

Rev. Stainislaus Vs. State of Madhya Pradesh and ors.

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Court : Madhya Pradesh

Decided On : Apr-23-1974

Reported in : AIR1975MP163

Judge : P.K. Tare, C.J. and ;U.N. Bhachawat, J.

Acts : Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 - Sections 3, 4 and 5; [Constitution of India](#) - Articles 20(3), 25 and 25(1)

Appeal No. : Misc. Petn. No. 136 of 1973 and Cri. Revn. No. 159 of 1971

Appellant : Rev. Stainislaus

Respondent : State of Madhya Pradesh and ors.

Advocate for Def. : Y.S. Dharmadhikari, Adv. General for Respondent No. 1

Advocate for Pet/Ap. : R.S. Dabir, ;S.Q. Hasan and ;O.P. Namdeo, Adv.

Disposition : Petition dismissed

Judgement :

Tare, C.J.

1. This order shall also govern the disposal of Criminal Revision No. 159 of 1971 (Rev. Stainislaus v. The State of M. P.).

2. On a report made by the Circle Inspector, Balodabazar, dated 9-3-1970, and on a complaint made by him on 23-5-1970, the Sub-divisional Magistrate, Balodabazar, sanctioned prosecution of the petitioner for the alleged offences under Sections 3, 4, 5 (2) and Section 6 of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (No. 27 of 1968), by Order, dated 23-10-1970, in exercise of the powers delegated to him by Section 7 of the said Act. Accordingly, an offence was registered and Criminal Case No. 1195 of 1970 was initiated in the Court of the Magistrate, 1st Class, Balodabazar.

3. The petitioner raised a preliminary objection as to the tenability of the prosecution contending that the Act was ultra vires the powers of the State legislature, as it did not fall within the scope of Entry No. I to List II and Entry No. 1 to List III of the Seventh Schedule. But, in fact it falls within Entry No. 97 of List I of the Seventh Schedule and as such, the Parliament alone had the power to enact legislation on the subject and the State legislature in the name of public order could not have enacted such a legislation. The other contention raised was that the provisions of Sections 3, 4 and 5 (2) of the Act contravene Article 25 of the [Constitution of India](#) guaranteeing freedom of religion, the Act is void as being in violation of the petitioner's fundamental rights. On these two grounds the prosecution was said to be untenable.

4. The learned Magistrate, by order dated 28-10-1970, observed that the objections raised constituted a constitutional question, which the High Court alone was competent to adjudicate upon. In spite of that observation, the learned Magistrate refused to refer the case for the opinion of this Court, as required by Section 432 of the Code of Criminal Procedure. Against the order of the trial Magistrate the petitioner filed a revision before the Additional Sessions Judge, which was registered as Criminal Revision No. 139 of 1970. By order, dated 15-2-1971, the learned Additional Sessions Judge held that no question of constitutional importance arose and hence he refused to refer the case for the opinion of this Court. Therefore, the petitioner has filed not only a Criminal Revision under Section 439, Criminal Procedure Code, but also a writ (petition under Articles 226 and 227 of the [Constitution of India](#)). As both these cases involve the same questions, we propose to dispose them of by a common order.

5. In the present cases the petitioner has raised three constitutional questions challenging the vires of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1966. We propose to discuss them in a serial order as follows:

(i) that Sections 3, 4, 5 (2) and 6 of the M. P. Dharma Swatantrya Adhiniyam, 1968, are violative of the petitioner's fundamental rights guaranteed by Article 25(1) of the [Constitution of India](#);

(ii) that in exercise of powers conferred by Entry No. 1 of List II, read with Entry No. 1 of List III of the Seventh Schedule, the Madhya Pradesh legislature in the name of public order could not have enacted the said legislation. But the matter would fall within the scope of Entry No. 97 of List I of the Seventh Schedule, which confers residuary powers on the Parliament to legislate in respect of any matters not covered by List I, List II or List III. Therefore, it is contended that the Parliament alone had the power to legislate on this subject and the legislation enacted by the State legislature is ultra vires the powers of the State legislature;

(iii) that Section 5 (1) and Section 5 (2) of the M. P. Dharma Swatantrya Adhiniyam, 1968, amount to testimonial compulsion and, therefore, the said provisions are violative of Article 20(3) of the [Constitution of India](#).

6. Regarding the first question that the provisions of the Act are violative of the petitioner's fundamental rights guaranteed by Article 25(1) of the Constitution, it may be relevant to reproduce the pertinent provisions of the Act along with the provisions of the Madhya Pradesh Dharma Swatantrya Rules, 1969. The very nomenclature of the Act, namely, the M. P. Dharma Swatantrya Adhiniyam, 1968, (Religious Freedom Act) indicates that the Act had been passed to ensure freedom of religion. The preamble of the Act mentions that it is for providing prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means and for matters incidental thereto. Of course, it is true that the preamble of an Act is not relevant for interpreting the specific provisions of the statute. But, we have reproduced the preamble to show with what object the legislature enacted this legislation.

7. This Act came into force on 21-10-1968, as per publication in the Madhya Pradesh Rajpatra (Extraordinary), dated 21-10-1968, at page 1860. Section 2 of the Act defines 'allurement', 'force' and 'fraud', which are said to be objectionable methods of conversion. Sub-section (a) of this Section defines 'allurement' as follows:--

'Allurement' means offer of any temptation in the form of-

- (i) 'any gift or gratification either in cash or kind;
- (ii) grant of any material benefit, either monetary or otherwise.

'Force' has been defined by Sub-section (c) as follows:

'Force' shall include a show of force or a threat of injury of any kind including threat of divine displeasure or social ex-communication.

'Fraud' has been defined by subsection (d) as follows :

'Fraud' shall include misrepresentation or any other fraudulent contrivance.'

Section 3 of the Act prohibits forcible conversion by use of force or allurement or by any fraudulent means. Section 4 provides for punishment for contravention of the provisions of Section 3 with imprisonment extending upto one year or with fine, which may extend to five thousand rupees or with both. The proviso states that if an offence is committed in respect of a minor, a woman or a person belonging to the Scheduled Castes or Scheduled Tribes, the punishment shall be imprisonment to the extent of two years and fine upto ten thousand rupees. Section 5 of the Act requires the person converting any other persons from one religious faith to another, to give intimation of the fact to the District Magistrate within such period after the ceremony as may be prescribed in such form as may be prescribed. Sub-section (2) of Section 5 provides that if any person fails without sufficient cause to comply with the provisions contained in Sub-section (1), he shall be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both. Section 6 of the Act makes the offences under the Act cognizable, which shall not be investigated by an officer below the rank of

an Inspector of Police. Section 7 provides that no prosecution shall be launched without the sanction of the District Magistrate or such other authority, not below the rank of a Sub-divisional Officer, as may be authorised by him in that behalf. Section 8 empowers the State Government to frame rules for carrying out the objects of the Act.

8. Rule 3 of the M. P. Dharma Swatantrya Rules, 1969, provides that a person converting any other person from one religion to another shall send intimation to the District Magistrate within seven days after the date of such ceremony. Sub-rule (2) of Rule 3 provides that intimation shall be in Form A. Rule 5 requires the District Magistrate to maintain a register of conversion in Form C with all particulars. Rule 6 requires the District Magistrate by the 10th of each month to send a report to the State Government of intimations of such conversion.

9. We may reproduce Form A, which requires the person converting another to intimate the fact of conversion to the District Magistrate within seven days of the ceremony. It is necessary to reproduce the entire form, as the petitioner challenges the provisions of Rule 3 (2) and Sub-sections (1) and (2) of Section 5 of the Act, as amounting to testimonial compulsion in contravention of Article 20(3) of the [Constitution of India](#). The Form A is as follows:

'Form A'

(See Rule 3 (2))

Intimation regarding conversion from one religious faith to another.

To

The District Magistrate,

District

Madhya Pradesh.

Sir,

I having performed the necessary ceremony for conversion as a religious priest/having taken part in the conversion ceremony of Shris/o r/o from religious faith toreligious faith, do hereby, give intimation of the conversion as required by Sub-section (1) of Section 5 of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 (No. 27 of 1968) as follows:--

1. Name of the person converted.....
2. Name of the father of the person converted.....
3. Address of the person converted in House No..... Ward No.Mohalla VillageTah. District
4. Age.....
5. Sex.....
6. Occupation and monthly income of the persons converted.....
7. Whether married or unmarried.....
8. Name of persons, if any, dependent upon the person converted.....
9. If a minor, name and full address of the guardian, if any.....
10. Whether belongs to Scheduled Caste or Scheduled Tribe and if so, particulars of such Caste or Tribe
11. Name of the place where the conversion ceremony has taken place with full details.....House No..... Ward No.....Mohalla VillageTan. District
12. Date of conversion.....
13. Name of person who has performed the conversion ceremony and his address.....

14. Names of at least two persons other than priest/the person giving intimation present at the conversion ceremony.....

Signature of the religious

priest/the person taking

part in the conversion

ceremony.

VERIFICATION.

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

Signature

Date.....

10. Taking up the first question, whether the provisions of Sections 3, 4, 5 (1) and 5 (2) and Section 6 of the M. P. Dharma Swatantrya Adhiniyam, 1968, violate the petitioner's fundamental rights guaranteed by Article 25(1) of the [Constitution of India](#), we may usefully reproduce Article 25(1), which is as follows :

'Article 25(1).-- Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.'

What the Article guarantees is freedom of conscience and the right to profess, practice and propagate religion. This fundamental right is not restricted to the Indian citizen alone, but to every person living within the territory of India. Regarding freedom of religion it is to be noted that the freedom of religion is not a monopoly of a single individual, but the freedom is to be enjoyed by a person commensurate with similar freedom to all other individuals. It was strenuously contended by the learned counsel for the petitioner that the provisions of Sections 3, 4 and 5 of the Act constitute encroachment on the petitioner's freedom of

religion. In this connection we may observe that the freedom of religion has been guaranteed subject to four things, namely, public order, morality, health and the other provisions of this Part. As liberty cannot be construed to be a licence so also freedom of religion cannot be construed to be the right of an individual to encroach upon similar freedom of other individuals by questionable methods. It is only from this point of view that the State legislature has prohibited conversion by practising force, fraud or by offer of an allurement. The contention of the learned counsel for the petitioner was that force or fraud is well understood by phrases which have also been defined by the Indian Penal Code and the Indian Contract Act. But the introduction of the third phrase 'allurement' for the first time in an enactment is objected to on the ground that the phrase is too vague and is incapable of a precise definition. In this connection attention was invited to the observations of a Division Bench of the Orissa High Court in *Mrs. Yulitha Hyde v. State of Orissa*, AIR 1973 Ori 116. We shall have occasion to deal with this case in some details when we consider the other point relating to the legislative competence of the enactment.

11. The learned counsel for the petitioner invited attention to the pronouncement of their Lordships of the Supreme Court in *Ratilal Punamchand Gandhi v. State of Bombay*, AIR 1954 SC 388, wherein the provisions of the Bombay Public Trusts Act, 1950, were challenged on the ground that they contravene Articles 25 and 26 of the [Constitution of India](#). Attention was specially invited to the pronouncement of their Lordships in paragraph 10 as follows :

'Article 25 of the Constitution guarantees to every person and not merely to the citizens of India the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the Article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and Sub-clause (b) reserves the State's power to make laws providing for special reform and social welfare even though they might interfere with religious practices.

Thus, subject to the restrictions which this Article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to prorogate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people.

What Sub-clause (a) of Clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.'

Ultimately, their Lordships held that the provisions of Clauses 3 to 6 of Section 47 to the extent that they relate to the appointment of the Charity Commissioner as a trustee of a religious trust like temple and Math were invalid. However, Section 48 of the Act was held valid. Similarly, Section 50 of the Act was also held valid. As regards Sections 55 and 56 of the Act, their Lordships observed that those Sections purport to lay down how the doctrine of cy pres is to be applied in regard to the administration of public trust of a religious or charitable character. The doctrine of cy pres as developed by the Equity Courts in England, has been adopted by our Indian Courts since a long time past. In that view their Lordships declared Clause (3) of Section 55 and Sub-section (1) of Section 56 of the Act void. Section 58 of the Act was held to be intra vires, as it was not a tax, but a fee, which would come within the purview of Entry 47 of List III of Seventh Schedule of the Constitution. In that view their Lordships partly allowed the appeals by declaring Section 44, Sub-clauses 3 to 6 of Section 47, Clause (c) of Section 55 and a part of Clause (1) of Section 56 of the Act to be unconstitutional.

12. Attention was invited to the pronouncement of their Lordships of the Supreme Court in *Ramji Lal Modi v. State of U. P.*, AIR 1957 SC 620, wherein Section 295A of the Indian Penal Code was challenged as violative of Article 19(1)(a) of the [Constitution of India](#). Their Lordships held that Clause (2) of Article 19 protected a law imposing reasonable restrictions on the exercise of the right to freedom of speech 'in the interests of public order' and not for maintenance of public order. If, therefore, certain activities have a tendency to cause public disorder, a law penalising such activities as an offence would amount to imposing reasonable restrictions in the interest of public order, although in some cases those activities may not lead to a breach of public order. In that view their Lordships upheld the validity of Section 295A of the Indian Penal Code and dismissed the writ petition. This case brings out the distinction between 'in the interests of public order' and 'for maintenance of public order'. We may observe that the phrase used in Article 25(1) of the Constitution is 'subject to public order, morality and health and to the other provisions of this Part', which really means that the fundamental right of religious freedom is to be exercised subject to these four restrictions and the words 'public order' would have a wider connotation than the words 'maintenance of public order'.

13. In this connection we may usefully advert to the observations of a Division Bench of this Court in *G. X. Francis v. State of Madhya Pradesh*, 1957 MPLJ 1, wherein the appointment of a Fact-Finding Commission, presided over by the former Chief Justice, Dr. M. B. Niyogi, was challenged by the petitioner on the grounds of violation of Articles 15, 19, 25 and 26 of the [Constitution of India](#). Hidayatullah, C. J. (as he then was) delivering the order on behalf of the Division Bench, declined to issue a writ of Quo Warranto against the Members of the Commission of Enquiry, holding that the appointment of a Commission was not ultra vires, but the constitutional guarantees could be disregarded. Therefore, the constitution of a Fact-Finding Commission for enquiring into the activities of Christian Missionaries in the Madhya Pradesh State was upheld by the Division Bench. However, that was a case of a Fact-Finding Commission, which did not provide for any penalty whatsoever. Therefore, the learned counsel for the petitioner sought to distinguish the case and urged that the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968, provides for penalty and different

considerations would be applicable.

14. We may next advert to the case of *Tejrai Chhogalal Gandhi v. State of Madhya Bharat*, AIR 1958 Madh Pra 115, wherein the petitioner prayed for issue of a writ for removal of a Shiv-Ling kept by them in a temple situated in Rat-lam City. It was contended that the temple was a Jain temple, known as Shri Shanti Nath Jain temple and also as Agarji's temple. A further direction was issued that the petitioners along with other members of the Jain community should have free access to the temple for worshipping the deities installed therein according to the principles of Jain religion. In that view the provisions of Articles 25 and 26 of the [Constitution of India](#) came up for consideration before the Division Bench. Referring to the pronouncements of their Lordships of the Supreme Court in the *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar*, AIR 1954 SC 282 and in AIR 1954 SC 388, the Division Bench observed that 'subject to the restrictions which the article imposes, every person would have a fundamental right under the Constitution not merely to entertain such religious belief as may be approved of by this judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others'. However, on facts the Division Bench found that this was a temple dedicated to and for the benefit of the Jain community. In that view the petitions were allowed by the Division Bench. In that case also the question of providing for a penalty did not at all arise for consideration.

15. We may usefully advert to the pronouncement of their Lordships of the Supreme Court in *His Holiness Srimad Perarulala Ethiraja Ramanuja Jeeyar Swami etc. v. The State of Tamil Nadu*, AIR 1972 SC 1586, wherein his Lordship, Palekar, J. delivering the judgment on behalf of the Court made the following observations:

'This Court in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*, AIR 1962 SC 853 = (1962) Supp 2 SCR 496 has summarised the position in law as follows (pages 531 and 532 of SCR) = (at p. 867 of AIR), The content of Articles 25 and 26 of the Constitution came up for consideration before this Court in the

Commr., Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, 1954 SCR 1005 = AIR 1954 SC 282; Jagannath Ramanuj Das v. State of Orissa, 1954 SCR 1046 = (AIR 1954 SC 400); 1958 SCR 895 = (AIR 1958 SC 255); Durgah Committee, Ajmer v. Syed Hussain Ali, (1962) 1 SCR 383 = (AIR 1961 SC 1402) and several other cases and the main principles underlying these provisions have by these decisions been placed beyond controversy. The first is that the protection of these articles is not limited to matters of doctrine or belief they extend also to acts done in pursuance of religion and therefor contain a guarantee for rituals and observances, ceremonies and modes of worship which are integral parts of religion The second is that what constitutes an essential part of a religious or religious practice, has to be decided by the Courts, with reference to the doctrine of a particular religion and include practices which are regarded by the community as a part of its religion.'

Ultimately, their Lordships upheld the validity of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1971, on the finding that the Act did not violate the provisions of Articles 25 and 26 of the [Constitution of India](#).

16. Thus, according to the pronouncement of their Lordships of the Supreme Court in the cases mentioned above, exercise of the fundamental right of religious freedom is subject to public order, morality and health. It necessarily implies that the word 'public' has to be read with the other two phrases as well. Therefore, the restrictions will be public order, public morality and public health. The exercise can be subject to the restrictions provided by Sub-clause (1) of Article 25 of the Constitution. We have, therefore, to determine whether the M. P. Dharma Swatantrya Adhiniyam, 1968, violates Article 25(1) of the [Constitution of India](#). In this connection we may observe that it is not merely the penal provisions which ought to be considered in exclusion. What is penalised is conversion by force, fraud or by allurement. The other element is that every person has a right to profess his own religion and to act according to it. Any interference with the right of the other person by resorting to conversion by force, fraud or allurement cannot, in our opinion, be said to contravene Article 25(1) of the [Constitution of India](#), as the Article guarantees religious freedom subject to public order, public morality and public health. As such, we do not find that the provisions of Sections 3, 4 and 5 of

the M. P. Dharma Swatantrya Adhiniyam, 1968, are violative of Article 25(1) of the [Constitution of India](#). On the other hand, it guarantees that religious freedom to one and all including those who might be amenable to conversion by force, fraud or allurement. As such, the Act, in our opinion, guarantees equality of religious freedom to all much less can it be said to encroach upon the religious freedom of any particular individual. We would, therefore, repel the contention of the learned counsel for the petitioner on the first point by holding that the provisions of Sections 3, 4 and 5 of the M. P. Dharma Swatantrya Adhiniyam, 1968, are not violative of Article 25(1) of the [Constitution of India](#).

17. Coming to the second question regarding legislative competence of the State legislature, the learned counsel urged that the subject-matter will be covered by Entry No. 97 of List I of the Seventh Schedule, which is as follows:

'Any other matter not enumerated in List II or List III including any tax not mentioned in either of those Lists.'

The suggestion, therefore, is that the matter will be covered by the Entry relating to the residuary power of the Parliament. It is strenuously urged that the subject-matter will not be covered by Entry 1 of List II, i.e. the State List, which is as follows:

'Public order (but not including the use of naval, military or air forces or any other forces of the Union in aid of the Civil power).'

18. It is also suggested that the subject-matter will not be covered by Entry 1 of List III of the Seventh Schedule, i.e. the Concurrent List, which is as follows:

'Criminal Law, including all matters included in the Indian Penal Code at the commencement of this Constitution but excluding offences against laws with respect to any of the matters specified in List I or List II and excluding the use of naval, military or air forces or any other armed forces of the Union in aid of the civil power.'

19. It was argued that public order will not be disturbed if some persons are converted in a Church and, therefore, the subject-matter of the enactment cannot

be said to be covered by the phrase 'public order' We may observe that the legislation is not meant with reference to any particular religion. But the injunctions provided by the Act apply to all religions equally and in addition conversion by force, fraud and allurement also has been made an offence punishable under Section 4 of the Act. We shall deal with this aspect a little later. At this stage we propose to dispose of the arguments relating to public order.

20. We may advert to the pronouncement of their Lordships of the Supreme Court in *Ramesh Thappar v. State of Madras*, AIR 1950 SC 124 wherein their Lordships by drawing a distinction between 'public order' and 'public safety', made the following observations with reference to Madras Maintenance of Public Order Act, 1949:

'The impugned Act was passed by the Provincial Legislature in exercise of the power conferred upon it by Section 100. Government of India Act, 1935, read with Entry No. 1 of List II of Schedule 7 to that Act which comprises among other matters, 'Public Order'. Now 'public order' is an expression of wide connotation and signifies that state of tranquillity prevailing among the members of a political society as a result of the internal regulations enforced by the Government which they have instituted. Although Section 9 (1-A) refers to 'securing the public safety' and 'the maintenance of public order', as distinct purposes, it must be taken that 'public safety' is used as a part of the wider concept of public order, for, if public safety were intended to signify any matter distinct from and outside the content of the expression 'public order', it would not have been competent for the Madras Legislature to enact the provision so far as it relates to public safety. This indeed was not disputed on behalf of the respondents. But it was urged that the expression 'public order' in the impugned Act, which is a statute relating to law and order, means the security of the Province, and, therefore, 'the security of the State' within the meaning of Article 19(2) as 'the State' has been defined in Article 12 as including among other things, the Government and the legislature of each of the erstwhile Provinces Much reliance was placed in support of this view on *Rex v. Wormwood Scrubbs Prison*, (1920) 2 KB 305 = (59 LJKB 759) where it was held that the phrase 'for securing the public safety and the defence of the realm' in Section 1, Defence of the Realm (Consolidation) Act, 1914, was not limited to

securing the country against a foreign foe but included also protection against internal disorder such as a rebellion. The decision is not of much assistance to the respondents as the context in which the words 'public safety' occurred in that Act showed unmistakably that the security of the State was the aim in view. Our attention has not been drawn to any definition of the expression 'public-safety', nor does it appear that the words have acquired any technical signification as words of art.'

Ultimately, their Lordships expressed the opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under Clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order. It follows that Section 9 (1-A) which authorises imposition of restrictions for the wider purpose of securing public safety or the maintenance of public order falls outside the scope of authorised restrictions under clause (2), and is, therefore, void and unconstitutional.

21. We may note the difference between 'maintenance of public order' and 'securing of public safety' on the one hand and 'In the interest of public order'. That distinction has further been elucidated by their Lordships of the Supreme Court in AIR 1957 SC 620, wherein with reference to Article 19(2) of the Constitution, which uses phrases 'in the interests of and not 'for the maintenance of', their Lordships made the following observations:--

'After this Court decided the cases of Romesh Thappar, AIR 1950 SC 124 and Brij Bhushan v. State of Delhi, AIR 1950 SC 129, clause (2) of Article 19 of the Constitution was amended. Clause (2), as amended, protects a law in so far as such law imposes reasonable restrictions on the exercise of the right conferred by Sub-clause (a) of Clause (1) of Article 19 'in the interest of security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement to an offence' The question for our consideration is whether the impugned section can be properly said to be a law imposing reasonable restrictions on the exercise of the fundamental right to

freedom of speech and expression in the interest of public order. It will be noticed that the language employed in the amended clause is 'in the interests of and not 'for the maintenance of. As one of us pointed out in *Debi Soren v. State of Bihar*, AIR 1954 Pat 254, the expression 'in the interest of makes the ambit of the protection very wide. A law may not have been designed to directly maintain public order and yet it may have been enacted in the interest of public order.

It is pointed out that Section 295A has been included in Chapter 15 Penal Code which deals with offence relating to religion and not in Chapter 8 which deals with offences against the public tranquillity and from this circumstance it is faintly sought to be urged, therefore, that offences relating to religion have no bearing on the maintenance of public order or tranquillity and consequently a law creating an offence relating to religion and imposing restrictions on the right to freedom of speech and expression cannot claim the protection of clause (2) of Article 19A reference to Articles 25 and 26 of the Constitution, which guarantee the right to freedom of religion, will show that the argument is utterly untenable. The right to freedom of religion assured by those Articles is expressly made subject to public order, morality and health. Therefore, it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order. Those two Articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order.'

22. This distinction has further been elucidated by their Lordships of the Supreme Court in *Kanu Biswas v. State of West Bengal*, AIR 1972 SC 1656, wherein their Lordships made the following observations:--

'The distinction between the concept of public order and that of Law and order has been adverted to by this Court in a number of cases. In the case of *Dr. Ram Manohar Lohia v. State of Bihar*, (1966) 1 SCR 709 = (AIR 1966 SC 740) Hidayatullah, J. (as he then was) said that any contravention of law always affected order, but before it could be said to affect public order, it must affect the community at large. He considered three concepts, law and order, public order

and the security of the State, and observed that to appreciate the scope and extent of each one of them, one should imagine three concentric circles. The largest of them represented law and order, next represented public order and the smallest, represented the security of State. An Act might affect law and order, but not public order, just as an act might affect public order but not the security of the State. In the subsequent case of *Arun Ghose v. State of West Bengal*, (1970) 3 SCR 288 = (AIR 1970 SC 1228) the Court dealt with the matter in the following words:

'Public Order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however, much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort, Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different.

The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, according to the dictum laid down in the above case, is a question of degree and the extent of the reach of the act upon that society. Public order is what the French call 'ordre publique' and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current life of the community so as to a disturbance of the public order or does it affect

merely an individual leaving the tranquillity of the society undisturbed?'

23. Their Lordships relied on the pronouncement of his Lordship, Hidayatullah, J. (as he then was) in AIR 1966 SC 740. In that case their Lordships made the following observations:

'These observations determine the meaning of the words 'public order' in contradistinction to expressions such as 'public safety', 'security of the State'. They were made in different contexts. The first three cases dealt with the meanings in the legislative Lists as to which, it is settled, we must give as large a meaning as possible. In the last case the meaning of 'public order' was given in relation to the necessity for amending the Constitution as a result of the pronouncements of this Court. The context in which the words were used was different, the occasion was different and the object in sight was different.

We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression 'public order' take in every kind of disorders or only some of them? The answer to this serves to distinguish 'public order' from 'law and order' because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight, there is disorder, but not public disorder. They can be dealt with under the powers to maintain law and order, but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order, but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before it can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily

sufficient for action under the Defence of India Act, but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30 (1) (b) to prevent subversion of public order, but not in aid of maintenance of law and order under ordinary circumstances.

It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression 'maintenance of law and order' the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules.'

24. This aspect again came up for consideration before their Lordships of the Supreme Court in *Amiya Kumar Karmakar v. State of West Bengal*, AIR 1972 SC 2250, wherein their Lordships made the following observations :

'As to the proper connotation and the scope of the concept of public order, as distinguished from the concepts of law and order and security of State, the Act furnishes no dictionary. But these three concepts have by now been matters of discussion in several judgments of this Court wherein a clear differentiation of one from the other has been elucidated. Such differentiation was illustrated in some cases by means of three imaginary concentric circles, the narrowest of them being that relating to the security of the State, the next being that pertaining to public order, and the third, the largest, being that pertaining to law and order. See (1966) 1 SCR 709 = (AIR 1966 SC 740). In other cases, the differentiation was sought to be made on the basis of the degree of disorder affecting, in one case the community at large, and in other, specific individuals, and only in a secondary sense public order, in other words, between crimes against specific individuals and crimes against the public. Such a distinction appears at first sight attractive by reason of the simplicity of its test, but on a closer examination of it, it fails to cover

cases which are marginal and sometimes overlapping. As pointed out in (1970) 3 SCR 288 = (AIR 1970 SC 1228) the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts, and circumstances, might cause different reactions. In one case it might affect specific individuals only, and, therefore, touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. On the basis of such a distinction, an attack on an educational institution, in the course of which its registers and other papers were destroyed by acts of arson, was held to fall within the area of public order, although it was aimed at an individual entity. See *Nagendra Nath Mondal v. State of West Bengal*, (1972) 1 SCC 498 = (AIR 1972 SC 665). The criterion thus being the potentiality of the act in question or the degree of its impact on members of the community in the locality in which the act in question is committed, examination of ground No. 2 from that angle would appear to be more appropriate.'

25. As such, it is clear that the phrase 'public order' ought not to be confused with 'law and order' or 'public safety'. These three concepts are altogether different and they convey a different connotation and as the phrase 'public order' conveys a wider connotation, as laid down by their Lordships of the Supreme Court in the different cases mentioned above, we are of the opinion that the subject-matter of the Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968, falls within the scope of Entry No. 1 of List II of the Seventh Schedule relating to the State List regarding public order. We would reject the contention of the learned counsel for the petitioner on that point. In this connection, the learned counsel laid stress on the view taken by the Division Bench of the Orissa High Court in *Mrs. Yulitha Hyde v. State of Orissa*. AIR 1973 Ori 116 with reference to the Orissa Freedom of Religion Act, 1968, particularly with reference to Article 25(1) of the [Constitution of India](#) as also the legislative competence of the Orissa Legislature to enact such a legislation. The case is on all fours with the present one and, therefore, it is necessary to discuss this case in details.

26. The petitioner in that case challenged the vires of the Orissa Freedom of Religion Act, 1968, mainly on two grounds: (1) that the provisions of Sections 2, 3 and 4 of the Act were beyond the legislative competence of the Orissa State Legislature, as the subject-matter was not covered by Entry No 1 of List II or Entry No. 1 of List III of the Seventh Schedule. But, in fact, it was covered by Entry No. 7 of List I of the Seventh Schedule; (2) the other ground was that prohibition against conversion by inducement offended Article 25(1) of the Constitution and as such, the provision was void. We may, therefore, examine the reasoning of their Lordships of Orissa High Court. The learned Judges constituting the Division Bench observed that although the phrases 'force' and 'fraud' were well-understood phrases as defined by the Indian Penal Code, the phrase 'inducement' was vague. The Division Bench negatived the petitioner's contention with reference to Article 25(1) of the Constitution and held that the restriction was covered by the limitation subject to which the right was guaranteed under Article 25(1) of the Constitution. Regarding the phrase 'inducement', their Lordships held that the definition is capable of covering some of the methods of proselytizing and though the concept of inducement can be a matter referable to 'morality', the wide definition is indeed open to reasonable objection on the ground that it surpasses the field of morality. As regards the legislative competence of the Orissa State Legislature to enact the impugned statute, the learned Judges were of the opinion that the subject-matter of the Act could not be said to be covered by Entry No. 1 of List II or Entry No. 1 of List III of the Seventh Schedule. But, in fact it would be covered by Entry No. 97 of List I of the Seventh Schedule and as such, the Parliament alone had the power to legislate on such subject-matter. The Division Bench also referred to the pronouncement of their Lordships of the Supreme Court in AIR 1950 SC 124; Superintendent, Central Prison v. Ram Manohar Lohia, AIR 1960 SC 633; AIR 1966 SC 740 and Pushkar Mukherjee v. State of West Bengal, AIR 1970 SC 852 all cases relating to 'public order'. As the learned Judges were of the opinion that these were cases with reference to the use of the word 'public order' occurring in Article 19(2) of the Constitution, the same connotation could not be imported into the legislative list, particularly Item No. 1 of List II of the Seventh Schedule. According to the learned Judges, the Orissa Act essentially dealt with the subject-matter of 'religion' and its provisions did not relate to 'public order'. Ultimately, the

learned Judges concluded as follows:

'(1) Article 25(1) guarantees propagation of religion and conversion is a part of the Christian religion.

(2) Prohibition of conversion by 'force' or by 'fraud' as defined by the Act would be covered by the limitation subject to which the right is guaranteed under Article 25(1).

(3) The definition of the term 'inducement' is vague and many proselytizing activities may be covered by the definition and the restriction in Article 25(1) cannot be said to cover the wide definition.

(4) The State Legislature has no power to enact the impugned legislation which in pith and substance is a law relating to religion. Entry No. 1 of either List II or List III does not authorise the impugned legislation.

(5) Entry 97 of List I applies.' For that reason the Division Bench allowed the writ petition and declared the Orissa Act invalid on the ground of legislative competence and particularly the provision relating to prohibition of conversion by inducement.

27. With due respect to the learned Judges of the Orissa High Court, we are unable to concur with the reasoning of that Division Bench for the reasons already mentioned by us above, particularly with reference to the several cases and the pronouncement of their Lordships of the Supreme Court made in those cases. We would, therefore, differ from the Division Bench of the Orissa High Court and would hold that the subject-matter of the M. P. Dharma Swatantrya Adhiniyam, 1968, is covered by Entry No. 1 of List II of the Seventh Schedule and as such, the Madhya Pradesh Legislature was competent to enact that piece of legislation. Further, we would hold that Sections 3, 4 and 5 of the M. P. Dharma Swatantrya Adhiniyam, 1968, do not violate Article 25(1) of the [Constitution of India](#). But, on the other hand, they establish the equality of religious freedom for all citizens by prohibiting conversion by objectionable activities such as conversion by force, fraud and by allurement. In our opinion, the provision relating to conversion by

allurement cannot be challenged either on the ground of legislative competence or on the ground of violation of Article 23(1) of the Constitution.

28. Lastly, a faint attempt was made by the learned counsel for the petitioner challenging the provisions of Section 5 of the M. P. Dharma Swatantrya Adhinivam. 1968, on the ground of testimonial compulsion as being violative of Article 20(3) of the [Constitution of India](#), we have already reproduced the provisions of Section 5 of the Act above as also Form A, in which intimation regarding conversion from one religious faith to another is required to be given to the District Magistrate. In this connection we might advert to the pronouncement of their Lordships of the Supreme Court in R. K. Dalmia v. The Delhi Administration AIR 1962 SC 1821, wherein their Lordships made the following observations:

'We also hold that it is not inadmissible in view of clause (3) of Article 20 of the Constitution. It was not made by Dalmia at a time when he was accused of an offence, as is necessary for the application of that clause, in view of the decision of this Court in State of Bombay v, Kathi Kalu Oghad, AIR 1961 SC 1808, where the contention that the statement need not be made by the accused person at a time when he fulfilled that character was not accepted. Dalmia was not in duress at the time he made that statement and therefore was not compelled to make it. It was said in the aforesaid case at p. 1816 :

' 'Compulsion', in the context, must mean what in law is called 'duress',.....The compulsion in this sense is a physical objective act and not the state of mind of the person making the statement, except where the mind has been so conditioned by some extraneous process as to render the making of the statement involuntary and therefore, extorted.' The various circumstances preceding the making of the statement, Exhibit, P-10, by Dalmia have all been considered and they fall far short of proving that Dalmia's mind had been so conditioned by some extraneous process as to render the making of this statement involuntary and therefore extorted.'

29. We may further observe that what Section 5 of the M. P. Dharma Swatantrya Adhiniyam, 1968, provides for is merely giving of intimation to the District Magistrate about a conversion. The person intimating is not required to make a

confession of any offence whether conversion is on account of fraud, force or allurement. Had Form A prescribed those particulars, there might have been some substance in that contention of the learned counsel for the petitioner. What Section 5 of the Act and Form A provide for is mere intimation of the fact of conversion and nothing more. As such, we are clearly of the opinion that the said provisions cannot be said to be violative of Article 20(3) of the [Constitution of India](#). That contention has to be rejected outright in view of the pronouncement of their Lordships of the Supreme Court, particularly with reference to Sections 24 to 27 of the Indian Evidence Act.

30. As a result of the discussion aforesaid, we feel that there is no case made out for issuance of any writ or order in favour of the petitioner. It is true that this case involved some questions of Constitutional law, which needed their adjudication by the High Court and as such, the trial Magistrate and the Additional Sessions Judge were bound to refer this case to the High Court as required by Section 432 of the Code of Criminal Procedure. In the absence of such a reference it is open to this Court to entertain revision under Section 439, Criminal Procedure Code. It was for that purpose that we had admitted Criminal Revision No. 159 of 1971 and also the present writ petition filed under Articles 226 and 227 of the [Constitution of India](#). But on merits we have negatived all the contentions raised on behalf of the petitioner and in that view the writ petition and the criminal revision are both liable to be dismissed. They both are accordingly dismissed. However, under the circumstances, we make no direction as to costs. The outstanding amount of the security deposit shall be refunded to the petitioner.

Both Petition and Revision dismissed.