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Connecting Communities of Discourse: How the Judiciary, Academia, Government and International Institutions further the work of Religious Freedom

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1. Background

Nepal has been transformed from a Hindu Kingdom to a secular republic in 2007 following the People's Movement, which demonstrated the people power in its truest form and successfully catapulted the country to the path of peace and democracy.

The country is currently engaged in writing a new constitution through the Constituent Assembly. There is a near unanimity among the political forces to institutionalize the democracy, secularism and federalism in the new constitution.

Even before 2007, people in Nepal had been enjoying religious freedom and right to religion. Even though there is overwhelming majority of Hindu in the country, Nepal remains a multi-ethnic, multi-religious and multi-cultural country.

As such, it was felt that it is inappropriate for the state to be seen to embrace only one particular religion. Therefore, the concept of secularism was adopted.

During the pre Constituent Assembly period in 2007, it had become evident that the constitution building process in Nepal should still be seen through the prism of conflict management for the next couple of years, at least. Trust between the key players remained low and the agenda of the Constituent Assembly (CA) including autonomy arrangements, federalism, and power sharing between institutions remained divisive and required nationwide debates and consensus.

However, the peace process that started two and a half years ago has already yielded a number of remarkable achievements. First and foremost, the much anticipated election of CA was held successfully. A total number of 601 members have been elected in the CA - including 335 from proportional representation system. There has been historic representation of hitherto under-represented communities such as Muslims and Christians.

The challenge before Nepal, at present, is multi-pronged. While it is necessary to placate the majority Hindus that their right and freedom will not be infringed upon just because the country became secular, it is also equally necessary to assure minorities that their right to religion will be upheld.

The communal harmony is extremely important for any society to develop, much more for a least developed society like that of Nepal.

It calls for clear demarcation between the state and the religion. A recent example of Nepal is clear enough to show how important it is to keep religion away from politics.

The previous government led by Unified Communist Party of Nepal - Maoists had tried to replace the chief priests at the Pashupatinath temple in Kathmandu - which is like a Mecca for Hindus all over the world, around eight months ago. The then government had decided to install Nepali priests by replacing the Indian priests even though there has been centuries-long practice and tradition of appointing priests from particular South Indian community.

This move by the government backfired as the devotees protested and the government had to withdraw its decision.

This episode marked how sensitive devotees are to the tradition and practice. This episode is also an example how government's intervention can harm the harmony subsisting among the people.

As Nepal is engaged in writing a new constitution, these issues are of utmost importance.

2. Major Issues

Let us now discuss how the various organizations can help in strengthening the religious freedom.

- Judiciary

Judiciary basically works within the ambit of constitutional and legal framework to protect, and strengthen religious freedom. It formulates specific laws to protect the religious freedom. In Nepal, right to religion and religious freedom are under the fundamental rights. The judiciary can work to protect these laws. The Judiciary can even pass strictures in case there is any lacuna in the existing laws. Traditionally, courts in Nepal have stood in favour in protecting religious freedom. Even in the case of appointment of priests in Pashupatinath temple, the Supreme Court asked the government to maintain long-held tradition. Since the courts are major guarantors for minority rights, their role is extremely important in maintaining religious freedom.

- Academia

The community of academia including intellectuals, media, civil society and NGOs are always in the forefront for protecting minority rights. In fact, in Nepal the civil society and academia spearheaded the campaign for democracy during the People's Movement in 2007. In particular, these groups of academic, which is composed of people from all backgrounds and religion, can and should act as independent and unbiased voice to promote religious harmony. For example, when there was an eruption of inter-religious clashes in the city of Nepalgunj and Kapilvastu two years ago, the academia came together to provide a saner counsel and helped to create harmony. The role of media can also be conciliatory or inflammatory in such circumstances. The media should become responsible and play the role in promoting harmony and freedom. Besides, the academia can always lobby in favour

of laws that promote and strengthen religious freedom. They can also lobby for the implementation of such laws. They can act as watchdog for minority rights.

- Government

The government has the most important role to play in promoting religious freedom. First of all, it can pass the laws necessary to do that and implement them. Secondly, it can refrain from intervening in matters that are religious and not show, overtly or covertly, any inclination to any particular religion. Equality should be the basis in treating the people of all religious hues. It should also take the campaigns made by civil society and religious organizations into considerations to create proper environment. The ultimate responsibility to create harmonious environment rests on the government.

- International Institutions

The international institutions, first of all, need to demonstrate their credibility and balance so that their voice will be heard seriously by all and sundry. Their responsibility is to see how the laws and constitutions of any particular country are in conformity with international conventions. Besides, they also need to study the tradition and practice of particular country when making any recommendations. They have to take particular precaution to avoid being seen as discriminatory. Their role must be limited within lobbying in favour of religious freedom and right to religion.

3. Conclusion:

This is right time in Nepal to raise the issues of right to religion and religious freedom. In the new constitution being written by the Constituent Assembly (CA), it will be important to incorporate the provisions to protect and promote religious and cultural freedom. In fact, there is a separate committee within the CA to look after the cultural issues. The CA members have also come out in support of promoting religious freedom. The minorities and underprivileged communities have found the CA process as a golden opportunity to establish their rights.