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Freedom of Religion in South Asia: Implications for Minorities

I. Introduction

The accommodation of religious diversities is always a challenging issue and constantly remains in the forefront of public debate in South Asia, comprising India, Pakistan, Bangladesh, Nepal, Sri Lanka, Bhutan, Maldives, and Afghanistan. The partition of India in 1947, which remapped the political geography of South Asia and paved the way for further remapping, was a direct consequence of the inability to accommodate the interests of various religious groups in an independent India. This historic partition was, be it justified or not, the cause of continuing violation of minority rights in

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1 Religious composition of South Asian countries’ population is as such—India (2001): Hindus 81.4%, Muslims 12.4%, Christians 2.3%, Sikhs 1.9%, Buddhists 0.8%, Jains 0.4%, and others 0.7%; Pakistan (2008): Muslims 96.28%, Hindus 1.9%, Christians 1.6%, Ahmadis 0.1% and others 0.12%; Bangladesh (2001): Muslims 89.6%, Hindus 9.2%, Buddhists 0.7%, Christians 0.3%, and others 0.2%; Nepal (2001): Hindus 80.6%, Buddhists 10.7%, Muslims 4.2%, Kirats 3.6%, Christians 0.5%, and others 0.4%; Sri Lanka (2001): Buddhists 76.7%, Muslims 8.5%, Hindus 7.8%, Christians 6.1%, and others 0.9%; Bhutan (2007): Buddhists 75%, Hindus 24%, and others 1%. According to the official data of Maldives, Sunni Muslims constitute 100% of the population. However, conflicting reports have claimed that there are small numbers of Buddhists and Hindus in Maldives. The authenticity of these claims is not well supported by reliable data.

India, Pakistan, and Bangladesh due to animosity between Muslims and Hindus. The other countries of South Asia also lag well behind international standards on freedom of religion. Keeping these realities in mind, in the present article, the authors examine the constitutional jurisprudence of South Asian countries on freedom of religion and analyze the potential implications of such jurisprudence for the religious minorities of these countries.

Recognizing that the promotion and protection of the legitimate rights of religious minorities depend on several constitutional, legal, institutional and social factors, the authors stress that the constitutional arrangement of freedom of religion has significant bearing on religious minorities. In particular, the way in which the higher courts of a country interpret the scope and application of this fundamental right demarcates the minimum level of protection that religious minorities can expect to assert before judicial forums. Alternatively, the higher courts’ failure to interpret and recognize the strictly limited nature of the limitations and restrictions can pose a hazard to freedom and thereby promote legal vulnerability of religious minorities. Before auditing the jurisprudence of these countries’ higher courts on the issue of fundamental right to freedom of religion, one has to keep in mind that these countries’ constitutions provide certain provisions that are arguably not consistent with international human rights standards on freedom of religion. These constitutional provisions limit and restrict the courts in offering progressive interpretation of the freedom of religion clause as contained in the constitution. Accordingly, sometimes the constitutions, rather than the courts, contribute to the antiminority jurisprudence developed in these countries concerning the right to freedom of religion.

II. INTERNATIONAL STANDARDS ON FREEDOM OF RELIGION

Religious rights are the oldest of the internationally recognized human freedoms and had been incorporated into political instruments long before the idea of systematic protection of civil and political rights was developed. In the early days of the human rights regime of the United Nations, Article 18 of the Universal Declaration of

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3 For historical surveys see, Gopal Das Khosla, *Stern Reckoning: A Survey of the Events Leading up to and Following the Partition of India* (Oxford University Press, New Delhi, 1989).

4 Among the South Asian states, Bhutan has no written constitution or Bill of Rights. However, the state is in the process of adopting a written constitution. Alternatively, Nepal has been governed by an Interim Constitution since 2007. Accordingly, the authors scrutinize the Draft Constitution of Bhutan and the Interim Constitution of Nepal for the purpose of the present article.
