

[ADRN Issue Briefing]

State of Minority Rights in Asia: Trends from India, Bangladesh, Nepal, Mongolia and Thailand

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True measure of a democracy is how it treats its minorities. It is democratic system alone that retains the “self-correcting” and “self-improving” mechanism to ensure minority communities enjoy equal freedom and opportunities. Minorities make critical contributions to the richness and diversity of society, and that states which take appropriate measures to recognize and promote minority rights are more likely to remain tolerant and stable.¹ Given this, nearly all democratic nations have either codified certain basic rights or have ensured some protection mechanisms for the minorities in their constitutions or national legislations. Many follow the rules and conventions established under the United Nations and other intergovernmental institutions. While this may be the case, the rights and privileges of minorities are rarely honoured in practice even in many established democracies. While there have been visible progress in the status of minority groups since the 1960s largely due to global civil liberties movements, support lend by scores of international human rights organisations, civil society organisations, courts and alert media, over last decade there have been a growing trend of attacks on minorities, open assault on their constitutional and legal rights. Growing polarization and majoritarianism in many countries including some of the most diverse democracies not only depriving minorities their basic constitutional and human rights, they are also creating perpetual divides in the social spheres. In short, nearly every major region of the world is witnessing alarming erosion in the status of minorities.

Given its growing importance to the future and stability of democracy, Asia Democracy Research Network (ADRN) undertook five country case studies (India, Bangladesh, Nepal, Thailand and Mongolia) from Asia to understand the dynamics and key trends with regards to the status of minorities. The case studies explored major questions: How has this evolved during the years (e.g., from discrimination to legislation)? What are the constitutional, legal and administrative mechanisms for protection of minorities and their rights in your country? What are the key challenges in protecting minorities in your country? What should be done to ensure the protection of minority rights?

¹ United Nations Human Rights Commissioner, “Promoting and Protecting Minority Rights: A Guide for Minority Rights Advocates”, 2012.

Legal and constitutional provisions to protect minorities

A necessary precondition to ensure the rights of minorities is having certain basic legal and constitutional provisions. Of course, this varies from country to country. For instance, the Indian constitution provides a long list of provisions in the forms of fundamental rights, institutional commitments both from the executive and judicial branches to enable minorities and disadvantaged populations enjoy equal rights and opportunities.² While Article 25 of the constitution provides the right to “freely profess, practice and propagate religion, Article 29 ensures cultural and educational rights of minority groups. Similarly, Bangladesh has several crucial provisions in the constitution and administrative spheres to ensure the protection of minority groups particularly the religious minorities. For example, Article 41 of the constitution ensures the rights of religious minorities by allowing them the right to practice and promote religious beliefs. Further provisions of Article 41 guarantees each individual’s right to refuse to practice a religion, or to be compelled to be educated in a religion other than their own.³

Nepal and Mongolia have much weaker provisions to ensure adequate protection for minority groups. While the Nepalese constitution under its fundamental rights allows minorities educational and cultural freedoms, the amended Civil Service Act 2049 (1993 AD) in 2007 offers affirmative action (reservation policy) to ensure proportional representation of minorities particularly Dalit (oppressed from the Hindu religion), indigenous communities, women among others.⁴ In Mongolia, the rights of ethnic minorities are guaranteed under the Constitution of Mongolia (1992) which states “no person may be discriminated on the basis of ethnic origin, language, race, age, sex, social origin or status, poverty, occupation or post, religion, opinion, or education”. Similarly, the 1992 constitution allows ethnic minorities to practice their own culture and use their own language, guaranteeing “the right of national minorities of other tongues to use their native languages in education and communication and in the pursuit of cultural, artistic, and scientific activities”.⁵ Mongolia however does not have any specially recognized constitutional provisions or legislations safeguarding the rights of religious minorities or indigenous communities.

Other than the constitutional and legal provisions, the countries in focus have numerous state policies and institutional forms to deal with the rights and privileges of minorities. India for instance has most elaborate list of welfare provisions, central and state schemes in the forms of scholarships, free coaching, loans, skills program, state subsidies for minority run institutions for the welfare of minorities. In addition, India has established a statutory body called Minority Commission both at the federal and state levels to safeguard the rights of minorities. Bangladesh and Nepal too have put in place state-led schemes and provisions and administrative and statutory mechanisms (i.e. Human Right Commission) at multiple levels to strengthen the opportunities for minorities and disadvantage groups. The current Bangladesh government has been making efforts to recruit more and more minorities into government departments apart from state-wide initiatives to make majority community aware and sensitive about other religions. A noteworthy feature of Bangladesh’s approach to minority rights is the proactive role played by vibrant civil society organizations. Whereas, Mongolia has been

² See Niranjana Sahoo, 2022. The Majoritarian Challenge to Minority Rights in India: Case of Muslims, ADRN working paper.

³ Shaheen Anam, 2022. “Protection of Minority Rights in Bangladesh requires stronger commitment”, ADRN Working Paper.

⁴ Pradip Pariyar, 2022. ‘The Protection of Dalit Rights in Nepal: Status and Way Forward’, ADRN Working Paper.

⁵ Ukhnaa Tuya and Damba Ganbat, 2022. “Protection of Minority Rights in Mongolia”, ADRN Working Paper.

allocating state resources for the educational progress of minority groups, although it does not have any specialized programmes targeting these sections.

Progress in Minority Rights: A Mixed Bag

While there are impressive list of constitutional, legal and state-led provisions to protect minority rights in all the countries under study, the implementation records are patchy and uninspiring. This is very much evident from the educational, socio-economic and political positions of minority communities in these countries. The most striking examples can be found in the cases of India and Bangladesh. While the minority Muslims constitute more than 14 percent of population (more than 210 millions), their representation in the elite civil services, particularly the Indian Administrative Service and Indian Police Service, was a mere 3 percent and 4 percent, respectively. Further, Muslims are precariously positioned on most key socio-economic and educational indicators compared to other religious groups such as Hindus, Christians and Sikhs. Even the historically oppressed Scheduled Castes (belonging to the Hindu religion) have moved up on several crucial indicators compared to India's Muslims. Much worse is Muslim political representation, which has seen a sharp decline in recent years, particularly with the rise of right-wing, pro-Hindu Bharatiya Janata Party. However, the plights of Muslims and other religious minorities such as Christians are far more severe in matter of religious freedom. With right-wing forces in power, the country is alive to daily hatreds, discrimination, attacks and vilification of minority groups particularly Muslims by the fringe groups associated with the ruling dispensation. This has warranted the UNHRC chief to call for cessation of attacks against minorities in the country.⁶

Like India, Bangladesh too has significantly failed to protect the religious and ethnic minorities particularly Hindus who continue to face increasing attacks (religious festivals in particular) and discrimination under a political regime that strongly advocates secular politics. Not only are religious and ethnic minorities comprising of 10 percent of total populations rank lower than the national average in every indicator of human development, they face severe social, economic and political discrimination, increasingly losing their ancestral land to Bengali settlers or to land grabbing by vested groups with close links with establishment or political parties in power. What has worsened the conditions and safety of minorities is rising religious extremism especially the Jamaat-e-Islam and majoritarian mobs which have unleashed brutal attacks on Hindu minority, on their religious places, festivals and properties despite state committing to their protection.

In the case of Nepal, the oppressed Dalit community are at the receiving end of upper caste politics and institutionalized discrimination and state neglect. While Dalits are near about 14 percent of population and reservation policy in place for many years, only 2 percent of them find themselves in elite civil service. They are grossly underrepresented in Federal Cabinet, House of representatives and provincial parliaments. Neither do they find adequate representation in local bodies in the positions of mayors and district heads.

As far as Mongolia is concerned, it neither has any positive news regarding ethnic and religious minorities and their participation in key spheres of state. Compared to majority Khalkas (84.5%), ethnic minorities such as Kazakhs (around 100,000 or 4%), Tuvas (around 70,000) and

⁶ Aljazeera, 2019. <https://www.aljazeera.com/news/2019/3/7/un-rights-chief-warns-against-harassment-of-muslims-in-india>

Tsaatans (roughly 1300 population) are placed at the bottom of human development pyramid. What is more concerning is minorities are struggling to preserve their language, culture, customs and religion in a society and polity that is overwhelmingly dominated by the majority Khalkas. While Mongolia is not witnessing serious erosion of minority rights in terms of religious or ethnic attacks from majority community or any state sponsored discrimination, minority groups suffer from state apathy and low penetration of institutions and initiatives.

To cut the long story short, a combination of poor allocation of state resources, weak state capacity, lack of political will, democratic politics which thrives in anti-minoritism and majoritarian impulses, and importantly apathy of independent institutions have all contributed to precarious situation with regards to minority rights in the above mentioned countries. This trend is further accentuated due to lack of coherent and sustained pressure from the global human rights bodies and inter-governmental organizations.

A Ray of Hope from Thailand

Amidst bleak scenario with regards to minority rights and their future, Thailand offers some positive hope. The case study of the LGBTQ (lesbian, gay, bisexual, transgender and queer) community in Thailand by Jirayudh Sinthuphan and Thanchanok Ruendhawil⁷ illustrating their long struggle to find legal and constitutional right to marriage offers lot of hope for other societies in Asia and elsewhere. Although homosexuality and transgenderism have had a long presence in Thai society where lesbian, gay, bisexual transgender individuals enjoyed relatively higher freedom to express their identities and lead normal life than their compatriots elsewhere in Asia, they still face institutionalized discrimination, particularly the right to marriage. With the formation of Thai LGBTQ community in 2012, a visible progress has been made in terms of advocacy and constitutional recognition of their rights. After a decade long struggle and persistent advocacy, on 15 June 2022, both the Civil Partnership Bill, proposed by the government, and the Marriage Equality Bill, proposed by the opposition party, passed the first reading by the parliament along with another draft of the Civil Partnership Bill proposed by the Democrat Party and the cabinet initiated Civil and Commercial Code reform. While this is a big step forward on marriage equality for LGBTQ, there are still many bottlenecks (i.e. surrogacy law, conservative heterosexual majoritarianism) to its actual realization. While this would require further struggle, a lot has been achieved as far as inclusion and equal rights are concerned for these vulnerable minorities.

Conclusion

A quick snapshot of five country case studies clearly illustrate significant erosion of the rights of minority communities. While there are major variances, many key parameters of violation of the rights, failures to enforce codified rights and privileges and majoritarian politics thriving on anti-minoritism and identity politics are common threads that run across most of these states. A combination of weak institutional capacity, thin spread of resources, and apathy or inefficiency of

⁷ Jirayudh Sinthuphan and Thanchanok Reundhawil, 2022. "Fighting for Love: A Battle for Equal Marriage Rights in Thailand", ADRN Working Paper.

constitutional independent institutions such as judiciary have made constitutional and legal rights and privileges guaranteed to minorities remain on paper only. While civil society, media, and human rights organisations offer some resistance to this trend, they are no match to the sweeping majoritarianism and politics of polarization which thrive on anti-minoritism and exclusion. ■

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