

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT

MR. JUSTICE FAQIR MUHAMMAD KHOKHAR
MR. JUSTICE M. JAVED BUTTAR
MR. JUSTICE SABIHUDDIN AHMED

CONSTITUTION PETITION NO. 70-1 OF 2007

Pakistan Hindu Council, Karachi ... Petitioner
Versus

Pakistan thr. Ministry of Law, Justice &
Human Rights Division and another ... Respondents

For the petitioner : Mr. Muhammad Akram Sheikh,
Sr. ASC

For respondents : Mr. Amer Raza Naqvi, DAG

Date of hearing : 29-01-2009

ORDER

By means of this petition the petitioner (Pakistan Hindu Council) seeks a direction to the Government of Pakistan to promulgate a law thereby providing a punishment for conversion from one religion to another by use of force, allurement or by fraudulent means.

It seems appropriate that this case may be heard at principal seat of this Court at Islamabad. The Office is directed to place this matter before the Hon'ble Chief Justice of Pakistan for necessary orders.

Karachi,
29-01-2009.

Signed

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

MR. JUSTICE ZIA PERWEZ

MR. JUSTICE SARMAD JALAL OSMANY

CONSTITUTIONAL PETITION NO. 70/2007

Pakistan Hindu Council.

... Petitioner

VERSUS

Pakistan through Ministry of Law, Justice.

... Respondent

For the Petitioner: Nemo

For the Respondents: Mr. Umar Hayat Sindhu, DAG

Date of Hearing: 06.01.2009

ORDER

For the reasons stated in the application for adjournment, this case is adjourned to a date in office.

Karachi

06.01.2009

M. Safdar Mahmood/2

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE SABIHUDDIN AHMED

MR. JUSTICE SARMAD JALAL OSMANY

CONSTITUTIONAL PETITION NO.70-K OF 2007

Pakistan Hindu Council

Petitioner

Versus

Pakistan through Ministry of Law, Justice

Respondent

For the petitioner: Mr. Muhammad Akram Sheikh, Sr. ASC

Respondent: Not represented

Date of hearing: 27.11.2008.

ORDER

Issue notices to the Secretary, Ministry of Law, Justice & Human Rights Division and Attorney General for Pakistan for a date in January, 2009.

Karachi, the
27th November, 2008
Atif/

Atif
27/11/08



IN THE SUPREME COURT OF PAKISTAN
(Constitutional Jurisdiction)

Constitutional Petition No. 70 /2006 7

Pakistan Hindu Council,
Registered under the Societies Registration Act 1860,
Through Mr. Visha Ram, General Secretary,
72 Swami Narayan Temple Estate,
M. A. Jinnah Road,
Karachi.

...Petitioner

Versus

Pakistan
Through Ministry of Law, Justice
& Human Rights Division
Pak Secretariat,
Islamabad.

Respondent

PETITION UNDER ARTICLE 184(3) OF THE CONSTITUTION OF
ISLAMIC REPUBLIC OF PAKISTAN, 1973

Respectfully Sheweth;

1. That the petitioner is an association formed, inter alia, with the object to endeavour for the promotion and propagation of Hindu Culture and to unite all the Hindus at one platform and solve the problems faced by Hindu community at grass route level and to take appropriate steps to consolidate and strengthen Hindu Community and inculcate a sense of oneness among Hindu society. The association has been

duly registered under the Societies Registration Act 1860. This petition is being filed through Mr. Visha Ram, General Secretary of the petitioner association who is duly authorized in this behalf and is well conversant with facts and circumstances of the case and can depose thereto. For perusal of this Hon'ble Court, copies of the certificate of registration of the petitioner association and Memorandum and Articles of Association are enclosed herewith as Annexes 'A' & 'B' respectively.

2. That the Religious Demography of the country with a total population of 150 millions approximately is such that, according to the last census taken in the year 1998, an estimated 96% of the population are Muslim; 1.7% are Christian; 2.02% are Hindu; and 0.35% are others (including Ahmedis). The majority of Muslims are Sunni. An estimates 10% to 15% are Shi'a, including some 5,50,000 to 600,000 Ismailis. Most Ismailis in the country are followers of Aga Khan, however, some 50,000/- are Ismailis known as Borahs, are nor. Religious minorities, however, believe that they are under represented in the government census counts.
3. That notwithstanding the fact that Constitution of the country, in so many words, guarantees every citizen freedom to profess, practice and propagate his or her religion, citizens who belong to minority religious faith generally and

the petitioner in particular believe that in practice the constitutional guarantee is nothing more than a hoax. In gross violation of the right to profess religion, the citizens belonging to minorities faiths are socially and economically coerced to convert to Islam. The following are a few, amongst most commonly employed, methods for forced conversions:

(a) Through false accusation of blasphemous act e.g. alleging some non Muslim of committing blasphemous crime and then showing him the way of compromise on the condition of conversion to Islam.

(b) Through kidnapping of young Hindu girls and then later on forcing them to marry any Muslim guy which results in the conversion of religion.

(c) Through keeping them in Madrassahs e.g. kidnapping them and then later on showing them "orphan" or "Lawaris" in the court so that they can be kept in Madrassahs which ultimately results in forcible conversion.

4. That there are only a few incidents of forced conversions that reach media. Every now and than, some fanatic elements of Muslim Majority are coercing and exploiting economically, politically and socially individuals belonging

to Hindus and Christian faiths etc to convert to Islam. The intensity and the scale of conversion is certainly much more than the one reported by the print media. Atleast two such cases have reached the level of this Hon'ble Court also. The first case involves false and malicious involvement of Kirshna Wanti in the case registered vide FIR No. 302 dated 02.09.2005 registered at Police Station IDS, District Swabi wherein she has been accused of an offence under section 295-B of Pakistan Penal Code read with section 7 ATA; and the second case involves kidnapping of three young Hindu girls for conversion in the case registered vide FIR No. 144/2005 dated 22.10.2005, at Police Station Frere, Karachi. In the above two cases, Criminal Petition No. ³⁹² 1/2005 and Constitutional Petition No. 31/2005 respectively are pending before this Hon'ble Court. For perusal of this Hon'ble Court, copies of the said petitions are enclosed herewith as Annexures 'C' & 'D' respectively.

5. That the question of protection against forced conversion is a question of public importance involving fundamental right embodied in Article 20 of the Constitution which equally affects image and reputation of Pakistan in relation to the protection and enforcement of fundamental rights and constitutional guarantees of the citizens generally and of minorities in particular. Furthermore, it is submitted with great respect that "a Hindu is only a born Hindu". The

community does not accept converts; even those who wish to proclaim themselves as Hindus are not accepted within the folds of this "Dharm", therefore a community which wishes to contend itself to its present strength and except for procreator, does not wish to expand, has a right to preserve its entity and identity being Hindu as a "birth right". This right is to worship as and when and where and in the way he likes.

6. That even the Supreme Court Bar Association of Pakistan, through Constitutional Petition No. 31 of 2005, has brought to the notice of this Hon'ble Court the issue of forced conversion.
7. That conversions of citizens by use of force, allurements or by fraudulent means or to aid or abet any such conversion is manifestly illegal, in violation of citizens' fundamental right and constitutional guarantee as embodied in Article 20 of the Constitution.
8. That through this Constitutional Petition, for proper protection and effective enforcement of the citizens' fundamental right of freedom to profess and practice religion of birth, the petitioner craves indulgence of this august court to direct the Government of Pakistan to make law prescribing it to be a criminal offence punishable with

imprisonment for a person who converts or attempts to convert any person from one religion to another by use of force, allurements or by fraudulent means or aids or abets any such conversion, inter alia, on the following

G R O U N D S

(a) That the fundamental rights are primordial in nature, which are imperative and essential for the very existence, development, progress and prosperity of the citizens of the State and are necessary for the growth and expression of their personalities. These are basic in character because they enable a citizen to chalk out his own life in the manner he likes the best; these are rights which a citizen possesses as a creature of the nature, and are natural in form. However, for the precise identification, extent, guarantee and enjoyment of such rights in an ordered democratic society, such as ours, the whole nation entered into a contract and by a unanimous resolution endorsed the rights on account of above the political power of the state stood security for the sanctity and inviolability of these rights. The fundamental rights embodied in chapter I of part II of the Constitution, as observed by this august Court, occupy a place of pride in the scheme of our Constitution and indeed these are the conscience of the Constitution. While Article 8 of the

Constitution places upon the state an obligation not to make laws in violation of fundamental rights of the citizens and if any such law or usage or practice having the force of law does exist, the same is void to the extent of inconsistency with any of the fundamental rights, however, the responsibility to enforce these fundamental rights has been placed upon the superior judiciary and, for this purpose, this august Court in terms of Article 184(3) and the High Courts of the country under Article 199(1)(c) of the Constitution can issue appropriate direction to any government including a direction to promulgate a law.

(b) That there is a consensus amongst the comity of nations that freedom of conscience and the freedom to profess and practice religion is one of the fundamental rights of all human beings. This consensus, which is equally reflected in the UN Declaration of Human Rights, has also been adopted and enacted in the Constitution of Islamic Republic of Pakistan, 1973 in the shape of Article 20 of the Constitution. The right embodied in Article 20 of the Constitution guarantees every citizen to profess and practice the religion of his birth, choice and in exercising such right, he has a right of conversion, however, any attempt to coerce an individual by using force, allurement or fraud to convert to another religion is a blatant

violation of the constitutional guarantee. The frequency of such violations is alarming and calls for effective measures against those fanatic elements in the society who are responsible for violating the constitutional right/guarantee. Keeping in view the importance of the fundamental right, intensity and scale of violations of such a constitutional right/guarantee, it is imperative and necessary for effective enforcement of the fundamental right that an offence punishable by way of imprisonment be prescribed for the person who converts or attempts to convert any person from one religion to another by use of force, allurements or by fraudulent means or aid or abet any such conversion. In as much as this august court, in the scheme of the Constitution, is custodian of the fundamental rights of the citizens, therefore, for the discharge of constitutional mandate and exercise of authority entrusted to it, an appropriate direction may graciously be issued to the Government of Pakistan for legislation against forced conversions.

(c) That deterrence of punishment is one of the most effective methods of controlling violations of constitutional guarantees. That is why, for proper protection and effective enforcement of many of the fundamental rights embodied in chapter I of Part II, the state has prescribed violations of such fundamental

rights in form or the other to constitute an offence punishable with imprisonment. There are a number of examples where, for effective enforcement of one or the other fundamental birthright, laws with penal consequences have been promulgated against those responsible for depriving a citizen of his or her fundamental birthright. A number of offences contained in Chapter XVI of the Pakistan Penal Code have been prescribed for the protection and enforcement of fundamental rights to life and dignity of the citizens. Likewise, a number of offences contained in Chapters XVII and XVIII of the Pakistan Penal Code have been prescribed for the protection and enforcement of fundamental right to property of the citizens. The offences of criminal trespass etc as contained in Sections 441 to 462 have been prescribed to protect and enforce inter alia right to privacy of the citizens. Constitutional right of the citizens to enjoy protection of reputation is equally protected and enforced through Chapter XXI of the Penal Code of Pakistan. For proper protection and effective enforcement of the fundamental right to profess and practice religion, it is necessary that a certain minimum level of deterrence must be maintained by the state against those who act for violating the fundamental right and constitutional guarantee by forcing others to convert.

(d) That in the Sou Moto Case No. 11 of 2005 concerning loss of lives of innocent citizens on account of dangerous kite flying, this august Court, for the enforcement of fundamental right to life, time and again emphasized the need for government of the Punjab to promulgate law against dangerous kite flying prescribing it to be an offence punishable with imprisonment.

(e) That there are a number of states which, for the protection and effective enforcement of the fundamental right of its citizens to profess and practice religion of their birth and choice, have prescribed it to be an offence to force other citizens to convert in violation of their fundamental or human right.

(f) That above all, even the state religion, Islam, itself frowns upon forced conversions and deems them un-Islamic and against the Will of God. Indeed, according to Islamic point of view, there is no compulsion in the choice of religion [“La Iqra Fid-din” Sura Baqra 2-256]. Moreover, Islam gives protection to minorities, their lives, families and properties.

Islam is a religion of tolerance and peace. While free conversion to Islam is to be welcomed, forced conversions are indeed a blight upon the religion of Islam

and on the name of Pakistan. Every news item reporting instance of forced conversion to Islam supports propaganda and falsehood propagated abroad that Islam was a religion spread through the sword and brings bad name to the religion, nation and the country.

WHEREFORE, it is respectfully prayed that for the protection and enforcement of the fundamental right of the citizens this august Court may graciously be pleased to direct the Government of Pakistan to promulgated a law prescribing it to be an offence punishable with imprisonment for a person who converts or attempts to convert any person from one religion to another by use of force, allurement or by fraudulent means or aids or abets any such conversion. Any other direction ancillary or incidental thereto may also graciously be given.

SETTLED BY

(Mohammad Akram Sheikh)
Senior Advocate
1-A, St. 26, F-6/2, Islamabad
Tel. No. 2274386-87 *well appear me*

DRAWN & FILED BY

(M. A. Zaidi)
Advocate-on-Record

CERTIFICATE

Certified that no other Constitutional petition has been filed in the Supreme Court on the subject.

(M. A. Zaidi)
ADVOCATE ON RECORD

Dated:- 29-04-2006