

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO OF 2020

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & others

...Respondents

URGENT APPLICATION

To,

The Registrar,

High Court of Delhi at New Delhi,

Sir,

Kindly treat the accompanying application as an urgent one in accordance with the High Court Rules and Orders.

Petitioner is filing this writ petition under Article 226 of the Constitution. Matter is urgent in public interest as prayed.

PETITIONER-IN-PERSON

(Ashwini Kumar Upadhyay)

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NOOF 2020

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IN THE MATTER OF:

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NOTICE OF MOTION

To,

The Standing Council

Union of India

High Court of Delhi, New Delhi,

Sir,

Please find enclosed herewith copies of above mentioned Writ Petition, which is being filed today before this Hon'ble Court and likely to be listed before the Hon'ble Court on 13.03.2020 or any other date fixed by the registry. It's for your information and necessary action.

PETITIONER-IN-PERSON

(Ashwini Kumar Upadhyay)

12.03.2020

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO OF 2020

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

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MEMO OF PARTIES

Ashwini Kumar Upadhyay

...Petitioner

Verses

1. Union of India

Through the Secretary,

Ministry of Home Affairs

North Block, New Delhi-110001

2. Union of India

Through the Secretary,

Ministry of Law & Justice (Legislative Dept)

Shastri Bhawan, New Delhi-110001

3. Government of NCT of Delhi

Through the Chief Secretary,

Delhi Secretariat, IP Estate,

New Delhi - 110002,

...Respondents

PETITIONER-IN-PERSON

(Ashwini Kumar Upadhyay)

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) NO. OF 2020

[UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA]

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Versus

Union of India & Another

...Respondents

SYNOPSIS

Directive Principles are affirmative instruction to the State to secure Justice – social, economic, and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all fraternity, assuring dignity of individual and unity and integrity of the nation.

It is duty of the State to direct their activities in such a manner so as to secure the high ideals set forth in Preamble and Part III. The Directives are amalgam of diverse subjects embracing the life of nation and include principles, which are statements of socio economic rights, social policy and administrative policy.

Under Article 15(3) of the Constitution, the State is empowered to make special provisions for the benefit of women and children. The freedom of conscience, free profession, practice and propagation of religion under Article 25 is subject to public order, morality and health & other provisions of Part-III.

Article 46 of the Constitution directs the State to take appropriate steps to protect schedule castes and schedule tribes from social injustice and other forms of exploitation. Undoubtedly, religious conversion by intimidating,

threatening or deceptively luring gifts and monetary benefits or by using miracles, superstition and black magic, is an injustice and exploitation.

Under Article 51A, it is duty of every citizen to: abide by the Constitution and respect its ideals and institutions; uphold and protect unity and integrity, promote harmony and spirit of brotherhood; renounce practices derogatory to dignity of women; value and preserve rich heritage of our composite culture; and develop scientific temper, humanism and spirit of enquiry and reform; strive towards excellence in all spheres of individual and collective activity; but there are incidents where conversion is done by using miracles & black magic.

India is Social Secular Democratic Republic and has a vast majority of followers of Muslims, Christians, Jains and Sikhs. As part of human right every individual is free to profess any religion of his choice without discrimination. Preamble of the Constitution is framed with great care and deliberations and reflects high purpose and noble objectives. Article 25 supports the concept of religious freedom that, *“all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health.”* However, many individuals, NGOs and institutions are converting by intimidating, threatening, deceptively luring monetary benefits and by other acts including miracle healing, black magic and more.

Many individuals/organizations have started conversions of SC-STs in rural areas and situation is very alarming. The mass religious conversion of the socially economically downtrodden men, women and children, and, in particular of the schedule caste and schedule tribe community, is on the rise in the last 20 years. The Organizations operate very smoothly targeting socially

economically downtrodden men, women and children, and in particular of the schedule caste and schedule tribe community, with fraudulent tricks such as mass prayers of miracle healing and marketing campaigns of black magic.

India is a victim of religious conversions for many centuries. Therefore, it is duty of the State to take appropriate steps to stop religious conversion to of socially economically downtrodden men, women and children, particularly of the SC-ST community, being done by intimidating, threatening, deceivingly luring gifts and other monetary benefits and using miracles and black magic. It is necessary to state with dismay that the Government has done little or nothing to stop religious conversions by force and luring gifts and money etc.

Evidence of deceitful religious conversion is available in social media, particularly on YouTube and Facebook. Foreign funded individuals and NGOs are given a road map and monthly target of religious conversion. It is necessary to state that as per 2011 census, Hindus are 79% and down from 86% in 2001, *(most importantly 79% including millions converted continue to record them as Hindus to get reservation in Jobs and other benefits)*. Presently, Christians are majority in Mizoram (88%), Nagaland (89%) and Meghalaya (75%) and there is significant population in Manipur(42%), Arunachal(31%), Goa, Kerala, Tamil Nadu and West Bengal. Muslims are majority in Lakshadweep (97%), Kashmir (96%) and there is significant population in Assam (34.20%), West Bengal (27.5%), Kerala (26.60%), Uttar Pradesh (19.30%) and Bihar (18%). At this rate, if no action will be taken by the Government, Hindus will become minority in India. Recently, a boy from minority community befriended a schedule caste girl posing as a Hindu. One day, he revealed his real identity and

forced the girl to convert to get married. When girl negated for conversion boy threatened her to expose their relationship and even threatened for physical assault. There are many similar incident and surprisingly such incidents are on the rise because Government have no laws for controlling religious conversion. There are many methods through which Government can maintain discipline and reduce forceful/deceitful conversion of poor's. The State may enact a Law and declare punishments for the attempts of conversion. A convict found guilty would serve imprisonment of 3-7 years with heavy fine. Additionally, the State may empower National Human Right Commission to deal with the affairs of religious groups and analyze religious discrimination among them.

It is most respectfully submitted that the substance of what is submitted hereinbefore, has been recognized by the Apex Court in *Rev. Stainislaus v. State of Madhya Pradesh*, (1977) 1 SCC 677. In one of its findings, the Court held that propagation only indicated persuasion / exposure without coercion and that the right to propagate did not include right to convert any person. Court held: *"It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike."*

There is no gainsaying that the freedom of religion enshrined in Article 25 is not granted exclusively in respect of one faith, but includes all religions

equally, and an individual may properly enjoy it if he practices his right in a manner commensurate with the like freedom of persons practicing the other religions. What is liberty for one, in equal measure, is freedom for the other, and therefore, there can be no such thing as a fundamental right to turn another man into one's own religion.

The protected right must be looked at through the prism deciphering its pristine nature. Article 25, therefore, protects the right of "all persons" to enjoy a freedom of conscience, necessarily implying, enjoying that freedom without intimidation, threat, or undue coercion or misguided material lure. The content of constitutionally guaranteed freedom therefore loses its essence and Article 25 is denuded of its content when the State fails to adopt and implement sufficient measures to ensure that unlawful, coercive and forceful conversions are prohibited. This Hon'ble Court being the sentinel on the qui vive of fundamental rights, may pass appropriate directions in this regard.

Apex Court in Indian Young Lawyer Association Case [(2019) 11 SCC 1] held that in public law conversations between religion and morality, it is the overarching sense of constitutional morality which has to prevail. It is most respectfully submitted that it is the duty of the Courts to ensure that what is protected is in conformity with fundamental constitutional values & guarantees and accords with constitutional morality. While the constitution recognizes religious beliefs & faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. While the constitution is solicitous in its protection of religious freedom as well as denominational rights, it must be understood that practices

& beliefs which detract from those foundational values cannot claim legitimacy. The ignominy of having to lose one's freedom of conscience on illicit lures of material benefits, is ultimate exploitation which the Constitution surely does not protect under Article 25. Therefore, the jurisdiction of this Hon'ble Court is invoked to protect the general populace from an insidious assault on their freedom of conscience which the executive has entirely failed to contain/curb.

Furthermore, no fundamental right is absolute. Article 25 is also subject to public order, morality, health and other parts of Part-III and morality include constitutional morality. A division Bench of the Hon'ble Allahabad High Court has held in *Ram Gopal Tripathi v Sarvajeet Herbert*, 2003 SCC Online All 550, that when a gathering is intended to mislead people by making false and untenable claims designed to lure poor, incredulous and ignorant masses into joining a particular fold, faith or religious group by false exaggerated claims as to possession of divine and supernatural powers, the Courts can prohibit or strike down such activities. The Court cannot countenance any abuse or misuse of such gathering which may result in chaos and disorder.

LIST OF DATES

- 17.01.1977: The Five Judges Bench of the Supreme Court in *Rev. Stainislaus Case* [(1977) 1 SCC 677, para 20] observed that right to propagate, guaranteed under Article 25, is subject to public order, morality and health and does not include right to convert. (Annexure-1)
- 10.05.1995: The Apex Court in *Sarla Mudgal Case* [(1995) 3 SCC 635, para 46] opined that government may consider feasibility of appointing a Committee to enact a Conversion of Religion Act. (Annexure-2)

08.05.2003: The Allahabad High Court held that Article 25 is subject to public order health and morality and authorities and Court can prohibit the gathering, intended to mislead people by making untenable & false claim to convert people in another religion. (Annexure-3)

27.12.2010: Law Commission submitted Report No 235. (Annexure-4)

12.03.2020: Despite the Court observations & Law Commission endorsement, respondents did nothing to control conversion. Hence this PIL

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(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & others

...Respondents

PIL TO CONTROL RELIGIOUS CONVERSION OF SCHEDULE CASTES, SCHEDULES TRIBES AND ECONOMICALLY BACKWARD CLASSES BY INTIMIDATING, THREATENING OR DECEIVINGLY LURING WITH GIFTS AND MONETARY BENEFITS OR BY USING MIRACLES AND BLACK MAGIC

To,

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE HIGH COURT OF DELHI

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petition is not guided by self-gain or for gain of any other individual person, institution or body. There is no motive other than the larger public interest in filing this petition. Petitioner has no personal interest or individual gain,

private motive or oblique reasons in filing this PIL. It is totally bona-fide with the sole purpose of securing larger public interest and is in interest of justice.

2. Source of averments made in petition is personal knowledge and information collected from various sources, including newspapers and government websites. Petitioner is filing this PIL seeking a writ order or direction or a writ in the nature of mandamus to take steps to control religious conversion by intimidating, threatening or deceptively luring unwitting individuals with gifts or monetary benefits or by using miracles, superstition and black magic.
3. Present petition is for benefit of poor, disabled, economically weaker section and socially-economically down trodden people and particularly the schedule castes and schedule tribes. As they are incapable of accessing this Hon'ble Court themselves, petitioner is filing this PIL to secure fundamental rights guaranteed under Articles 14, 15 and 21 of the Constitution of India.
4. The Union and State is likely to be affected by the orders sought in the petition and they have been impleaded as Respondents. Petitioner submits that to its knowledge, no other persons, bodies, institutions are likely to be affected by the order/ direction sought in this writ petition.
5. Petitioner's full name is Ashwini Kumar Upadhyay. Office at: 15, M.C. Setalvad Chambers, Supreme Court, New Delhi-01. Residence at: G-284, Govindpuram, Ghaziabad-201013, #08800278866, aku.adv@gmail.com, PAN: AAVPU7330G, AADHAAR: 659982174779. Income is Rs. 6 LPA. Petitioner is able to bear the cost if any, imposed by this Hon'ble Court.
6. Petitioner is an Advocate, practice in this Hon'ble Court and Supreme Court and a social-political activist, striving for gender justice, gender equality and

dignity of women and contributing his best to the development of socially-economically downtrodden people and national integration.

7. Petitioner has not filed any other petition either in this Court or in other Court seeking same or similar direction as prayed in this petition.
8. Petitioner has not submitted representation to Union and State because despite Court observations and Law Commission recommendations, they did nothing. There is no requirement to move concerned authority for the relief sought in this writ petition. There is no other remedy available except approaching this Hon'ble Court by way of the instant petition under Article 226.
9. Directive Principles are affirmative instruction to the State to secure Justice – social, economic, and political; Liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity and to promote among them all fraternity, assuring dignity of individual and unity and integrity of the nation. It is duty of the State to direct their activities in such a manner so as to secure the high ideals set forth in Preamble and Part III. The Directives are amalgam of diverse subjects embracing the life of nation and include principles, which are statements of socio economic rights, social policy and administrative policy.
10. Under Article 15(3) of the Constitution, the State is empowered to make special provisions for the benefit of women and children. The freedom of conscience, free profession, practice and propagation of religion under Article 25 is subject to public order, morality and health and other provisions of Part-III.
11. Article 46 of the Constitution directs the State to take appropriate steps to protect schedule castes and schedule tribes from social injustice and other forms of exploitation. Undoubtedly, religious conversion by intimidating,

threatening or deceptively luring gifts and monetary benefits or by using miracles, superstition and black magic, is an injustice and exploitation.

12. Under Article 51A of the Constitution, it is the duty of every citizen to: abide by the Constitution and respect its ideals and institutions; uphold and protect unity and integrity of India, promote harmony and spirit of brotherhood; renounce practices derogatory to dignity of women; value and preserve rich heritage of our composite culture; and develop scientific temper, humanism and spirit of enquiry and reform; strive towards excellence in all spheres of individual and collective activity; but there are so many incidents where mass religious conversion is done by using miracles and black magic and luring gifts.
13. India is Social Secular Democratic Republic and has a vast majority of followers of Muslims, Christians, Jains and Sikhs. As part of human right every individual is free to profess any religion of his choice without discrimination. Preamble of the Constitution is framed with great care and deliberations and reflects high purpose and noble objectives. Article 25 supports the concept of religious freedom that, *“all persons are equally entitled to freedom of conscience and the right to freely profess, practice, and propagate religion subject to public order, morality and health.”* However, many individuals, NGOs and institutions are converting others by intimidating, threatening, deceptively luring monetary benefits and by other acts including miracle healing, black magic and more.
14. Many individuals and organizations have started mass conversions of SC-STs in rural areas and situation is very alarming. The mass religious conversion of the socially economically downtrodden men, women and children, and, in particular of the schedule caste and schedule tribe community, is on the rise in

the last 20 years. The Organizations operate very smoothly targeting socially economically downtrodden men, women and children, and in particular of the schedule caste and schedule tribe community, with fraudulent tricks such as mass prayers of miracle healing and marketing campaigns of black magic.

15. India is a victim of the religious conversions for many centuries. Therefore, it is duty of the State to take appropriate steps to stop religious conversion to of socially economically downtrodden men, women and children, particularly of the SC-ST community, being done by intimidating, threatening, deceivingly luring gifts and other monetary benefits and using miracles and black magic. It is necessary to state with dismay that the Government has done little or nothing to stop religious conversions by force and luring gifts and money etc.

16. The evidence of the deceitful religious conversion is available in social media, particularly on YouTube and Facebook. Foreign funded individuals and NGOs are given a road map and monthly target of religious conversion. It is necessary to state that as per 2011 census, Hindus are 79% and down from 86% in 2001, *(most importantly 79% including millions converted continue to record them as Hindus to get reservation in Jobs and other benefits)*. Presently, Christians are majority in Mizoram (88%), Nagaland (89%) and Meghalaya (75%) and there is significant population in Manipur(42%), Arunachal(31%), Goa, Kerala, Tamil Nadu and West Bengal. Muslims are majority in Lakshadweep (97%), Kashmir (96%) and there is significant population in Assam (34.20%), West Bengal (27.5%), Kerala (26.60%), Uttar Pradesh (19.30%) and Bihar (18%). At this rate, if no action will be taken by the Government, Hindus will become minority in India, which was once a complete Hindu majority country.

17. Recently, a boy from minority community befriended a schedule caste girl posing as a Hindu for five years. One day, he revealed his real identity and forced the girl to convert to get married. When girl negated for conversion boy threatened her to expose their relationship and even threatened for physical assault. There are many similar incident and surprisingly such incidents are on the rise because Government have no laws for controlling religious conversion.
18. There are many methods through which Government can maintain discipline and reduce forceful/deceitful conversion of poor's. The State may enact a Law and declare punishments for the attempts of conversion. A convict found guilty would serve imprisonment of 3-7 years with heavy fine. Additionally, the State may empower National Human Right Commission to deal with the affairs of religious groups and analyze religious discrimination among them.
19. Himachal Pradesh Government through "The Freedom of Religious Act" passed in 2006 tackled the issue of forceful and deceitful religious conversion. The law was accepted in 2007 and it states that *"No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by inducement or by any other fraudulent means nor shall any person abet any such conversion."* To simply define the Anti-Conversion Law, it is the practice in which one can convert his religion from one to another on his own will. One cannot impose a religion by false means such as by threat or by building fear of punishment in afterlife.
20. Even before the Independence of India, various States had followed the anti-conversion laws. The Raigarh State Conversion Act 1936 and the Sarguja State Apostasy Act 1945 are some of the examples. Similarly, many other States

i.e. Bikaner, Jodhpur, Kalahandi and Kota enacted anti-conversion policies. The idea was to prevent religious conversion taking place in the States. After the independence, the need to establish laws to protect the allured conversion of religion excessively rose. A large number of Hindus were reported in forceful conversion either into Christianity or Islam. Even in 1960s, it was reported in Madhya Pradesh that a large population of a schedule tribe community was forcefully converted into Christianity without their will. It placed a high pressure on the Government to act against such unlawful acts. Upon this the Government made a Judicial Commission led by Dr Bhavani Shankar Niyogi, a retired Judge of the Madhya Pradesh High Court. Through their investigations, the report of conversion was confirmed that Christians since a very long time had been involved into religious conversion. Such conversions disturb the faith and creates chaos in the country by disturbing the law and order situation.

21. On 15.1.2019, the then Home Minister Sh. Rajnath Singh expressed concern over mass religious conversion and said that it needs to be curbed. He said:
- "If someone accepts a religion out of his choice, then nobody should raise an objection. However, mass conversion is a matter of concern for any country including India. If you are a Hindu be a Hindu; a Muslim, be a Muslim; a Christian, be a Christian; but why do you want to convert the whole world? All six sects of Christianity are found here. All 72 sects of Islam are not found even in Islamic countries but are found in India. I support the freedom to follow any religion but of the opinion that a debate is needed as mass conversions are a matter of concern for any country. I have never discriminated on the basis of caste, creed and religion in my life. Whether or not we get votes. Whether or not*

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

22. Uttarakhand, Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh and Jharkhand have enacted Anti-Conversion Law. In Gujrat, one have to take permission from District Magistrate 30 days before conversion. Orissa and Madhya Pradesh have been following Anti-Conversion Law since 1960s. They do not require the converter to take any kind of permission from the Magistrate. Madhya Pradesh restricts the converter to inform the magistrate soon after the conversion. The idea of informing the Magistrate is to control the forceful conversion. In this manner the local authority is able to know the reason of conversion as well. The Government should enact a Law and get it strictly implemented pan India. The Law should have strict ban or scrutiny on

foreign funds because many people operate under the hide of an NGO. The Law should also include terms to restrict foreign NGOs from entering India during national calamities. Ideally these NGOs come to help initially and start their act of converting because people are vulnerable when they are poor and need help.

23. India is a Socialist Secular Democratic Republic and Rule of Law is the basic dictum of our democracy. Preamble of the Constitution secures social economic and political justice to every citizen thus it is duty of the Government to take steps to stop religious conversion by intimidating and luring monetary benefits to socially economically downtrodden men, women and children, particularly of the schedule castes and schedule tribes community. Therefore, it is prayed that Government should constitute a Judicial Commission or an Expert Committee to examine the anti-conversion laws and policies of developed countries and best practices of Anti-Conversion Laws, enacted by States to control forceful and deceitful religious conversion. In the alternative, direct the Law Commission of India to prepare a report within three months.

24. In the context of raging controversies on the scope and impact of propagation right of religious freedom, it becomes necessary to work on a two pronged approach on the role of law in these areas. The one to enhance positive content for religious tolerance and religious freedom and other to progressively reduce scope for legal intervention in matters of propagation and practices of religion. There is an integral connection between the two facets of religion though a religion can exist without need for its expressed propagation. All dimensions of religion must be seen as facets of right to personal autonomy of an individual and domain of choices exercisable on knowledge, appeal and

convictions. It appears that only by wise fusion of this approach facilitated by non-state actor's role can public order and peace be preserved. The saner minds who understand universality of spiritual experiences also understand the need for a common protective framework for faiths on foundations of equality/nondiscrimination. The need to protect many truths lie in the essence of truth itself. This must proceed on the premise that those who wish to propagate their faith will do so not out of ignorance of or contempt to other faiths; nor because that the converting faith believes in propagation as a competitive vocation of soul saving and mandated by their faith; not because sans propagation, religious freedom itself will be at peril; but essentially because that the authenticity of the core values of all faiths, in so far as they constitute the discoveries of all soul searching, or voyages of truth, must be freely exchanged. If there can be propagation without denigration so be it. A person in need of clutches will be happy to hold on even to a straw, may see no wrong in accepting engagement of selfless service of a converter, the material benefits offered, and the spiritual solace, all under the banner of conversion.

25. Can there be an ideal 'converttee', who may first insist upon spiritual solace of higher value and meaning and then consider the relevance of material benefits? These concerns are, that all truths and claims to truths of faiths and religion are to be received as of equal validity; truth comparisons are odious and wrong; and exchanges of love, compassion, empathy and being in joy with differences, shall promote these concerns. All discourses on religion/faith should identify and choose meanings and interpretations that coalesce and displace colonial and hegemonic attributes and eschew denigrations. The concerns themselves

are not new; they have been profoundly stated, in the past and are being voiced by minds which have felt and perceived humanity's common weal and common yearnings. Every restatement of such values is but yet another brick laid, to strengthen resolves to promote universal humanhood and dissolve differences while maintaining distinctions. No constitutional right can avoid debates on its meaning and scope, assertion and denial. Judicial statements on rights can be both matters of reinforcement, as well as fodder for a later day cinder. Wise statesmanship, critical understandings and elevated thought processes have however managed debates on several constitutional rights, say for example, the right to free speech. Some constitutional rights are more problematic than others because entrenched and contested social claims are so entangled. The domain of faith, conscience and religion is one such constitutional area. The ability of the State to deal with the tension ridden layers of this domain, lies in the competence to enact wise definitions, caring spaces, equality of concern and the concern for equality. This demand on the State is to require it to walk on razor edges. The hope is to make reasonable constitutional statements, with eyes focused firmly on community peace and order.

26. Every claim to communicate an idea or a thought in value neutral terms touching upon issues concerning religion, morality, ethics and even aesthetics and culture, demands close scrutiny. Both objectivity and neutrality are elusive dimensions of social debates. Frank acknowledgement of elusive dimensions, would however open up greater areas of accommodation, tolerance and goodwill. The above prelude has been chosen particularly keeping in mind the extremities in points of views in debates concerning propagation / conversion.

The need to use language and formulation of thoughts and ideas, which must endeavor to nourish the intrinsic values immanent in every system of belief, faith, worship and religion deserve very close attention. As we proceed upon the debate on propagation and conversion, we will slowly learn that the solutions offered, the measures suggested and the understandings that must be promoted, are, enormously goodwill exercises, and must be far removed from impenetrable German walls forever dividing peoples. Sociological, anthropological and other historical studies may be relevant if one is engaged in confronting claims made about exclusive superiority of one faith or other. Discourses on proof in this connection, will then necessarily enter into contentious areas. Religious proof will then claim to have a special status beyond scientific or philosophical proofs. One set of Religious truths can claim greater superiority and condescendingly too. Wide range of comments are made on even honest attempts made to explain the entangled web of issues concerning religious superiority, propagation and proselytism.

27. Affirmation and assertion of only one set of religious truths as exclusive truths, will be one manner of propagation, perhaps lopsided. Presentation of experiences, spiritual, unique and revealing, as mere sharing and stimulus for common human evolution, can be another propagation venture. If however both modes of conveying ideas and thoughts constitute propagation and neither on philosophical basis nor on political principles, clear lines of distinction, can be drawn, is there a problem in the State remaining neutral, avoiding any entanglement or mediation or in entering into the debate, endeavoring to draw lines, in order to secure valuable social or community

ends? How far can the propagationists travel unhindered in their propagation agendas? What if the propagationist claims that there can be no propagation without conversion and that conversion is the most satisfactory self-consoling achievement without which propagation would be a mere empty conception? The task of answering these questions is not merely political. Any attempted answer with a 'State involvement' need not be necessarily communal, as it was noticed that objectivity/ neutrality are difficult values in practice and delicate attainments. If assertions towards exclusive religious truths are themselves antithetical to human freedom/liberty and to diverse claims, historically well stated tested and founded, the State would not be turning a wrong chapter by asking of such propagationists to practice moderation, accommodation and be willing to be subjected to reasonable restraints. The very concept of reasonable restrictions is a commentary on human nature and its untamable audacities.

28. Treating the subject of religious neutrality in America with profound understanding and the impasse involved, it is suggested: *“the courts should monitor legislative output, not inputs. Citizens may make whatever religious arguments they like in favor of a law, so long as the law that is ultimately passed is justifiable in non-religious terms. Because government may not take a position on religious truth, a law that can be justified only in religious terms is invalid. The requirement that a law have a secular purpose will, of course, prevent some people from getting what they want in the political process, but any meaningful constitutional restriction will do that.”*

29. At one level, namely from the level of the perennial and Universal value of exchange and communication, propagation can be a noble pursuit. At a

different level, of calling the other faith, a lesser entity it can be akin to dominion and power and thus Religious colonialism. Is there a room for Religious colonialism in contemporary times? The rights under Human Rights instruments to choice of belief or religion is against State or other religions dictating against free choice and deserve not to be used by conscious conversion agendas. If otherwise understood, the right of choice to abandon or change faith will stand on its head. In the market place of choices, there is no room for bullish trading. The acuteness of the problem of dealing with propagation sliding into conversion, and conversion promising liberation from undeserving faiths and religions is not made easy by blurring the lines between propagation and conversion. The earnest hope of Rawls that we should generalize "*the principle of religious toleration to a social form*", with all its profundity, is webbed by persistent contrary understandings, agendas, and executions of religious conversions, which are far removed from nobler conceptions, and 'embracing' perceptions and practices. As long as the State does not impede the right to profess and practice religion there is no controversy. By now the meaning and scope of these expressions, profess and practice have attained some element of stability. Propagation however continues to have some controversies, since contested stretches of meanings are canvassed for protection. For instance it is said that successful propagation would result in conversion thus stating ends of propagation? Does the constitution protect all ends of propagation? (*as there can be no human activity sans ends and purposes*) or keeps at bay those ends which are fundamentally in conflict with the equal validity of all faiths? Saner, wiser and understanding minds will say

that propagation has no ends beyond propagation. Whatever follows propagation should be left to matters beyond the propagationist. This is absolute and stern detachment. What does history tell us about why constitutions should care about propagation? The free hand of all colonisers – mind, region and religion – and the unbridled authority exercised on peoples on grounds of high scriptural authority, tells us that an inviolable and sacred space should be left untouched and the freedom of the movement of the mind in its profound and compassionate mould is as inviolable as the freedom of the mind itself. Constitutions and human rights instruments generally protect propagation as part of the right to faith. But why propagation? Why should it be a right? What autonomy rights, identities of individuals and grounds are involved in it? Will right to practice one's faith or religion wilt, if propagation is curtailed? Can we compare the need of organic elements of nature, trees, plants – for earth and water as sustaining elements, to propagation as a need of practicing one's faith? Practicing one's faith will not wilt if propagation is not part of it. Every faith or claim to truth does not thrive on propagation. People can draw fences and live comfortably within. But there is an innate urge of the human mind to share. If sharing of the beauty of one's practice is seen more as preservation of the beauty, and dissemination of beauty, propagation makes sense. Poetry, philosophy science, morality are all part of sharing and the joy of sharing is the noblest aspect of human consciousness.

- 30.** It is most respectfully submitted that the substance of what is submitted hereinbefore, has been recognized by the Apex Court in *Rev. Stainislaus v. State of Madhya Pradesh*, (1977) 1 SCC 677. In one of its findings, the Court held that

propagation only indicated persuasion / exposure without coercion and that the right to propagate did not include right to convert any person. Court held: *“It has to be remembered that Article 25(1) guarantees “freedom of conscience” to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one’s own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the “freedom of conscience” guaranteed to all the citizens of the country alike.”*

31. That there is no gainsaying that the freedom of religion enshrined in Article 25 is not granted exclusively in respect of one faith, but includes all religions equally, and an individual may properly enjoy it if he practices his right in a manner commensurate with the like freedom of persons practicing the other religions. What is liberty for one, in equal measure, is freedom for the other, and therefore, there can be no such thing as a fundamental right to turn another man into one’s own religion.

32. That in the context of analyzing the contours of a constitutional guarantee, the protected right must be looked at through the prism deciphering its pristine nature. Article 25, therefore, protects the right of “all persons” to enjoy a freedom of conscience, necessarily implying, enjoying that freedom without intimidation, threat, or undue coercion or misguided material lure. The content of constitutionally guaranteed freedom therefore loses its essence and Article 25 is denuded of its content when the State fails to adopt and implement sufficient measures to ensure that unlawful, coercive and forceful

conversions are prohibited. This Hon'ble Court being the sentinel on the quiver of fundamental rights, may pass appropriate directions in this regard.

33. The Apex Court in *Indian Young Lawyers' Association v. State of Kerala*, [(2019) 11 SCC 1] has held that in public law conversions between religion and morality, it is the overarching sense of constitutional morality which has to prevail. It is most respectfully submitted that it is the duty of the Courts to ensure that what is protected is in conformity with fundamental constitutional values and guarantees and accords with constitutional morality. While the constitution recognizes religious beliefs and faiths, its purpose is to ensure a wider acceptance of human dignity and liberty as the ultimate founding faith of the fundamental text of our governance. While the constitution is solicitous in its protection of religious freedom as well as denominational rights, it must be understood that practices and beliefs which detract from those foundational values cannot claim legitimacy. The ignominy of having to lose one's freedom of conscience on illicit lures of material benefits, is the ultimate exploitation which the Constitution surely does not envisage protected under Article 25. Therefore, the jurisdiction of this Hon'ble Court is invoked to protect the general populace from an insidious assault on their freedom of conscience which the executive machinery has entirely failed to contain or curb.

34. Furthermore, no fundamental right is absolute. Article 25 is also subject to public order, morality, health and other parts of Part-III and morality include constitutional morality. A division Bench of the Hon'ble Allahabad High Court has held in *Ram Gopal Tripathi v Sarvajeet Herbert*, 2003 SCC Online All 550, that when a gathering is intended to mislead people by making false and

untenable claims designed to lure poor, incredulous and ignorant masses into joining a particular fold, faith or religious group by false exaggerated claims as to possession of divine and supernatural powers, the Courts can prohibit or strike down such activities. The Court cannot countenance any abuse or misuse of such gathering which may result in chaos and disorder.

35. Rumi puts it beautifully when he says: *“The human soul is a meeting place of doubt and difficulty, and there is no way for it to be read of doubt and difficulty except by being in love.”* Being in love is sharing. Again when he says *“every prophet and every saint has a way, each leads to God, all are one”*, he talks about sharing and not destroying or denigrating. Human urges however are not like mathematical categories, easily grouped and can stand in splendid isolation. Urges can become impulses, sharing can lead to control and cohabiting can lead to subjugation. Patanjali, talks of negation of all tendencies of the mind towards division and distortion, as Yoga. The domain of conviction about one’s faith is beyond penetration by the State, and so by other faiths. Emerging out of the womb of this conviction and with the noblest of urges to share truths that can be shared and experiences that can be transmitted, can be another independent domain. Within this pure urge domain of propagation, when comparisons and denigrations of other’s faiths occur, the road to lapses is inevitably laid and propagation loses its holy mantle. It is felt therefore, that propagation is the Joy domain of human sharing and conversion is spiritual or religious colonialism and built only on hegemony and decimation of other faiths. The constitutional protection of propagation is to be confined to the noble engagement of detached sharing. Talking to dolphins is propagation; catching fish is conversion.

36. Laws relating to conversion are said to be unsustainable. Several reasons are cited; one is the problem involved in State enquiries into the imponderables of personal identity which is a matter of choice and the awkwardness of the State trying to discern and evaluate personal qualities; that the conversion debates leave the convert out of analysis, as she can be an independent choice making agent and not a victim; and the anti-conversion laws re-enforce social hierarchies by portraying existing social – economically disadvantaged groups as innately weak and credulous; the right to convert is thus so convoluted, and that this right remains un-discussed. Marc Galanter is quoted : *“certain aspects of what is claimed to be religion are given recognition, support, encouragement; others are the subject of indifference; finally some are curtailed and proscribed.”* These are important observations in so far as they are neutral. They need to be addressed not dismissively, but by looking at several anxieties and concerns which are truly and also perceived to be driving sources or persuasions behind the no conversion debate. A disinterested propagationist however would be a rarity. It is submitted that law should care about and be concerned about disinterested propagation and yet may persuade itself to delicately deal with propositions that see no distinction between propagation and conversion, or those which vote for the thesis that propagation without ends particularly conversion would be empty rhetoric & wasteful. Five categories of proselytism have been noticed: (i) *Openness to people who want to join the group;* (ii) *Inviting and convincing others to join the group;* (iii) *Seeking to run others from their present allegiance because of the error of their position.* (iv) *Reaching out*

to save others from the danger and evil that surrounds their present membership; and (v) Coercing others to accept membership in the group.

37. While all three major monotheistic religions accept converts they deny the right of their followers to leave the religion. Apostasy is regarded as a severe offence by all three religions. Attempts made to deal with the subject of moderation suggest that law can prescribe limitations for the purpose of securing non-coercive material and moral space. Constituent Assembly debates and the provisions sought to be included in the constitution, throw light on how a final balance was struck, retaining propagation as a protected right and not conversion. It was decided that the Constitution will make no statement on conversion. But constitutional meanings and contents of propagation are not finally or conclusively dictated by Constituent Assembly debates. We need not get caught in Original intent debate, as subtle coercions, and other modes of conversion take liberal avatars, the State can take a call.

38. Provision against conversion was not acceded, doesn't mean conversion was favoured. Only such a provision in the Constitution would have produced several Marcus Aureliuses of whom it is said: *"Few emperors of Rome possessed the learning and refinement of Marcus Aurelius. Power and pomp meant little to him; his great passion was for justice..but Marcus Aurelius was an energetic persecutor of the Christians, and for zealous intolerance was a star of the first magnitude in a galaxy of persecuting emperors..Aurelius the persecutor makes an especially interesting study because his intolerance was result not of crude barbarism, but sophisticated political thinking infused with religious fervor."*

- 39.** Writing in the context of propagation and persecution of Protestantism in Germany, it is said, *“Jews and heathens have persecuted Christians, Christians have persecuted Jews and heathens, Romanists have persecuted Protestants, Protestants have persecuted Romanists, and every state-church has more or less persecuted dissenters and sects. It is only within a recent period that the sacred rights of conscience have been properly appreciated, and that the line is clearly and sharply drawn between church and state, religious and civil offenses, heresy and crime, spiritual and temporal punishments.”*
- 40.** Propagation was included worthy of Constitutional protection also could not mean that no demands can be made on propagation exercises to practice high virtues, and moderation. Public order and peace can be the ultimate signals in this regard. Debates have all along gone on, in defining conversion and the difficulties in infringing a person’s right to conversion. The point however is to understand propagation. Any and all stratagems of conversion are conversion. There is no holy conversion versus unholy conversion. Law has struggled to deal with the unholy part, on a benevolent and tolerant premise that there can be a holy part. Freedom of religion and belief cannot be used to frustrate freedom of religion or belief.
- 41.** An argument against conversion or in its favour is not simply answered by suggesting that the convert is not a victim and that the State being indifferent to the right to convert oneself, cannot claim any neutral position. The question is not as to whether within the conversion play, the targets are victims because of their vulnerable positions but whether there can be any activity of conversion which does not involve challenge to religious identities, and

disruption of demography, culture, social practices, and social institutions. With all this comes serious political entanglements. In the final analysis, conversion, inevitably lands into the political process. By asking the above stated questions, one need not necessarily dismiss those acts of great compassion and empathy which drive people to provide solace and comfort for those in need of a caring human hand. Caring human hand, even, with propagation tough, is an intrinsic universal human value of high order. The above stated facts and practical circumstances, ought to be seen as venerable human conduct, beyond planned execution of conversions.

42. Conversion has never been and no longer is a mere domestic happening in a country without external embrace. It is a trans-boundary, involvement. It trifles national concerns. It teases the intelligence and humane constitutional safeguards as well as governance credentials. It is thus evident that conversion is not a mere battle of wits but a serious constitutional question. Constitutional fabrics can withstand pin-pricks, but not sledge hammers, though the great strength and maturity of the Indian mind is not easily shaken. We are thus truly confronted with a question as to whether the State can resort to legal measures to deal with the issue of conversion without being accused of being partisan or subjecting to peril, bonafide pursuits of propagation. How is it valid that, one can engage in conversion, giving it robust justifications, and blame the State for defining his activities? The moment one trespasses, duels are hard to avoid. But why only burden the State with neutrality roles? If we understand and stand committed to the nobler concept of propagation and the joy of sharing as the highest human value, then beyond these legitimate domains, if there is a

demand for poaching into the other's domains, there is no reason why the State cannot be called upon to deal with the problematic dimension of poaching.

43. Ronald Dworkin talks about the general right of ethical independence as a constraint on the State rather than special rights to certain things: *“If we deny a special right to free exercise of religious practice, and rely only on the general right to ethical independence, then religions may be forced to restrict their practices so as to obey rational nondiscriminatory laws that do not display less than equal concern for them. Do you find that shocking? The last of these requirements – equal concern – requires a legislature to notice whether any group regards the activity it proposes to prohibit or burden as a sacred duty.”* *“That priority of non-discriminatory collective government over private religious exercise seems inevitable and right.”* The Dworkin voice is one among several sane voices. There can be thus no sacred duty to convert. The only sacred duty is to honour unconditionally, all faiths and beliefs.

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

but because, there is a need for wisdom, measurement, balance and equal concern, all of which should inform such regulatory framework. Those who are unhappy with a long history of regulatory attempts must ask the question, as to whether these regulatory measures were written on a clean slate, or there were sufficient invitations and justifications for State intervention.

45. The five judges bench judgment of the Supreme Court in Rev. Stainislaus [(1977) 1 SCC 677, para 20] is annexed as **Annexure-1**. [Pages
46. The Judgment of the Hon'ble Supreme Court in Sarla Mudgal Case [(1995) 3 SCC 35, para 46] is annexed as **Annexure-2**. [pages
47. Division Bench Judgment of the Allahabad High Court in Ram Gopal Tripathi Case [(2003) 5 AWC 3910, para 6-7] is annexed as **Annexure-3**. [pages
48. Law Commission Report No 235 titled as "Conversion / Reconversion to Another Religion" is annexed as **Annexure-4**. [pages

PRAYER

Keeping in view the above facts and circumstances, it is the most respectfully prayed that this Hon'ble Court may be pleased to issue a writ, order or direction or a writ in the nature of mandamus to the respondents to:

- a) take apposite steps to control conversion to another religion by intimidating, threatening or deceptively luring gifts or monetary benefits or by using miracles, superstition and black magic, in spirit of the observations made by the Hon'ble Supreme Court; [Annexure-1, para 20 and Annexure-2, para 46]
- b) take appropriate steps to prohibit religious gatherings, which are intended to mislead people by making false and untenable claims, designed to lure ignorant masses in joining a particular faith or religious group by false exaggerated

claims of possession of divine and super natural powers, in spirit of the observations of the Allahabad High Court; [Annexure-3, paras 6-7]

- c) take appropriate steps to implement the recommendations of Law Commission Report-235 on Conversion/Reconversion to Another Religion. [Annexure-4]
- d) pass such other order(s) or direction(s) as this Hon'ble Court may deem fit and proper in facts and circumstances of the case and allow the cost of petition.

12.03.2020

(ASHWINI KUMAR UPADHYAY)

NEW DELHI

PETITIONER-IN-PERSON

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C) NO OF 2020

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

Ashwini Kumar Upadhyay

...Petitioner

Verses

Union of India & others

...Respondents

AFFIDAVIT

I Ashwini Kumar Upadhyay aged 44 years, at present at New Delhi, do hereby solemnly affirm and declare as under:

1. I am sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have filed the present writ petition as PIL. There is no personal gain, private motive or oblique reasons in filing this petition. It is totally bona-fide and purely in larger public interest and in the interest of justice.
3. I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the PIL is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor any body in whom I am interested, would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. The petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of Public Interest.
5. I have done whatsoever enquiry/investigation, which was in my power to do, to collect all data/material which was available and relevant for this Court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.
6. I have read and understood the contents of accompanying synopsis and list of dates pages (4- 9) and writ petition pages (10-32) and total pages (1-) which are true and correct to my personal knowledge and belief.
7. Annexures filed along with this petition are true copies of their respective originals.
8. The averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this Affidavit is false nor has anything material been concealed there from.

DEPONENT
(Ashwini Kumar Upadhyay)

VERIFICATION

I, the Deponent do hereby verify that the contents of above affidavit are true and correct to my personal knowledge and belief. No part of it is false nor has anything material been concealed there from. I solemnly affirm today i.e. 12th day of March 2020 at New Delhi.

DEPONENT
(Ashwini Kumar Upadhyay)

**IN THE HIGH COURT OF DELHI AT NEW DELHI
WRIT PETITION (CIVIL) NO. OF 2020
[UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA]**

IN THE MATTER OF:

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**PETITIONER-IN-PERSON
(Ashwini Kumar Upadhyay)**