

GOVERNMENT OF INDIA

LAW  
COMMISSION  
OF  
INDIA

Conversion/reconversion to another religion - mode of proof

Report No. 235

December, 2010

**Justice P. V. Reddi**  
(Former Judge, Supreme Court of India)  
(R)  
Chairman  
(O)  
Law Commission of India

New Delhi  
Tele: 2301 9465  
2338 4475  
Fax: 2379 2745 (R)

D. O. No. 6(3)/185/2010 – LC (LS)

December 27, 2010

Dear Hon'ble Minister Dr. M. Veerappa Moily,

Sub: Conversion/reconversion to another religion –  
mode of proof

I am forwarding herewith the 235<sup>th</sup> Report of the Law Commission of India on the above subject.

In a matrimonial appeal disposed of by the Kerala High Court, the question was whether the wife who applied for divorce with mutual consent under Section 13B of the Hindu Marriage Act, 1955 satisfactorily proved the factum of conversion to Hindu religion. *Inter alia*, the Family Court held that the applicant-wife who was Christian by birth has not established that she had converted herself to Hindu religion and there was no adequate proof of valid solemnization of marriage as per Hindu customs and rites.

The High Court set aside the said findings and directed *de novo* consideration of the issue after giving further opportunity to the applicant to adduce appropriate evidence. The observations made in paragraph 15 of the judgment are extracted in the opening paragraph of the enclosed Report. In paragraph 16 of the judgment, the Registry was directed to forward a copy of the judgment to the Law Commission of India, drawing the attention of the Commission to paragraph 15.

Office: I. L. I. Building, Bhagwandas Road, New Delhi – 110 001  
Residence: 1, Janpath, New Delhi 110 011

E-mail: pv\_reddi@yahoo.co.in

Accordingly, the subject was taken up by the Law Commission of India for consideration. After I assumed the office, the study was undertaken and a consultation paper was circulated for getting the views of the public, while expressing the *prima facie* view of the Law Commission. Certain representations were received and the same have been adverted to at paragraph 15 of the Report. The Commission after due deliberations has come to the conclusion that a declaration followed by confirmation before a registering authority should not by itself be treated as proof of conversion and secondly it would be highly inappropriate to prescribe by way of legislation the details of ceremonies and formalities to be gone through for conversion or the manner in which conversion is to be proved in a Court of law. At the same time, the Commission felt that the suggestion of the High Court should be accepted to a limited extent so as to afford opportunity to those who would like to have documentary evidence to substantiate the plea of conversion. The Commission has made it clear that filing of declaration and recording thereof should not be an indispensable proof of conversion. It should only be made optional so that the converted person will be enabled to have documentary proof to establish conversion/reconversion as and when necessary. The Commission has also made it clear that the documentary proof ought not to be considered as conclusive proof in as much as the Court has necessarily to go into the question whether conversion was true, and voluntary. Accordingly, recommendations are made at paragraph 16 and 17 of the Report. The Commission has expressed the view that in order to give effect to the simple recommendation which does not conflict with any law in force, statutory amendments to personal laws are not required. The Central Government can issue appropriate instructions to the concerned authorities of the UTs and the States.

With regards,

Yours sincerely,

(P.V. Reddi)

Dr. M. Veerappa Moily  
Hon'ble Minister for Law and Justice  
Government of India  
New Delhi – 110 001

## **Re: Conversion/reconversion to another religion - mode of proof**

### **Introduction: Observations of Kerala High Court**

1. A Division Bench of Kerala High Court, in a matrimonial case in Betsy and Sadanadan Vs Nil (Mat Appeal No. 339 of 2009) while dealing with a joint application moved by the parties for dissolution of marriage under Section 13B of the Hindu Marriage Act, 1955 examined the issue whether in the absence of any specific procedure prescribed under pristine Hindu law, custom and statute governing conversion, what the approach of the court should be and whether there is a need for legislative intervention so as to make the law simple and user - friendly. The High Court invited the attention of the Law Commission to the observations made in paragraph 15 in order to address the need for legislation. It was observed thus by Justice R. Basant in para 15 of the Judgment:

“We must, in this context, note that the stipulation in clause (c) of the Explanation to Section 2(1) of the Hindu Marriage Act which shows that a conversion or re-conversion to Hinduism can take place and the absence of any stipulations of law or specific recognized practices to facilitate such conversion is causing great difficulties to the parties. It should not be impossible for the legislature to prescribe the methods by which a person without any difficulty can effectuate such conversion. He should not be left before courts to adduce exhaustive evidence to prove such conversion. The law which recognizes such conversion must also be in a position to prescribe how the parties, without the necessity to get involved in unnecessary and time consuming litigations, can declare to the world such conversion. Appropriate stipulations of law appear to be necessary on this aspect in respect of conversions to and from all religions. Simple statutory stipulation applicable for all religions of filing of an affidavit of solemn declaration before a registering (statutory) authority (who must give the declarant sufficient time to dispassionately contemplate and confirm the declaration) and acceptance and recording of such reconfirmed declaration by the

authority in a register maintained under the statute for that purpose after lapse of a stipulated period and after calling for and hearing of objections if any of any interested party, will make the procedure simple, user friendly and less cumbersome. Such stipulations will save many a citizen like the petitioners herein of the tedious obligation to get involved in time consuming and unnecessary legal proceedings and litigation. Religious conversions may appear to many in Indian mindset to be unnecessary, puerile and negation of the very concept of respect for both religions as also the followers of such religion. But certainly, the freedom of faith guaranteed the Constitution may not justify the negation of the right to pursue the chosen faith, by conversion where necessary.”

The High Court observed that easy identification of the religion of a person in the event of a controversy does not appear to be possible even with the help of the decided cases The Bench then observed in paragraph 13 as under:

“But the courts cannot throw their hands up. Resolve they must, in the event of controversy or conscientious and objective doubt (even when parties raise no controversy) of the question whether there was conversion or reconversion to Hinduism in a given case as asserted by the litigant. We are certain that it must be possible for the court below with the help of the above guidelines, on the basis of evidence presently available and further evidence that may be adduced, to decide whether the first appellant has become a Hindu by conversion under explanation (c) to Section 2(1) of the Hindu Marriage Act. We may broadly indicate that an assertion of the 1<sup>st</sup> appellant that she had, prior to her marriage, embraced Hinduism will have to be given due weight. She can explain the assertion and satisfy the court that the tests indicated above have been satisfied by her in accepting conversion to Hinduism. She can prove the conduct of having her marriage with the 2<sup>nd</sup> appellant solemnized in accordance with Hindu religious rites and ceremonies. She can certainly show before the court that she had, after such conversion, been worshipping Hindu Gods. She can also adduce evidence to show that after such conversion, she has held out to the world that she is a Hindu. All these circumstances, if established, we find no reason why the uncontroverted

assertion of the appellant that the 1<sup>st</sup> appellant had become a Hindu by conversion before marriage cannot be accepted and the marriage performed in accordance with Hindu rites cannot be accepted as valid under the Hindu Marriage Act by the Court below.”

With the aforesaid observations, the High Court remanded the Case to the lower court and allowed the parties to adduce further evidence and also to amend their pleadings, if necessary.

2. The Law Commission of India with a view to address the limited question whether a particular mode of proof of conversion as suggested by the High Court should be statutorily prescribed, having made a preliminary study and recorded its *prima facie* view, invited the views of public on the said issue. Certain suggestions have been received which would be adverted to at the appropriate stage.

### **Freedom to profess and practise religion of one's choice**

3. The freedom of conscience and the right to profess, practise and propagate religion is enshrined in Art.25 of the Constitution. The equality of all religions is expressly recognized by Art.25 thereby emphasizing the cherished ideal of secularism. The expression ‘practice’ is concerned primarily with religious worship, ritual and observations. Propagating the religion connotes the right to communicate the religious beliefs to others by expounding the tenets of that religion. Of course, in the name of propagation, no one has a right to convert a person to another religion under pressure or inducement (vide *Rev. Stainislaus v. State of Madhya Pradesh*, AIR 1977 SC 908). Religious practices are as much a part of religion as religious faith or doctrines (vide *The Commissioner, Hindu Religious Endowments, Madras v. Shri Lakshmindra Thiratha Swamiar of Shirur Mutt*, AIR 1954 SC 282). The fundamental right to freedom of conscience and the right to profess, practise and propagate a religion is subject to the

considerations of public order, morality and health. Clause (2) of Art.25 preserves the power of the State to make a law regulating any economic, financial, political or other secular activity which may be associated with religious practice. Art.26 gives effect to the concomitant right of the freedom to manage religious affairs and this right is again subject to public order, morality and health. Articles 25 and 26 undoubtedly extend to rituals also and not confined to doctrine. It is well-settled that the freedom of conscience and the right to profess a religion implies freedom to change the religion as well. It is pertinent to mention that Art. 18 of the Universal Declaration of Human Rights specifically lays down that the freedom of conscience and religion includes freedom to change the religion or belief. The right to freedom of conscience thus implies the individual right of a person to renounce one's religion and embrace another voluntarily.

4. The change from one religion to another is primarily the consequence of one's conviction that the religion in which he was born into has not measured up to his expectations – spiritual or rational. The conversion may also be the consequence of the belief that another religion to which he would like to embrace would better take care of his spiritual well-being or otherwise accomplish his legitimate aspirations. At times it may be hard to find any rational reason for conversion into another religion. The reason for or propriety of conversion cannot be judged from the standards of rationality or reasonableness.

5. Any discussion on conversion generates thoughts on religion and religious faith. There is no precise definition of religion. 'Religion', it is said, is a matter of faith and belief in God is not essential to constitute religion. In *Shirur Mutt case* (AIR 1954 SC 282), Mukherjee, J made the

following pertinent observations on religion and Hindu religion in particular:

“Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion and these forms and observances might extend even to matters of food and dress.” ( para 18)

The saint and great philosopher Swami Vivekananda said:

“Religion as it is generally taught all over the world is said to be based upon faith and belief and in most cases consists only of different sets of theories and that is the reason why we find all religions quarrelling with one another. These theories are again based upon faith and belief.”

Sri M.N. Rao, former Chief Justice of H.P. High Court and presently Chairman of National Commission for Backward Classes, after referring to the above thoughts in his article on ‘Freedom of Religion and Right to Conversion’ (2003) made the following pertinent observations:

“Right to conversion connotes individual right of a person to quit one religion and embrace another voluntarily. This kind of change from one religion to another religion must necessarily be in consequence of one’s conviction that the religion in which he was born into has not measured up to his expectations, spiritual or rational. Sometimes it may also be the result of losing faith in one’s own religion because of the rigidity of its tenets and practices. Sometimes one may even lose total faith in the very concept of the existence of God and turn to Atheism. A change of religion, a consequence of any of the above reasons, falls within the ambit of the “Right to Conversion”.



**Conversion –nature of and essentials to be proved:**

6. Conversion like a marriage is a solemn act. Conversion from one religion to another has far reaching consequences –social and legal. It affects succession, marital status and also the right to seek elective office. Divorce can be granted on the ground that the spouse has changed the religion (vide Section 13(1)(ii) of the Hindu Marriage Act). `Upon conversion a person may be governed by a different personal law. The right to contest in elections from a constituency reserved from SCs / STs might be lost if the person who has changed the religion happened to be a member of Scheduled Caste or Tribe. Thus, the event of conversion is of critical importance from the point of view of rights and disabilities of a convert.

7. Conversion cannot be treated as an event which can be achieved through a mere declaration – oral or writing. At the same time, no particular formalities or ceremonies are required according to the law declared by Supreme Court. In fact, no such ceremonies are specifically prescribed in any religious texts or precepts, though certain ceremonies like ‘Suddhi’ (in the case of Arya Samajists) and baptism (in the case of Christians) are gone through in practice in some cases. Credible evidence of the intention to convert followed by definite overt acts to give effect to that intention is necessary. The subsequent conduct of the converttee is also important in reaching the conclusion that a conversion in its true sense had taken place and there was genuine conversion. The evidentiary facts which establish conversion have been time and again stated by the Supreme Court, while observing that no specific ritual or ceremony is required. Satisfactory evidence of conversion which has always been insisted upon by the Courts is necessary especially when we hear plethora of complaints of manipulated conversions for extraneous reasons or as a result of undue pressures.

**Views of the Commission on the crucial question and relevant case law:**

8. In the Commission's view, statutory prescription of procedure to establish conversion or nature of proof required is neither desirable nor practicable. Normally, a statute does not deal with the details which lie within the realm of appreciation of evidence. Any such enumeration touching on the quality of evidence to be adduced would result in more complications. A declaration of the nature suggested by the High Court cannot be a substitute for the tests laid down in decided cases for entering a finding of conversion. In fact, it does not appear that the High Court intended to say that the declaration followed by confirmation should be treated as a conclusive evidence of conversion/reconversion. The High Court apparently intended that the declaration followed by subsequent confirmation before the registering authority would serve as weighty documentary evidence, thereby minimizing the scope of controversy. There is another angle from which the said observations of the High Court have to be viewed. The declaration and registration thereof, if made the only mode of proof, many *bona fide* converts may be handicapped in proving the conversion merely by reason of failure to adhere to the procedure of registration. Moreover, a question may arise as to what purpose will such a procedure serve, where there are objections from some quarters – whether they be *bona fide* or *mala fide*? Should it be left to the Registration Officer to deal with those objections and record a finding? Is it proper for the Registration Officer to take a decision on the *bona fides* of conversion on the basis of facts existing at that initial stage? These questions defy a satisfactory answer if the declaration and confirmation should be treated as the conclusive proof of conversion.

9. The High Court's observation that the proof in respect of conversion should be simplified and credible documentary evidence could be made available to those who are called upon to prove the factum of conversion is not without merit. It stems from an anxiety to avoid prolonged litigation and unnecessary controversies. But, the issue has to be viewed from a larger perspective keeping in view the socio-economic conditions, the practical difficulties in implementation and the spurious claims that are quite often advanced. The Courts including Supreme Court have consistently held that the law does not require any particular ceremony or ritual for conversion, but what is necessary is a *bona fide* intention to convert to another religious faith accompanied by conduct unequivocally expressing that intention. The satisfaction of the Court on this aspect should necessarily be present and the filing of declaration of conversion before a prescribed authority is one of the important aspects that aids the Court in reaching such satisfaction, but that should not be the sole criterion.

10. It has been held in a number of decided cases including the pronouncements of the Supreme Court that no particular formalities or religious rituals or ceremonies are necessary to bring about conversion or reconversion. In the case of *Punjabrao v. Dr. D.P. Meshram and others* (AIR 1965 SC 1179), it was observed that the presence of a Bhikku on the occasion of a function held for conversion of Hindu Harijans into Buddhism and compliance with particular rituals is not necessary; so also, the signature of a converted person in a register for conversion is not obligatory. In *Perumal Nadar (dead) by Legal Representative v. Ponnuswami Nadar (minor)* (AIR 1971 SC 2352), the principle was reiterated that no formal ceremony of purification or expiation is necessary to effectuate conversion. So also in the case of *S. Anbalagan v. B.*

*Devararajan and others* (AIR 1984 SC 411), the Supreme Court examined the legal position in regard to caste status on conversion or re-conversion to Hinduism and held that no particular ceremony was prescribed for re-conversion to Hinduism. The Karnataka High Court observed in *Sujatha v. Jose Augustine* (II (1994) Divorce & Matrimonial Cases 442) that to be a Christian, one must truly profess the Christian faith and the fact that one has undergone the ceremony of baptism may not by itself be sufficient to hold that he or she has become a Christian. The fundamental thing to be established before one can be held to be Christian is that the person concerned truly believes in and professes the Christian faith.

10.1 The test of conversion has been put thus by the Supreme Court in *Perumal Nadar v. Ponnuswami* (*supra*).

”A person may be a Hindu by birth or by conversion. A mere theoretical allegiance to the Hindu faith by a person born in another faith does not convert him into a Hindu, nor is a bare declaration that he is a Hindu sufficient to convert him to Hinduism. But a bona fide intention to be converted to the Hindu faith, accompanied by conduct unequivocally expressing that intention may be sufficient evidence of conversion. No formal ceremony of purification or expiation is necessary to effectuate conversion”. (para 6)

The Supreme Court also observed “in our judgment the finding of the courts below that Annapazham was converted to Hinduism before her marriage to Perumal is amply supported by evidence.”

10.2 In *Kailash Sonkar vs. Smt. Maya Devi* (AIR 1984 SC 600) the Supreme Court while dealing with a case of reconversion adopted a similar approach, as seen from the following observations:

“In our opinion, the main test should be a genuine intention of the reconvert to abjure his new religion and completely dissociate himself from it. We must hasten to add here that this does not mean that the reconversion should be only a ruse or a pretext or a cover to gain mundane worldly benefits so that the

reconversion becomes merely a show for achieving a particular purpose whereas the real intention may be shrouded in mystery. The reconvert must exhibit a clear and genuine intention to go back to his old fold and adopt the customs and practices of the said fold without any protest from members of his erstwhile caste.” ( para 30)

It was further clarified:

“In order to judge this factor, it is not necessary that there should be a direct or conclusive proof of the expression of the views of the community of the erstwhile caste and it would be sufficient compliance of this condition if no exception or protest is lodged by the community members, in which case the caste would revive on the reconversion of the person to his old religion.” ( para 30)

10.3 We may also refer to the decision of Kerala High Court in *Sapna Jacob, Minor vs The State of Kerala & Ors* (AIR 1993 Kerala 75) - K.G. Balakrishnan, J. (as he then was) after referring to the various authorities, observed:

“In order to prove that the petitioner was a member of the Hindu community she must have established that there was a bona fide intention to be converted to the Hindu faith accompanied by conduct or unequivocally expressing that intention. It is true that no formal ceremony of purification or expiation is necessary to effectuate conversion. The petitioner is admittedly the daughter of a Jacobite Christian. So by birth she is a Christian. A convert must embrace Hinduism and follow the cultural system and tradition of that religion and should take the Hindu mode of life. It may be true that the Court cannot test or gauge the sincerity of religious belief; or where there is no question of the genuineness of a person’s belief in a certain religion, the court cannot measure its depth or determine whether it is an intelligent conviction or ignorant and superficial fancy. But a court can find the true intention of men lying behind their acts and can certainly find from the circumstances of a case whether a pretended conversion was really a means to some further end. In the instant case, the petitioner’s mother after marrying V.M. Jacob changed her name as Uma Jacob. The petitioner’s name is Sapna Jacob, admittedly a Christian name. There is nothing in evidence

to show that the petitioner ever led a Hindu mode of life. The only ground on which the petitioner claims the benefit of Scheduled Caste is that her mother is a Scheduled Caste.” ( para 6 )

10.4 Similarly, in *Rakheya Bibi vs. Anil Kumar* ILR (1948) Cal. 119), the Calcutta High Court observed that it is open to the Court to go into the question whether the conversion was a bona fide one or a mere pretence.

10.5 In recent case of *M.Chandra vs. M. Thangamuthu and Another* (2010) 9 SCC 712 the Supreme Court observed in para 42“it is a settled principle of law that to prove a conversion from one religion to another, two elements need to be satisfied. First, there has to be a conversion and second, acceptance into the community to which the person converted.”

10.6 In the case of *Punjabrao Vs Dr. D.P. Meshram (Supra)*, a Constitution Bench of Supreme Court interpreted the expression ‘profess’ in clause 3 of the Constitution (Scheduled Caste) Order 1950. The said provision contemplates that a person to be treated as one belonging to the Scheduled Caste, should profess either Hindu or Sikh religion. In that case, the election of the first respondent to the Legislative Assembly was challenged on the ground that he embraced Buddhism and had ceased to be a member of Scheduled Caste. The Election Tribunal upheld the contention of the appellant and set aside the election. However, the High Court held that conversion of first respondent to Buddhism had not been established and therefore, upheld his election. The Supreme Court allowed the appeal and restored the order of the Election Tribunal holding that the first respondent had ceased to be Hindu at the time of his nomination and consequently ineligible to be a candidate for election from a constituency reserved for members of Scheduled Castes. The Supreme Court explained as to what is meant by professing a religion. The Supreme Court observed after referring to the dictionary meanings of the word ‘profess’, “it seems to us

that the meaning “to declare one’s belief in: as, to profess Christ, is one which we have to bear in mind while construing the aforesaid Order because it is this which bears upon religious belief and consequently also upon a change in religious belief. It would thus follow that a declaration of one’s belief must necessarily mean a declaration in such a way that would be known to those whom it may interest. Therefore, if a public declaration is made by a person that he has ceased to belong to his old religion and has accepted another religion he will be taken as professing the other religion. In the face of such an open declaration it would be idle to enquire further as to whether the conversion to another religion was efficacious”.( para 13)

In that case, the argument that no Bhikku had officiated at the function and that respondent No. 1’s name was not found in the register of conversion to Buddhism and therefore, there was no satisfactory proof of conversion was rejected. The decision shows that a declaration in public renouncing his old religion and accepting another religion is an important step in establishing the factum of conversion to another religion. Another equally important step as laid down in *Perumal’s case* is the *bona fide* intention to convert demonstrated by his/her subsequent conduct. In *Punjabrao’s case*, the Supreme Court was concerned with the import of the expression ‘profess’ in the Presidential Order.

11. Though no particular formalities or ceremonies are required to be followed for the purpose of conversion, credible evidence of intention to convert followed by subsequent conduct of the converttee is necessary in reaching the conclusion that there was genuine conversion. The convert must embrace Hinduism (or another religion) and follow the cultural and spiritual traditions and take to the mode of life of that religion.

12. It may be noted that in some states, viz., Gujarat, Madhya Pradesh, Himachal Pradesh, Arunachal Pradesh etc., the Freedom of Religion Acts were enacted. The provision thereof prohibits forcible conversion. i.e., by

use of force, allurements or by fraudulent means and requires the person who participates or takes part in the ceremony for conversion from one religious faith to another should send the intimation to the District Magistrate either in advance or within a stipulated period after the event of conversion. Failure to do so is an offence. Some enactments cast a duty on the person who is converted to send a notice to the District Magistrate within a stipulated period in a prescribed form and if he fails without sufficient cause to comply with this requirement, he is also punishable. Thus, the intimation and the filing of declaration is a statutory obligation enforceable by law in some of the States. However, where there is no such legislation, the Commission feels that the filing of declaration and registration should not be made obligatory or indispensable mode of proof of conversion. Nor it is necessary or desirable for the Parliament to step in and incorporate such a provision in the Hindu Marriage Act and other laws. We are not concerned here with the issue of forcible or induced conversions and remedial action to be taken in connection therewith. We are only examining the limited question of the evidentiary proof required to establish the factum of conversion when a dispute arises.

13. Viewed in this light, the Commission is of the view that the suggestion of the High Court deserves to be accepted to a limited extent so as to afford an opportunity to those converts who would like to have documentary evidence of declaration to substantiate the plea of conversion as and when required. At the same time, the filing of declaration and recording thereof should not be made obligatory and an indispensable mode of proof of conversion, but it should only be made optional so that the converted person will be enabled to have documentary proof to establish the factum of conversion/reconversion in the absence of other reliable



documentary evidence. However, as stated earlier, such documentary proof testifying to the declaration and confirmation made by the converted persons ought not to be considered as conclusive proof. The Court cannot be barred from considering the other relevant questions such as the voluntary nature of conversion and the subsequent conduct of the alleged convert, whenever a dispute arises. Hence it is reiterated that the recorded declaration not followed by objections cannot be regarded as the sole criterion to establish conversion in a court of law, though it may be given due weight by the Court in reaching the finding.

14. The Commission would like to advert to one more aspect. In regard to the compulsory registration of marriages, the Supreme Court in the case of *Seema(Smt.) Vs Ashwani Kumar* (2006) 2 SCC 578, gave certain directives/suggestions to the State Governments. However, it does not appear that the States have taken any concrete measures in this regard. In the 211<sup>th</sup> Report, the Law Commission has gone to the extent of recommending that the non-registration of marriage and divorce should be made an offence and secondly that no judicial relief shall be granted if the concerned marriage or divorce is not duly registered under the proposed Act. Presently, the Law Commission does not wish to offer its comments on those suggestions having far-reaching effects because the issue which the Commission is presently called upon to deal with is about conversions. If the registration of marriage is made obligatory as per the directives of Supreme Court, or the recommendations of the Law Commission, it does not necessarily follow that conversion to another religion should also be compulsorily registered. Conversion which is bereft of any particular formalities or religious rites, cannot be placed on the same pedestal as marriage which can be recognized in law only if customary rites and ceremonies are gone through. Further, the

backdrop in which the compulsory registration of marriages was considered necessary in societal interest is not applicable in all fours to religious conversions. Maybe, as and when compulsory registration of marriage and divorce becomes a reality and adequate machinery is put in place to implement the directives for registration of marriages, the question of recording/registration of conversion could also be considered. At this juncture, the Commission does not propose to recommend, based on the 211<sup>th</sup> Report, to evolve a scheme for compulsory registration of conversions as well where there is no such law in a State.

**Representations/views received and discussions thereon**

15. Before we conclude the report by formulating the Commission's recommendations, we would like to consider the views expressed in the responses submitted by Kerala Law Academy Law College, Thiruvananthapuram, Revd. Archbishop of Bhopal, the Catholic Church Body of Madhya Pradesh and certain other Christian organizations/individuals of MP State.

15.1 The students and faculty of Kerala Law Academy, after intensive discussion submitted a report under the caption "Statutory vacuum for effectuating voluntary religious conversion". The report of Kerala Law Academy has stressed on the need to legislatively prescribe a non-cumbersome procedure for effectuating religious conversion. It has been pointed out that declaration should be recognized in the statute as an effective means of conversion. Further, it was pointed out that the law should clearly define the scope and ambit of conversion ceremonies in effecting conversion. The absence of prescription of specific procedure, according to them, creates a legal vacuum in the area of religious

conversion which is not in tune with the constitutional guarantee of freedom of conscience.

15.2 We have already adverted to some of these aspects. The Commission would like to reiterate that the declaration followed by confirmation should not by itself be treated as proof of conversion and secondly it would be highly inappropriate to prescribe by way of legislation the details of ceremonies and/or formalities to be gone through for the purpose of conversion or the manner in which by law the conversion has to be proved in a court of law. Nebulous prescriptions ought to be avoided. Further, the whole problem has to be viewed from the angle whether the conversion was bona fide or genuine. The observance of the prescribed ceremony or the declaration of the convert cannot give sanctity to the alleged conversion, if the conversion is otherwise a 'sham' exercise or a pretence to achieve an ulterior objective or the result of force or allurement. Freedom of conscience is in no way infringed by adopting this approach. The Commission is, therefore, of the view that the filing of declaration or the proof of observance of certain rituals / ceremonies cannot, having regard to the essence of conversion, be treated as conclusive proof of conversion. But, the declaration followed by confirmation, as said earlier, serves as an important piece of evidence in support of conversion.

15.3 Coming to the responses sent by the Rev. Archbishop of Bhopal and the Christian Organizations of MP (which are almost on similar lines), the following is the summary of the representations:

Cases are being registered against Christians on the allegation of effecting conversion by force or allurement and the fundamental organisations have also been disturbing the prayer meetings.

Proper guidelines on the subject of religious conversions and re-conversions will help avoiding conflicts. The law should be such as to respect the conscience of the individual. When the change of religion is a conscious choice of an individual based on his belief in God, the law cannot insist on obtaining the prior permission from the District Magistrate to change his or her religion. It is only after the conversion that it would be appropriate to send the intimation to the concerned officer of the Government.

15.4 Some of the points referred to above relate to the legal validity of certain provisions of the Freedom of Religion Act enacted by Madhya Pradesh Legislature and the alleged high-handed action by the police under the said Act and also the lawless acts of the people of certain groups opposed to Christianity. These complaints cannot be looked into by the Law Commission as it is not within the scope of the subject taken up for consideration. They raise larger issues regarding the constitutional validity of the provisions of the said enactment or distortions in applying the law or the alleged lawless acts of certain persons. These do not fall within the domain of the Commission's report.

15.5 As regards the other point raised, i.e. providing proper guidelines on the subject of conversions/re-conversions, this aspect has already been dealt with in the earlier paragraphs.

### **Recommendations**

16. The Law Commission, therefore, proposes to formulate the following recommendations:

1. Within a month after the date of conversion, the converted person, if she/he chooses, can send a declaration to the officer in charge of registration of marriages in the concerned area.

2. The registering official shall exhibit a copy of the declaration on the Notice Board of the office till the date of confirmation.
3. The said declaration shall contain the requisite details viz., the particulars of the convert such as date of birth, permanent address, and the present place of residence, father's/husband's name, the religion to which the convert originally belonged and the religion to which he or she converted, the date and place of conversion and nature of the process gone through for conversion.
4. Within 21 days from the date of sending/filing the declaration, the converted individual can appear before the registering officer, establish her/his identity and confirm the contents of the declaration.
5. The Registering officer shall record the factum of declaration and confirmation in a register maintained for this purpose. If any objections are notified, he may simply record them i.e., the name and particulars of objector and the nature of objection.
6. Certified copies of declaration, confirmation and the extracts from the register shall be furnished to the party who gave the declaration or the authorized legal representative, on request.

17. Now, the question arises as to how the above recommendations could be implemented. It is clarified that in whichever State, there is a law governing conversion such as Freedom of Religion Act, the above recommendations do not apply. The question then is whether for implementation of the said recommendations in other States, the enactment

of law by Parliament is necessary. The Commission is inclined to think that a separate enactment or amendments to the respective personal laws is not required to give effect to this simple recommendation having regard to the fact that it does not go contrary to the existing provisions of law nor does in any way impinge on the religious freedom or faith of any person. Matters relating to conversion/reconversion are governed by the personal laws in respect of which Parliament has power to make laws. The Central Government can exercise its executive power under Article 73 to issue appropriate instructions to the Union Territories. Similar communications may be addressed by the Central Government to the States (where there are no laws governing the conversion) to give effect to the recommendations set out *supra*. The Governments concerned in their turn will have to issue necessary orders to the Registration officers. That can be done by the Governments of UT and State Governments administratively.

(Justice P.V. Reddi)

Chairman

(Justice Shiv Kumar Sharma)

Member

(Amarjit Singh)

Member

(Dr Brahm Agrawal)

Member-Secretary