Proselytism

Tad Stahnke

Introduction

Proselytism is one of the most controversial aspects of relations among religious communities, and between religion and the state. The very meaning of the word is hotly contested, as is its propriety – considered by some a compulsive religious duty, by others a harmful abuse of freedom. How the law should apply to this field of human relations is unsettled, with national examples ranging from virtually complete freedom to complete criminal prohibition, and everything in between. International law has provided scant guidance. Untangling these issues is of critical importance, as the stakes are high. Recent reports by the Pew Research Center found that proselytism is restricted in over 30 percent of the world’s 197 countries, and incidents of social hostility over proselytism, including acts of violence, occur annually in around 20 percent (Grim et al. 2012: 68, 85; Grim et al. 2014: 72, 89). Conflicts over proselytism impinge on peace and security, inter- and intra-religious relations, church–state relations, and protections for individual human rights. Thus, proselytism is not solely a matter for ecumenical consideration or the subject of interreligious dialogue. How the state and the law address proselytism impacts the extent of civil freedoms as well as relations between religion and the state, resulting in some cases in relative equilibrium or in others constant tension and even violence.

What is proselytism?

The definition itself is contested, fluctuating between inherently good and outright deviant.

For example, within the broad umbrella of Christianity, some denominations assert that proselytism (or “evangelistic outreach”) describes God’s calling to share the gospel in word and deed, as well as Jesus’s exhortation to “Go . . . and make disciples of all nations (Matthew 28: 19).”¹ Others divide “Christian witness” on the one hand, from proselytism on the other.

The former is “proclam[ing] God’s acts in history and seek[ing] to reveal Christ as the true light which shines for every man.” The latter is “improper attitudes and behavior” in the practice of that witness: “Proselytism embraces whatever violates the right of the human person, Christian or non-Christian, to be free from external coercion in religious matters.”

To be able to tease out the issues underlying conflicts that result from proselytism, it is necessary to start with a more neutral definition: “expressive conduct undertaken with the purpose of trying to change the religious beliefs, affiliation or identity of another.” The person initiating the conduct is called the “source;” the person on the receiving end is the “target.” The conduct is not per se improper. Whether it is (or should be) considered improper is based on a variety of factors discussed below.

A religious view on proselytism is closely connected to that religion’s view on conversion. Some religions limit conversion into the community. For example, since the rise of rabbinic Judaism, conversions are generally accepted only in certain limited circumstances set out in religious law. Thus, active proselytism of non-Jews is not promoted (Berkley Center for Religion, Peace and World Affairs 2010).

Other religions hold a different view: “[W]hile many religions or beliefs welcome – and in some cases even encourage – the conversion of individuals belonging to other faiths, they are reluctant to admit the conversion of individuals of their own faith; apostasy is viewed with disfavour by them and often is prohibited by their religious law or discouraged by social ostracism” (Krishnaswami 1960). Under this view, it is permissible to be the source but not the target of proselytism. When a religion holding this view represents the majority of the population, or holds a legally preeminent position in a country, proselytism targeting members of the dominant religion will often be discouraged through social and legal means. Examples of this include several self-proclaimed Islamic states such as Iran, Afghanistan, Sudan and Saudi Arabia, as well as Greece and Burma. On the other hand, some groups that oppose proselytism in any form likewise oppose any appeal to the civil authorities to silence other groups that engage in it.

Religious views on proselytism are also shaped by views on religious pluralism. Migration in the twentieth century has brought religious communities across the globe into greater contact with each other within nation states (see Witte 2008). Twenty-first-century communications technology has brought everyone that much closer, with an entire world of divergent religious views and enticements potentially at one’s fingertips. A significant feature of some religions is the belief that their path to the truth is an exclusive one. Inevitably, religious adherents are confronted with the reality that others hold different truths, or different beliefs about the nature of religion, or even no religious beliefs at all. At the extreme, this confrontation has contributed to war, forced conversion, and fierce religious persecution throughout history. Most religious groups currently repudiate such responses, and instead promote activities to convince targets to change their religious beliefs by choice (Berkley Center for Religion, Peace and World Affairs 2010: 3–6). Despite this, proselytism and conversion remain sources of tension among religious communities.


Is proselytism protected under international law?

Proselytism as defined here falls within the broad scope of internationally recognized human rights, including the freedoms to manifest religion or belief through teaching, to seek and impart information of all kinds, and – for members of minorities – to profess one's religion. According to Article 18 of the International Covenant on Civil and Political Rights (ICCPR), the right to freedom of religion includes the:

freedom to have or to adopt a religion or belief of [one's] choice, and freedom, either individually or in community with others and in public or in private, to manifest [one's] religion or belief in worship, observance, practice and teaching. The scope of protection includes new, unfamiliar or unusual religions and beliefs, as well as beliefs of a similar fundamental character to religion, such as agnosticism and atheism.

Article 27 of the ICCPR provides that persons belonging to ethnic, religious or linguistic minorities shall not be denied the right “to profess and practice their own religion.” International human rights documents also recognize the right to freedom of expression, which includes, e.g. in Article 19 of the ICCPR, freedom “to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, ... or through any other media ...”. Interpreting these norms, the Human Rights Committee has clearly stated that spreading knowledge about one’s faith and propagating beliefs “are part of an individual’s manifestation of religion and free expression.”

United Nations-appointed experts have also affirmed that international human rights protections cover proselytism, and that blanket prohibitions are inconsistent with international standards.

The freedoms mentioned above are subject to limitation by the state, albeit in exceptional circumstances where certain criteria are met. Article 18.2 of the ICCPR provides that “No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.” Also, the freedom to manifest religion or belief may, in certain circumstances, be subject to limitation “necessary to protect public, safety, order, health, or morals or the fundamental rights and freedoms of others.”

The right to non-discrimination ensures that any restrictions to these freedoms are applied in a non-discriminatory manner. The Human Rights Committee has said that it “views with concern any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community.”

Despite these general principles, the extent to which permissible limitations can be applied to different acts of proselytism is neither articulated clearly in human rights instruments nor has it been extensively elaborated in jurisprudence.

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6 See A/51/542/Add.1/para. 134; A/60/399, para. 62.

7 A/60/399, para. 62.

8 ICCPR, Article 18.3.

9 Human Rights Committee, General Comment No. 22 (48) (art. 18), supra note 4, p. 35.
Rights and interests

Disentangling the rights and interests of the main actors in the proselytism drama – the source, the target, religious communities and the state – helps to identify the appropriate factors used to separate legally proper from improper conduct. Discussed above are some of the interests of religious communities, i.e. seeking converts on the one hand and maintaining adherents on the other. But what about the other actors? The source, the target and the state all have rights and interests that can align with or oppose one another depending upon the particular circumstances.

Rights of the source

The freedom to manifest religion or belief

Although there is no definitive text in international human rights documents – a provision recognizing the freedom to persuade another on matters of religion was removed from an early draft of the ICCPR – it is logical that the freedom to manifest religion would include the attempt to persuade another to adopt new religious beliefs or affiliation.

Arcot Krishnaswami, the first UN expert on freedom of religion or belief, said: “While some faiths do not attempt to win new converts, many of them make it mandatory for their followers to spread their message to all, and to attempt to convert others. For the latter, dissemination is an important aspect of the right to manifest their religion or belief” (Krishnaswami 1960: 34). International recognition of the freedom to change religion further supports this view. Moreover, the European Court of Human Rights has said that “Bearing witness in words and deeds is bound up with the existence of religious convictions.” The Court held that:

According to Article 9, freedom to manifest [one’s] religion . . . includes in principle the right to try to convince one’s neighbour, for example through teaching, failing which, moreover, freedom to change [one’s] religion or belief, enshrined in Article 9, would be likely to remain a dead letter.

Not all states are in agreement with this position, reflecting the sensitivity of the issues proselytism raises and the difficulty of delineating widely accepted legal standards. Several governments object to the right to change religion (see below). The Malaysian government has argued that laws prohibiting proselytism targeting Muslims does not infringe the freedom of non-Muslims. In light of Islam’s special position as the religion of the Malaysian Federation, restricting the propagation of non-Islamic religions among Muslims “could not in any way diminish the enjoyment by non-Muslims of freedom of thought, conscience and religion.” Although this might be expected in Malaysia, where Islam has a constitutionally privileged position, a

10 The UN Commission on Human Rights deleted from the final text a provision, which had been approved by the drafting committee, that recognized the freedom to “endevor to persuade other persons of full age and sound mind of the truth of his beliefs” (Evans 1997: 194 quoting Report of the Working Group to the CHR, E/CN.4/56, art. 15).
12 Id.
similar conclusion has been reached in secular India. The Indian Supreme Court has held that "the right freely to profess, practice and propagate religion" as enshrined in the Indian Constitution, did not encompass the right to convert (or attempt to convert) another person to one's own religion.\textsuperscript{14}

The right to freedom of expression

As proselytism is here defined as expressive activity, it is encompassed by the right to freedom of expression protected under international human rights instruments.\textsuperscript{15} Although the distinction between proselytism as the manifestation of religion or belief and proselytism as expression may seem formal, there can be practical ramifications to the designation as one or the other. First, that branch of proselytism where the source is motivated by a desire to convince the target to change her religious beliefs, but not adopt new ones, does not fall easily within the notion of the manifestation of religion or belief because the source does not necessarily have religious beliefs of her own. Second, categorizing proselytism as expression relieves the examiner from the task of determining whether or not the beliefs asserted by the source are "religious," or whether proselytism falls within the scope of religious freedom.

The rights of the target

The rights of the target can run in contradictory directions. Limiting proselytism, on the one hand, may restrict the target's freedoms to change religion or to receive information. On the other, it may be a justifiable limit on the source's freedom to manifest religion or the freedom of expression, for the purpose of protecting the target's freedom to have or maintain a religion of belief free from coercion. The freedom from injury to religious feelings, as well as the right of persons belonging to religious minorities to maintain their religious identity, may also be invoked to justify restrictions on proselytism. In light of limited space, two freedoms of the target will be discussed below: the freedom to change religion and the freedom to have or maintain a religion or belief.

The freedom to change religion

There is some controversy in the international community over the question of whether or not the right to freedom of religion encompasses the freedom to change religion. Although explicitly guaranteed in the Universal Declaration of Human Rights, the ICCPR adopted a related, but different, formulation: "No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice." The Human Rights Committee's comment on the scope of this provision states that "the freedom to 'have or to adopt' a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief."\textsuperscript{16}

In certain countries, the treatment of apostasy overshadows and determines that of proselytism. For example, certain Islamic states have laws prohibiting apostasy from Islam based on purported

\textsuperscript{14} Stainislaus v. Madhya Pradesh & Ors., 1977, 2 S.C.R. 611, 615–16.
\textsuperscript{15} A/60/399, para. 61.
\textsuperscript{16} Human Rights Committee, \textit{General Comment No. 22 (48) (art. 18)}, supra note 4, para. 5.
requirements of Islamic law. If apostasy, i.e., the abandonment or renunciation of one’s religion is an offense, it follows that proselytism, as an attempt by another to change one’s beliefs, will not be tolerated.

Nonetheless, laws penalizing apostasy are inconsistent with international human rights standards. The Human Rights Committee has clearly stated that: “Article 18.2 [of the ICCPR] bars coercion that would impair the right to have or adopt a religion or belief, including the use of threat of physical force or penal sanctions to compel believers . . . to adhere to their religious beliefs . . .”.

It does not necessarily follow that the freedom to change religion, the freedom to abandon religious belief, or the “right to replace one’s current religion or belief with another or to adopt atheistic views,” supports the freedom of others to proselytize. In other words, does restricting the ability to proselytize impair the rights of those who have not expressed a desire to receive such information? There is no international consensus on the answer to this question. For example, the Malaysian government has argued that a prohibition on proselytism of Muslims by non-Muslims does not interfere with the ability of Muslims to change their religion:

If any Muslim desires to seek knowledge about another religion or even to possess another religion of his own free will and on his own initiative, [laws prohibiting proselytism] are not capable of deterring him. Those laws are merely aimed at protecting Muslims from being subjected to attempts to convert them to another religion.

However, as noted above, the European Court has adopted a different view, stating that the freedom to change religion would likely be “a dead letter” if the freedom to manifest religion did not include “the right to try to convince one’s neighbour.” Asma Jahangir, when she was UN expert of freedom of religion or belief, adopted a related view, leading to a similar conclusion: “The freedom of religion or belief of adults basically is a question of individual choice, so any generalized State limitation (e.g. by law) conceived to protect ‘others’ freedom of religion or belief by limiting the right of individuals to conduct missionary activities should be avoided.”

The distinction between these two views lies in the conditions necessary to ensure a person’s freedom to change her religion. Under Malaysia’s view, the absence of any hindrance or penalty on the part of the state for changing religion is considered sufficient. In the other, the state may not, in the name of protecting the target, overly restrict the source in such a way that in effect substantially narrows or even eliminates the personal freedom of choice by the target.

The freedom to have or maintain a religion

While the freedom of the target to change religion or to receive information may support the freedom of the source to proselytize, other rights and freedoms may support a restriction on proselytism.

In Kokkinakis, Greece successfully argued to the European Court that a restriction on proselytism can, in theory, be sustained as an effort to protect the right of the target to the

17 Id.
18 Implementation of the Declaration . . ., supra note 13, para. 58.
19 Kokkinakis v. Greece, supra note 11, p. 17.
20 A/60/399, para. 62.
peaceful enjoyment of their freedom of religion. In the case, Greece asserted that “[t]he sole aim of [the prohibition on proselytism] was to protect the beliefs of others from activities which undermined their dignity and personality,” i.e. “attempts to influence them by immoral and deceitful means.”

The Court approved of the attempt in the Greek legislation to develop criteria that would separate what it termed “Christian witness” from “improper proselytism.” The Court’s decision described the distinction between the two in this way:

[Christian witness] corresponds to true evangelism, . . . an essential mission and a responsibility of every Christian and every Church. [Improper proselytism] represents a corruption or deformation of it. It may . . . take the form of activities offering material or social advantages with a view to gaining new members for a Church or exerting improper pressure on people in distress or in need; it may even entail the use of violence or brainwashing; more generally, it is not compatible with respect for the freedom of thought, conscience and religion of others.

For a restriction on proselytism to be valid, therefore, the Court ruled that particular circumstances must be present that render the proselytism “improper.” Noting that it had not been shown in the Greek courts that the applicant – a Jehovah’s Witness named Minos Kokkinakis – had done anything improper, the Court determined that his conviction was a violation of the European Convention. This and subsequent European Court cases have made clear that “improper proselytism” generally corresponds to the notion of coercion that would impair the freedom to have, or more clearly, to maintain, a religion. The important question that follows is at what point can expression by one person work a coercion on another to relinquish their religious beliefs? This question is taken up further below.

The interests of the state

As with the protection of the rights and freedoms of the target, a consideration of the interests of the state may support either the freedom to proselytize or its restriction. States may be motivated to grant and protect that freedom if they perceive that benefits from religious freedom, generally, are maximized by free choice by individuals in matters of religion. A state may also hold the view that the religious pluralism resulting from vigorous competition in matters of religious belief is an important addition to the overall cultural diversity of its people. This section, however, will focus on two state interests commonly asserted to restrict proselytism: protection of a particular dominant religious tradition and the preservation of public order.

Protection of a dominant religious tradition

Restrictions on proselytism can exist within an integrated system of offenses, regulations, policies and practices designed to inhibit conversions from or otherwise protect the position of the dominant religion. Examples are found among several Islamic states, which prohibit apostasy, blasphemy and the injury to religious feelings, as well as proselytism. Closely related to these

21 Kokkinakis v. Greece, supra note 11, p. 17.
22 Id., pp. 18, 20.
23 Id., p. 21.
restrictions are civil and social disabilities on members of the non-dominant religion. A hallmark of these situations is that, for the most part, the prohibitions and penalties run in a single direction. One scholar of Islamic society has characterized the pattern as follows: “[N]on-Muslim missionary efforts to convert Muslims are generally curtailed when not absolutely prohibited . . . Missionary work to convert non-Muslims to Islam is, on the other hand, officially encouraged and even publicly funded in some countries” (Mayer 1987: 149). Penalties for apostasy only apply to Muslims. Restrictions on blasphemy are framed or enforced to suppress only expression critical of Islam.

An example of restrictions on proselytism imposed for the purpose of protecting the dominant religion is Malaysia, where a constitutional principle prohibiting proselytism targeting Muslims has been defended by the government as necessary to protect Islam and Islamic institutions. The Malaysian Constitution authorizes the enactment of laws that “may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.”24 In response to the allegation that this threatens religious freedom, the government has asserted that the unity and stability of Malaysia as a multiethnic, multireligious state requires the preservation and strengthening of the Islamic character of the state and Muslim institutions.25 In furtherance of that goal, Muslims are protected “from being subjected to attempts to convert them to another religion.”26

The difficulty of implementing this principle in a way that is consistent with protecting freedom of religion, at least with respect to certain forms of proselytism, is illustrated by the case of Minister for Home Affairs v. Othman. In that case, a Christian was detained by the Minister of Home Affairs for attending a series of meetings that had caused the conversion of six Malays to Christianity, under a statute preventing persons from “acting in any manner prejudicial to the security of Malaysia.”27 The Minister supported the detention on the grounds that the petitioner “was involved in a plan or programme for the dissemination of Christianity amongst Malays.”28 The lower court ruled that the detention was unlawful, and the Supreme Court agreed:

We do not think that mere participation in meetings and seminars can make a person a threat to the security of the country. As regards the alleged conversion of six Malays, even if it was true, it cannot in our opinion by itself be regarded as a threat to the security of the country . . . The guarantee provided by art. 11 of the Constitution, ie the freedom to profess and practice one’s religion, must be given effect unless the actions of a person go well beyond what can normally be regarded as professing and practising one’s religion.29

26 Implementation of the Declaration . . . , supra note 13, para. 58.
27 [1989] 1 M.L.J. 418 (Sup. Ct.).
28 Id., 420.
29 The lower court decision is reported at [1989] 1 M.L.J. 368 (High Ct.).
30 Othman, 1 M.L.J., 420.
Protection of public order

Despite a constitutional recognition of “the right freely to profess, practice and propagate religion,” laws in several of India’s states regulating religious conversion and proselytism have been supported by the asserted goal of protecting public order. Nevertheless, these laws continue to be a divisive issue in the country, and the nationalist BJP government elected in 2014 has vowed to continue to support the introduction and implementation of state laws as well as a national law.

The Indian Supreme Court has upheld the laws of two Indian states, Orissa and Madhya Pradesh, which criminalize the conversion of persons to another religion under certain circumstances. For the purposes of this discussion, the two acts are essentially the same. The relevant section of the Orissa Freedom of Religion Act 2 of 1968 provides: “No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.”

The terms used in this provision are defined as follows:

(a) “conversion” means renouncing one religion and adopting another;
(b) “force” shall include a show of force or a threat of injury of any kind including threat of divine displeasure or social excommunication;
(c) “fraud” shall include misrepresentation or any other fraudulent contrivance;
(d) “inducement” shall include the offer of any gift or gratification either in cash or in kind, and shall also include the grant of any benefit, either pecuniary or otherwise.

The statutes in question were challenged in the High Courts of the respective states as being invalid restrictions on religious freedom. Both Courts upheld the prohibition against conversions by means of force or fraud. In addition, the High Court of Madhya Pradesh upheld the prohibition of conversion by means of “allurement” (defined in practically identical terms as “inducement” in the Orissa Act). The Orissa High Court, however, held that the definition of “inducement” was too broad to be justified under the permissible constitutional limitations.

On other grounds than those relied on by the state high courts, the Indian Supreme Court, hearing both cases together, affirmed the decision of the Madhya Pradesh court and reversed that portion of the Orissa court’s decision that invalidated the “inducement” section of the statute. The Supreme Court determined that “there is no fundamental right to convert another person to one’s own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the ‘freedom of conscience’ guaranteed to all the citizens of the country alike.”

On a separate legal issue, the Supreme Court held that the restrictions on conversion and proselytism were valid efforts to maintain public order:

[I]f an attempt is made to raise communal passions, e.g. on the ground that someone has been “forcibly” converted to another religion, it would, in all probability, give rise to an

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32 Id.
34 See Stainislaus v. Madhya Pradesh & Ors., supra note 14, 611.
35 Id., 616.
The apprehension of a breach of the public order, affecting the community at large. The Acts are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community.\(^{36}\)

As recently as 2012, a similar law from the state of Himachal Pradesh was upheld on substantially the same grounds by its High Court:

\begin{quote}
Every human being also has a right to question and change his own belief. However, this change must be an act of his own conscience—an act which has come from within himself, an act uninfluenced by force, "fraud" or "inducement." If a person changes his religion or belief of his own volition then the State has no role to play. On the other hand, if persons are made to change their religion due to "force," "fraud" or "inducement," this would wreck the very basic framework of our society and lead India to total annihilation.\(^{37}\)
\end{quote}

Given the sometimes violent relations between religious groups, international standards cannot be indifferent to the relationship between public order and those acts perceived to be attacks on another religion. But such a connection must be carefully scrutinized, as the argument can be subject to abuse, for example, where the right to freedom of expression is limited solely on the basis of the unpopularity of the message. Furthermore, any limitations on rights to promote public order should be viewed in light of the state's fulfillment of its own obligation to promote tolerance, mutual understanding and peaceful relations between groups.\(^{38}\)

### State practice drawing the legal line between proper and improper proselytism

With sometimes sharply competing rights and interests at play, and a lack of firm guidance in international law, what factors should guide the legal assessment of proper vs. improper proselytism?

Looking at state practice, the outlines of a framework emerge that helps to disentangle the factors that have been used to draw that line. The framework has four interrelated variables, each corresponding to relevant factual circumstances: (1) attributes of the source; (2) attributes of the target; (3) the location of the action alleged to be improper proselytism; and (4) the nature of the action. When each of these variables is laid out on a scale, one can see where various decision-makers have sought to draw the line. The framework—shown graphically in Table 26.1—does not generate answers on its own, but provides a starting point for a more focused discussion on the range of choices available to states.

The touchstone of the framework is the notion of coercion.\(^{39}\) If it is assumed that an individual should be able to make a considered and unrestrained choice in matters of religious belief and affiliation, the more that an act of proselytism interferes with the ability to choose, the more the regulatory power of the state may be attracted. This overall approach is reflected in the following

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36. Id., 617–18.
38. See, e.g., Universal Declaration of Human Rights, Art. 26(2); International Covenant on Economic, Social and Cultural Rights, Art. 13(1).
39. ICCPR, Art. 18(2).
Table 26.1 Drawing the line between proper and improper: factors considered in regulating proselytism

<table>
<thead>
<tr>
<th>Nature of the Action:</th>
<th>Invalid Regulation of Proselytism</th>
<th>Valid Regulation of Proselytism</th>
</tr>
</thead>
<tbody>
<tr>
<td>Communication of religious beliefs, including a denial or criticism of other beliefs</td>
<td>An offer of money or other things of value, e.g. delivery of humanitarian services</td>
<td>Malicious injury or offense to religious feelings</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Fraud (lies or misrepresentations)</td>
</tr>
<tr>
<td>Where the Action Occurs:</td>
<td>Open space, such as a public street, square, or park</td>
<td>Public facility, such as courthouse, administrative offices, school, military base, or hospital</td>
</tr>
<tr>
<td>Home or place of worship of source or willing target</td>
<td></td>
<td>Place of employment or public accommodation</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Home or place of worship of unwilling target</td>
</tr>
<tr>
<td>Attributes of the Source:</td>
<td>Health or social service provider</td>
<td>Employment or educational supervisor</td>
</tr>
<tr>
<td>Stranger</td>
<td></td>
<td>Private person acting pursuant to State authority, including health, social, or educational service provider</td>
</tr>
<tr>
<td></td>
<td></td>
<td>State official directly controlling the person or interests of the target, e.g., judges, wardens, military officers, educational officials</td>
</tr>
<tr>
<td>Attributes of the Target:</td>
<td>Person vulnerable on account of poverty</td>
<td>Employee</td>
</tr>
<tr>
<td>Competent Adult</td>
<td></td>
<td>Person dependent upon others, e.g., refugees, humanitarian, health, or social service recipient</td>
</tr>
<tr>
<td>Weak, gullible, uneducated or naïve person</td>
<td></td>
<td>Person under the care or control of others, e.g., prisoner, patient, student</td>
</tr>
<tr>
<td>Person vulnerable on account of poverty</td>
<td></td>
<td>Person without legal capacity, e.g., child, mental incompetent</td>
</tr>
</tbody>
</table>
formulation by Asma Jahangir, the UN expert: “Missionary activity cannot be considered a violation of the freedom of religion or belief of others if all involved are adults able to reason on their own and if there is no relation of dependency or hierarchy between the missionaries and the objects of missionary activities.” As Jahangir’s examples suggest, coercion may exist in a variety of forms linked to the four factors of the framework.

Attributes of the source

An inherently coercive relationship between source and target can be a determining factor in defining improper proselytism because the target may not be able to exercise free choice in accepting or resisting the change in beliefs proffered by the source. Action that may be perfectly appropriate between two persons who are strangers, (i.e. at “arm’s-length” from one another) may not be appropriate where there exists some physical, legal or economic advantage that the source has over the target. Examples of potentially coercive sources include the state and its official representatives, private persons acting with state authority or endorsement, providers of important health or social services, and employment superiors.

Acts of proselytism by the state or its officials can amount to improper coercion depending on the official position of the source and its relationship to the target. An action by a state official in the course of their legislative, administrative or judicial duties may have little effect on the public in general, but may have a much greater effect when the target’s person or interests are controlled by, or directly influenced by, that official. Examples include those charged with the authority to direct or care for persons who are stationed, confined or committed to state institutions such as military installations, educational facilities, prisons, hospitals or nursing homes. Proselytism may constitute an abuse of that authority.

As an example, the European Court determined that a conviction of two Greek military officers for proselytism of their military subordinates did not constitute a violation of the European Convention, but it was not improper for the military officers to engage in similar proselytizing activity when directed at civilians. In describing the basis of the different outcomes, the Court stated:

[T]he hierarchical structures which are a feature of life in the armed forces may colour every aspect of the relations between military personnel, making it difficult for a subordinate to rebuff the approaches of an individual of superior rank or to withdraw from a conversation initiated by him. Thus, what would in the civilian world be seen as an innocuous exchange of ideas which the recipient is free to accept or reject, may, within the confines of military life, be viewed as a form of harassment or the application of undue pressure in abuse of power.

40 A/60/399, para. 67.

41 A different view is held in the United States. The United States Supreme Court views almost all forms of religious expression by the state or persons acting in an official capacity or with official endorsement to raise an impermissible danger of coercion. See Lee v. Weisman, 505 U.S. 577, 587, 589 (1992) (“The design of the Constitution is that preservation and transmission of religious beliefs and worship is a responsibility and a choice committed to the private sphere, which itself is promised freedom to pursue that mission.”).


43 Id.
Another example from the European Court is the case of Pitkevitch v. Russia, where no violation of article 9 was found when the state dismissed a judge who used her position to advance the interests of her church by recruiting as members several local officials and parties to proceedings under her examination. The judge had also “prayed publicly during court hearings, and... promised certain parties to proceedings a favourable outcome of their cases if they joined the Church.”

Private institutions and individuals can also exert considerable influence over the choice of religious beliefs of another. Examples include the situation where religious groups exercise some government authority or where they have been granted or maintain an exclusive position over the provision of educational, health or other social services. Even in the absence of government authority or a monopoly position, someone in a private institution providing a job or a needed service to another entrusted to their care, as in a hospital or a nursing home, may be a coercive source. In these situations, the target is either unable to break the relationship with the source, or there may be a strong incentive to stay in good relationship to the source.

Determining whether or not coercion has taken place, as opposed to circumstantial evidence of a hierarchical relationship, can be difficult. In 2010, the Moroccan government expelled at least 50 Christian foreign residents from the country for alleged proselytizing. Many of those were expelled from the Village of Hope (VOH) orphanage in Ain Leuh, effectively closing it down. The government authorities also permanently took 33 children citizens from the custody of their foreign resident guardians. The Moroccan law on proselytism, Article 220 of the Criminal Code, provides for up to three years’ imprisonment for “whoever employs means of seduction in the purpose of shaking the faith of a Muslim or to convert him to another religion, either by exploiting his weakness or his needs or by using for such a purpose institutions of education, health, shelter or orphanages.” The Moroccan authorities had not publicly made clear what acts were alleged to constitute the illegal proselytism in these cases, as they unfolded without public legal proceedings, leaving the impression that it was the relationship itself between source and target that was the problem.

In some situations, e.g. the People’s Republic of China, sources that are “foreign” to a particular place are considered inherently improper and/or coercive, although restrictions on the activities of foreign sources simply because they are foreign can mask disapproval of the religious message that foreigners bring.

**Attributes of the target**

The primary concern with the attributes of the proselytism target relates to the perceived susceptibility of the target to the types of persuasion (and, potentially, coercion) that may be employed by different sources. In essence, the greater the perceived “vulnerability” of the target, the more likely that proselytism directed towards it will be restricted. For example, the target may be vulnerable because of its relationship to the source, as mentioned above with respect to hospital patients, prisoners, and employees. Certain targets may be susceptible to a change in religious beliefs, as they might be susceptible to persuasion in any matter. Children fall into this category. In Dahlab v. Switzerland, the European Court found that the dismissal of a state

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primary school teacher for wearing the Muslim headscarf was not a violation of the European Convention because, among other reasons, wearing of the headscarf “might have some kind of proselytizing effect” on the young children submitted to her care. The pupils were aged between four and eight, “an age at which children wonder about many things and are also more easily influenced than older pupils.”

Other inherently vulnerable targets include the uneducated, naïve, or generally weak or unsure of themselves. It is apparently on this basis that the Greek proselytism statute prohibits “taking advantage of [the] inexperience, . . . low intellect and naivety” of the target. Another example is that portion of the Orissa statute that includes the use of a “threat of divine displeasure” within the definition of conversion by force. This provision was sustained by the Orissa High Court based on the need to protect those with “undeveloped mind[s]” from the “numb[ing of] the mental faculty” that such threats create.

Persons in distress or in need were mentioned as vulnerable targets by the European Court in Kokkinakis. Proselytism directed at that type of targets can be particularly divisive, and can produce legislative responses that are more restrictive than necessary under the circumstances. For example, the Nepalese government once argued that legal provisions against conversion and proselytism in that country were necessary to guarantee the rights of “weak person[s]” and reflected “the intent to discourage the anomaly in a socioeconomically weak society where instances of involuntary religious conversion are found to have taken place by means of financial enticement and other temptations.” This example illustrates the important point that the means used to address concern over the vulnerability of the target should correspond to the type and extent of the activity of the source. In this instance, can a blanket prohibition on all conversions resulting from proselytism be supported by a concern with the weakness of certain targets to financial and other inducements?

**Location of the act of proselytism**

Where the proselytism takes place is another factor taken into consideration in separating proper from improper proselytism, in accordance with the likelihood that the target is in that place by choice and is free to leave. For example, the home of the source or of a willing target is less likely to raise concerns than the home of an unwilling target. A similar dichotomy exists with respect to places of worship or religious education. Proselytism is expected in the source’s religious facility, discouraged at the target’s.

For example, in the Indian state of Andhra Pradesh, although the Indian Constitution protects the propagation of religion, a law prohibits the propagation of one religion near a place of worship or prayer of another.

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49. Id.
50. See *Kokkinakis v. Greece*, supra note 11, p. 12.
Other distinctions can be drawn with respect to places open to the public. For instance, preaching or leading worship in a church or synagogue reaches a more voluntary audience than the same activity on the street or in a public park. While practically all persons use the public streets and other public places, they are also likely to be free to move to other places if occasionally confronted with unwanted proselytism. For this reason, proselytism may be permitted (subject to safety considerations) in certain public places like streets or parks — especially in places historically open to public debate or expression — to a greater extent than in other public spaces where persons may be, for the most part, required to be present, such as government offices, courtrooms, schools, and other public facilities.

**Nature of the act of proselytism**

The most significant of the four factors separating improper from proper proselytism is the nature of the action. In a loose way, the potential for coercion lies in the nature of the exchange, whether proposed or actually realized, between the source and target. At one end of the scale lies the bare communication of religious beliefs which, with some significant exceptions, is generally not considered to be improper. At the other end lies a conversion or change in beliefs through violence or threat of violence. This method appears to be universally denounced by both religions and governments. Between these two extremes lies a broad range of actions.

The mere presentation or exchange of religious ideas does not raise significant concerns about coercion. These are the underlying facts of the Kokkinakis case, where Mr Kokkinakis was found by the Greek courts to have engaged in religious discussions using skillful explanations and “in a pressing manner.” The European Court determined that a criminal conviction on this basis was a violation of article 9 of the European Convention. Similarly, in the Malaysian case of Othman the petitioner had allegedly participated in religious meetings and seminars and the Supreme Court determined that this activity, without more, did not prejudice the security of the state. Relatedly, the Human Rights Committee in the 2004 Sri Lanka case found a violation of freedom of religion where the Sri Lankan Supreme Court had prevented the legal recognition of a religious order because, in the view of the Court, the order’s activities — the provision of material and other benefits to vulnerable people, without more — were coercive or otherwise improper. Also, in February 2014, an appeals court in Morocco overturned a proselytism conviction of a Muslim convert to Christianity who apparently had no more than private conversations about religion with two young men (Morning Star News 2014).

It is true that some states take exception to this principle. For example, Sudanese law criminalizes apostasy and encompasses anyone who “propagates for the renunciation of the Creed of Islam.” Other significant exceptions relate to the mere exchange of religious ideas but in conjunction with one of the problematic other factors discussed above, such as the hierarchical relationship between employer and employee identified in the Larissis case. In these situations,
even the most basic exchange may be tainted by the coercive nature of the relationship within which it takes place.

A further species of religious discussion that is generally thought not to be coercive is that which includes a denial of the truth of the beliefs of others or is otherwise critical of those beliefs. The case law of the Greek courts, as related in the Kokkinakis case, has held that spiritual teaching that “demonstrates the errors of other religions” is not prohibited proselytism.57 Likewise, in Punjab Book Society, the Lahore High Court determined that attempts “to show that [one’s] religion is the best in the world” did not evidence a “deliberate and malicious” intent to insult the religious feelings of another.58

However, when these expressions are delivered in a certain manner, states may act to prevent or punish them. Falling at this point on the scale are the “extremely offensive” views, with “no reliable source to justify its acceptance as correct,” that the Pakistani Court determined may fall within the statute prohibiting injury to religious feelings.59 Contrast this with the United States, which protects offensive speech in the context of proselytism (and elsewhere); the proselytism at issue in some of the US Supreme Court’s Jehovah’s Witness cases was protected regardless of the hostile, abusive, and offensive nature of the activity.60

The next category of activity includes promises or offers of something of value to the target in exchange for their change in beliefs or affiliation. A division may be made here between, for lack of more precise terms, “tangible” and “intangible” benefits. An example of an intangible benefit arose in the Orissa proselytism statute, where the term “inducement” was defined to include the “grant of any benefit.” The High Court of Orissa invalidated this provision of the statute, as it believed that inducement as therein defined could include purely spiritual benefits such as the promise of an eternity in the hereafter.61 The offer or granting of tangible benefits, such as money, “material assistance,” and “social advantages,” in exchange for a change in religious beliefs or affiliation is prohibited by a number of proselytism statutes, including those of India, Israel, and Greece.62

Events over the last several years in Sri Lanka illustrate some of the difficulty in drawing the line between coercive and non-coercive in the area of material benefits. Religious tensions between the Buddhist majority and minority Christians resulted in several attempts to legislate against “unethical conversions.” In 2004, two draft bills emerged, one prepared by the then-current government, the other by the opposition JHU party. Both are loosely modeled on Indian laws discussed above. The JHU bill criminalizes the attempt to convert another by the use of force (which encompasses physical violence as well as the threat of religious displeasure or condemnation of any religion), allurement (which can involve any gift or grant of material benefit) or other fraudulent means.63 The constitutionality of the bill was challenged before the Supreme Court on the basis that the prohibition of the full range of conduct covered in the bill – including “acts of benevolence and charity in obedience to the Gospel command” – was a

59 Id., 638
60 See Murdock, 319 U.S. at 115–16 (citation omitted); Martin v. City of Struthers, 319 U.S. 141, 157, 1943.
violation of the right to manifest a religion (see Owens 2007: 340–5). The Supreme Court, in an unreported judgment, stated that the improper activity in this scenario was “the willful engagement of a deceitful exercise to secure a conversion.” The Court then went on to determine that the definition of “allurement” in the bill needed to be restricted by specifying that the acts in question – e.g. gifts and offers of material benefit – had to be offered for the purpose of converting another, in order to comply with the Constitution. This change introduces a requirement of intentionality (which makes it proselytism) but it apparently leaves unchanged the notion that material benefits offered for the purpose of converting another are inherently “a deceitful exercise” and subject to criminal sanction.

UN expert Asma Jahangir, following a visit to Sri Lanka, expressed concerns about the unethical conversion bills because, among other reasons, gifts and inducements did not necessarily amount to a violation of freedom of religion or belief:

While some maintain that freedom of religion, and in particular the right to choose a religion, may be violated in cases where, for example, a person in need has converted after having received presents and inducements that may significantly improve his or her life, the enjoyment of that right by the same person may equally be impaired if he or she does not have the possibility to freely decide to convert to another religion, even after having received a gift.

Jahangir recommended against the adoption of such legislation as they were incompatible with international human rights law, could promote persecution, and would probably not diffuse religious tensions.

On the reverse side of the offer of benefits is the threat to withhold, injure, or destroy something of value, including an intangible such as the “threat of divine displeasure” prohibited by the Orissa statute. Threats of a more tangible nature include policies and practices such as “those restricting access to education, medical care, employment, [political rights] or the rights guaranteed by . . . other provisions of the [ICCPR]” that are identified by the Human Rights Committee as tantamount to coercion. Finally, on the far end of the scale, and thus generally prohibited, are the threat or use of physical violence. The nature of the exchange in these latter circumstances is such that the targets relinquish their religious beliefs or affiliation in order to preserve their rights, health, and even their lives.

Conclusion

Developing legal standards to regulate proselytism is no simple task. However, a careful review of international and state practice yields a number of important principles:

First, the purposeful attempt to change another’s religious beliefs or affiliation is a manifestation of religion or belief and falls within the scope of international human rights protections.

65 Id.
66 E/CN.4/2006/5/Add.3, para. 73.
67 Id., paras. 121–23.
69 Human Rights Committee, General Comment No. 22 (48) (art. 18), supra note 4, para. 5.
70 See id.; Kokkinakis v. Greece, supra note 11, p. 21.
Second, the freedom to engage in proselytism must be recognized irrespective of the content of the views asserted by the source, the manner in which those views are asserted, and whether the interference stems from state or private action.

Third, as with all freedoms, the freedom to engage in proselytism is not unlimited. However, restrictions on proselytism must further a secular interest (i.e. restrictions cannot further purely religious or ideological goals), and the restrictions must be proportionate to the realization of those interests. In practice, the interests asserted by states to support restrictions on proselytism are typically the protection of (a) public order or (b) the right to have or maintain a religion or belief without coercion. The two interests are interrelated, in that coercive methods of proselytism may provoke sharp responses.

Fourth, with respect to the protection of public order, the state’s response to proselytism must be directly proportionate to the disorderly nature of the activity itself, and only in extreme circumstances (and for temporary periods) can it be related to the response of others to the activity. In other words, the preferred state response to societal resistance to non-coercive methods of proselytism are to promote peace, tolerance and mutual understanding between communities, rather than to restrict proselytism.

Fifth, whether an act of proselytism is improperly coercive will depend upon the characteristics of the source, the characteristics of the target, the place where the act takes place and/or the nature of the act itself. The location of an act, or a particular relationship between source and target can introduce an element of coercion to an act that might not be coercive in other circumstances.

Sixth, unwanted, annoying or offensive acts of proselytism – even though they may result in social disruption – are not necessarily improperly coercive. Indeed, these conditions reflect circumstances under which a person can make a free and informed choice regarding religious beliefs.

Finally, there is a fine line between securing the minimum conditions for an individual to freely choose a religion or belief and protecting the ability of an individual to maintain the religion or belief that has been chosen. In this regard, states should be guided, in the words of Arcot Krishnaswami, by the need “to ensure a greater measure of freedom for society as a whole” (Krishnaswami 1960: 16).

[Author’s note: This chapter updates an article first published in Stahnke 1999.]

Bibliography

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