converting adult males who were not members of the scheduled castes or tribes.[3]

A similar Act was passed by the Madhya Pradesh Legislature in 1968. It is essentially the same as the Orissa Freedom of Religion Act with the exception that it requires that conversions be registered with the District Magistrate.

A third act which did not become part of the *Stanislaus* case, but which is worth considering, is the Arunachal Pradesh Freedom of Religion Act passed in 1978. In many respects it is the same as the Orissa and the Madhya Pradesh Acts. In one important respect it is different. Its aim is to prohibit conversion from indigenous faith (this includes Buddhism, Vaishnavism, and nature worship), by means of force, fraud, or inducement.[4] Of particular interest in this Act is the appeal to indigenous faith. Conversion from indigenous faith is to be prevented as far as this is possible because ostensibly such conversion is seen as a threat of some sort. Faiths not mentioned in the definition of indigenous are by implication clearly to be seen as alien. Public order is to be seen as somehow connected to adherence to indigenous faith. Thus any inducements such as appeals to divine displeasure or criticisms of indigenous faiths become threats to public order.

The Case

Both the Orissa Act and the Madhya Pradesh Act came under challenge at the State level before being heard on appeal by the Supreme Court. In Orissa, in the case of *Yulitha Hyde vs State* (1973), the challenge against the Orissa Act was made on two grounds, namely, "(a) The State Legislature has no legislative competency to legislate on the matters covered by the Act, and (b) The Act infringes the fundamental right guaranteed under Art. 25 of the Constitution".[5] The Act was eventually judged by the Court to be *ultra vires*. For our purposes the interesting and pertinent aspects are the arguments surrounding propagation and conversion. In his judgement, Justice R. N. Misra pointed out that the petitioners (both Catholic and Protestant) admitted to various reasons for conversion – satisfaction of basic physical wants, the exemplary life led by Christians, the attraction of Christian beliefs, escape from a depressed class, and mild threats such as divine displeasure.[6] From the Christian side propagation was seen as an integral part of Christianity. That is, Christ had given the mandate to Christians to make disciples, and Christians felt compelled to share the gift of salvation with others. That propagation was part of the religious duty of Christians was accepted by the Advocate for the Government of Orissa.

But, Justice Misra, appealing to the judgement in *Durgah Committee vs Hussain Ali* (1961), went beyond this stating that propagation is part of the religious duty of Christians and therefore a guaranteed right under the Constitution of India. We have here one of the few judgements in which conversion is seen as a right contemplated by the articles on religious freedom.

> The true scope of the guarantee under article 25 (1) of the Constitution, therefore, must be taken to extend to propagate religion and as a necessary corollary of this proposition, conversion into one's own religion has to be included in the right so far as Christian citizenship is concerned.[7]

Speaking for one aspect of the Act, Justice Misra suggested that the threat of divine displeasure and the threat of excommunication did in fact constitute forms of force and threat. However, the definition of inducement in the Act was seen as being too broad in that "even invoking the blessings of the Lord or to say that 'by His grace your soul shall be elevated' may come within the mischief of the term".[8]

The Act was, in the end, judged to be unconstitutional on three grounds, namely, article 25 (1) guarantees conversion as part of the Christian religion, the definition of inducement is too vague, and the State has no power to enact the legislation envisioned by the Act since the Act deals with religion and not public order. The latter falls under the competency of State legislation, but the former does not.[9]

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Two years later the Madhya Pradesh High Court heard a challenge to its own religious freedom act in *Rev. Stanislaus vs State* (1975). Since the provisions of the Act and the challenges to those provisions were similar to the Orissa Freedom of Religion Act, Justice C. J. Tare made substantial reference to the judgement in the case of *Yulitha Hyde vs State*. However, the purpose of these references was not to support the judgement in *Yulitha Hyde* but to argue against that judgement.

Appealing to the preamble of the Madhya Pradesh Act, Justice Tare argued that the Act did fall within the competence of the State Legislature. Conversions brought about by force, fraud, or allurement were for him matters of public order. The Act therefore had to do with public order and not simply with religion as the judgement in *Yulitha Hyde* seemed to indicate. In the view of Justice Tare, the Act fell within the competence of the State Legislature because it had to do with public order and not simply with religious freedom. Had the Act been confined only to freedom of religion it would not have fallen within the competence of the State.[10]

Justice Tare also found, in opposition to the judgement of Justice Misra, that the provisions of the Act did not violate Article 25 (1) of the Constitution. Shifting the argument away from the issue of the broad definitions of allurement, force, and fraud, Justice Tare argued that the provisions in the Act merely prohibit conversions by spurious means and therefore guarantee religious freedom even to those who might be amenable to such conversions. The arguments here were significant in that they were repeated with some changes in the Supreme Court decision. On the one hand he argued that "freedom of religion cannot be construed to be the right of an individual to encroach upon similar freedom of other individuals by questionable means".[11] On the other hand, to attempt to convert using force, fraud, or allurement might indeed create a threat for public order, here defined as community as opposed to the individual.[12]

Two other points concerning the decision of Justice Tare need to be emphasized since these become issues in the Supreme Court decision in the same case. Relying heavily on the Supreme Court judgements in *Ratilal Punamchand Gandhi vs State of Bombay* (1954) and *Commisioner, Hindu Religious Endowments vs Sri Lakshmindra Tirtha Swamiar* (1954), the Justice emphasized that the purpose of propagation was simply the edification of others.[13] This is quite different from the understanding of conversion in *Yulitha Hyde* where conversion was seen as a legitimate purpose of propagation – indeed as a right recognized by the Constitution in the case of Christians. Secondly, playing on the weaknesses of people amenable to force, fraud, or allurement is a contravention of their own right to religious freedom. To have an Act that prohibits such activities is, in fact, to guarantee religious freedom to weaker sections of society. The issue here is not to protect against conversion per se, but to protect against conversion of those who might be amenable to fraud. The Act then is seen as a protective measure for those who need the protection of the State. Whether or not the argument holds any water, it needs to be pointed out here since it is used in the Supreme Court decision in *Stanislaus*, but with a much wider application than that contemplated by Justice Tare.

Both cases, because they presented similar issues and arguments, were heard together by the Supreme Court in 1977. The decision of the Court was written by Chief Justice Ray. The two issues singled out by the Chief Justice were the right to propagate and the competency of the State Legislatures to enact the Freedom of Religion Acts. Emphasizing that the Acts were aimed at forcible conversion and therefore have to do not so much with religion as they have to do with the maintenance of public order, the Chief Justice argued that the States had the competency to enact the impugned legislation. In making this ruling the Chief Justice referred for support to *Ramjilal Modi vs State of U. P.* (1957), in which it was emphasized that a law relating to religion can be enacted in the interests of public

order.[14]

Of interest in the statements of the Chief Justice is the argument that the mere apprehension of disturbance to public order is enough to justify the impugned Act and the argument that conversions effected in a manner reprehensible to the conscience of the community are justifiably prohibited by the impugned Acts. This argument, it would seem, opens up the possibility of prohibiting any conversion if the community decides that it is reprehensible. If this is an acceptable conclusion, and at times this seems to be the gloss that organizations like the VHP sometimes put on the decision, then the Acts serve potentially to prohibit any conversions whatsoever. Or, it makes the right to convert or to seek conversions dependent on the will or vote of the majority. This I would suggest goes beyond what the framers of the Constitution wanted and what the Constitution itself suggests. Furthermore, it is precisely the kind of situation that the framers of the Constitution were trying to prevent, i.e. that the exercise of religious freedom should become dependent on the will of the majority community.

On the issue of propagation the concern of the Chief Justice turns on the argument made by the appellant that implied in the right to propagate is the right to convert a person to one's own religion. Taking a narrow view of the word propagate, and finding support in *Ratilal vs The State of Bombay* (1954) the Chief Justice argued that the right to propagate is confined to transmitting or spreading the tenets of one's own religion. It will be recalled that in the *Ratilal* case it was argued that the purpose of propagation is edification, not conversion. Speaking to the rights enshrined in Article 25 Ray states:

> What the Article grants is not the right to convert another person to one's own religion, but to transmit or spread one's religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all citizens of the country alike.[15]

The language of the Chief Justice would seem to suggest that if I am offended by someone's attempt to convert me, this is enough to make the attempt illegal. The Chief Justice also appears to be saying that since conversion does not appear in the fundamental rights it cannot by implication be included as a right even if my religion commands that I seek to convert in order to fulfil my religious duties.

Conclusion

How is one to understand the language in this judgement? It is possible to take a very narrow and literal approach as has been done by spokespersons for the VHP and to claim that Christians do not have the right to convert another. This I would suggest would be to take the pronouncements of the Chief Justice out of context. One has to see the language of the judgement in the context of the Freedom of Religion Acts and the M. P. High Court case on which the Chief Justice seems to depend. The Acts themselves, in spite of the restraints placed on anyone seeking to convert another do not prohibit such activity. They do prohibit seeking conversions by force, fraud, or inducement or allurement. The issue in both Acts is to prohibit conversions by questionable means.

If this more contextual approach to the decision in the Stanislaus case is correct then I would suggest that the claim that the Court has said that no one has the right to convert is a red herring. To put the issue in those simplistic terms is to ignore the complexity of the issue and the history of the interpretation of Article 25. There is a distinction to be made between saying that I have a right to convert someone and that I have a right to seek to convert someone. The latter is not ruled out even by the narrow

understanding of propagation, which says that I have the right to propagate only for the sake of edification or spreading the tenets of my religion. Relevant court cases taken as a whole seem to assert two rights implied by the fundamental rights. I have the right to convert to another religion and I have the right to seek to convince others about the rightness of my views. As cases dealing with freedom of speech suggest, without the latter as implied, the provision for freedom of speech would be an empty provision.[16] Furthermore it needs to be pointed out that the framers of the Constitution understood that conversions would flow from the exercise of the fundamental rights and the courts have tended to see things the same way. Conversion is seen by the courts to be a part of the fabric of a multireligious society that guarantees to people the right to propagate their views.

Even if one grants a contextual reading of *Stanislaus*, there are problematic aspects in the language of the Chief Justice. First, he seems to suggest that to insist on conversion as a fundamental right is to move in the direction of employing questionable means. This is to conflate the insistence on the right to convert with the right to force one's views on someone. This is, in the eyes of the Chief Justice, particularly pernicious with respect to the weaker sections of society which the Acts were designed to defend. The language taken at face value is similar to the rhetoric found in the infamous Niyogi Commission Report and in some of the arguments put forward against the right to propagate during the Constituent Assembly debates. It is the kind of rhetoric that suggests that conversion can only be conversion by force, fraud, or allurement – that there cannot be conversion of another kind. It is the kind of rhetoric that suggests that conversion is by definition an act of violence and disruption. Pertinent here is the definition of conversion provided in the Freedom of Religion Acts – that conversion is "renouncing one's religion and adopting another". Such a simplistic definition can only result in the misrepresentation of the relationship of potential converts to the community and the State. I have in mind here the business of dual allegiances, a reality which is recognized in the histories of converts and by the courts themselves in cases dealing with conversion and membership in scheduled castes.[17]

Secondly, it seems to be the view of the Chief Justice that any conversion that offends the conscience of the community is reprehensible and liable to be a threat to public order. Such arguments open up the possibility to prohibiting any conversion whatsoever if the community decides that it is for one reason or another reprehensible. If this is a correct interpretation it would make any attempt to seek a conversion dependent on the will of the majority. This would seem to lead to the very situation that the Constitution of India seeks to avoid, namely, that the exercise of religious freedom becomes dependent on the will of the religious majority.

Thirdly, to argue that the mere apprehension of disturbance to public order is enough to prohibit or to seriously circumscribe conversion activity is to argue against the direction that the Courts have taken in cases dealing with insult and religious procession. The Courts have argued that to justify a piece of legislation as being in the interests of public order there must be more than simply a perception that there might be a disturbance of some sort. The responsibility to protect public order is not met simply by placing a ban on the propagation of one's views or a ban on religious processions.[18]

Finally, the judgement of Chief Justice Ray goes far further in the protection of weaker sections of society than the courts have been willing to go in cases dealing with insult to religion. The subtext of his judgement seems to be that because Christians prey on weaker sections of society in their conversion efforts, these weaker sections need special protection to guarantee their freedom of conscience. It is on this point that constitutional experts have found the decision to be both wanting and potentially pernicious. In his monumental work on constitutional law in India H. M. Servai, former Advocate General of Maha-

rashtra, takes issue with Chief Justice Ray's emphasis on freedom of conscience at the expense of freedom of religion. He insists that the two must harmonize to provide for a system that gives free choice in matters of religion. Likewise the provision for propagation must be seen as harmonizing with the freedom of conscience.

> The right to propagate religion gives a meaning to freedom of choice, for choice involves not only knowledge but an act of will. To propagate religion is not only to impart knowledge and to spread it more widely, but to produce intellectual and moral conviction leading to action, namely, the adoption of that religion. *Successful* propagation of religion would result in conversion. Ray C. J. mistakenly believed that if A deliberately set out to convert B by propagating A's religion, that would impinge on B's "freedom of conscience".
>
> ... conversion does not in any way interfere with the freedom of conscience but is a fulfilment of it and gives meaning to it. It is submitted that the above view harmonizes with the legislative history of Art. 25(1) and the inclusion of the word "propagate" in it. It harmonizes with a matter of common knowledge that several religions are proselytizing religions as a matter of religious duty, and it harmonizes with the meaning of the words "propagate", "convert", and "conversion", "freedom of conscience" and the right freely to profess and practise religion.[19]

The argument that propagation is to be for edification only is, I would suggest an argument that caters to elements of the majority religious community. Certainly it is an idea with which the majority religious community will be more comfortable than it will be with the idea of propagation for the sake of conversion. But it is not the only line of argument taken by the Courts. As I have suggested earlier in this treatment there are cases in which the decisions challenge the notion that propagation must be for edification only. This is clearly the line of argument that Servai takes in his commentary on the Stanislaus case.

Notes

1. Lalit Mohan Suri (ed.), *The Current Indian Statutes*. (Chandigarh: Law Reporter Press, 1968), Part VI, p. 5.
2. Suri, Part VI, p. 5.
3. Suri, Part VI, p. 5
4. See the discussion in Bojendra Nath Banerjee, *Religious Conversions in India*, (New Delhi: Harnam Publications, 1982), pp. 261-67.
5. *Yulitha Hyde vs State*, 1973, AIR Orissa, p. 117.
6. *Yulitha Hyde*, p. 118.
7. *Yulitha Hyde*, p. 120.
8. *Yulitha Hyde*, p. 121.
9. *Yulitha Hyde*, p. 123.
10. *Rev. Stanislaus vs State*, 1975 AIR M. P., pp. 164-65.
11. *Stanislaus*, 1975, p. 166.
12. *Stanislaus*, 1975, pp. 171-72.
13. *Stanislaus*, 1975, pp. 164-65.
14. *Rev. Stanislaus vs State of M. P.*, 1977, AIR S. C. p. 912.
15. *Stanislaus*, 1977, p. 911.
16. See, for example, *State of U. P. vs Lalai Singh*, 1977, S. C. and *Ramesh vs Union of India*, 1988, S. C. In both judgements propagation of one's views with an eye to converting the other is seen as a legitimate enterprise. And criticism of another's religion in this context cannot be construed as insult simply because someone or some group finds the criticism objectionable. To give in to such objections is to give in to fanaticism.
17. See, for example, *Chatturbhuj Vithaldas vs Moreshwar Parashram*, 1954, AIR S. C. in which it is argued that a convert can for practical purposes retain old social, political, and caste ties if the old order chooses not to excommunicate him or her. See also *C. M. Arumugam vs S. Rajagopal*, 1976, AIR S. C. in which Justice Bhagawati argued for the court that castes may consist of persons who were Hindu and persons professing other religions and that conversion from Hinduism did not necessarily mean loss of caste.
18. See, for example, the argument in *Indulal vs State*, 1963, AIR Gujarat, in which it is argued that there must be more than a fanciful connection between propagation and the threat to public order to justify a ban on propagation. In *Gulam Abbas vs State of U. P.*, 1981, AIR S. C., the court argued that authorities have a responsibility to deal with

those likely to create disturbances rather than to take the easy route of imposing a ban. See also the strong language on this point in the series of cases, *Jagdishwarananda vs Police Commissioner, Calcutta,* 1984, AIR S. C., *Jagdishwarananda vs Commissioner of Police, Calcutta,* 1990, AIR, Calcutta, and *Commissioner of Police vs. Jagdishwarananda,* 1991, AIR Calcutta.

19. H. M. Seervai, *Constitutional Law of India, A Critical Commentary* (fourth edition), (Bombay: N.M. Tripathi Private Ltd., 1991), p. 1289.