



**Congressional Human Rights Caucus  
Staff Briefing  
“Religious Freedom Conditions in South Asia:  
The Treatment of Religious Minorities”  
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We at the Becket Fund believe that religious freedom, like other human rights, is rooted in the inherent dignity of the human person, not in the fickle will of the state. Religious freedom is a fundamental human right enshrined in the United Nations Declaration on Human Rights and the ICCPR. There are many reasons religious liberty should be at the forefront of American human rights work, and one of them is that **religious liberty is the best measure of whether a country has adequate human rights protections**. Religious freedom is singular among fundamental human rights for its dependence on the protection of other rights. The right to religious liberty requires the freedom of conscience and thought. But its exercise also requires freedom of speech, freedom of association, and even travel and property rights.

Today I will focus on anti-conversion and anti-blasphemy laws, the two most emblematic legal challenges religious liberty faces in South Asia, with particular attention to India and Pakistan.

Article 25 of the Indian Constitution guarantees religious freedom to the extent that all are permitted to “profess, practice and propagate religion” freely.<sup>1</sup> However, the existence of anti-conversion laws punishing proselytism and limiting conversion at the state level greatly undermines this guarantee. Seven Indian states have passed anti-conversion legislation and one state is considering its passage.<sup>2</sup> Sadly, the courts have also supported the constitutionality of such laws.<sup>3</sup> The penalties for conversion range from imprisonment and fines to forced re-

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<sup>1</sup> Article 25 Freedom of conscience and free profession, practice and propagation of religion.

(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law -  
(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

<sup>2</sup> Anti-conversion laws exist in Orissa (passed 1967), Madhya Pradesh (passed 1968, made stricter 2006), Chattisgarh (passed 1968, made stricter 2006), Arunachal Pradesh (passed 1978), Gujarat (passed 2002, made stricter in 2006), and Rajasthan (passed 2006, not yet signed). A similar law is pending in Jharkhand.

<sup>3</sup> See *Rev. Stainislaus vs. State of MP (1977)*. A.N. Ray C.J. wrote the judgment upholding of the constitutionality of anti-conversion laws:



conversion. Some states that have had these laws since the late 1960's are now moving to make them even more restrictive.

Despite India's rich history of religiously diverse expression in the public square, **public division on the law follows religious lines**. Supported today largely by Hindu Nationalist parties, particularly the BJP, anti-conversion laws are promoted as defensive measures against "forced conversions." However, police and judges have interpreted "forcible conversions" to mean anything from charity by religious groups to the claim that God would be happier if someone converted to a new religion.

The more salient point is that **even if forced conversions were occurring**, there are existing civil and legal remedies that would address violent or coercive actions without stifling freedom of conscience. **There are already laws against assault, false imprisonment, blackmail, defamation against persons, and fraud.**<sup>4</sup>

Indian anti-conversion laws are not only affecting the citizens of India. The Buddhist majority country of **Sri Lanka has essentially copied India's anti-conversion model** for its own proposed national anti-conversion legislation.<sup>5</sup>

India and Sri Lanka's constitutions largely conform to international standards for freedom of expression and freedom of conscience. However, **the lack of a rule of law culture at the local level** are what creates the most severe religious freedom problems.

In **Muslim-majority Pakistan, Afghanistan, and Bangladesh, Islam is the official state religion**. Islam is written into each constitution and establishes a foundation for law-making. Perhaps out of a commendable desire to respect local cultures and religions, **the United States missed an opportunity in Afghanistan** to be forceful in defending fundamental freedoms, such as religious freedom for all believers. Those freedoms are actually necessary for the development of an open society. The Abdul Rahman conversion case from last year illustrated how religious freedom cannot be ignored in nation building.

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"It has to be remembered that Article 25(1) guarantees "freedom of conscience" to every citizen and not merely to the followers of one particular religion and that, in turn, postulates 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."

<sup>4</sup> These laws have disproportionately affected the Dalit population – also called "untouchables" and, by Gandhi, "Harijans," or Children of God. According Hindu scriptures (that, of course, Hindus are free to accept or reject on their own conscience), these lowest caste members cannot participate in temple or religious leadership. Whereas in America, the government would not dream of forcing a religious institution to accept members, in India, such privatized discrimination is illegal because of the historical, cultural, socio-economic, and religious phenomenon that is untouchability. Anti-conversion laws allow the state to determine whether Dalits are allowed to leave Hinduism in order to convert to another religion or no religion.

<sup>5</sup> See the Becket Fund's dedicated website <http://www.lankaliberty.com> for legislative history. The Constitution of Sri Lanka, Chapter III, Article 10 conversely states, "Every person is entitled to freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of his choice."



**In Pakistan, freedom of speech itself is “subject to any reasonable restrictions imposed by law in the interest of the glory of Islam.”**<sup>6</sup> This ideological precedent lends itself to the establishment of blasphemy laws meant to protect Islam. Defiling Islam or its prophets is punishable by the death penalty, while desecrating the Qur’an will result in a life sentence in prison.<sup>7</sup> Insulting another’s religious feelings – and note here the **emphasis on the subjective feelings of the listener rather than the objective speech of the speaker** – leads to ten years imprisonment.<sup>8</sup> **Anti-blasphemy laws protect ideas, not the people who hold the ideas.**

It is not just religious believers who are affected by such laws, **dissenters in the broader culture and within majority religions are also targets.** Just last month, a local religious leader issued a fatwa against the editor and staff of a Pakistani fashion magazine for blasphemy. Additionally, the Islamabad police issued a blasphemy complaint in reaction to the publication’s article “Adam and Eve, the bone of contention” and its accompanying photos. While some clerics have called for the death of the staff, police have reported the magazine to higher authorities, with the intention of having “the magazine closed and the staff convicted.”<sup>9</sup>

Although the Pakistani government enacted a law in 2005 requiring police to investigate blasphemy charges, cases against minority religions are common, especially as these laws are rarely applied to the defamation of minority religions.<sup>10</sup> This past May, a political-religious coalition of six parties – the Muttahida Majlis-i-Amal – tabled a bill known as the **Apostasy Act 2006**, which calls for severe punishments for those who convert away from Islam. The Apostasy Act proposes death for all male converts and life in prison “until penitence” for female converts. Convictions may be obtained either by the accused’s own confession, or by the testimony of two adult witnesses, which is consistent with Islamic law. Should it pass, it would override all laws on the topic currently in place.<sup>11</sup>

Thus, the religious freedom community faces even greater challenges in these Muslim majority countries than in India and Sri Lanka: not only does respect for and understanding of rule of law need to be reinforced, but structural constitutional changes also need to be made in order for religious liberty to exist.

I conclude with three practical recommendations:

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<sup>6</sup> Part II, Article 19 of the Constitution of the Islamic Republic of Pakistan.

<sup>7</sup> Sections 295-B and 295-C of the Pakistani Criminal Code.

<sup>8</sup> Section 295-A of the Pakistani Criminal Code.

<sup>9</sup> Reporters Without Borders Report. “Fatwa pronounced against fashion magazine staff,” June 19, 2007.

[http://www.rsf.org/print.php3?id\\_article=22610](http://www.rsf.org/print.php3?id_article=22610)

<sup>10</sup> State Department International Religious Freedom Report 2006, Pakistan: “...**in cases where the religious feelings of a minority religion were insulted, the blasphemy laws were rarely enforced** and cases rarely brought to the legal system.”

<sup>11</sup> Daily Times, “Fails to oppose death for apostasy draft.” May 7, 2007.

[http://www.dailytimes.com.pk/default.asp?page=2007%5C05%5C09%5Cstory\\_9-5-2007\\_pg1\\_7](http://www.dailytimes.com.pk/default.asp?page=2007%5C05%5C09%5Cstory_9-5-2007_pg1_7) – “The government did not oppose the bill and sent it to the standing committee concerned. If passed, the bill will over-ride all other laws in force at present.”



1. In the most recently published *U.S. National Strategy for Public Diplomacy and Strategic Communication*, the administration, represented by Under Secretary of State for Public Diplomacy and Public Affairs Karen Hughes, recognizes the importance of engaging religion as a topic of public diplomacy, especially in the Islamic world.<sup>12</sup> However, this report also **discourages the use of religious language out of fear that it might be misconstrued.**

**Instead of avoiding the use of religious language, the State Department should be learning how to interact with religious leaders**, especially in countries like Pakistan, where the state and religion are so closely aligned, and in India, where religious expression is weaved into public life.

Congress has the opportunity to exercise its oversight of the **1998 International Religious Freedom Act, which strongly recommends the training of Foreign Service Officers** in “the instruction on the internationally recognized right to freedom of religion, the nature, activities, and beliefs of different religions, and the various aspects and manifestations of violations of religious freedom.” We **recommend that the IRFA be amended to require this training.** We have heard that the only religion-related training there is right now dates from the Cold War era, and encourage Congress to investigate the state of religious freedom and religious understanding training.

2. Pakistan, Afghanistan, and Bangladesh are all members of the **Organization of Islamic Countries**, which **has taken the lead in advancing religious defamation measures in international law.** Religious defamation measures, like anti-blasphemy laws, protect the subjective sentiments of the hearer rather than the peaceful speech of the speaker. Worse, they are routinely applied only against religious minorities and dissenters within majority faiths, belying their purported purpose of protecting the vulnerable.

Last month President Bush announced that the United States will send a **Special Envoy to the OIC.** According to Under Secretary Hughes, the Special Envoy’s duties will be “to listen, to learn and to foster dialogue.”<sup>13</sup> Under Secretary Hughes explained that the “Secretary General of the OIC has been a strong voice for reason and tolerance.” **Congress should send a letter to the Special Envoy outlining the legal implications of anti-blasphemy laws** and encouraging the Special Envoy to engage the subject thoughtfully and substantively.

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<sup>12</sup> Strategic Communication and Public Diplomacy Policy Coordinating Committee (PCC) “U.S. National Strategy for Public Diplomacy and Strategic Communication,” <http://www.state.gov/documents/organization/87427.pdf>, p. 18: “The unique role of religion in the current war on terror requires that greater efforts be made to engage in dialogue with the leaders of faith-based communities... Special efforts should be made by USG officials to highlight mainstream Muslim voices that condemn extremist violence.”

<sup>13</sup> Remarks of Karen Hughes, *Foreign Press Center Briefing: Outreach to the Muslim World*, June 27, 2007, at <http://www.state.gov/r/us/2007/87497.htm>.



3. Even as the Becket Fund and other U.S. NGOs attempt to change the legal structures within these countries through the courts and international organizations, our efforts would be amplified by greater congressional involvement. We **applaud the \$5 million dollars included in the Foreign Operations Bill designated for International Religious Freedom**,<sup>14</sup> and we hope that Congress will keep in mind the advancement of religious freedom through the oversight of programs like the \$750 million aid package to the FATA regions of Pakistan. We also encourage Congressional Delegations who are visiting the South Asia region to meet with religious and political leaders who are affecting and affected by anti-conversion and anti-blasphemy laws.

It is an important struggle we are battling here today and I am proud to be among this persistent and passionate gathering. Thank you again for having me.

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<sup>14</sup> House Report, Appropriations STATE, FOREIGN OPERATIONS, AND RELATED PROGRAMS APPROPRIATIONS BILL, 2008:

*“Human Rights and Democracy Fund* The Committee recommendation includes \$40,000,000 for the Human Rights and Democracy Fund, which is \$5,000,000 above the request. The Committee further directs that up to \$5,000,000 of this amount be provided for the promotion of international religious freedom through groups that are able to develop legal protections and promote cultural and societal understanding of international norms of religious freedom.”