

The Relationship Between Religion and Rule of Law in China

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Abstract: As China is a unified multi-ethnic country, religion is one of the indispensable components in Chinese social life. Although politics is separated from religion in Chinese structure of power, and the proportion of religion believers is relatively small compared to the huge population of China, it is still important to protect freedom of religious belief in China, because the latter is of great significance to maintain the ethnic unity and enrich the social culture. China's legal concepts and principles are distinct from religious concepts, but it attaches great importance to the protection of freedom of religious belief. At the same time, it also strictly prohibits and cracks down on cult criminal activities. This paper will provide an overview of China's major religions in Part I such as Buddhism, Taoism, Islam, Catholicism and Christianity, introducing religious activities, religious places, and number of believers of each religion. In Part II, the author explores China's legal framework on religion in relation to the rule of law principle. In addition to Constitutional Law, relating laws and regulations will be examined to sort out some principles on the relationship between religion and rule of law. In principle, freedom of religious belief is protected, and normal religious activities are encouraged. Religion should not become a basis of discrimination in the context of education and employment. However, the freedom of religious belief is not absolute in China, the boundary is whether the practice of religion will harm other people or endanger the public order. Therefore, any criminal acts in disguise of religious activities are strictly prohibited in China. Part III focuses on the legal institutions combating cult crimes. Typical cases will be cited in this section to illustrate the dangerousness of such crimes to the whole society. In Part IV, the author concludes this paper with some comments on current legislation as well as some proposed reforms of religion law to enhance the overall rule of law construction in China.

Keywords: religion, China, rule of law, constitutional law, cult crimes

In his book *The Interaction of Law and Religion*, Harold J. Berman regards law and religion as the domain of all cultures, and believes that in all cultures today, law and religion share certain elements, namely, ritual, tradition, authority and universality, while law is generally presented as a secular, rational, utilitarian system – a way of getting things done.³ At the socio-cultural level, law and religion do share certain characteristics; at the institutional level, the relationship between law as a governance tool and religion as a spiritual pursuit may be more complicated, and show different relationships in different countries and societies: In Western society, the number of believers accounts for a large proportion of the citizens. This kind of country usually shows the characteristics of the unity of politics and religion. In China, the religion and politics are separated, and the formulation and implementation of laws are not affected by religion. Laws protect and regulate citizens' religious beliefs and oppose and curb the development and

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³ <http://www.socialtheology.com/docs/berman-law-and-religion-000074.pdf>

activities of cults.

I. The Basic Religion Background in China

Although China is not a country with traditional religious beliefs as the only background, it is a country with multiple religious beliefs. At present, five religions are recognized by the Chinese government. They are Buddhism, Taoism, Protestantism, Catholicism, and Islam. Buddhism is divided into Chinese Buddhism and Tibetan Buddhism. In addition to the five officially recognized religions, there are other religions and a variety of folk beliefs in China. Among the five major religions, only Taoism is a native religion in China, with a history of more than 1,700 years; the other four religions all come from foreign lands. Various religions in China can peacefully coexist due to the tolerance of Chinese culture.

According to survey data, nearly 90% of Chinese citizens have no religious beliefs, and the remaining 10% believe that they are religious. However, even these people who think they have religious beliefs rarely participate in religious organizations. Only about 1% of respondents nationwide have joined faith or religious groups.⁴ In addition, Official statistics show that there are nearly 150,000 approved religious venues in the country, more than 400,000 religious clerics, and more than 5,500 religious' organizations. In addition, some religious organizations in China have also organized religious training. There are more than 100 religious academies with personnel.⁵

Buddhism has a history of 2000 years in China. Statistics indicate that there are more than 33,000 Buddhist monasteries in China, about 200,000 monks and nuns, including about 120,000 lamas and nuns of Tibetan Buddhism, more than 1,700 living Buddhas, and more than 3,000 monasteries.

Taoism originated in China and had a history of more than 1,700 years. There are more than 9,000 Taoist temples and over 50,000 Taoist priests and Taoist nuns in China.

Islam was introduced to China in the 7th century. Islam is believed by the masses of 10 ethnic minorities in China, including the Hui and Uyghurs. The total population of these ethnic minorities is about 21 million. There are more than 35,000 mosques and over 45,000 imams in China.

Catholicism was introduced to China several times since the 7th century, on a large scale after the Opium War in 1840. There are currently more than 5.5 million Catholics in China, about 7,000 clerical staff, and about 6,000 churches and clubs.

Christianity (Protestantism) was introduced to China in the early 19th century, on a large scale after the Opium War. There are currently about 23.05 million Christians in China, more than 37,000 pastoral and preachers, more than 25,000 churches, and more than 30,000 simple activity venues.

In China, national religious organizations include the Chinese Buddhist Association, the Chinese Taoist Association, the Chinese Islamic Association, the Chinese Patriotic Catholic Association, the Chinese Catholic Bishops' Conference, the Chinese Christian Three-Self Patriotic Movement Committee, and the Chinese Christian Association. Each religious organization elects and selects leaders and leading institutions in accordance with their own charters.

⁴ Lu Yunfeng, Report on Contemporary Chinese Religions based on Data of CFPS(2012), The World Religious Cultures, Vol.1, P11-25 (2014).

⁵ <http://www.pacilution.com/ShowArticle.asp?ArticleID=9839>

II. China's legal framework on religion in relation to the rule of law principle

Even if the Chinese is not a religious people, there are essential legal systems on religion in China. This section examines China's legal framework on religion from the perspective of rule of law principle.

A. Constitutional Law

According to the Constitution of PRC (amended in 2018), freedom of religious belief is a basic right for citizens. Article 36 of the Constitution stipulates, *Citizens of China enjoy freedom of religious belief. No state organ, public organization or individual may compel citizens to believe in, or not to believe in, any religion; nor may they discriminate against citizens who believe in, or do not believe in, any religion. The state protects normal religious activities. No one may make use of religion to engage in activities that disrupt public order, impair the health of citizens, or interfere with the educational system of the state. Religious bodies and religious affairs are not subject to any foreign domination.* The Constitution sets the tone for Chinese religion law, that is, people enjoy the freedom of religious belief with the boundary of not endangering public order or others.

B. Statutes

In addition to the constitutional provisions, the legal provisions on the freedom of religious belief are usually principles-based, which are scattered in several statutes enacted by the National People's Congress. These are declarative provisions in that they just reflect the State's spirit of protecting freedom of religious belief.

The Labor Law of PRC (2018), for example, ensures that both religious and non-religious citizens have the right to employment. Article 12 of the Labor Law stipulates: "*Laborers shall not be discriminated against in employment due to their nationality, race, sex, or religious belief.*" And Article 4 of **the Compulsory Education Law of PRC** (2018) guarantees all Chinese children, both religious and non-religious, have the right and obligation to receive education.⁶

The Law of PRC on Regional National Autonomy (2001 Amendment) protects the minority nationalities' freedom of religious belief by delegating the obligation to the organs of self-government of national autonomous areas. From a certain perspective, China's religious beliefs are largely based on ethnic minority cultures. China is a unified multi-ethnic country, including the Han nationality as the main ethnic group and 55 ethnic minorities that have been officially recognized. There are also a few unidentified ethnic groups that are not officially recognized but actually exist. Many of these ethnic minorities believe in religion based on their national culture, such as the Hui people believe in Islam, the Tibetan people believe in Tibetan Buddhism, the Manchu people believe in Shamanism, etc. Respecting and protecting the religious beliefs of these ethnic minorities is also an important part of China's protection of freedom of religious belief.

Apart from civil rights protection, Chinese statutes also protect the citizen's religion related

⁶ "All children and adolescents who have the nationality of the People's Republic of China and have reached the school age shall have equal right and have the obligation to receive compulsory education, regardless of the gender, nationality, race, status of family property, religion, belief, etc."

political rights. For example, **the Election Law for the National People's Congress and Local People's Congresses at All Levels** guarantees that all citizens who have reached the age of 18 shall have the right to vote and stand for election, regardless of religious belief.

These legal provisions protect the religious freedom of citizens indirectly by protecting the basic civil rights of religious and non-religious citizens, emphasizing the rights to education, labor, voting and being elected. That is, citizens will not be discriminated whether they have religious beliefs or not. This is a specific interpretation of the spirit of the Constitution.

C. Regulations

More specific rules on religion can be found in various regulations, which are formulated and issued by the State Council, having inferior legal status to statutes but still having binding force. One of the special regulations is **the Regulations on Religious Affairs**. It is the first comprehensive administrative regulation on religion in China. It protects citizens' freedom of religious belief, maintains religious harmony and social harmony, and regulates the management of religious affairs. The rights of citizens (including religious personnel) are explicitly provided in the regulations. At the requirements of law-based administration of government and constructing a government under rule of law, the administrative actions of relevant government departments have been regulated; religious groups, religious schools, and religious institutions have been clarified. Management systems for venues, religious staff, religious property, etc. are explicitly provided. In the event of infringement of their rights and interests, religious groups, religious venues, religious staff, and religious citizens have the right to appeal to the relevant administrative organs of the government, or to the court for legal protection.

The Chinese government has also promulgated **the Provisions on the Administration of Religious Activities of Aliens Within the Territory of the People's Republic of China**, which respects the freedom of religious belief of foreigners in China and protects the friendly exchanges and cultural and academic exchanges between foreigners and the Chinese religious circles in terms of religion. Foreigners can participate in religious activities in religious venues within China, they can give lectures and preaching at the invitation of religious groups at or above the provincial level, and can hold religious activities for foreigners in places recognized by the people's government at or above the county level, and can invite Chinese religious clergymen hold religious ceremonies such as baptisms, weddings, funerals, and dojo ceremonies, and can bring their own religious prints, religious audio-visual products and other religious supplies into China. Foreigners conducting religious activities in China shall abide by relevant Chinese statutes and regulations.

In conclusion, freedom of religious belief is protected, and normal religious activities are encouraged in China. Religion should not become a basis of discrimination in the context of education and employment. However, the freedom of religious belief is not absolute in China, the boundary is whether the practice of religion will harm other people or endanger the public order. Therefore, any criminal acts in disguise of religious activities are strictly prohibited in China.

III. The Legal Institutions Combating Cult Crimes

Since the 1980s, cult organizations have appeared in China, carrying out illegal or even criminal activities in the name of religion. Leaders of cult organizations may distort religious doctrines, create hearsay, deceive the believers, resist the implementation of national laws and

decrees, instigate the overthrow of the government; or use superstition to pretend to be ghosts, causing deaths and injuries; or gather crowds for fornication, defraud money, and endanger the people's normal life. Both the public and the religious figures abhor this. China's judicial organs punish such criminals who seriously endanger society and public interests in accordance with the law, precisely for the purpose of safeguarding public interests and legal dignity, and for better protecting citizens' right to freedom of religious belief and normal religious activities.

According to the judicial interpretation, illegal organizations that are set up by using religions, Qigong, or other things as a camouflage, deify their leading members, and confuse and deceive people, recruit and control their members, and endanger the society by fabricating and spreading superstitious hearsays shall be identified as "cult organizations", ⁷ and their criminal conduct constitute cult crimes. The finding and punishment of cult crimes are stipulated by **the Criminal Law of PRC**; the task of cracking down on cult crimes is mainly carried out by the police force and the judicial agencies. In addition, local governments and police usually cooperate in popularizing and educating citizens against cults to prevent people from unknowingly engaging in cult organizations.

A cult homicide case happened in Zhaoyuan Shandong attracted tremendous attention. On May 28, 2014, five adults, together with a 12-year-old boy, assaulted a woman in a McDonald's restaurant in Zhaoyuan City, Shandong Province. The woman was knocked down to the ground and was slammed by a mop for about 2 minutes. A bald man among the six assailants yelled at her, calling her "demon" and cursing her "never be overborn forever". The female manager of the McDonald's restaurant intended to stop the gangsters but was beaten by two of them with helmets. When the police arrived, assailants were still beating the victim, three assailants and the boy tried to stop the police. During the arrest, a female assailant attacked the police. According to investigation, the five adult assailants were all members of the Almighty God cult. In order to promote the cult and recruit new members, they asked the customers in the McDonald's for their phone numbers. After being rejected by the victim, one of the assailants believed that she was a demon or an evil spirit and should be wiped out, so they beat the victim to death. After trial, two assailants were sentenced to death with instant execution, one defendant was sentenced to life imprisonment, another defendant was sentenced to 10 years in prison, and the other defendant was sentenced to 7 years in prison. The little boy was found not guilty because he was under the age of criminal responsibility.⁸

IV. Comments on Current Legislation as Well as Some Proposed Reforms of Religion Law

All China's legislation on religion shares a common proposition, that is, religious belief is the private matter of individual citizens. It is the common goal and fundamental interests of the

⁷ Interpretation of the Supreme People's Court and the Supreme People's Procuratorate on Several Issues concerning the Application of Law in the Handling of Criminal Cases involving Sabotaging the Enforcement of Laws by Organizing and Utilizing Cult Organizations(2017) Article 1: Illegal organizations that are set up by using religions, Qigong, or other things as a camouflage, deify their leading members, and confuse and deceive people, recruit and control their members, and endanger the society by fabricating and spreading superstitious heresies shall be determined as "cult organizations" as prescribed in Article 300 of the Criminal Law.

⁸ <https://baike.baidu.com/item/5·28山东招远涉邪教故意杀人案>, 5.28 Shandong zhaoyuan she xiejiao guyi shaoren an [Cults related homicide case in Zhaoyuan Shandong on May 28, 2014].

people from all ethnic groups in China, whether religious believers or not, to safeguard the sovereignty of the country and the dignity of the nation. Therefore, both religious and non-religious citizens can achieve political unity and cooperation, and mutual respect in faith. The history, culture and national conditions differ from country to country, which determines that the practice of protecting freedom of religious belief will have different characteristics in different society. When China emphasizes the freedom of religious belief, it also emphasizes the protection of freedom of non-belief, placing the two in an equally important position, thus embodying the freedom of religious belief in a complete sense. This is a fuller and more comprehensive protection of the basic rights of citizens.

Religions must adapt to the society in which they live. This is the universal law of the existence and development of religions. The Chinese people are building a modern socialist country with Chinese characteristics, and the Chinese government advocates that religion should adapt to it. This adaptation does not require citizens to abandon their religious beliefs or change the basic doctrines of their religions but requires religions to operate within the scope of the law and to adapt to the development of society and the progress of civilization. This is in line with the fundamental interests of religious believers and the religions themselves.

Compared to other jurisdictions, the religion law in China is still in its infancy. Its under-development is probably due to the small proportion of religion believers in Chinese population. However, as is illustrated in the Constitution, the freedom of religious belief is a fundamental right for everyone, including citizen and non-citizen. To better protect the freedom of people's religious belief, the legislature should keep enriching the religion law in China. Meanwhile, judicial organs should strike hard against cult crimes. Only by punishing cult crimes, can religion believers make distinction between normal religious activities and criminal conduct. Religion is regarded as more of a culture than a political institution in China. People have the freedom to believe in any religion, and they should also have the freedom to not believe in any religion. That's what an open and tolerant society should be. For those Chinese citizens who do not have any religions, it doesn't mean they have no beliefs. Chinese culture is broad, profound, and diverse. Non-religious people can still find their spiritual pillar in Chinese philosophical thoughts. Therefore, their freedom of not believing in any religion is equally worthy of protection.