Flygtningenævnets baggrundsmateriale

Bilagsnr.:	**436**
Land:	Pakistan
Kilde:	USCIRF
Titel:	Limitations on Minorities Religious Freedom in South Asia
Udgivet:	11. december 2018
Optaget på baggrundsmaterialet:	4. marts 2019

LIMITATIONS ON MINORITIES'

RELIGIOUS FREEDOM IN SOUTH ASIA

UNITED STATES COMMISSION ON INTERNATIONAL RELIGIOUS FREEDOM

LIMITATIONS ON MINORITIES' RELIGIOUS FREEDOM IN SOUTH ASIA

USCIRF Special Report

NOVEMBER 2018

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WHO WE ARE

The U.S. Commission on International Religious Freedom (USCIRF) is an independent, bipartisan U.S. federal government commission created by the 1998 International Religious Freedom Act (IRFA) that monitors the universal right to freedom of religion or belief abroad. USCIRF uses international standards to monitor violations of religious freedom or belief abroad and makes policy recommendations to the President, the Secretary of State, and Congress. USCIRF Commissioners are appointed by the President and Congressional leaders of both political parties. The Commission's work is supported by a professional, nonpartisan staff of regional subject matter experts. USCIRF is separate from the State Department, although the Department's Ambassador-at-Large for International Religious Freedom is a non-voting, *ex officio* Commissioner.

WHAT IS RELIGIOUS FREEDOM

Inherent in religious freedom is the right to believe or not believe as one's conscience leads, and live out one's beliefs openly, peacefully, and without fear. Freedom of religion or belief is an expansive right that includes the freedoms of thought, conscience, expression, association, and assembly. While religious freedom is America's first freedom, it also is a core human right international law and treaty recognize; a necessary component of U.S. foreign policy and America's commitment to defending democracy and freedom globally; and a vital element of national security, critical to ensuring a more peaceful, prosperous, and stable world.

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The right to freely choose and change one's religion is protected under international law, as is the right to manifest one's beliefs through teaching those beliefs. While there is a right to propagate or proselytize, Article 18 of the International Covenant on Civil and Political Rights (ICCPR) also protects individuals from coercion that would impair their freedom to choose their religion or belief. The tension between the freedom to spread one's beliefs and the freedom of others to not be coerced is at the heart of an alarming majoritarian trend in South Asia.

Over the last decade, governments across the South Asia region have taken legal measures to prohibit religious conversions from the dominant religious group. Often the motivation behind these laws, though not officially stated as such, is to protect the dominant religious tradition from a perceived threat from minority religious groups. The methods of preventing conversion vary: in India, several state legislatures have adopted laws limiting conversions away from Hinduism; in Pakistan, national blasphemy laws are used to criminalize attempts by non-Muslims to convert Muslims; and in India, Pakistan, and Nepal, governments are tightening their control over non-governmental organizations (NGOs), especially foreign missionary groups.

In some instances, especially in the aftermath of major natural disasters like Nepal's 2015 earthquake and Sri Lanka's 2004 tsunami, some proselytizing groups have upset majority sentiments by focusing their efforts on disenfranchised subgroups within the dominant religious tradition, such as Dalits (or Untouchables) in Hindu-majority countries. There have been accusations that some of these groups induce individuals to convert by predicating aid or food assistance on conversion of the recipient. Sensitivities are also heightened among the majority religious population over interfaith marriages or marriages predicated on the conversion of one spouse. Despite the persistence of these allegations, credible data has not been presented to demonstrate the extent and nature of these alleged coerced conversions. In fact, the National Investigation Agency in India in October 2018 closed an investigation of alleged "love jihad" and found that accusations of a Muslim plot to convert Hindu women were unfounded.

This report begins by presenting an overview of limitations faced by individuals in South Asia who want to convert away from the dominant religious tradition. Next, the report critically examines anti-conversion laws enacted by state governments in India and the central governments of Nepal and Sri Lanka. The next section looks at alternative methods used to criminalize conversions, including anti-blasphemy laws in Pakistan, discriminatory foreign NGO registration laws for faith-based groups, and limits on inter-faith marriages across the region. The report ends with some conclusions about the problems with these laws and provides recommendations for U.S. policy.

In summary, to address this distressing trend, the U.S. government must work with its allies in South Asia through regional capacity-building efforts and by applying pressure on governments to rescind laws that deny individuals the right to share and choose their religion freely.

INTRODUCTION

Countries passing and enforcing anti-conversion laws must balance three countervailing constitutional provisions and international human rights norms:

- the right of an individual, and his or her respective religious institution, to manifest his or her religion through proselytization;
- the right of individuals to not be subject to coerced conversion; and
- the right and duty of the state to protect public order.

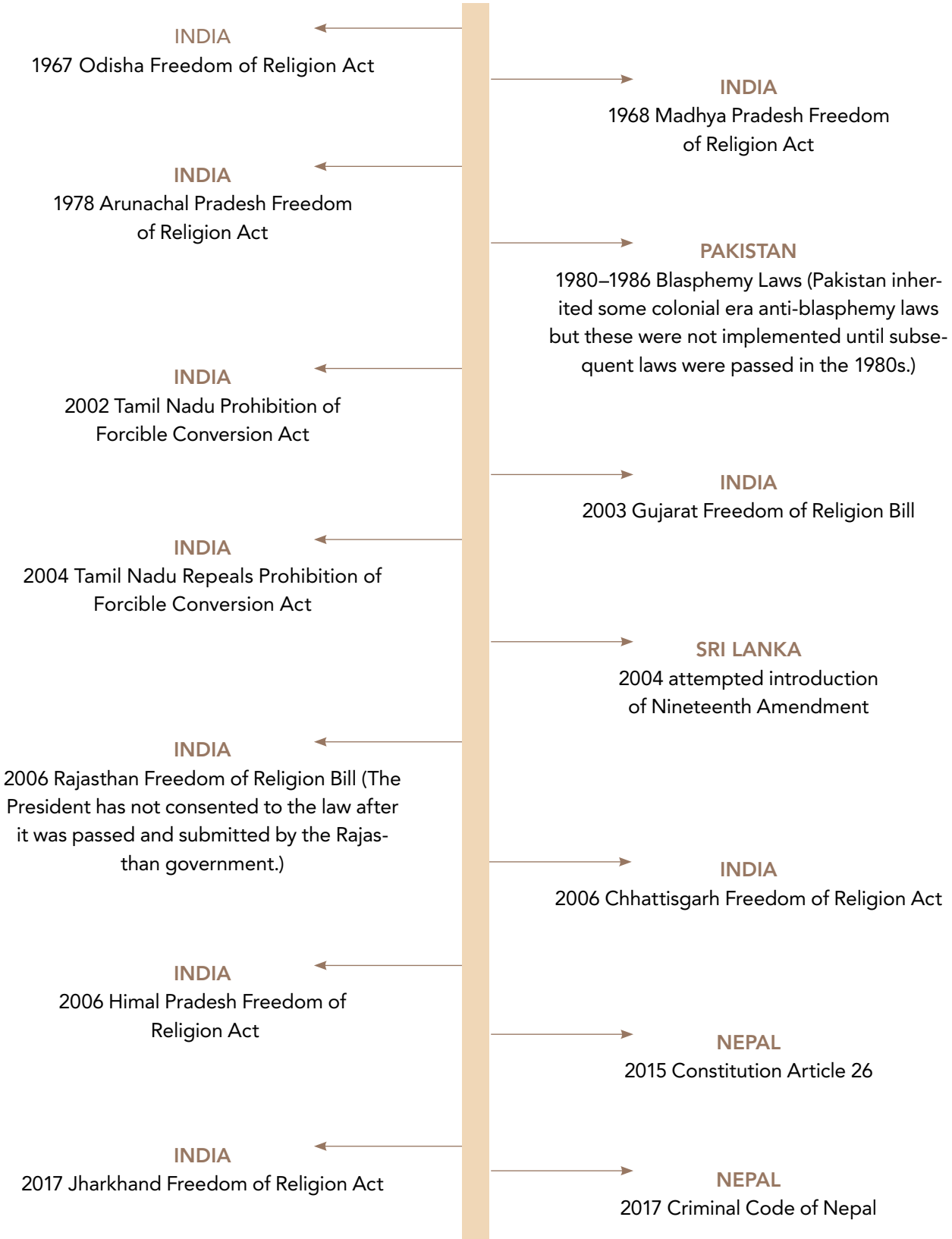
To be consistent with freedom of religion or belief as per Article 18 of the UN Declaration of Human Rights and the International Covenant on Civil and Political Rights, non-discriminatory anti-conversion laws should protect people from being subject to coerced conversions, while allowing conversions based on the convert's free will and consent. In South Asia, however, anti-conversion laws frequently provide definitions for "forced" or "induced" conversions that are so broad little, if any, room is left for consensual legal conversion.

Although conversion away from the majority religious faith is prohibited in many countries in the region, converting to the majority religion remains permissible, and political figures and state officials, particularly the police, encourage it. Moreover, when such vague legal definitions enable anti-conversion laws to be enforced discriminatorily, the laws become a weapon for both the state and religious majority groups to diminish the rights of religious minorities.

Summary of Majoritarian Limits Used to Prevent Religious Conversion in South Asia

Country	Majority Religious Group	Impacted Minority Religious Groups	Existence of Anti-Conversion Laws	Existence of Blasphemy Laws	International NGO Registration Limitations
Bangladesh	Muslim (86%)	Christian, Hindu (12.5%)	N	N	Y
India	Hindu (80%)	Christian, Muslim (16.5%)	Y	Y	Y
Nepal	Hindu (80%)	Christian, Muslim (6%)	Y	Y	New Law Proposed in 2018
Pakistan	Muslim (96.5%)	Christian, Hindu (3.5%)	N	Y	Y
Sri Lanka	Buddhist (70%)	Muslim, Christian (17.3%)	Law Proposed and invalidated in 2004	Y	N

Timeline of South Asian Anti-Conversion and Blasphemy Laws



ANTI-CONVERSION LAWS

India

Accusations, especially from Hindutva supremacist groups, of induced or fraudulent conversions are rising in India. Further, political leaders belonging to parties like the Bharatiya Janata Party (BJP) have accused certain international faith-based NGOs of conditioning the distribution of aid on the conversion of the recipient. Yet, governmental agencies have not reported the exact number and nature of so-called "unethical" conversions.

While Amit Shah, the party-president of the BJP, has argued in favor of national laws criminalizing conversions away from Hinduism, the right to pass such laws remains constitutionally vested in the states under India's federal constitutional system. Based on this division of power, several state legislatures have passed anti-conversion laws, with Odisha's and Madhya Pradesh's laws dating back to the 1960s. In 1997, the Supreme Court of India upheld state anti-conversion laws in the case of *Rev. Stanislaus v. Government of Madaya Pradesh*. Although Article 25 of India's Constitution protects the right to "propagate" one's religion, the Supreme Court held that this "does not grant [the] right to convert [an]other person to one's own religion but to transmit or spread one's religion by an exposition of its tenets." Despite the long existence of these laws and the Supreme Court's decision, the UN Special Rapporteur on freedom of religion or belief Asma Jahangir concluded in 2009 that there had not been verifiable prosecutions of a forced or induced conversion case in Odisha.

The second wave of anti-conversion laws, entitled "Freedom of Religion" laws, came in the 2000s, with states including Himachal Pradesh, Gujrat, Chhattisgarh, Rajasthan, and Tamil Nadu adopting them. Since then, the state of Jharkhand adopted an anti-conversion law in 2017 and Uttarkhand's legislature is considering the adoption of a similar law in 2018.

The details of these laws differ, but they all share some general shortcomings. First, the definitions of "induced," "fraudulent," or "coerced" are expansive to the point that they could be interpreted to prohibit any kind of conversion, whether consensual or not. Second, the passage of these laws appears to have produced both rising levels of hate crimes against alleged proselytizers and their faith-based communities and false accusations of induced or fraudulent conversion against Christians and Muslims. Third, most of the laws do not focus on rectifying the harm done to the victim of an alleged induced or fraudulent conversion, and allow almost anyone to bring a criminal complaint against a member of a religious-minority community. Lastly, the implementation and enforcement of these laws has been discriminatorily geared toward punishing non-Hindus. Reports of forced or induced conversions of non-Hindus to Hinduism in homecoming or "ghar wapsi" ceremonies have not drawn the attention of state authorities in the same way as conversions away from Hinduism.

Notably, at least three states have repealed—not implemented—or have considered repealing state anti-conversion laws. In 2005, three years after the passage of the Tamil Nadu Prohibition of Forcible Conversion of Religion Act, the law was repealed. In Rajasthan, the Freedom of Religion bill has not been implemented as it has not yet been accepted by the President. Most recently, in June 2018, the BJP-affiliated chief minister of Arunachal Pradesh explained that the state's anti-conversion laws were being used to discriminate against Christians, and offered to begin talks to repeal the law. Critics, however, view this as an effort to pander for votes in a state that is majority Christian as of 2011, and other BJP members have said the law will not be

repealed. Indigenous tribal members also criticized the idea of repealing the state's anti-conversion law, stating that removal of the law may facilitate more tribal members converting away from indigenous faiths.

Outside of anti-conversion laws, other legal provisions have also been used to discourage members of the Dalit community from converting away from Hinduism. For example, Dalit rights groups have reported that the affirmative action benefits guaranteed to Dalits through the constitution and other laws are no longer practically accessible after a Dalit converts to a non-Hindu religion like Christianity or Islam.

Sri Lanka

Legislators belonging to the Jathika Hela Urumaya (JHU)—a Sinhala nationalist political party led by Buddhist monks—and the President's cabinet introduced two bills in 2004 to criminalize conversion. This came in response to rising complaints that proselytizers affiliated with international faith organizations were engaged in fraudulent or induced conversions of Buddhists. Despite these claims, Asma Jahangir, the then-UN Special Rapporteur on freedom of religion or belief, was unable to corroborate forcible conversions of Sri Lankan Buddhists during her in-country visit in 2005.

Both bills required participants in religious conversions to report that activity to government agencies, and mandated that the punishment for induced, forced, or allured conversions was up to five years in prison and a 150,000 rupee (USD 1,500) fine. The preamble of the bills claimed that both Buddhists and non-Buddhists were facing threats of "forcible conversions and proselytization by coercion or by allurement or by fraudulent means." However, in 2004 the Supreme Court held that the bill's language would need to be revised in order to respect proselytizing religious groups or it would require a super-majority in Parliament for passage.

This led to the JHU submitting for consideration by Parliament a new amendment to the Constitution of Sri Lanka that would make Buddhism the official religion of the country and prohibit converting "Buddhists into other forms of worship." This amendment was also successfully challenged at the Supreme Court, where the Court held certain provisions of the law violated religious freedoms in Sri Lanka. Despite the failure of the previous two attempts to prohibit religious conversions, in 2011, the JHU initiated another Anti-Conversion Bill, which was never moved forward in Parliament.

Nepal

In Nepal's 2015 Constitution, Article 26 recognizes the right of every citizen to practice his or her faith; however, the same article prohibits any citizen from "convert[ing] a person of one religion to another religion." This article clearly prohibits conversion for any religion. Nonetheless, it provides special protection for conversion from religions that have "been practiced since ancient times," which can be understood as referring to Hinduism. Under this provision, in 2016, a group of Christians was charged with attempting to convert children due to their possession of a graphic novel about Christianity but the group was eventually acquitted of all charges.

In 2017, further, Nepal's government passed a new criminal code bill in 2017, part of which was aimed at criminalizing proselytization. This law went into effect in August 2018, and those convicted under the law could serve up to five years in prison and pay up to 50,000 rupees (USD 690) in fines. While no one has been arrested under the law, immediately before the implementation of the law in 2018, a Christian couple was deported from the country based on allegations of conversion. The true impact of the law will emerge as the law begins to be implemented. Many Christian groups, though, are concerned about the potential impact on non-Hindu religious groups.

OTHER MEANS OF LIMITING CONVERSION

Blasphemy Laws

Pakistan

In Pakistan, blasphemy laws, rather than anti-conversion laws, are used to criminalize conversion and proselytization and thereby limit the rights of religious minorities. Additionally, there is a prevalent, and increasing, problem of Muslims converting non-Muslims by force in Pakistan, yet Christians and Hindus who are actual victims of forced conversion to Islam have few legal remedies. In 2017, Prime Minister Nawaz Sharif recognized the increasingly difficult problem of forced conversions of non-Muslims, especially Hindus.

A religious minority preaching to or attempting to consensually convert a Muslim to a non-Muslim faith can experience heavy-handed enforcement of the blasphemy law by state authorities. For example, a Christian preacher, Zafar Bhatti, was arrested and charged with blasphemy in 2014 and has been sentenced to life in prison. Moreover, mere accusations of blasphemy trigger the wrath of violent mobs that attack religious minorities with impunity or even with support from state actors, including the local police.

Registration Laws for International Non-Governmental Organizations

South Asian governments have regulated international nongovernmental organizations (INGOs) and their international funding with increasing strictness over the last decade as political leaders in South Asia have demonstrated an increasing distrust of INGOs. This has culminated in the creation of INGO registration laws that have been enforced discriminatorily in some cases to create limitations on faith-based NGOs unaffiliated with the majority religion.

India

Parliament passed the Foreign Contributions Regulation Act (FCRA) in 2010 and the BJP-led administration amended the rules in 2015. Since then, reports indicate that thousands of INGO licenses have been canceled in the country. The UN Special Rapporteurs on freedom of expression, freedom of association, and human rights defenders have all stated that the FCRA is being used to attack groups that are challenging the ruling administration's performance on human rights. In relation to faith-based INGOs, several have reported facing complications and limits on their foreign funding due to FCRA enforcement. Compassion International, a Christian INGO that reportedly served nearly 145,000 children with 500 projects in India over nearly 50 years, closed its operations in 2017 after the government blocked its foreign funding.

Pakistan

In November 2015, several faith-based NGOs, including World Vision International and Catholic Relief Services, were refused registration by the Pakistani government. In 2017, Pakistan deregistered 29 INGOs based on a restrictive new policy for registration and permission to receive foreign funds. Much like in India, critics pointed to the government's animus toward those trying to empower disadvantaged groups including women, children, and religious minorities.

Nepal

Critics fear that Nepal is adopting a similar model for INGOs through its National Integrity Policy, which was originally proposed in the spring of 2018. The Ministry of Home Affairs announced in June 2018 a new registration process for INGOs operating within Nepal. The original version of the bill appeared to target religious

INGOs in particular, but the government eventually removed provisions that were potentially adversarial to religious minority groups. Nevertheless, if discrimination by state actors is permitted in the implementation of the new INGO registration rules, proselytizing religious minority groups could face challenges.

Interfaith Marriages

Pakistan

As leaders of religious-nationalist parties in certain South Asian countries have politicized and exaggerated the issue of forced conversions through marriage, it is an increasing phenomenon confronting religious minorities in Pakistan. The Pakistani media has featured many stories with a similar series of events: a Muslim man will kidnap, sexually assault, forcibly convert, and then forcibly marry a young Christian or Hindu woman, often with the collusion of state officials, such as the police and religious leaders, and neighborhood imams.

Although this has been a serious and endemic issue throughout Pakistan, the provincial government in Sindh attempted to pass a law in 2016 that addressed the growing phenomenon of non-Muslim women being forcibly converted and married to Muslim men. The Sindh provincial government's proposed law criminalized the forcible conversion of religious minorities. The law provided that any religious conversion of a minor under the age of 18 would not be recognized as valid. For the individual involved in forcing the conversion and subsequent marriage, the proposed law provided for a punishment of up to five years in jail and financial restitution to the victim. Further, the proposed law allowed for prosecution of defendants for underlying crimes including kidnapping, abduction, and forcing consent for marriage. Unlike the anti-conversion laws in India, this proposed law was aimed at criminalizing the forced conversion *of* a religious minority, rather than *by* a religious minority. Further, this law could be differentiated from many of the state laws in India because it included victim restitution as part of the punishment.

However, the governor of Sindh in 2016 refused to assent to the law and therefore it stands unimplemented or enforced. Despite the law's attempt to address the problem of forced conversions intertwined with forced marriages of religious minorities, the failure of the governor to assent to the law has allowed the problem to continue and grow.

Bangladesh

Forced conversions and marriages also occur in Bangladesh. There have been widely publicized cases in which social, psychological, and sometimes physical pressure is brought to bear on religious minority women, especially Hindus, to force them to convert from their religion and marry Muslims. Along with women, young children belonging to indigenous groups have also been targeted in the Chittagong Hill Tracts by Muslim groups engaged in forced or induced conversions. Some of these proselytizing groups take advantage of indigenous tribes' lack of access to legal protections, education, and economic opportunities, which makes them prime targets for coerced conversions.

India

Over the last several years, several public cases have involved false accusations against inter-faith couples related to forced conversion and marriage. In the *Hadiya* case, a woman from a Hindu family converted to Islam and married a Muslim man in 2016. Her decision caused the National Investigation Agency (NIA), the national counter-terrorism investigative agency in India, to launch an investigation into whether she was being forced to convert and marry. The investigation included police officers monitoring her movements. During the lead-up to this case, many conservative media outlets were running stories about alleged "love jihad," through which Muslim groups purportedly were conspiring to brainwash or force Hindu women to marry Muslim men and convert them to Islam en masse. Some activists alleged that these accusations were part of a larger fear-mongering narrative from Hindutva supremacist groups to justify their anti-Muslim activities.

Eventually in 2017, the High Court of Kerala annulled Hadiya's marriage based on accusations that she had fallen victim to this "love jihad." On appeal, the Supreme Court of India set aside the lower court's annulment in March 2018 and upheld Hadaya's marriage after being satisfied that she had freely granted consent. The court did not, however, provide guidance

to or limitations on the NIA for further investigations relating to inter-faith marriages. Regardless, the NIA announced in October 2018 that it was closing its investigation because the agency found that accusations of "love jihad" were baseless and there was no evidence of a conspiracy to unethically convert Hindus to Islam.

In another state, Uttarkhand, the High Court demanded that the legislature pass a law punishing interfaith marriages based solely on soliciting a religious conversion from one of the parties. Lawmakers acquiesced to this demand by passing Article 6 of the newly-created Uttarkhand Freedom of Religion Act.

Inter-faith couples often face extreme social pressures and threats from extremists. In many Indian states, mixed-faith couples seeking to marry or individuals applying to have their religious conversion certified by a court are required to publish their names on a publicly available docket. Hindutva supremacist groups who monitor those dockets often exert social pressure on the couples directly through digital spaces or by threatening their family members directly. Further, these violent groups also use Facebook to identify interfaith couples and have created a public target list to encourage people to take violent action against them. There have been many cases of physical violence against inter-faith couples, especially against males belonging to non-Hindu faiths.

CONCLUSION

Nations concerned with protecting citizens from coerced conversions have options available under constitutional and international law. In many South Asian countries, laws already in effect criminalize fraud and assault. These laws could be used to protect disadvantaged sectors of the population from being victimized by coerced conversions, and the proper implementation of these laws could render anti-conversion laws superfluous.

Despite the existence of these general laws, specific laws addressing coerced conversion should have a non-religious purpose to protect potential victims, rather than protecting the majority religious group from an alleged threat from religious minorities. Additionally, such laws must narrowly define fraud, inducement, and coercion, so that they are less likely to be used to undermine the rights of religious minority groups. Further, effective anti-conversion laws should focus on victim restitution and limit the complaint process to the victim, rather than permitting anyone who claims to have witnessed an unethical conversion to lodge a criminal complaint.

Even with well-intentioned and well-crafted laws, however, police, judges, and state officials need to implement such laws in a non-discriminatory manner, applying equal scrutiny for religious conversions to and from the majority group. Where there are patterns of false accusations of unethical conversions, especially against religious minorities, state actors should properly investigate and punish those acts. Societal actors also need to ensure that social pressure is not applied to individuals who consensually wish to change faiths.

Courts in South Asian countries have a mixed history on protecting the rights of religious minorities. Although high courts in India have made judgments criticized as demonizing or marginalizing religious minorities in relation to conversion, some courts have delivered counter-majoritarian decisions that have subdued a legislature's efforts to criminalize the practice. In 2017, the Indian Supreme Court upheld the conversion and marriage of a woman from a Hindu family to a Muslim man, ruling that the only legal question was whether the woman had freely given her consent for the arrangement. Similarly, in 2004, the Sri Lankan Supreme Court delivered a counter-majoritarian verdict by blocking the passage of an anti-conversion law and constitutional amendment. The court concluded that the provisions would deprive minorities of their religious freedom under international and constitutional law. The decisions by the Indian and Sri Lankan Supreme Courts demonstrate how judiciaries have recognized the ways in which anti-conversion laws violate religious freedom for minorities.

Nations with anti-conversion laws should pause to reconsider them, especially when the passage of such laws predicates an increase of hate crimes, hate speech, or communal violence.

RECOMMENDATIONS FOR U.S. POLICY

The U.S. government should raise issues concerning majoritarian laws limiting the rights of religious minorities in South Asian countries by:

A. Facilitating regular visits by USCIRF delegations to South Asian countries in order to investigate the underlying context for the proliferation of anti-conversion laws. This is especially important in India, where the government has repeatedly denied USCIRF permission to visit.

B. Organizing a regional conference bringing together activists, provincial politicians, police, judges, and attorneys working on religious freedom from each country in South Asia. Activities would include facilitating:

    1. discussions among various stakeholders within each country, as well as cross-country exchanges; and
    2. capacity-building workshops for various religious freedom protection skills.

The goal of this roundtable would be to recognize regional trends that can be addressed with cooperative efforts by stakeholders at various levels in each country.

C. In India, the U.S. Embassy in New Delhi should expand its efforts to raise the issue of anti-conversion laws, which are proliferating across the country and exacerbating the deteriorating nature of religious freedom. The U.S. Embassy should continue its concerted efforts to meet with religious minority groups to gather information on the nature of persecution faced by non-Hindu groups under the anti-conversion laws. The U.S. Embassy should also expand contacts with parliamentarians at the state level where anti-conversion laws are enforced. Further, the U.S. Embassy in New Delhi should engage with the relevant government ministries in order to address methods of:

    1. Repealing state-level anti-conversion laws or reforming them to narrowly define fraud, coercion, and inducement;
    2. Deterring false accusations of unethical conversion;
    3. Limiting discriminatory enforcement of anti-conversion laws; and
    4. Permitting Dalits who change faiths to continue benefiting from affirmative action programs when they continue to face socio-economic discrimination despite converting.

D. In Sri Lanka, the U.S. Embassy in Colombo should meet with leaders in the Jathika Hela Urumaya (JHU) party, members of the ruling party, and relevant government ministries regarding:

    1. Implementing and adhering to the Supreme Court judgment from 2004; and
    2. Forgoing attempts to create a new anti-conversion law with the stated purpose of protecting Buddhists from conversion to any other faith.

E. In Bangladesh, the U.S. Embassy in Dhaka should meet with the nation's leadership and leading parliamentarians about creating laws that address the problem of forced conversion and marriage of non-Muslim citizens.

F. In Nepal, the U.S. Embassy in Kathmandu should continue urging the Nepalese government to avoid using its anti-conversion laws to diminish the

religious freedom of non-Hindu minorities and to consider repealing the anti-conversion provisions in the nation's constitution and criminal code.

G. In Pakistan, the U.S. Embassy in Islamabad should continue meeting with relevant government officials and leading parliamentarians regarding:

    1. Repealing the country's blasphemy laws; and
    2. Urging the national assembly and other provinces to adopt Sindh's proposed approach to protecting minorities from forcible conversion.

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