



Asia Regional Consultation on Freedom of Religion, Rights of Religious Minorities, and Constitutional Guarantees in Asia

Background Information Note

Freedom of religion is a fundamental human right. This right includes the freedom to have or adopt a religion, the freedom to change one's religion without being persecuted, and the freedom to practise and manifest one's religion. Freedom of religion applies to religious minorities as equally as to majority religious expressions. Those belonging to religious minorities often become powerless or are oppressed by political authorities or by the religious fundamentalists and extremists as well as political activists of religion-based political parties. During the past several years, there has been a serious debate about the articulations of ideas, thoughts, and expressions which may be offensive to certain religions. The controversial terms 'defamation of religions' or 'hurting of religious sentiments' have acquired considerable attention both at the national and international levels, giving rise quite often to abuses by authorities in the way they apply or interpret these terms. There are many cases of blasphemy laws in Asia, which are applied in a discriminatory manner against religious minorities and political opponents.

The right to freedom of religion or belief does not include the right to have a religion or belief that is free from criticisms. In trying to ascertain whether the exercise of freedom of expression violates freedom of religion or belief in specific cases, it should be noted that international human rights law protects primarily individuals, and, to some extent, the collective rights of the community concerned, but not religions or beliefs per se. A distinction between what constitutes incitement to national, racial, and religious hatred and what constitutes a mere criticism of a particular religion is, therefore, necessary to be defined.

Religious pluralism is a worldwide reality today. The increasing presence of multiple faiths in secular societies makes isolation of religions impossible and in such situations interfaith encounters are inevitable. In today's context, religion has come to play an increasingly central role in civil and political life. The fundamental right to freedom of religion or belief is often violated by both governments and individuals, acting either on their own behalf or as members of majority groups. Widespread and grievous violations of this freedom affect the stability, security and development of many states and severely impact the daily lives of individuals, families, and communities, especially their peaceful coexistence and the overall wellbeing of society.

As freedom of religion or belief is one of the foundational rights in the post-war system of international human rights instruments, different legal instruments came into being internationally, regionally and nationally during the past decades. Beginning with Article 18 of the 1948 Universal Declaration of Human Rights (UDHR), religious freedom as a fundamental right has been established (Article 18). Subsequently, the International Covenant on Civil and Political Rights (ICCPR Art. 18 (1)), the UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, as well as several other regional and national legal instruments.

Freedom of Religion in Asia

Asia is home to a great diversity of culture, language, history, and religion. Yet, instead of embracing this plurality by protecting the freedom of religion and belief (FoRB), its violations are a common trend across the region. State legislation, including 'blasphemy' and 'apostasy' laws, is promulgated in the name of 'defending religion'. Such legislations often directly violate FoRB, particularly that of minorities, including religions or indigenous minorities and other vulnerable groups. Concerns about FoRB-related issues are sometimes linked to domestic politics, notably around immigration and integration. Some egregious cases of persecution (Rohingya Muslims in Myanmar, Uyghurs in China) have shone a light on religious dimensions of conflicts and rights. Religious minorities in Asia face not only religious discrimination but also serious threats to their security, liberty, and lives.

In Pakistan, blasphemy laws with severe punishments are used to target religious minorities and restrict their religious freedoms. Pakistan's Penal Code forbids blasphemy with strict punishments. The surge in blasphemy cases against religious minorities stokes communal tensions and bears the continued potential for sectarian violence. Additionally, the Penal Code also prohibits Ahmadis from referring to themselves as Muslims, thus demonstrating the discrimination faced by the minority group. The country continues to report with increasing frequency cases of kidnapping, forced conversion, and forced marriage of young Christian and Hindu girls.

In Bangladesh, the rise of political Islam intrudes upon the faith and practice of the traditionally liberal and religiously tolerant majority Muslims. The rise of political Islam instigates religious hatred against minority religions especially the Chakma Buddhists, Hindus, Christians, and Ahmadiyya Muslims. Blasphemy accusations have led to the destruction and arson of temples and houses.

Although Article 25 of the Indian Constitution guarantees freedom of religion to its citizens, freedom of religion is violated in manifold ways in India. Anti-conversion laws introduced by the State governments are one of the most pressing concerns for religious freedom. Although these laws have been successfully challenged as unconstitutional at the national level, the laws are still being enacted and are in force in nine Indian states. The rise of Hindu nationalism and the conflation of religion and politics have threatened pluralism and harmony, with vitriolic public narratives and hate speech frequently used to incite communal aggression and violence.

In Nepal, strict interpretations have resulted in convictions against Christians on grounds of proselytization. The law does not provide for registration or official recognition of religious organizations as religious institutions, except for Buddhist monasteries. All other religious groups must register as non-governmental organisations or non-profit organisations to own property or operate legally.

In Bhutan, Buddhism is recognised as the state's "spiritual heritage". However, religious nationalism continues to put pressure on non-Buddhist citizens to follow Buddhism. Christian communities are unable to worship publicly, own property, raise funds, conduct outreach activities, or import literature.

In Sri Lanka, the courts have taken cognisance of the constitutional provisions giving foremost preference to Buddhism. In a report to the UN Human Rights Council in 2019, the UN Special Rapporteur on Freedom of Religion or Belief observed that "significant gaps" in "upholding accountability and access to justice as well as ensuring non-recurrence of human rights violations." It was also reported that religious minorities in Sri Lanka faced restrictions in the manifestation of their religion or belief, such as proselytization, conversion, and building of places of worship, in addition to numerous incidents of violent attacks.

Iran is constitutionally defined as an Islamic republic, with all laws and regulations being based on “Islamic criteria” and an official interpretation of *sharia*. Conversion or proselytization and attempts by non-Muslims to convert Muslims bear the death sentence. The death sentence is also accorded in cases of blasphemy—*moharebeh* (“enmity against God”) and *sabb al-nabi* (“insulting the Prophet or Islam”). There were several instances of violations of the freedom of religion reported in 2020.

Although Malaysia and Indonesia are often held up as examples of modern and moderate majority Muslim states with long traditions of tolerance and diversity, there are signs that a more rigid interpretation of Islamic extremism is exerting greater influence in Malaysia. The constitution protects freedom of religion but defines ethnic Malays (around 50 per cent of the population) as Sunni Muslims, with the Shias and Ahmadiyyas considered ‘deviant’. The government continues to selectively prosecute speech that allegedly denigrates Islam, while it largely ignores criticisms of other faiths. Non-Muslims faced legal difficulties when they sought to use the word “Allah” and as many as 31 other Islam-related words.

The Christian minority in Indonesia is but one minority in the country that faces significant religious discrimination. Regional governments are permitted, by law, to ‘regulate’ the construction or renovation of houses of worship, with the process of acquiring permits being fraught with red tape. This has led to the closure of churches and other places of worship at the hands of Muslim extremists who take the law into their own hands.

In East Timor, instances were reported of civil servants rejecting marriage or birth certificates issued by religious organisations (Muslims and Protestants) other than the Roman Catholic Church.

While the Philippines stands out in the region for its relatively strong track record on FoRB, Muslim communities have been severely affected by violence related to the conflict in Mindanao and the southern Philippines for many years. The tensions between the majority Christians and the minority Muslim populations are an additional stress factor.

In Myanmar, Muslims (and particularly Muslims of the Rohingya ethnic group) have faced substantial violence and discrimination because of their religious and ethnic identities at the hands of the Buddhist majority, often with governmental indifference or even active encouragement. The births of Rohingya children cannot be registered and they are thus rendered stateless at birth.

Thailand also saw a marked deterioration in freedom of religion or belief in the last decade, particularly concerning the maintenance of social amity and religious tolerance in some parts of the country. The interim constitution which is currently in use does not provide guarantees about freedom of religion or belief. The most serious human rights violations related to religious intolerance are concentrated in the southernmost border provinces where Islam is the dominant religion, where religious conflicts have been continuing for a long time.

In Cambodia, Buddhism is the state religion, and the law does not permit other non-Buddhist denominations to proselytise freely. The animist Phnong community are discriminated against by local governments. There continue to be barriers to the social integration of religious minorities, especially for the Cham Muslims—as they continue to face suspicion and intolerance by the majority Buddhist population. During the implementation of health measures to fight COVID-19 in the country, Muslim Cambodians were singled out and separated from other Cambodian citizens in official government statistics on infections.

In Laos and Vietnam, the freedom of religion is recognised but ‘normal’ religious practice is defined and regulated. Decree 315 in Laos upholds the “respect for the religious rights and freedom” of both

believers and non-believers; however, the government continues to control written materials for religious audiences with the regulation on the import and printing of religious materials and production of books and documents of various religious. Minority Christian groups face discrimination, government restrictions, and social hostilities especially in rural areas, where Decree 315 is misused or misinterpreted. Vietnamese law provides for significant government control over religious practises and includes vague provisions that permit restrictions on religious freedoms in the stated interest of national security and social unity.

In 2018 in South Korea, mass protests were held in support of the freedom of religion and against the governments' inaction on widespread programmes of violent forced conversions carried out by certain cult-like Christian churches. Under the guise of the freedom of religion, certain religious communities endangered public health by conducting mass gatherings despite COVID-19 restrictions.

Japan continues to be accommodating and supportive of the freedom of religion and belief, with many provisions made for different religions to be practised in harmony and coexistence. However, it has strict refugee screening processes for granting asylum to those facing religious persecution and discrimination elsewhere.

China has been noted as a country of particular concern when it comes to respecting the freedom of religion and belief. In 2020, there were reports of deaths in custody and that the government tortured, physically abused, arrested, detained, sentenced to prison, or harassed adherents of both registered and unregistered religious groups for activities related to their religious beliefs and practices.

Mongolia permits the freedom of religion, but its laws have placed limits on freedom of belief in changing a religious faith. Some religious groups have faced bureaucratic harassment or been denied registration.

Australia's Constitution bars the federal government from making any law that imposes a state religion or religious observance, prohibits the free exercise of religion, or establishes a religious test for public office. The government has also considered public feedback on revised draft religious freedom laws, the aims of which were to make it unlawful to discriminate on the basis of religious belief or activity in key areas of public life. The country also has anti-discrimination laws in place, enabling people to practise religion without fear of consequences.

Constitutional Provisions in Asia

The provision of the rights to freedom of religion and belief also varies greatly among the different Constitutions of Asian countries. Some Constitutions overtly discriminate against religious minorities, such as Pakistan's Penal Code which forbids blasphemy, carrying a penalty of up to ten years and even death in some cases. The public practice of the Ahmadi Muslim sect is also severely restricted by law— Ordinance XX added to Section 298(c) of the Penal Code prohibits Ahmadis from calling themselves Muslims or even referring to their faith as Islam. Articles 13 and 14 of the Iranian constitution refer to the freedom of "recognised" religious minorities such as Zoroastrianism, Judaism, and Christianity while excluding the Baha'i community from its purview. The rights of non-Muslims in Iran are ambiguous and subject to divergent interpretations in the Penal Code.

The provisions related to blasphemy in Myanmar's Penal Code, specifically Sections 295(a) ("outraging the religious feelings" of any class of people with a "deliberate or malicious intent") and 298 ("wounding the religious feelings") are incompatible with Myanmar's international human rights obligations to respect the rights to freedom of religion and belief, and their vague and over-broad formulations leave them open to subjective interpretation and misuse. Furthermore, in Myanmar, since ethnicity is closely

related to religion, the Constitutional denial of citizenship to Rohingya Muslim communities and other Muslim groups residing in Rakhine state and along the western coast is tantamount to religious persecution, and such groups continue to experience the most severe forms of legal, economic, education, and social discrimination.

Some Constitutions permit the freedom of religion by upholding secularism as its founding principle, but the practice of it may vary greatly. Bangladesh's Constitution declares Islam to be the state religion, but the country is mostly governed by secular laws. The Constitution also states that "the State shall ensure equal status and equal right in the practice of Hinduism, Buddhism, Christian, and other religions". Islamic law plays a role in civil matters pertaining to the Muslim community; however, there is no formal interpretation of Islamic law, and it is not imposed on non-Muslims.

Articles 25 to 28 of the Indian Constitution mention the non-discrimination of the state in the profession on any religion. However, several Indian states have passed anti-conversion laws. The Citizenship Amendment Act of 2019 provides citizenship to refugees from six religious minority communities from neighbouring countries, but it has been severely criticised for excluding Muslims. In the Constitution of Nepal, although the religious profession is safeguarded in Section 26.1, Section 26.3 places significant limits on the practice and manifestation of religion or belief or conversion. These limitations potentially create two crimes in one sentence: blasphemy and a ban on proselytising.

In Malaysia, although Article 11(1) of the Federal Constitution guarantees to all persons the right to profess and practice one's religion, the civil courts in Malaysia have failed to robustly protect the religious freedom of Muslims (or former Muslims) by deferring jurisdiction to the Syariah courts over matters of conversion. In some cases, the judiciary of the country overturns directives or bans against the religious freedoms of minorities, such as the Kuala Lumpur High Court ruling earlier this year which overruled the ban as unconstitutional and stated that the word "Allah" along with three other words of Arabic origin ("kaabah", "baitullah", and "solat") could be used by Christians. In Indonesia, despite constitutional protection of religious freedom, as of 2010, Indonesia still had "at least 156 statutes, regulations, decrees, and by-laws that restrict religious freedom," including blasphemy laws.

Freedom of religion and belief is not only a moral imperative worthy of universal support of nation-states and religions around the world, but it also needs to be seen as essential for the emergence of civil liberty and the creation of a world community—and may well prove to be crucial to the survival of the human family.

The recent trends of religious intolerance, ethnic violence, and conflict within and among communities in Asia are extremely worrisome and are matters of serious concern for the CCA. The Christian Conference of Asia (CCA) promotes a vision of inclusiveness that advances religious freedom that everyone can partake.

As a fellowship of churches, the CCA is convinced that true reconciliation and harmony for peaceful societies needs to be established in every possible way, for which the fundamental rights of each citizen should be protected and upheld. At the same time, CCA believes that FoRB is intrinsically related to all other fundamental rights, and thus the Church in Asia would only be credible if it struggles for the rights of everyone, irrespective of religious and ideological differences. Thus, the CCA will engage in advocacy to rescind discriminatory laws as well as promote religious freedoms in all the countries where CCA member churches and councils take up the issue of religious freedom in their local and national contexts.

The CCA will organise an **Asia Regional Consultation** on ‘**Freedom of Religion, Rights of Religious Minorities, and Constitutional Guarantees in Asia**’ from **5–8 October 2021** to understand the challenges faced by Asian religious minorities and uphold the religious and ethnic rights in a region with diverse religious, cultural, and ethnic variations.

Objectives

- To review and assess the current situation of religious freedom and minority rights in Asian countries;
- To identify constitutional guarantees and legal frameworks (or lack thereof) to protect the religious freedoms of minorities in Asian countries;
- To promote and engage in fostering an inclusive and holistic (rather than simply legalistic) understanding of the freedom of religion and belief of religious minorities in different Asian countries;
- To support the right of religious minorities to practice their faith unhindered and without fear;
- To develop potential means of redress and the direction of future advocacy to protect the religious freedoms of different Asian minorities; and,
- To call for the affirmation of commitment to religious freedom for all that transcends ethnicity, nationality, and political beliefs.

Dates

The consultation will be conducted online from **5 (Tuesday) to 8 (Friday) October 2021**.

Participants

Representatives from the CCA member churches and councils, faith-based organisations, civil society organisations, and legal experts will be invited to attend the consultation.

Suggested outcome – a set of recommendations on the promotion and protection of FoRB for Asian policymakers and heads of state, which will inform the proceedings of the CCA’s forthcoming Asian Interreligious Leaders’ Summit in 2022, as well as the CCA’s 15th General Assembly in 2023.