

**National Commission
for
Minorities**

**Studies in
Educational & Socio-Economic
Problems of the Minorities in India**

[II]

**Right of Minorities to Religious Freedom
[under Article 25]**

**Rev. Dr. James Massey
Chairman, High Powered Study Committee
and Member, NCM**

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PREFACE

Religious Freedom is a fundamental law of the Indian Socialist Secular Democratic Republic. Its declared in the Constitution as a basic human right, which the Judiciary is bound to respect. In 1978 the Government of India through a President's Order constituted a Minorities Commission at the national level, which was to evaluate the working of the various safeguards in the Constitution for the protection of Minorities and to ensure "effective implementation and enforcement" of the same. To make more effective functioning of the Minorities Commission, the Parliament of India passed a National Commission for Minorities Act, 1992 and gave it a statutory status with a new name as "National Commission for Minorities". The Act also define the role of the Commission, according to which it is now asked to "monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures".

Secondly, it must be remembered that the Indian Constitution was framed in a time when issue of human rights had assumed much importance. It is during that time (10 December 1948), the Universal Declaration of Human Rights was proclaimed by the United Nations, to which India is one of the signatories. The Article 18 of this Declaration is important for our this study (specially when we refer to Article 25 of our Constitution), because this Article of the Declaration does not only give to a person "the right to freedom of thought, conscience and religion", but it also gives him/her "freedom to change his religious or belief".

Thirdly, it is generally an accepted truth that there is a definite relationship between religious freedom and democracy. Some one has even gone to the extend saying that "religious freedom is the condition and guardian of all other freedoms". Even people having no religious convictions, but if they are democrats, they know about this relationship. But it is also true that in this modern age attempts have been made by some fascist forces to impose restrictions on the religious freedom. But as said above freedom of religion is a fundamental human right and is not the right just belongs to one or some religion, group or any minority group. It is a right which belongs to all. This truth was emphasised in the Constituent Assembly debate again and again. Because it stands or falls with democracy in this country as in any other. Therefore it is important to state the implication of this truth for religious people in general and religious Minorities in particular. It is their paramount duty to see democracy succeeds and stays in India in all the times to come.

Fourthly, we must remember that the Indian Nation has accepted the plurality of religions always, and therefore the clear guarantee of religious freedom is the surest way, not only for a peaceful co-existence of different religious groups, but also their active participation for the common good and unity. Because often it is not the "diversity of opinion", which becomes the


point of conflict, it is really the absence of the religious toleration, which most of the time has created problems. Here a statement made by our first President Rajendra Prasad at the time of St. Thomas Anniversary Celebration during December 1955 is note worthy, in which he actually gave "the assurance to all those who inhabit this country that we do not look for conformity to faith, but expect loyalty from every individual who happens to be a son or daughter of this country, not loyalty to dogma or any faith, but loyalty to the country".

So this study need to be taken into account keeping in mind the above four perspectives. The study itself has been divided in five chapters. The chapter one gives the background of the origin of this study. The chapters two and three deal with the background history, scope and application of Article 25 of our Constitution. In chapter four the detail discussion on the implementation both at Central and States' level has been discussed. Finally in chapter five the conclusions and recommendations of based on this study are listed.

I must admit this study could have not been possible without the support and help of some of the persons. Some of these persons need a special mention. Among these first comes the NCM's Chairman Prof. Dr. Tahir Mahmood, who encouraged and guided me always, whenever I approached him. Therefore I would like to offer him my special thanks. At the same I am grateful to the Commission Members, Senior Officers and other staff for their help. Specially I would like to thank Mr. Hasib Ahmad (the Secretary of the High Powered Study Committee), my personal staff Mr. M. Mathai and other. My thanks also goes to Miss Bobby, a staff in my residence office who has typed the complete study on the computer.

Finally this study is being placed before the Commission and through it to the Government of India for their consideration and implementation.

Date : 25-5-1999
Delhi.


Rev. Dr. habil. James Massey
Chairman, High Powered Study Committee
and Member, NCM

PROLOGUE

"The Minority problem could not have been solved easily but thanks to the integrity of the various religious and other minorities, the separate electorates through which the British Government divided one community from another in this country and ruled it, were given up. They gave up at the outset separate electorates for joint electorates with reservation of seats, but laterly they have given up even the reservation. Thanks to their farsightedness it marks one more step in the unification of this country and I am sure this will be worked in the spirit in which the minorities have acceded to it. It is now left to the majority community to show that whatever religion an individual may belong to, it is only his talents and spirit of service that will count and not his community and persons belonging to the minority communities will not be discriminated against merely because they belong to particular minority communities. I am sure the majority community will accept the hand that has been stretched out by the minorities, who have gladly given up their reservations."

(Constituent Assembly Debates, Volume XI, Official Report, Lok Sabha Secretariat, New Delhi, 14-11-1949 to 20-11-1949, pp. 661-62).

Chapter One

INTRODUCTION

(A) Commission's decision on three studies

1. The National Commission for Minorities (NCM) in its meeting held on 6th May 1997 took one of the important decisions to constitute a High Powered Study Committee on the Socio-Economic and Educational Problems of Religious Minorities under the Chairmanship of NCM Member, Dr. James Massey (*see for details, NCM Study 1, Right of the Minorities to Establish Administer Educational Institution, 1998 paras 6-8*).

2. In Commission's meeting, held on November 23-24, 1998 (because of the number of constraints faced by the Commission including the required fund for the work of the Committee), it was decided to bring out three separate studies instead of single volume report. The suggestion for these studies from the members of the High Powered Committee were also invited through a letter addressed to them by the Chairman of the Commission, Prof. Dr. Tahir Mahmood on December 7, 1998. (*see Appendix 1.*)

3. The three studies under preparation are :

- i. The Problems related to 'Right of the Minorities to Establish and Administer Educational Institutions', (*This study has been already completed in December 1998.*)
- ii. The Problems related to the 'Right of Minorities of Religious Freedom'. (*Present Report*)
- iii. The Problems related to the 'Socio-Economic Right of the Minorities'. (*To be submitted by September 1999*)

(B) The Constitutional Right to Freedom of Religion

4. The Constitution of our country India has four articles (25, 26, 27 and 28) through which the Right to Freedom of Religion has been granted to all the citizens of our country (including Minorities).

5. Because the Right to Freedom of Religion has been granted equally to all the citizens of our country, the articles 25, 26, 27 and 28 fall in the 'common domain', which are :

Article 25 : Freedom of conscience and free profession, practice and propagation of religion -

- (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.
- (2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -
 - (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
 - (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation - I - The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation - II - In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 26 : Freedom to manage religious affairs -

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right -

- (i) to establish and maintain institutions for religious and charitable purposes;
- (ii) to manage its own affairs in matters of religion;
- (iii) to own and acquire movable and immovable property; and
- (iv) to administer such property in accordance with law.

Article 27 : Freedom as to payment of taxes for promotion of any particular religion -

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

Article 28 : Freedom as to attendance at religious instruction or religious worship in certain educational institutions -

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (i) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto. (*The Constitution of India, New Delhi, As on the 1st June 1996, pp. 8,9.*)

6. In this study, we will be considering all the above four articles, but special treatment will be given to article 25, which is the core to the Right to Freedom of Religion particularly for religious Minorities in the country.

Chapter Two

BACKGROUND HISTORY OF ARTICLE 25

1. The first meeting of the Constituent Assembly took place from December 13 to 19, 1946. In this meeting of the Constituent Assembly on the first day on December 13, Pandit Jawahar Lal Nehru moved the historic Objectives Resolution, which the Assembly discussed in detail for five full days. For further consideration, the discussion was postponed to January 20-22, 1947. On January 22, the text of the Resolution was adopted by the Constituent Assembly unanimously.

2. Three relevant clauses, for our this study of the Objectives Resolution are reproduced under below :

(1) This constitutional Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance of a Constitution; ...

(5) Wherein shall be guaranteed and secured to all the people of India justice, social, economic and political; equality of status, of opportunity and before the law; freedom of thought, expression, belief, faith, worship, vocation association and action, subject to law and public morality; and

(6) Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and ... (Rao, B. Shiva (Ed.) : *The Framing of India's Constitution Select Documents, Vol. II, New Delhi, 1967, pp. 3,4.*)

3. The Constituent Assembly also in its first meeting on January 13 constituted an Advisory Committee in order to determine the fundamental rights of the citizens. Minorities etc. The Advisory Committee in its first meeting on February 27, 1947 set up the five sub-committees, including a 'Sub-Committee on Fundamental Rights' and a 'Sub-Committee on Minorities'. The Sub-Committee on Fundamental Rights invited from the members their suggestions on the fundamental rights. In response to the call of the Committee the following members submitted their drafts with various notes : Alladi Krishnaswami Ayyar, K.M. Munshi, Harnam Singh and B.R. Ambedkar. But before the work of the various committees began, preliminary notes during September-December 1946 were also prepared and shared by B.N. Rau and K.T. Shah, which served as a background to the work of the Sub-Committee on Fundamental Rights. K.T. Shah's note submitted to the President of the Constituent Assembly on December 3, 1946 made special reference to the rights of Minorities, which read as :

In the Statement of the Fundamental Rights appended special reference is made to the rights of Minorities due to the peculiar conjuncture of circumstances in India at the movement. In reality, however, they are rather obligations of majorities that they shall cultivate toleration and equal regard for the ways of life, thought, or worship of their sister communities however much they may differ from them, or safeguards for Minorities rather than positive privileges of the latter. (Rao, Vol. II, 1967, p. 39.)

4. The Sub-Committee on Fundamental Rights had its meeting from February 27 - March 31, 1947, in which it considered various drafts submitted by the members and adopted with certain changes. The Committee's recommendations on 'Religious Freedom' are set in clauses 16, 17, 18, 19 and 20 of its draft report of April 3, 1947, which read as follow:

16. All person are equally entitled to freedom of conscience and the right freely to profess and practice religion subject to public order, morality or health and to the other provisions of this chapter.

Explanation I : The wearing and carrying of *kirpans* shall be deemed to be included in the practice of the Sikh religion.

Explanation II : The right to profess and practice religion shall not include any economic, financial, political or other secular activities that may be associated with religious worship.

Explanation III : No person shall refuse the performance of civil obligation or duties on the ground that his religion so requires.

17. Every religious denomination shall have the right to manage its own affairs in matters of religion and to own, acquire and administer property moveable, and unmovable and to establish and maintain institutions for religious or charitable purposes consistently with the provisions of this chapter.

The right to build places of worship in any place shall not be denied except for reasonable cause.

18. No persons may be compelled to pay taxes the proceeds of which are specially appropriated to religious purposes.

19. The State shall not recognize any religion as the state religion.

20. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instructions that may be given in the school.

21. The property of any religious body shall not be diverted, save for necessary works of public utility and on payment of compensation.
22. No person under the age of 18 shall be converted to any religion other than the one in which he was born or be initiated into any religious order involving a loss of civil status.
23. Conversion from one religion to another brought about by coercion or undue influence shall not be recognized by law and the exercise of such coercion or undue influence shall be an offense. (*Rao, Vol. II, 1967, p. 140.*)

5. The above adopted clauses on fundamental rights were discussed and debated first among the members of 'Sub-Committee on Fundamental Right', the second by the 'Sub-Committee on Minorities', third by the Advisory Committee and finally (fourth) among the members of the Constituent Assembly, in which the present fundamental rights of our Constitution took the final form.

(A) Sub-Committee on Fundamental Rights

6. The above quoted clauses 16-23 in para 4 on 'Religious Freedom' were part of the work carried on by the 'Sub-Committee on Fundamental Rights'. The important meetings included those on February 27 - March 31, 1947 and April 14-15, 1947. The result of these meetings were the above amended clauses 16-23.

(B) Sub-Committee on Minorities

7. Second level discussion and the debate took place among the members of the 'Sub-Committee on Minorities', which contributed important elements to the contents of the right to 'Religious Freedom'.

8. About the need of clause 16, the minutes of the meeting of the 'Sub-Committee on Minorities' held on April 17, 1947 reads that :

Mr. Rathnaswami pointed out that certain religions, such as Christianity and Islam, were proselytizing religions, and provision should be made to permit them to propagate their faith in accordance with their tenets. (*Rao, Vol. II, p. 201.*)

Beside Mr. Rathnaswamy's above suggestion about clause 16, a number of other suggestions were made on other clauses also.

9. Based on the out come of the meetings of 'Sub-Committee on Minorities', the interim report of the sub-committee was submitted on April 19, 1947 to the

Advisory Committee on Minorities, Fundamental Rights etc., in which the clause 16 read as under :

All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion subject to that public order, morality or health and to the provisions of the chapter; ... (*Rao, Vol. II, p. 208.*)

(C) Advisory Committee on Fundamental Rights, Minorities etc.

10. The Advisory Committee on Fundamental Rights, Minorities etc. met for two days on April 21 and 22, 1947. The Committee considered the recommendations made by the two sub-committees : Fundamental Rights Sub-Committee and the Minorities Sub-Committee. The Committee on April 22, 1947 concentrated basically on two major questions : One, whether the scope of the clause should be confined to 'guaranteeing freedom of worship or extended to the free practice? And two, whether or not the right to propagate religion be included in the clause?

11. With regards to the first question, on 'the right to freely practice', the objection was raised that it will hinder the future social legislations and according to Rajkumari Amrit Kaur, it "would even invalidate past legislations such as the Widow Remarriage Act, the Sarda Act or even the law abolishing *sati*". But then other member Mr. Syama Prasad Mookerjee pointed out : "There are certain religious practices which do not come within religion worship and if you omit religious practice it will lend to considerable hardship and difficulties". Therefore he suggested instead of omitting 'practice', we can "insert a proviso to cover that". This suggestion was accepted and the Chairman appointed two members C. Rajagopalchari and S.P. Mookerjee to work out such a proviso. (*Rao, Vol. II, pp. 213, 290, 265, 267.*)

12. The second question, which the Advisory Committee took more serious was the expression 'propagate'. Some members including C. Rajagopalachari agreed that propagation is already covered under 'freedom of expression' (*Rao, Vol. II, p. 265*). But the members discussed in detail various meanings and implications of the expression 'propagate'. Finally, the Chairman of the Advisory Committee, Sardar Vallabhbhai Patel asked the member to vote. After the members voted in favour of retaining 'propagate', it was incorporated in clause 16, as adopted by the Committee.

13. The discussion also took place on the contents of the clauses 17 to 23 and with minor changes, these were adopted by the Advisory Committee.

14. The Advisory Committee on April 23, 1947 submitted its interim report with the text of fundamental rights to the Constituent Assembly, which included

the following rights relating to religious freedom. In redrafting the number of clauses were also changed which read as :

13. All persons are equally entitled to freedom of conscience, and the right freely to profess, practise and propagate religion subject to public order, morality or health, and to the other provisions of this chapter.

Explanation 1. - The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

Explanation 2. - The above rights shall not include any economic, financial, political or other secular activities that may be associated with religious practice.

Explanation 3. - The freedom of religious practice guaranteed in this clause shall not debar the State from enacting laws for the purpose of social welfare and reform.

14. Every religious denomination shall have the right to manage its own affairs in matters of religion and subject to the general law, to own, acquire and administer property, movable and immovable, and to establish and maintain institutions for religious or charitable purposes.

15. No person may be compelled to pay taxes, the proceeds of which are specifically appropriated to further or maintain any particular religion or denomination.

16. No person attending any school maintained or receiving aid out of public funds shall be compelled to take part in the religious instruction that may be given in the school or to attend religious worship held in the school or in premises attached thereto.

17. Conversion from one religion to another brought about by coercion or undue influence shall not be recognised by law. (Rao, Vol. II, 1967, p. 287)

14. The Advisory Committee on May 1, 1947 submitted the complete text of the fundamental rights (including the quoted above relating to the freedom of religion) to the Constituent Assembly.

(D) Debate in the Constituent Assembly

15. All the clauses on fundamental rights including those on Religious freedom (see para 13) were moved in the Constituent Assembly. After due consideration, the Assembly adopted all clauses with some modification and the Drafting Committee was asked to further work on these. Clause 16 was

referred to the Advisory Committees and on clause 17, further consideration was held. The Drafting Committee worked on these and reproduced them with the changed numbers as articles 19-20. The clause 13, which included the core of the freedom of religion "the right to freely to profess, practice and propagate religion" became article 19. The Draft Constitution (including articles on freedom of religion) were circulated among the members of the Constituent Assembly. Among the suggestions received by the Drafting Committee, one suggestion was to change the expression "propagate religion" to "profess and practice", which the Drafting Committee did not accept. (*Rao, Vol. II, p. 265.*) The Drafting Committee considered all the suggestions including notes and reports of the Constitutional Advisor's and submitted to the President of the Constituent Assembly, a revised Draft Constitution on February 21, 1948. The Draft Constitution had 315 articles and 8 schedules, which included the following articles on 'freedom of conscience and free profession, practice and propagation of religion' :

19. (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Explanation : The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

- (2) Nothing in this article shall affect the operation of any existing law or preclude the State from making any law -

- (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;
- (b) for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus.

20. Every religious denomination or any section thereof shall have the right -

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property ; and
- (d) to administer such property in accordance with law.

21. No person may be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

22. (1) No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds :

Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(2) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person, or if such person is a minor, his guardian has given his consent thereto.

(3) Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours. (*Rao, Vol. III, pp. 524-25.*)

16. The Constituent Assembly discussed, in detail all the articles related to 'the freedom of religion'. The most serious debate took place in the contents of article 19. First on 3rd December, 1948, the debate began with the inclusion of article 19 as part of the Constitution, and thereafter the members amendments and proposals were discussed. Some of the main points, of discussion are referred here.

17. A member Mr. Tajamul Husain proposed that in article 19, the expression "practise and propagate religion" should be replaced with "and practise religion privately". Mr. Husain's argument in support of his proposal was "that religion is a private affairs", therefore it should not be interfered by preaching or propagation (*Constituent Assembly Debates, Vol. 7, p. 817*). Prof. K.T. Shah agreed with article 19 but suggested that a proviso should be added in this article to put a check on the abuse of this right. (*Debates, Vol. 7, p. 820.*) But a member Mr. Lokanath Misra, while opposing the article 19, specially the inclusion of the expression "propagate" in this article said "I do really feel that this is the most disgraceful Article, the blackest part of the Draft Constitution... you know that propagation of religion brought India into this unfortunate state and India had to be divided into Pakistan and India". (*Debates Vol. 7, p. 822.*) With Mr. Misra's remark, further debate was postponed till Monday the 6th December 1948.

18. On 6th December 1948, when the debate began on article 19, Mr. Lokanath Misra again raised the question of secularism and propagation of religion as a fundamental right. He demanded a rightful place for "the ancient

faith and culture" means "Hindu religion". He also raised a well known question of majority and minorities by pointing out :

"We have no quarrel with Christ or Mohammad... In the present context what can this word 'propagation' in article 19 mean? It can only mean paving the way for the complete annihilation of Hindu culture, the Hindu way to life and manners. Islam has declared its hostility to Hindu thought. Christianity has worked out the policy of peaceful penetration by the back-door on the outskirts of our social life... The aim is political,... Let everybody live as he thinks best but let him not try to swell his number to demand the spoils of political warfare. Let us not raise the question of communal minorities any more. It is a device to swallow the majority in the long run. This intolerable and unjust... I therefore say, let us say nothing about rights relating religion... Drop the word 'propagate' in article 19 at least. (*Debates, Vol. 7, p. 824.*)

19. Mr. Mohammad Ismail Sahib, an other member of the Assembly argued in favour of the proposed article 19 and said :

Another honourable Member spoke about the troubles that had arisen as a result of propagation of religion. I would say that the troubles were not a result of the propagation of religion or the professing or practising religion. They arose as a result of the misunderstanding of religion. My point of view, and I say that is the correct point of view, is that if any people understand their respective religions aright and if they practice aright in the proper manner there would be no trouble whatever; and because there was some trouble due to some cause it does not stand to reason that the fundamental right of a human being to practise and propagate his religion should be abrogated in any way. (*Debates, Vol. 7, p. 831.*)

20. After hearing the general views expressed by some members, then the discussion was opened on clause one of article 19.

21. Mr. B. Lakshmi Kanta Maitra from West Bengal opened the discussion with the following observations :

This article 19 of the Draft Constitution confers on all persons the right to profess, practice and propagate any religion they like but this right has been circumscribed by certain conditions which the State would be free to impose in the interests of public morality, public order and public health... Some of my friends argued that this right ought not to be permitted... for the simple reason that we have declared time and again that this is going to be a secular State and as such practice of religion should not be permitted as a fundamental right. It has been further argued that by conferring the additional right to propagate a particular faith or religion the door is opened for all manner of troubles and conflicts which would eventually paralyse

the normal life of the State. I would say it once that this conception of a secular State is wholly wrong. By secular State, as I understand it, is meant that the State is not going to make any discrimination what so ever on the ground of religion or community against any person professing any particular form of religious faith. This mean in essence that no particular religion in the State will receive any State patronage whatsoever. (*Debates, Vol. 7, p. 831.*)

21. Pandit Maitra in his further observations dealt with the question about the Christian community which was raised by some members. He said :

It has been said,...that the Christian community in its proselytising zeal has sometimes transgressed its limits and has done acts which can never be justified... I want to say that a good deal of injustice will be done to the great Christian community in India if we go away with that impression. The Indian Christian community happens to be the most inoffensive community in the whole of India. That is my personal opinion and I have never known anybody contesting that position. This Indian Christian community, so far as I am aware, spend to the tune of nearly Rs.2 crores every year for educational uplift, medical relief and for sanitation, public health and the rest of it... If this vast amount of Rs.2 crores were utilised by this Christian community for purposes of seeking converts, then the Indian community... From 7 millions it would have gone to 70 millions... The point of the whole contention is that the Christian community in India has not done that proselytising work with that amount of zeal and frenzy with which some of our friends have associated it. I am anxious to remove that mis-conception. Sir, I feel that every single community in India should be given this right to propagate its own religion. (*Debates, Vol. 7, pp. 832-33.*)

22. Shri L. Krishnanswami Bharathi from Madras, while agreeing with the views of Pandit Maitra added his own observations on the issue related to Christians and the expression 'propagate' by saying :

Let me also in this connection, remind the House that the matter was thoroughly discussed at all stages in Minorities Committee, and they came to the conclusion that this great Christian community which is willing and ready to assimilate itself with the general community, which does not want reservation or other special privileges should be allowed to propagate its religion along with other religious communities in India... That is the way in which this community, which has been thoroughly nationalist in its outlook, has been moving. Therefore, in good grace, the majority community should allow this privileges for the minority communities and have it for themselves as well. I think I can speak on this point with a certain amount of assurance that the majority community is perfectly willing to all this right. I am therefore strongly in favour of the retention of the word 'propagate' in this clause. (*Debates, Vol. 7, p. 834.*)

23. An other honourable member the Contituent Assembly Shri K. Santhanam added to the debate an other very convincing point while talking about the expression 'propagate'. His new point was on the question of 'conversion' or the 'right to get converted'; He said :

Sir, some discussion has taken place on 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 the Constitution has taken care to see that no unlimited right of conversion has been given. People have freedom of conscience and, if any man is converted voluntarily owing to freedom of conscience, then well and good. No restriction can be placed against it. But if any attempt is made by one religious community or another to have mass conversion through undue influences 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 ensuring freedom but toleration-toleration for all, irrespective of the religious practice or profession. And this toleration is subject to public order, morality and health. Therefore this article has been very carefully drafted and the exceptions and qualifications are as important as the right it confers. Therefore I think the article as it stands is entiled to our wholehearted support. (*Debates, Vol. 7, p. 834-35.*)

24. Shri T.T. Krishnamachari from Madras while taking part in the debate on the right to 'propagate' said two things. First, this religious right is given to all people belonging to different religions and second, he questioned the social treatment, which is being given to some segments of our Indian society. He said:

Sir, objection has been taken to the inclusion of the word "propagate" along with the word "freedom and practice" of the matter of religion. Sir, it does not mean that this right to propagate one's religion is given to any particular community or to people who follow any particular religion. It is perfectly open to the Hindus and the Arya Samajists to carry on their Suddhi propaganda as it open to the Christians, the Muslims, the Jains and the Bhuddists and to every other religionist, so long as he does it subject to public order, morality and the other conditions that have to be observed in any civilised government... Sir, I know as a person who has studied for fourteen years in Christian institutions that no attempt had been made to convert me from my own faith and to practise Christianity. I am very well aware of the influences that Christianity has brought to bear upon our own ideals and our own outlook, and I am not prepared to say here that they should be prevented from propagating their religion. I would ask the House to look at the facts so far as the history of this type of conversion is

concerned. It depends upon the way which certain religionists and certain communities treat their less fortunate brethren. (*Debates, Vol. 7, p. 836.*)

25. One of the most important members of the Constituent Assembly was Shri K.M. Munshi and right from the beginning he was part of the process of framing various articles and clauses in the fundamental rights and safeguards provided for the Minorities. He towards the closing of the debates on article 19 made one very important observation on the whole question of the inclusion of the expression "propagate" in article 19. He said :

Moreover, I was a party from the very beginning to the compromise with the minorities, which ultimately led to many of these clauses being inserted in the Constitution and I know it was on this word that the Indian Christian community laid the greatest emphasis, not because they wanted to convert people aggressively, but because the word "propagate" was a 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 recognised. The word 'propagate' in this clause is nothing very much out of the way as some people think, nor is it fraught with dangerous consequences.

26. After Shri K. M. Munshi's observation the article 19 was put to vote, which was accepted and adopted with various modifications in sub clauses and Explanations. The three articles 20, 21 and 22 with minor modifications were also accepted and adopted. During the debates draft articles 19 to 22 were also renumbered as articles 25 to 28, which now we have in our Constitution. (see *Chapter One, para 5.*)

27. So here ends the history of articles related to the 'Right of Minorities of Religious Freedom' particularly of article 25 of our Constitution. This history has many important points, which need our attention particularly for the purpose of our this study. Some of the points are list below :

- (I) The first point which becomes clear, from the history of the right of Minorities of religious freedom, is that this was offered not as a positive privilege, but more in the nature of a safeguard.
- (II) K.T. Shah's preliminary note on the fundamental rights also spelled out the need of the rights of Minorities, because of the 'peculiar conjunctive circumstances' prevailing in India.
- (III) On the general scope of the religious freedom at all levels (including Sub-Committees, Advisory Committee, Constituent Assembly), it was intentionally extended to all the citizens from the

right of freely professing and practising religion to the extend of propagation.

- (IV) The right to propagate was not limited to a particular religion (as it was/is understood by some that it is meant for Christians), but was meant for all including the Hindus and the Arya Samajists for their Suddhi propaganda.
- (V) But all activities relating to religious freedom were to be submitted to public order, morality and health.
- (VI) Beside the right to propagate religion, freedom of conscience to individuals was also accepted as part of the fundamental right, by the use which, any religious community may persuade other people to join their faith. Hence the conversion by free exercise of the conscience was recognised. This means right to get converted was accepted as a fundamental right.
- (VII) The fact that the propagation of faith is a fundamental part of some religions particularly Christianity was also recongnised.
- (VIII) The misuse of the right to religious freedom is restricted by the Constitution by adding a number of restrictions in article 25, which include "subject to public order, morality and health and to the other provisions of this part."

Chapter Three

SCOPE AND APPLICATION OF ARTICLE 25

(A) Fundamental Rights and Religion :

1. Three basic principles are at work underneath the fundamental rights enshrined in our Constitution. These principles are : (a) secularism, (b) equality of all religious, and (c) neutrality of State to the various religions. The spirit of these principles is well captured in the text of the fundamental rights contained in articles 12-51, which are available to all, irrespective of religion, caste, race etc. These of course can be legally regulated and restricted by the State on certain grounds as laid down by the Constitution itself. (see for details Prof. Tahir Mahmood, *Religion and Law Review*, Vol. V, 1996, New Delhi, p.1.)

2. The Article 15, clause one and two specially have put the restrictions on the State, so that the above principle particularly the spirit of secularism adopted by our Constitution should not get impaired. Article 15, clause 1 and 2 read as :

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition to —(a) access to shops, public restaurants, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats...(*The Constitution of India*, 1996, p.5.)

(B) General Scope and Application of Constitutional Law :

3. As stated above in para 2, the fundamental rights enshrined in our Constitution are meant for all the people of India. Therefore, there is no such thing a special right or rights for the Minorities. Of course some special safeguards have been made available to Minorities, so that they can enjoy the full equality before the law and have equal share of development and growth along with the people of majority. (articles 29 and 30.)

4. What are these rights, which specially are related to the issue of 'religious freedom'? Number one is (as stated above), the Constitution specifically prohibits any form of discrimination by the State against any citizen on the ground of religion (article 15). It positively guarantees with respect to religion, the equality before law (article 14), the freedom of speech and expression (article 19), freedom of conscience and free profession, practice and propagation of religion for all persons (article 25), freedom to manage religious

affairs (article 26), freedom as to payment of taxes for promotion of any particular religions (article 27), and freedom as to attendance at religious instruction or religious worship in certain educational institutions (article 28). All these freedoms are available to all the individuals and communities belonging to both minority religions (Muslims, Christians, Buddhists, Sikhs, Jains, Parsees etc.) as well as to majority religion (Hindus).

(C) Scope and Application of Article 25 :

5. Article 25 is indeed form the core of the 'right of religious freedom'. It has two clauses, which need our special attention. The clause one after stating the proviso part, offers to all persons equality :

- a) freedom of conscience
- b) the right to profess, practice and propagate religion

The clause two of this article gives the State right to regulate the activities , connected with 'religious practice', if these are having any implication of economic, financial and political nature. Also State can interfere in matters related to social welfare and reform. This clause also makes a point clear concerning "throwing open of Hindu religious institutions of a public character to all classes and all sections of Hindus". This condition according to Explanation II is also applicable to persons professing the Sikh, Jain or Buddhist religion and their institutions.

6. Now we return to the main clause one of article 25. While commenting on this clause at the time of Constituent Assembly debate, Pandit Lakshmi Kanta Maitra observed :

At the same we must be careful to see that in this land of ours we do not deny to anybody the right not to profess or practise but also to propagate any particular religion. Mr. Vice-President, this glorious land of ours is nothing if it does not stand for lofty religious and spiritual concepts and ideals. India would not be occupying any place of honour on this globe if she had not reached that spiritual height which she did in her glorious past. Therefore I fell that the Constitution has rightly provided for this not only as a right but also as fundamental right. In the exercise of this fundamental right every community inhabiting this State professing any religion will have equal right and equal facilities to do whatever it likes in accordance with its religion provided it does not clash with the conditions laid down here. (*Debates, Vol. VII, p. 832.*)

7. The above observation of Pandit Maitra and the discussion of chapter three makes one point very clear that article 25 (including clause 1) here intentionally has been included in the Constitution as part of the fundamental rights. Other important point to be noted is that this right as a fundamental right including

propagation of religions is not given to any particular religion or community, it is given to all. The third point which needs our attention is that this right is subject to the right and duty of the State to see that it is not exercised in a manner that would upset the public order, morality and health of the country.

8. But actually what is the meaning of article 25 particularly the expressions used in it to spell out the content of the 'right of religious freedom'. The special attention needs to be given for this study is related to the following two rights : 'freedom of conscience' and the 'right freely to profess, practice and propagate religion'. In the later the expression 'propagate' is the most important, because around this the central discussion took place during the Constituent Assembly debate. Also about it during last fifty years the debate is continuing in the judiciary circle, among the constitutionalists and even among the ordinary citizens of our country. The most serious part of this debate is linked up with the meaning of the expression 'propagate' and if it includes in it also 'the right to convert' or 'the right to get converted'. Therefore we will also refer here, some of the observations from different sources, which will help us both the meaning of 'propagate' and its relationship with 'conversion' and 'the freedom of conscience'.

9. The first observation, which we will refer here, comes from a classic case, which came before the Supreme Court, *Rev. Stanislaus Vs State of Madhya Pradesh* (AIR 1977 SC 908). Here in this case the Act of 'Orissa Freedom of Religion Act 1967 and Madhya Pradesh Dharma Swatantrya Adhiniyam 1968 were challenged. The five judges bench included A.N. Ray, C.J. and M.H. Beg, R.S. Sarkaria, P.N. Shinghal and Jaswant Singh, J.J. The Chief Justice A.N. Ray while basing his interpretation of expression 'propagate' on the Oxford and Century dictionaries made the following observations as part the judgment :

Article 25 (1) by giving the right of propagate one's religion does not grant 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 impinge up on the "freedom of conscience" guaranteed to all the citizens of the country alike. (*Rev. Stanislaus, AIR 1977 SC 908, Para 20.*)

The Chief Justice Ray further added to his above observation that :

Freedom of religion enshrined in Article 25 is not guaranteed in respect of one religion only, but covers all religions alike, and it can be properly enjoyed by a person if he exercises his right in a manner commensurate

with the like freedom of persons following the other religions. What is freedom for one, is the freedom for the other, in equal measures, and there can therefore, be no such thing as a fundamental right to convert any person to one's own religion. (*The Rev. Stainislaus, AIR 1977 SC 908, para 21.*)

10. It is true Chief Justice Ray's is above decision is continue to taken as law, because it has not been reconsidered afterward. But the experts on Constitutional Law definitely differ with Chief Justice Ray on the question of the meaning of 'conscience' and its implication in the whole question of the freedom of religion. Here a few such views are referred.

11. H.M. Seervai in his 'A Critical Commentary' on 'Constitutional Law of India' has made a detail observation about Chief Justice Ray's judgment. First point Seervai in his observation has made that unfortunately "the legislative history of Art. 25 was not brought to the attention of the Supreme Court". (see *Chapter II of this Study in Background History of Article 25.*) He said :

When the matter was debated in the Constituent Assembly, there was considerable discussion on the word "propagate". In the course of the debate, Mr. T.T. Krishnamachari pointed out, what is clear from the language of Art. 25 itself, namely, that it was "perfectly open to the Hindus and the Arya Samajists to carry on their *Suddhi* propaganda as it is open to the Christians, the Muslims, the Jains and the Buddhists and to every other religionist so long as it is subject to public order, morality and the other conditions that have to be observed in any civilized society... It is clear that his conclusion runs counter that the legislation history; but that does not conclusively establish that the conclusion is clearly wrong." (*Seervai, H. M. : Constitutional Law of India, A Critical Commentary, Third Edition, Vol. I, London, 1983, p. 914.*)

12. H.M. Seervai in his further observation has discussed directly about the nature of the freedom of religion based on Article 25 and where the Chief Justice Ray's judgment has gone wrong. He said:

This brings us to the basic misconception in the judgment of Ray C.J. as to the nature of the freedom of religion. Dropping freedom of religion, he turned to the phrase "freedom of conscience" to suggest that if freedom of religion included the right to convert even by persuasion, it would interfere with the "freedom of conscience" of the person who was converted. The meaning of the phrase "freedom of conscience", given above, (*freedom or liberty of conscience, system allowing all citizens free choice of religion*), puts an end to that argument. First, Art. 25 (1) confers freedom of religion - a freedom *not limited to the religion in which a person is born*. Freedom of conscience harmonizes with this, for its presence in Art. 25 (1) shows that our Constitution has adopted "a system which allows free choice of

religion". The right to propagate religion gives a meaning to freedom of choice, for choice involves not only knowledge but an act of will. A person cannot choose if he does not know what choices are open to him. To propagate religion is not to impart knowledge and to spread it more widely, but to produce intellectual and more conviction leading to action, namely, the adoption of the 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". But, as we have seen, the precise opposite is true : A's propagation of his religion with a view to its being accepted by B to exercise his free choice of a religion... It is also submitted that the Supreme Court's judgment is clearly wrong, is productive of the greatest public mischief and ought to be overruled. (Seervai, 1983, pp. 915-16.)

13. Acharya Dr. Durga Das Basu in his '*Commentary on the Constitution of India*' has added a further clarity to the meaning of "freedom of Conscience". First he has referred to Article 18 of United Nations' Universal Declaration of Human Rights, which reads as :

Everyone has the right to freedom of thoughts, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (*Human Rights, A Compilation of International Instruments, volume 1 & First Part, Universal Instruments, United Nations, Geneva, 1994, p. 4.*)

14. Dr. Durga Das Basu in his observation said :

But the very concept of any right to "have" a religion of his choice implies that a person has the right not be deprived of his religion or belief except according to his free will. The meaning would be clear if we read this clause with the words "freedom to change his religion or belief" in Art. 18 of the Universal Declaration. This means that every person has the freedom to adopt or change a religion of his free will, but not to be made to change it against his free will. The guaranteed right, in short, is not to convert another... but the right not to be converted. Nobody can prevent him from changing his religious if he does it of his own choice because he has got the guaranteed freedom of conscience. For the same reason, nobody can make him change his religious if he does not chose or consent to do that. (Basu, Acharya Dr. Durga Das : *Commentary on the Constitution of India, Vol. I, Calcutta 1997, p. 87.*)

15. Mani Shankar Aiyar in his article "The right to be converted", published in the Indian Express (February 9, 1999) has further clarified the meaning of 'the right to propagate one's faith'. He writes :

The right to propagate a religion is a right given to explain one's religious beliefs. It is not right given to a missionary to convert; it is a right given to the Indian citizen to change his religion if he wishes to do so. The missionary preaches, it is the individual who converts. (*The Indian Express*, Tuesday, February 1999, p. 8.)

Chapter Four

IMPLEMENTATION OF ARTICLE 25

1. From the facts and discussion in chapter two on 'Background History' and chapter three on 'Scope and Application' of article 25, it becomes very clear that the rights of Minorities including 'Freedom of Religion' have been included in our Constitution as part of the fundamental rights, because of "the peculiar conjuncture of circumstances in India". These rights are not 'positive privileges' given to the Minorities, because in real truth these are only 'safeguards' given to them. Because the rights are the same, which the person belonging to majority community or communities are enjoying. Also the right to propagate has been intentionally included in article 25 and it is applicable to all, professing different faiths/religions including the Hindus and the Arya Samajists for their *Suddhi* propaganda. Also in our discussion of chapter three the meaning of "Freedom of Conscience" becomes very clear. Therefore article 25 (1) "Confers freedom of religion – a freedom not limited to the religion in which a person is born. freedom of conscience harmonizes with this, for its presence in Article 25 (1) shows that our Constitution has adopted a system which allows free choice of religion". (see Chapter Three paras 11,12). This of course was the intention of the framers of our Constitution as we seen in chapter two and three, but still the question, which we need to ask is : "Are we able to implement article 25 or not?" In order to get the answer to this most important question, we need to look into some of the actions taken both by the Central as well as State governments. For this purpose we are referring four actions out of which two belongs to Central Government and two to the State Governments. These four actions, we will look in the following order :

- I. The Constitution (Scheduled Castes) Order, 1950
- II. The State Laws
- III. National Commission for Minorities
- IV. State Minorities Commissions and Boards

1. The Constitution (Scheduled Castes) Order, 1950 :

2. The Constitution (Scheduled Castes) Order, 1950 commonly known as 'Presidential Order 1950' is the first official order through which the first President of our country specified the communities, or groups to be included in the list of Scheduled Castes. This he did by using his power given to him in article 341 (1) of our Constitution. According to this article, the President is supposed to only specify Scheduled Castes, which our President did, but in this Order (1950), he almost re-enacted the list of the Government of India (Scheduled Castes) Order, 1936. This means while specifying the Schedule Castes, he followed the basis laid down in 1936 by the British Government for which they used 'religion' as a criterion, because of which Scheduled Castes professing Hindu religion was only included. This is the reason the third

paragraph, which followed the list of the Scheduled Castes read as "Notwithstanding anything contained in paragraph 2, no person who professes a religion different from Hindu, shall be deemed to be member of a Scheduled Caste". This paragraph was amended by Parliament (by using its power under article 341 (2)) in 1956 to "Hindu or Sikh" and in May 1990 to "Hindu or Sikh or Buddhist". (see for detail discussion Massey, James : *Dalit in India*, New Delhi, 1995 pp. 54-57, 131-36.)

3. In the above para 2, the point to be noted here is that the position of the President and Parliament are same as that of the British Government in 1932-36, in which "religion" was used as the criterion to define the Scheduled Castes. But in the case of British Government the followers of minority religions were enjoying some privileges as Minorities, which in the post-independence they refused to take in order to be part of the mainstream of our Indian society (see Chapter Three, para 22). Also the third paragraph of Presidential Order 1950 contradicts directly with the first clause of article 15, which prohibits the State not to discriminate any citizen on grounds of religion and also article 25 (2), which gives to all citizens of the country "Freedom of Conscience".

4. Besides the Presidential Order 1950, which directly contradicted with articles 15 and 25, specially goes against the rights and safeguards provided to the larger sections of religious minorities (Muslims and Christians), those having the Scheduled Caste origin.

5. Three more attempts were made by the member of parliament belonging to majority. The first attempt was made by a member of parliament in 1954 in which he moved in the Parliament the "Indian Converts (Regulation and Registrations) Bill" providing for compulsory licensing of missionaries and registration of conversions with the government officials. This bill was dropped on the opposition mainly from Christians supported by Prime Minister Jawaharlal Nehru. Again in 1960 a non-official "the Backward Communities (Conversion) Bill" was introduced. In this bill an attempt was made to check conversion of Hindus to "non-Indian origin religions" (Islam, Christianity, Judaism and Zoroastrianism). But this bill was also rejected in the Parliament. Almost after two decades in 1979 a well known "Freedom of Religious Bill" was introduced with a aim to put stop on inter-religious conversion. But because of opposition including that by the Minorities Commission, it could not get passed in the Parliament. (see for detail discussion Mahmood, Tahir 'Indian State Laws on Religious Freedom and Conversion' in *Religious and Law Review*, Vol. II, 1992, pp. 327-29.)

II. The State Laws :

5. The three States Orissa, Madhya Pradesh and Arunachal Pradesh enacted laws in 1967, 1968 and 1978 respectively. The texts of these three laws are reproduced in Appendices 2-4.

6. The three States' (Orissa, Madhya Pradesh and Arunachal Pradesh) laws in their contents are identical and their purpose is also similar. They are to prohibit conversion from one Religion to another by the use of force or inducement or by fraudulent means. The definition of "conversion" according to the three laws is "renouncing one's religion and adopting another". The common prohibition clause also in all the above three laws are identical word by word which reads as :

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion. (see Clause 3 of all three laws, in Appendices 2-4.)

7. In all the above three State laws, the expression "force", "fraud", "inducement" and "minor" are well defined. For this study the meaning of word "inducement" need our special attention, which in the texts of Orissa Act 1967 and Arunachal Pradesh Act 1978 reads as follow :

"Inducement" shall include the offer of any gift or gratification either in cash or in kind and shall also include the grant of any benefit, either pecuniary or otherwise.

8. The above three State laws on the face value looks alright and the question related to the competence of enacting these laws already has been positively decided both by the High Court and Supreme Court. But the courts, as Prof. Tahir Mahmood rightly has pointed out have dealt only with two questions, "(1) Whether the two Acts (*Orissa & Madhya Pradesh*) were violative of the fundamental right guaranteed under Article 2: (1) of the Constitution, and (2) Whether the State Legislatures were competent to enact them?" (*Mahmood, Tahir, op. Cit., p. 317*). The court's final judgment was in favour of the States.

9. But there are number of other questions which one has to answer with regards the scope of the above three State laws. For example, is the 'conversion' in these laws include only one or two particular religions (Christianity and Islam) or it also include Hinduism, Sikhism, Buddhism and others. Is Hindus or Arya Samajists *Suddhi* Karan (re-conversion) is also covered by these laws. If yes, then, have anytime these been applied against such actions of Hindu preachers. During the personal visits of the Chairman of High Powered-Study Commission to states of Madhya Pradesh and Orissa, the concerned State officers could not answer these questions satisfactorily.

10. Again on the question of inducement one other observation made by Prof. Tahir Mahmood need our attention, when he says : "undoubtedly there is a lot of inducement in the Schedule Caste law of India for not renouncing Hinduism and for reconversion by converts from their faith and their descendants. If 'inducement' for embracing a new religion cannot be legal, one may legitimately ask what the basis for the legality of inducement for sticking to (or reconverting from) the old religion, could be". (*Mahmood, Tahir : 'Islamic Law and State Legislation on Religion Conversion in India' in Contemporary Studies, Part Two, p. 178.*)

III. National Commission for Minorities :

11. As seen above in the information and discussion in Paras 2-10, the initial attempts of both the Central and State Governments are contrary to the spirit of articles 15 and 25, which protects the religious right as well as freedom of conscience of all citizens of India including Minorities. The case of Presidential Order 1950 and three State laws, are against the religious interests of the religious Minorities, because these basically have imposed restrictions on the minority religions particularly the religions with non-Indian origin like Islam and Christianity. Possibly such actions of Centre and States created doubts in the mind of Minorities about the effective enforcement and implementation of articles related to the rights, freedom and safeguards of religious Minorities. (see for detail discussion, Massey, James: *Minorities in a Democracy, The Indian Experience*, New Delhi, 1999, pp.84-87.) Therefore, there arose a need for a special body to look after this concern of the Minorities. In response to this need, in January 1978, the Government of India decided to set up the 'Minorities Commission'. The Government Resolution, dated 12 January 1978 notified by the Ministry of Home Affairs, gives the reasons for the backgrounds of formation of commission in these words :

1. Despite the safeguards provided in the Constitution and the laws in force, there persists among the Minorities a feeling of inequality and discrimination.

In order to preserve secular traditions and to promote national integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the Minorities and is of the firm view that effective institutional arrangements are urgently required for the effective enforcement and implementation of all the safeguards provided for the Minorities in the Constitution, in Central and State laws, and in Government policies and administrative schemes enunciated from time to time.

2. The Government of India has, therefore, resolved to set up a Minorities Commission to safeguard the interests of Minorities whether based on religion or language

12. So, with the above resolution, the first 'Minorities Commission' was born on 22 February 1978. It consisted of a Chairman and two members. Fourteen years after the inception of the Commission, Parliament enacted the National Commission for Minorities Act 1992, changing the name of the Commission to 'National Commission for Minorities' (NCM) and giving it a statutory status. This Act was passed on 17 May 1992 and came into effect, exactly after one year, on 17 May 1993. This act gives the Commission six members and a Chairman. Three years later in 1995, the Act was amended to create the position of a Vice-Chairman. Beside giving the other details about the functioning of the Commission, the Act of 1992, clearly stated both the functions and powers of the Commission in Chapter 3.

13. The Act of 1992 (clause 9:1) among the functions of the Commission specially included the functions related to the Constitutional safeguards of the Minorities, which read as follows :

- (a) evaluate the progress of the development of Minorities under the Union and States;
- (b) monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures;
- (c) make recommendations for the effective implementation of safeguards for the protection of the interests of Minorities by the Central Government or the State Governments;
- (d) look into specific complaints regarding deprivation of rights and safeguards of the Minorities and take up such matters with the appropriate authorities;

14. The Act of 1992 (clause 9:4) also empowered the Commission with all the powers of the civil court, so that it can perform effectively its functions mentioned above in sub-clauses (a), (b) and (d), in particular, in respect of the following matters namely :

- (a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- (b) requiring the discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office;
- (e) issuing commissions for the examination of witnesses and documents;
- (f) any other matter which may be prescribed.

15. The present Commission while using its power under clause 8 (2) of the Act 1992 has prepared a clear procedure for looking into specific complaints regarding the deprivation of Constitutional rights and safeguards of the Minorities. The introductory section (1) of Regulation 7 read as :

In terms of Section 9 (1) (d) of the Act, specific complaints of deprivation of Minorities' rights and safeguards can be lodged with the Commission by any individual, institution or organization within its jurisdiction. These may be addressed to the Chairperson, a Member or the Secretary of the Commission. No fee will be chargeable for entertaining and disposing of a complaints, unless otherwise directed.

16. The present Commission because of its statutory status given to it by the Parliament Act of 1992 could fulfill its obligations with regards to the Minorities' safeguards during the crisis period started from September 1997 till now. It has dealt hundred of cases, most of which were related to the "Right of Minorities of Religious Freedom". A few examples from these cases are listed below :

- (1) Complaints of the Buddhist community regarding vesting of management of Bodh Gaya Temple to the Buddhist community (28.2.97).
- (2) Complaints of Muslims in police/para military/armed forces regarding discrimination in the matter of growing beard as religious practice (21.8.97).
- (3) Vice Principal of St. Joseph School Fr. Kristodas was attacked in Dumka, Bihar in September 1997 and was forced to walk naked for 8 K.M. by a mob belonging to majority.
- (4) Violation of Religious rights of Minorities to hold religious meetings and Police atrocities on Christian in Ludhiana, Punjab on October 25, 1997.
- (5) The Sikhs of Delhi represented to the Commission against the Govt. order making it obligatory for all women users of two-wheeler scooters to wear helmets w.e.f. 1.11.97 as the order clashed with their religious practice.
- (6) Complaint of Muslims of Coimbatore against communal violence erupted just before the General Elections in Dec. 1997.
- (7) Violence and attacks on the muslim around the Dargah of Dhwaja Moinuddin Chisti in Ajmer on 17th and 20th February 1998.

(8) Attacks on Minorities in Gujarat in July and August 1998 :

- (a) exhuming of a corpse from a Christian Cemetary in Kapadgunj in Old Kheda District.
- (b) burning of the New Testaments (Bible) in a CNI School, Rajkot.
- (c) harrassment of the Muslims of Village Randhikpur as a reaction of some inter-religious marriages.

(9) The heinous crime of gangrape of four nuns in a remote village, navapura in Jhabuva district of Madhya Pradesh on 23 September 1998.

(10) Attacks on Christians and burning and demolishing of Church buildings in Dangs District of Gujarat during Christnas Week 1998.

(11) The communal violence and attacks on Muslims in Surathkel in District Mangalore, Karnataka from December 29, 1998. January 6, 1999.

(12) Attacks on a Christian Church and Christians in Peth Taluka of Nasik District, Maharashtra during November 1998 and a Rally organised by Vishal Hindu Sammelan on 5th January, 1999.

(13) Brutal burning to death of Dr. Graham Stewart Staines and his two sons on 22nd January, 1999.

(14) 157 burning of Christian houses in Ranalai Village, Orissa on March 16, 1999.

17. The National Commission for Minorities Act 1992, though has stated very clearly the functions of the Commission and also has empowered it with all the powers of a Civil Court, yet it lacks the power of implementing its findings and recommendations. Presently after doing all its work, it can send only its recommendations to Central and the State Governments under clause 9 (c) of the Act 1992. Both the Central as well as the State governments are supposed to lay these before each House of Parliament and before the Legislatures of the States respectively along with of memorandum explaining the action taken or proposed to be taken on the Commission's recommendations. The Act of 1992 very clearly has stated this produces in clause 9 (2) and (3) which reads as follow :

- (2) The Central Government shall cause the recommendations referred to in clause (c) of sub-section (1) to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any of such recommendations.

- (3) Where any recommendation referred to in clause (c) of sub-section (1) or any part thereof is such with which any State Government is concerned, the Commission shall forward a copy of such recommendation or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on the recommendation relating to the State and the reasons for the non acceptance, if any, of any of such recommendation or part.

18. But unfortunately both the Central and State governments have very rarely have fulfilled the demands of the National Commission for Minorities Act 1992. For examples during the period September 1997 – March 1999, only two State governments of Gujarat and Madhya Pradesh have laid the Commission's recommendations before the Legislatures. The Central Government has not laid during this period any of the report of the Commission of recommendations in the Parliament. Here one is faced with a problem of political will on the part of the Government.

IV. State Minorities Commissions or Boards :

19. Presently nine states are having State Minorities Commissions. Out of these nine states, six states are having statutory Minorities Commissions and three are having non-statutory Commissions. Among the Statutory Commissions, the Uttar Pradesh Commission came into being way back in 1960 as one man Commission, but in 1974 it was made a multi-member body and in 1994 it got as statutory status through an ordinance, which was replaced later on with the "U.P. Commission for Minorities Act 1994". In Bihar, Andhra Pradesh and Karnataka, the State Minorities Commission were established in 1971, 1979 and 1983 respectively. These later on in 1991, 1994 and 1998 got statutory status respectively. The West Bengal State Minorities Commission was established in 1994 and the same in 1996 was given a statutory status.

20. Tamil Nadu, Maharashtra and Rajasthan also set up the State Minorities Commissions in 1989, 1992 and 1993 respectively. These three Commissions were set up by executive actions, therefore these are having non-statutory status. This is also the reason that with the change of state governments in Maharashtra and Rajasthan, the Commission in both of these states were dissolved. But present new government of Rajasthan in 1999, again has reconstituted the State Minorities Commission. Also the Delhi State has decided in 1999 to establish a non-statutory State Minorities Commission.

21. In Gujarat and Assam, non-statutory Minorities Boards were established instead of Commissions in 1981 and 1985 respectively. Both the Boards are registered under the Societies Registration Act 1960. In Gujarat later on the Board became a Corporation under a new Government Order, but with the change of government again it was reverted to the old status.

22. The various State Minorities Commissions according to the State Acts or State Executive orders have been assigned functions and given powers similar to the National Commission for Minorities. But during the visits of the Chairman of the High Powered Study Committee, he has found out, these State Minorities Commissions in most of cases are unable to carry on their functions, because the States either have not provided all the needed facilities including funds or the members are not giving their full time or the membership have been over politicised.

23. Here at the end of this chapter a point must be emphasised that the Minorities Commissions need to be taken seriously as important parts of the social-justice enforcement mechanism of the Nation at different levels. But it will work only effectively as an enforcement mechanism if it will have complete statutory status with clear cut functions, powers and with a mechanism of implementing its recommendations.

CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions:

1. Going through the discussion and background history offered in chapters one to four, the first point that becomes clear is that the 'Religious Freedom' is a fundamental law of the Indian Socialist Secular Democratic Republic.
2. The second point, which becomes clear is that the 'Religious Freedom', has been intentionally kept as part of the 'justifiable fundamental rights', by the framers of the Constitution, so that it can be implemented and protected even through the Judiciary of the country.
3. The third point, which becomes clear is that beside the right of 'Religious Freedom' as having justifiable status, the Nation while recognizing the important of the Minority rights, also has created a special instrument, the National Commission for Minorities (NCM) through a Parliament Act in 1992 in order to monitor the working of the safeguards and rights (including their right of religious freedom).
4. The fourth point, which becomes clear is that the framers of the Constitution has fully accepted the plurality of religious and "the peculiar conjuncture of circumstances in India", because of this reason the rights of the Minorities have been given a special place in the Constitution.
5. The fifth point, which becomes clear is that the framers of the Indian Constitution took the meaning of a 'Secular State', which will not "make any discrimination what so ever on the ground of religion or community against any person professing any particular forms of religious faith." (*Chapter 2, para 21, p. 17.*)
6. The sixth point, which becomes clear is that the framers of the Constitution have "taken care to see that no unlimited right of conversion has been given. People have freedom of conscience and, if any man is converted voluntarily owing to freedom of conscience then well and good. No restriction can be placed against it. But if any attempt is made by one religious community or another to have mass conversion through undue influences either by money or pressure or by other means, the State has every right to regulate such activity." (*Chapter 2, para 23, p. 18.*)
7. The seventh point, which becomes clear is that the scope and application of "the right to religious freedom" (as enshrined in article 25) are applicable to "every community inhabiting the State professing any religion" (*Chapter 3, para 6, p. 22*), which means also the right to propagate one's religion "is

perfectly open to the Hindus and the Arya Samajists to carry on their *Suddhi* propaganda as it is open to the Christian, the Muslims, the Jains and the Buddhists and to every other religionist, so long as he does it subject to public order, morality and the other conditions that have to be observed in any civilized government." (Chapter 2, para 24, p. 18.)

8. The eighth point, which becomes clear is the meaning of the expression "freedom of conscience", which "allow free choice of religion". But it is propagation of religion which "gives a meaning to freedom of choice, for choice involves not only knowledge, but an act of will. A person can not choose if he does not know what choices are open to him. To propagate religion is not to impart knowledge and to spread it more widely, but to produce intellectual and more conviction leading to action, namely, the adoption of the religion". (Chapter 3, para 12; p. 25.)

9. The ninth point, which becomes clear from the discussion in chapter four is that "inducement" with regards to the conversion or *Suddhi Karan* should be objected to and punished under law, but the folly of the legal inducement presently recognised in the Constitution (Scheduled Castes) Order 1950 should be questioned equally and dealt with.

10. The tenth point, which becomes clearly is that as stand to-day three states (Orissa, Madhya Pradesh and Arunachal Pradesh) by using the proviso clause of article 25, have enacted state laws to prohibit "conversion from one religion to another by the use of force or allurement or by fraudulent means", but unfortunately the scope of these it looks is extended only to conversion in the sense of Christian or Muslim religions, because it is not clear if these laws cover the *Suddhi Karan* or what some others call re-conversion. Some of the regulatory clauses of these three state laws even effect the individual's 'freedom of conscience' also.

11. The eleventh point, which becomes clear is that both the National Commission for Minorities and the various State Minorities Commissions do need some kind of mechanism, which can help them to implement their findings and recommendations related to the various problems of Minorities. Also State Commission are unable to function without a statutory status.

B. Recommendations :

12. We recommend to the Central and State governments the instructions about the fundamental rights including their history, scope and application should be made compulsory as part of the courses both at school and college levels.

13. We recommend both the Central and State governments should take note of the history, scope and application of the fundamental rights specially of articles

25 and 30, when they make any law, which will effect the rights of the Minorities.

14. We recommend, the Central government should immediately amend the Constitution (Schedule Castes) Order, 1950 in order to remove the third paragraph from the Order, which does not only contradicts with the spirit of article 15 and 25 of our Constitution, but also offers legal inducement for sticking to (or reconverting from) the old religion.

15. We recommend, the three States (Orissa, Madhya Pradesh and Arunachal Pradesh) to amend immediately their respective laws dealing with the conversion so as to make it clear that conversion does not mean only conversion to Christianity or Islam, but it also includes conversion to Hinduism including reconversion and *Suddhi Karan* and tribals converting to Hindusim.

16. We recommend to the Central government that the power of the National Commissions for Minorities must be further strengthen particularly by providing it the implementing mechanism, which at present it does not have.

17. We recommend to all the State governments to establish (if currently is not there) the State Commissions for Minorities in order to monitor and safeguards the rights of the Minorities including "Religious Freedom".

18. We also recommend to those States, which are having already Minorities Commissions, these should be extended statutory status through a State law.

19. We recommend to both the Central and State government that they should instruct all levels administrations both Civil and Police to treat all the followers of all religions at equal level as required from them by the Constitution in the matters of religion (articles 14, 15, 25, 26, 27, 28).

20. We recommend to both the Central and State government that efforts through education all level should be made for the elimination of all forms of religious intolerance because currently it is this evil which is responsible for most of our inter-religious conflicts.

21. We recommend that the viability of the plurality of religions, which has been accepted in our Constitution, should be shared with people through the media, because it is the very surest path not only towards a state of peaceful co-existence of diverse religions, but also of their active co-operation for the common good.

22. We finally recommend to all the citizens of the country that the religious freedom has the recognition by the Nation, of the moral foundation of its political, economic and social life, that is, of a transcendent law of Justice, which all the citizens of our nation should serve. Because this is the only path

by walking on which, the citizens of India will be able to prevent India from becoming, totalitarian, the only possible basis on which democracy itself will be checked from becoming the tyranny of the majority.

APPENDICES

Appendix-I

Letter of NCM Chairman

From

Professor (Dr.) Tahir Mahmood
Chairman
National Commission for Minorities,
Government of India

7 December, 1998

No. CH/4/98/NCM.

Dear *(All the members of the High Powered Study Committee)*

In terms of a decision taken by the Commission on 6 May 1997, a Committee was constituted to undertake a fresh comprehensive Study of the Educational, Economic and Social Problems of the Minorities. At the inaugural meeting of the Committee on 30 July 1997, the then Welfare Minister had announced his Government's full support for the Commission's move and a financial grant of upto Rs.50 lakhs for meeting the expenses of the study.

While according to the original decision the proposed Study was to be completed by 15th August 1998, the Commission has so far received no grant and no sanction for the required research staff and consultants for its project; and it is certain that none will be received now – while the Commission is left with only one year of its statutory tenure. In these circumstances, we have no other option but to do the best we can to save and complete our project with our own internal human and financial resources.

We have, therefore, decided to prepare a 3-Part Study – one each covering the educational, economic and social problems of the Minorities. In view of the extraordinary delay, the First Part (Educational Problems) has already been prepared and will be released on 18 December. The other two Parts are to be completed positively by 15 March 1999; and both of them will contain additional materials on Educational Problems, besides those on their own respective subjects.

On behalf of the full Commission I offer you my profound thanks for joining our Committee and request you to kindly favour us with your written observation/comments/view/suggestions, etc. on all the three aspects of the Study (Educational, Economic, Social) or any of them, to be suitably used while preparing the 2nd and 3rd Parts of the Study. It is further requested that the same may kindly be made available to us as early as possible – but latest by 31st January 1999. The Commission will be grateful for this kind help and co-operation and with your views and comments will feel enriched and better-equipped to complete its Study.

With very warm regards,

Sincerely,

Sd

Tahir Mahmood

Appendix 2

(A) Orissa Freedom of Religion Act 1967
Orissa Act II of 1968 [9 January, 1968]

An Act to provide for prohibition of conversion from one Religion to another by the use of force or inducement or by fraudulent means and for matters incidental thereto.

Be it enacted by the Legislature of the State of Orissa in the Eighteenth Year of the Republic of India, as follows :-

1. *Short title extent and commencement -*

- (1) This Act may be called the Orissa Freedom of Religion Act, 1967.
- (2) It shall extend to the whole of the State of Orissa.
- (3) It shall come into force at once.

2. *Definitions: --* In this Act unless the context otherwise requires -

- (a) "conversion" means renouncing one religion and adopting another ;
- (b) "force" shall include a show of force or a threat of injury of any kind including threat of divine displeasure or social excommunication ;
- (c) "fraud" shall include misrepresentation or any other fraudulent contrivance;
- (d) "inducement" shall include the offer of any gift or gratification, either in cash or in kind and shall also include the grant of any benefit, either pecuniary or otherwise;
- (e) "minor" means a person under eighteen years of age.

3. *Prohibition of forcible conversion. --*

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

4. *Punishment for contravention of the provisions of section 3. --*

Any person contravening the provisions contained in section 3 shall, without prejudice to any other liability, be punishable with imprisonment of either description which may extend to one year, or with fine which may extend to five thousand rupees, or with both :

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes, the punishment shall be imprisonment to the extent of two years and fine up to ten thousand rupees.

5. *Offence to be cognizable. --*

An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of a Inspector of Police.

6. *Prosecution to be made with the sanction of district magistrate. --*

No prosecution for an offence under this Act shall be made without the sanction of the Magistrate of the District or such other authority, not below the rank of a Subdivisional Officer, as may be authorised by him in that behalf.

7. *Power to make rules. --*

The State Government may make rules for the purpose of carrying out the provisions of this Act.

(B) Regulations, Orders, Notifications, Rules, etc., issued by the Governor,
Heads of Departments and High Court

Part III-A

HOME DEPARTMENT
NOTIFICATION
The 29th November 1989

No. 70533-Ref-1-5/87-H.C.-In exercise of the powers conferred by section 7 of the Orissa Freedom of Religion Act, 1967 (Orissa Act 2 of 1968), the State Government of Orissa, do hereby make the following rules, namely : -

Short title

1. (1) These rules may be called the Orissa Freedom of Religion Rules, 1989
- (2) They shall come into force on the date of their publication in the official Gazette

Definition

2. (1) In these rules, unless the context otherwise requires : -
 - (a) 'Act' means Orissa Freedom of Religion Act, 1967 (Orissa Act 2 of 1968)
 - (b) 'Organisation' means a body of persons authorised by religious institutions who expound spiritual thoughts of different religions inside and outside the country.
 - (c) 'Form' means form appended to these rules
 - (d) 'Government' means Government of Orissa
 - (e) 'Religious institutions' means different religious authorities, who expound religious thoughts in the country and abroad.
 - (f) 'State' means State of Orissa
- (2) All other words and expressions used but not defined in these rules shall have the same meaning as is respectively assigned in the Act.

List of religious institution and Organisations

3. (i) Each District Magistrate shall maintain a list of religious institutions or organisations propagating religious faith in his district and that of persons directly or indirectly engaged for propagation of religious faith in the district.
- (ii) The District Magistrate, if he thinks fit, may call for a list of persons with the religious faith, receiving benefits either in cash or in kind from the religious organisations or institutions or from any person connected therewith.

Declaration before conversion.

4. Any person intending to convert his religion, shall give a declaration before a Magistrate, Ist Class, having jurisdiction prior to such conversion that he intends to convert his religion on his own will.

Intimation of ceremony.

5. (1) The concerned religious priest shall intimate the date, time and place of the ceremony in which conversion shall be made along with the names and addresses of the persons to be converted to the concerned District Magistrate before fifteen days of the said ceremony.

(2) The intimation shall be in Form A and shall be delivered either personally by the priest to the concerned District Magistrate or be sent to him by registered post with acknowledgement due.

The District Magistrate to issue acknowledgement receipt.

6. The District Magistrate on receiving the intimation from the priest shall sign thereon stating the date on which and the hour at which the intimation has been delivered to him or received by him and shall forthwith acknowledge the receipt thereof in Form B.

Register of conversion.

7. The District Magistrate shall maintain a register of conversion in Form C and shall enter therein particulars of the intimation received by him.

Penalty

8. Any person who contravenes the provisions of rule 5 or 6 shall be liable to a fine of rupees one thousand.

Submission of Report to Government.

9. The District Magistrate shall by the 10th of each month send to the State Government a report of intimations received by him during the preceding month in Form D.

By order of the Governor
S. M. PATNAIK
Secretary to Government

FORM A

INTIMATION REGARDING CONVERSION FROM ONE RELIGIOUS FAITH
TO ANOTHER

To

The District Magistrate,
District –

Sir,

I having performed the necessary ceremony for conversion as a religious priest/having taken part in the conversion ceremony of Shri S/o

R/o from religious faith to religious faith, do hereby give intimation of the conversion as required by sub-section (1) of Section 5 of the Orissa Freedom of Religion Rules, 1989 as follows : -

1. Name of the person converted
2. Name of the father of the person converted
3. Address of the person converted in

House No..... Ward No.
Mohalla.....
Village..... Tehsil
District.....

4. Age
5. Sex
6. Occupation and monthly income of the person converted
7. Whether married or unmarried
8. Name of persons, if any, dependant upon the person converted
9. If a minor, name and full address of the guardian, if any
10. Whether belongs to Scheduled Caste or Scheduled Tribe and if so, particulars of such Caste or Tribe.
11. Name of the place whether the conversion ceremony has House No... Ward No... taken place with full details.

Mohalla
Village Tahasil
District.....

12. Date of conversion
13. Name of person who has performed the conversion ceremony and his address.
14. Names of at least two persons other than priest/the persons giving intimation present at the conversion ceremony.

Signature of the religious priest/the person taking part in the conversion ceremony.

VERIFICATION

I, the undersigned do hereby declare that what is stated above is true to the best of my knowledge and belief.

Place

Date

Signature

FORM B

Received intimation under rule 5 of the Orissa Freedom of Religion Rules, 1989 from Shri, S/o, P/o from religious faith to religious faith.

Date

District Magistrate

FORM C

REGISTER OF CONVERSION

1. Name of the person converted
2. Name of the father of the person converted

Appendix 3

Madhya Pradesh Dharma Swatantrya Adhiniyam 1968 *M.P. Act XXVII of 1968 [19 Oct., 1968]*

An Act to provide for prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means and for matters incidental thereto.

Be it enacted by the Madhya Pradesh Legislature in the nineteenth year of the Republic of India as follows :

1. *Short title, extent and commencement -*

- (1) This Act may be called the Madhya Pradesh Dharma Swatantrya Adhiniyam 1968.
- (2) It shall extend to the whole of the State of Madhya Pradesh.
- (3) It shall come into force at once.

2. *Definitions. -*

In this Act unless the context otherwise requires -

- (a) "allurement" means offer of any temptation in the form of -
 - (i) any gift or gratification either in cash or kind;
 - (ii) grant of any material benefit, either momentary or otherwise;
- (b) 'conversion' means renouncing one religion and adopting another;
- (c) 'force' shall include a show of force or threat of injury of any kind including threat of divine displeasure or social ex-communication;
- (d) 'fraud' shall include misrepresentation or any other fraudulent contrivance;
- (e) 'minor' means a person under eighteen years of age.

3. *Prohibition of forcible conversion. -*

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

4. *Punishment for contravention of the provisions of section 3. -*

Any person contravening the provisions contained in section 3 shall, without prejudice to any civil liability, be punishable with imprisonment of either description which may extend to one year, or with fine which may extend to five thousand rupees, or with both :

Provided that in case the offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes, the punishment shall be imprisonment to the extent of two years and fine up to ten thousand rupees.

5. Intimation to be given to district magistrate with respect to conversion. -

(1) Whoever converts any person from one religious faith to another either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the ceremony as may be prescribed, send an intimation to the district magistrate of the district in which the ceremony has taken place of the fact of such conversion in such form as may be prescribed.

(2) If any person fails without sufficient cause to comply with the provisions contained in sub-section (1), he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

6. Offence to be cognizable. -

Any offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of Inspector of Police.

7. Prosecution to be made with the sanction of district magistrate. -

No prosecution for an offence under this Act shall be instituted except by, or with the previous sanction of, the District Magistrate or such other authority, not below the rank of a Sub-Divisional Officer, as may be authorised by him in that behalf.

8. Power to make rules. -

The State Government may make rules for the purpose of carrying out the provision of this Act.

Appendix 4

Arunachal Pradesh Freedom of Religion Act 1978

Ar. P. Act No XL of 1978

An Act to provide for prohibition of conversion from one religious faith to any other religious faith by use of force or inducement or by fraudulent means and for matters connected therewith.

1. *Short title & extent*

(1) This Act may be called the Arunachal Pradesh Freedom of Religion Act 1978.

(2) It shall extend to the whole of Arunachal Pradesh.

2. *Definitions.* -

(a) government means government of Arunachal Pradesh.

(b) 'conversion' means renouncing one religious faith and adopting another religious faith and "convert" shall be construed accordingly.

(c) 'indigenous faith' means such religions, beliefs and practices including rites, rituals, festivals, observances, performances, abstinence, and customs as have been found sanctioned, approved or performed by the indigenous communities of Arunachal Pradesh from the time these communities have been known and includes Buddhism as prevalent among the Monpas, Membas, Sherdukpens, Khambas, Khamptis and Singphos, Vaishnavism as practiced by Noctes, Akas and Nature worships, including worship of Donyipolo, as prevalent among other indigenous communities of Arunachal Pradesh.

(d) 'force' shall include show of force or a threat of injury of any kind including threat of divine displeasure or social ex-communication;

(e) 'fraud' shall include misrepresentation or any other fraudulent contrivance.

(f) 'inducement' shall include the offer of any gift or gratification either in cash or in kind and shall also include the grant of any benefit, either pecuniary or otherwise.

(g) prescribed means prescribed under the rules.

(h) 'religious faith' includes any indigenous faith.

3. *Prohibition of forcible conversion:-*

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

4. *Punishment for contravention of the provisions of section 3. --*

Any person contravening the provisions contained in section 3 shall be punishable with imprisonment which can extend to two years and with fine which may extend to Rs. Ten thousand.

5. Intimation of the conversion to deputy commissioner and punishment. --

- (1) Whoever converts any person from one religious faith to another either by performing himself the ceremony necessary for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period after the ceremony as may be prescribed, send an intimation to the Deputy Commissioner of the district to which the person converted belongs, of the fact of such conversion in such form as may be prescribed.
- (2) If any person fails without sufficient cause to comply with the provisions contained in sub-section (1), he shall be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

6. Offence to be cognizable. --

An offence under this Act shall be cognizable and shall not be investigated by an officer below the rank of Inspector of Police.

7. Sanction for Prosecution. -

No prosecution for an offence under this Act shall be instituted except by, or with the previous sanction of the Deputy Commissioner or such other authority, not below the rank of an Extra Assistant commissioner as may be authorised by him in this behalf.

8. Power to make rules: --

The Government may make rules for the purpose of carrying out the provision of this Act.