University of Cincinnati

Date: 6/26/2019

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It is entitled:

Using Transnational Advocacy Networks to Challenge Restrictions on Religion: Christian Minorities in Malaysia and India

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34245

Using Transnational Advocacy Networks to Challenge Restrictions on Religion: Christian Minorities in Malaysia and India

A dissertation submitted to the
Graduate School
of the University of Cincinnati
in partial fulfillment of the
requirements for the degree of

Doctor of Philosophy

in the Department of Political Science
of the College of Arts and Sciences

by

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July 2019

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Abstract

State-imposed restrictions on religious freedom challenge the rights of minorities. While some minorities live in authoritarian regimes, others live in countries with religious rights institutionalized in national constitutions and international human rights treaties. Despite these guarantees, minorities face restrictions on religion through laws and regulations that restrict what religion they choose and limit how they practice their faith. Thus minorities that in theory are supposed to have religious freedom also encounter religious freedom restrictions in practice. Faced with blockages that restrict their religious rights, minorities at times turn to transnational advocacy networks (TANs).

Through my analysis of Christian minorities in Malaysia and India, I discover what some of these blockages are and how minorities and their transnational partners have negotiated with the state in recent legal challenges to Christians' rights. I focus on the agency and strategies of minorities by listening to their opinions, arguments, and reasoning, as articulated through interviews, legal documents, and an original survey. In doing so, this study differs from recent scholarship that traces the structure and organization of TANs. I find that how Christian minorities use transnational advocacy networks is dependent on the political opportunities that are available to them domestically. Political opportunities in the form of transreligious alliances and politically salient subnational identities offer Christian minorities alternate pathways to negotiate religious rights.

In examining how local minorities and their transnational partners have navigated recent legal challenges in these two post-colonial settings, I also suggest that Christian minorities benefit from using nonreligious arguments in their religious rights claims-making.

Acknowledgments

I completed this dissertation with the help of several people who deserve my deepest gratitude.

I would like to first thank my advisor Laura Jenkins for her support throughout the writing of this dissertation. Laura was always generous with her time carefully reading through each chapter and offering me the guidance I needed as the project progressed. Her knowledge and advice were invaluable.

I would also like to thank my committee members Andrew Lewis and Rebecca Sanders for their helpful comments. It was in Andy's colloquium class that I first became interested in issues related to religious freedom. I am especially grateful for his gracious critique, encouragement, and guidance.

I must also thank the many Christian minorities and NGOs in Malaysia and India who gave of their time to answer my questions or allowed me access to people who could help me further my research.

I could not have undertaken this project without the support of my family. I want to thank my parents for instilling in me the importance of faith and learning. While my mother never got to see me finish this project, her encouragement at the onset remained with me till the end. My sister Karen deserves special thanks for her unwavering support and for patiently listening to reports of my progress while not so gently prodding me to see its completion.

Of course, none of this would be possible without the support of my husband Scott and our three children Bailey, Grace, and Lucas. Scott's support gave me the ability to embrace this challenge, and this dissertation is as much the result of his commitment as it is mine.

Above all, I would like to thank God. I began this journey asking Him to lead me. He was with me in the beginning, and He is with me now. *Soli Deo Gloria.*

Table of Contents

Chapter 1: Introduction……………………………………………………………..1
Argument…………………………………………………………………………..4
Theoretical Framework………………………………………………………….... 7
Methodology……………………………………………………………………....13
Organization of Research………………………………………………………......16

Chapter 2: Constraining Freedom………………………………………………...20
Historical Transnational Connections……………………………………………..21
Religious Minorities and Transnational Advocacy………………………………… 29
Legal Framework and Secularism in India………………………………………..32
Legal Framework and Religious Freedom in Malaysia……………………………...33
Anti-Conversion Laws…………………………………………………………….37
Regulations Against Apostasy…………………………………………………….41
Restricting Religious NGOs (FCRA)……………………………………………..43
Protecting Majority Sensibilities………………………………………………….46
Hindu Nationalism and Islamic Revivalism……………………………………….50

Chapter 3: Challenging State Restrictions
Against Religious Conversion and Apostasy……………………………………..54
Lina Joy v. Majlis Agama Islam Wilayah Persekutuan& Ors……..………………...55
Evangelical Fellowship v. State of Himachal Pradesh……..………………………...60
The Role of TANs…………………………………………………………………66
Contested Claims…………………………………..………………………………...74
Contrasting Frames: Religious Rights vs. Right to Privacy…………………………79

Chapter 4: Confronting State Regulations on Financial
Transactions and the Media……………………………………………………..83
Comparing the FCRA and the PPPA…………………………………………...85
India: Compassion International…………………………………………………..88
Malaysia: *Archbishop of Kuala Lumpur v. Menteri Dalam Negri,,,,,,,,,*……………90
Advocacy in Support of the Catholic Church……………………………………..99
The Role of TANs………………………………………………………………..101
Politics of the FCRA and the PPPA……………………………………………...107
Counter Claims……………………………………………………………………...111

Chapter 5: Complicating Religious Rights Claims
Transreligious Networks, Cross-Cutting Identities,
and the Impact of Local Politics………………………………………………… 115

Dynamic Political Opportunity Structures……………………………………………116
Sarawak and Tamil Nadu…………………………………………………………...118
Tamil Nadu Prohibition of Conversion Act……………………………………...122
Azmi Mohamad v. Director if Jabatan Agama Islam Sarawak……………………. 129
The Influence of Local Politics……………………………………………………..135
The Appeal of Transreligious Networks……………………………………………136

Chapter 6: Conclusion………………………………………………………… 143
Limitations of Transnational Advocacy……………………………………………144
Pitfalls of Religious Freedom Arguments…………………………………………..146
The Influence of Electoral Politics…………………………………………………150
The Promise of Transreligious Networks…………………………………………...152
Final Thoughts on Christian Minorities in India and Malaysia……………………..153

References……………………………………………………………………..154

List of Tables

Table 1 State Legislation Concerning the Control and Restriction of Propagation of Non-Islamic Religions 35

Table 2 Top 25 Recipient Associations of Foreign Funds 45

Table 2 Social Opposition and Transreligious Support 139

Table 4 Effect on Attitudes Toward Working with Other Religious Minorities 140

List of Acronyms

AIADMK	All India Anna Dravida Munnetra Kazhagam
ABIM	Islamic Youth Movement in Malaysia
ACS	Association of Churches in Sarawak
AAS	Advocates Association of Sarawak
AWAS	All Women's Action Society
BJP	Bharatiya Janata Party
BN	Barisan Nasional, or National Front
CFM	Christian Federation of Malaysia
CPM	Communist Party of India (Marxist)
DMK	Dravida Munnetra Kazhagam
ECLJ	European Center for Law and Justice
EFI	Evangelical Fellowship of India
FCRA	Financial Contribution Regulation Act
IGO	Intergovernmental Organization
INC	Indian National Congress
KMF	Kuching Ministries Fellowship
MCCBCHST	Malaysian Consultative Council of Buddhism, Christianity, Hinduism, Sikhism and Taoism
MCA	Malayan Chinese Association
MIC	Malayan Indian Congress
MCC	Malaysia Christian Council
NRD	National Registration Department

NCCI	National Council of Churches in India
NUCF	National United Christian Forum
OHCHR	Office of the High Commissioner on Human Rights
PAS	Parti Islam Se Malaysia, or the Pan Malaysian Islamic Party
PEMBELA	Pertubuhan-Pertubuhan Pembela Islam
PH	Pakatan Harapan or Alliance of Hope
PKR	Parti Keadilan Rakyat, or the People's Justice Party
PPPA	Printing Presses and Publications Act
RM	Malaysian Ringgit
RS	Indian Rupee
RS	Pakistan Rupee
RSS	Rashtriya Swayamsevak Sangh
SIB	Sidang Injil Borneo
SIS	Sisters in Islam
TMMK	Tamil Nadu Muslim Munnetra Kazhagam
UCFHR	United Christian Forum Human Rights
UDHR	Universal Declaration of Human Rights
UMNO	United Malays National Organization
UN	United Nations
UPR	Universal Periodic Review
WAO	Women's Aid Organisation
WCC	World Council of Churches
WEA	World Evangelical Association

Introduction

Chapter 1

On a rainy night in late 2018, hundreds of people gathered outside Rome's Colosseum to hear the story of Asia Bibi, a Pakistani woman imprisoned on charges of blasphemy against Islam. The Colosseum lit in bright red as a show of solidarity for Christian minorities and their religious rights served as a backdrop. Asia Bibi's story began ten years earlier in a village 40 miles southeast of Lahore after being arrested on trumped up charges of blasphemy following a village disagreement. Section 295 C of Pakistan's penal code calls for severe fines, life imprisonment, or punishment with death should a person be convicted of using words, either written or spoken, visible representation, or by imputation, innuendo, or insinuation that defiles the prophet, Mohammad. Charged with blasphemy and facing capital punishment and a Rs.100,000 fine, Asia Bibi appealed to the Lahore High Court. The court denied her appeal. Her subsequent application to Pakistan's Supreme Court overturned the decision two years later, but religious conservatives challenged the court's decision with massive protests and calls for judicial review. Ultimately, Asia Bibi was released to protective custody in January 2019 following a review of the Supreme Court's decision. Her eventual departure from Pakistan as an asylum seeker and relocation to Canada in early May 2019, ten years after being charged, was the culmination of both democratic process and transnational advocacy. In the ten years between her imprisonment and eventual release transnational human rights supporters advocated on her behalf in multiple ways. Their efforts included keeping her story active on social media, creating an online petition signed by over 800,000 individuals, writing letters to the Pakistani Prime

Minister and the United Nations, as well as appeals from European parliamentarians and U.S. based advocacy organizations calling for her release.

Asia Bibi's story is just one example of religious minorities who live in countries where state restrictions on religious freedom challenge their religious rights. Her story received significant international press coverage and attention from foreign legislatures and other transnational partners. But there are more neglected cases where religious freedom is also restricted. According to Pew Research Center, approximately twenty-eight percent of countries have high or very high restrictions on religion (Pew Research Center, 2018). In his study of 597 religious minorities in 177 countries, Jonathan Fox found that over 61 percent of religious minorities faced some form of state-imposed limits on religious practice, institutions, and clergy (Fox, 2016, p 2). While some minorities live in authoritarian states where human rights standards have not taken root, others live in countries with well-established norms institutionalized in domestic law and international human rights treaties. Still, they are subject to restrictions that range from anti-conversion laws to limits on proselytization and regulations on building houses of worship and the printing of religious materials. Thus minorities that in theory are supposed to have religious freedom, as in India and Malaysia, also face religious freedom restrictions in practice. I focus on these less publicized or studied cases. In both countries, laws and regulations challenge constitutional guarantees of religious freedom and complicate how minorities practice their faith.

According to the U.N. Special Rapporteur for freedom of religion and belief, Ahmed Shaheed, restrictions on religion are on the rise and are a global phenomenon (Shaheed, 2017). In the 2018 annual report on how governments and societies hinder religion, Pew Research Council found Christian minorities experience more state-imposed restrictions than any other religion

(Pew Research Center, 2018). Likewise, an independent review on the global "persecution of Christians" initiated by the U.K. Commonwealth and Foreign Office found Christian minorities are subject to the highest amount of violence and state-imposed limits on their faith in the world (U.K. Commonwealth and Foreign Office, 2019). For these Christian minorities, transnational advocacy networks are a pathway to challenge restrictions.

How do Christian minorities engage with transnational advocacy networks when faced with state restrictions on religious freedom? And in the language of TANs scholars, what do domestic "openings" and "blockages" look like on the ground, and how have local and transnational groups navigated this terrain in recent legal challenges to Christians' rights? Based on the outcomes of their efforts in these cases, I deepen the scholarly understanding of the limitations of TANs in religious freedom cases, particularly in postcolonial settings. I bring needed attention to the particular domestic blockages and opportunities that shape TANs strategies and their outcomes in specific cases, rather than focusing on tracing the structure of the networks, which has been the focus of much recent TANs scholarship. In doing so, I shed light on a puzzle: Why might small minorities sometimes actually avoid or minimize assistance from well-resourced TANs that are ready and willing to help promote their rights? For instance, when I asked one Indian Christian leader when he would consider appealing to TANs, he suggested that he would do so only when things got really bad. I find that when and how Christian minorities in India and Malaysia use TANs is determined by what is happening on the ground domestically and it is often not the first response or is carefully limited in these postcolonial countries.

Much of the literature and public discussion assume that TANs advocating for people's rights will be helpful and focus on their degree of effectiveness or influence (Mundy and Murphy, 2001; Shawki, 2011; Hadden and Jasney, 2017; Ciplet, 2019). But TANs advocating for rights in postcolonial settings may backfire and must be used with care. The TANs scholars brought political science the notion of blockages and the concept of the *boomerang* effect. When groups face blockages at home, they turn outward to international allies who call on their own governments, international organizations, and other non-state actors to put pressure on the state (Keck and Sikkink, 1999, p. 93). This project reveals what some of these blockages (and opportunities) are exactly, and how minorities and their TANs allies try to tailor their advocacy to the contexts they face in particular cases.

Through a comparative analysis of four legal cases and two events in two different countries—India and Malaysia—I consider the strategic choices Christian minorities make in response to a diverse set of restrictions on religious rights and how they maximize political opportunity structures, both dynamic and institutional. I study how they respond to anti-conversion laws, regulations against apostasy, and financial and media regulations that, although outside the scope of religion, can still negatively impact how individuals and religious organizations operate. As such, I do not examine how social hostilities—mob violence, communal violence, and crimes motivated by religious hatred—affect Christian minorities.

Argument

My central contention is that how Christian minorities engage with TANs is dependent on the opportunities available to them domestically. These opportunity structures are resources that are external to the mobilizing group and aid minorities in their negotiations with the state. They can be institutional, as in access to national courts that allow minorities to challenge

restrictions through legal means. They can also be dynamic and come through shifts in the electoral landscape or changing judges on the courts.

When Christian minorities have access to institutional opportunity structures such as domestic courts, TANs can provide legal advice, serve as amicus curiae, or act as observers of legal proceedings. In these instances, transnational partners adopt a collaborative stance, with domestic advocates acting as the primary agents in challenging state restrictions. At other times, TANs take a more central role, holding states accountable by reminding them of obligations with appeals to the United Nations via submissions to the Universal Periodic Review or engaging with foreign legislatures through letters and hearings.

In examining how local and transnational groups have navigated recent legal challenges to Christians' rights, I suggest that Christian minorities benefit from using nonreligious arguments in their search for religious rights. In diverse contexts, religious rights are often deeply contested. Religious freedom arguments meet competing claims in support of the maintenance of public order, the conflation of religious identity with national identity, and the preservation of national sovereignty. These competing claims, which are often reinforced by existing laws, influence how religious freedom constitutional guarantees are interpreted by national courts and in other forums. As such, Christian minorities can benefit by framing their challenges to state restrictions on religion with nonreligious arguments that resonate with a broader audience and by taking into account both domestic blockages (heeding the power of majoritarian nationalist framings of religious freedom) and opportunities (politically salient subnational identities or cross-religious alliances) while carefully and selectively engaging with TANs.

By focusing on the interplay of local minorities, domestic contexts and transnational advocacy, I contribute to the TANs literature by documenting the particular dynamics of TANs engagement in postcolonial contexts due to the strength of counterarguments based on nationalism and sovereignty, as well as opportunities to draw on subnational identities or trans-religious coalitions to increase minorities' political clout. This study also enriches the TANs literature with its focus on the agency and strategies of local religious minorities, by listening to their arguments, opinions and reasoning, as articulated through interviews, a survey, and their legal documents.

In the discussion below, I consider some of the debates surrounding religious freedom, define TANs, explain the theoretical framework the guides this dissertation, detail the methodology, and describe how the study is organized and include summaries of each chapter.

Religious Freedom

Article 18 of the Universal Declaration of Human Rights (UDHR) grants all people "the right to freedom of thought, conscience, and religion." The UN International Covenant on Civil and Political Rights (ICCPR) affirms this right and states that freedom of thought, conscience, and religion "shall include freedom to have or to adopt a religion or belief of his choice." In turn, the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief by the UN General Assembly, "reaffirms that freedom of thought, conscience, religion and belief is a right guaranteed to all without discrimination." The majority of countries also have religious freedom protections enshrined in constitutions (Grim and Finke 2011, p. 27). Despite this recognition of religious freedom in international law and national constitutions, debates persist regarding the global promotion and protection of religious freedom.

For some scholars, religious freedom is a universal public good that must be protected (Hertzke 2012; Philpott and Shah, 2016). For others, the promotion of religious freedom is an extension of power imbalances between the West and the rest of the world (Hurd 2015; Schonthal 2015). Saba Mahmood in her critique of the promotion of religious freedom calls transnational religious freedom advocacy a "technology of modern governance... in the maintenance of a geopolitical and international legal order in which West and non-West sovereignty are unequally weighted" (Mahmood, 2012, p. 419). She questions if transnational religious freedom advocacy can be separate from "the exercise of geopolitical domination, interests, and power" (Mahmood 2015, 147-148). For Shakman Hurd, transnational efforts in support of religious freedom "globalizes the secular states' power over the individual and "and as a guarantee of the worth of the individual's own desires it tells individuals how to be religious, modern, and free" (2015, p. 54),

Absent from these debates is the consideration of the agency of religious minorities themselves. I attempt to rectify this gap by bringing into the conversation the strategic choices religious minorities make in their use of transnational partners in support of religious freedom. Thus, I do not question the international promotion of religious freedom as an ideal or a universal public good as expressed in domestic and international law. Instead, through my analysis of Christian minorities, I also shed light on the strategic choices that religious minorities make in how and when they use transnational advocacy partners, which is a missing dimension in existing debates on the transnational promotion of religious freedom.

Defining TANs

Keck and Sikkink introduced the concept of transnational advocacy networks (TANs) as “those actors working internationally on an issue, who are bound together by shared values, a common discourse, and dense exchanges of information and services (Keck and Sikkink 1999, p.

89). While sharing similarities with social movements, these networks are differentiated by their commitment to norms and emerge out of common ideas and values (Keck and Sikkink 1998, p.9). Bolstered by new technologies, they 'frame' debates, leverage states, and utilize non-state actors to bring about change.

In the area of religion, transnational advocacy has a rich history, with transnational religious connections existing well before the emergence of the nation-state (Rudolph et al.1997). According to scholars, Dominican missionaries engaged with the Royal Spanish Court in 1511 AD to advocate against the exploitation of the indigenous population of Hispaniola in what is now the Great Antilles. Later, the Quakers would establish the "Society of Friends" and oppose the slave trade in the Caribbean colonies and North America (Stamatov 2010, 2013). More recently, new forms of communication and interconnectedness in the 21st century have helped solidify transnational religious ties (Wuthnow and Offutt 2008), and global religious advocacy encompasses a wide range of issues and includes various religious traditions (McCrudden 2015; Wang 2019).

The nature of organized religion itself allows for built-in networks and solidarity based on common beliefs and values (Smith, 1996, p. 15). Advocacy networks and especially religious ones allow for solidarity to emerge or be strengthened. For Christian Smith, in the context of religion, "the camaraderie, shared experience, and collective affirmation of moral commitments and personal and group identity all become rewarding in and of themselves, beyond what the movement may or may not achieve" (Smith, 1996, p.15). Thus, in religious rights claims-making, TANs also serve as transnational solidarity networks that provide religious minorities with the needed support to persevere as they negotiate with the state.

Transnational advocacy for religious rights, specifically on issues of religious freedom, is not limited to religious groups alone but also includes a broader collection of state and non-state actors. These TANs include not only religious organizations, but also human rights groups, foreign legislatures, and international governmental organizations. While different in identity, scope, and function, they coalesce on ideational grounds and mobilize in ways that are collaborative and dynamic. Transnational advocacy groups advocate for religious minorities in many regions, but scholars have yet to analyze how religious minorities access their services, especially in different contexts, and the domestic blockages and opportunities that influence how and when Christian minorities use them.

Theoretical Framework

The influence of domestic structures has been discussed by the broader international relations literature on norms (Risse-Kappen 1995; Risse, Ropp, and Sikkink, 1999), as well as prior research on transnational advocacy (Keck and Sikkink 1998). Using the important work by Keck and Sikkink on TANs as a jumping off point, I draw from other literatures that address collective action, including social movements. Political opportunity structures and framing, two key concepts of the social movement literature, provide the theoretical framework for my analysis.

Political Opportunity Structures

The influence of political opportunity structures on advocacy efforts is generously covered by the social movement literature. Unlike resource mobilization theory which emphasizes the internal variables of mobilization including internal organization and

specification of goals, political opportunity structures relate to those external factors that influence mobilization. Thus, “opportunities” are “options for collective action, with changes and risks attached to them which depend on factors outside the mobilizing group” (Koopmans, 2004, p.65). Sidney Tarrow defines political opportunities as “consistent—but not necessarily formal or permanent—dimensions of the political environment or of change in that environment that provided incentives for collective action by affecting expectations of success or failure” (Tarrow, 2011, p. 163).

Political opportunity structures are conceptualized theoretically in two ways; either as institutional (Kitschelt 1986, p. 63) or dynamic (Gamson and Meyer, 1996, p. 277; Tarrow 1996, p. 41). Herbert Kitschelt in his cross-national study of anti-nuclear movements argues that when political systems are open but weak, they allow for social movements’ assimilative strategies or the ability of social movements to work through institutions because the political opportunity structures offer multiple avenues of access. When political systems are closed and have the capacity for significant repression, social movements adopt confrontational strategies, which are outside established channels (Kitschelt 1996, p. 66). For Tarrow, political opportunity structures are not only state institutions, but conflict and alliance structures that oppose constraints and offer resources external to the group (Tarrow, 1996, p. 54). These dynamic opportunity structures are those that are windows of opportunity due to shifting alliances among collective actors and specific events (Larsson and Lindekilde 2009, p. 363; Steinberg, 2016, p. 34). For Gamson and Meyer, these dynamic opportunities shift with political actors, events, and policies (Gamson and Meyer 1996, p. 277). Moreover, dynamic opportunities can be either enduring or event-based (Beck 2008, p.1569).

Framing

Opportunity structures, framing processes and claims-making are three core concepts in the study of social movements. The concept of claims-making is understood "as performances where governments are the targets, claim initiators or third parties" (Tilly and Tarrow, 2006 p. 4; Tilly, 2008, p.5). Christian minorities in the cases and events discussed in the following chapters sought rights by "claiming" what was guaranteed by national and international law. In addressing the state in their claim, they created an obligation of the state to deliver on an already established right—the right to freedom of religion. Intrinsically linked to claims-making, framing is defined as the "the conscious, strategic efforts by groups of people to fashion shared understandings of the world and themselves that legitimate and motivate collective action" (McAdam, McCarthy and Zald, 1996, p. 6). As Goffman suggests, frames offer the first answer to the question: "What is going on here?" (Goffman, 1974, p. 25). They construct meaning for constituents, bystanders, and opponents (Snow and Benford, 1988 p.198). Master frames, although similar in function to collective action frames, are broad and are intended to turn bystanders into constituents (Snow and Benford, 1992, p. 139). They appeal to a broader audience and are designed to resonate with the cultural context in which the issue of contention resides.

For McAdam, collective action frames must overcome six hurdles; attracting new recruits, sustaining the morale and commitment of current adherents, generating media coverage, mobilizing the support of bystander publics, constraining the social control options of its opponents, and ultimately shaping public policy and state action. Included in McAdam's definition is the acknowledgment that competing frames exist and can result in "framing contests" (McAdam, Tarrow and Benford, 2001 p. 48). According to Snow and Benford, frames assign meaning and interpret relevant events and conditions in a manner that is intended to

mobilize potential adherents and constituents, demobilize antagonists, and garner the support of bystanders (Snow and Benford 1988, p. 198). As such, framing is not static but an active "meaning-making process by which actors strategically diagnose a problem, propose solutions, and motivate others to rise up and pursue change" (Morrell, 2015, p.364).

Two of the central concepts of framing are *frame resonance* and *frame alignment*. Snow et al., define frame alignment as the linkage of individual or collective interpretive frameworks, making events or occurrences meaningful, where frames function to organize experience and guide action, whether individual or collective (Snow, Rochford, Worden & Benford 1986, pp. 464-467). Frame resonance refers to salience and credibility of the frame and its capacity as a bridge builder (Bergmann, 2018, p. 379).

Making frames more resonant through the *vernacularization* of rights arguments to fit local contexts can address new realities, increase legitimacy, and help undermine counter arguments (Merry 2006). Merry and Levitt in their cross-national study of women's rights movements argue "venaculizers convey ideas from one context to another, adapting and reframing them from the way they attach to a source context to one that resonates with the new location" (Levitt and Merry, 2009, p. 449). Advocates who construct master frames that "align" and "resonate" with existing "rights talk" are able to reach a broader audience and, therefore, increase the number of new recruits and sympathizers while maintaining the commitment of existing supporters (McAdam et al, 1996, pp. 5-6).

Methodology

My analysis uses a mixed method design. Using both qualitative and quantitative approaches, I examine how Christian minorities in two different contexts, India and Malaysia, engage with TANs. Although one is a majority Muslim country and one majority Hindu, in many ways Malaysia and India are similar cases, as they both have small but longstanding Christian minorities, a British colonial past, and constitutional protections of religious freedom. Thus the study is akin to the "most similar systems" design often used in comparative politics (Levy, 2008 p. 10). In many ways, however, these two countries have complex legal, political, historical and social differences. Thus my comparative case study of Christian minorities does not claim to hold enough variables constant to prove a hypothesis. Rather, this interpretive study deepens our understanding of how domestic contexts shape minority engagement with TANs and the outcomes of such engagements in recent years in two Asian countries. The data includes semi-structured interviews with elites and non-elites, content analysis of press statements, judicial proceedings and U.N. documents, and original survey data.

To better understand domestic blockages and opportunities and how subsequent decisions to engage with TANs played out for religious minorities, I examine legal cases and events with different outcomes. As such, I consider instances where the claims of Christian minorities were denied or realized either in part or in full. I do not limit my research to the religious rights claims of individuals, but also investigate the strategic choices religious NGOs make in how they engage with TANs and in the arguments they employ. Furthermore, the four legal cases and two events that anchor my study span sixteen years, the period from 2001 to 2017. By examining cases and events that span sixteen years, I allow for temporal differences that reveal dynamic

opportunity structures, including changes in ruling political parties. My choice of cases also covers a range of laws and regulations that impact how religious minorities practice their faith. While some laws are directly tied to religion, other forms of regulation, although outside the sphere of religion, still can negatively impact how Christian minorities groups and especially faith-based NGOs operate. As such, in the Indian context, I analyze transnational advocacy efforts in response to anti-conversion laws and financial regulation. In the Malaysian context, I examine regulations against apostasy, the protection of majority sensibilities, and the regulation of the press.

I examined judicial proceedings, press statements from political parties, NGOs, and human rights organization in both countries. I also analyzed the NGO and country submissions of two U.N. Universal Periodic Review cycles in each country. I conducted twenty semi-structured interviews with elites and non-elites from both countries. These interviews included conversations with pastors, leaders of Christian denominations, missionaries, heads of Christian advocacy NGOs, both domestic and transnational, legal experts, and non-clergy. Due to the nature of the subject matter of this study, I have withheld the names of all the individuals I interviewed.

In addition to semi-structured interviews, I conducted an original survey *(n*=300) to inquire about public attitudes concerning the pathways Christian minority groups consider when responding to restrictions on religious freedom. During fieldwork in Madhya Pradesh in 2017, I surveyed the attitudes of elites and non-elites attending a Christian conference which included attendees from several states in India, including Tamil Nadu, Chhattisgarh, Orrisa, Assam, and Kerala amongst others. As such, my survey sample allows for regional differences. Translated

into English and Hindi, the survey included questions related to how Christian minorities should engage with TANs and other religious minority groups.

Why Christians?

Christians experience more discrimination than followers of any other religion (Fox, 2016, p. 8). As followers of the largest religion in the world, they occupy a vast geographical expanse and are minorities in countries where the interests and religious sentiments of the majority population take precedence. The experiences of Christians in these countries vastly differ from Christians in the global north, and this experiential disparity has contributed to the religious rights of Christian minorities being understudied and receiving less attention than other religions.

Some Christian minorities live in authoritarian regimes, while others live in democracies. Democracies, despite constitutional guarantees, can still restrict religious freedom in practice, but Christian minorities in these countries receive less scholarly and media attention. Moreover, the global rise of state-imposed limits on how Christian minorities practice their faith calls for a better understanding of the strategic choices they make in their negotiation with the state over their religious rights.

Why India and Malaysia?

I chose Christian minorities in India and Malaysia as cases for my comparative study for several reasons. India is the world's largest democracy, and Christians make up 2.3% of a 1.2 billion population. Yet, their response to religious restrictions is understudied. Moreover, the best data sets concerning the number and types of religious restrictions in India use data from

NGOs and the U.S. government. As such, there is a scarcity of original survey research concerning Christian minorities.

Similarly, Christians in Malaysia compose 9.2% percent of the 32 million population, and again, their use of TANs is understudied. While both cases focus on the same religious minorities—Christians, who in each case are less than 10% of the overall population but a large number in absolute terms—they are situated in countries with different majoritarian religions (Hinduism in India and Islam in Malaysia), different political systems, and varying levels of religious liberty guarantees. India is a democracy with constitutional provisions that grant all persons the "freedom of conscience and the right to freely profess, practice and propagate religion" (Article 25, Constitution of India). Malaysia is a constitutional monarchy with Islam as the state religion and the constitutional provision that "every person has the right to profess and practice his religion and, subject to Article 11(4), to propagate it." By selecting two states with different political systems, levels of religious liberty guarantees, and majoritarian religions, I can analyze a variety of domestic opportunities and blockages in each country and the strategic choices Christian minorities make in how and when they use transnational partners in response to state restrictions on religion.

Organization of Dissertation

The dissertation is organized into six chapters. Following this introductory chapter and a chapter that covers the types of restrictions that Christian minorities encounter in each context, I devote the remaining chapters to comparative discussions of how Christian minorities groups in India and Malaysia engage with TANs and the arguments they use in their negotiation with the state over religious rights. A summary of each chapter is below.

In chapter two, I examine the relationship between religion and the state in both contexts, the restrictions that Christian minorities face, the legal frameworks that guide those restrictions, and the social forces that influence them. I examine the relationship between religion and the state by asking the questions: what is the legal framework that guides state restrictions on religious practice and belief? How have social forces influenced these restrictions? And how have Christian minority groups historically engaged with TANs in each context? To respond to these questions, I explore constitutional provisions for religious freedom in each context and consider state restrictions on religion and other forms of regulation that challenge those guarantees. I compare state anti-conversion laws in India with regulations against apostasy in Malaysia and state legislation that pertains to the control and restriction of the propagation of non-Islamic religions. I also discuss how financial regulations, the registration of societies, and press and publishing licenses are used by the state to limit the operations of religious NGOs. These forms of regulation, which are not explicitly regulations of religion, can still negatively impact on Christian minority groups. Finally, I consider how religious restrictions do not occur in a vacuum, and social movements and their ties to political parties in power influence their emergence and formation.

Chapter three compares the strategic choices Christian minorities make in their legal challenges against state anti-conversion laws (India) and regulations on apostasy (Malaysia). Analysis of the two cases, *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan & Ors. 2007* and *Evangelical Fellowship v. State of Himachal Pradesh* 2012 shows Christian minorities with access to similar networks adopted different strategies. The level of transnational engagement around these two cases differed as well, with the Lina Joy case receiving more transnational attention than Evangelical Fellowship. In Evangelical Fellowship, Christian minorities

challenged the Himachal Pradesh anti-conversion law using religious freedom arguments accompanied by the nonreligious argument that the law's 30-day prior notification requirement violated an individual's right to privacy. Evangelical Fellowship's use of the right to privacy resonated with the court, which struck down the required 30-day advance notification to the local magistrate of the intent to convert. In comparison, arguments presented in the Lina Joy case primarily centered on an individual's right to religious freedom as guaranteed by Malaysia's constitution, and Joy's request was ultimately denied by the country's Federal Court. The difference in the legal outcomes of both these legal cases suggests that Christian minorities in the search for religious rights can benefit from using nonreligious arguments.

Chapter four focuses on how Christian minority organizations in both contexts use TANs to confront state regulations that are outside the scope of religion but still impact how religious organizations operate. I conduct an analysis of the Foreign Contribution Regulation Act 2010 (FCRA) in India and the Publication and Presses Act 1984 (PPPA) in Malaysia and compare how two Christian organizations engaged with TANs in their challenges to the state's enforcement of registration and publication requirements. During my analysis, I ask the following questions: what arguments did Christian minorities put forth to the transnational network and to their own governments? What strategies did Christian minorities employ in their use of the transnational network? And what do the outcomes of these strategies tell us about religious rights claims-making?

In chapter five, I detail the impact of domestic dynamic and institutional opportunity structures on how Christian minorities engage with TANs. I return to state restrictions against conversion and apostasy, but this time consider two cases that resulted in legal outcomes that

were in favor of Christian minorities. *Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* 2015, which involves a Sarawakian Christian man's desire to leave Islam and receive state recognition for his change in religious status, is compared to the challenge that Christian minorities put forth in response to the enactment of an anti-conversion law in India's southern state of Tamil Nadu. In Tamil Nadu, Christian minorities utilized dynamic opportunity structures in the formation of domestic transreligious networks and changing electoral politics to challenge the state successfully. Likewise, in the case of Azmi Mohamad Azam (also known as Roneey Rebit), the influence of institutional and dynamic opportunity structures also played a role. The analysis also suggests that in both instances, strong sub-national identities factored into the decisions of the Court and government. Thus, the study indicates that in diverse contexts where other forms of identity can complicate or support religious rights claims, increased descriptive representation can impact how judicial and political decisions are determined and when the rights of religious minorities are granted.

In chapter six, I summarize the findings, outline the contributions of the dissertation, and suggest some avenues for future research.

Constraining Freedom of Religion

Anti-conversion laws, regulations against apostasy, and limits to proselytization

Chapter 2

In order to understand how Christian minorities partner with TANs to secure their rights and participation in India and Malaysia, it is important to understand the history of each country's relationship with religion—both religious majorities and religious minorities. In this chapter, I examine the relationship between the state and religion in India and Malaysia, the restrictions that Christian minorities face, the legal framework that guides those restrictions, and the social forces that influence them. The premise that underlies this chapter is that by first examining state constraints to religion including the legal framework that regulates religion in both countries, the historical factors that brought them into being, and the social forces that underpin them, a more in-depth inference can be made in subsequent chapters that analyze specific legal cases and events.

I begin with a comparison of Christian minorities in India and Malaysia and their historical engagement with TANs. I continue with a brief narrative on how secularism is interpreted and proceed with a more detailed discussion on religion's legal framework in both countries. Lastly, I consider the political factors that impact the regulation of religion and the social movements that influence them. I mirror my discussion on India with a similar conversation on Christian minorities in Malaysia. Along the way, I consider similarities and differences between the two countries.

Historical Transnational Connections

Christian minorities have a long history that dates to the early centuries of the Christian era when the religion was first established on India's south-east coast. In fact, "long before Christian communities established themselves in Europe, there were Christian communities in India called "Thomas" or Syrian Christians" (Frykenberg, 2003, p. 34). Followers connect their history to Thomas the Apostle and claim that he arrived in the country as early as 52 A.D. (p. 34) In 1498, the first European Christians, this time Roman Catholics, arrived (p. 40). In 1706, German Evangelical missionaries came to Southern India, and as the missionary movement grew, Christian institutions, both Catholic and Evangelical, spread throughout the country (p. 47). Missionaries continued to thrive under British imperial rule during the 19th century, and Christianity in the subcontinent was for the first time, the religion of the imperial rulers, just like Islam had been before (Brown, 2002, p. 2).

The connections that Christians in India have across borders have historically been perceived as an 'anti-national' stance (Mallampalli, 2004, p. 87). Questions about allegiance and identity were prevalent during the Indian nationalist period. In actuality, the influence that transnational Christian networks had on the attitudes and commitments of India's Christian minorities were exaggerated, for amongst other reasons, Christians in India found their ties distinctly unique compared to other states and especially those from the west. Moreover, the relationship that members of these groups had with followers in other countries depended on their economic and social standing (Mallampalli, p. 87). Over time, and mainly in response to Hindu nationalism, a distinct Indian Christian voice grew to represent their interests to the government. The emergence of religious NGOs such as the Catholic Truth Society formed in

1919 and the National Council of Churches in India (NCCI) founded in 1921, as well as a growing Catholic Press, all contributed to the consolidation of a Christian voice. This consolidated Christian voice despite ecumenical and regional differences shared similar sentiments in their welcome of the end of colonialism and concern over their place as Christian minorities in Hindu majority India.

Christian minorities in Islam dominated Malaysia shared a similar concern. Their origin in the country, like Christian minority groups in India, also has a long history. While there are claims that Christianity gained a foothold in the 7th century through traders from Turkey and Persia (Liow, 2016, p.140), the Portuguese conquest of Malaysia in 1511, followed by the Dutch victory over the Portuguese in 1641, offer the first sustained presence of Christianity in the country (Roxborogh, 2014, p. 2). The Dutch eventually ceded control to the British in the first half of the 19th century (although parts of Malaysia and Penang, in particular, were already under British control) and further facilitated the growth of the Christian community. By the end of the 19th century, numerous denominations constituted the Christianity minority community in Malaya (Roxborogh, 2014, p. 29). While colonialism did facilitate the spread of Christianity in the country, migrants contributed as well with the "the Hakka Christians from China, and South Asian migrants from the subcontinent were equally crucial in how they spread the religion through their transnational networks" (Liow, 2016, p. 143). The Japanese occupation in 1941 and changing politics after the war contributed to the call for a Christian voice that was self-representative and distinctly Malayan. In this manner, Christian groups were mirroring the sentiment of the country at the time, which was the need to be independent. In response to calls for a representative voice and events such as Emergency rule in 1948, the Malayan Christian Council (MCC), an ecumenical NGO consisting of Christian organizations and churches was

formed. In the early 1950s, political parties became progressively more active with calls for self-rule, and in 1955, campaigned for Independence from the British. Subsequent talks between the British and the Alliance which was made up of three political parties based on communal lines resulted in August 31st, 1957 is established as the date of Independence (J. Norman Parmer, 1957, p. 147).

Situating Christian Minorities Post Independence

The actual framing of Malaysia's constitution was a two-year multi-layered process that ultimately, despite cautionary voices from religious and ethnic minorities, chose to establish Islam as the state religion. The constitutional commission named after Lord Reid, a Lord of Appeal in the Ordinary in the House of Lords, was constituted of legal experts from the Commonwealth. The five-member commission included B. Malik, Chief Justice of the Allahabad High Court, Abdul Hamid, a judge from Pakistan, Cambridge academic Ivor Jennings, and Sir William McKell, also a judge and a former Governor- General from Australia (Harding, 2012, p. 30; Fernando and Rajagopal, 2017, p. 4). The formation of the Reid Commission was the culmination of negotiations between Britain, Malaya's Sultans, and the Alliance which was, in turn, constituted of the Malayan Indian Congress, the Malayan Chinese Association, and the United Malays National Organization (UMNO) (Stilt, 2015, p. 413).

Analysis of the Commission's proceedings tells a story of competing voices advocating for rights based on religious and ethnic identity. While the Commission was dissimilar to India's Constituent Assembly's formation—the latter constituted by elected members versus the Commission consisting of appointed international jurists—the areas under debate were similar. The Commission proceedings addressed the protection of rights for ethnic and religious minorities, and like the Constituent Assembly debates in India, there was also significant

discussion over the relationship between the state and religion. To retain their existing power on matters of religion, the Sultan's argued against the inclusion of an establishment clause (Fernando, 2006, p. 259). The Alliance, on the other hand, argued in favor of an establishment clause and in their testimony to the Commission called for Islam to be the state religion and in contradiction for Malaya to also be a secular state.

Moreover, the Alliance also called for the freedom for "non-Muslim nationals professing and practicing their own religions" (Political Testament of the Alliance as quoted in Stilt, 2015, p. 46). As such, very early in post-Independent Malaysia, contradictions over religion's place in society were institutionalized. The establishment of Islam as the religion of the federation along with constitutional guarantees that granted individuals the right to practice and profess their faith have continued to complicate how religious freedom is legally interpreted in Malaysia and is evident in the legal cases discussed in following chapters.

Apart from the testimony of the three main stakeholders (i.e., the Sultans, Britain, and the Alliance), the Reid Commission also welcomed written reports and oral testimony from both individuals and representatives from civil society. In total, the Commission received 131 memoranda from individuals and organizations. Their testimonies centered on three main areas, namely, guarantees concerning the use of vernacular languages, education and equality of citizenship, and freedom of worship. Among the long list of voices were religious minorities, including the Malaya Christian Council. Founded in 1947, the Malaya Christian Council (MCC) an ecumenical NGO constituted of Christian churches and organizations, "expressed the need to ensure "full religious freedom" was provided in the constitution" (Fernando and Rajagopal, 2017, p. 6).

A summary of the Commission's meeting with Malaya Christian Council in part reads:

> Dr. Ho [Chairman of the Malayan Christian Council] then referred to the implications of the request of some people that the Muslim religion should be the new State religion. He suggested that it would be proper in a community of so many different races if the new Independent State were to be a secular one giving no particular favours or privileges to any one religion as in the case of India. Mr. Hamid [representative from Pakistan] said that such a supervision by itself would not prevent the legislative body from enacting any law on the subject it saw fit to introduce. Archdeacon Woods [representative of the Malaya Christian Council] said that in the case of Pakistan were Islam was the State religion 85% of the population were Muslim. In the case of Malaya only 48% were Muslim the State religion would operate to the detriment of a majority of the people of the country. Mr. Hamid asked whether the fact that such a provision was present in the State Constitutions had done any harm or created any obstacles. Mr. Woods emphasised that in the case of countries where the population was predominately Muslim, it was different matter, but this was not the case in Malaya" (Malayan Christian Council Summary Record of Meeting August 23, 1956, BNA, C.O. 889/, C.C. 20167, at 2, as quoted in Stilt, 2015, p. 417).

Other religious minorities, including the Sikh community, also expressed concern concerning Islam as the state religion and called for constitutional guarantees protecting the right of religious freedom. Ultimately, the Commission chose not to include Islam as the state religion, but the issue would continue to draw debate in the next layer of the constitutional framing process when the Working Party which consisted of the three main stakeholders–the Alliance, the Sultans, and the British government reviewed the draft. Again, the Sultans held to their position of non-inclusion of an establishment clause and clarified their position with the following:

> to declare that the faith [Islam] is the established religion of the Federation would then prejudice their own position as heads of the faith in their respective States, and would also serious encroach upon rights of States and their governments solely to deal with the question of the Muslim faith (Untitled document n.d., NBA, C.O. 941/85 as quoted in Stilts p 424).

However, the Alliance which had always been in favor of an establishment clause now found

support from Abdul Hamid, the Pakistani jurist and member of the Reid Commission who had changed his position in favor of Islam as the state religion. After some give and take between the Sultans and the Alliance including the constitutional provision that the Sultans would retain their control of religious affairs at the individual state level (Article 3 (2), the various stakeholders reached an agreement. At the end of the Constitutional framing process Article 3(1) of the constitution stated: Islam is the religion of the Federation: but other religions may be practiced in peace and harmony in any part of the Federation (Article 3 [1]).

The establishment of Islam as the religion as outlined in the constitution laid the foundation for competing interpretations with regard to the rights of religious minorities in Malaysia. Numerous legal cases over the rights of religious minorities have grappled with the seemingly contradictory provisions found in Article 3 and two legal cases involving Christian minorities—*Lina Joy* and *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* are discussed in chapter 3 and chapter 4 respectively.

Calls for the freedom to practice minority faiths which were articulated by the Malaya Christian Council and other religious minorities in Malaysia was a concern also shared by Christian minorities in India. Establishing religious rights in Hindu majority India during the constitutional framing process was a common goal amongst religious minority groups in the early days of post-Independence India. The issue of conversion was central to discussions on freedom of religion during the Constituent Assembly Debates (Neufeldt, 2005, p. 383). The conversion of minors as a subset of the broader discussion on conversion received particular attention with some members like Purushottamdas Tandon advocating against conversion for all including minors. Independence activist K.M. Munshi took a different approach and proposed

the following:

> freedom of conscience and the right freely to profess and practice religion be subject to public order, morality, or health but that persons under eighteen should not be free to change religion without parental consent, and that conversion brought about by coercion, under influence or, material inducement by punishable bylaw (Framing vol. 11. p. 76 as quoted in Neufeldt p. 383).

Others including B.R. Ambedkar, recognized as the principal architect of India's constitution, argued for the right of minors to convert (Debates, vol. III, 1947, pp. 496 and 503 as quoted in Neufeldt p. 285). Concern for the Hindu majority's sensibilities was also apparent during discussions on conversion. M. Ananthasayanam Ayyangar, who would eventually become Speaker of the Lok Sabha, India's lower parliamentary house, articulated this concern:

> Our minorities are communal minorities for which we have made provision. Do you want an opportunity to be given for numbers to be increased for the purpose of getting more seats in the Legislatures?... All people have come to the same opinion that there should be a secular State here: so we should not allow conversion from one community to another (*Constituent Assembly of India*, Vol. III, 1947, p. 498 as quoted in Neufeldt, p. 386).

Lokanath Misra who would later become the Governor of Assam, expressed concern over conversion bringing about the demise of Hindu culture:

> To my mood Vedic culture excluded nothing. Every philosophy and cultures has its place but now the cry of religion is a dangerous cry. It denominates it divides and encamps people to warring ways. In the present context what can this word 'propagation' in Article 19 mean? It can only mean paving the way for the complete annihilation of Hindu culture, the Hindu way of life and manners (Constituent Assembly of India, Vol. II, 1948, p. 824, as quoted in Neufeldt, p. 387).

Constituent Assembly Member, R.V. Dhulekar also voiced his concern for conversions leading to separatism as well as reducing the number of Hindus in the country.

India's Constituent Assembly proceedings provide insight into how the relationship between religion, law, and society is interpreted differently across contexts. For some lawmakers, secularism did not mean separation of church and state, but rather that the state could get involved in matters of religion and limit the right of religious minorities to practice their faith. Undergirding this argument was the understanding that involvement of the state into matters of religion was acceptable as long as India's identity as a Hindu nation remained intact. Accompanying this argument was the threat that an increase in the number of religious minorities could jeopardize Hindu culture, thus prompting lawmakers to question the need for religious freedom provisions they viewed as being at the expense of Hindu majority interests.

Concern for the sensibilities of the majority religious community evident during the Constituent Assembly debates continues today amongst India's political elite and often comes at the expense of other religious communities. In both countries, the rights of religious minorities, including Christians, are repressed as a result of regulations that cater to the sensibilities of the majority. Malaysia's constitutional framing process concerning religious rights is equally interesting because it highlights the multiple competing voices (many of which exist today) that had a vested interest in the relationship between religion and state. Like the Constituent Assembly debates in India, there was concern about preserving specific identities. In India, the constitutional framing process illustrates the desire to preserve the Indian cultural identity and in Malaya, the Malay identity, both of which being deeply tied to religion (Article 160[1] links Malays to Islam, making the definition of a Malay to be that of a follower of Islam). In both countries, differences in the meaning of secularism and interpretations of the right to profess and practice religion, the imbalance between majority and minority interests, and conceptualizations

of national identity as being deeply tied to religion illustrate that religious minorities could benefit from using non-religious arguments when negotiating religious rights.

Along with identifying competing arguments concerning religious rights, the constitutional framing process also illustrates the coming together of distinct religious minorities in their quest for religious rights. In Malaysia, the Malaya Christian Council, a domestic ecumenical Christian NGO argued against the inclusion of Islam as the state religion, but there were also transnational connections.

Religious Minorities and Transnational Advocacy

The most noticeable transnational connections in the Malaysian constitutional framing process were outside the scope of religion and came in the formation of the Reid Commission itself which was the result of the unusual decision of having outside legal experts help frame Malaysia's constitution. However, there were hints of transnational religious connections as well. Debates over the establishment of Islam as the state religion made their way across borders to other countries in Asia, including Pakistan as evident by a Colonial Office report which states:

> Echoes of this controversy have arisen in the Pakistan press where there have been allegations that the refusal of the Commission to recognize Islam as the established religion is a bad thing and that there is an Indo-British conspiracy to "impose" on the Malay people a constitution which will place the Malays in a permanent ineffective minority in their own country (as quoted in Stilt p. 426).

It is unclear whether the popular support from Pakistan in making Islam the state religion in Malaysia had any effect on the Constitution's framing. Nevertheless, it does highlight the presence of transnational voices concerning the relationship between religion and the state in the early days of independent Malaysia.

Transnational advocacy in support of religious minorities in the early days of post-independent India is an example of the impact of domestic opportunity structures on how Christian minority groups engage with TANs. In India transnational support was in response to concerns that the religious feelings of the majority would subsume the rights of minorities. Jawaharlal Nehru, India's first Prime Minister, was sympathetic to this concern. Nehru didn't have much time for religion, and at the birth of the nation, fiercely defended the idea of secular India. Secularism, in his definition, would transcend mere separation of church and State, and instead, foster religious pluralism. His vision for India was that of a nation whose strength came from her diversity of religion and culture (Brown 2009, p. 223). Not only was Nehru's view of secularism informed by his skepticism of religion, but also by his commitment to the rights of minorities in the aftermath of partition (Bajpai, 2002, p. 184; Tejani, 2008, pp. 258-259).

Despite his own commitment to secular principles and the founding of the newly independent state on those same principles, Nehru found that Christians, as well as other religious minorities, faced intimidation. Examples included the harassment of Christians in Uttar Pradesh's Meerut district by the Arya Samaj, and also in Madhya Pradesh where "local Hindu activists and the state government all seemed to be implicated" (Brown, 2009, 225-226). The Archbishop of Bombay, Cardinal Gracias spoke to Nehru of his "anxieties" about the fate of Christians in various parts of the country. He had called upon Nehru for three consecutive years and did so again in 1955, equipped with a list of grievances. Nehru's concern was two-fold. On the one hand, Nehru was concerned about religious minorities in Hindu majority India, on the other hand, was his acknowledgment that he needed the Vatican's support in the shaping of Indian Catholic and international opinion.

As Brown notes:

> In the case of Christians, their ties with foreign missionary societies, particularly those within British and the developing British Commonwealth (in which India was a key player) meant that any Indian Christian grievances would be publicized on a broad international stage and the domestic political arenas of countries whose support India needed, very specifically, the support of the Catholic hierarchy in India and of the Vatican was a significant element in his long-term hope to achieve the peaceful integration of Portuguese Goa into the Indian Union (see secret note by Nehru quoted in Brown p. 22).

Nehru needed the country's Catholic community and their vast and powerful transnational partners to support the government's plan to integrate Portuguese Goa into the Indian Union. Nehru would eventually end Portuguese rule in 1961 by force, but not without the support of Bombay's Catholic Bishop (Brown, 2009. p. 233). At the time of Goa's liberation, Nehru made a point to mention the Christian minorities support when he said "this event has been hailed by the people, not by the Hindus, but by the Christians, including the Catholics. You may have seen in the press what the leading dignitary of the Catholics in India, the Archbishop of Bombay has said. He has welcomed the liberation" (Nehru Statement at Press Conference, New Delhi, December 28, 1961). Newly independent India and Nehru, in particular, wanted to prove to the international community that this was a state rid of the shackles of colonialism, plural in religious and cultural traditions, and committed to secular principles. Christian minorities recognizing Nehru's need for international recognition and the support of domestic constituents (i.e., India's Catholic community) with regard to foreign policy, saw this dynamic as a "window of opportunity" and used it to their advantage.

Other transnational advocacy included concern over an inquiry commissioned in 1954 by the state of Madhya Pradesh into the activities of missionaries. The inquiry which two years later produced an influential report commonly known as the Nyogi Report (named after its principal

investigator), was primarily viewed by local Christian minorities as harassment. Added visa restrictions for missionaries received even more criticism from both Christians in India and transnationally. After the Archbishop of Canterbury expressed his concerns to Nehru, changes in policy were made and missionaries were instead required to hold special endorsements in their passports and statements of "no objection to return" certificates had to be issued by the government for those already working in India.

The events mentioned above and the restrictions on religious practice and regulations that impact individuals and organizations discussed below illustrates that India's Christian minorities use of TANs in response to restrictions is not a new phenomenon, but instead is traced to the early days of independent India. Christian minorities at different times and under different circumstances have utilized TANs in response to restrictions on religious freedom. How Christian minorities have engaged with TANs is influenced by the political opportunity structures available to them.

Legal Framework of Religious Freedom: Secularism in the Indian Context

Secularism in India is described more in terms of equality and less in terms of separation between church and state. In fact, the term 'secular' was not originally a part of the constitution and was only added to the Preamble twenty-seven years later with the passing of the 42nd Amendment. India's constitution allows for both religious plurality and state interference. Article 25(1) grants citizens freedom of conscience and the right to profess, practice freely, and propagate religion. Article 25(2) allows room for the state to interfere in religious matters and states, "nothing in this article shall affect the operation of any existing law or prevent the state from making any law regulating or restricting any economic, financial, political or other secular

activity which may be associated with religious practice. Furthermore, Articles 15, 16, and 29(2) centers on the equality of citizens regardless of religion, race, sex, or caste. Despite these constitutional guarantees, debates continue as to what does secularism mean in the Indian context.

In the absence of a Hindi word for 'secular,' secularism in India is viewed to be more in keeping with the Hindi phrase *sarva dharma samabhava* or equal respect (Singhvi, 2009, p. 332). Some scholars have described the relationship between the state and religion as one of equidistance. In this conception, one faith is not favored over another, and instead, there is an equal distance between the state and religion. Amartya Sen describes it as a "basic symmetry of treatment…wherein so far as the state has to interact with different religions and with members of different religious communities, there must be a basic symmetry of treatment" (Sen, 2005, p. 296). While some scholars have termed this separation in terms of equal distance or even 'symmetry of treatment,' where the state takes a neutral posture and engages with different religions equally, Rajeev Bhargava describes the relationship as not one of equidistance, but rather as "principled distance" (Bhargava, 2010, p. 27). For Bhargava, secularism in India means "the state intervenes or refrains from interfering in religion depending entirely upon where or not some values are protected or advanced" (Bhargava, 2007, 40). Like the nuanced understanding of secularism in India, religious freedom in Malaysia comes with several qualifiers.

Legal Framework of Religious Freedom: State Religion in Malaysia

The legal framework surrounding religious freedom in Malaysia allows for multiple interpretations. Firstly, there is the issue of Islam being the state religion as provided in Article 3 of the constitution, therefore, making arguments that the country is also secular hard to defend.

Secondly, ethnic and religious identity are tied together in Article 160, which defines 'Malay' as a person who professes the religion of Islam, habitually speaks the Malay language and conforms to Malay custom. This legal intertwining of religion with ethnicity has proven problematic in issues related to religious freedom. The Malaysian courts have at different times used this intertwining between religion and ethnicity found in the constitution to rule in favor of restricting religion. One of the most notable cases is *Lina Joy v Majlis Agama Islam Wilaya Persekutuan & Amor* (discussed in chapter 3). In *Lina Joy*, the court ruled in favor of the state and based its decision in part on the relationship between ethnicity and religion. According to the court, "a person as long as he/she is a Malay and by definition under Article 160 clause 92 a Malay, the said person cannot renounce his/her religion at all. A Malay under Article 160(2) remains in the Islamic faith until his or her dying days" (Lina Joy [2004] 2 MLJ 119). Thirdly, the constitution empowers individual states to pass laws in matters pertaining to Islam (Moustafa, 2014, p. 158). Under this provision, the majority of states have enacted anti-conversion laws (see Table 1). These laws, named 'Control and Restriction of the Propagation of Non-Islamic Religion' enactments, restrict the propagation of non-Islamic religions to Muslims. Also, some states have monetary and physical punishment for apostasy which falls under the state (Adil 2007, p. 16) and others have also enacted "rehabilitation laws" that allow for detention and the reeducation of converts out of Islam (Ahmad, Masum & Ayus, 2016, p. 38).

Table 1: State Legislation Concerning the Control and Restriction of Propagation of Non-Islamic Religions

State	Enactments	Date	Provisions prohibiting the use of specific words and expressions	Penalty
Terengganu	Control and Restriction of the Non-Islamic Religions Enactment, 1980	April 1, 1996	Section 9 and Parts I& II of the Schedule	Fine of RM 1,000
Kelantan	Control and Restriction of the Propagation of Non-Islamic Religious(sic) Enactment 1981	Jan 1, 1987	Section 9 and Parts 1 & II of the Schedule	Fine not in excess of RM 10,000 or jail not in excess of five years or both and whipping * As amended by the Control and Restriction of the Propagation of non-Islamic religions (Amendment Enactment 2007 which came into force on July 20, 2007.)
Selangor	Non-Islamic Religions (control of Propagation Amongst Muslims) Enactment 1988	July 8, 1988	Section 9 and Parts I & II of the Schedule	Fine not in excess of RM, 1,000
Kedah	Control and Restriction of the Propagation of Non-Islamic Religions Enactment, 1988	Oct 1. 1988	Section 9 and the Schedule	Jail not in excess of three years and for a second and subsequent offence, jail not in excess of four years
Malacca	Control and Restriction of the Propagation of Non-Islamic Religions Enactment, 1988	Jan 1, 1990	Section 9 and Parts I & II of the Schedule	Fine of RM 1,000
Perak	Control and Restriction of the Propagation of Non-Islamic Religions Enactment, 1988		Section 9 and Parts I & II of the Schedule	Fine not in excess of RM 5,000 r hail not in excess of two years or both.
Pahang	Control and Restriction of the Propagation of Non-Islamic Religions Enactment, 1989	March 1, 1990	Section 9 and Parts I & II of the Schedule	Fine not in excess of RM 5000 or jail not in excess of two years or both
Johor	Control and Restriction of the Propagation of Non-Islamic Religions Enactment, 1991	February 1, 2003	Section 9. No Schedule but prohibited to use "any of the words of Islamic origin or any of its derivatives or variations".	Fine not in excess of RM5000 or jail not in excess of two years or both.
Perlis	Control and Restriction of the Propagation of Religious Doctrines and Belief which is Contrary to the Religion of Islam Enactment, 2002	January 1, 2007	Section 9 and Parts I & II of the Schedule	Fine not in excess of RM 5000 or hail. Not in excess of one year or both
Negri Sembilan	The Control and Restriction (The Propagation of Non-Islamic Religions Amongst Muslims) (Negri Sembilan Enactment, 1991	April 5, 2007	Section 9 and Parts I & II of the Schedule	Fines not in excess of RM 1,000 or jail not in excess of six months or both

Source: Malaysian Bar Council

Lastly, the parallel legal system of civil and Syariah courts further complicate any adjudication of religious freedom disputes. It is under the banner of contradictory constitutional guarantees, an establishment clause, parallel legal systems, and individual state legislative action protecting Islam that Christian minorities reside.

Christian minorities in Malaysia are guaranteed the right to freedom of religion according to Article 11(1) which states that "every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it." Clause 4 is especially important since it offers a significant caveat to the preceding clause and gives the state license to restrict how religious minorities practice their faith and prevent the propagation of non-Islamic religions to Muslims.

Furthermore, it illustrates that in Malaysia, constitutional guarantees of religious freedom do not mean equal rights. The freedom to profess and practice religion is further limited by Article 3(1) which states that "Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation" (Article 3[1]), thereby implying the caveat of "peace and harmony" both of which are not defined. Of equal significance is Article 11(3a) which states that "every religious group has the right to manage its own affairs," and 3b and 3c "to establish and maintain institutions for religious or charitable purposes; and to acquire and own property and hold and administer it in accordance with law" respectively. The constitutional provision of religious communities having the right to manage its affairs has been an argument used to deny religious freedom in legal cases, including the landmark case of Lina Joy, discussed in the next chapter.

Religion is regulated not only by the legal framework of the constitution but also by other regulatory mechanisms at the federal and state level. Article 11(4) which provides the legal basis

for individual states to construct laws that restrict the propagation to Muslims of any religion other than Islam outlines it as: “State law and in respect of the Federal Territories of Kuala Lumpur and Labuan, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam” (Article 11 [4]). Based on that legal foundation, 10 out of 13 states have laws that restrict the propagation of non-Muslim religions to Muslims. The three exceptions are Penang and the states of Sabah and Sarawak in East Malaysia. The reasons for the absence of laws in these three states are related to politics and a lesser extent history, more than any other factors. Sabah and Sarawak formerly part of Borneo is geographically removed from the rest of Malaysia, has a majority Christian population, and joined the Federation under separate assurances that protected individual rights including the right for Muslims to renounce their faith (Liow, 2016, p. 164). Peninsular Malaysia does not have the same right, and individual states regulate not only the propagation of non-Islamic religions to Muslims but the right to convert from Islam to other faiths. Anti-conversion laws are also a part of religious restriction landscape in India and affect how Christian minority groups practice their religion.

Restrictions on Religious Practice and Belief: Anti-Conversion Laws

The regulation of conversion in India is better understood not as a story of stops and starts but rather as a narrative on a continuum where at different times anti-conversion sentiment and subsequent proposals for regulation against conversion have seen a resurgence. In fact, anti-conversion legislation can be traced to colonial times when the princely states of Patna, Raigarh, Udaipur, and Jodhpur, amongst others, had laws limiting conversion (Jenkins, 2008, p. 113). The Raigarh State Conversion Act 1936 called for an individual who wanted to convert to submit an

application to an appointed officer (Jenkins, 2008, p. 114). The Patna Freedom of Religion Act 1942 and the Surguja State Apostasy Act 1945 followed soon after and were laws restricting conversion under the umbrella of maintaining law and order. The Udaipur State Conversion Act 1946 in turn, called for all conversions from Hinduism to other religions to be officially registered. As Jenkins notes, these early princely state laws and the Raigarh example aptly illustrates the continuity of the issue. The regulation of conversion via the Raigarh State Conversion Act 1936, which was implemented during colonial rule continued when it became a district of Madhya Pradesh and ultimately, was involved in the landmark Supreme Court Case *Stanislaus v. Madhya Pradesh* (Jenkins 2008).

Other regulations associated with conversion were also evident in the late 1900s when the Araya Samaj introduced the Shuddhi movement, which means 'purification'. Best known for targeting the Muslim Rajput, it was, in essence, a rite of reconversion where Muslim Rajputs had to purify themselves and reconvert to be a part of Hindu benefits (Adcock, 2014, p. 365). In post-independence India, regulations directly or indirectly related to conversion emerged as early as the 1950s with the introduction of personal laws. The first of which was the Hindu Marriage Act. Enacted in 1955, the Act laid grounds for a person to divorce their spouse should they convert from Hinduism to another religion (Hindu Marriage Act, 1955). The Hindu Succession Act in 1956, also delved into the issue of conversion. According the Act, children born to a person who had:

> ceased or ceases to be a Hindu by conversion to another religion, children born to him or her after such conversion and their descendants shall be disqualified from inheriting the property of any of their Hindu relatives, unless such children or descendants are Hindus at the time when the succession opens (Hindu Succession Act, 1956).

While the personal laws did not explicitly prevent conversion, it is likely that both Acts and others like the Hindu Minority and Guardianship Act, 1956 and the Hindu Adoptions and Maintenance Act, 1957 could have served as a deterrent to conversion to minority religions. While these are examples of deterrents, other regulations were more explicit including several unsuccessful attempts to establish a national anti-conversion law.

Introduced in 1954, the Indian Conversion Regulation and Registration Bill is one of several unsuccessful attempts at restricting conversion at the national level. The Report of the Christian Missionary Activities Enquiry Committee two years later in 1956, also illustrates the anti-conversion sentiment at the time. Commonly known as the Nyogi Report, because of its principal investigator, Chief Justice of the Nagpur High Court, Bhavan Shankar Nyogi, the report consisted of hundreds of interviews and took two years to complete. Deeply critical of the activities of Christian missionaries, it laid the foundation for the Madhya Pradesh's anti-conversion law enacted as the *Madhya Pradesh Dharma Swantantraya Adhinium*, 1968 in the state, and subsequent anti-conversion narratives and has remained influential since. Jenkins in her research on anti-conversion laws in India concludes that "suspicion of conversions and assumptions about the gullibility of poor converts, voiced in this report, paved the way for legal restrictions" (Jenkins, 2008, p. 114).

Among the Report's recommendations was the prohibition of altering "any attempt by force or fraud, or threats of illicit means of grants of financial or other aid, or by fraudulent means or promises or by moral and material assistances, or by taking advantage of any person's inexperience …" (Christian Missionary Activities Committee 1956, vol. I, p.163). Subsequent anti-conversion laws enacted by state legislatures have with a few exceptions drawn strongly

upon the Madhya Pradesh anti-conversion legislation which was in turn deeply influenced by the report.

Despite several calls for an anti-conversion law at the national level, restrictions concerning conversion still remain within the foray of states. The Orissa Freedom of Religion Act 1967 was the first state to enact an anti-conversion law in post-independence India. According to the Act, “no person shall convert or attempt to convert either directly or otherwise, any persons from one religious faith to another by the use of force of inducement or by any fraudulent means nor shall any person abet any such conversion” (The Orissa Freedom of Religion Act 1967, § 3). Penalties include imprisonment up to one year or with a fine of rupees 500 or both if the crime of “forcible conversion” has been determined (The Orissa Freedom of Religion Act §4). Accompanying rules introduced in 1989 included the requirement of the “priest performing the ceremony of conversion to intimate the date, time, and place of the ceremony, along with the names and addresses of the persons to be converted to the concerned District Magistrate before fifteen days of the said ceremony” (Orissa Freedom of Religion Rules, 1989, 5[1]). The Orissa anti-conversion law’s constitutional validity was challenged by Christian minorities, in *Yulitha Hyde v State of Orissa* 1969. In this case, the Orissa High Court held that the propagation of religion was an essential part of Christianity and therefore fell within the scope of Article 25 and Article 26 (Neufeldt, 2005, p 13). The decision, which was a win for the Christian community, was short-lived and was later overturned by the Supreme Court in *Stanislaus vs. Orissa and Madhya Pradesh*.

Following the Supreme Court’s ruling, other states have enacted similar laws, including Arunachal Pradesh (1978), Chhattisgarh (2000), Gujarat (2003), and Rajasthan (2006). The

objectives of these laws are similar, and differences between them are limited to scope with some states imposing stronger penalties and regulatory mechanisms than others. The Himachal Pradesh Freedom of Religion Act also enacted in 2006 is especially noteworthy due to the legal challenge initiated by Christian minorities and is discussed in chapter 4. Equally notable is the Christianity minorities response to the Tamil Nadu Prohibition of Forcible Conversion of Religion Act introduced just a few years before. While Christian minorities, along with the transnational partners, had some success combating the Himachal Pradesh anti-conversion legislation using non-religious arguments, the Tamil Nadu Act in its entirety was repealed a few years after its enactment. I examine the Tamil Nadu anti-conversion law along with TAN engagement in detail in Chapter 5, but for now, I turn my attention to state laws restricting religion in Malaysia.

Restrictions on Religious Practice and Belief: Regulations Against Apostasy

State laws restricting the propagation of non-Islamic religions to Muslims first emerged in 1980 in the state of Terengganu. Similar laws were enacted through the 1980s and 90s, with the last one being the "Control and Restriction of the Propagation of Religious Doctrine which is Contrary to the Religion of Islam by the state of Perlis (Kusrin, Nasohah, Samuri & Zain et al, 2013, p. 14). The laws make it illegal to influence or persuade a Muslim to be a follower of another religion, to subject a Muslim under the age of 18 to the influence of a religion other than Islam, and also prohibit the use of banned words (Saeed & Saeed 2017, p.124). The word Allah, viewed by Muslims as the term for God which is on the list of banned words was at the center of *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri*, a protracted legal case between the Catholic Church and the Malaysian government discussed in chapter 4.

The special position of Islam in Malaysia also affects the right of individuals to transfer from one religion to another. While non-Muslims can change their faith, Muslims cannot. Debates for or against apostasy center on two constitutional provisions. Those individuals for in favor of apostasy cite the freedom of belief found in Article 11 while those against apostasy cite Article 3 and its empowerment of the state to protect, defend, and promote Islam and therefore, is in keeping with the apostasy laws preventing Muslims from changing their faith. In spite of these debates, several states have enacted punishments under Islamic Criminal Law Enactments, or the Administration of Islamic Law Enactments were "apostates may be sanctioned with fines, imprisonment, or whipping" (Ahmad, Masum & Ayus 2016, p.746). For example, Pahang, the third largest state in Malaysia, details the punishment for apostasy with the following:

> Any Muslim who states that he has ceased to be a Muslim , whether orally, in writing or in any other manner whatsoever, with any intent whatsoever, commits an offence , and on conviction shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or both and to whipping of not more than six strokes (Section 185 Administration of the Religion of Islam and the Malay Custom Enactment of 1982[revised 1989]).

While anti-conversion laws and regulations against apostasy are an overt restriction on religious practice, other state regulations can affect religion in a more indirect manner. These regulations, although outside the realm of religion, can still have a negative impact on how individuals practice their faith and how religious organizations operate. They range from restrictions on publications and the press to the regulation of foreign funds which are vital to religious charitable NGOs. These NGOs face requirements of extensive and demanding reporting for all foreign-funded activities, severe penalties for violations, and mandatory state licensure. States that use these regulations to curve the activities of NGOs justify their actions with claims of protecting national sovereignty, promoting transparency, and accountability in civil society

and pursuing national security (Rutzen 2015, pp. 30 -31). In recent years, more than 50 states around the globe have used financial regulation to restrict the actions of civil society (Mayer, 2018, p. 1206). The Indian government's Foreign Contribution Regulation Act (FCRA) is one example.

Restricting Religious NGOs – India's Foreign Contribution Regulation Act (FCRA)

Introduced in 1976 under the leadership of Prime Minister, Indira Gandhi, and established under Emergency Rule, the FCRA monitors the inflow of foreign funds from individuals and associations into India. Under the guise of national security and protecting the country's elections from foreign interference, the Act initially targeted political parties. Since then, amendments and a significant broadening of the scope of the FCRA in 2010 have increased the number of regulatory guidelines. More recently, additional FCRA rules introduced in 2017 require all NGOs to enroll in a separate registry, establish banking relationships with government-designated banks, and publicly disclose all inflows of foreign funds along with donor information on their organization's website (Government of India, Ministry of Home Affairs, 2017).

The FCRA (2010) requires government approval of the receipt of foreign funds via 'prior permission' from the Home Ministry or through the granting of a five-year renewable license. NGOs must affirm that funds received from foreign sources are not used for "activities that are likely to prejudicially affect the sovereignty and integrity of the county, the security, strategic, scientific, and economic interest of the State and the public interest." The stated purpose of the FCRA is "to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or

incidental thereto" (Foreign Contribution (Regulation) Act 2010). However, "public interest" or "national interest" are overly broad terms and are not defined prompting criticism from domestic and international human rights organizations. One example is the U.N. Human Rights Office of the High Commissioner who noted that the terms "do not conform to a prescribed aim and are not a proportionate response to the purported goal of the restriction" (U.N. Human Rights Office of the High Commissioner 2016). The overly broad terms which leave room for government interpretation has also prompted claims that the FCRA is used as a tool of reprisal against those organizations that do not align with its ideology (Amnesty International, 2017).

The cancellation of 10,000 FCRA licenses in 2015 and the rejection of renewal licenses of 25 NGOs in late 2016 (many of which were rights-based advocacy organizations), prompted the National Human Rights Commission to issue a notice to the Home Ministry. In their critique, the National Human Rights Commission stated that “prima facie it appears FCRA license non-renewal is neither legal nor objective and thereby impinging on the rights of the human rights defenders in access to funding, including foreign funding” (Sampath, 2016). Extensive reporting requirements and the non-renewal of licenses to receive foreign funds have negatively affected NGOs, including religious organizations, many of which are Christian.

The philanthropic activities of Christian missionaries in India have a long history beginning in the colonial era when they built schools, orphanages, colleges, and dispensaries (Jalali, 2008 p. 182). Today, Christian domestic NGOs and missionaries continue to engage in some of the same activities, and many of them receive funds from like-minded organizations outside of India. According to the FCRA 2011-2012 Report (the last report of its kind published by the Ministry of Home Affairs), 13 of the top 25 recipients of foreign funds are religious organizations (see Table 2).

Table 2 - Top 25 Recipient Associations of Foreign Funds

Name of Association	**State**	**Affiliation**	**Foreign Contribution (in Rupees crore)**
World Vision of India	Tamil Nadu	Christian	233.38
Believers Church of India	Kerela	Christian	190.05
Rural Development Trust	Andhra Pradesh	non-religious	144.39
Public Health Foundation of India	Delhi	non-religious	130.77
Aga Khan Foundation	Delhi	non-religious	130.31
Caruna Bal Vikas	Tamil Nadu	Christian	110.26
Mata Amritanandmayi Math	Kerela	Hindu	109.50
Bal Daksha Bharat	Delhi	non-religious	98.64
Gospel for Asia	Kerela	Christian	91.33
Compassion East India	West Bengal	Christian	81.31
SOS Children's Village of India	Delhi	non-religious	81.22
Missionaries of Charity	West Bengal	Christian	71.09
Action Aid	Karnataka	Non-religious	62.69
Womens Development Trust	Andhra Pradesh	Non-religious	61.46
Services Association of Sds. Pvt. Ltd.	Tamil Nadu	Non-religious	56.58
Child Fund International	Andhra Pradesh	Christian	54.83
Bochasanwasi Akshar Purshottam Swaminarayan Sanstha	Gujarat	Hindu	54.42
Pratham Education Foundation	Maharashtra	Non-Religious	54.24
A.M.G. India International	Andhra Pradesh	Christian	48.13
Operation Mobilsation India	Andhra Pradesh	Christian	46.94
Tibetan Childrens Village	Himachal Pradesh	Christian	43.58
Caritas India	Delhi	Christian	43.45
Oxfam India	Delhi	Non -religious	42.07

Source: FCRA Annual Report 2011-2012, Ministry of Home Affairs, Government of India

Eleven of the 13 are Christian with World Vision, India and Believers Church taking the first and second spots receiving the highest amount of foreign funds among a longer list of associations (Receipt and Utilization of Foreign Contribution by Voluntary Associations, FCRA Annual Report 2011-2012). The receipt of foreign funds which are essential to many NGOs makes the FCRA and its extensive and onerous reporting requirements, overly broad and ill-defined terms, and the non-renewal of licenses burdensome for many Christian NGOs. Compassion International, a Christian child welfare organization, is an example where despite transnational advocacy efforts (discussed in chapter 4), ultimately closed its operations in early 2017.

The rights of religious minorities are not only restricted by laws that directly or indirectly affect religious practice and belief, but also through regulations that cater to the sensibilities of the majority. Other indirect restrictions on religion are the result of the state catering to the sensibilities of the majority. The banning of words (Malaysia) and the prevention of cow slaughter (India) are two instances where the state-imposed restrictions on religious minorities in order to protect the religious feelings of the majority.

Protecting majority sensibilities: Sacred Cows

Cows are viewed by Hindus to be sacred and most Hindus today view the value of cows not through what it may offer economically, but rather through a religious lens. This sentiment has been used at different times by communal and fundamental organizations as a political tool (Jha, 2002). Mughal emperors, Akbar and Aurangzeb both implemented temporary bans on cow slaughter to accommodate other groups. However, it was in the late nineteenth century that cow protection became a movement. The support of the Hindu reform organization, the Arya Samaj helped strengthen their efforts and effectively used the symbol of the cow to unify Hindus and

converted religious sentiment into a movement.

> Article 48 of the Indian Constitution, a Directive of State Policy, supplies the legislative foundation for the prohibition of cow slaughter. Article 48 states:
> The State shall endeavor to organize agriculture and animal husbandry on modern scientific lines and shall in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows, and other milch and draught cattle.

What is not mentioned is the protection of cows due to religious belief. Instead, cow protection is based on purely economic reasons, and despite the stated connected between cow protection and economic concerns in the constitution, on the whole, states have used the license provided in Article 48 to restrict the slaughter of cows based on religion (Chigateri, 137-139). While the regulation on the consumption of cows does not directly affect Christian religious practice, it can have a negative effect on India's Christian community. Unlike Hindus, India's Christian minorities eat beef, an economical source of protein that is especially important to the lower sections of society, including Dalits which make up approximately half of the Christian population in India. Furthermore, the issue of cow protection illustrates the complex relationship between the state, political parties, and social movements and the effect that relationship has on religious minorities, including Christians.

Amrita Basu, in reference to the Hindu nationalist political party, the Bharatiya Janata Party (BJP), says that BJP governments in close collaboration with the Hindu nationalist movements, the VHP and RSS have pursued three Hindu nationalist commitments namely, educational reform, cow protection, and religious conversion. All three of these commitments have discriminated against minorities. Legislation concerning cow protection and religious conversion has given the state license to employ surveillance and repressive action and has revealed what Basu refers to as the "party-movement-state government collaboration in pursuing an ideologically driven agenda through legislation and popular mobilization" (Basu, 2009, p. 44).

The linkage between the three is evident in the actions of the BJP as the party is not only restricted by the concerns of the electorate but is also constrained by the non-electoral RSS and VHP (Basu, p. 302).

Protecting the sensibilities of the majority, which is illustrated by the banning of cow slaughter in India is also present in other forms in the Malaysian context. The curbing of religious minority activities via banned words, the registration of societies and national security laws are examples of how the sensibilities of the majority population are protected in Malaysia.

Protecting Majority Sensibilities: Banned Words, Publications, Societies, and National Security

Religious NGOs, including Christian organizations, are dependent on the state's approval of property assets in the form of licenses, titles, and other regulatory mechanisms needed to conduct their operations. These approvals which are granted by the government, can be used to restrict the religious practice of both individuals and NGOs. Similar to India, where the Foreign Regulation Contribution Act (FCRA) is used to crack down on members of civil society that do not share the government's ideology (Jalali, 2008), laws outside the realm of religion are also used by the state to restrict religious practice in Malaysia. The Internal Security Act 1960 (Act 82), the Societies Act of 1966, the Police Act of 1967, the Town and Country Planning Act of 1976, and the Printing Press and Publications Act 1985 (Act 301) are examples of regulations outside the area of religion that can impact the religious practice of individuals and NGOs (Adil, 2007, p. 9). While the Societies Act calls for both non-religious and faith-based organizations to register to exist therefore granting the government the ability to revoke registration, the Police Act of 1967 regulates freedom of movement and allows the government to restrict the movement of religious groups and the conduction of religious activities in public places. In turn, the Town

and Country Planning Act regulates where religious activities take place, and Section 298 of the penal code criminalizes the deliberate wounding of religious feelings of another (Adil, 2007, p. 12-13). Under the auspices of protecting national interest and security, and maintaining social harmony, these laws have been used to restrict the activities of minorities, including Christians. The Printing Presses and Publications Act 1985 and the Internal Security Act 1960 are two other examples, both of which have been challenged by Christian minorities in Malaysian courts.

In the case of *Menteri Dalam Negeri v. Jamaluddin bin Othman* 1989, Yeshua Jamaluddin bin Othman, a Muslim Malay convert to Christianity, was detained under the Internal Security Act 1960 section 8(1) which allows for an individual to be detained for up to two years for "acting in any manner prejudicial to the security of Malaysia" (Internal Security Act 1960 8[1]). While Jamaluddin bin Othman was detained under the Internal Security Act, his arrest was in fact, based on allegations of proselytization to Muslims which included his participation in a seminar about proselytization and his involvement in the conversion of six Malays, an allegation which he denied. Jamaluddin petitioned the High Court of Kuala Lumpur, and the court ordered his release based on Article 11 and his constitutional right to profess and practice his religion. The judgment was later upheld in an appeal to the Supreme Court on the basis that the mere participation in meetings and seminars as well as the alleged conversion of six Malays was not a threat to the security of the country (*Minister of Home Affairs v. Jamaluddin Othman*, 1989).

Like the Internal Security Act, the Printing Presses and Publications Act 1985, is also used to regulate religion. The most notable instance is the banning of the use of the word "Allah" by non-Muslims, a decision which has prevented the Christian community from using the word in Malays bibles and other Christian publications. The Catholic Church petitioned the court in

Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam and eventually lost in a protracted legal battle that lasted several years. Chapter 5 discusses both cases in greater detail.

Linkages exist between the protection of the sensibilities of the majority in both countries and the rise of religious nationalism. The onslaught of Hindu nationalism in India and Islamic revivalism in Malaysia account in part for the limits imposed on religious minority organizations.

Hindu Nationalism

Hindu nationalism in its organized form arose out of regional associations, or Sabhas. Hindus, although economically dominant, became wary of the majority Muslim population's use of identity politics. The formation of the Muslim League in 1906 in Bengal was an example of the Muslim community's exertion of a politically organized identity. This event, along with others, helped facilitate the beginning of a "Hindu consciousness" (Williams, 2013, p. 544). Hindu nationalists believed that the role of the state was to fulfill the vision of Hindu texts. This ideology not only glorified the "golden age" of the past but also believed that Hindu tradition should guide the future. Their goal was to form a cohesive Hindu identity, which would transcend the plurality of Hinduism itself. For Hindu nationalists, the 'Hindu identity' equaled the 'Indian identity.

Vinayak Damodar Savarkar, recognized as the founder of Hindu nationalist ideology or Hindutva, argued a Hindu to be:

> He who looks upon the land that extends from Sindu to Sindu – from the Indus to the Seas, as the land of his forefathers – his fatherhood (Pitribhu), who inherits the blood of the race …who has inherited and claims as his own the culture of that race as expressed chiefly in their common classical language Sanskrit, and represented by a common history, a common literature, art and architecture and law and jurisprudence, rites and rituals, ceremonies and sacraments, fairs and festivals, and who above all addresses this land as his holy land (V.D. Savarkar, 1969, p. 115).

For Savarkar, non-Hindus would suffer from competing loyalties and be torn between India as fatherland and a different land that they considered sacred. It was out of this environment that the BJP, India's ruling party, was born.

Islamic Revivalism

While Hindu nationalism in its organized form came into being in the first half of the 20th century, the Islamic Revival or Dakwah movement in Malaysia began its rise later, in the 1970s and through Islamic youth movements. Islamic revivalism in Malaysia called for the Islamization of society and urged the government to put policies in place that were reflective of Muslim ideology. In response, the ruling United Malays National Organisation (UMNO) party sought to "brandish its religious credentials" (Moustafa, 2013, p. 160). Rising Islamic revivalism and pressure from its coalition partner the Pan-Malay Islamic Party (PAS), also influenced their co-opting of some of the movement's policies to gain electoral votes (Abu Bakr, 1981, p.1050). In 1981, Article 121, a key amendment to the constitution, further consolidated Islam's primacy via the establishment of two legal systems in the form of civil and Syariah courts (Guan, Yeoh Seng Guan 2011, p. 96). The implementation of a parallel legal system has had a profound effect on Christians and other religious minorities. The rights of religious minorities have in several cases since become caught in the middle of both legal systems. In these cases, issues of jurisdiction and the collective rights of the religious community have taken precedence over the rights of the individual.

The complex relationship between political parties, religious-based social movements, and the state can affect Christian minorities in direct and indirect ways. In India, individual state

bans on cow slaughter and regulations on beef consumption, while not directly affecting Christian religious practice, has negatively impacted segments of the Christian population in economic terms. As such, it is illustrative of the complex nature of restrictions and the motivating forces behind them. In the Malaysian context, the effect on Christian minorities has been more direct with the regulation of the word Allah in Malay translations of the Bible and other Christian literature. In both instances, political parties, and their ties to social movements and the alliances they form have impacted the policies they adopt. In both cases, political parties, motivated by electoral gains, have catered to the sensibilities of the majority at the expense of Christian minority groups.

Conclusion

This chapter introduced the historical beginnings of Christian minorities in India and Malaysia and laid the foundation for subsequent chapters by examining the relationship between law, religion, and society in both countries. In each context, I discussed the restrictions that Christian minority groups face, the legal framework that underpins the restrictions and the social movements and political factors that influence them. My discussion of both countries offers several comparisons. First, constitutional guarantees of religion do not mean equal rights as the legal framework surrounding religious freedom in both countries allow for counter provisions that subordinate and the right to profess, practice and propagate religion to other criteria including the maintenance of public order thus, complicating any legal challenges from Christian minority groups based on religious freedom arguments alone. Second, in both contexts, the rights of religious minorities are subordinated to the rights and interests of the majority population. The desire to preserve a Hindu national identity and the fear of that identity was under threat from religious minorities was apparent in the early days of post-independent India

and remains today. Likewise, the intertwining of religion and ethnicity in Malaysia institutionalized in Article 160 ties the Malay identity to Islam and complicates religious freedom arguments that Christian minorities use in legal challenges to constraints on religious belief and practice. Lastly, comparisons of transnational support in the early days of post-independent India and Malaysia display some differences. In the Malaysian context, transnational connections were outside the scope of religion and came in the form of foreign experts during the constitutional framing process. In the Indian context, Christian minority groups recognized the "window of opportunity" that Nehru's need for international recognition and the support of India's Catholic community and the Vatican gave them and used this domestic political opportunity to their advantage.

In the following chapter, I build on my discussion of state constraints on religion, the social forces that help bring them into being, and the legal framework that guide them and turn my attention to a comparison of two legal cases in both countries. My discussion centers on the arguments put forth by Christian minorities in both cases and how they used TANs as they negotiated with the state over an anti-conversion law (India) and regulations against apostasy (Malaysia). The two legal cases, *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan & Ors* 2007 and *Evangelical Fellowship v State of Himachal Pradesh* 2012 offer insight into the strategic choices Christian minorities make in their search for religious rights. The outcomes of the cases also point to alternative policy options with regards to transnational advocacy and challenging the state on issues related to religious freedom.

Challenging State Restrictions against Religious Conversion and Apostasy

Chapter 3

After devoting chapter two to the relationship between the state and religion, the restrictions that Christian minorities face, the legal framework that guides those restrictions, and the social forces that influence them, I now turn my attention to specific legal cases. In this chapter, I compare two legal cases the first a Malay Muslim woman who converted to Christianity, and the other, an Indian NGO's challenge to a state's anti-conversion law. Through my analysis of *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors* 2007 and *Evangelical Fellowship v. State of Himachal Pradesh* 2012, I examine the arguments that Christian minorities used, their engagement with TANs in executing those arguments, and the competing claims they encountered along the way. I ask the questions; How do Christian minorities navigate counter arguments to religious rights? And how do they engage with TANs when claims-making? Careful analysis of the two legal cases shows Christian minorities with access to similar networks chose different strategies in the arguments they adopted and in their engagement with TANs. Lina Joy's legal argument centered primarily on religious freedom guarantees, whereas, Evangelical Fellowship accompanied religious freedom arguments with a non-religious argument—the right to privacy. These different strategies also led to different outcomes. Lina Joy lost her legal challenge, while Evangelical Fellowship was successful in part. Closer investigation into the strategies Christian minorities used and the legal outcomes of those strategies is the focus of this chapter.

I begin with a comparative analysis of *Evangelical Fellowship* and *Lina Joy* and its journey through the Kuala Lumpur High Court, the Court of Appeals, and the Federal Court of

Malaysia. I continue with an analysis of how Christian minorities used transnational partners during both cases and proceed with a comparison of the state's counterclaims in each context. Lastly, I analyze Evangelical Fellowship's use of a non-religious argument as an alternative approach in making religious rights claims.

A protracted, landmark legal case began in February 1997 when Azlina Binte Jailani, born a Muslim and converted to Christianity, applied to the National Registration Department (NRD) to change her name from Azlina Binte Jailani to Lina Leilani. Accompanying her change in name request was her application in which she stated that having earlier renounced Islam and adopted Christianity, she needed a new identity card (known as MyKad) reflecting the name change. The NRD rejected her application. She applied again, and this time requested her name to be changed to 'Lina Joy' and again on the basis that she had changed her religion. Not receiving a reply, she returned to the NRD, and was guided by an NRD official to not mention conversion as a reason for the name change. She did, and her application was granted with a directive to apply for a replacement identity card. Again, Joy applied for the replacement identity card and again, stated her religion as Christianity, but her application was rejected. She applied again. Again, the NRD rejected her application and this time on the grounds that without an order from the *Syariah Court* stating that she had renounced Islam, Joy was still a Muslim (4 CLJ [2005] p. 688). In doing so, the NRD adopted its familiar stance of relinquishing control to the Islamic courts. In response, and having exhausted procedural options, Joy rejected the NRD's recommendation and, instead, took the bold step of initiating a legal case against the NRD and the Religious Council of the Federal Territories.

Lina Joy's legal battle, adjudicated in three separate forums, spanned six years. In *Lina Joy v. Islamic Religious Council*, which was tried in the Kuala Lumpur High Court, Joy argued that based on her right to religious freedom under Article 11(1) of the Malaysian constitution, the Administration of Islamic Law (Federal Territories) Act 1993, and other State Enactments were null and void being inconsistent with Article 11(1) which guarantees an individual's right to practice and profess a religion of their choice . Furthermore, she argued that the Syariah Criminal Offences Federal Territories Act 1997, and other related State Enactments were not applicable to her since she was now a Christian ([2004] 6 CLJ, p. 243). Joy's argument was foundationally based on Article 11(1) with her counsel even drawing comparisons between the Malaysian constitution's Article 11(1), and the Indian constitution's, Article 25 (Lee, 2010, p. 65). Freedom of conscience, they argued, afforded a citizen the right to adopt a religion of their choice. The Court disagreed and noted that while the Indian constitution affords its citizens freedom of conscience, the Malaysian constitution does not, and therefore, the phrases "freedom of conscience" and "freely profess" could not be implied and a comparison could not be drawn. Moreover, the Court attested that India's constitution did not have the equivalent of Articles 13(1) 12, 1221(1) and 160 (Lee, 2010, p. 65). The Court disputed Joy's right to freedom of religion based on Article 11 and in the following statements stated:

> the plaintiff is so obsessed with the first part of art 11(1) of the FC and had given it an interpretation to the effect that the said first part of art 11(1) gives her the right to profess and practice the religion of her choice. I think art 11 of the FC actually speaks of freedom of religion and not freedom of choice which are distinct ([2004] 6 CLJ, p. 247).
>
> It is trite that Article 11(1) of the Constitution guarantees the freedom of a religion, where every person has the right to profess and practice his religion. However, such right is not absolute as Article 11(5) provides that this article does not authorise any act contrary to any general law relating to public order, public health or morality ([2004] 6 CLJ, p. 249).

In turn, Kuala Lumpur High Court Judge Faiza, while referring to the Syariah Court to decide on Joy's desire to convert out of Islam, made the following concluding statement:

> The plaintiff also stated that she is raised and grew up in a household of Islamic belief although her belief in Islam is shallow …. she stated that her original name is Azlina bte Jailani as is stated in her I/C No 7220456. I therefore conclude that the plaintiff is a Malay. "By art 160 of the Federal Constitution, the plaintiff is a Malay and therefore as as long as she is a Malay by that definition she cannot renounce her Islamic religion at all. As a Malay, the plaintiff remains in the Islamic faith until her dying days" ([2004] 6 CLJ, p. 262).

The Kuala Lumpur High Court judgment highlights the contestation surrounding religious freedom in Malaysia and points to the susceptibility of religious freedom arguments to counter arguments supported by a country's laws. While Joy supports her claim for religious rights using the constitutional guarantee of freedom of religion found in Article 11(1), the Court's interpretation of Article 11 was different. First, according to the Court, freedom of religion did not mean freedom of choice, and therefore, Joy could not change her religion. Second, her ethnic identity as a Malay superseded her religious identity as a follower of Christianity. For the Court, being a Malay meant being a Muslim. The two intertwined, could not be separated.

Joy appealed the judgment, but the scope of her argument changed and moved from an argument built on rights founded in constitutional guarantees to technicalities of administrative law. In her appeal, Joy challenged, among other things, the NRD's refusal to delete the word "Islam" from her identity card and the requirement that she provide a renunciation order from the Syariah Court. She questioned whether the NRD was acting according to the law and the registration regulations. According to anthropologist, Julian Lee, this migration from the constitutional approach emphasizing Article 11 to the "technical" approach based on

administrative law and disputing minor legal details was in direct response to the preceding judgment (Lee, 2010)[1]. However, while Joy's argument turned toward administrative law, interested parties including domestic and transnational NGOs who submitted watching briefs [2] still questioned the underlying constitutional validity of the Court's position on religious freedom. While the one non-Muslim judge on the three-judge panel contended that the NRD had acted outside their mandate and that requiring a renunciation order from the Syariah Court was "unreasonable," the other two judges disagreed. Instead, they held that while the NRD did not have any specific jurisdiction to require the additional documentation, the request was still valid ([2005] 4 CLJ). In the end, the three-panel judge in a 2 to 1 decision dismissed the case on the basis that Joy had not succeeded on any of her points of argument ([2005] 4 CLJ). Again, Joy appealed—this time to the Federal Court of Malaysia, the country's apex court.

On May 30, 2007, in another 2 to 1 decision, the Federal Court of Malaysia rejected Joy's appeal. The dissenting judge, Richard Malanjum, the only Christian on the three-judge panel in a scathing critique drew attention to the reliance on implied power, overexpressed mandates, and the court's abdication of their civic duty to a religious court ([2007] 4 MLJ). Nevertheless, the Federal Court's majority decision was a Muslim who wishes to renounce Islam must go to the Syariah Court and obtain an apostatisation order. While receiving such an order might appear to be a reasonable step toward apostasy, in reality, "the prospect of obtaining an apostatisation order is illusory given the general belief that apostatisation is a sin, and the Muslim community has an obligation to prevent its adherents from falling into sin" (Dawson and Thiru, 2007, p.

[1] For more on the specific technical details that was offered by Joy during the case, consider Lee, Julian C.H *Islamization and Activism in Malaysia*. 2010. pp. 62-73.
[2] In Malaysia, watching briefs are used as a method to protect the rights of interested parties who are not subject to the legal proceedings. Watching briefs were held in support of Joy by NGOs including the MCHBST.

159). The majority judgment by requiring that Joy obtain an apostatisation order from the Syariah Court placed Islamic law above constitutional guarantees and echoed the sentiments of the Islamic Religious Council which in the proceedings had argued that being a Muslim is not an individual act. It is part of being the wider community, is being part of the Ummah (community of Muslims). And the responsibility of the state is to take care of the Ummah" (Dawson and Thiru, 2007, p. 154). The majority judgment reflected the same sentiment and stated:

> The freedom of religion under Article 11 of the Federal Constitution requires the Appellant to comply with the practices or law of the Islamic religion in particular with regards to converting out of the religion. Upon complying with the requirements of the religion and the religious authorities confirming her as an apostate only then, can the Appellant profess Christianity. In other words, one cannot look at one's whims, and fancies, renounce or embrace a religion. When professing a religion, common sense itself requires him to comply with the law and practices of the religion ([2007] 3MLJ 585).

At the crux of the legal battle were debates between the rights of the individual—Lina Joy and the rights of the community, the intertwining of religious and ethnic identity, and the primacy of religious law in issues related to Islam. Despite the constitutional guarantee of an individual's right to freely profess and practice a religion of their choice, counter arguments grounded in the primacy of Islam took precedence over individual rights and specifically the right of a Malay woman to choose her religion.

The Federal Court's decision in *Lina Joy* points to the limitations of religious freedom arguments in contexts where religious rights are deeply contested. The blurred jurisdiction between civil and religious courts, the intertwining of religious and ethnic identity, and the supremacy of the majority religion aided counter arguments that questioned the viability of the right to religious freedom and influenced the Court's decision in favor of the state. As such, the

Joy decision suggests that religious freedom claims although backed by domestic laws and international covenants can face limitations that call for alternate approaches to religious rights claimsmaking. An analysis of *Evangelical Fellowship of India v. State of Himachal Pradesh* discussed below, although in a different context, uncovers similar counter-arguments but suggests an alternate pathway to challenging state restrictions on religious freedom.

India: Evangelical Fellowship of India v. State of Himachal Pradesh 2012

Formed in 1951 and representing 45,000 churches, Evangelical Fellowship of India (EFI) is one of the largest Christian NGOs in India. Based in New Delhi, the NGO considers its primary goals to be advocacy, networking, and capacity building. Based on this three-pronged approach, EFI has branched into a variety of areas ranging from poverty alleviation and climate change to health and nutrition and women's rights. However, at the foundational core of the organization lies its goal to be a representative body of evangelical Christians in the country. It is in this capacity that the NGO has advocated for the religious rights of the evangelical Christian community, both domestically and transnationally (Evangelical Fellowship of India, 2018). Through institutional political opportunity structures, specifically national courts and via submissions to the Universal Periodic Review, the NGO has advocated against the use of violence by social forces and state restrictions on religious practice. One such example is the legal case it brought against the state of Himachal Pradesh and specifically the Himachal Pradesh Freedom of Religion Act, 2006.

The Himachal Pradesh Freedom of Religion Act came into effect on February 18, 2007. Although prior legislation in other states like Madhya Pradesh and Odisha influenced the details of the law, there was one notable difference. Unlike the Odisha and Madhya Pradesh laws, the

Himachal Pradesh anti-conversion act called for 30-day prior notification of the intent to convert to a District Magistrate. At the heart of the new legislation was the prohibition of forced conversions. According to the law, "no person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by inducement or by any other fraudulent means nor shall any person abet any such conversion (Himachal Pradesh Freedom of Religion Act, 2006, Section 2[d]). Penalties for violators included up to two years imprisonment and or fines up to twenty-five thousand rupees. Accompanying rules that came into effect in July 2007, further articulated the process of notification to local authorities, and the authority of the district magistrate to determine the use of "force" or "inducement." The anti-conversion law was problematic for minority religions in multiple ways. Not only did it curb constitutionally guaranteed religious rights, but the lack of definition of key terms such as "force" or "inducement" increased the possibility for inconsistent interpretation at the local level and the possibility of the law being used as a tool to settle other grievances.

The Himachal Pradesh anti-conversion law came as a surprise to the Christian community especially since the Congress party ruled the state and had historically been supported by religious minorities in electoral contests (Jenkins 2008, p. 122). In comparison to the BJP, the Congress, in light of the legacies of Nehru and others, had historically claimed to be a bastion of secularism in the country. Therefore, the response from the Christian community was especially critical. Archbishop Vincent Concessao, the president of the United Christian Forum (NUCF), the largest Christian alliance in India, comprised of the Evangelical Fellowship of India (EFI), National Council of Churches in India (NCCI) and the Catholic Bishops Conference of India (CBCI), articulated the alliance's disappointment. According to Concessao, "the last thing that the citizens, particularly the minorities, expected from the Congress, is the

anti–conversion law" (Chatterjee, 2007). Bishop Mathias of the state's capital Shimla Diocese further criticized the Congress calling the law a "politically motivated distraction to move people from 'real' problems and focus attention on non-existent conversions" (Chatterjee, 2007). But criticism also came from a state agency and crossed religious lines. The National Commission for Minorities, which was established in 1992 to protect the interests of minority religious communities, called the prior notification provision "a gross interference with the individual liberties of citizens and would allow state functionaries to interfere in the matter of personal life and religious beliefs. More seriously, it would impinge on the freedom of conscience, and free profession, practice, and propagation of religion guaranteed by Article 25 of the constitution" (National Commission for Minorities, Press Statement, 2007). Furthermore, the organization called on state governments with similar legislation to reverse them.

In 2011, five years after the law's enactment, Evangelical Fellowship of India along with Act Now for Harmony, a Delhi-based, non-religiously affiliated NGO advocating for human rights and was formed in the aftermath of the 2002 Gujarat riots, petitioned the Himachal Pradesh High Court based on constitutional guarantees found in Articles 14, 19 (1), 21 and 25 (Ahuja, 2016). The specific articles covered a wide ambit of rights many of which are *secular*. Article 14 (freedom of equality) and Article 19 (freedom of speech and expression) are constitutional guarantees not uniquely tied to religion. Moreover, EFI challenged the law's 30-day prior notification requirement based on Article 21, which guarantees the protection of personal life and liberty is also a secular right. In doing using so, they avoided counter-arguments in support of the majoritarian interests and maintaining order between religious communities. By basing their petition on rights outside the sphere of religion, they were able to

broaden the frame which social movement scholar, McAdams argues is a necessary for gaining support for bystander publics (McAdams, McCarthy& Zald 19969b p. 6), and in doing so increased the likelihood of adding more supporters to their cause.[3] Given the contested nature of religious rights in India, the NGOs' strategic choice to extend its argument to encompass a broader set of rights accomplished the difficult task of attracting recruits and sympathizers.

Evangelical Fellowship consolidated their argument to three main points. First, EFI and Act Now argued that the individuals' right to "propagate" their religion meant the right to convert as guaranteed in Article 25(1) of the Constitution. The NGO also noted that the Himachal Pradesh law had gone beyond the Madhya Pradesh and Odisha laws in requiring time defined prior notification (Freedom of Religion Act, 2006 Section 4). Second, they argued that terms in the law, such as "inducement" and "fraud" were imprecise and, therefore, in their application could lead to discriminatory abuse. Third, in an instance of broadening the frame, the NGO petitioned the court against the 30-day prior notification on the basis that it violated an individual the right to privacy. The Indian constitution, EFI argued, grants individuals' fundamental rights, including the right to privacy based on the constitutional guarantee in Article 21 which grants everyone the right to life and liberty. Therefore, EFI argued, "a person not only has a right of conscience, the right of belief, the right to change his belief, but also has the right to keep his belief secret……A person's belief or religion is something very personal to him, and the state has no right to ask a person to disclose what is his personal belief" (*Evangelical Fellowship v. State of Himachal Pradesh*, CWP No. 438 2011 p. 21 at para 37). EFI also argued that the law could subjugate the convert to physical and psychological torture, and therefore, the

[3] I use the definition of framing articulated by McAdam et al., which is "the conscious strategic efforts by groups of people to fashion shared understandings of the world, and of themselves that legitimate and motivate collective action (Doug Mc Adam et al., 1996 p. 6).

remedy proposed by the state to protect individuals against forced conversions "may prove to be more harmful than good" (CWP No. 438 2011, p. 22 at para 40).

Court Decision and Response

Response from the two-panel judge was mixed. The Court contended that some of the issues raised by the petitioner had already been decided by the country's Supreme Court in *Stanislaus v. State of Madhya Pradesh* (1977 AIR SC 908). The Court also held that they found no justification in Article 25 that grants the fundamental right of persons to convert another to their own religion. Citing another case, *Ratilal Panachand Gandhi v. The state of Bombay* 1954, the court opined that the constitutional guarantee of propagation, while a source of "edification" for others, did not mean the right to convert. Instead, freedom of conscience in Article 25 did not mean the right to convert another person to one's own religion, but rather to "transmit or spread one's religion by exposition of its tenets" (CWP 438 of 2011, p. 4 at para 4). In this sense, the Court held that "freedom of religion" meant not only the individual's right to practice one's religion but also the "freedom from religion." On the NGO's challenge against the law's imprecise language, the Court held that vagueness of terminology which could result in misuse did not mean that the law should be struck down (CWP 438 of 2011, p. 9 at para 12). The Court also disagreed with the NGO's argument that Christianity like Islam were proselytizing religions and proselytization being an inherent part of these religions, the State could not put any restriction on this religious practice. Instead, the Court argued that while there was a fundamental right to propagate, there was not a fundamental right to convert" (CWP 438 of 2011, p.13 at para 31). However, on the argument that the law violated an individual's right to privacy, the Himachal High Court agreed.

In its judgment, the Himachal Pradesh High Court stated:

> ...our Constitution ensures that no person living in India can be denied equality under the law or the benefits of Part III of the Constitution of India and every person is entitled to his freedoms, which are guaranteed under Part III of the Constitution of India. These rights, which are commonly known as fundamental rights, are, in fact, human rights. These rights inherent in every human being and in every civilized society, we must respect such rights. The right to privacy is one of such rights and has been the subject matter of interpretation in a number of cases (CWP 438 of 2011, p.17 at para 31).

Furthermore, the Court held:

> A person not only has a right of conscience, the right of belief, the right to change his belief, but also has the right to keep his beliefs secret …. a man's mind is the impregnable fortress in which he thinks and there can be no invasion of his right of thought unless a person is expressing or propagating his thoughts in such a manner that it will cause public disorder or affect the unity or sovereignty of the country (CWP 438 of 2011, pp. 21-22 at para 38).

The decision of the Himachal Pradesh High Court to strike the 30-day prior notification requirement from the law on the basis of the right to privacy suggests that by negotiating religious rights using a non-religious argument, Evangelical Fellowship effectively convinced the Court that at least in part, the anti-conversion law was in violation of an individual's constitutional rights.

Unlike *Lina Joy*, where religious rights arguments were paramount, the non-religious argument against the law's anti-privacy measures resonated with the three-judge panel. Despite this victory, the Evangelical Fellowship legal battle, like Lina Joy's offers insight into the counter arguments that minorities face and reinforces the need to pursue alternate approaches when challenging state restriction on religious rights in diverse contexts. In both instances, the primacy of the rights of the community, the maintenance of public order and the protection of

national sovereignty, and the conflation of religious identity with national identity complicated the religious rights claims of Christian minorities.

Lina Joy and *Evangelical Fellowship* used different strategies when claiming the religious rights of Christian minorities. While Lina Joy primarily used a religious freedom argument to support her claim, Evangelical Fellowship framed their argument to include an individual's right to privacy. Careful analysis of both legal cases also shows different approaches in their engagement with TANs. Lina Joy, in her protracted legal battle, used TANs to place pressure on the state via amicus briefs and invoked the need for state compliance with international law. In contrast, Evangelical Fellowship not only broadened the legal discussion to claim rights outside the sphere of religion but adopted a strategy which focused more on the domestic legal realm and less on transnational advocacy and its potential to change government policy.

The Role of TANs: Evangelical Fellowship

Transnational advocacy support for Evangelical Fellowship was significantly less than Lina Joy. While the larger conversation regarding anti-conversion laws and their impact on Christian minority groups was communicated widely to different segments of the TAN, the legal case itself did not garner the same level of legal support. In comparison to *Lina Joy*, which included the filing of amicus briefs in favor of the plaintiff from domestic and transnational NGOs alike, cross-border support for Evangelical fellowship came more in terms of solidarity. In fact, in an interview with a legal expert closely affiliated with the case, the general sentiment was that transnational advocates "do not always have a good understanding of circumstances on the

ground." [4] As such, most of the transnational advocacy effort came in the form of broad calls for the revision and repeal of all the country's anti-conversion laws and not during legal proceedings of the case itself.

In the five years between the enactment of the law and the initiation of the legal case, intergovernmental organizations and segments of foreign governments including the U.N. and the U.S. State Department discussed the impact of anti-conversion laws on the Christian community and other minority religions. In a report to the U.N. General Assembly, the Special Rapporteur on freedom of religion or belief, Asma Jahangir, while not mentioning the Himachal Pradesh law individually, did express concern over the same points that were brought up by the plaintiff. Jahangir's concerns included the use of broad and vague terms such as "inducement," advance notice of the intent to convert, and preferential treatment to reconversions. Like the plaintiff, Jahangir maintained that state inquiry into the substantive beliefs and motivation for conversion was problematic and could lead to "interference with the internal and private realm of the individual's belief (forum unternum)" (Jahangir, 2009, p.17). Furthermore, Jahangir stated:

> Provisions relating to notice and selective inquiry will allow functionaries to interfere in matters of personal life and religious beliefs, thus impinging on freedom of conscience and free profession and propagation of religion guaranteed by article 25 of the Constitution. The Special Rapporteur would like to add that, according to universally accepted international standards, the right to freedom of religion or belief includes the right to adopt a religion of one's choice the right to change religion and the right to maintain a religion (Jahangir, 2009, p. 17).

The years between the enactment and decision also corresponded with two cycles of the U.N. Human Rights Council's Universal Periodic Review of India with the first conducted in 2008 and the second in 2011. Initially conceived by U.N. General Secretary Kofi Anan and established

[4] Interview with legal advocate (name withheld) January 2018.

in 2006 by the U.N. General Assembly in resolution 60/251, the UPR's peer review system allows states to offer recommendations to other countries based on their Human Rights performance (McMahon and Ascherio, 2012 p. 234). Each country has the opportunity to respond to recommendations and to state the actions they have taken to improve human rights conditions.[5] Apart from submissions from member states, members of civil society also participate in the UPR via individual and joint submissions.

Among the 36 members of civil society who provided submissions for the first Universal Periodic Review (2008) were several Christian NGOs, including the Becket Fund, the Christian Solidarity Network, and the European Center for Law and Justice. Included in each of their submissions were references to anti-conversion laws and their impact on the Christian minority community. The Becket Fund, like the UN Special Rapporteur, also noted the vagueness of the law (Becket Fund, 2007, p. 2). In turn, the European Center for Law and Justice asked that "particular attention be paid during the Universal Periodic (UPR) Review to the development of anti-conversion laws and their incompatibility with the Universal Declaration of Human Rights (European Center for Law and Justice, 2007, p. 3). The statements of civil society during the second cycle of the UPR in 2011 also brought attention to the country's anti-conversion laws. In a joint submission, the World Evangelical Alliance (WEA), the evangelical network organization which represents churches around the globe, and Evangelical Fellowship provided details of anti-conversion laws and specifically the accompanying rules of the Himachal Pradesh law. According to the two NGOs, the "vague and overly broad legislation are in fact based on long-time propaganda by right-wing Hindu groups against Christian and Muslim minorities. They

[5] Undertaken in distinct cycles, the first cycle of UPR of both countries was completed between 2008-2011, the second cycle between 2012-2016, and the third cycle between 2017-2021 is still in progress.

require a person converting to another religion to give details on the conversion to the local district magistrate, either prior to the conversion ceremony or subsequent to it" (ECLJ and EFI, 2011). In turn, the World Council of Churches, along with Pax Romano, the oldest Catholic lay association, and four other NGOs, also offered a submission for the second cycle of the UPR which was in turn endorsed by seventy-five civil society organizations.

Critique of the country's anti-conversion laws came not only via submissions to the two cycles of the U.N. Universal Periodic Review but also from the United States State Department. The State Department's Annual Religious Freedom Report (2008, 2011) included anti-conversion laws in the years between the enactment of the legislation and the initiation of the case and specifically mentioned the Himachal Pradesh law.

The analysis of advocacy in the Evangelical Fellowship case can be categorized in two ways namely those efforts directly associated with the legal case and those transnational efforts that focused more broadly on the issue of anti-conversion laws in the country through submissions to the UPR and reports by U.N. special rapporteurs. In comparison, the discussion below of transnational engagement surrounding the Lina Joy case displays higher levels of national and transnational advocacy that was more closely associated with the legal case itself.

The Role of TANs: Lina Joy

In July 2006, at the height of the case, the Islam Youth Movement in Malaysia (ABIM) formed an organization called the Organization for the Defense of Islam, Pertubuhan-Pertubuhan Pembela Islam or PEMBELA for short. The organization, created to preserve Islam, was formed with over 70 Islamic NGOs made up of Islamic clerics, academics, professionals, and students.

Statements by PEMBELA at the time of its inception shows that it was "formed to address the issue of apostasy among Muslims in Malaysia by defending the Islam faith and its status as the official religion of Malaysia from legal challenges posed by apostate Muslims and non-Muslims" (Liow 2009, pp. 117-118). Immediately after its formation, the NGO initiated a signature campaign aimed against the efforts of liberal Muslims and non-Muslims attempts to establish the supremacy of Article 11(freedom of religion), over Article 121(1), which grants the Syariah court's jurisdiction over matters concerning Islam. PEMBELA's efforts dwarfed efforts of opposing, more secularist leaning NGOs. Among them was the Article 11 Coalition, a broad collection of Muslim and non-Muslim lawyers and activists whose aim was to "create awareness of the guarantees within the Federal Constitution, the guarantees provided therein and the concept of rule of law against increasing assertions that Malaysia is in law an Islamic State" (Sarwar, 2006). Article 11 originated in response to a prior legal case *Shamala Sathiyaseelan v. Jeyaganesh* 2004, involving the child custody rights of a Hindu woman and her Muslim spouse. While that case was successful in part, the efforts of the Article 11 Coalition including organizing public forums to discuss the issue and to mobilize support during the Lina Joy case were squashed by the government when Prime Minister Abdullah Badawi instituted a gag order on discussions on the constitution and specifically religious freedom (Lee, 2010, p. 92). Article 11 has since dismantled, but PEMBELA continues to provide a voice against apostasy. The formation of both these NGOs and their different goals is another example of the contested nature of religious rights in diverse contexts. Furthermore, they also illustrate how the legal framework that governs religious rights in these contexts can be interpreted in differing ways.

Apart from transnational support and domestic advocacy, Lina Joy's protracted legal battle also received significant attention from the press both within and outside the country with

arguments in favor of or against Joys' religious rights discussed widely in the public sphere. The Malaysian vernacular press is divided amongst the country's three main ethnicities and the Malay press, specifically, extensively covered the case (Moustafa, 2013b, p. 793). The Pan Malaysian Islamic Party (PAS), in their daily newspaper *Harakah Daily*, was especially critical of TAN involvement. A handful of articles titles illustrate this sentiment. Articles entitled, "*Lina Joy is backed by America, we only have God,*" "*Case of Lina Joy organized effort to eradicate Islam,*" and "*American agency accused of giving full support to Lina Joy*" demonstrate that in the battle of ideas, international involvement helped strengthen counter-arguments that Islam was under siege and national sovereignty under threat. The case was also extensively covered by the international media. Domestic activists, realizing that their efforts weren't producing the desired results, turned to the international press to share their story, in the hope that international pressure would prompt the government to capitulate in favor of Lina Joy. Thus, leading international news agencies, including the *Economist,* the *New York Times*, and the *Wall Street Journal*, covered the case and further fed into counter-arguments (Moustafa, 2013b, p. 793).

One of the most notable transnational connections in the Lina Joy case was The Becket Fund for Religious Liberty, a Washington D.C. public interest law firm. The Becket Fund, which considers as its mission "to protect the freedom of all faiths" filed an amicus brief along with the Economic and Social Council of the United Nations (ECOSOC) in support of Joy. Becket and ECOSOC, as amicus curiae, held that the government's refusal to recognize Joy's conversion from Islam was a violation of international law on two counts. Firstly, they argued that the freedom to choose one's religious belief included the freedom to convert to another religion under customary international law. Secondly, Becket attested that the government's "discrimination based on religious status in application of its national identity program, and

consequently, of its civil marriage laws" was also a violation of international law and "renders Lina Joy's right to freedom of religion ineffective and illusory" (Becket Fund for Religious Liberty, 2005, p.5). To support their argument, Becket invoked Article 18 of the United Nations Declaration of Human Rights (UNHDR):

> Everyone has the right to freedom of thought, conscience, and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice worship, and observance (Universal Declaration of Human Rights, art. 18, 1948).

The brief also invoked Malaysia's accession in 1995 to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Malaysia, the brief stated, "as a state party to CEDAW, must work to ensure the full development of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights" (Becket Fund for Religious Liberty, 2005, p. 4). Along with international law, Becket and ECOSOC also emphasized the responsibility of the Malaysian Court and its duty to protect fundamental rights (including the freedom to profess and practice a religion of one's choosing) in its application of Administrative law. The brief also noted that civil courts should not compel individuals to participate in religious activities, should not interpret or enforce religious law, nor interfere with a religious community's ability to exclude members. Moreover, it was the Federal Court's duty to protect Fundamental Rights (Becket, 2005, pp.12-14).

The case had other instances of transnational involvement. Along with the amicus filing, Becket also testified before the U.S. Congressional Human Rights Caucus on the issue of religious rights in Malaysia. In turn, the United States Department of State highlighted the case in its International Religious Freedom Annual Reports (2000-2010). Furthermore, the United

Nations Commission on Human rights, at the request of Malaysian rights organizations, made several inquiries to the Malaysian government concerning religious rights (in 2006, 2008, and 2009) (Moustafa, 2013b, p. 793).

Domestic organizations also filed watching briefs in favor of Joy. The Bar Council, the Malaysian Consultative Council of Buddhism, Christianity, Hinduism, and Sikhism (MCCBCHST), and the National Human Rights Society of Malaysia (HAKAM) lent their support (Moustafa, 2014, p. 493; Moustafa, 2013, p. 783). The MCCBCHST in their brief spoke to the State's obligations to international law and stated:

> a legitimate expectation amongst Malaysians that the rights enshrined in the Universal Declaration of Human Rights, so far as those rights are not inconsistent with the fundamental liberties guaranteed to us in our Federal Constitution, will be respected and given due regard by all the organs of State in Malaysia, since it has been statutorily recognized by virtue of s.4(4), Human Rights Commission of Malaysia Act 1999 (MCCBCHST, 2006).

Women's rights organizations including Sisters in Islam (SIS) and the All Women's Action Society (AWAM), Women's Aid Organisation (WAO were among five women's groups that held a watching brief in support of Joy. Conservative Muslim NGOs also filed watching briefs in support of the State including the Malaysian Islamic Student Youth Movement (ABIM), the Shariah Lawyers Association of Malaysia and the Muslim Lawyers Association.

Following the 2 to 1 decision by the Federal Court, transnational voices continued, and among them were several foreign NGOs. In a joint submission to the sixth session of the UN Human Rights Council, the American Center for Law and Justice (ACLJ) and the European Center for Law and Justice (ECLJ) in consultative status with ECOSOC, were critical of the Federal Court, saying it had "dealt a blow to Malaysia's self-promoted image as a tolerant

nation" (ACLJ and ECLJ, 2007). Two years later, the European Center for Law and Justice also highlighted the case in their submission to the UN Universal Periodic Review 2009.

Comparing the Two Cases: Making Claims and Framing Arguments

Careful analysis of the two legal cases shows Christian minorities with access to similar networks chose different strategies in the arguments they adopted and in their engagement with TANs. Evangelical Fellowship in their legal challenge of the Himachal Pradesh anti-conversion law did not extensively engage with TANs and instead, relied on the court as the primary forum for their negotiation of religious rights. In comparison to Lina Joy, transnational support in favor of the NGO was more in terms of solidarity and less in terms of advocacy. Nevertheless, despite the differences in TAN engagement and strategic choices of Evangelical Fellowship to include a non-religious argument in their legal challenge, Christian minorities claims for the right to practice their faith met counterclaims. Amongst these counterclaims were arguments that made the rights of the individual subject to the rights of the community, conflated religious identity with national and ethnic identity, and placed the maintenance of public order and the protection of national sovereignty above the religious rights of Christian minorities.

Contested Claims: Individual Rights vs. Community Rights

The *Lina Joy* case was emblematic of the divergent attitudes in the country concerning an individual's religious rights. On one side was the argument based on the right to freedom of religion as granted by article 11. Among those voices were Christian minorities, who (as indicated in the evidence presented in *Lina Joy* and other legal cases since) have held to the primacy of Article 11. On the other side is the argument that questions the central authority of

the constitution itself. This argument, both during the *Lina Joy* case and now, comes from a variety of segments in Malaysian society, including Islamists, state governments, the Malay Sultans, and Malay nationalists (Neo, 2015, p. 7). Underlying these counter arguments is the idea that secular laws cannot have jurisdiction over Islamic laws “which is given by Allah and thereby above the state” (7). For Islamists, secular norms protected within the constitution do not supersede religious norms, and therefore, they reject the ability of the civil courts to decide religious matters. Resistance also comes from state governments, who often compete with the federal government for the content and administration of religious law, and from the Malay Sultans who consider interference in religious matters a threat to sovereignty. The individual’s right to choose is subordinate to the rights of the community, and opposition to apostasy is founded in the perception that the individual is not merely leaving Islam but also betraying the Malay community (Neo, 2015 pp. 7-13).

The subordination of individual rights to that of the community and religious law which manifested itself in *Lina Joy* is also present in several other legal cases. One of the most notable legal cases was *Soon Singh a/l Bikhar Singh v. Pertubuhan Kebajikan Islam Malaysia* 1999, in which a Malaysian man who was born a Sikh and converted to Islam as a minor at age 17, sought to return to Sikhism at age 21. In a precursor to *Lina Joy*, the Federal Court held that secular courts do not have jurisdiction over issues related to Islamic law. Likewise, in *Kaliammal Sinnasamy v. Islamic Religious Affairs Council of the Federal Territories* 2006 which involved the burial rites of Moorthy Maniam, a Malaysian man, whose alleged conversion to Islam was disputed by his Hindu family, the High Court of Kuala Lumpur held that civil courts did not have the competence or jurisdiction to decide his religious status (Moustafa, 2013, p. 784).

The rights of an individual to freely believe and practice a religion of their choosing is also challenged by the assumption that when it comes to exercising religious rights, some individuals do not have the competence to make sound decisions. Judge Faiza, in the Federal Court's majority judgment in *Lina Joy*, held that "one cannot at one's whims, and fancies renounce or embrace religion" ([2007] 3CLJ 557 FC). Anti-conversion laws in India which operate under the auspices of preventing the "forced" conversion of individuals suggest a similar assumption. How does one determine that which is "forced"? As Jenkins notes, the challenge in India's anti-conversion law lies in the need to read minds. "One way to circumvent the need to read minds is to rely on rules of thumb, assumptions, and stereotypes" (Jenkins 2008, p. 120). In both contexts, the state questioned the competence of individuals' to freely exercise their religious rights.

Contested Claims: Religious Identity vs. National and Ethnic Identity

Contested claims also venture into the area of identity. In Malaysia, resistance also comes from nationalists who see Malay identity as intricately tied to Islam. In India, debates over who is an Indian, especially from religious nationalists, is often linked to Hinduism. The linkage between Hinduism as the majority religion and national identity was evident as early as the Constituent Assembly debates as discussed in the previous chapter. These *predatory identities* as articulated by scholar Arjun Appadurai are claims that the cultural majority are intrinsically linked to the identity of the nation (Appadurai, 2006, p. 52). Accompanying discourse with such claims conveys a zero-sum game, where growth in the population of the minority would mean a decline in fortunes for the majority. In Malaysia, the idea that Islam was under threat fed into these nationalist, sovereignty, and cultural supremacy claims. This interweaving of Islam to the

Malay identity calls for Islam not be supplanted by other religions and connects to political rhetoric that portrays the majority Malay community as victims both economically, politically, and in religious terms (Neo. 2014, p. 765). Likewise, the exaggerated "fear" that the number of Hindus were being overtaken by the number of minority religions has influenced the call for anti-conversion laws in the country.

A private member bill submitted by a BJP member of parliament calling for a national ban on conversions in response to census data further illustrates this sentiment. [6] The intertwining of religious identity and national identity present in counter-claims in *Lina Joy* was also apparent in *Evangelical Fellowship* in the different treatment given to converts to Christianity compared to "re-converts" to Hinduism. According to the Himachal Pradesh Religious Freedom Act "no notice shall be required if a person reverts back to his original religion" (Himachal Pradesh Freedom of Religion Ac 4[2]). Therefore, according the anti-conversion law, individuals must provide notification to their local district magistrate of the intent to convert from Hinduism to a minority religion, but the same conditions do not apply to individuals who choose to "reconvert" to Hinduism (Himachal Pradesh Freedom of Religion Act, 4[2]). Therefore, a Hindu who converted to Christianity would have to inform the local district magistrate of the intent to convert, whereas, a Christian who chose to "re-convert" to Hinduism would not. Undergirding this preferential treatment for Hindu reconverts is the conflation of the majority religion with national identity and that to be an Indian is to be a Hindu.

[6] Tarun Vijay, A BJP member of Parliament, submitted a private member bill banning conversion and made the following statement: "For the first time, the population of Hindus has been reported to be less than 80 percent. We have to take measures to arrest the decline. It is very important to keep the Hindus in majority in the country and I think a bill of this nature (anti-conversion law) will allow Hindus to remain a majority in India" ("BJP MP Plans to Table Bill in Parliament,", *The Tribune*, September 28, 2015. http://www.tribuneindia.com/news/uttarakhand/community/bjp-mp-plans-to-table-bill-in-parliament/139072.html accessed April 18, 2018).

In both legal cases, counter arguments predicated on the conflation of national identity with religious identity and the illusion of threat from minority religions influenced the decision of the court concerning the religious rights of Christian minorities. Along with counter-claims which called for the rights of the community over the rights of the individual and the preferential treatment of majority religion, Christian minorities in both contexts also faced counter - arguments related to national sovereignty and public order.

Contested Claims: Religious Rights vs. Public Order and Sovereignty

Religious rights in both countries subject the freedom to profess and practice religion to the additional litmus test of public order. In India, the desire for public order in the midst of religious difference has a long history. The Raigarh State Conversion Act of 1936, one of the earliest versions of contemporary anti-conversion legislation was motivated in part by concerns about foreign influences, public order, and "encroaching colonialism" (Jenkins 2008, p. 114). Two decades later, the Nyogi Report on missionary activity in Madhya Pradesh also articulated the importance of preserving "social cohesion and security" (114). In turn, Constitutional guarantees of religious rights in both countries are subject to public order, and legal decisions, including the landmark case *Rev. Stanislaus vs. State of Madhya Pradesh and Ors* 1977., reiterated the same.

The idea of social cohesion was also evident in the *Evangelical Fellowship* decision. In the case, the Court held that "when rights of individuals clash with the larger public good, then the individual's right must give way to what is in the larger public interest" (*Evangelical Fellowship* 2012 § 37). Likewise, in Malaysia, claims of individual liberty are also subject to

national security. While article 5(1) guarantees life and personal liberty according to the law, article 149 undermines that right by granting power to Parliament to pass special laws to preserve internal security (Neo, 2006, p. 25). Like India, constitutional guarantees of religious rights in Malaysia are subject to the maintenance of public order. The prioritization of internal security was also evident in Joy's case in the Kuala Lumpur High Court, where the judge determined that "chaos and confusion" would ensue if Joy was allowed to apostatize ([2004] 6 CLJ, p. 249). Apart from the constraints that come via contested claims, Christian minorities and their use of TANs are also impacted by their choice of frames.

Contrasting Frames: Religious Rights vs. Right to Privacy

Analysis of the arguments put forth in both legal cases shows differences in the strategic choices Christian minorities made in framing their arguments. While Lina Joy placed her argument within the context of religious rights, Evangelical Fellowship adopted a broader frame and argued that the Himachal Pradesh Religious Freedom Act 2005, specifically, the requirement of a 30-day notification before conversion, violated the right to privacy. According to Article 21 of the Indian constitution, "no person shall be deprived of his life or personal liberty except according to a procedure established by law." Although the Indian constitution does not have an explicit provision that guarantees the right to privacy, the guarantee of life and personal liberty is used as grounds for the protection of a wide range of rights that range from the right to livelihood (*Olga Tellis v. Bombay Municipal Corporation* 1985) to the right to a clean environment (*Vellore Citizens Welfare Forum v. Union of India* 1996.) Likewise, Article 21 is used as grounds for an individual's right to privacy. In *Evangelical Fellowship* the Himachal Pradesh High Court, affirmed an individual's right to privacy in the absence of any compelling reasons

that would justify the anti-conversion law's requirement that an individual offer prior notification to the state of their intent to convert.

The court's striking of the time-dependent condition based on an individual's right to privacy was a significant "win" for India's Christian minorities. By achieving the desired result, even if only in part, the Evangelical fellowship case lends support to the argument that by adopting wider frames that include a broader collection of rights—in this case, the right to privacy—Christian minorities increase their argument's effectiveness. Evangelical Fellowship's strategic choice to broaden its argument and align it with a right that affected not only Christians or even religious minorities, but every citizen, resonated with the court. The right to privacy as a master frame aligned with the cultural context and existing "rights talk". The growing importance that Indians place on privacy was further illustrated five years later in *Justice K.S. Puttaswamy (Retd.), and Anr v. Union of India and Ors.* 2012 when the Supreme Court, ruled privacy was indeed a fundamental right (*The Indian Express*, 2017). The Supreme Court decision was the culmination of a lawsuit which began the same year as the decision of *Evangelical Fellowship v. State of Himachal Pradesh*. The legal challenge, brought about by a retired Judge, was against the Indian government's implementation of a biometric identification program called "Aadhaar." The program's expansive data collection of iris scans, demographic information, and fingerprints to generate a "Unique Identification Number" for every member of the Indian populace, criticized for being overly intrusive and violating an individual's right to privacy had caused growing concern in India. The strategic choice the NGO made to argue that the 30-day prior notification requirement was a violation of privacy tapped into established and timely domestic "rights talk."

Conclusion

In this chapter, I examined the legal cases, *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors* 2007 and *Evangelical Fellowship v. State of Himachal Pradesh* 2012 and compared the arguments in support of religious rights put forth by Christian minorities and their use of TANs in support of those arguments. In my discussion of both cases, I also considered the counter-arguments that Christian minorities encountered. In both countries, religious rights claims by Christian minority groups were complicated by counter-arguments that made the rights of the individual subject to the rights of the community, conflated religious identity with national and ethnic identity, and placed the maintenance of public order and national sovereignty above the religious rights of Christian minorities. The contested nature of religious freedom in these two diverse countries, and Evangelical Fellowship's legal victory in part, also suggests that in the contested field of religious rights claims-making, Christian minorities can benefit from using non-religious arguments in their search for religious rights.

The scope of transnational advocacy networks was initially conceptualized linearly, in which domestic groups in response to grievances brought about by the actions of state or non - state actors would turn to transnational partners to advocate on their behalf. These transnational networks would then exert pressure on the source of the grievance to bring about change. Accompanying this narrative was the idea that state power through the effect of globalization and other factors was on the decline and networks could pressure governments into changing course. Missing from this account was the acknowledgment of the existence of competing claims and how they can complicate the efforts of transnational advocacy networks and how the actions of TANs could even reinforce these counter-arguments.

In the chapter that follows, I continue to explore these themes by comparing two additional instances of transnational advocacy in each context. Specifically, I compare the legal case, *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* 2014 to the Indian government's decision in 2017 to withdraw the FCRA license of Compassion International. I discuss some of the underlying reasons for the restrictions associated with these cases, the arguments put forth in each case, the availability of domestic political opportunities and compare how Christian minorities engaged with local and transnational partners in both instances.

Confronting State Regulations on Financial Transactions and the Media

Chapter 4

In chapter 3, I examined how Christian minorities in India used TANs to challenge an anti-conversion law and compared their engagement to how a Malay Christian woman used TANs in her legal battle to challenge regulations against apostasy. My analysis of the subsequent legal cases, *Evangelical Fellowship v. State of Himachal Pradesh* and *Lina Joy v. Majlis Agama Islam Wilayah Persekutuan* centered on restrictions that impact individuals, specifically, an individual's right to choose their religion. In this chapter, I focus on Christian minority organizations and how they navigate state regulations outside the sphere of religion. I conduct an analysis of the Foreign Contribution Regulation Act 2010 (FCRA) in India and the Publication and Presses Act 1984 (PPPA) in Malaysia and compare how two Christian organizations engaged with TANs in their challenge to the state's enforcement of these regulations. In doing so, I also ask the following questions: What were the arguments and counter arguments presented in both cases? What strategies did Christian minorities employ in their use of the network? Lastly, what does the outcome of these strategies tell us about religious rights claims-making?

Like the *Lina Joy* and *Evangelical Fellowship* legal cases discussed in chapter 3, a closer look at both regulations and their manifestation in legal judgments and government decisions offer insight into debates that transcend religious difference and move into the areas of sovereignty, identity, and national security. Religious rights claims are complicated by these competing arguments, and it is against this backdrop that Christian minorities make strategic

choices on how to engage with TANs. Lina Joy responded to being unable to leave Islam by using institutional opportunity structures in the form of a legal challenge. TAN engagement in this instance was collaborative with transnational partners serving as amicus curiae and acting as observers of judicial proceedings by holding watching briefs. In the Lina Joy case, TANs also exercised accountability politics calling on the Malaysian government to abide by international agreements. In contrast, transnational engagement during the *Evangelical Fellowship* case was more behind the scenes. In this chapter, through an analysis of submissions to two cycles of Universal Periodic Review (UPR) of the U.N. Human Rights Council in both countries, I endeavor to determine the level of advocacy against these two restrictions from religious and secular stakeholders. I suggest that transnational and domestic advocacy in favor of repealing or revising these restrictions from both non-religious and religious rights grounds offer Christian minorities the ability to gather support from a broader audience. In keeping with existing literature on social movements and framing (Snow and Benford, 1992; McAdam, McCarthy & Zald,1996; Tilly and Tarrow, 2015), minority groups can broaden their audience when they tap into existing rights claims that are outside the scope of religion. By including non-religious rights arguments, they can transcend counter-claims based on the supremacy of the majority religion's laws (in Malaysia), and the protection of national security or public order (in both India and Malaysia) and tap into deeper wells of support.

I begin with a discussion of the Foreign Contribution (Regulation) Act 1976 in India and the Printing Presses and Publications Act 1984 in Malaysia and follow with a comparison of instances when Christian minority groups in each context challenged these two regulations. I compare the legal case *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* to the Indian government's decision to withdraw the FCRA license of Compassion

International. I discuss some of the underlying reasons for the restrictions and compare how Christian minority groups engaged with TANs in both instances.

Comparing India's Foreign Contribution (Regulation) Act 2010 and Malaysia's Printing Presses and Publications Act 1984

The Foreign Contribution (Regulation) Act, which was first enacted in 1976 during Emergency rule under Prime Minister Indira Gandhi, has been used by successive governments to monitor the inflow of foreign funds to NGOs. Like the PPPA in Malaysia, the FCRA comes under the jurisdiction of the Ministry of Home Affairs, which has under its purview areas related to state security. The State's administering of the PPPA and FCRA in their respective contexts has been criticized by human rights organizations including Human Rights Watch and Amnesty International. According to Human Rights Watch, the PPPA is being used as a weapon against those members of civil society that are critical of the Malaysian government or do not share the same ideological leanings (Human Rights Watch, 2015). In the same vein, Amnesty International criticized the use of the FCRA by the Indian government as a "tool of reprisal" against those organizations that do not share the government's ideology (Amnesty International, 2017). Like the FCRA, the PPPA also affects non-religious NGOs. In India, secular organizations including Greenpeace and the Lawyers Collective, a New Delhi based human rights organization, were negatively impacted by the nonrenewal and suspension of FCRA licenses respectively. In Malaysia, the PPPA was used to restrict the voice of *The Edge*, a daily newspaper which had its license suspended for three months by the Home Ministry after being critical of the Malaysian government (Lim, Ida, 2015).

At the core of the PPPA and the FCRA are registration requirements that offer the state a pathway to monitor and control organizations. U.N. Special Rapporteur for Freedom of Religion and Belief, Asma Jahangir, in her 2005 annual report to the Commission on Human Rights, notes that "registration often appeared to be used as a means to limit the right of freedom of religion or belief of members of certain religious communities" (Jahangir, 2005, p. 17). Governments use registration requirements to restrict religious minority organizations of their choosing by revoking or withholding required authorization needed to operate (Finke, Fox, and Mataic, 2017, p. 721). In her study of religious repression by authoritarian governments, Ani Sarkissian finds that since registration requirements have "the veneer of following the rule of law they can be manipulated to target specific groups" (Sarkissian, 2015, p. 35). Although India and Malaysia are democracies, both countries have used a form of registration in the granting of licenses to curtail the activities of organizations operated by Christian minorities. According to the FCRA, organizations are required to have a license granted by the Ministry of Home Affairs to receive foreign funds. Additional rules introduced in 2017 under the FCRA require all NGOs to enroll in a separate registry, publicly disclose all inflows of foreign funds along with donor information on their organization's website and establish banking relationships with government-designated banks. Likewise, the PPPA states that "no person shall print, import, publish, sell, circulate or distribute, or offer to publish, sell, circulate or distribute" a newspaper without a license granted from the Minister of Home Affairs (Printing Presses and Publications Act 1984). In both instances, governments through the withholding of licenses can control how religious organizations operate.

While the FCRA is a form of financial regulation, the PPPA is considered "the premier censorship law" in Malaysia and is a licensing law that gives the government the power to issue

licenses needed for using printing presses and for the publication of newspapers (Sharom and Guan, 2018 p. 219). The laws share similar origins as both regulations are grounded on prior legislation and enacted during emergency rule. Originally, introduced in 1976, during Prime Minister Indira Gandhi's instituted Emergency, the FCRA has evolved with its most recent iteration in 2010 enforcing a higher number of restrictions on NGOs and the inflow of foreign funds. Likewise, prior legislation forms the basis of the PPPA; in this case, the Printing Ordinance 1948 that came into being during emergency rule under the British colonial government. Revised in 1971 to the Printing Presses and Publications Act, the law was amended in1984 to its current form. Both regulations originated under political circumstances that stifled democratic voices and have over time expanded in scope.

The PPPA grants authority to the Minister of Home Affairs to issue, renew, or suspend the license required to publish. According to the PPPA,

> If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned (Printing Presses and Publications Act 1984, Section 7[1]).

Furthermore, any individual found in violation of the law "shall on conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding twenty thousand ringgit or to both" (Printing Presses and Publications, Section 8[1&2]). An amendment of the law in 2012 removed some of the most oppressive aspects, including the annual renewal of the license and the ouster clause, that prevented judicial review of the Minister's decision (Printing

Presses and Publications [Amendment] Act 2012). While the Home Ministry can still suspend a publication's license at will, annual renewal of the license is no longer required, and publications can now seek judicial review of the government's decision (Sharom and Guan, 2018 p. 220). In 2012, the Catholic Church in Malaysia used the option of judicial review to challenge the decision of the Minister of Home Affairs to make the license to publish the Church's weekly newspaper, the *Herald*, subject to conditions including banning them from using the word "Allah." I discuss that case in greater detail later in this chapter, but first I turn to Compassion International and the decision by the Indian government to prohibit the inflow of foreign funds to the NGO under the auspices of the FCRA.

India: The Case of Compassion International

On June 3, 2014, shortly after newly elected Prime Minister, Narendra Modi, took office, the Indian Intelligence Bureau submitted a confidential report to the Prime Minister advising his office of an effort by foreign-funded NGOs to slow India's development. The report, entitled "Concerted efforts by select foreign funded NGO's to 'take down' Indian development projects," cautioned the government about foreign funding that came under the guise of charitable causes. These charitable causes, the report noted, ranged from the protection of human rights to violence against women, religious freedom, and caste discrimination and were being used to serve the "strategic foreign policy interests of western government(s)" (*Indian Expre*ss, June 7, 2014). It is unclear whether the report was the impetus that led to the crackdown on foreign-funded NGOs by the BJP led government. Nevertheless, the Indian government, under the auspices of the FCRA, restricted the activities of NGOs through the cancellation of 10,000 FCRA licenses and

the rejection of renewal license applications of numerous NGOs, many of which were faith-based.

Among the long list of religious NGOs whose operations were restricted, suspended, or terminated was Compassion International, a Christian child welfare organization with headquarters in the United States. Founded in 1952 in response to the humanitarian needs of children after the Korean war, the NGO now operates in 25 countries, has 6700 international church partnerships and is one of the largest Christian child advocacy organizations in the world (Compassion International Fact Sheet, 2018). The NGO began its operations in India in 1968 and at the time of its withdrawal from the country in 2017 had more than 580 local child development projects, which were operated with foreign funds of U.S. $50 million annually. According to the Indian government, in 2011-2012 Compassion was the second largest contributor of foreign income to NGOs (FCRA Annual Report 2011-2012, Ministry of Home Affairs, Government of India).

Compassion International's conflict with the Indian government began in 2011 when Caruna Bal Vikas, one of their primary partner organizations, was audited by the Commissioner of Income Tax and subsequently charged U.S. $18 million in tax for engaging in religious activity that was contradictory to their purpose as a charitable trust. Disputing the government's claim, Compassion filed a legal case in the Madras High Court, which is still pending. Three years later, the NGO's other central partner organization, Compassion East India, was investigated by the Indian government's Directorate of Enforcement, the economic intelligence agency responsible for investigating economic crime, on allegations of "anti-national" activity. Later the same year, based on accusations of alleged proselytization, the Indian government

denied the FCRA renewal of Compassion's two main partner organizations and required they receive foreign funds only with prior permission from the Ministry of Home Affairs. Under the assumption that the Ministry of Home Affairs would not grant prior permission, the NGO decided to challenge the state's decision using an extensive advocacy campaign that included letter writing by supporters, calling on officials from the U.S. State Department, and a hearing before the Foreign Relations Committee of the U.S. House of Representatives. Despite this effort, the Indian government denied the renewal of Compassion International's partner organizations, and in early 2017 the NGO closed its operations in the country.

According to Indian government officials, the decision to deny the renewal was in keeping with preserving "national interest" and according to Indian Foreign Secretary, Gopal Baglay, "a matter of law enforcement and following the laid-down laws of the country" (Bhalla, 2017). The Malaysian government made similar arguments in its enforcement of the PPPA. An analysis of the arguments presented in *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* (or the "Allah" case as it is commonly called) shows similar themes, including religious rights claims based on constitutional provisions granting freedom of religion and counter-arguments that stress national security concerns and the primacy of the majority religion over minority faiths.

Malaysia: Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negri

At the core of the case *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* is the debate over who can use the word "Allah." The controversy, which had bubbled to the surface periodically over the years, spilled over in 2007 when the Malaysian

government took a more oppositional stance to non–Muslim individuals using the word "Allah" in publications. The government's banning of the non-Islamic use of the word "Allah" began much earlier, in the 1980s, when the Malaysian government issued a directive prohibiting Christians from using the term (Hirschl and Sachar, 2018, p. 445). The directive, however, was not enforced, and Christian minority groups continued to use the term "Allah" to denote God as they had done for centuries in their worship, sermons, and in the Malay translation of the Bible. Translations of the Bible into Malay began in the 1600s and an early translation of the first four books of the New Testament in 1852 by Munshi Abdullah, who is considered the father of modern Malay literature, used the term "Allah" to refer to God (Neo, 2014, p.751). Christian minorities in neighboring Indonesia also use the term to denote God in the *al-Kitab,* the Bahasa Indonesia translation of the Bible. For Malay language speaking Christian minorities, using the word "Allah" to mean God was part of their everyday religious practice and had been for centuries. As far as the Malaysian government was concerned, the decision as to who could and couldn't use the word "Allah" was left for the government to decide, and the government's decision was that the use of the word "Allah" to denote God was for Muslims only.

Beginning in the late 1990s, the Home Ministry sent the first of several letters to the *Herald* — the Catholic Weekly, a newspaper affiliated with the Roman Catholic Church in Malaysia and published by the Archbishop of Kuala Lumpur. The newspaper, which is published in English, Chinese, Tamil, and Malay, had operated since the early 1990s and the newspaper's Malay translation had used the term without incident. In 1998, the first letter from the Malaysian government to the newspaper came under the category of a "letter of admonition," which was, in turn, followed four years later by a "show cause letter." In 2007, the issue took a more direct turn when the Ministry of Home Affairs granted the *Herald* the license to publish subject to

conditions, which became the impetus for the long legal battle that followed. The Ministry of Home Affairs made the newspaper's Printing Presses and Publications license subject to two conditions: 1) The publication had to stop using the word "Allah" in the Malay version of the newsletter until the Court had decided on the issue, and 2) the publication's circulation had to be limited to churches and Christians (*Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Anor*, 2010). In response, the Archbishop of Kuala Lumpur, as publisher of the *Herald*, applied for judicial review and named the Minister of Home Affairs and the Government of Malaysia as respondents (Hussin, 2018, p. 95).

The legal battle spanned seven years and traversed through Malaysia's civil courts beginning with the High Court of Kuala Lumpur. The High Court's decision, in favor of the newspaper, was challenged by the Malaysian government and the Ministry of Home Affairs in the Court of Appeal. The Court of Appeal overturned the decision of the High Court, deciding in favor of the government. With the hope of countering the Court of Appeal decision, the Archbishop (hereafter referred to as the Catholic Church) applied for judicial review to the Federal Court of Malaysia. The apex court denied the application. In a final attempt, the Catholic Church applied again for judicial review in the hope that a new judicial panel would arrive at a different decision. Again, the Federal Court denied the Catholic Church's application. A closer look at the arguments presented by both the plaintiff and respondents in *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* offers insight into the hurdles Christian minority groups confront when making religious rights claims.

Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri: Making religious rights claims in the High Court of Kuala Lumpur

Although the Ministry of Home Affairs required the *Herald* to comply with two conditions, the Catholic Church chose to challenge only one, and specifically the prohibition of the use of the word "Allah" in the Malay version of the newspaper. On the condition that the publication, be restricted to Churches and Christians only, the Catholic Church chose not to seek judicial review. Instead, they challenged the prohibition of the use of the word "Allah" on constitutional grounds found in Articles 3(1) (practice of non-Islamic religions in peace and harmony), Article 10 (freedom of speech and expression), Article 11 (freedom of religion), and Article 12 (right to maintain religious education). The Catholic Church also argued that the Home Ministry had not taken into consideration the historical evidence concerning the usage of the term by Christian minorities.

The Christian usage of the word "Allah" predates Islam, being the name of God in the old Arabic Bible as well as in the modern Arabic Bible and used by Christians in countries across the Middle East, Asia, and Africa (Liow and Noor, 2010, p. 2). Using historical evidence and grounding their argument in constitutional provisions concerning religious rights, the Catholic Church argued that Islam as the religion for the Federation and as guaranteed in Article 3(1) did not empower or authorize the state to prohibit the newspaper from using the word "Allah." In doing so, not only was the state in violation of constitutional protections but had also acted outside the scope of the PPPA. Furthermore, the Catholic Church argued, they had the right to freedom of speech and expression found in Article 10, and their use of the term in the *Herald* was also protected by the constitutional guarantee of freedom of religion in Article 11 and the right of any religion to manage its religious affairs. Lastly, the Catholic Church maintained that

under Articles 11 and 12 they had to the right to use the term while educating the Catholic community in religious teaching (*Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Anor*, 2010, 2 CLJ 2010, pp. 78-79).

The Minister of Home Affairs and the Government of Malaysia, as respondents, also turned to Constitutional guarantees to support their stance. Specifically, they based their argument on Article 3(1) which establishes Islam as the official religion of the Federation and Article 11(4) which permits laws to be enacted to control or restrict the propagation of non-Islamic religions to followers of Islam. Since the majority of Malaysian states have laws that prohibit the propagation of non-Islamic religions to Muslims, and since section 9 of these laws forbids the use of specific words by non-Muslims, including the term "Allah," the Home Ministry argued that allowing the use of the term by non- Muslims would violate existing law.[7]Moving away from constitutional guarantees, the respondents also justified their stance on the grounds of state security and protecting public order, which became the crux of their argument (2CLJ, 2010, p. 79). For the respondents, the prohibition of the use of term by non-Muslims was intended to "avoid confusion and misunderstanding among Muslims" as there was "no guarantee that the said publication will be circulated only among Christians and will not fall into the hands of Muslims and it has gone online and is accessible to all" (2CLJ, 2010, p. 107). In doing so, the Malaysian government turned to "order," which has become a "catch-all" or "go to" reason for restrictions on how minority religious communities practice their faith. The Court

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[7] As an example, consider the state of Perak's Control and Restriction of the Propagation of Non-Islamic Religions Enactment 1988 (Perak no. 10/1988) available at http://www2.esyariah.gov.my/esyariah/mal/portalv1/enakmen2011/Eng_enactment_Ori_lib.nsf/f831ccddd195843f48256fc600141e84/43b2b2a6c1d6df6948257027002435e2?OpenDocument

made a similar argument in *Lina Joy* when they contended that chaos and confusion would erupt should Joy be allowed to leave Islam and embrace Christianity (*Lina Joy* [2004] 6 CLJ p. 249).

Malaysia and India's constitutions make religious rights subject to public order. Article 25(1) of the Indian Constitution states:

> 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, practise and propagate religion (Constitution of India 1950, Article 25[1])

Similarly, Article 11(1) of the Malaysian Constitution, which provides every person's right to profess and practice his religion, is also subject to Article 11(5), which states that Article 11(1) "does not authorize any act contrary to any general law relating to public order, public health or morality" (Constitution of Malaysia Article 11[5]). In using these constitutional constraints, both governments have applied the maintenance of public order as grounds to stymie religious rights. In India, the maintenance of public order is used to prevent the propagation and practice of minority religions via anti-conversion laws, as seen in *Evangelical Fellowship v Himachal Pradesh*. However, extolling the maintenance of public order as a reason for imposing restrictions is not always successful, and in the case of *Archbishop of Kuala Lumpur v. Menteri Dalam Negeri,* the High Court of Kuala Lumpur agreed with the Catholic Church. In the "Allah" case's iteration in the High Court of Kuala Lumpur, the presiding judge Lau Bee Lan found the public order and state security justifications insufficient and questioned: "are guaranteed rights to be sacrificed at the altar just because the Herald has gone online and is accessible to all?" The judge also cautioned against the use of the "avoidance of confusion" as grounds "to obviate a situation where a mere confusion of certain persons within a religious group can strip the constitutional right of another" (2 CLJ, 2010, p. 65). Citing lack of material evidence that the

usage of the word "Allah" is a threat to national security and the "uncontroverted historical evidence" in support of the Christian minorities' usage of the term, the court ruled in favor of the Catholic Church (2 CLJ, 2010, para 28). The Catholic Church's legal victory, however, was short-lived.

Unlike the High Court, the Court of Appeal ruled in favor of the state. The three-judge panel held that on the issue of constitutionality, preventing the *Herald* from using the word "Allah" was not in violation of any of the constitutional rights presented by the Catholic Church. Instead, the Court held that "it is our common finding that the usage of the name 'Allah' is not an integral part of the faith and practice of Christianity" (Court of Appeal, Press Summary, 2013) and that "constitutional protection of religious freedom only extends to rituals and practices that are essential to religion" (Neo, 2014, p. 757; *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Anor*, 2010, 6MLJ, 2013, 890). Making the judgment that the use of the term "Allah" was not an integral part of the faith and practice of Christianity, the three-judge panel then questioned why the Catholic Church was "adamant to use the name 'Allah' in their weekly publication." They argued that such usage if allowed, "will inevitably cause confusion within the community" (Summary of Decision, 2013). The three-judge panel in their decision also placed more attention on Article 3 and the primacy of Islam in the country compared to the religious rights found in Article 11 (1) and (3). While Article 3 appoints Islam the religion of the federation, it also states that other faiths can exist in peace and harmony, and Article 11(1) grants individuals the right to profess, practice, and propagate their religion. In turn, Article 11(3) provides every religion the right to manage its own affairs. In another instance of the contested nature of religious rights claims, where arguments in favor of religious rights meet counter-claims, the Court of Appeal used the same constitutional provision in Article 3(1)

and interpreted it differently than the High Court. The Court, using national security as justification, upheld the supremacy of Islam in the country, was sympathetic to the sensibilities of the religious majority, and subordinated the religious rights of Christian minorities to that of the majority Islamic community.

In response, the *Herald* applied to the Federal Court of Malaysia seeking judicial review. In a close four-to-three majority, the Federal Court of Malaysia decided in favor of the Minister of Home Affairs and held that the Court of Appeal judgment was procedurally and constitutionally sound, thereby dismissing the Catholic Church's application for judicial review. According to the Federal Court, the Minister of Home Affairs as representative of the state had acted objectively and therefore it was unnecessary for the Federal Court to interfere (4MLJ, 2014, p. 465). Furthermore, the apex court reiterated the Court of Appeal's stance, which stated:

> the usage of the word "Allah" particularly in the Malay version of The Herald, is, without doubt, to have the potential to disrupt the even tempo of the life of the Malaysian community. Such publication will surely have an adverse effect upon the sanctity as envisaged under Article 3(1) and the right for other religions to be practiced in peace and harmony in any part of the Federation. Any such disruption of the even tempo is contrary to the hope and desire of peaceful and harmonious co-existence of other religions other than Islam in this country (6 MLJ, para 30 p. 576).

In doing so, the apex court affirmed the Court of Appeal judgment that public order took precedence over religious rights. The Federal Court's decision assumed that allowing non-Islamic groups including Christian minorities to use the word "Allah" would hurt the sensibilities of the majority population and create confusion amongst its ranks. The Catholic Church in a final attempt to get the Federal Court to reconsider its decision applied for an uncommon review of the Court's refusal to hear its appeal. Again, the Federal Court denied their application.

The domestic reaction to the Court of Appeal and the Federal Court's judgments were mixed, with Islamic groups applauding the ruling and Christian minorities and human rights groups expressing concern. In an article to the Bar Council, legal advocate, Tommy Thomas, was sharply critical of the Court of Appeal's judgment and called the decision a violation of freedom of religion, a fundamental right under the Malaysian constitution (Thomas, 2013).[8] Representing the broader Christian community in Malaysia, the Christian Federation of Malaysia expressed their disappointment over the Federal Court's refusal to accept the Catholic Church's application for judicial review and made clear in a press statement their intent to continue using the term. They called on Malaysia's Attorney General to keep to his assurance to Christian minorities that the court's decision would not impact their use of the word in other contexts. In the press statement, CFM noted:

> The Attorney General had previously publicly pointed in his statement issued on 20th October 2013 that this decision is only with respect to the use of the word "Allah" in The Herald newspaper. As legal advisor to the Government of Malaysia we will hold him and the Government of Malaysia to that position. Given the refusal to grant the Roman Catholic Church leave to appeal, we will in proceeding with our actions and activities therefore treat the decision of the Court of Appeal as being confined to the specific facts of that particular case, and otherwise maintain that the Christian community has the right to use the word "Allah" in our Bibles, church services and Christian gatherings in our ongoing ministry to our Bahasa Malaysia-speaking congregations as we have done all this while (CFM June 23, 2014).

Similar to the legal cases discussed in chapter 3, the Allah case also illustrates the limitations of religious freedom arguments. The Catholic Church's use of religious rights

[8] Tommy Thomas' legal opinion on the "Allah" case and the constitutional provision of religious freedom in Malaysia is noteworthy for future legal challenges by Christian minority groups considering his appointment as Malaysia's Attorney General following the 2018 parliamentary elections which ousted the UMNO led Barisan Nasional Coalition in favor of the Pakatan Harapan led coalition thus breaking UMNO's streak of winning every general election since Independence.

arguments though grounded in constitutional provisions met counter arguments that subordinated those rights to the preservation of public order and the protection of majority sensibilities. Despite these counterarguments, there was significant TAN engagement both in terms of advocacy and solidarity during the case.

Advocacy in support of the Catholic Church

Domestic and international NGOs used various advocacy measures including public statements, submissions via the UPR (discussed in detail later in this chapter), serving as amicus curiae, and conducting watching briefs. In Malaysia, watching briefs are used as a method to protect the rights of interested parties who are not subject to the legal proceedings. Unlike an amicus brief were parties that are not subject to the legal proceedings submit a brief that offers their perspective on the legal case, holding a watching brief in this context meant that lawyers representing the interests of parties not subject to the legal procedures would act as observers. Among the long list of religious and non-religious NGOs who held watching briefs were the World Council of Churches, Malaysian Consultative Council of Christianity, Buddhism, Hinduism & Taoism (MCCBST), the Malaysian Bar Association, Christian Federation of Malaysia, and the Council of Churches of Malaysia. Evangelical Councils from east Malaysia and specifically Sabah and Sarawak, where the majority of the country's Christian population reside, also held watching briefs. Another NGO, Advocates Association of Sarawak, the East Malaysia counterpart of the Malaysian Bar Council, served as amicus curiae in support of the Catholic Church.

Transnational efforts also included public statements and letters of solidarity to Christian minorities in the country. The World Council of Churches (WCC) in a public statement entitled

“The Politicization of the Religion and the Rights of Minorities” called religious freedom an inherent human right. Referencing the "Allah" case, the WCC was also critical of the tendency of ruling governments to use religion to maintain the support of majority religious communities and create electoral gains at the polls (WCC, November 18, 2013). Likewise, the World Evangelical Alliance (WEA) expressed concern regarding the status of freedom of religion in the country in a letter of solidarity addressed “to the National Evangelical Fellowship of Malaysia and Indeed all Malaysia’s Christians” (WEA, March 21, 2014).

U.N. experts also lent support, including the Special Rapporteur on Freedom of Religion or Belief, Heiner Bielefeld. Bielefeld, in a press release condemning the Malaysian government's action, said: “It cannot be the business of the State to shape or reshape religious traditions, nor can the State claim any binding authority in the interpretation of religious sources or in the definition of the tenets of faith” (*U.N. News*, 2013). Joining Bielefeld in condemnation of the actions of the Malaysian government was Frank La Rue, Special Rapporteur on Freedom of Expression, who called on the Ministry of Home Affairs and the Malaysian Government to “take steps to immediately secure the right to freedom of opinion and expression of the newspaper and withdraw unconditionally from further litigation on this issue” (*UN News*, 2013). While Christian minorities in Malaysia in their legal battle over the use of the word “Allah” interacted with different segments of the transnational network through letters of solidarity, watching briefs, and U.N. experts, Compassion International adopted a different strategy that focused mainly on advocacy measures by the U.S. government. Compassion International relied heavily on U.S. government officials placing pressure on their Indian counter-parts to change their stance toward the NGO. Neither strategy was behind-the-scenes in approach, although the advocacy in India was more focused on a single influential country (the U.S.).

The Role of TANs: Compassion International

Unlike Christian minorities who adopted a collaborative approach to TAN engagement using TANs behind the scenes in their legal battle over the enactment of an anti-conversion law in *Evangelical Fellowship v. Himachal Pradesh* (discussed in chapter 3), Compassion International engaged with transnational partners in more overt ways. The NGO's support from the U.S. government to advocate on its behalf was, in turn, the result of an ambitious grassroots effort which involved thousands of like-minded Christians from all over the United States sending letters to their congressional representatives demanding the U.S. government act in support of the NGO. In India, help at the grass roots level amongst Christian minority groups was much smaller and primarily focused on generating awareness and solidarity.[9] One exception was the support the NGO received from political opponents of the BJP-led government at the state level and specifically, from Tamil Nadu, the state in south India where one of Compassion's major partner organizations was based. It is likely that the reason for their support lies as much with political opportunism as any commitment to religious freedom. Nevertheless, the Tamil Nadu Congress Committee Minority Department, in a press report, stated that the government treated the NGO with a "discriminative attitude on (the) basis of religion and economic status, which has affected the poor people of our nation. Hence, this BJP led Government has again proved that it is not a government concerned for the poor and common people of this nation" (TamilNadu Congress Minority Department, 2017).

[9] Requests for solidarity with the NGO via requests for prayer was evident during field work conducted in Madhya Pradesh and Chennai in January 2017.

While domestic advocacy for the NGO was limited, transnational advocacy, specifically from the United States, was extensive. U.S. Secretary of State John Kerry in his 2016 visit to India voiced the US government's concern over the non-renewal of Compassion's FCRA license. The scope of the NGO's advocacy was also evident during the confirmation hearing of his successor, Rex Tillerson, when a member of the U.S. Congress asked him of his plan of action regarding the issue. One of the most notable advocacy efforts was the NGO's testimony before the Committee on Foreign Affairs of the U.S. House of Representatives. Entitled "American Compassion in India: Government Obstacles," the hearing also included expert testimony from the Asia Advocacy Director of Human Rights Watch, John Sifton and Irfan Nooruddin, a Georgetown University academic. What were the arguments presented in these different forums? And what strategies did different segments of the TAN employ when attempting to change the Indian government's stance? An analysis of the arguments and TAN engagement in both cases displays common themes and differences.

In testimony before the Committee on Foreign Affairs of the U.S. House of Representative, the details of which were widely reported in the Indian press, Compassion, using religious freedom arguments, called on U.S. lawmakers to pressure the Indian government. In doing so they tapped into the rising support from US lawmakers for religious freedom in India and around the world (Adcock, 2018, p. 341). According to the NGO, the actions of the Indian government violated Article 25 of the Indian constitution and was an "attack on freedom of religion." In keeping with the religious freedom theme, Compassion also invoked Article 15 of the Indian constitution which provides that "the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them." The Indian Home Ministry, they argued, had "repeatedly disregarded these constitutional protections" (Committee

on Foreign Affairs, House of Representatives Hearing, 2016). Apart from invoking religious freedom arguments based on constitutional guarantees, the NGO also took the risk of ruffling post-colonial sensibilities and suggested that the Indian government did not have the political will to take care of the country's poor and had shown "a culture of indifference to the poor" and called on the U.S. lawmakers to use their influence as lawmakers to "advocate for those that the Indian government ignores" (Committee on Foreign Affairs, House of Representatives Hearing, 2016).

The NGO did not limit their audience to the hearing before members of the House of Representatives, but also engaged with U.S. legislators in other ways. In an open letter to the Indian Minister of Home Affairs, Rajnath Singh, the Chairman of the House Committee on Foreign Affairs invoked the strong relationship between the two countries and their "share(ed) bonds rooted in political pluralism and respect for the rule of law" (George, 2017). The letter, which was signed by 127 members of the U.S. Congress, called for greater transparency in the administration of the FCRA and a reprieve for the NGO. The letter, and the Congressional hearing that preceded it was, in turn, the culmination of the significant advocacy effort by Compassion. Supporters of the NGO via letters, phone calls, and social media placed pressure on their elected representatives to urge the Indian government through diplomatic means to reverse their decision. In turn, the U.S. Department of State in its 2016 edition of its annual International Religious Freedom Report also mentioned the FCRA and specifically noted the non-renewal of licenses of the NGO's two main domestic partner organization Caruna Bal Vikas and Compassion East India. However, religious transnational advocacy groups within the United States were not all in support of Compassion. In a statement submitted to the U.S. House Foreign Affairs Committee, the Hindu American Foundation, an advocacy group for the Hindu

community, accused the NGO of "predatory proselytization" and argued that the hearing was not in the best interest of India-US relations (HAF Statement, December 2006).

UN representatives also addressed the FCRA as a tool used by the Indian government to curb NGO activities. Among them were Michel Forst, Special Rapporteur on the situation of human rights defenders, David Kaye, Special Rapporteur, freedom of expression and opinion, and Maina Kiai, Special Rapporteur for the rights to freedom of peaceful assembly and association. According to these UN Special Rapporteurs, the recent crackdown by the Indian government via the non-renewal, suspension or denial of registration under the FCRA had jeopardized the activities of numerous civil society organizations in the country that were dependent on FCRA accreditation to sustain their operations "assisting millions of Indians in pursuing their political, cultural, economic and social rights" (*U.N. News*, October 16, 2016). The United Nations Human Rights Council, in the Universal Periodic Review (UPR) of each country, also expressed concern that Malaysia and India were using the PPPA and FCRA respectively to obstruct the activities of members of civil society. Thus, broad support from nonreligious sources for the repeal or revision of these two registration regulations which had negatively impacted Christian minorities did exist, but Christian minorities chose not to significantly activate them in either context.

Transnational Advocacy via the UPR

A systematic analysis of individual NGO submissions in the two cycles of the UPR of Malaysia and three cycles of the UPR of India shows rising concern from transnational NGO's over the use of the PPPA and the FCRA by each government to obstruct the activities of religious and non-religious organizations. While there was little mention of the FCRA in the first

cycle (2008) and second cycle of the UPR (2012), there was an increase in the mention of the FCRA from transnational NGOs in the third cycle (2017). In submissions to the Human Rights Council, transnational NGOs, including some of which are nonreligious, expressed concern over the FCRA restricting foreign funds. Amnesty International, in their submission in the third cycle and 27th session of the UPR, called on India to repeal the Act (Amnesty International, 2016). In turn, Human Rights Watch suggested that investigations under the auspices of violations under the FCRA and the tactics used have a broader "chilling effect" on the work of other groups (Human Rights Watch, 2016). The International Commission of Jurists, another non-religious NGO and whose mission includes the global preservation and promotion of the rule of law, also voiced concern over the FCRA under the auspices of freedom of speech, association, and expression (International Commission of Jurists, 2016).

In comparison, complaints about the Malaysian government's use of the PPPA as a tool against members of civil society occurred in both cycles with a modest increase in criticism of the PPPA between the first cycle (2009) and second cycle (2013). Like the FCRA, advocacy in support of repealing or amending the PPPA also came from non-religious NGOs including the International Publishers Association, the Centre for Independent Journalism, and the Commonwealth Human Rights Initiative. Not only were these submission from nonreligious NGOs, but they also included non-religious arguments including the right to freedom of expression (which includes the right to bear a permit) as justification for their recommendations. Advocacy efforts from these non-religious NGOs and others suggests that Christian minorities, by including non-religious arguments in their religious rights claims making, could tap into broader levels of support.

An analysis of individual country recommendations to the Indian and Malaysian government concerning the use of the FCRA and PPPA respectively also offers evidence of broader levels of support for the repeal or amendment of restrictive laws and regulations that impact religious minorities. Among the list of foreign governments critical of the PPPA during the second cycle of the UPR was Ireland who expressed concern that the Malaysian government had "used the Printing Presses and Publication Act to block publications considered hostile, continued to impose three years' imprisonment for 'maliciously published false news' and obliged accused individuals to disprove guilt" (A/HRC/25/10, 98). Likewise, foreign governments called on the Indian government to either amend or repeal the FCRA. Among the list was Germany who recommended that the Indian government "amend the Foreign Contribution (Regulation) Act to ensure the right to freedom of association, which includes the ability of civil society organizations to access foreign funding and protect human rights defenders effectively against harassment and intimidation." (A/HRC/36/10/10 p. 18). Likewise, South Korea called on the Indian government to "improve the Foreign Contribution (Regulation) Act so that it could fund a broader scope of non-governmental organizations" (A/HRC/36/10/10 p. 18). The brief response from the Indian government was that "the Foreign Contribution (Regulation) Act prohibited acceptance and utilization of foreign contributions or foreign hospitality for any activities detrimental to the national interest. Any violation of the Act was a cognizable offence" (A/HRC/36/10/10 p. 18).

The increase of criticism of the FCRA between the first, second, and third cycles of the UPR of India and an analysis of civil society stakeholder submissions in the first and second cycle of the UPR of Malaysia also shows an increase in the mention of the PPPA. What accounts for the differences in the level of criticism? Why did these two governmental regulations which

had been in existence for decades, come to the forefront in recent years? A closer look at contextual factors in both countries suggests electoral politics as a determining factor.

The politics of the FCRA and the PPPA

In 2014, the Bharatiya Janata Party (BJP), which had been in opposition for ten years, came into power in India winning 283 seats of the 428 they contested. Led by the former Chief Minister of Gujarat, Narendra Modi, the party used a combination of anti-minority rhetoric to cater to its' Hindu nationalist base and promises of economic development to broaden its appeal. Hindu nationalism is at the core of the BJP's ideology, and the party after its electoral victory had a choice whether to submit to its ideological foundation or abide by the Indian constitution (Varshney, 2014, p. 35). Since the 2014 election, the party has chosen to align more with its ideological roots. The BJP led government's assault on religious minority organizations, secular institutions, and constitutional freedoms has, therefore, resulted in widespread criticism of the party's policies from a broad spectrum of voices.

In the years following the BJP's win, domestic human rights defenders, religious actors especially Muslims and Christians, international organizations, and transnational NGOs have criticized the BJP led government for fostering an environment of intolerance in the country and curbing human rights. The reasons for this criticism stems from the introduction of new laws like the banning of cow slaughter in BJP led state governments, and the use of existing laws at the national level, such as the FCRA, to obstruct the activities and voices of organizations which contradict the government's ideology or criticize its policies.

Shifts in the electoral fortunes of the United Malays National Organization (UMNO), the political party that led the ruling Barisan Nasional coalition, also suggest that when it comes to regulations on religion, changing political dynamics can influence how and when restrictions on religion are activated. Unlike the BJP, the UMNO party, which leads the Barisan Nasional coalition (BN) and led its predecessor the Alliance, had won every election since 1957 until the most recent election in 2018. Political parties in Malaysia traditionally form along ethnic lines, and UMNO is considered to be the party that represents Malay Muslim interests (Puyok, 2015, p.60). UMNO's political rival, Partai Islam Se-Malaysia (PAS), the Islamist party which competes for the same vote bank, challenges the party's representation of Malay Muslims' interests (Moustafa, 2014, p. 167; Welsh, 2013, p. 140). As such, UMNO has tried to maintain, and now regain, its hegemony over the Malaysia political landscape through statements and legislation to remind its political base of its religious credentials and the party's commitment to preserving the Malay and Muslim identity. Their use of the PPPA as a tool to prohibit the use of the word "Allah" by non-Islamic religions was a way to counter PAS's status as the largest Islamist political party in the country. In doing so, UMNO hoped to remind the Malay Muslim community that the party was still the protector of their interests. UMNO's actions suggest that how and when restrictions on religion occur is in part influenced by electoral considerations. Likewise, the BJP's ties to Hindu nationalism and specifically the RSS, the Hindu Nationalist socialist movement that underpins the party has prompted the party to cater to its Hindu nationalist base and implement new policies or in the case of the FCRA expand or enforce existing policies that negatively impact religious minorities including Christians.

However, electoral considerations can also work in favor of Christian minority groups in their search for religious rights and is discussed in chapter 5. Nevertheless, in contexts where

ruling political parties are tied to the majority religion, Christian minority groups must decide if advocacy using religious freedom arguments either through domestic advocacy measures or with the help of transnational partners is the best course of action. In these instances, Christian minorities make strategic choices whether engaging with TANs would be more advantageous than utilizing dynamic and institutional opportunity structures that are available to them on the national level. A comparison of how Christian minorities used TANs in response to the Malaysian government's prohibition of the use of the word "Allah" and the Indian government's nonrenewal of Compassion International's FCRA licenses reveals differences in strategy.

Comparing transnational advocacy efforts in each context

Compassion International overtly engaged its transnational network via social media, a letter-writing campaign to U.S. legislators, and diplomatic calls from the U.S. State Department to the highest levels of the Indian government. In Malaysia, Christian minorities' engagement with transnational and domestic advocacy networks was broader and included the World Council of Churches, the Malaysian Bar Council, and Sisters in Islam, an NGO that advocates for the rights of Muslim Women. While both organizations argued in support of religious rights, Compassion International was more singular in their approach and focused mainly on the one particular NGO and its inability to operate due to the nonrenewal of its FCRA license. In testimony before the U.S. House Committee on Foreign Affairs, Compassion stressed two main points, first, the Indian government's violation of religious freedom constitutional guarantees and second, the NGO's commitment to helping impoverished children. Despite this emphasis, the NGO did not link their overall argument to the UN Convention of the Rights of the Child, an international agreement that India ratified in December 1992. By keeping their argument

primarily within the sphere of religion and the Indian government's non-renewal of the organization's FCRA license, they were unable to expand their domestic or transnational support and "mobilize the support of bystander publics" (McAdam, McCarthy & Zald, 1996, p. 339). According to one Christian pastor from the southern city of Chennai, where Compassion's leading partner organization Caruna Bal Vikas operated, Compassion International's advocacy efforts, while helpful in increasing awareness amongst Christian minority groups, were perceived by others as "promoting the rights of one Christian agency only, and not advocating for human rights issues."[10] By focusing solely on the issue at hand—the reinstating of the FCRA licenses to Compassion International's partners—and limiting its argument to religious rights, Compassion International was unable to broaden its well of support beyond Christian minorities within India and transnational networks in support of religious freedom. Unlike Evangelical Fellowship of India, which broadened their argument to include the right to privacy in the anticonversion case—a fundamental right outside the scope of religion, Compassion constrained its call for the government to reconsider its stance concerning the NGO's FCRA license based on a religious rights frame.

Similarly, the Catholic Church in their challenge to the Malaysian government's prohibition of their use of the word "Allah" in the *Herald*, also based their argument primarily within the sphere of religious rights. Unlike *Evangelical Fellowship of India v. State of Himachal Pradesh* (discussed in chapter 3) where Christian minorities used a non-religious right argument in religious rights claims making, the Catholic Church in *Titular Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* adopted a strategy more in keeping with Compassion International's approach. While a few other issues (poverty in India) or rights (press freedom in Malaysia) were

[10] Interview with Christian pastor, January 24, 2017 (Chennai, India).

mentioned, the main legal emphasis in both instances remained religious freedom, thus opening up vulnerability to counterclaims under the constitutional limits in each country on religious freedom. In both instances, arguments based on constitutional provisions related to religious freedom met counter-claims that called for the protection of national security and maintaining public order, the supremacy of the majority religion, and the protection of national sovereignty.

Counter Claims: Religious Rights v. National Security and Public Order

The Malaysian government by stating that Christian minorities would cause “confusion and misunderstanding amongst Muslims” should they use the term "Allah" and thus undermine public order, presented the issue as a threat they had to manage. In doing so, the government undertook what international relations scholar Barry Buzan articulates as a *securitizing move* or “the discourse that takes the form of presenting something as an existential threat” (Buzan, 1998, p. 25). The language of the Kuala Lumpur High Court judges in Malaysia, however, is striking in that it shows the low bar they thought necessary to justify a curb on religious freedom in the name of security or order— “confusion and misunderstanding” hardly rise to the level of existential threat. Preserving national security or public order in the face of threat has also been used as justification for financial regulations that can hinder the operations of NGOs. Using arguments of national security, the state including India stigmatizes religious and nonreligious NGOs “as Trojan horses that covertly serve the West” (Cooley, 2015, p. 54).

Counter Claims: Religious Rights vs. Supremacy of the Majority Religion

The supremacy of religious law and Islam in Malaysia as a counter-claim to arguments in support of religious rights is especially illustrative of the complexity of religious rights advocacy. Domestic and transnational advocates for religious rights face counter-claims that position the

majority religion above minority faiths. The primacy of the majority religion was especially evident in the "Allah" case, and specifically in arguments centered on Article 3(1) of the Malaysian constitution. Responding to the Catholic Church's use of Article 3(1) that states that "religions other than Islam may be practiced in peace and harmony in any part of the Federation," the majority judgment in the Court of Appeal also turned to Article 3(1) but focused on the first part, which begins with "Islam is the religion of the Federation." In this instance, the same constitutional provision, Article 3(1), was interpreted differently with emphasis being placed by the plaintiff and respondent on distinct parts, and in the end, the supremacy of the majority religion took precedence over the religious rights of the minority.

The supremacy of the majority religion in Malaysia is not only seen in arguments by the state in *Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* but in other court rulings as well, including *Lina Joy v. Majlis Agama Islam* (discussed in Chapter 3). Oral arguments by Haji Sulaiman Abdullah, who represented the Islamic Religious Council of the Territories in the Lina Joy case, noted that "there is nothing which is outside the scope of Islamic Law…because Islam...is a complete way of life and ... controls all aspects of our life (Dawson and Thiru 2007, p. 154; Moustafa, 2018a, p. 141). The decision to hold Islamic religious law above constitutional guarantees that provide for a Malay woman, in the case of *Lina Joy*, to freely choose her religion, and the decision to affirm the prohibition of the word "Allah" by non- Muslims both demonstrate the complexity of religious rights advocacy and the hurdles that domestic and transnational advocates for minorities have to overcome in countries where one religion has a special constitutional status.

In contrast, Hinduism is not officially the religion of India, precluding a similar line of legal argumentation or judicial decision making. Nevertheless, when the government is controlled by the Hindu majoritarian BJP, other branches of government may pursue elite Hindu interests to the detriment of minorities, as when bureaucrats selectively enforce foreign funding regulations in a way that disadvantages religious minority NGOs.

Conclusion

Through an analysis of the Financial Contribution (Regulation) Act 2010 in India and the Publication and Presses Act 1984 in Malaysia and their manifestation in legal cases and government decisions, this chapter focused on how two Christian organizations used TANs in their response to restrictions outside the sphere of religion. Based on my analysis, I suggest that the use of non-religious arguments in religious rights claims allows Christian minorities to broaden the basis of support for their cause. The use of non-religious arguments also makes it harder for counter arguments using constitutionally recognized (in both countries) limitations on freedom religion, including security and order. In contexts where the majority religion receives a banner of legitimacy and minority religions are perceived as foreign and viewed through a lens of suspicion, Christian minorities can benefit from including non-religious arguments in their search for religious rights. Compassion International's strategy primarily involved engaging the U.S. government to place pressure on Indian authorities to change their policy based on a religious freedom argument grounded in constitutional guarantees. The NGOs strategy was unsuccessful and met counter claims that invoked the preservation of national interest and sovereignty. Its efforts being unsuccessful, the NGO was forced to end its operations in India. In Malaysia, the Catholic Church also challenged the state primarily using religious freedom

guarantees enshrined in the Malaysian constitution, but unlike Compassion, which focused mainly on US government officials putting pressure on their Indian counterparts, the Catholic Church was able to garner support from U.N. representatives and domestic voices that supported their cause. While both the efforts of Compassion and the Catholic Church were unsuccessful, the broader issue of non-Muslims using the term "Allah" to denote God continues in Malaysia.

The study of submissions to the UPR of each country also indicates that broad support for the revision or repeal of the FRCA and PPPA existed outside religious circles. This support came not only from foreign governments but also from NGOs that represent a wide range of interests. By not tapping into this support they missed an opportunity to form alliances including transreligious alliances, a strategy used by some Christian minorities and discussed in the next chapter. The analysis of both cases also suggests the influence of electoral politics on how and when the state implements restrictions on religion. The dynamic between electoral politics and restrictions on religion are two-fold. Not only do changing political environments influence how and when national governments impose restrictions on religion, but they also offer opportunities for Christian minorities to engage with the state over religious rights in new ways.

Complicating Religious Rights Claims

Transreligious Networks, Cross-Cutting Identities, and the Impact of Local Politics

Chapter 5

In the search for religious rights, Christian minorities make strategic choices on how to engage with transnational advocacy networks based on available political opportunity structures. At times they choose to challenge restrictions on religious freedom through legal means as in *Evangelical Fellowship v. State of Himachal Pradesh* 2012 (discussed in chapter 3). In other instances, Christian minorities protest restrictions by engaging with international human rights organizations or with foreign legislatures. Compassion International's response to the Indian government's cancellation of their FCRA license (discussed in chapter 4) exemplifies this form of TAN engagement. These strategies offer differing results. Advocating for religious rights with the help of transnational partners can be useful to Christian minority groups but can also support counter-arguments that portray the efforts of TANs as a threat to national sovereignty and the maintenance of public order.

In this chapter, I return to laws that limit religious conversion and apostasy but instead consider cases with different outcomes. Unlike Lina Joy, which involved a Malay woman's unsuccessful attempt to leave Islam, *Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* 2015, the legal case I consider in this chapter, concerns a Bidayuh Christian man's decision to leave Islam and receive state recognition for his change in religious status. Although the scope of the cases was similar, their outcomes were different. Azmi Mohamad Azam, also known as Roneey Rebit, was allowed to leave Islam and the state recognized his decision to embrace Christianity by changing his religious status on his identity card and other documents.

Likewise, the coordinated protest which involved the coming together of various groups in response to the Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002, also resulted in a positive outcome for Christian minorities. What factors were present in these two cases that were not in others? And what do the different outcomes in these two cases tell us about the strategic choices Christian minorities make in their engagement with TANs? A comparative analysis of both cases suggests that the use of local political opportunity structures in the form of transreligious networks and the changing political environment helped reinforce their religious rights claims. These dynamic political opportunity structures, by providing an alternate pathway to challenge the state's restriction of religion, can impact how Christian minorities choose to engage with TANs.

I begin with a discussion of Sarawak and Tamil Nadu, the two states in context. I continue with a comparative analysis of *Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* 2015 and the Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002. I discuss the strategies that Christian minorities employed and uncover their level of engagement with TANs in each instance. Lastly, I consider the impact of cross-cutting identities on the choice of strategies and the state's response.

Religious rights claims and dynamic political opportunity structures

Dynamic opportunity structures are the temporal windows of opportunity that emerge due to shifts in political actors, policies, or events (Gamson and Meyer 1996, p. 277). While institutional political opportunity structures are stable elements like the nature of the political system or open access to national courts, dynamic opportunity structures are those "windows of opportunity' that are either enduring, or event-based (Beck 2008, p. 1569). In chapter 4, I

discussed state restrictions that are outside the sphere of religion and, using a comparative analysis of the PPPA in Malaysia and the FCRA in India, I explored how Christian minority groups in each context used institutional opportunity structures in the form of foreign legislatures and legal means. In the narrative below, I consider how Christian minorities use not only institutional opportunities, but also dynamic opportunity structures—those windows of opportunity that allow Christian minority groups to challenge state restriction by engaging in transreligous networks that coalesce around shared grievances. I also consider dynamic opportunity structures in the form of changing political environments.

According to social movement theorists, McCarthy, Britt, and Wolfson,

> When people come together to pursue collective action in the context of the modern state, they enter a complex and multifaceted social, political and economic environment. The elements of the environment have manifold direct and indicted consequences for peoples' common decisions about how to define their social change goals and how to organize and proceed in pursuing those goals (McCarthy, Britt & Wolfson, 1991, p. 46).

In the search for religious rights, domestic opportunities influence how Christian minorities choose to engage with TANs. As such, cross-cutting identities related to region and ethnicity can also impact the strategic choices Christian minorities make in their interaction with the state. In India, the southern states of Kerela, Tamil Nadu, and Andhra Pradesh, along with states in the North East region of the country have larger Christian populations. The same is true of Sarawak and Sabah, the former Borneo states in East Malaysia. Two-thirds of Malaysia's Christians reside in these two states and are constituted mainly of indigenous tribes. Denser populations of Christian minorities in some regions and rights associated with ethnicity offer Christian minorities alternate ways to negotiate with the state, which in turn affects the strategic choices they make in their use of transnational partners. The comparative analysis of Tamil Nadu and

Sarawak that follows offers insight into how regional and ethnic identities can influence how Christian minorities negotiate with the state when making religious rights claims.

Sarawak and Tamil Nadu

The autonomy that Sarawak holds, although diminished since Independence, was initially outlined before the formation of Malaysia. The Malaysia Agreement, signed on July 9, 1963, by Malaya, Sabah, Sarawak, and Singapore formed the basis for the creation of the Federation of Malaysia. The agreement included separate state constitutions for Sabah, Sarawak, and Singapore which were intended to preserve the autonomy, rights, and interests of the people of East Malaysia (Roff,1974, p.152). In 1965, two years later, Singapore left the union, but the remaining states of Sabah and Sarawak were able to retain power not allowed to other states. Special accommodation for both states is also enshrined in Article 153 of Malaysia's constitution and provides for reservations in education, permits for business operations, and public service positions.

According to Article 153(1)

> It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article (Article 153(1), Constitution of Malaysia).

While the level of autonomy of the two states has eased over time, the former states of Borneo in East Malaysia still consider themselves as distinct from peninsular Malaysia. According to a public opinion survey of the region in 2018, by the Institute of Southeast Asian Studies, sixty-three percent of respondents identify themselves as Sarawakian first with only twenty-five percent first identifying themselves as Malaysian citizens (Guan, 2018). In another indicator of regional exceptionalism, the Institute of Southeast Asian Studies survey, found the majority of

Sarawakians do not support Islam as the official state religion, with the level of support varying on ethnic lines. The religious demographics of the state also contribute to the absence of support for Islam. According to the 2010 census, 44 percent of Sarawakians are Christians and are mainly non-Malay Bumiputera (Puyok, 2014, p, 61). In Malaysia, this Sanskrit term, which means "sons of the soil," refers to Malays and numerous indigenous groups in the country which include amongst others the Iban, Penan, Melanau, and Bidayuhs. The Bidayuhs are the second largest indigenous group in Sarawak, and the majority of Bidayuhs are Christian.

In Sarawak, organizations representing the interests of Christian minorities also draw attention to the exceptionalism of the state when making religious rights claims. In a press statement commemorating the 50th anniversary of the Malaysian Federation, the Association of Churches of Sarawak, the ecumenical organization representing the interests of Christian minorities in the state, used the opportunity to remind people about the special conditions afforded by the Malaysia Agreement:

> We would reiterate that Sabah and Sarawak consented to form Malaysia in 1963 with Islam as the religion of the federation on the express condition that there will be complete freedom of religion without any hindrance placed on other religions. This is found in all the constitutional documents which record the concerns, discussions, assurances and agreements which finally led to the solemn execution of the Malaysia Agreement (Association of Churches in Sarawak, 2013).

The region as a political prize also means that at different times since Independence, special provisions have been made by the Malaysian government to accommodate the interests of Christian minorities. One such example is the "10-point solution," a statement issued in 2011 by Prime Minister Najib Razak to address "the Bible issue and other related issues." The government's banning of the term "Allah" by non-Muslims, which was deeply contentious in

Peninsular Malaysia, was even more concerning to Christian minorities in East Malaysia where Bumiputera Christians have used the term for centuries (Neo, 2015, p. 751). The Catholic Church's legal challenge in *Titular Archbishop of Kuala Lumpur v. Menteri Dalam Negeri & Anor*, 2010 in response to the Malaysian government's ban of the use of the term in its weekly, the *Herald* (discussed in chapter 4), and the seizure of 30,000 Malay bibles by government authorities in Kuching, Sarawak had further exacerbated growing disaffection amongst the Christian community (Ting, 2014, p. 102). It was in this context that Malaysian Prime Minister, Najib Razak government introduced the Ten Point Solution.

Addressed to Chairman of the Christian Federation of Malaysia (CFM), Bishop Ng Moon Hing, the Ten Point Solution was strategically timed to coincide with the lead up to the Sarawak state elections and was intended to smooth over relations with Christian minority groups. The statement explicitly addressed Sabah and Sarawak, and the first four points stated:

1. Bibles in all languages can be imported into the country, including Bahasa Malaysia/Indonesia.

2. These Bibles can also be printed locally in Peninsula Malaysia, Sabah, and Sarawak. This is a new development which should be welcome by the Christian groups.

3. Bibles in indigenous languages of Sabah and Sarawak such as Iban, Kadazan-Dutsun and Lun Bawang can also be printed locally and imported.

4. For Sabah and Sarawak, in recognition of the large Christian community in these states, there are no conditions attached to the importation and local printing of the Bibles in all languages, including Bahasa Malaysia/Indonesia and indigenous languages. There is no requirement for any stamp or serial number (Office of the Prime Minister, Government of Malaysia, April 2011).

The strategically timed introduction of the 10-point solution by the Prime Minister offers insight into the role dynamic political opportunity structures play in the relationship between the state and minorities over issues related to religious freedom. An analysis of the legal case of *Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* also suggests political opportunity structures in the form of electoral politics influenced the National Registration Department (NRD) not to seek an appeal of the Sarawak High Court's judgment in favor of the plaintiff. Political opportunity structures in the form of local elections offer Christian minorities an alternate pathway to challenge state-imposed restrictions on religious rights. However, in some instances, government concessions on religious freedom are not widespread, prompting Archbishop Datuk Bolly Lapok, chairman of the Association of Churches in Sarawak to call such accommodations "ad hoc benevolence." Nevertheless, when local opportunities exist to negotiate religious rights, Christian minorities are less likely to turn to TANs as a first response. Sarawak as a political prize due to its religious and ethnic diversity offered Christian minorities a pathway to challenge state-imposed restrictions in alternate ways. Similarly, the use of transreligious networks by Christian minorities in Tamil Nadu in response to the Tamil Nadu anti-conversion law also supports the argument that when local political opportunity structures exist Christian minorities are less likely to use TANs.

Tamil Nadu, like Sarawak, has a significant Christian population. Historically, the South India region has had large Christian communities. The Madras Presidency (part of which became Tamil Nadu) included the most substantial number of Christians and denominations in British India (Mallampalli, 6). According to the most recent census conducted in 2010, Christians make up the most significant religious minority in Tamil Nadu and constitute 6.12 percent of the state's population. Muslims are a close second at 5.86 percent. Despite sharing a common Indian

civilization, the state is distinguished by social and cultural differences from other parts of India (Chiriyankandath, 2018, p. 46). The distinctiveness of the state is reinforced further by the Tamil language which is a significant contributor to the state's subnational identity. According to Amrita Basu, language is one of the contributing factors that has kept the Hindu nationalist BJP, from making greater inroads in the state partly due to the Hindu nationalist BJP's ties to Hindi speaking communities in North India. The long history of non-Brahmanical movements in the South has also hindered the rise of the BJP. The BJP's upper Brahmanical support and its attention to Hindu nationalism have differed from the state's regional parties which have not focused on religion but instead, have emphasized caste.[11] Historically, the state's strong regional political parties founded upon the distinct Tamil "Dravidian" identity, have been committed to secular principles and have not ventured into anti-conversion legislation like other states in the country. As such, the introduction of an anti-conversion law in Tamil Nadu in October 2002 by Chief Minister Jayalalithaa of the ruling All India Anna Dravida Munnetra Kazhagam (AIADMK) party, was widely criticized by Christian and other religious minority groups.

Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002

Initially introduced as the Tamil Nadu Anti-Conversion Ordinance, the law was similar in scope to other anti-conversion legislation in other states and was crafted as "an act to provide for the prohibition of conversion from one religion to another by the use of force or allurement or by fraudulent means and for matters incidental thereto." According to the law:

> No person shall convert or attempt to convert, either directly or otherwise, any person from one religion to another by the use of force or by allurement or by any fraudulent

[11] My analysis on factors that have impacted the growth of Hindu Nationalism in TamilNadu was informed by a conversation with Amrita Basu, April 4, 2019.

> means nor shall any person abet any such conversion" (Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002 5[3]).

Penalties for violation included imprisonment for up to three years and a maximum fine of fifty thousand rupees. However, if the convertee was a minor, woman, or person belonging to a Scheduled Caste or Scheduled Tribe, imprisonment could extend to four years along with increased fines to a maximum of one lakh rupees. Like the Himachal Pradesh anti-conversion law, introduced a few years later, the Tamil Nadu law also called for notification to a district magistrate should a conversion take place, but unlike the Himachal Pradesh law, the Tamil Nadu anti-conversion law did not offer time specifics (Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002 5[1]).

The Tamil Nadu law was also explicit in its penalties concerning clergy, which also prompted a strong response from local Christian minority elites. According to the law:

> Whoever converts any person from one religion to another either by performing any ceremony himself for such conversion as a religious priest or by taking part directly or indirectly in such ceremony shall, within such period as may be prescribed, send an intimation to the District Magistrate of the district in which the ceremony has taken the place of the fact of such conversion in such form as may be prescribed.
>
> (2) Whoever fails, without sufficient cause, to comply with the provisions of sub-section (1), shall be punished with imprisonment for a term, which may extend to one year or with fine which may extend to one thousand rupees or with both.

An accompanying "explanatory statement" articulated the following:

> The Government has received reports that conversions from one religion to another are made by use of force or allurement or by fraudulent means. Bringing in legislation to prohibit such conversions will act as a deterrent against the anti-social and vested interest groups exploiting the innocent people belonging to depressed classes. It may also be useful to nip in the bud the attempts by certain religious fundamentalists and subversive forces to create communal tension under the garb of religious conversion. The Government has, therefore, decided to enact a law to prevent conversion by use of force

> or allurement or by fraudulent means (Tamil Nadu Prohibition of Forcible Conversion of Religion Act, 2002).

Domestic Response

Church leaders from various Christian denominations including the Church of South India, Evangelical Church of India, Adventist Church, and the Archdiocese of Madras-Mylapore were outspoken in their criticism of the legislation. In an attempt to prevent the proposed bill from becoming law, Christian minorities made the strategic choice to form domestic transreligous networks, and along with Muslims and Dalits formed the Anti-Conversion Ordinance Protest Committee. Hyder Ali, General Secretary of the Tamil Nadu Muslim Munnetra Kazhagam (TMMK), an Islamic NGO, and the leader of the newly formed anti-Conversion Ordinance Protest Committee held protest marches in the capital city of Chennai (formerly known as Madras). According to Hyder Ali, this was "not a mere symbolic protest, but (the) beginning of a movement seeking either the repeal of the black law or the downfall of the AIADMK regime" ("No Symbolic Protest," 2002). In doing so, Ali tied the proposed anti-conversion legislation to potential electoral losses should the proposed law be enacted. According to a bishop actively involved in bringing together Christian minorities, Dalits, political parties including the Indian National Congress as well as smaller parties to unite in challenging the law helped catalyze the Christian community's political consciousness.

Several rallies were organized to bring attention to the proposed anti-conversion law, which religious minorities considered to be an initiative that was politically motivated. Among them was a mass rally held on the grounds of the Scottish Presbyterian Church in Chennai, where the main political opposition leader and political rival of Jayalalitha (former Chief

Minister Karunanidhi, leader of the opposition party, the DMK) was the chief guest. The strategic decision of Christian minorities to partner with Muslim minority groups and other minority voices in street protests, the establishment of a committee, and mass rallies demonstrates that in this instance, Christian minority groups chose to respond to the legislation via dynamic opportunity structures that were available to them locally.

Ultimately, the Tamil Nadu Prohibition of Forcible Conversion of Religion Act was enacted on October 31, 2002, but was repealed on May 18, 2004, less than two years later. Why was the law repealed? An analysis of the circumstances surrounding the repeal of the Tamil Nadu anti-conversion indicates the role of political factors. The ruling All India Anna Dravida Munnetra Kazhagam (AIADMK) had been in alliance with BJP and part of the BJP NDA coalition that had won the general election in 1998 a few years earlier. The NDA government would eventually fall due to Chief Minister Jayalalitha's withdrawal from the alliance. What followed was an on-again-off-again relationship with the BJP and AIADMK and their main political opposition, the Dravida Munnetra Kazhagam (DMK). The BJP was back in power at the end of 1999, and the Tamil Nadu Prohibition of Forcible Conversion of Religion Act was enacted in 2002, inspiring accusations that Chief Minister, Jayalalitha was catering to the BJP and Hindu nationalist forces. According to the Islamic NGO, Tamil Nadu Muslim Munnetra Kazhagam, the Chief Minister in enacting the law was "playing to the Sangh Parivar galleries" (Ram, 2002). After the BJP lost the general election in 2004, fearing a backlash at the polls from religious minorities and Dalits, Jayalalitha repealed the anti-conversion law along with other unpopular legislation (Jenkins 2008, p. 121).

Christian minorities, TANs, and positive outcomes

The decision of Christian minorities to form transreligous networks and to incorporate other sympathizers suggest that by creating a broad alliance and attaching potential electoral consequences, Christian minority groups were able to influence Chief Minister Jayalalitha to repeal the law ultimately. One glaring omission in the effort to have the law repealed was the absence of any significant involvement with transnational partners advocating on behalf of Christian minorities.

In interviews with local Christian elites, it was apparent that Christian minorities in Tamil Nadu made the calculated choice to partner with Dalits, opposition political parties, other religious minorities and, specifically, Muslims, the second largest religious minority in the state. According to a bishop intricately involved with the protest efforts, "Christians in Tamil Nadu never looked to the West or any other country outside India. It was mainly through the efforts of Christians, Muslims, Dalits, other minorities and secular forces which stood for the human rights and freedom to put an end to the draconian law."[12] While different in many respects, these minorities chose to form what sociologist William Gamson (in reference to social movement coalitions) initially articulated as "temporary, means oriented, alliances among individuals or groups which differ in goals" (Gamson 1961, p. 374). For some in the network, the Tamil Nadu anti-conversion law was a violation of the rights of religious minorities. For others, like the Tamil Nadu Communist Party of India (Marxist) party, the anti-conversion law was indicative of the continued oppression of Dalits and the inequalities in society. Despite these different

[12] Interview conducted with bishop (name withheld), Chennai, India on November 30, 2018.

concerns, a broad network of political parties, Dalits, and Muslim minority groups joined Christian minorities to challenge the law.

Christian minorities in Tamil Nadu, by forming a broad network of different groups, chose to challenge the state using dynamic opportunity structures available to them. As such, their engagement with TANs was less in term of advocacy and more in terms of solidarity. One notable example was a statement by Pope John Paul II, who, following a visit of bishops from other parts of India to the Vatican, spoke of the enactment of anti-conversion laws in a public address and noted:

> For centuries, Catholics in India have been carrying on the essential work of evangelization, especially in the fields of education and social services, freely offered to Christians and non-Christians alike. In parts of your nation, the road to a life in Christ is still one of extreme hardship. It is most disconcerting that some who wish to become Christians are required to receive the permission of local authorities, while others have lost their right to social assistance and family support. Still, others have been ostracized or driven out of their villages. Unfortunately, certain fundamentalist movements are creating confusion among some Catholics and even directly challenging any attempt at evangelization. It is my hope that as leaders in the faith you will not be discouraged by these injustices but rather continue to engage society in such a way that these alarming trends can be reversed (Address of John Paul II, May 23, 2003).

Since Pope John Paul II did not specifically mention the Tamil Nadu anti-conversion law, it is unclear whether his comments were directly in response to the proposed enactment of the legislation primarily because anti-conversion laws were enacted in other states including Gujarat (2003) and in Chhattisgarh (2000). Nevertheless, Chief Minister Jayalalitha took offense and, in keeping with other instances of state responses to religious rights claims (discussed in chapter 3 and 4), called it a violation of national sovereignty. When asked by local media about the Pope's comments regarding anti-conversion laws, Jayalalitha responded: "the Pope has no authority to

talk about any legislation passed by democratically-elected governments in India" ("Jayalalitha Objects," 2003). This response suggests that engaging with TANs could have backfired by inspiring further complaints of international interference in state level legislation. Instead, local groups with different concerns came together to challenge the enactment of the state's anti-conversion law. As such, analysis of this Christian minorities' response suggests that when political opportunity structures exist at the local level, specifically dynamic opportunity structures in the form of alliances or changing political environments which offer an alternate pathway to challenge the state, Christian minorities are less likely to engage with TANs as a first response.

Transreligious involvement, although not to the extent seen in Tamil Nadu, was also evident in Sarawak and the legal case of *Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* 2015. An analysis of the arguments presented by the court in granting the plaintiff's request for his change in religious status also offers insight into cross-cutting identities that can undermine or reinforce religious rights claims. In the case of Lina Joy, her identity as a Malay was used by the state to challenge her constitutional right to freedom of religion. In the case of Azmi *Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* 2015, the Court's decision in favor of religious rights based on constitutional guarantees was buttressed by the plaintiff's ethnicity, which suggests that other forms of identity can complicate or support religious rights claims. Lastly, comparative analysis also indicates that electoral calculations influenced the outcomes of both the Tamil Nadu and Sarawak cases.

Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak 2016

A legal case began in 2015 when Azmi b Mohamed Azam Shah, a Sarawakian Bidayuh Muslim, decided to embrace Christianity and applied to the National Registration Department for recognition of his change in religion status. Azmi b Mohamed Azam Shah also known as Roneey Rebit was born into a Christian family. However, in 1983, his parents embraced Islam when Roneey at age ten was still a minor. As a minor, his religious status was changed from Christianity to Islam along with his parents. As an adult, Azmi b Mohamed Azam Shah chose to return to Christianity and in 1999 was baptized in the Sidang Injil Borneo (SIB) or Borneo Evangelical Church. Following his conversion, Rebit approached the National Registration Department (NRD) with his baptism certificate to have his official religious status changed on all registration records, and his name changed from "Azmi b Mohamed Azam Shah @ Roneey to "Roneey anak Rebit (*Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* 2016, 6 CLJ pp. 563-565). In a move similar to Lina Joy, the NRD informed Rebit that a "letter of release from Islam" and a court order from the Syariah Court was needed before any change in religious status could be made. In order to obtain the necessary documentation, Roneey took his request to the Islamic Affairs Department, who informed him that they were unable to help without a Syariah court order. Having exhausted all administrative options, Roneey chose to challenge the decision through legal means and applied for judicial review in the High Court of Sarawak, naming the Director of the Sarawak Islamic Affairs Department, the Sarawak Islamic Department, the Sarawak State government, and the NRD as respondents.

There are similarities between the *Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* 2015 and *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Ors* 2007 discussed in chapter 3. Both cases involve apostasy and specifically an individual's decision to

leave Islam and adopt Christianity. The arguments presented are also similar, with the state arguing in favor of the Syariah Court as the gatekeeper for an individual's decision to leave Islam in both cases. However, while the High Court of Kuala Lumpur in the Lina Joy case decided in favor of the state (*Lina Joy,* 4 CLJ, 2005, p. 688), the Sarawak High Court decided in favor of Rebit. The difference in the legal outcomes of these two cases also prompts an inquiry into the composition of the Court and how judges are appointed.

In diverse contexts like Malaysia and India, the legal system is a valued arbiter of contestations over minority rights and protections. But, the lack of descriptive representation or judicial independence can impact legal outcomes. In Malaysia, a judicial crisis in 1988 was the result of the ruling UMNO party removing the Chief Justice of the Supreme Court (now Federal Court) and other judges in response to a decision from the Court that was not favorable to the party. In India, the Supreme Court which is one of the most active in the world has not developed a sustained agenda on individual rights due to a weak support structure a condition which law and society scholar Charles Epp argues is necessary for sustained judicial attention to rights (Epp, 1998, p. 108; Epp, 2011, p. 406). The Court's reluctance to get involved in issues concerning religious difference and establishing constitutional clarity and instead opting for a modus vivendi approach has handicapped minority rights and protections (Mehta, 2006, p. 155). As such, in the search for religious rights, Christian minorities in diverse contexts like India and Malaysia not only encounter counter arguments that question the legitimacy of their claims, but also face institutional structures that can serve as blockages to the realizations of religious rights.

The Lina Joy case is illustrative of how descriptive representation on the bench can influence legal outcomes. The case moved through three different judicial forums and spanned six years. In each court her request to leave Islam was rejected, with the dissenting opinions in the two upper courts given by non-Malay judges. Judges Gopal Sri Ram and Judge Richard Mangalam of the Court of Appeals and

Federal Court respectively, in their legal opinions did not intertwine Joy's ethnicity as a Malay with Islam and instead founded their legal opinions on constitutional guarantees and administrative law. Two years after the Federal Court decision in the Lina Joy case, Malaysia established a Judicial Appointment Commission with the purpose of ensuring the separation of powers between the legislature, executive and judiciary. The lack of judicial independence was especially evident several years earlier when then Prime Minister Mahathir Mohammad ousted the Chief Justice of the Supreme Court (renamed Federal Court) along with two other judges of the apex court in response to a decision that went against the ruling political party[13]. It is unclear whether a lack of judicial independence influenced the outcome of Lina Joy's legal challenge. Nevertheless, the dissenting opinions from two non-Malay judges suggest that in diverse contexts where other forms of identity can complicate or support religious rights claims, increased descriptive representation can impact how judicial decisions are determined and when the rights of religious minorities are granted.

The judicial proceedings of the Roneey Rebit case also share differences with the Lina Joy case. Firstly, in addressing the state's argument that in matters related to apostasy the Syariah court had final say, the court disagreed, and held it was not a matter of jurisdiction but instead, was based on the constitutional guarantee of religious freedom where "every person has the right to profess and practice his religion" enshrined in Article 11(1).

According to the Sarawak High Court:

> The freedom of religion gives individuals the liberty to worship their Creator in the way they think and are more agreeable with. In order to give life and meaning to 'constitutional freedom of religion,' the exercise of that freedom should not be impeded by subjecting the applicant to the decision of a Syariah Court. He does not need a Syariah Court Order to release him from Islam religion because the right to choose his religion lies with the applicant himself and not the religious body. The rights to religious freedom

[13] For more on the constitutional crisis consider Andrew Harding "The 1988 Constitutional Crisis in Malaysia, *The International and Comparative Law Quarterly*, vol. 39. No 1 (1990) pp. 57-81.

> are the natural rights of mankind and thus, only the applicant alone can exercise that right. In other words, the exercise of constitutional religious freedom is out of bound/jurisdiction of Syariah Court and the applicant can approach the civil court for a declaration that he is a Christian ([2016] 6 CLJ p. 574).

In doing so, the Sarawak High Court did not disagree with the state's stance on the Syariah court as the decision-making body on issues related to apostasy; instead it submitted that those factors did not apply because Roneey had not "professed" Islam. Using Longman's Dictionary of Contemporary English, the Judge Yew Jen Kie defined "profess" as "a statement of belief, opinion or feeling," and thus "conveys the meaning to profess a religion is making a public statement about the religion you believe in. Thus, a person professing the religion of Islam is a person who has made a public declaration, affirmed his faith in his allegiance to Islam" ([2016] 6 CLJ p. 575). Since Roneey was a minor and Islam had been chosen for him the same did not apply.

Secondly, Roneey's ethnic identity also played a role in the court's decision. The Court repeatedly emphasized the plaintiff's identity and referenced Roneey not as a "Christian" but a "Bidayuh Christian" thus suggesting a hint of exceptionalism. The emphasis placed on Roneey's ethnicity, referred to as "race," was especially evident in the Court's comparison of this case with *Lina Joy*.

Comparing the two cases, Judge Yew Jen Kie noted:

> the appellant was a Malay woman brought up as a Muslim…. It is noted that the applicant in the present case is a Bidayuh by race and has been raised and brought up in a Christian Bidayuh community since birth ([2016] 6 CLJ p. 571 at 26).

In comparing Roneey Rebit to the Lina Joy case, the Court made a distinction that implied that a Malay woman seeking to leave Islam was different than a Bidayuh man attempting to do the same.

Judge Yew Jen Kie noted,

> the applicant, who is a Bidayuh by birth, had not in the first place professed his faith in Islam but his conversion followed that of his mother as he was a minor… [That] the applicant has not lived like a person professing Islam is seen in his averment that he was raised and brought up in the Bidayuh Christian community (6 CLJ, 2016, p. 575).

Ultimately, the Sarawak High Court ruled in favor of Roneey. However, the analysis suggests that non-religious factors such as his age at the time of conversion and ethnic background also influenced the Court's decision. The Sarawak High Court identifying Roneey in Court proceedings as a "Bidayuh by race," "Bidayuh by birth," and being a part of the "Bidayuh Christian community" suggests that for the Court, Roneey's religious rights claims were reinforced by his ethnicity.

Analysis of the decision of the two apostasy cases suggests not only the influence of religion and ethnicity but also gender and ethnicity. Sociologist Nira Yuval- Davis in her research on gender and national identity notes that women are viewed and treated as cultural transmitters, cultural signifiers, and biological reproducers (Yuval Davis, 2010, pp. 627-630). As biological reproducers women act as symbolic representatives of the collective and are deeply tied to the idea of the nation. Thus, women form an integral part of a country's national identity. Yuval-Davis' theory on gender and nation, poses an interesting dimension to the differences between the two legal cases. Indeed, analysis of the judicial proceedings of the Lina Joy case suggests that the cross-cutting identities of ethnicity and gender did not help Joy's legal claim. In

fact, according to the court, Lina Joy as a Malay woman could not change her religion based on "whims and fancies" (4MLJ [2007] at 14). Instead, she was to remain in the Islamic faith "until her dying days". In both cases, cross-cutting identities influenced the legal outcome. Lina Joy's status as a Malay woman obstructed her legal claim to leave Islam while Roneey Rebit's ethnic-religious identity as a Bidayuh Christian helped reinforce his request to leave Islam and adopt Christianity.

Following the Sarawak High Court's judgement, the National Registration Department appealed the decision but shortly after withdrew the appeal. According to newspaper reports, the Chief Minister of Sarawak, Adenan Satem, obtained an agreement from Prime Minister Najib Razak ensuring that the NRD would not appeal the Sarawak High Court's decision (Moustafa, 2018a, p. 84).

Domestic Response

Christian minorities welcomed the decision but also pointed to intervening political factors that helped facilitate the outcome of the legal case. In a press statement, CFM acknowledged the involvement of the Sarawak Chief Minister and noted:

> It was in the midst of an election campaign that the Chief Minister of Sarawak Tan Sri Adenan Satem had to step in to obtain the Honorable Prime Minister of Malaysia's assurance to Roneey, the people of Sarawak, and all Malaysians that the NRD would not be appealing Roneey's case…. When our constitutional freedom and rights are understood and embedded in the life of our nation then there would be consistency in all policies and actions because it is on the Federal Constitution of Malaysia that this nation was founded in 1963 as the Federation of Malaysia when the then independent states of Sabah and Sarawak joined with the Federation of Malaya as equal partners of this new nation, Malaysia, with the Federal Constitution as its guiding principle (Christian Federation of Malaysia, 2016).

Other religious groups also voiced their support and welcomed the Court's decision. Advocates Association of Sarawak (AAS), the Association of Churches in Sarawak (ACS), Kuching Ministries Fellowship (KMF) and, interestingly, the Buddhist Association conducted watching briefs (Jenis, 2016). Following the Court's decision, transreligious support also came from the liberal rights minded NGO, Sisters in Islam. That NGO is a women's rights organization committed to protecting liberal rights and specifically the rights of women and exists "to promote the principles of gender equality, justice, freedom, and dignity in Islam and empower women to be advocates of change." In a press statement the NGO said "Sisters in Islam (SIS) applauds the decision by judge Datuk Yew Jen Kie declaring Roneey Rebit a Christian and ordering the National Registration Department (NRD) to change his religion from Islam to Christianity on his identity card. This judgment reaffirms the supremacy of the Federal Constitution, which under Article 11 defends every Malaysian citizen's right to freedom of religion" (Sisters in Islam, 2016).

Christian minorities and the State: The Influence of local politics

A common theme between both these cases of Christian minorities' engagement with the state over issues related to religious freedom is that the domestic and specifically local political environment, particularly upcoming elections, influenced the outcomes. The National Registration Department's decision not to appeal the judgment in favor of Roneey Rebit was motivated in part by the upcoming Sarawak State elections a few months later (scheduled for May 2016). Christians being the most significant religious community in Sarawak, an adverse legal outcome for a Sarawakian Christian could have had repercussions in the upcoming polls. Prime Minister Najib Razak, engulfed in corruption scandals, badly needed a win in the 2016 Sarawak state elections. Razak needed to restore the public's confidence, and a weak showing in

Sarawak would not have sent the correct signals for the upcoming 2018 general election to be held two years later. As such, Prime Minister Najib wanted to secure the position of the *Barisan Nasional*, the ruling coalition in the state, and according to newspaper reports struck an agreement with Sarawak's Chief Minister, Adenan Satem, that the NRD would not continue to pursue the case (Moustafa, 2018, p. 84).

The Chief Minister's decision to advocate on behalf of Roneey signaled the exceptionalism of the region in comparison to peninsular Malaysia. Christians groups used the dynamic political opportunity structures made available to them with the upcoming election and benefited from the changing political environment. Likewise, the repeal of the Tamil Nadu anti-conversion law brings attention to the complex nature of restrictions on religion and the motivating factors that bring them into being and, in the case of the Tamil Nadu, repeal them. Chief Minister Jayalalitha's sensitivity to pragmatic politics influenced the Tamil Nadu government's decision to repeal the law. But other political factors affected the outcome too. Opposition parties eager to capitalize on the grievances of religious minorities entered the broad alliance of Muslim minorities, Christian minorities, and Dalits. In highlighting their secular credentials, political parties including the Dravida Munnetra Kazhagam (DMK), Pattali Makkal Katchi (PMK), Communist Party of India (Marxist), and the Indian National Congress (INC) joined the broad network and presented themselves as a favorable alternative to a state government run in coalition with the Hindu nationalist BJP.

Christian Minorities and the State: The Appeal of Transreligious Networks

Analysis of both cases also points to support from other religious groups. Although transreligious support was more apparent in the repeal of the Tamil Nadu Prohibition of Forcible

Conversion of Religion Act, 2002, there was transreligious advocacy in favor of Roneey Rebit as well. The Buddhist Association's watching brief in support of Roneey, and the press statement by Sisters in Islam, the NGO for women's rights, suggest that advocacy via broader alliances which are either formal or informal can serve as a signal to the state to renegotiate the rights of religious minorities.

Why do groups that differ form alliances? International relations scholar, Stephan Walt considers the formation of alliances as a balance against a threat. Walt's conceptualization involves states in which he argues that states, when faced with threat, would form alliances to balance against other states (Walt, 1987 p. 5). Scholars who study social movements view the coming together of groups in terms of social movement coalitions that "occur when distinct activist groups mutually agree to cooperate and work toward a common goal" (McCammon and Moon, 2015, p. 327). For social network theorist, Mark Granovetter, "weak ties" even more so than strong ties have the potential for mobilization (Granovetter, 1973, p. 1373). Thus, the formation of alliances made up of distinct groups that differ in numerous ways but are drawn together through "weak ties" founded on a common goal can have an even higher capacity for mobilization than strong ties between individuals and groups that could miss potentially useful allies. Christian minorities partnering with Muslim minorities to challenge the Tamil Nadu anti-conversion law speaks to the potential of weak ties to mobilize in response to a shared grievance.

The likelihood of groups forming coalitions also increases in the face of a threat, when building coalitions become easier since it is more probable that groups with different goals will come together against a common enemy (Van Dyke and McCammon, 2010). A shared sense of threat based on the presiding political environment can motivate different groups to come

together to form coalitions (Brooker and Mayer, 2018, p. 258). In the case of Sarawak and Tamil Nadu the shared sense of threat was two-fold. In Sarawak, the growth of Malay and Islamic majoritarian nationalism motivated the formation of transreligious alliances that were sympathetic to Christian minorities and protective of the longstanding Sarawakian subnational identity. In comparison, in Tamil Nadu, Hindu majoritarian nationalism accompanied by the threat to their distinct Dravidian identity helped bring together different groups. This coming together of religious minority groups in Tamil Nadu acted as a signal to Chief Minister Jayalalitha and the ruling AIADMK government that the level of disaffection was deeper and not just limited to one religion and, therefore, policy changes were needed.

In addition to sparking a policy change in Tamil Nadu, support for transreligious networks amongst Christian minorities in India also exists on the individual level and in other states. To examine this dynamic, I surveyed Christians ($n = 300$) from several states in India, including Tamil Nadu, Chhattisgarh, Orrisa, Assam, and Kerala amongst others, who gathered at a Christian religious conference in central India. My goal was to learn about their attitudes toward transreligous partnerships. When asked the question "should Christians work with other religious minorities to make sure everyone can practice their religion freely," seventy percent of respondents surveyed did support partnerships, with 33 percent of those surveyed responding "agree," and 37 percent responding, "strongly agree" (see Table 3)

Table 3 - Social opposition and transreligious alliance support

		strongly disagree	*disagree*	*neither*	*agree*	*strongly agree*	*Total*
social opposition	no	16	13	7	36	24	96
	yes	14	17	13	54	77	175
Total		30	30	20	90	101	271

Source: Data set collected during fieldwork January 2017

The relationship between experiencing social opposition for their Christian beliefs and their support for the use of transreligious alliances is also noteworthy. Borrowing from Pew Research Center's definition of "social hostilities" in their annual global report on government, I defined "social opposition" as acts of religious opposition by private individuals, organizations, or groups in society. Linear regression models show that those who had experienced social opposition to their religious beliefs are significantly more likely to want to form alliances with other minorities. Experiencing opposition predicts supporting aligning with minority groups, controlling for demographic characteristics (see Table 4).

Table 4 – Effect on Attitudes Toward Working with Other Religious Minorities

	B	Std. Error	Beta	t	Sig.
social opposition	.459	.203	.159	2.263	.025**
gender	.064	.215	.021	.297	.767
pastor	.294	.226	.094	1.301	.195
education	.134	.75	.123	1.783	.076
member	-.234	.207	-.083	-1.132	.259
(Constant)	2.960	.401	—	7.391	.000

** $p < 0.05$
Dependent Variable: Working with other religious minorities
Source: Dataset collected during fieldwork January 2017. *n* =300

These findings suggest that Christian minorities are more inclined to form alliances with other religious minorities when they face intolerance from society on the individual level. These findings also speak to the relationship between context and strategy. Christian minorities are more open to forming alliances with other religious minorities when they face threat from the social context in which they reside. As such, survey results are in keeping with the political opportunity structures theoretical framework that guides this dissertation and specifically the idea that strategies and tactics do not occur in a vacuum, but instead, are influenced by the political opportunities, both dynamic and institutional that are available to them. This survey thus points to some interesting avenues for further research. As such, societal threat can act as a trigger mechanism for whether Christian minorities make the strategic choice to challenge

government restrictions on religion with the help of transreligious partnerships. Further research could also examine in more detail the appeal of alliances that are both transreligious and transnational as opposed to local or national transreligious allies.

Conclusion

The legal case *Azmi Mohamad Azam v. Director of Jabatan Agama Islam Sarawak* 2015, which concerned a Bidayuh Christian man's decision to leave Islam and receive state recognition for his change in religious status, and the enactment and ultimate repeal of the Tamil Nadu Forcible Conversion Act 2002 each reinforce the argument that how Christian minorities use TANs is influenced by political opportunity structures. Dynamic opportunity structures in the form of a) election cycles and b) potential transreligious partnerships offer Christian minority groups an alternative pathway to negotiate religious rights outside the courtroom. By forming broad alliances of support and attaching the possibility of electoral consequences, religious minority groups can increase their influence with the state over issues related to religious rights.

In both cases, transnational support was more in terms of solidarity than advocacy. Absent from both cases were appeals to foreign legislatures via grass roots campaigns as evident in the case of Compassion International, or the filing of amicus briefs from foreign religious advocacy organizations as evident in *Lina Joy*. Instead, Christian minorities engaged with TANs through acts of solidarity including a statement of encouragement from Pope John Paul II.

The analysis of the two cases also points to the impact of cross-cutting identities on how religious rights are negotiated. Proceedings of Rooney Rebit’s legal challenge indicate that the court’s decision in favor of Rooney was in part based on him being a Bidayuh. In Tamil Nadu, subnational ties helped forge together an alliance of political parties, Dalits, and Muslims.

Motivated by the threat of Hindu majoritarian nationalism (Tamil Nadu) and Islamic and Malay majoritarian nationalism (Sarawak), Christian minorities in both contexts capitalized on available domestic dynamic opportunity structures to challenge the government. The findings from Sarawak and Tamil Nadu, along with survey results incorporating activists from several Indian states, suggest that in the area of religious rights, threat serves as a trigger mechanism for the formation of alliances among groups that differ on ideological lines yet come together and unite around a shared interest. These alliances, which in the cases examined in this chapter were event based and informal, can still have a powerful impact on the realization of religious rights.

In the following concluding chapter, I explore some overarching themes from my comparative analysis of the six cases. I also consider the limitations of transnational advocacy and offer policy recommendations for religious minorities in their interaction with the state.

Conclusion

Chapter 6

December 10, 2018, marked the 70th anniversary of the adoption of the Universal Declaration of Human Rights. Eleanor Roosevelt, one of its principal architects, predicted that "a curious grapevine" would spread the values articulated in the aspirational document ("Mrs. Roosevelt Reveals," 1948). In the realm of religious rights, TANs function as the curious grapevine Roosevelt envisioned. How religious minorities use TANs, however, depends on the situation on the ground, or as this dissertation argued, the political opportunity structures—both institutional and dynamic— available to religious minority groups.

How do Christian minorities use TANs when faced with state restrictions on religious freedom, and what strategies are more effective than others are the two primary research questions that guided this dissertation. To investigate these questions, I compared the state's relationship with religion in India and Malaysia and examined events and cases related to anti-conversion laws, regulations against apostasy, as well as regulations that although outside the scope of religion still can influence religious practice. In doing so, my study did not examine how social hostilities affect religious minority groups. Thus, I did not investigate the impact of mob and communal violence, and other crimes motivated by religious hatred. Instead, my focus was on how Christian minority groups access transnational advocacy networks in response to state restrictions on religion. I posited the argument that the availability of domestic institutional and dynamic opportunity structures influence how Christian minorities use TANs. When institutional opportunities are available in the form of access to national courts, they can

challenge regulations on religion through legal means. In these instances, Christian minorities use TANs in collaborative ways with domestic advocates acting as primary agents in challenging state restrictions and using TANs for legal advice, as amicus curiae, or as observers of legal proceedings. On the other hand, dynamic opportunity structures in the form of a) election cycles and b) potential transreligious partnerships offer Christian minority groups alternative pathways to negotiate religious rights outside the courtroom. In these instances, Christian minorities use TANs behind the scenes or as transnational solidarity partners.

By considering how Christian minorities use TANs, the focus of the dissertation was not on the structure of the network, but instead, on Christian minorities themselves and the strategic choices they make as to when and how they use TANs in their religious rights claims-making. The comparative study of six legal cases and related events in both countries on a range of state restrictions on religion supports the argument that domestic institutional and dynamic political opportunity structures influence how Christian minorities use TANs. But there are broader findings that the analysis brings to the forefront about TANs as well as religious advocacy. As the analysis suggests, using TANs to respond to restrictions does come with limitations, including the competing claims that promote national interest and protect sovereignty. The limitations of TANs, the influence of electoral politics, pitfalls of religious freedom arguments, and the promise of transreligious networks are some of the broader theoretical contributions of this dissertation.

Limitations of Transnational Advocacy

Transnational advocacy networks were initially conceptualized linearly (Keck and Sikkink, 1999; Carpenter, 2007). Groups faced with grievances brought about by the actions of state or non-state actors and blockages impeding their ability to deal with these problems locally

or nationally would turn to transnational partners who would advocate on their behalf. However, missing from the argument was the acknowledgment of competing claims and how TANs in their efforts could reinforce nationalist counter-arguments. For example, the Pan Malaysian Islamic Party (PAS), utilized transnational advocacy measures in support for Lina Joy to bolster their case that Islam and Malaysia's national sovereignty were under threat. Using the party's daily newspaper to convey this message, they capitalized on TAN involvement to drum up nationalist sentiments. Similarly, Compassion International did not consider rising nationalism in India when they focused primarily on the one national partner, the U.S. government, to put pressure on their Indian counterparts to change policy. In both instances, the efforts of TANs met counter-narratives that tapped into nationalist feelings.

Rising majoritarian nationalism in India and around the globe in recent years introduces a temporal dimension to the efficacy of transnational advocacy and prompts some broader theoretical questions and interesting avenues for future research. First, do the efforts of TANs work better under certain conditions and not in others? Second, under what conditions do TANs best serve minority populations? Third, how does nationalism respond to TAN support of minority causes? These are just a few of the questions I plan to explore in future research.

The relationship between the state imposing the restrictions and a foreign government or IGO sympathetic to the religious minority's concerns can also affect advocacy outcomes. Relations between countries based on aid, trade, or security interests are used by foreign governments as leverage to achieve desired outcomes. But in the realm of transnational advocacy over religious rights, the use of leverage politics is limited by other factors, including the ideological leanings of ruling political parties and the strength of majoritarian nationalism. The unsuccessful attempt by the U.S. lawmakers to convince the Indian government to reconsider

their stance on Compassion International is one example of the limits of leverage politics. Despite trade between the two countries exceeding 142 billion (2018 estimates), U.S. foreign direct investments (FDI) of 44.5 billion in 2017 (Office of the United States Trade Representative, 2019), and increased security cooperation in recent years, the U.S. government was unable to persuade the Indian government to change their stance toward the NGO. This calls into question earlier literature on the potential of bilateral investment treaties as a negotiating tool (Mayer, 2018, p.1226) and suggests that in the area of religious rights, stronger domestic forces and more pressing interests limit the power of leverage politics. As such, individuals, human rights NGOs, and segments of foreign governments when advocating on behalf of religious minorities could benefit from a nuanced approach to transnational religious rights advocacy that takes into consideration the complexities of the context and stays away from a "one size fits all" approach.

Pitfalls of Religious Freedom Arguments

Along with the argument that institutional and dynamic political opportunity structures influence how Christian minorities use TANs, this dissertation also argued in support of using nonreligious arguments when claiming religious rights. In doing so, my intent was not to question the principle of religious freedom itself, but instead to offer an alternate pathway to the realization of religious rights in diverse contexts.

In countries where the majority religion operates under an umbrella of legitimacy and minority religions are perceived as foreign and viewed through a lens of suspicion, religious minorities can benefit from including nonreligious arguments in their religious rights claims-making. Using social movement literature's concept of framing as a theoretical framework, I found that Christian minority groups by adopting arguments that transcend religious difference

can overcome competing claims in support of the maintenance of public order, the preservation of national sovereignty, and the conflation of religious identity with national identity. These competing claims, which are sometimes reinforced by existing laws, impact how national courts interpret and limit constitutional guarantees of religious freedom and how these guarantees are expressed in other forums.

It is under these realities that the successful legal challenge mounted by Evangelical Fellowship in 2012 against the Himachal Pradesh anti-conversion law on the grounds of the right to privacy supports the potential of nonreligious arguments as an alternate pathway for religious rights claims-making. More recently, the legal challenge mounted by 30 social advocates in the Bombay High Court against the Maharashtra government's beef ban because it violated the right to food further reinforces the potential for nonreligious frames in religious rights claims-making. Earlier litigation challenging proposed bans on cow slaughter have used the right to equality (Article 14), right to freedom of religion (Article 25) and the right to practice any profession, or to carry on any occupation, trade or business (Article 19 [1]) (Teater and Jenkins, 2019; "Supreme Court Says," 2017). The legal challenge against the beef ban is also noteworthy because not only did it use a secular argument to advocate for religious rights but, like the Evangelical Fellowship case, the framing of the legal challenge also tapped into existing domestic "rights talk" and, specifically, the right to privacy. The adoption of rights-based advocacy by Christians is also apparent in other parts of the globe. In his study of evangelicals in the United States political scientist, Andrew Lewis found the shift toward rights-based arguments came after Evangelicals' acknowledged their minority status in the country and was brought about by abortion politics (Lewis, 2018, p. 5). This rise in rights-based arguments that tap into

existing public discourse could have interesting implications for the future of religious minority rights advocacy in India and Malaysia and across the globe.

The analysis of the four legal cases and two events discussed in this dissertation also points to the gap between constitutional provisions of religious freedom and the judicialization of religious rights. Courts can be the protector of minority religious rights (Richardson, 2015, p. 13), but also arenas for "ideological mobilization" where anti-secular activists use courts as a means to change laws and public opinion (Moustafa, 2018 p. 687). Thus, the judicialization of religious freedom can cut both ways.

A lack of judicial independence can also affect whether the rights of religious minorities are realized (Finke, Martin, and Fox, 2017, p. 393) and the lack of descriptive representation on judicial panels can also impact legal outcomes (Grossman, Gazal-Ayal, Pimentel & Weinstein, 2016, p. 44). In their study on the impact of ethnic composition of appellate courts on the outcomes of sentencing appeals in Israel, Grossman et al., found that Arab defendants who face a judicial panel with at least one Arab judge was more likely to win their appeals (Grossman et al., 2016, p. 59). Likewise, the findings of this dissertation and specifically, the dissenting opinions offered by non–Malay judges in the two upper courts in the Lina Joy case, confirms the importance of descriptive representation in multi-ethnic and multi-religious societies. Thus, Christian minorities in diverse contexts also face institutional structures that can serve as blockages to the realizations of religious rights and the legal outcomes of the cases examined in this dissertation suggest that despite constitutional guarantees, religious freedom arguments face several challenges.

Firstly, constitutional guarantees of religious freedom do not mean equal rights. Thus, governments can align and justify constitutional provisions with restrictions on religion. The legal framework that presides over religious freedom in both countries allows for counter provisions that subordinate the right to profess, practice, and propagate religion to other criteria. Malaysia's constitution states, "Islam is the religion of the Federation," and thus, complicates any legal challenge in support of religious rights from individuals practicing non-Islamic faiths. In India, the right of an individual to profess, practice, or propagate a faith of their choosing is subject to public order, and as such, allows the state to regulate religion in ways that obstruct the constitutional guarantee of liberty of conscience.

Secondly, the subordination of the rights of religious minorities to the rights and interests of the majority population in both countries and the intermingling of religion and ethnicity also impacts the interpretation of religious freedom guarantees. The desire to preserve a Hindu national identity and the fear that a Hindu conception of national identity is under threat from religious minorities was evident in the early days of post-independence India and continues today. Likewise, entanglements of religion with ethnicity in Malaysia, institutionalized in Article 160, binds the Malay identity to Islam and complicates legal challenges solely based on religious rights.

Thirdly, the protection of the religious feelings of the majority population at the expense of the rights of religious minorities also acts as a deterrent to the realization of constitutional guarantees of religious freedom. The legal case initiated by the Catholic Church in *Titular Roman Catholic Archbishop of Kuala Lumpur v. Menteri Dalam Negeri* over the use of the word "Allah" to denote God by non-Islamic faiths is one example in which protecting the sentiments of the majority took precedence over religious rights arguments.

The analysis of the legal cases and events discussed in this dissertation by including the influence of electoral politics also contributes to existing understandings of religious advocacy. As this study suggests, changes in the political context present Christian minority groups with both challenges and opportunities. While the challenges that come from changing politics must be managed, using the opportunities that political changes provide appears to be a promising approach for Christian minorities.

The Influence of Electoral Politics

The relationship between electoral politics and restrictions on religion are two-fold. Changing political environments can affect how and when national governments impose restrictions on religion. Political parties, in an effort to maximize electoral gains at the polls, display their religious credentials by enacting policies that can restrict how religious minorities practice their faith. To emphasize their religious credentials, they support existing laws and regulations, or adopt new ones that limit religious rights. On the other hand, analysis of Indian and Malaysian cases suggests that electoral politics can offer Christian minorities another pathway to claim religious rights. The strategically timed introduction of the Ten Point Solution by the UMNO led the government to appease Christian minorities before the Sarawak state election by easing regulations on the import and printing of Bibles.

More recently, parliamentary elections in both countries also point to the power of subnational identities. Cross-cutting identities, such as religion in relation to region and ethnicity, can impact the strategic choices that Christian minorities make in their interaction with the state. Tamil Nadu (discussed in chapter 5) was one of only two states, the other being the southern state of Kerela, that withstood the Modi wave in the 2019 parliamentary election. Tamil Nadu and Kerela have significant Christian populations. While it is difficult to determine whether the

Christian minorities in both these states chose not to vote for the Hindu nationalist BJP, it is apparent that the strong subnational identities of both states were a determining factor in the election results. Motivated to preserve the Dravidian identity and the Tamil language and differentiate itself from the Hindi belt. Likewise, the states of Sabah and Sarawak in East Malaysia, which also have significant Christian populations, went against the trend of the rest of the country and voted in favor of regional parties. Sabah and Sarawak, like Tamil Nadu and Kerela, have strong subnational identities, but also a level of autonomy not afforded to Peninsular Malaysia. It was the erosion of negotiated autonomy over time that contributed to their support for regional parties in the 2018 election. As this study suggests and the election results of both countries confirm, subnational identities offer Christian minorities an opportunity to negotiate rights independent of transnational support and outside the realm of religion. Thus instead of going big (transnational advocacy networks), minorities may go small (subnational advocacy networks or political parties) when facing blockages at the national level in efforts to challenge restrictions on religious rights.

The influence of electoral politics is also manifested in the formation of transreligious alliances. The coming together of Christian minorities with Muslims and other minority groups in Tamil Nadu sent an important signal to the ruling AIADMK state government that their protests claims must be acknowledged, or the party would suffer electoral losses. Their contribution to the eventual repeal of the Tamil Nadu law suggests that if Christian minorities desire to protect religious rights, they will need to engage with the political system either through their own efforts or in cooperation with other minority groups.

The Promise of Transreligious Networks

Alliance formation across religious divides to achieve the desired result is evident on issues ranging from historical military cooperation (Almond, 2009) to peacebuilding (Al Qurtuby, 2016). In the face of TAN limitations, this study found the formation of transreligious networks within a country serves as an alternate pathway to challenge state restrictions on religious rights. The transreligious partnership between minorities formed in response to the Tamil Nadu anti-conversion law and eventual overturn of the law is illustrative of the power of transreligious networks. The formation of transreligious networks, examined in chapter 5, although event-based and informal, still had a powerful impact on the realization of religious rights. By forming alliances that transcend religious difference and attaching the possibility of electoral consequences should demands not be met, religious minority groups, can increase their influence with the state over issues related to religious rights.

Survey findings discussed in chapter 5 suggest that threat serves as a trigger mechanism for the formation of alliances among groups that while differing on ideological lines come together and unite around a shared interest. Minority individuals who experience intolerance from society for their religious beliefs are more likely to reach across religious lines to individuals of other minority religions and groups. These findings which point towards a relationship between perceived religious intolerance from society and support for the formation of collective transreligious partnerships offers some promising avenues for future research. While this research began with a focus on transnational advocacy networks, the findings suggest that subnational and transreligious advocacy networks within countries are at least as important for challenging restrictions on minority religions.

Some final thoughts on Christian minorities in India and Malaysia

The results of parliamentary elections in Malaysia and India in 2018-2019 offer challenges and opportunities for Christian minorities in both countries. Malaysia's 14th General Election in May 2018 resulted in the stunning end of the 61-year rule of the Barisan National (BN-National Front) coalition. Led by the United Malays National Organization (UMNO) party, BN and its predecessor the Alliance had governed Malaysia since independence. Their resounding loss, which included losing all but two federal states in the country, to the Pakatan Harappan or Hope Pact led by 92-year old Mahathir Mohammad (former Prime Minister and leader of BN) is a watershed moment for the country. Scholars and pundits differ as to the reasons for Pakatan Harappan's victory. For some, it was the cult of personality of Mahathir himself that led to the coalition's electoral gains (Welsh, 2018). For others, the results of the election were in part the result of extensive and effective use of social media by the opposition to convey messages contradictory to state-controlled media (Tapsell, 2018). Still others argue that the end of BN's reign was primarily due to corruption scandals and the reconfiguration of the opposition (Funston, 2018). Regardless of the reasons for the end of the UMNO-led coalition rule, the results of the general election offer Christian minorities the opportunity to engage with the state in a new way.

The appointment of secular-leaning key leaders by the newly elected government including Attorney General Tommy Thomas, who was critical of the former government's stance on the Lina Joy case, offers a glimmer of hope for the Christian community and other religious minorities in the country. Christian minorities have welcomed the result of the parliamentary elections, including the Christian Federation of Malaysia (CFM), which in a statement after the vote entitled "A New Malaysia, A New Hope" called the result a "momentous outcome" and

called for the unity of all Malaysians for “genuine national transformation to take place” (Christian Federation of Malaysia, 2018).

In contrast, India's parliamentary 2019 election involved an electorate of more than 900 million and resulted in 600 million people placing their votes was overwhelming in favor of Narendra Modi and the incumbent Hindu nationalist BJP party. The party, defying expectations won 303 seats of 543 contested seats of India's lower house, the Lok Sabha. The BJP's main opposition, the Indian National Congress (INC) party, won only 52 seats (“India General Election,” 2019). While most pundits and pollsters predicted a BJP win, the margin of the party's victory was a surprise. Despite an economic slowdown, corruption scandals, higher unemployment and increased communal violence including attacks and lynching of Muslims, the majority of India's populace voted for the BJP. The reasons for the BJP's win are more about the strength of personality of Modi himself and less about the party's attributes. Modi's self-portrayal as a strong, decisive leader resonated with India's electorate. His victory speech following the party's win hints towards the continued cultivation of personality politics, a worrying indicator for the future of India's democratic institutions.

In a letter to Prime Minister Narendra Modi following the election, the President of the Catholic Bishops Council, Archbishop Oswald Garcias assured the Prime Minister of India’s Catholics “prayers and best wishes for you and your team as you lead our country in building a strong and inclusive India” (Perappadan, 2019). The Bishop’s carefully worded letter, with the notable absence of any reference to the protection of minority interests, suggests that India’s Christian minorities are responding to the results with extreme caution. In keeping with the findings of this study, how Christian minority groups use TANs following the election will be

influenced by how the BJP government chooses to manage the relationship between religion and the state. Should the BJP government expand on anti-conversion legislation, limit proselytization with regulations within or outside the scope of religion, or if the independence of democratic institutions are at risk, it is likely that Christian minorities in India will assess the political opportunities available nationally, subnationally, and transreligiously, and then *strategically* turn to TANs for support.

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