



**PROPAGATION WITHOUT CONVERSION :
CAN WE INVITE EMPEROR ASHOKA
TO OUR LEGISLATURE?**

*R. Venkataramani**

THE TRAVAILS of humanity in grappling with issues thrown up by the existence and clashes of faiths and religions are a long story. Its attempt to find accommodative solutions through law have been halting and in some places and contexts controversial. Writing on the United Nation's attempt to deal with religious intolerance and its unending efforts, it has been said that the story of drafting instruments on the topic has been, "a tale punctuated by the hypocrisy, procedural jockeying and false starts".¹ Given the deep and entangled appeal and implications on religious faiths and their possible co-existence, in multi-faith societies, it is suggested that the role of law and particularly with coercive and penal elements in matters of propagation of faith and religion be minimized. Consistently any sectarian view which places superiority of any particular faith and justifications for the spread of any particular faith may not also enter the debate in the interventionist role of law in matters of propagation and practice of religion. Emperor Ashoka's inscription is always worth quoting in the context:²

King piyadasi (Ashok) dear to the gods, honours all sects, the ascetics (hermits) or those who dwell at home, he honours them with charity and in other ways. But the king, dear to the gods, attributes less importance to this charity and these honours than to the vow of seeing the reign of virtues, which constitutes the essential part of them. For all these virtues there is a common source, modesty of speech. That is to say, one must not exalt one's creed discrediting all others, nor must one degrade these others without legitimate reasons. One must, on the contrary, render to other creeds the honour befitting them.

A few examples of religious tolerance - in the Ashoka's way - can be found in the Norman Kingdom of Sicily under Roger II when Normans, the

* Senior Advocate, Supreme Court of India.

1. R.S. Clark, "The United Nations and Religious Freedom", 11 *NYUJ Int'l L & Pol.* 197 (1978).
2. Available at http://en.wikipedia.org/wiki/user:Mahitgar/sandboxReligious_harmony_in_India.



statutes of Kalisz with the general charter of Jewish liberty was issued by the Duke of Greater Poland Boleslaus in the year 1264 which saw its way into the Warsaw Confederation of 1573³ continued in force for a very long time. The Transylvanian Diet of Turda declared in 1568 the freedom to all religions and Hungarian historian treat the Turda edict as a first legal guarantee of religious freedom in Europe. The edict reads: ⁴

His majesty, our Lord, in what manner he – together with his realm – legislated in the matter of religion at the previous Diets, in the same matter now, in this Diet, reaffirms that in every place the preachers shall preach and explain the Gospel each according to his understanding of it, and if the congregation like it, well, if not, no one shall compel them for their souls would not be satisfied, but they shall be permitted to keep a preacher whose teaching they approve. Therefore none of the superintendents or others shall abuse the preachers, no one shall be reviled for his religion by anyone, according to the previous statutes, and it is not permitted that anyone should threaten anyone else by imprisonment or by removal from his post for his teaching. For faith is the gift of God and this comes from hearing, which hearing is by the word of God.

While we seem to have come a long way in our understanding of the historical depths, dimensions and the wisdom of various faiths and religions, it seems that the Ashoka way is yet to dawn and the wisdom of its appeal is yet to gain roots, deep enough to pave the foundations far removed from the clash of civilizations.⁵

In the context of the raging controversies on the scope and impact of the 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 the positive content and space for religious tolerance and religious freedom and the other to progressively reduce the 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 propagation. All dimensions of religion must be seen as the facets of the right to personal autonomy of an individual and the domain

2. 15 *The Encyclopaedia Britannica* 984 (15th Ed).

3. Ole Peter Grell and Bob Scribne, *Tolerance and intolerance in the European Reformation* (2002).

4. Richard C. Frucht, *Eastern Europe : An Introduction to the People, Lands and Culture*, (2005) and also see Molnar, *A Concise History of Hungary* (2001).

5. See Samuel P. Huntington, *The Clash of Civilization and remaking of World Order* (1997).



of choices exercisable on knowledge, appeal and convictions. It appears that only by wise fusion of this approach facilitated by non state actors role, can public order and peace be preserved.

A brief look at contemporary instances of religious intolerance may affirm the lessons drawn from experiences of the past, regardless of geographical areas. In societies with no distance between state and established religion, or which abide by a mono religious establishment, the free practice of religion and faith have been invariably under cloud. Tolerance seldom exhibited at the state level. Within and amidst faiths themselves, clashes and curtailments of freedom were not unknown. The history of protestant and calvinistic movements in Europe and use of state authority in curbing freedom of conscience and the cherished liberty of pursuing the wisdom of reason and experienced truths, perhaps symbolize those defects of human nature which are not easily tamed and which defy holy attempts at sublimation of what one may call the warrior element of all faiths.

Perhaps it is important to understand that every faith, systems of belief, worship or way of life, have core contents and tenets which have universal or common features; for after all, all laws of nature, including spiritual truths cannot become different, to the perceiving minds. It is true that wars have been fought on the rival claims to true answers to crucial questions concerning life, social order. As Isaiah Berlin wrote:⁶ “wars for principles and causes, both religious and secular, indeed human life itself, would have seemed meaningless without the deepest of all assumption”. However these core contents shorn of history are the outcome or product of the experiences of the deep yearnings [innate or otherwise] of humanity everywhere to transcend the limits of its sensory or perceived knowledge. The saner minds who understand the universality of spiritual experiences also understand the need for a common protective framework for all faiths on foundations of equality and non-discrimination. There are arguments which see the importance of promoting religious freedom where a particular group is a minority or of recognizing such a right to religious freedom in places where they are in a majority to promote reciprocal respect.⁷ The need to protect many truths lie in the essence of truth itself.

Some oft quoted points of view can be quickly seen. The emphasis on the compatibility of Islam with religious freedom is made with reference

6. Isaiah Berlin, *The Crooked Timber of Humanity* 179 (2003).

7. It has been argued that American Catholics played a strong role in promoting the change in Church doctrine to an acceptance of religious freedom because of their experiences as a minority religion. See Gene Burns, *The Frontiers of Catholicism* (1992).



to the Quranic statement that “There should be no compulsion in religion.”⁸ A survey of the Application of International Human Rights Law in Islamic States notes that the Quranic injunction has been said to be construed in a narrow manner and has not given rise to a general right to religious freedom in Islamic Law.⁹

Likewise, the Vatican traditionally condemned the notion that “liberty of conscience and worship is each man’s personal right”.¹⁰ Only in 1965 did the Vatican declare that:¹¹

Truth cannot impose itself except by virtue of its own truth, as it makes its entrance into the mind at once quietly and with power. Religious freedom in turn, which men demand as necessary to fulfill their duty to worship God, has to do with immunity from coercion in civil society. Therefore, it leaves untouched traditional Catholic doctrine on the moral duty of men and societies towards the true religion and towards the one Church of Christ.

It is, therefore, argued that we should be wary of drawing too heavily on religious models as a basis for freedom of religion or belief. Even those faiths that have acknowledged the importance of freedom of belief, often limit it more severely than allowed for in human rights treaties.¹²

We need to deal with these well founded positions, before we can make headway in regard to the contested space of scope, for propagation right as part of religious freedom. The question to be asked is, whether equality based human rights norms can replace religious prescriptions, with or without basis in scriptures or the holy books. What is the success story narratives in this regard.

During the 1980s, twenty five regional or civil wars entailed due to religion or belief.¹³ The 1986 report of the Special Repporteur of the UN Commission on Human Rights referred to the nearly universal nature of the problem of intolerance and discrimination based on religion or belief.¹⁴

8. *Quran*: 2 : 256

9. See Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (1990). Also see, Donna E. Arzt, “The Application of International Human Rights Law in Islamic States”, 12 *HUM. RTS Q.* 202 (1990); Abdullahi A. An-Na’im, “Religious Minorities under Islamic Law and the Limits of Cultural Relativism”, 9 *HUM. RTS Q.* 1 (1987).

10. 1 *The Papal Encyclicals* 1740-1878.

11. II *The Document of Vatican* 677 (1966).

12. Carolyn Evans, *supra* note 9. I have extensively used her references.

13. Van Boven T., “Advances and obstacles in Building understanding and Respect between People of Diverse Religions and Beliefs” 13 *HUM.RTS. Q.* 437 1991.

14. See David Harris and Sarah Joseph (eds.) *the International Covenant on Civil and Political Rights and United Kingdom Law* (1995).



The recent report of the Special Rapporteur does not offer any great solace,¹⁵ except perhaps the emerging culture of reliance upon international norms.

The cases of Iran and Egypt *vis-à-vis* Baha'is are telling examples. The December 2006 decision of the Supreme Administrative Council of Egypt makes a clear demarcation between recognized religions – Islam, Christianity and Judaism – and all other religious beliefs. Saudi Arabia, Qatar, Yemen, Sudan, Iran and Mauritania proscribe apostasy, while we see contemporary Islamic scholars arguing against death penalty for apostasy.¹⁶ The recent instances of hostility – both of state and community – in Ukraine, Kazakhstan, Russia against followers of Hindu faith and the Hare Krishna temples, are cases to be noticed. Indonesia and Malaysia have not lagged behind in this regard.

It is submitted that all this cannot but be said to be in affirmation of the continued need of all humanity to engage with greater effort and conviction on the evolution and promotion of norms of concern and respect for all faiths. It has been rightly stated that¹⁷ “... Government must treat those whom it governs ... and with respect, that is, as human beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived, ... it must not constrain liberty on the ground that one citizen's conception of the good life of one group is nobler or superior to another's”.

However it would be too adventurous to altogether abandon religious models as any basis for freedom of religion or belief. To what extent law can go to influence religious models becomes more important. This mature understanding regarding role of religious models must rest on the realisation that human beings will not easily cast away, the onion like layers of history, because every age produces commentators and bashyam writers, who may be said to constitute the rajasic element of human nature and responsible for distortions as well as deliverances. The tensions of the past – the product of numerous factors, too complex to be neatly packed – can only slowly disappear, with the emergence of national and international social orders which enable and foster equality and dignity, and permit with ease and compassion, freedom and choices in life and pursuits of truth; it appears that it was personal autonomy, that made possible the realisation of profound meanings and truths and it is this personal autonomy that must occupy the centre space of all Communities.¹⁸

15. Interim Report of the Special Rapporteur.

16. See the talk delivered by Ziya Meral at House of Lord, March 20, 2007.

17. Ronald Dworkin, *Taking Rights Seriously* (First Indian Reprint).

18. See Keith Ward, *Pascal's Fire, Scientific Faith and Religious understanding* (2007).



A Valid point is made in the following statement: ¹⁹

If freedom of religion is important because everyone has different and wholly subjective religious ideas, for example, then beliefs about religion may be no more significant than beliefs about the best flavour of ice-cream, so little reason may be needed to justify State interference. If religious freedom is important only to limit social conflict then constraints on the freedom that do not cause conflict may be acceptable. If questions about religion and belief are, however, perceived as an essential component of self-identity and its interference with them is seen to be an attack on the autonomy of the individual, then religious freedom is likely to be given a wide scope and limitations on it will require serious justification.

The U.N. Human Rights Committee has also offered certain general comments and concluding comments.²⁰ Extracts of general comment No. 22 may be quoted.

- (i) The right to freedom of thought, conscience and religion (which includes the freedom to hold beliefs) in article 18 (1) is far reaching and profound; it encompasses freedom of thought on all matters, personal conviction and the commitment to religion or belief whether manifested individually or in community with others. The Committee draws the attention of state parties to the fact that the freedom of thought and the freedom of conscience are protected equally with the freedom of religion. This freedom is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4(2) of the Covenant.
- (ii) Article 18 distinguishes the freedom of thought, conscience, religion or belief from the freedom to manifest religion or belief. It does not permit any limitations whatsoever on the freedom of thought and conscience or on the freedom to have to adopt a religion or belief of one's choice. These freedoms are protected unconditionally, as is the right of everyone to hold opinions without interference in article 19(1). In accordance with articles 18(2) and 17, no one can be compelled to reveal his thoughts or adherence to a religion or belief.....

19. See Carolyn Evans, *Freedom of Religion under the European Convention on Human Rights* (2001).

20. Concluding Comments on Jordan (1994) UN Doc. CCPR/C/79/Add. 53 para 10; Concluding Comments on the Islamic Republic of Iran (1993) UN Doc. CCPR/C/79/Add 25, para 16.



- (iii) The freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief. Article 18(2) bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Policies or practices having the same intention or effect, such as, for example, those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18(2). The same protection is enjoyed by holders of all beliefs of a non religious nature.

The concept of morals derives from many social, philosophical and religious traditions; consequently, limitations on the freedom to manifest a religion or belief for the purpose of protecting morals must be based on principles not deriving exclusively from single tradition.

These comments provide valuable rest houses. They can be expanded and particularized in the context of given societies.

This takes us to the next connected question of scope of propagation rights of the right to religion. As stated earlier, the scope of the propagation right has to be co-equal to the right to religion itself and must be subject to the same limitations as the broader right admits to. It is suggested that the propagation element should not be subjected to any special class or category of restrictions. 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"²¹ and mandated by their faith; not because sans propagation, religious freedom itself will be at peril; but essentially because the core values of all faiths, in so far as they speak about soul searching or voyages of truth must be freely exchanged. This freedom of exchange is what constitutes the conscience element of human existence and its elevating influence in life. There is room for mind, and swords ought to be kept away. Let not coercive law hold the field. If there can be propagation without denigration so be it.

21. Sonsank Perera, "Living with tortures-(sri Lanka) and the statement of evangelist," *The Asian Tribune* 6 January 2008.



The objections to conversions are often raised that the poor, the vulnerable and economically or socially weaker sections are targeted. The several legislations in question (even the recent Sri Lankan law stands on the same footing) proscribe inducements in any form. Inducements and contrivance are placed on the same footing. The underlying premise is that propagation of a faith is and can be only an appeal to the mind; offerings of any kind, including promises, of material benefits constitute appeal to the creature-comforts dimension of people, and thus go beyond the legitimate domains of propagation.

A person in need of clutches will be happy to hold on even to a straw. The material side of existence and creature-comforts are primary, compared to the spiritual, and persons in vulnerable positions may see no wrong in accepting the selfless service of a converter, the material benefits offered, and the spiritual solace, all under the banner of conversion. 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?

Life does not work that way. Therefore the state may say that under the scope of public order²² or other legitimate concerns propagation can be slated to be illegitimate if the exercise of propagation involves, is founded upon, or is prompted by a "package of considerations". The state may then call a halt to such propagation, whether acting at the instance of any particular faith or otherwise.

The question however is how to draw neat lines, and why bring in criminal sanctions? The very attempt to criminalize any dimension of propagation will hit at the value of freedom of exchange, which alone, in my view, constitutes the sacred center of propagation. Propagation may ultimately lead to conversion, not necessarily prompted by the 'offerings', but conversion may be a suspect beginning for propagation which belongs to a higher domain. Both the suggestion of a right to convert and the invocation of criminal sanctions seem to be alien to the ethos of propagation.

This dimension of free exchange is a value by itself which must be vigorously protected. It is this free exchange as a community transmission process which will in due course lead to greater understanding and compassion which in turn will negate the tendency if any, within any faith

22. While the ambit of expression public order in entry 3 List II, Seventh Schedule, of the Constitution is very wide (*Ramesh Thapar v. State of Madras*, 1950 SCR 594 ; *Superintendent Central Prison v. Ram Manohar Lohia*, (1960) 2 SCR 8210); the ambit of legislative power under article 19 (12) is qualified, thus, the threat to public order must be 'real and proximate, not far fetched and problematic' *vide Ram Manohar Lohia*.



to talk from the position of ‘civilizing masters’ or humanizing social aberrations through religious conversions. The story of religious conversions during the colonial expansions will probably be treated as old chronicles unworthy of repetition.

There are enough constitutional and human rights developments that are addressed to the questions of social and economic equality, community wealth partnership, and participation in governance. They are to be realized through economic and social endeavours and by means of social institutions functioning under rule of law. Let religion not covet that domain. This must rest also on the realisation that defects of human nature – conditioned by social factors or otherwise – are not alien to any race, community or even faith. A free flowing breeze has greater beauty and refreshment. What is objected to is the package of services and comity of faiths thus call for a voluntary code of conduct involving moderation.

If these fundamentals are clear, then, the existing legislations – the anti – conversion laws – will seem to be out of place. They rest on fear and hatred though under other justifications. Their framework drawn from pre-constitutional local legislations or other sources, are on foundations anathematic to the principle of free exchange and other constitutional foundations. I am not entering into the legal semantics of vires or otherwise of these legislations. Justice Black in his dissenting view in *Zorach v. Clauson* observed:²³ “in considering whether a state has entered the forbidden field, the question is not whether it has entered too far, but whether it has entered at all.” There is enough spiritual and constitutional material to outlaw such legislations which are parochial, when they attempt to bring in criminal sanctions too easily.

No reference is made here to the International Human Rights documents. Article 18(1) of the ICCPR has been rightly construed by the Human Rights Committee to include propagation and dissemination without undue restrictions. The reports of the special rapporteurs from time to time advocate this view, more from the understanding that recognition of lawful propagation within the larger right to religion relieves the tension.

The European Court’s opinion, in *Kokkinakis v. Greece*,²⁴ on the legitimacy of the Greek Laws on proselytism, viz. the protection of the rights and freedoms of those who may be subject to proselytism, is often cited to suggest, that “the state should be entirely indifferent as to whether a person maintained or changed his or her religion,²⁵ (See Swami

23. 343 US 306.

24. 260 A. Eur Ct. H.R. 16 (1993)

25. Judge Martens opinion and see Judge Pettit’s reading of the purpose of the law was to give the state- “the possibility of arrogating to itself the right to assess a person’s weakness in order to punish a proselytizer, an interference that could become dangerous if resorted to by an authoritarian State.”



Vivekananda's letter of 1894 to one Alasinga : Why should we mind if Jack and John become Christians? Let them follow whatever religion suits them)

The *Kokkinakis* opinion provides valuable reading. But it stems from an essentially European historical understanding and the history of article 9 of the European Convention. A suggestion made in the context of exploring human rights strands in Hindu thought, *viz.*, that the right to convert from one's religion as an expression of freedom must also be accompanied by an equally clear enunciation of the right to retain one's religion²⁶ can also be quickly seen as a response to the *Kokkinakis* view and as an offer to the rights dialogues. If competing rights are posited, the role of the state can become suspect and tension ridden, unless taming ends and remedies are available.

If the right to religious freedom in all its plenitude must be recognized as integral to liberty, propagation cannot be pushed to the war zone of colliding circles. The constitution, perhaps, calls for rejoicing acknowledgements of all faiths as the various 'pranas' of the body and not as hesitating tolerances, deeply distrustful inside.

The debate needs to be elevated to greater heights. Fear and hatred are related to apostasy. Arrogance and sometimes even well placed zeal may persuade breathing over another's neck. When they disappear, propagation will be likened to exchanges without frontiers and involvement without enticements. Let us not define them. Can Law act in promotion of such values?

26. See Arvind Sharma, *Hinduism and Human Rights* (2004).