

Right to Religious Freedom in the Church and in India: Content and Complexity

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Introduction

Human rights are one of the deep-seated claims of the modern man and woman and their promotion constitutes an essential element of this era. Scores of constitutions drawn up since the end of World War II have proclaimed religious freedom as one of the most fundamental human rights. Similarly, international covenants of human rights have exalted the right to religious freedom as a fundamental right that is so foundational and precious which should be guaranteed by all the States.

The Catholic Church considers the defence of human rights as an evangelical demand and is determined to give a central place in her ministry. In this attempt, she esteems freedom of religion as a fundamental right and affirms a vital place for it in the thematic importance of the human rights. She declares and defends strongly this right in her council teachings and in her canonical legislations in the sense of *ad extra*. As regards to Indian State, its constitution proclaims religious freedom in the sense of *ad extra* as well as *ad intra* yet the fundamental right to convert from one religion to

another remains subject of controversy in the Indian political and juridical arena even today.

1. Catholic Church and Religious Freedom

For centuries, the Catholic Church was holding that governments should discourage and even ban not only non-Christian religions but any version of Christianity that differed from Catholicism.¹ But only the Second Vatican Council radically altered that doctrine. It was the greatest gift of the Council to the society at large and to the Church very specifically, because the unanswered question about the stand of the Church regarding the religious freedom got its authoritative answer.

1.1. Declaration on Religious Freedom

The Council declared that the human person has a right to religious freedom.² It strongly stated that any governmental coercion of individuals to adhere or not to adhere to any religion is wrong: *“it is wrong for a public authority to compel its citizens by force or fear or any other means to profess or repudiate any religion or to prevent anyone from joining or leaving a religious body”*.³

This Declaration has given a significant development over the official teaching of the Church on religious freedom since the middle ages. Declaring it as a fundamental human right, it has recognized and called for the constitutional recognition and legal implementation of the right to religious freedom and made the Church as the defender of the rights of all human beings.⁴

The Council declares that the right to religious freedom is based on the very dignity of the human person (DH, 2) and

it calls for immunity from coercion and restraint due to his dignity as a human person. It concerns about external social immunity which belongs to the natural juridical order and which must be protected by civil law. It does not suggest that all religions are equally true, or that error must be put on equal footing with truth. Neither does it suggest that a person may determine his own religion in accordance with his whim or personal tastes but it simply declares that all have a right to religious liberty whether their beliefs are true or erroneous and the states are concerned with temporal and earthly order and therefore they are incompetent to judge what is true and what is erroneous in matters of religion.⁵

Though the Council has not answered the questions whether non Christians have any right to privacy from missionaries who seek to change the religion of persons to whom they preach, whether the Catholics have the right to quit their faith, the historic document on religious freedom issued by the Council is a new turning point in the Church. It is clear that the Church has taken a historic step by making a declaration on religious freedom.

1.2. Canonical Legislation on Religious Freedom

C. 748, § 2 of CIC 1983 states, "*It is never lawful for anyone to force others to embrace the catholic faith against their conscience*". This is a repetition of the principle contained in c. 1351 of CIC 1917 "*Ad amplexandam fidem catholicam nemo invitus cogatur*" which was the codification of the teaching of Pope Leo XIII in his encyclical *Immortale Dei*.⁶ This principle of non coercion on the matter of faith had been in existence in the Church from the early centuries. For example, Lactantius had asserted in his *Epitome* that religion is a matter of free choice; no one should be compelled to worship what he dislikes.⁷ St. Augustine

had insisted that the Church should only use persuasion not persecution.⁸ St Thomas Aquinas had stressed that *“A person who has not the faith cannot be compelled by human means or authority to accept it”*.⁹ However, the juridical recognition for the principle of non coercion on the matter of faith in *CIC* 1917 is a major step in the Church’s attitude towards the freedom of religion. It has given flesh to the spirit of religious freedom that has been resonating for centuries in the Church.

The obvious consequence of the teaching of c. 748, § 2 is that no one can be forced to accept the Catholic faith, or any other faith against his or her conscience. This legislation has its root in the Declaration on Religious Freedom of the Second Vatican Council very specially on articles 2 and 4, which serve as the conciliar sources for the canon under discussion. The canon does not use explicitly the word religious freedom rather uses the broader concept ‘conscience’ which includes the right to freedom of religion. It is used in relation to c. 748, § 1. But the conciliar source of c. 748, § 2 and its parallel canon of *CCEO*, c. 586 bring out its implications specifically to religious freedom.

Therefore it is a requisite that c. 748, § 2 has to be understood in connection with the first paragraph of the same canon which states two different responsibilities: (1) to seek the truth about God and his Church, and then, (2) having recognized that truth, to cling to it and live by it. Both are rights, which belong to everyone. The duty and freedom to search for religious truth is one which should pervade the life of the Church, for it is grounded not only on the dignity of the human person, but on the essential freedom of the act of faith.¹⁰ Hence it can be said that c. 748, § 2 traces out the boundary of the zone of religious freedom, that is non coercion.¹¹

A positive affirmation of the principle of non coercion can be also seen in the context of impediment of disparity of cult. As per c. 1125, 2° in a marriage between a Catholic and a non-Christian, the non-baptized party is to be informed in good time about the declaration and promise made by the Catholic party. The non-baptized party is not required to make a promise. This improvement or change could be seen as an explicit incorporation of the above stated principle. The reason is that the application of c. 1061, §1, 2° of CIC 1917, imposed an obligation upon the non-baptized also to give the promise.¹² The improvement or change over the legislation is due to the Instruction and the Apostolic Letter on Mixed Marriages, *Matrimonii Sacramentum*,¹³ and *Matrimonia Mixta*.¹⁴ The same principle is applicable to non-Catholics too. But in the context of our study, it is in keeping with the conciliar teaching. Moreover it is an acknowledgement of the non-Catholic or non-Christian party's equal rights within the marriage.¹⁵ Consequently it is an implicit recognition of the religious freedom of the other party and explicit exercise of the principle found in c. 748, § 2.

C. 586 of CCEO states, "*It is strictly forbidden to coerce, to induce through improper practices or to allure anyone to join the Church, however, all the Christian faithful are to take care that the right to religious freedom is maintained, lest anyone be hindered from embracing the Church by unjust harassment*". It is more thoroughgoing because not only force and untoward influences are to be avoided but the Church to show itself as an attractive community within which religious freedom is honoured. The context of the canon is promotion of mission. It indirectly exposes an ideal teaching that promotion of mission is not proselytising. It prohibits the use of force or inducement or

allurements. This Code is very explicit in applying the same principle to the question of inducement to change one's ascription to another Church *sui iuris* (C. 31) and it is held as a punishable offence (C. 1465). But such an inducement to change one's religion, comparatively a worse abuse, is not stated as penal offence either in *CCEO* or *CIC* 1983, which seems to be a *lacuna iuris*.¹⁶

1.3. Religious Freedom ad intra in the Church

Religious freedom, does it really exist within the Church? There is no common consensus among the canonists on this regard. Rik Torfs finds a lot of contradictions and inconsistencies in the expression of religious freedom by any religion. In his conception, religious freedom stands for the pluriformity, and even more so it stands for the gateway to true pluralism. Acceptance of religious freedom by the Church and religious movements within their own structure is a trend towards increasing pluralism. A religion fully accepting the internal religious freedom is equivalent to accepting complete pluralism.¹⁷ In his point of view, "*The freedom to leave the Church in general is canonically impossible. It would destabilize the current canonical system and it would even challenge not only the canonical but also theological connection between baptism and membership*".¹⁸

According to Rinaldo Bertolino, freedom of conscience exists within the canonical order but religious freedom continuously remains absent within the Church.¹⁹ Juan Ignacio Arrieta totally opposes the possibility of having internal freedom in the Church. For him, "*freedom of religion, by its definition, is only a civil liberty which exists only in the civil society*".²⁰

Jerald A. Doyle saw a positive sign of recognition of internal religious freedom in the exceptions offered in the cc. 1086, §1, 1117, 1124 and considered them as the recognition

of the right of freedom of conscience and religious liberty as enunciated in the Second Vatican Council.²¹ The above mentioned three canons exempt the persons who have formally defected from the Church from the obligations of merely ecclesiastical laws. But Pope Benedict XVI by his *Motu proprio, Omnium in mentem* published in 15th December 2009, revoked the phrase “the formal act of defection from the Catholic Church” and hence *CIC 1983* no longer contains in letter or spirit the dictum “the formal act of defection from the Catholic Church”. Now it is very clear that there is no right to religious freedom *ad intra* to leave the Church.

Peter Erdő finds strong difference between religious freedom in a secular context and religious freedom in the Church domain. According to him the decision whether or not to adhere to Catholic faith has to remain free. Yet, once a choice in favour of the faith has been made, it is no longer optional. Within the Catholic community it becomes an objective moral obligation, expressed in a juridical way.²² Rik Torfs holds this position as the current approach of the Code and Catholic Church.²³

Another point to be noted on this regard is from the subtitle given to *Dignitatis humanae* by Vatican Council II. Its subheading “*On the right of the person and communities to social and civil liberty in religious matters*” makes it clear that the freedom treated in this declaration is not concerning the freedom of men from God or faithful from the ecclesiastical authority, rather it concerns the freedom of the persons and communities to social and civil liberties in religious matters.²⁴ E. J. de Smedt had distinctively expressed it at the end of the Council that the freedom treated in the Declaration is not concerning the freedom of the faithful from the ecclesiastical

authority but it is concerning the relations of human beings with the individuals and the groups in the States.²⁵

Making a comparison between the rights to freedom referred in *Dignitatis humanae*, *Gaudium et spes* of Vatican II and the code of canon, John J. Folmer states the following:

the Declaration on Religious Liberty 'Dignitatis humanae' does explicitly recognize the right of each human person to live in relation to God within a zone of freedom, guaranteed free from any form of coercion. The Constitution on the Church in the Modern World 'Gaudium et spes' explicitly affirms the right of the Church to live in freedom from the world and of the world to live in freedom from the Church. But the Council does not address directly the issue of the right of the Christian to live within the Christian community in freedom. Although individual rights and freedoms, eligibilities and restrictions, responsibilities and duties are declared throughout the canons there is no comprehensive treatment of freedom, of individuality, of community, of the nature and function of Church law, of the relationship between law and freedom, of the purposes and process of ecclesiastical authority, or of the tension between the letter of the Code and the spirit of the Council.²⁶

So it can be concluded that the right to religious freedom within is completely absent in the Church. Neither the Code nor the Council approaches the protection of rights from the perspective of the vindication of the individual members.

2. Religious Freedom in India

The Indian Constitution envisages the establishment of a secular State²⁷ where all persons irrespective of their faiths, creeds or beliefs have a rightful place without any favour or discrimination. The concept of secularism²⁸ implies that the

State should neither sponsor nor favour any religion and should treat all religions with tolerance and equality.²⁹

2.1. Constitutional Provisions

Article 25 affirms the freedom of conscience and the freedom of religion to all persons.³⁰ It stipulates that a citizen shall have freedom of conscience and shall have the right to profess, practise and propagate religion, subject to restrictions imposed by the State, on the following grounds: (a) public order, morality and health; (b) other provisions of the Constitution;³¹ (c) regulating non-religious activity associated with religious practice; (d) social welfare and reform; (e) throwing open Hindu religious institutions of a public character to all classes of Hindus.

Article 26 offers freedom to religions and denominations to establish and maintain institutions, to manage religious affairs, to own and acquire movable and immovable properties and to administer properties in accordance with law. Article 27 ensures freedom from 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 rules out any kind of religious instruction in any educational institution wholly maintained out of State funds and guarantees freedom from compulsory attendance of religious instructions to persons attending any educational institution recognized by the State or receiving aid out of State funds.

In general, the right to religious freedom enshrined in the articles 25-28 of the Indian Constitution is double edged. On the one hand, it provides complete protection and constitutional guarantee for religious liberty to all persons;

on the other hand it restricts this right to certain extent by limiting its exercise and subjecting it to the power of the State to regulate it based on public order, morality and health.

2.2. Restrictions

In spite of article 13 (2) of the Constitution expressly prohibiting the State to make any law which takes away or abridges the fundamental rights, several attempts have been made in the legislatures of certain States and in the Parliament to abridge the right to propagate the Christian religion through legal control or the prevention of conversions.³²

The Indian judiciary being the interpreter and upholder of the Constitution protects this right to religious freedom from the danger of being arbitrarily curtailed by the executive or the legislature. It has ensured this right and has broadly interpreted it in many judgements.³³ There is also some strict interpretation which has sabotaged it. For example, interpreting the article 25 of the Constitution and speaking for the five-member bench of the Supreme Court, in the *Rev. Stanislaus vs Madhya Pradesh* case, Chief Justice A. N. Ray denied that the right to propagate religion was identical to the right to convert. In his judgement, what article 25 grants, is not the right to convert another person to one's own religion but to transmit or spread one's religion by an exposition of its tenets. There is no fundamental right to convert another person to one's own religion.³⁴

2.3. Majority Minority Issue

In India, where a large majority adheres to Hindu faith, the fortunes of the right to religious freedom seem to depend on the social and political forces in power and the majority's

clemency rather than on the merit of the right itself. Its status often appears that it has not placed itself in the context of the philosophy of democracy, goals of equality and rights and jurisprudence. The religious majority seems to make the religious minority feel that they have been, by law, relegated to second-class citizenship; although they are free to practice their religion, they must accept the nation's legal or traditional preference for Hindu faith.

It is true that the Indian constitution and the international declarations on religious freedom ensure that each faith must fully enjoy an opportunity to spread its message. But the minority religions do struggle to enjoy and exercise this right to propagate in India due to the pressure of the majority and the political forces that occupy power through the suffrage of the majority.

2.4. Inequality in Personal Laws

For different areas like marriage, divorce, adoption, guardianship, custody of children, maintenance, restitution of conjugal rights, judicial separation, alimony and succession, the Indian Christians depend on Indian Christian Marriage Act 1872, The Indian Divorce (Amendment) Act 2001, Indian Succession Act 1925, and The Guardian & Wards Act 1890. These applicable laws contain a vast degree of differences from the other Hindu and Muslim personal laws:

- The Indian Divorce Act 1869 was amended by The Indian Divorce (Amendment) Act, 2001 to give men and women equality in seeking divorce³⁵. However, when the subjects are Christians, the couples to divorce with mutual consent are to wait out a two-year separation,³⁶ while people of other faiths seeking divorce by mutual consent have only one-year requirement.

- A convert to Christianity from Hindu religion ceases to be a member of the joint family and die down to be under the Hindu Law. It is a severance of the joint status between him and other family members. It relinquishes the right of survivorship as between the convert and his coparceners (or joint heirs). He ceases to be a coparcener from the moment of his conversion and is entitled to receive his share in the joint family property as it stood at the date of his conversion.³⁷ His descendants are disqualified from inheriting property from any of their Hindu relatives.³⁸
- No person who was a Hindu³⁹ ceased to be a Hindu might claim maintenance under Hindu law. No convert is entitled to act as the natural guardian of a Hindu minor. A Hindu widow, upon conversion, loses her right to appoint by will, a guardian for any of her minor children in respect of their person and of property. Many disabilities are placed in the convert in giving and taking in adoption.⁴⁰
- Conversion of either spouse to another religion provides the Hindu spouse a ground for divorce.
- Converts from the Schedule Castes to Christianity are deprived of their special rights while the people from their castes belonging to Hinduism, Buddhism and Sikhism enjoy those rights.

2.5. Civil Court Ecclesiastical Court Clash

The State is not granting legal sanctity to annulments given by the Ecclesiastical marriage tribunals. The faithful have to approach the civil court for dissolution and nullity.

The Supreme Court of India has held that any declaration of nullity of marriage made by the Ecclesiastical Tribunals shall not be binding on the District Court or the High Court in India. It has stated that such Ecclesiastical Tribunal cannot exercise power parallel to the power of the District Court or High Court which has been vested on them by the provisions of the Divorce Act.⁴¹ Hence, declaration of nullity of marriage pronounced by an Ecclesiastical Court or dissolution of marriage favoured by the Holy Father does not have any legal impact as statute of the country provide a different procedure and a different code for divorce or annulment.

On 13 Sunday 2011, a delegation of Catholic advocates from Karnataka met then Union Law and Justice Minister, M. Veerappa Moily and handed over a petition seeking legal sanctity to Nullity and Dissolution of Marriage granted to Catholics as per Canon Law by the Ecclesiastical Courts and the Holy See. The petition demanded amendment to section 494 of Indian Penal Code.

The background for this move is 'Godwin D'Souza's case' which refers to one Godwin who was married to Shanthi D'Souza in 1999. The marriage was declared null and void by the Ecclesiastical Court of his diocese in 2002 and made them free to remarry. Based on this annulment of the Church, Godwin married another girl in the same church in 2003. But his first wife Shanthi filed a private complaint with the Chief Judicial Magistrate under Section 200 of the Criminal Procedure Code for various offences punishable under law including section 494 of IPC which deals with bigamy: *"Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment*

of either description for a term which may extend to seven years, and shall also be liable to fine”.

This means that Godwin has been sued for bigamy by his first wife because in the eyes of the law of the land Godwin has married again even when he was married to his first wife. However, the second marriage permitted by Canon Law, has now become a crime under sec. 494 of IPC. The priest has the risk of being prosecuted for abetting the crime of bigamy under sec. 109 of IPC.

Such a situation arises due to the conflict between civil and canon laws. The Civil Court does not recognize the Church annulments and in the same way, a decree of divorce or annulment granted by a Civil Court cannot compel the ecclesiastical authorities to solemnize a second marriage for anyone of the parties thereto.

Conclusion

The diversity of many religions, languages, cultures and ethnic characteristics is an existing reality of our modern society which demands in all countries an authentic affirmation of religious freedom which will promote mutual respect for the right of the other. For this objective, Church and State relationship is so essential and it should be very hale and hearty. In India, the right to religious freedom needs more advancement in the present legal and constitutional frameworks in order to overcome the conflicts and constraints it is facing at present.

(Endnotes)

¹ See Gregory XVI, *Mirari vos*, 14-15, in A. F. Utz, ed., *La doctrine sociale de l'Eglise à travers les siècles*, Documents pontificaux du XVème au XXème siècle, Tome-1, Paris, Beauchesne et ses Fils, 1970, pp. 132-143; Pius IX, *Quanta cura*, 29 in *ibid.*, pp. 161-163.

² Vatican II, Declaration on Religious Liberty, *Dignitatis Humanae*, 7 December 1965, n. 2, in AAS, 58 (1966), p. 931. English translation in Austin Flannery, ed., *Vatican II: The Conciliar and Post Conciliar Documents*, Vol. 1, Bombay, St. Paul Publications, 1992, p. 704: "The human person has a right to religious freedom. Freedom of this kind means all men should be immune from coercion on the part of the individuals, social groups and every human power so that, within due limits, nobody is forced to act against his convictions in religious matters in private or in public, alone or in association with others".

³ See DH, 6.

⁴ According to Hermino Rico, "The concept of 'religious freedom' took over the centre stage from two other related but more limited concepts: 'tolerance' and 'freedom of the Church'. Tolerance meant a compromise, out of necessity, with difference and pluralism. It was a concession, by the Church, to a lesser evil for the sake of public peace, a mere option not to seek repression. Religious freedom affirms, instead, the positive intrinsic value of freedom as an inalienable human right: it recognizes it as necessary, declares it unassailable, and promotes it as fundamental in the search for religious truth. Religious freedom is, thus, not a Church-centred concept. While, before, the freedom of the Church was a special institutional privilege claimed in the name of the exclusive rights of the truth, now it is seen as the intrinsic institutional dimension of the personal right to religious freedom, the two inseparably connected because of the social character of the human person. The new central concept shifted the focus to the good of the person, and turned the Catholic Church away from too self-centred claims of exclusive privileges, to a service of herald and defender of the rights of all human beings". H. Rico, *John Paul II and the legacy of Dignitatis Humanae*, Washington, Georgetown University Press, 2002, pp. 6-7.

6) Revelation does not affirm, in so many words, the right of a person's immunity from external coercion in matters of religion, but it does disclose the dignity of the human person as taught by Christ. No one should be forced to embrace the Christian faith against his or her will because an act of faith is by its very nature a free act depending upon the grace of almighty God.

7) Jesus did not compel his disciples to join him and he acknowledged the power of government and its rights; He never imposed the truth of his teaching on those who spoke against it. His disciples did the same and so must the Church. Those Church leaders, who have in the past tried to impose the Christian faith on others, have acted contrary to the spirit of the Gospel.

8) The Council Fathers rejoice that religious freedom has already been declared a civil right by many governments through their constitutions and international agreements. Yet, they deplore how this freedom continues to be widely violated. Effective protection of religious freedom by constitutional governments also protects peace and harmony among the nations of the world allowing people to lead lives with a sublime and unending freedom that is worthy of the sons and daughters of God. See J. J. Keane, "Religious freedom at Vatican: Its impact on Ecumenical and Interreligious/dialogue" in *One in Christ*, 41/2 (2006), pp. 45-46.

⁶ See Leo XIII, Encyclical, *Immortale Dei*, 1 November 1885, n. 36 in C. Carlen, ed., *The Papal Encyclicals 1878-1903*, U.S.A., McGrath Publishing Company, 1981, p. 117.

⁷ See Lactantius, *Epitome*, no. 54 in E. H. Blakeney, ed., trans., *Lactantius' Epitome of the Divine Institutes*, London, S.P.C.K., 1950, p. 101.

⁸ Augustine, Letter 23, 7 (392), in J. Comby, *How to Read Church History*, Vol. 1, London, SCM Press Ltd, 1984, p. 74.

⁹ *Summa Theologica*, II-II, q.10, a. 8 c.

¹⁰ DH, 10: "The act of faith of its very nature a free act".

¹¹ See J. P. Beal, J. A. Coriden and T. J. Green, ed., *New Commentary on the Code of Canon Law*, Bangalore, Theological Publications in India, pp. 912-913.

¹² Canon 1061, §1, 2° of CIC 1917: "Cautionem praestiterit coniux acatholicus de amovendo a coniuge catholico perversionis periculo, et uterque de universa prole catholice tantum baptizanda et educanda."

¹³ Sacred Congregation for the Doctrine of Faith, *Instructio, Matrimonii Sacramentum*, 18 March 1966, no. 3, in AAS, 58 (1966), p. 237.

¹⁴ See Paul VI, *Matrimonia Mixta*, 5, in AAS, 62 (1970), p. 261.

¹⁵ See G. Sheehy et al., ed., *The Canon Law Letter & Spirit*, London, Geoffrey Chapman, p. 634.

¹⁶ See G. Nedungatt, "Evangelisation of Peoples (cc. 573 - 583)", in G. Nedungatt, *A Guide to the Eastern Code*, Rome, Pontificio Istituto Orientale, 2002, p. 419.

¹⁷ According to Rik Torfs, "If all religions fully accept internal religious, they become uniform in accepting complete pluralism. This paradox is the result of apparent consistency. Using the opportunity for pluralism by being pluralistic oneself ultimately leads to the factual discontinuance of any pluralism. The paradox challenges even the logic of mathematics where + and + remains +, whereas here, + and + seem to lead to -". R. Torfs, "Rights in Canon Law: Real, Ideal, or Fluff?", in *CLSA Proceedings*, 61 (1999), p. 354.

¹⁸ *Ibid.*, p. 357.

¹⁹ See R. Bertolino, *Il nuovo diritto ecclesiale tra coscienza dell'uomo e istituzione*, Saggi dirittocostituzionale canonico, Torino, Giappichelli, 1989, p. 85.

²⁰ J. I. Arrieta, "The active subject of the Church's teaching office (canons 747-748)", in *Studia canonica*, 23 (1989), pp. 246-247.

²¹ See J. A. Doyle, "The Formal Act of Leaving the Catholic Church", in *CLSA Proceedings*, 52 (1990), p. 152.

²² See P. Erdő, "Liberté religieuse dans l'Église?", in *Appollinaris* (1995), p. 610.

²³ See R. Torfs, "Rights in Canon Law: Real, Ideal, Or Fluff?" p. 355.

²⁴ See J. Hamer, "Histoire du texte de la Déclaration", in J. Hamer et Y. Congar, sous la dir., *La liberté religieuse*, "Unam sanctam, n. 60", Paris, Les éditions du Cerf, 1967, p. 63; B. de Margerie, *Liberté religieuse et règne du Christ*, Paris, Les éditions du Cerf, 1988, pp. 81-89.

²⁵ See *Acta Synodalia Sacrosancti Concilii Oecumenici IV/V*, p. 150.

²⁶ J. J. Folmer, "Promoting and Protecting Rights in the Church: An Introduction", in *The Jurist*, 46 (1986), p. 3.

²⁷ It is worth noting that the term 'secular' was introduced into the Constitution only in 1976 by the 42nd amendment.

²⁸ D. D. Basu, ed., *Shorter Constitution of India*, Calcutta, S.C. Sarkar and Sons (P) Ltd, 1958, p. 101; S. Reddy, *Judicial Review of Fundamental Rights*, New Delhi, National Publishing House, 1976, p. 170

²⁹ The Indian Constitution affirms, for all citizens, equality before the law and equality of opportunity in matters of public employment (articles 14; 16, 1). It prohibits any kind of discrimination on grounds of religion, race, caste, sex or place of birth (article, 15).

³⁰ "(1) Subject to public order, morality and health and to other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise 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 to Hindu religious institutions of a public character to all classes and sections of Hindus".

³¹ The expression "subject to other provisions of this part" occurs in clause (1) but not in clause (2) of the Art. 25. This right is subject to the other provisions in the Fundamental Rights, Arts (Arts, 12-35). One of the provisions to which the right declared in Art. 25 (1) is subject, is Art. 25 (2). A law, therefore, which falls within Art. 25 (2) (a) or (b) will not infringe the right conferred by Art. 25 (1), and the limitation in Arts, 25 (1) does not apply to that law. See V.N. Shukla, ed., *Constitution of India*, Seventh Edition, Revised by D. K. Singh, Lucknow, Eastern Book Company, 1982, p. 146.

³² 1) Indian Converts (Regulation and Registration) Bill, 1954, 2) Niyogi Report et Madhya Pradesh Prevention of Religious Conversion Bill, 1958, 3) Orissa Freedom of Religion Act, 1967, 4) Madhya Pradesh Freedom of Religion (Dharma Swatantrya Adhiniyam) Act, 1968, 5) The Bill of 1970, 6) Arunachal Pradesh Freedom of Indigenous Faith Act, 1978, 7) Freedom of Religion Bill, 1978, 8) Attempt to revise the article 25, 1998 and Bill of 2002, 9) Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002, 10) Gujarat Freedom of Religion (Dharma Swatantrata Vidheya) Act, 2003, Amendment in 2006, 11) Himachal Pradesh Freedom of Religion Act, 2006, 12) Chhattisgarh Freedom of Religion Act, 2006, 13) Rajasthan Religious Freedom (Rajasthan Dharma Swatantrya) Act, 2006 and 2008.

³³ Ratilal Panachand Vs State of Bombay, in AIR, 1954, SC, p. 388; Babulal Parati Vs State of Maharashtra, in AIR, 1961, SC, p. 884; Yulitha Hyde Vs State of Orissa, in AIR, 1973, Orissa, pp. 116-123.

³⁴ Rev. Stanilaus Vs State of Madhya Pradesh, in AIR, 1977, SC, pp. 908-912.

³⁵ The Indian Divorce (Amendment) Act, 2001 is a very substantial amendment. Its parent act, The Indian Divorce Act, 1869 was the exact replica of the English Matrimonial Causes Act, 1857. This was repealed in England in the year 1923 because it had several provisions that were discriminatory for women but in India the amendment has taken place only after 132 years of its inception.

³⁶ Sec. 10, A, (1) of The Indian Divorce (Amendment) Act, 2001, states, "Subjects to the provisions of this Act and the rules made there under, a petition for dissolution of marriage may be presented to the district court by both the parties to a marriage together, whether such marriage was solemnized before or after the commencement of the Indian Divorce (Amendment) Act, 2001, on the ground that they have been living separately for a period of two years or more, that they have not been able to live together and they have mutually agreed that the marriage should be dissolved." See The Divorce Act, 1869, Bare Act, Delhi, Commercial Law Publishers (India) Pvt. Ltd., 2002. p.4.

³⁷ See H. Staffner, "Conversion to Christianity Seen from the Hindu Point of View", in J. Patrapankal, ed., Service and Salvation, Bangalore, Theological Publications in India, 1973, p. 488 .

³⁸ See Hindu Succession Act 1956, Section 26.

³⁹ The term 'Hindu' had not been defined in any Act of the Indian Legislature. Being a Hindu does not require the profession of any definite belief, but is a matter of social belonging. There is no particular article of faith which one must profess in order to be a Hindu. It is more difficult to be accepted as a Hindu if one was not born as such; than to cease to be considered a Hindu if one was born such, even though one may disregard most of the Hindu tenets and practices.

⁴⁰ See J. Saldanha, Conversion and Indian Civil Law, Bangalore, Theological Publications in India, 1981, pp. 137-138.

⁴¹ Molly Joseph Vs George Sebastian in AIR, 1997, SC, p. 109.