

THE SIXTH STANLEY SAMARTHA MEMORIAL LECTURE

Delivered by Justice K.T.THOMAS, former Judge of Supreme Court of India

October 4, 2007, St. Mark's Cathedral, Bangalore

Right to convert and the Indian Constitution

This was a subject of fume and sensitivity. A few years ago when some of the states proposed to pass legislation banning conversion, then it became a topic of debate in public places and also in the columns of the print media. When Jayalalitha government of Tamil Nadu proposed to bring such a legislation, a lot of protests were aired by Christians. At a later stage, she agreed to retrace the step for reasons not disclosed.

Whenever mass conversions took place from Hindus to Buddhism, I never heard even a whisper of criticism. But when conversion of even a small group took place from Hindus to Christians or to Islam, the critics raised their voice, sometimes the criticism became strident and even aggressive on the allegation that such conversions were brought about by allurements, if not by fraudulent methods. Why conversions from Hinduism to Buddhism or Jainism or even Sikhism never created any problem in India. Because they are Indian originated religions. But the problem arose only when such conversion is made from Hindu religion to Christianity, Islam or Jewish religion. They are counted as Semitic religions. They are also called Abrahamic religions as the common primogenitor for all those religions was Abraham (also called Ibrahim in Arabic). We can conveniently leave out Jewish religion as no recorded instance could be pointed out when somebody had converted from Hinduism to Jewish religion. When I refer to conversion, it may be understood as conversion either to Christianity or Islam.

I remember four different occasions when conversion from Hindu religion was raised as a political or legal question. First, when the Indian Constitution was made. Second was in 1956 when Justice Niyogi Commission report was published containing a recommendation that foreign missionaries shall be banned in India and also to impose statutory restrictions against conversion. The third occasion was in 1967-68 when the Congress governments of Orissa and Madhya Pradesh passed legislation imposing penal provisions against conversion by allurements and fraud. The fourth was in the recent past when some of the BJP state governments and the AIDMK government in Tamil Nadu brought similar legislation.

Many Christians believe that Jesus Christ issued a mandate to convert all people to Christianity. In support of this, the scriptural sentence often quoted is Chapter. 28 - 19 of the gospel according to Mathew: "Therefore go ye into all the world and make all people my disciples and baptise them in the name of the Father and the Son and the Holy spirit".

The Christians appear to believe that they can afford to ignore or disobey the rest of the teachings and commandments of Jesus Christ relating to social justice, but they should implicitly follow the mandate of conversion because it would result in increase the strength of Christian population.

We must remember that no legislation has imposed any restriction on conversion if it is done by one's own free will. Conversion was made an offence in the Orissa Act and also in the MP Act, if such conversion is brought out by others through compulsion, allurements, force or fraud. I remember the furore created then by the church. The validity of those Acts was challenged before the High Courts concerned and lastly in the Supreme Court. When it reached the Supreme Court, the case was heard by a Constitution bench (minimum 5 Judges). One of the Judges who heard that case was a Muslim by name Justice M.H. Beg. The decision of the Supreme Court came to be reported as *Rev. Stanslavos Vs. State*. The five Judge bench examined the validity of different (provisions of the legislation and held that none of the provisions is unconstitutional.

Even before the Constitution came into force, conversion by persuasion was objected by many Hindu leaders. Conversion was an irritant in Indian society, as almost all conversions were from Hindus to other religions and not vice-versa.

This is because fundamentally Hindu religion did not believe in proselytization. In this connection it will be interesting to read the words of Mahatma Gandhi when he said as early as 19th January 1928 (He was then addressing an assembly of delegates from different religions). "I came to the conclusion long ago, after prayerful research and discussion with as many people as I could meet, that all religions were true, and also that all had some error in them; and that, whilst I hold my own religion, I should hold others as dear as Hinduism from which it logically follows that we should hold all as dear as our nearest kith and kin, and make no distinction between them. So, we can only pray if we are Hindus, not that a Christian should become a Hindu, or if we are Mussalmans not that a Hindu or a Christian should become a Mussalman, nor should we even secretly pray that anyone should be converted; our inmost prayer should be that a Hindu should be a better Hindu, a Muslim a better Muslim, and a Christian a better Christian. I would not only not try to convert but would not even secretly pray that anyone should

embrace my faith" .

This was a very unambiguous stand of Mahatma Gandhi whose adoration and admiration of Lord Jesus Christ was convincingly much higher than majority of Christians themselves.

The right to freedom of conscience is enshrined in Article 25 of the Constitution as a fundamental right. It is a right conferred not only on the citizens of India, but on all persons. The article says "All persons are equally entitled to freedom of conscience, and the right to freely profess, practise and propagate religion". We must remember that the word "propagate" was added to the Article by the Constituent Assembly after heated deliberations. Some persons opposed it on the ground that no secular Republic should allow it. According to them, propagating one religion involves propagating against another religion which could give rise to bitterness and communal hostility. Hence, a permission to propagate religion may sometimes lead to hysterical outbursts. The trend of the debate in the Constituent Assembly shows that if the word "propagate" was not included as part of the fundamental rights, religious freedom as for Christians might remain only a mirage. It is interesting to note that it was Sardar Vallabhai Patel who strongly pleaded for inclusion of the word "propagate".

When the turn of Kulapathi K.M. Munshi came (he was the founder of Bharateeya Vidya Bhavan and also one of the greatest legal luminaries of India) he spoke like this:

"I know it was on this word 'propagate' that the Indian Christian community laid the greatest emphasis, not because they wanted to convert people aggressively, but because the word 'propagate' was fundamental part of their tenet. Even if the word were not there, I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of the conscience has to be recognized"

K. Santhanam who was a renowned Constitutional expert of that time spoke like this: I quote:-"A good deal of injustice would be done to the great Christian community in India if we delete the word propagate. After all propagation is merely freedom of expression. I would like to point out that the word 'convert' is not there. Mass conversion was a part of the activities of the Christian Missionaries in this country and great objection has been taken by the people to that. Those who drafted this Constitution have taken care to see that no unlimited right of conversion had been given. People have freedom of conscience, then well and good, no restrictions can be placed against it. But if any attempt is made by one religious community or another to have mass conversions through undue influence either by money or by pressure or by other means, the State has every right to regulate such activity. Therefore, I submit to you that this article, as it is, is not so much an article ensuring freedom, but toleration - toleration for all, irrespective of the religious practice or profession".

When the word 'propagate' was finally included as part of the religious freedom, the word 'convert' was deliberately avoided. What is the extent of the right to propagate? Does it include the right to propagate that your religion is faulty and my religion alone is perfect? Can it be permitted to propagate that, if only you follow my religion, you will enter into Heaven, but if you remain in your religion you might land up in Hell. Here comes the role of religious obscurantist. A religious fundamentalist believes that his religion alone is the right religion and all other religions are erroneous if not fake. As a religious pedantic he may be entitled to believe so but he cannot be allowed to propagate it for two reasons.

First is that, his belief that another religion is wrong is based on his ignorance about that other religion. According to me, he is ignorant of his own religion. If he knew of his own religion well, he would have realised that no religion is perfect in itself. Metropolitan Philippos Chrysostom, one of the most profound thinkers on religious pluralism, whose perorations could keep any audience to spell bound attention, once said that "Multiplicity of religion is a gift of God. It is because of other religions that imperfections of one religion can be replenished". Akbar the Great decided to form a new religion by collecting different principles from different religions. The name of the new religion was "Din Ilahi". It was a bold experiment made by a great secularist monarch. But unfortunately, that religion died out with the death of the emperor. Is it not a stark truth that no religion in the world is perfect by itself.

Let us take the case of Christian religion. What we have is only a very small portion of the vast area of teachings and preaching made by Jesus Christ. We have only what has been recorded in the four small books called gospels. The last gospel writer St. John had said in categorical terms that if what all Jesus said and did were recorded, the whole world could not hold them in books. Do you require more proof to show that Christian religion, as we know it now, is quite imperfect because, we know only a fraction of what Jesus himself said and did.

Based on such a truncated portion, if somebody propagates that Christianity is a perfect religion then you are going against the very gospel precept.

Second is, if every religious preacher is allowed to speak that the other religion is wrong or fake, one can imagine

the explosive situation which would be created by such propaganda. Religion has a tendency to erupt hysterical reactions. I have observed that this tendency is more acute among people following Semitic or Abrahamic religions. In all communal riots recorded in history at least one of the sides has been an Abrahamic religion. So a permission to propagate that your religion is inferior to my religion, if not to the extent of saying that your religion is fake, such propagation is very likely to stimulate fury and frenzy. That would snowball into creation of fertile soil for communal riots.

In this context, we must remember that, the right to religious freedom has been conferred in Article 25 of the Constitution by giving greater importance to public order, morality and health and also to the other provisions of the Constitution.

This can be discerned from the initial words of that Article (subject to public order, morality and health etc. all persons are entitled to freedom of religion). Thus public order, morality and health will override religious freedom. In other words, greater importance is given to public order, morality and health. If religious freedom is exercised in such manner as to endanger public order then it is the duty of the state to stop it.