

# Religious Freedom and Its Legal Restrictions in China

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## I. Introduction

In her concurring opinion in *McCreary County v. ACLU of Kentucky*,<sup>1</sup> Justice O'Connor observes:

*By enforcing the [Religion] Clauses, we have kept religion a matter for the individual conscience, not for the prosecutor or bureaucrat. At a time when we see around the world the violent consequences of the assumption of religious authority by government, Americans may count themselves fortunate: Our regard for constitutional boundaries has protected us from similar travails, while allowing private religious exercise to flourish.*

Americans are fortunate indeed in comparison to the Chinese, whose religious matters are precisely in the hands of the prosecutors and bureaucrats. And the state interference with religion has not only restricted the individual freedom of conscience, but also contributed to “violent consequences” in China’s ethnic relations.<sup>2</sup> Yet, similar to the American First Amendment, Article 36 of the Chinese Constitution, enacted in 1982, also explicitly confirms the freedom of religious belief, albeit with a limiting clause:

*Citizens 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 crux of the issue becomes the extent to which the state restriction may be legitimately imposed without violating the principle of religious freedom. After 1949, China has been dominated by the Marxist ideology, which treats religion as “superstition” and “opium of the people” for soothing the pain of individual souls.<sup>3</sup> The atheist animosity against religion reached its climax during the Great Cultural Revolution (1966-76), when the religious sanctuaries were damaged by the mobs or taken by governments at a massive scale. Since economic reform beginning in the late 1970s, China’s attitudes toward religion has been considerably softened, yet its religious policies are still influenced by the remnants of the atheist mindset and the fear for the organizational capacity of churches and sects, rendering religion a sensitive political issue. As a result, religious freedom is carefully limited by laws and regulations, which have substantially reduced the scope and effectiveness of the constitutional protection of religious freedom. Indeed, even those “normal” and lawful religious activities are not effectively protected, given the absence of legal remedies for official violations of religious freedom; administrative litigations, for example, are rather strictly limited to the scope of “legal interests” -- interests defined explicitly in laws, *not* including the Constitution.

This article discusses the Without effective judicial remedies, legislations and administrative acts can and, in reality, do impose a variety of stringent restrictions upon the freedom of religious belief.

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<sup>1</sup> 545 U.S. 844 (2005).

<sup>2</sup> See e.g., Austin Ramzy, Failed Government Policy Sparked Tibet Riots, *Time*, 26 May 2009; A Year After Xinjiang Riots, Ethnic Tensions Remain, *Time*, 5 July 2010.

<sup>3</sup> Karl Marx, Contribution to Critique of Hegel’s Philosophy of Right, in Robert C. Tucker (ed.), *The Marx-Engels Reader* (2<sup>nd</sup> Ed.), New York: Norton (1978), p. 54.

## II. General Attitude toward Religious Belief

Although the Chinese government has paid careful attention to limit offensive comments on religions in order to avoid religious agitations and maintain social stability (see Part IV), the atheist official ideology and previous political movements have accustomed the government officials and society at large to view religions either as superstition, product of ignorance, or unstable elements in society. In particular, while it is an established constitutional principle that religious faith as a belief about the supernatural being is not subject to secular judgment, and Justice Jackson went so far as to insist that the government is not even authorized to examine the veracity of the belief in order to prevent religious fraud,<sup>4</sup> China's government officials customarily judge religions by the factual standard of "right" or "wrong" and by the normative criterion of "good" or "bad" in terms of their political and social impact. The governments at various levels are particularly nervous about the prospect of social or ethnic agitations created by the religious gatherings, and are prompted to restrict perfectly normal religious activities in the name of social stability. Such an essentially anti-religious stance opens doors to local officials' heedless contempt, rough treatments, and misuse of power against religions, all contributing to deterioration of religious and ethnic relations.<sup>5</sup> The following examples illustrate China's contemporary understanding of religion.

### 1. Religious faith as a superstition?

As a result of China's atheist education, religious faiths are often treated as equivalents of "feudal superstitions". In the *Workers Daily (Gongren Ribao)* on February 7, 1998, the front page carried the headline "Flaming Incense in the Temples with crowds worshipping the Buddha", with the subtitle "modern superstition is coming back".<sup>6</sup> It reported that, during the spring festival, various temples in Beijing were visited by great numbers of worshippers and believers, who kneeled down before the images of various gods or goddesses, a phenomenon indicating the overwhelming resurgence of modern superstitions. In short, the report simply classified religious activity as "superstition", necessarily a serious insult against religion, which caused broad protest in the religious communities and was sharply criticized by Alan Ruo of Chinese Buddhist Association.<sup>7</sup>

Since China is a predominantly secular society, the people are inclined to evaluate religions by the official secular standard to evaluate religions. For example, it was asserted in an article that

*we should note that some religions rooted in Chinese traditional culture conflict with society in many aspects in trying to get adapted to and assorted with the modern and contemporary society; as a ideology, they appear in an upside-down outlook, providing illusory reflection of the world with obvious adverse effect upon society. Religion attributes the force that dominates nature and human beings to the god, which undoubtedly will restrain the working people from pursuing their ideal aggressively. In addition, a thick religious ambience may be created under the example of family believers, which will undoubtedly hinder the implementation of decrees and policies. It is absolute wrong to use religious belief to supplement the behavioral code of socialism in attempt to conciliate the conflicts between religion and socialism.*<sup>8</sup>

Some local party and government officials are seriously disturbed by the rapid increase of the

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<sup>4</sup> United States v. Ballard, 322 U.S. 78 (1944).

<sup>5</sup> Zhang, Qianfan, "A Constitutional Bridge between China and the West: Brief review of the constitutional issues in the religious administration in China", in International Symposium on Law and Religion (2004), p. 23, edited by the Institute of World Religion Study, CASS.

<sup>6</sup> Sansi: "Flaming incense and crowded worshippers in temples-Modern Superstition is reviving", *Workers Daily*, 7 February 1998.

<sup>7</sup> Alan Ruo: "A report that seriously contravened the policy on religious freedom", *Dynamic Study*, No. 2, 1998.

<sup>8</sup> Long Liyun: "Resurgence of religions and the cultural construction in rural areas", *Journal of Yiyang Normal College*, No. 2, 1994.

religious followers. For example, a United Front Work Department of a local party Committee wrote that “according to investigation, various religions have expanded all over the county, with rapid development in some places”; “since 1991, the number of Christians in some cities of southern Henan province has almost doubled, ... having even surpassed the number of the party members”.<sup>9</sup> These passages obviously reflect fear in some political leaders, who rushed to conclude that “the religious administration in rural areas should be reinforced urgently”. To other countries, the increase in the number of religious followers may well be seen as a positive sign of social moral and stability, but certainly not so in China.

Under such a mentality, local governments in China find it irresistible to interfere with and restrain religious activities. On July 10, 1995, being informed that Buddhism followers would hold a ceremony at Jie-Jie Temple to deliver commodities such as wood and rice, the United Front Work Department of the Party Committee of Muchuan County panicked and immediately came into contact with the local Public Security Bureau and the Party committee. The leaders of the county government worked out an emergency plan and action schedule to interrupt the religious event by sending personnel to toll stations to intercept transportation and prevent the vehicles from passing through the county, and dispatching officials from the county’s Religious Affairs Office to the Jie-Jie Temple in order to persuade people to dismiss the ceremony lest riot broke out. At 9 am, outside the Coal Construction Company of the county, gathered hundreds of Buddhists, some carrying crackers, some beating drums, and others wearing Buddhist costumes; all of them were cheerful and full of expectation, ready to parade on the street, without the slightest sign of an upcoming riot. Nevertheless the undersecretary of United Front Work Department, deputy director of Religious Affairs office, and the party secretary of the Muxi town, accompanied by a pack of policemen, came up to the crowd and explained the state restrictive policies on religion activities. At last those followers obeyed the order and cancelled the event.<sup>10</sup>

Another case involved similar local effort in interfering with religious activities. On January 2, 2005, Long Jianwen and Li Guangyi, two principal members of the Xiaozhong sect (a sect of Christianity in China) in Wuding County, attempted to hold a gathering of 95 people from 7 towns in Wande County, where they would read out a commemoration speech of “Millennium Kingdom”. The Religious Affairs Office of Wuding County dispatched personnel to the scene and prevented the event from occurring.<sup>11</sup>

## 2. The first litigation against defamatory textbook

In September 2004, attorney Qiu Jiandong in Fujian province filed a civil action against the Network Education School of Sichuan University at Wuhou District Court, Chengdu, claiming that his right to religious freedom was infringed by a passage in its textbook *The Philosophical Principle of Marxism*, where it asserted that “religion is in nature spiritual opium for the working people”.<sup>12</sup> He alleged that the description violated Article 36 of the Constitution, which prohibits discrimination against religious believers, and demanded correction of the content and compensation for spiritual damage for a symbolic one Yuan (RMB). The court declined to review the case and rejected the claims. Qiu Jiandong appealed the decision to the superior court, which sustained the original ruling by the end of 2004. Finally, he turned to the Ministry of Education for administrative reconsideration (*xingzheng fuyi*), but without success.

This case illustrates the potential conflicts between religious freedom and freedom of speech. Whether the content of the textbook constitutes infringement upon religious freedom depends a number of factors. First, the type of students who would use the textbook; since the textbook concerned is not to be used by religious believers, the risk of infringing religious believers’ right is

<sup>9</sup> United Front Work Department of Yanjin County: “Urgent situations in the management of religious affairs in rural areas”, *Zhongzhou United Front Work*, May 1996.

<sup>10</sup> Luo Shan: “A religious activity has been dismissed in Muchuan”, *United Front Work in Sichuan*, No. 9, 1995

<sup>11</sup> “Summary of the administration of religious affairs of Wuding County in 2005 and the Key points for the work of 2006”, <http://www.wuding.gov.cn/bmzd/mzj/show.asp?id=478>.

<sup>12</sup> Wang, Yi: “The first lawsuit against the test book in China and the right to education”, [http://article.chinalawinfo.com/article/user/article\\_display.asp?ArticleID=30025](http://article.chinalawinfo.com/article/user/article_display.asp?ArticleID=30025).

somewhat reduced. Second, the nature of the textbook. If the content of the textbook represents the official standpoint, it is obvious unconstitutional for the state to take any position on religious matters, particularly when it constitutes denigration on religion; on the other hand, if the textbook only stands for the personal opinion of the editor, then any individual seems to be free to express their own opinions, and the Article 36 of the Constitution explicitly requires respect for the rights of believers and non-believers. In fact, however, all textbooks in China are subject to the approval and censorship of the General Administration of Press and Publication (*xinwen chuban zongshu*), so that even ordinary textbooks seem to carry a certain degree of public characters.

More fundamentally, China provides no effective legal remedy to address the legal disputes arising from religious issues; once the religious freedom is violated, the victims can at best lodge their complaint to the local governments via administrative reconsideration, thus placing religious matters in the hands of bureaucrats. In reality, issues with respect to religious freedom are widespread in the Chinese education system; in Xinjiang, for example, it is very common for students to go on fast, exercise divine services, wear religious costumes, and read religious books at school.<sup>13</sup> The constitutionality of these practices should be resolved through legal procedures rather than administrative orders.<sup>14</sup>

### III. Laws and Regulations on Religious Practice

Although Article 36 of the Constitution explicitly protects religious freedom, it also stipulates limitations on such freedom. In practice both central and local authorities have enacted laws and regulations imposing restrictions on religious freedom.

#### 1. Regulations enacted by the Central Government

The Religious Affairs Regulation enacted by the State Council in 2005 is a major legislation that sets forth many restrictions religious rights. The basic principle of the Regulation is set out in Article 3:

*the state protects, according to law, normal religious activities and upholds the lawful rights and interests of religious groups, places of religious activity, and religious citizens. Religious groups, places of religious activity, and religious citizens shall observe the constitution, laws, rules and regulations and uphold national unity, inter-ethnic cooperation, and social stability. No organization or individual shall use religion to upset social order, harm the health of citizens, or obstruct the state education system, or to engage in other activities that harm national interests, social welfare, or the lawful rights and interests of citizens.*

The initial question is, of course, how “normal” religious activities are defined. If what constitutes “normal” is to be determined by administrative agencies, then what remedies are available if their determinations are challenged by unsatisfied believers? Further, the obligation imposed on religions to “uphold...social stability” seems to be beyond the range defined in Article 52 of the Constitution, which imposes on citizens the obligation to “uphold the unity of the country and ethnic

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<sup>13</sup> Ren Xinli, “The study on the countermeasures against the penetration of religion into education”, Journal of Xinjiang Normal University (social science edition), No. 3, 2000.

<sup>14</sup> The one that had substantial influence in this regard is the dispute about New Testament church in Taiwan. In 1997, New Testament believers in Xi’anshan, Gaoxiong County, organized the offspring of the believers in the whole province to withdraw from their regular school and turn to the church sponsored school. They believed the public school was dominated by antitheism, which is against their creed, and the church sponsored school also provided secular classes like Chinese, English, Mathematics and Physics, as well as practical courses like vegetable planting, carpentry, cooking and architecture, taught by qualified believers, which will provide them with adequate skills in secular life. More important, children in religious schools would be brought closer to the God by religious teachings (see *Apple Daily*, 3 September 2004). See Huang Jintang: “On Religious Freedom: also on Relevant Topics about Taipei City”, in Taipei Laws and Regulation Committee (ed.), Human Rights Protection: Theory and Practice (2005), pp. 77-113; Xu Zhixiong et al., *Modern Constitutionalism*, Yuanzhao Press (1999), p. 116, footnote 10.

cooperation”, without including “social stability”. The additional obligation imposed on religious believers by the Regulation may cause arbitrary administrative interference of religious freedom under the name of maintaining “social stability”. Finally, to the list of prohibitions on religious activities provided in Article 36 of the Constitution, namely “no organization or individual shall use religion to upset social order, harm the health of citizens, or obstruct the state education system”, the Regulation adds a catch-all phrase “or to engage in other activities that harm national interests, social welfare, or the lawful rights and interests of citizens”. These provisions substantially expand administrative power in regulating religious activities.

Second, Article 6 of the Regulation stipulates that

*when religious groups are founded, changed, or disbanded, they shall register such events pursuant to the provisions of Regulations Governing the Registration of Social Organizations. The articles of association of religious groups shall conform to the relevant provisions in Regulations Governing the Registration of Social Organizations. Religious groups shall conduct activities and receive legal protection in accordance with the articles of association.*

As analyzed before, strict conditions for the establishment of social organizations has been set forth in *Regulations Governing the Registration of Social Organizations*, according to which citizens may be deprived of their freedom to establish organizations. Thus, applying the same regulation to religious affairs will impose serious restrictions on the establishment, alteration, and cancellation of religious organization.

Third, Article 7 of the Regulation provides that

*religious groups may, in accordance with relevant state regulations, compile and print publications for internal religious use. The publication of publicly distributed religious publications shall be subject to state regulations governing publications. Published materials that contain religious information shall comply with the Regulations Governing Publication and shall not contain the following: that which would upset harmonious relations between religious citizens and non-religious citizens; that which would upset harmony between different religions or within a religion; that which discriminates against or insults religious citizens or non-religious citizens; that which propagates religious extremism; which violates the principle of religious autonomy and independence.*

This provision constitutes a strict restraint on freedom of the press. It seems that “relevant state regulations” refers the *Regulation on the Publication of Internal Information* promulgated in 1997 by the General Administration of Press and Publication (Order No.10 of the CAPP). According to Article 3 of that Regulation, an “Approval Certificate for Print” must be granted for both consignment and undertaking of the publication of internal information, whether such internal information is concerned with national interests or private interest. Thus, religious societies must obtain the same certificate prior to the publication of any religiously related internal information. That Regulation should cease effect after the promulgation of Administrative License Law, according to which a departmental regulation lacks the power to enact administrative license. The Religious Affairs Regulation, however, still takes for granted the validity of the Regulation on the Publication of Internal Information and its burden on religious publications. And regulations of these fundamental rights may have failed to satisfy the requirement of prior legislative authorization according to Article 8 of Law on Legislation enacted in 2000. It is true that religious freedom is not expressly included as the matters to be regulated only by the National People’s Congress (NPC) or its Standing Committee (NPCSC), but since religious freedom is no less important than political rights, personal freedom, and non-state-owned property rights, which are specifically mentioned in the same Article 8, it should be covered by the catch-all phrase of “any other matter”. In other words, any administrative regulations limiting religious freedom without authorization of laws should be seen as violating the principle of *ultra vires*.

Fourth, Articles 8 and 9 of the Regulation set forth rigid restrictive conditions against the establishment of religious colleges and the qualification requirements. Articles 12 through 19 lay down strict restrictions on the venues, the conditions, the procedures and the manner of internal

management of religious activities, which may cause inconvenience, even detriments, to the religious practices.

Last but by no means the least, the Regulation specifically provides for several legal liabilities for violations of its prohibitions. First, according to Article 40, para. 2, “Large-scale religious activities that harm public security or seriously upset the social order shall be penalized on site in accordance with laws and administrative regulations on assemblies, parades, and demonstrations. The registering authority shall rescind the registration of the organizing religious group or church (temple) that is responsible.” The repeal of registration is obviously a severe penalty that imposes serious restriction on religious practices. Second, certain provisions encourage the state to intervene improperly in the religious activities. For example, paragraph 3 of Article 40 provides that “religious affairs departments shall order a halt to large-scale religious activities that are held without authorization”. Third, the same paragraph stipulates that

*Religious affairs departments shall order a halt to large-scale religious activities that are held without authorization, and they shall seize illicit income if there is any. Furthermore, they can impose fines of between 100% and 300% of illicit income. If such a large-scale religious activity is held without authorization by a religious group or a place of religious activity, the registering authority can also order that the religious group or place of religious activity replace the personnel who were directly responsible for the activity.*

Likewise, Article 41 states that “in the event of any of the following acts by a religious group or a place of religious activity, the department of religious affairs shall demand correction. If the matter is serious, the registering authority shall order that the religious group or place of religious activity replace the personnel who were directly responsible for the activity”. In both articles, the authority to replace religious personnel is suspicious of violating the right of religious group over its own internal management. Fourth, Article 45 provides that, if a religious instructor violates a law, regulation, or rule while engaged in a religious educational activity, he shall be prosecuted according to law, and the department of religious affairs shall recommend that the relevant religious group rescind his instructor status. This provision constitutes a direct intervention on the right to religious education and to internal management of religious groups. Fifth, in case that religious believers or groups disagree with the official sanctions, the Regulation does provide for judicial remedy, but limit it by requiring the exhaustion of administrative remedies as a precondition. Article 46 stipulates that, if one does not accept a specific administrative action by a department of religious affairs, one may apply for administrative reconsideration according to law; only if one does not accept the administrative decision, may one bring an administrative litigation, while ordinary administrative litigation is not preconditioned on such requirement.<sup>15</sup>

Overall, the Regulation authorizes many restrictions on – in some cases, even deprivations of -- freedom of religious belief and practice protected by Article 36 of the Constitution, without providing for sufficient remedies to check against potential abuse of power.

## 2. Local statutes

In addition to the central Regulation, certain local regulations and rules also contain strict limitations on religious activities and thus share the same constitutional problems. A typical example is the *Zhejiang Provincial Regulation on Religious Affairs* (hereinafter “Zhejiang Regulation”):<sup>16</sup>

First, Article 7 of the Zhejiang Regulation stipulates that the governments at all levels shall protect the legal rights and interests of religious groups, and shall coordinate the work of managing religious affairs and guide the religions to adapt to the socialist society. In comparison to the superior law, Article 5 of the Regulation, the Zhejiang Regulation adds the last guiding clause, which can easily

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<sup>15</sup> Art. 37, Administrative Litigation Law.

<sup>16</sup> Approved by the Standing Committee of Zhejiang People’s Congress in 1997, revised by the same Standing Committee in 2006.

be interpreted as authorizing the local governments to intervene in religious practice with secular socialist guidelines.

Second, Article 15 of Zhejiang Regulation provides that religious groups may, in accordance with relevant central regulations, compile and print publications for internal religious use. The publication of publicly distributed religious publications shall be subject to the approval of provincial religious affairs departments and obtain the “Print Approval Certificate” issued by the provincial administration of press and publication. This article adds two extra requirements of approval and issuance procedure to those already existing in Article 7 of the Regulation, and is inconsistent with Administrative License Law.

Third, Article 19 provides that, if verified and registered religious staff from outside the province move to Zhejiang and to obtain its household registration, they must assume the religious status in the province for at least 3 year and be recommended by relevant religious groups; their application is subject to the examination and approval of the provincial religious affairs authority, and relevant formalities should be performed according to the requirement of relevant household control. The same applies to in-province religious personnel, who need to transfer their household registration out of the province. This provision on household matters does not exist in the Regulation. The problem is that such a provision highlights differential treatment based on household system to religious society by introducing Chinese household related prejudice, such as the “three year” restrictive condition for non-provincial religious personnel, which may contradict the provisions of Article 33 and 36 of the Constitution.

Last, Article 25 of the Zhejiang Regulation requires the religious activity venue to establish administrative organs and implement democratic governance. The administrative organ is made of religious personnel and religious believers at the venue through democratic consultation and election, under the direction of relevant religious groups, and registered at the registration authority of the venue and for a term of five years, after which the members of the organ are re-elected. Any member of the organ in default of duty is subject to replacement, though the method of replacement is not specified. Anyway this article in essence allows a secular government to interfere with internal organization and operation of religious groups, matters of which should have left to the self-determination of these groups if their religious freedom is to be respected.

### 3. Religion related Provisions in the Military Service Law of the PRC

According to the *Military Service Law*, all citizens have the obligation to perform military service, regardless of ethnic status, race, occupation, family background, religious belief and education. This provision reflects the equality principle stipulated by Article 33 of the Constitution, but fails to accommodate special need for those religious believers who object to military service by conscience. The Military Service Law provides a number of liabilities for failure to perform military service.

First, Article 61 of the Military Service Law provides that (1) if any citizen, who has the duty to perform military service, refuses to register for military service or evades such registration, (2) if any citizen who is eligible for enlistment refuses to be enlisted or evades enlistment, or (3) if a reservist refuses to undergo military training or evades such training, and if any such person refuses to mend his ways in spite of persuasion, the government at the grassroots shall compel him to fulfill his duty of performing military service and punish him with a fine. If any citizen who is eligible for enlistment refuses to be enlisted or evades enlistment, and refuses to mend his way, he shall not be employed as Public Servant, staff and workers of state owned enterprises, and shall not go abroad or enter a higher school within two years. In wartime, if a reservist refuses to be called into active service or evades such service, or if he refuses to undergo military training or evades such training, and if the case is

of serious nature, he shall be punished with reference to the Military Service Law on Punishment of Servicemen Who Commit Crimes Contrary to Their Duties. This article imposes an extremely heavy burden on failure to perform military service duty; paragraph 2 not only infringes upon religious freedom of conscientious objectors, but also violates Articles 42 and 46 of the Constitution with respect to right to work and receive education. Particularly, the criminal liability clause of paragraph 3 imposes heavy burden on conscientious objectors to military service.

Second, Article 62 of the Military Service Law stipulates that any active serviceman who refuses to perform duties or escape from the army for the purpose of evading military service shall be given administrative sanction according to the regulations of the Central Military Committee; any one who escapes from the army in wartime and constitute crime shall be investigated for criminal responsibility. Any one who knowingly hire or employ an army deserter shall be ordered to correct by the government at the county level and be fined; if the misconduct constitutes a crime, criminal liability will be investigated and imposed. The first paragraph in this provision imposes serious legal burden of active service on conscientious objectors, while the second paragraph imposing administrative and criminal sanctions on the employer who employs an army deserter could lead to employment discrimination with respect to conscientious objectors. Measured by Article 36 of the Constitution, the validity of these provisions seems to be in serious deficiency.

#### 4. Heretic cult as a crime and other restrictions

There are many other unresolved problems concerning religious freedom. First, whether a criminal shall be provided in jail with proper conditions for religious practice? Confined in prison and isolated from the rest of the world, a criminal in China can hardly find opportunity for practicing religion.<sup>17</sup> Second, Article 300 of Criminal Law was amended by the NPC in 1997, which provides that whoever forms or uses superstitious sects or secret societies, or uses superstition to undermine the implementation of laws and administrative regulations shall be sentenced to imprisonment of a fixed-term between three and seven years; if the circumstances are especially serious, he can be sentenced to more than seven years. Third, Criminal Law also provides that whoever forms or uses superstitious sects or secret societies, or uses superstition to rape a woman or swindle money or property shall be convicted and punished according to Articles 236 and 266, respectively. Fourth, Article 376 of the Criminal Law stipulates that any reservist who refuses or escapes from enlistment or military training in wartime shall be sentenced to criminal detention or a fixed-term imprisonment of three years at maximum. Any citizen who refuses or escapes from military service in wartime shall be sentenced to criminal detention or a fixed-term imprisonment of not more than two years. These provisions are likely to infringe the religious freedom of the believers.<sup>18</sup>

More important, the NPCSC amended Criminal Law in 1999 to punish “heretic cult”,<sup>19</sup> but it raises more questions than it answers: how is “heretic cult” defined? Who is authorized to define this perhaps indefinable notion? How should abuse of power be prevented in the process of defining and prosecuting “heretic cult”? The Supreme People’s Court (SPC) and Supreme People’s Procuratorate (SPP) jointly passed judicial interpretations twice, in October 1999 and June 2001, for the purpose of setting up judicial guidelines for trying religious cases.<sup>20</sup> Article 1 of the 1999 Explanation defines the “heretic cult” as

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<sup>17</sup> Geng Guangming and Li Baichao, “Brief discussion on the Criminal’s religious belief”, *Modern Law*, No. 4, 2000.

<sup>18</sup> On the ruling of the Taiwan Conference of Justices that military service does not violate religious freedom provided in the Constitution, see its Interpretation No. 490, 1 October 2000.

<sup>19</sup> Decision of the Standing Committee of the National People’s Congress on Banning Heretic Cult Organizations, Preventing and Punishing Cult Activities, Adopted at the 12<sup>th</sup> Session of the Standing Committee of the Ninth National People’s Congress, 30 October 1999.

<sup>20</sup> Explanations of the Supreme People’s Court and Supreme People’s Procuratorate Concerning Laws Applicable to Handling Cases of Organizations and Employing Heretic Cult Organizations to Commit Crimes (hereinafter designated as the “Explanations”), Adopted at the 1079<sup>th</sup> Meeting of the Judicial Committee of the Supreme People’s Court, 9 October 1999,



*illegal organizations that have been established under the guise of religion, qigong or other forms, deifying their leading members, enchanting and deceiving others by concocting and spreading superstitious fallacies, recruiting and controlling their members, and endangering society.*

Articles 2 and 3 of the Explanation also delineate cases that shall be regarded as “especially serious” meant in Article 300 of the Criminal Law. Punishment shall be determined, according to Article 300, item 1 of the Criminal Law, for the organizers and employers of heretic cult and the participants of the following activities:

*assembling crowds to besiege and attack the State organs, enterprises or institutions, and disrupt their work, production, operation, teaching or research activities; holding illegal assemblies, parades and demonstrations, or inciting, deceiving and organizing their members or others to gather together to besiege, charge, seize or disrupt public places or venues for religious activities, or disrupt social order; resisting departments concerned to ban their organizations, or resuming the banned organizations or establishing other heretic cult organizations, or continuing their heretic cult activities; instigating, deceiving and organizing their members or others to refuse to fulfill their legal obligations, with serious consequences; publishing, printing, duplicating and distributing publications spreading cult fallacies, and printing symbols of heretic cult organizations; other activities that violate the State laws and administrative regulations.*

Although the judicial definition of “heretic cult” and its sanctions may help to narrow down such a problematic notion and reduce abuse of public power, it is still full of such vague, broad, and loaded terms as “superstitious fallacies” and “endangering society”, which may be easily manipulated to serve the purpose of suppressing any targeted religion.

#### **IV. Religious Privileges and Special Treatments**

Article 36 of the 1982 Constitution provides for the basic equality principle that requires equal treatment of believers and non-believers, but in practice, several laws offer religious believers and groups with a variety of privileges and immunities, as well as special protections for ethnic minorities and religious believers. Law on Ethnicity Autonomous Regions, Law on the Protection of Consumer’s Rights, and Prison Law all require that various ethnicities to learn from and help each other, respect each others’ language, customs and religious beliefs. According to Article 251 of the Criminal Law, any state functionary that unlawfully deprives a citizen of his religious freedom or infringes upon the customs and habits of ethnic minorities shall, if the circumstances are serious, be sentenced to criminal detention or a fixed-term imprisonment up to two years.

##### **1. Criminal Law**

Ethnic customary laws are often inconsistent with the current criminal law system. Specifically, behaviors regarded as criminal under the current penal system are sometimes regarded as normal practices in ethnic customary laws. Such behaviors mostly stem from the economic activities, styles of life and religious cultures of the ethnic minority groups. China’s basic ethnic policy requires that the enforcement of Criminal Law take into account of ethnic customs, especially those involving religious beliefs. As a result, many minority autonomous localities modify provisions of a law or administrative regulation to adapt to local customs; conducts that constitute criminal acts under the Criminal Law may be given lenient treatment or even exempted from legal penalty.<sup>21</sup> According to a

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and at the 47<sup>th</sup> Meeting of the Ninth Procuratorial Committee of the Supreme People’s Procuratorate.

<sup>21</sup> Wu Dahua, *On the Applicability of Chinese Criminal Law in Ethnic Minority Areas*, Press of People’s Public Security University of China (1989), p. 56; Yao Benmo, “Pay more attention to the social effect in handling special cases in ethnic minority regions”, *People’s Procuratorate*, No. 8, 1987.

policy of the Central Party Committee enacted in 1984, the courts shall pursue a policy of fewer arrests, fewer death penalties and greater leniency when crimes involve ethnic minority, and to give more lenient judgment and sentencing for such crimes.<sup>22</sup> When it comes to adopt modified applications of the Criminal Law, the following articles need be reconsidered with a series of ethnic characteristics, including religious belief.

First, Article 125 prohibits illegal manufacturing and trading of firearms. This provision shall be accommodated for several minorities in Southern China, such as the Miao and Tong ethnicities in Congjiang, Liping, Rongjiang of Guizhou Province, where almost every young man carries a home-made gun for the purpose of decoration; the same applies to the remote northern pasturing areas, where ethnic minorities live on hunting and animal husbandry. For these cases, the manufacturing and selling of guns shall not be regarded as criminal offences; only those do so for profit by selling large amount of guns to other ethnicities (.e.g., the Han people) and caused serious consequence shall be punished by law.

Second, Article 236 of the Criminal Law defines statutory rape with respect to underage girls. The current criminal law provision regards a girl below 14 as a minor for this purpose, and any sexual conduct with her would constitute statutory rape, while it is regarded as entirely normal under the early marriage system of the Miao ethnic minority in Yunnan province. Indeed a number of ethnic minority groups have long regarded girls of 13 years old as proper for holding adulthood ceremonies and taking part in social activities with the opposite sex (e.g. the custom of “daitiantou”, which involves changing the hair-dress style for young girls in Tibet), after which marriage and sexual conducts are allowed by the local conventions. Therefore, except for some serious cases that would cause physical harm, death or other serious consequence, the penalty for statutory rape shall not be applied to such cases.

Third, Article 237 of the Criminal Law punishes indecent conducts, such as insults by force and other means, toward woman. This provision shall be accommodated in some minority regions, particularly on the occasion of festivals or social events, when local customs allow such conducts as caressing, forceful hugging, or even sneaking into the woman’s room at night and force sexual intercourse. Although some of these conducts are inconsistent with modern laws and morals, they should not be punished by law to the extent that they stop short of causing harm to the individuals involved or to the social order in general.<sup>23</sup>

Last, Article 258 of the Criminal Law concerns bigamy, which should be accommodated when applied to certain minority regions, where the religious beliefs and local customs make marriage relationship unstable; it is quite common in some regions to have brothers in a family to marry with a same woman, or sisters share the same husband, or a man or woman with many spouses. More often than not, marriages or divorces go through religious procedures or customary rituals rather than legal procedures. Cases of these types shall be taken as private prosecution applying the principle of “no charge, no trial”. The compulsory jurisdiction of the state shall not step in such cases directly, except for special cases where conducts were committed for criminal purposes or with serious consequences.

## 2. Tax Exemptions

Article 36 of the Religious Affairs Regulation provides that religious groups and places of religious activity shall implement state policies on finances, and shall receive tax exemptions and deductions according to the relevant state tax code provisions. In 1986, National Tax Bureau promulgated Provisional Regulations on Property Tax, of which Article 5 provides that the self-use houses in religious churches, gardens, and historic relics shall be exempted from property tax. In 1987, the same bureau enacted Provisional Regulations on Land Use Tax in Cities and Towns, which provides that the self-use lands in religious churches, gardens, and historic relics shall be exempted from land use tax. “Self-use” property of a church or temple refers to the abodes of the religious personnel or the houses or rooms where religious ceremonies or rituals are held.<sup>24</sup> Also in 1987, Administration of Religious Affairs under the

<sup>22</sup> Wu Dahua, *On the Applicability of Chinese Criminal Law in Ethnic Minority Areas*, p. 20.

<sup>23</sup> Liang Huaren and Shi Yuchun, “On the versatility of Criminal Law in ethnic minority regions”, 10 July 2006, <http://www.lexchina.com/ReadNews.asp?NewsID=322>.

<sup>24</sup> *Select Compilation of Administrative Statutes* (vol. 1), Law Press (1991), pp. 948-949, 957-958.

State Council decreed that both Buddhist and Taoist churches or temples are exempted from taxes for their income earned from selling entrance tickets. Likewise, religious incomes from the donations, the disciple's contribution, and the religious activities are free of tax. Finally, the Central Office of CCP Committee issued a normative document in 1985 that that food stuff, vegetables, tea, fruits and livestock produced by religious groups, as well as their incomes from providing services, manufacturing, or business for self-reliance purposes, shall be exempted from taxes.<sup>25</sup>

### 3. Regulations on food and hygiene management

In 1978, the Ministry of Finance, National Ethnicity Committee, and the State General Administration of Labor jointly issued the Notice on Proper Settlement of the Catering for Hui Nationality Employees, which requires respect for the living habits of minorities formed through long history and prohibits any prejudice thereof. In 1980 the Ministry of Commerce circulated the Notice about Butcher and processing of Beef and Mutton for Hui and other Nationalities, which requires respect for the minority conventions and observance of the national policies regarding ethnicity and religions. The beef or mutton for the Hui nationality shall be prepared by mullahs only. In 1989, China Airline and the Ministry of Communication successively promulgated notices with regard to catering for Islam passengers. In 2000, Ministry of Education and National Ethnicity Committee jointly circulated a notice about the establishment of Mosques and kitchens for Islamists in various schools. In addition, all provinces, autonomous regions, and municipalities have formulated regulations regarding Islam food in their individual jurisdictions. At present, laws, regulations, and other rules with respect to the management of the food for Mosques mainly involves the following special provisions: special requirements on the occupational qualifications, special regulations on both the internal and external conditions of any business that engages in food business for Islamists, special regulations on the source of food for Islamists and requirement of certificates for Islam food production and trade.

### 4. Media regulation and banning of *The Da Vinci Code*

Since religion in China is a sensitive issue affecting social stability, the Chinese government adopts an extremely cautious and protective attitude toward potential religious conflicts. In particular, the state has tightly regulated the media, requiring "all news reports relating to religions show respect to the minority customs and religious beliefs, and refrain from anything that smear, insult and discriminate the image of minorities or distort religious creeds"; and "in propaganda, we must pay sufficient understanding and respect to minority customs and religious beliefs, and ..... shall not deface, insult and fabricate. When it comes to sensitive issues, more attention shall be paid to avoid hurting the emotion of the minority and providing excuse for hostilities."

According to the provisions of the State Administration of Radio, Film and Television, propagandas on important issues related to ethnic minority and religions shall be conducted prudently and strictly pursuant to the unified arrangement and standard decided by the central government. Any report regarding religious ceremonies should be moderate and prudent. In 2006, the Tentative Regulation on Celestial Burial enacted by the government of Tibet Autonomous Region emphasizes that celestial burial is a Tibetan custom protected by the national law, which prohibits such conducts as watching, photographing, and video recording of such occasions; no words, pictures, and reports on celestial burial are allowed to appear in newspapers, magazines, radio programs, films, televisions, or website.<sup>26</sup>

In 2006, the film named the *Da Vinci Code* was prohibited for fear that the film may offend the Christian community. The story was about a renowned Harvard symbolist summoned to the Louvre

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<sup>25</sup> *Zhongbanfa* (1985) No. 59. About the constitutionality of the tax exemption for an Australian Church, see *The New Faith v. Commissioner of Pay-Roll Tax (Vic)* (1983) 154 CLR 120; About the constitutionality of the tax exemption for the land of religious use provided in Taiwan's Law of Land Tax, see Interpretation No. 460, 10 July 1999; the requirement of obtaining administrative license as provided in Regulations on the Supervision of Temples infringed religious freedom to the extent that exceeds necessity, Interpretation No. 573, 27 February 2005.

<sup>26</sup> Shen Zhengfu: "Free Speech Not Allowed to Override Religious Belief", *Contemporary Media*, No. 3, 2006.

Museum to examine a series of cryptic symbols relating to Da Vinci's artwork. In decrypting the code, he uncovers the key to one of the greatest mysteries of all time. Allegedly Jesus is not God; he was only a man who was married to Mary Magdalene and the two had a daughter. Angered by the its blasphemous implications, four major Christian groups in Thailand demanded that the film be banned; hundreds of Catholics demonstrated in India, and China's Catholic Patriotic Association issued notice claiming that "both the film and novel of the Da Vinci Code are made out of fabrication and nonsense, which distorted the Catholic creed and the history, generated confusion and misunderstandings among readers and believers, and caused enormous damage to the Christian belief. All communities, all religious groups and Catholics have sharply criticized and condemned the film and the novel." The notice called for boycott of the film and "conscious maintenance of the sanctity and authority of the Bible". Under the pressure from the Christian community, the Chinese government prohibited all cinemas from showing the film.

From the legal perspective, if the film is really based on fabrications, it may be banned for committing libel. However, any governmental intervention in the incident may violate the principle of separation between church and the state. In fact, in the United States, where the film was produced and first exhibited, most Christians and the churches remained calm and silent; they did not watch the movie, but nor did they vehemently protest on the streets or demand the banning of the film. Only when the state remain neutral on religious matters can the people of different beliefs begin to deal with each other and gain enough experience to know the necessity for toleration and mutual respect.

## **V. Church and State Relations**

In providing for special treatment for religions, the Chinese governments necessarily project themselves into religious affairs and produce entanglements between churches and the secular state. Indeed, by providing funds to religious schools and religious constructions, establishing religious associations, and evaluating religious personnel, governments at various levels are deeply involved in matters that properly belong to religious organizations.

### **1. Governmental support for religious constructions**

The southwest of Sanya City, Hainan Province is believed to be the starting point for Buddha Guanyin to visit the south sea and related to the east journey of Monk Jianzhen in Tang Dynasty. In order to exploit tourist resources and to spread Buddhist culture, an enterprise called Sanya Nanshan Guanyin Garden Construction Development Co. invested 800 million yuan (CNY) for constructing Nanshan Guanyin Holy Image on the Sea, a religious statue of 108 meters in height, and the Nanshan Guanyin Cultural Garden. Since 1994, the project went through proposal, planning, and construction, and was approved by the State Development and Reform Committee, State Administration of Religious Affairs and Hainan local government. In 2005, the project was completed and opened to public. The business scope of the project includes sightseeing, hotel, travel agency, construction and management of real estates, the design and development of gifts, souvenirs, and other cultural products. The project was centered on the Buddha statue, and was originally approved by the state as a religious place, but in fact it became a commercial center, with "good profitability and prospect."

It was reported that, during the six years of construction period, "every leader from the central government who came to this place would pay a visit to the construction site, where they would be briefed about the progress of the construction and express their support." In 2004 at the press conference for the Opening Ceremony of the Holy Image, a leader from Sanya City government even expressed that "the completion of the project owed a lot to the support and effort of the State Administration of Religious Affairs, Hainan Provincial government, the Party's Committee of Hainan Province, the Party's Committee and the government of Sanya City, and all circles"; while "the government of Sanya will concentrate all city resources on the cooperation with the Chinese Buddhist Association and Nanshan Temple in the opening ceremony". In this way, a religious facility was

turned into a governmental project. Later on, it was reported that the local government insisted that Guanyin Company transferred to the government the property rights of Guanyin open Copper Image and relevant assets under the Nanshan Guanyin Garden Project. At last an assignment agreement was signed with the company and a decree was issued by the municipal authority to take over 100% property rights of the project. Although the city government only paid 40 million yuan to the company, leaving almost 800 million yuan unpaid, the National Assets Committee sent personnel to the site, accompanied by personnel from the Civil Administration and the Public Security Bureau, to clean up and renovate the site, and the Guanyin Company had to stop their business. As a result, the government replaced the enterprise and directly run a religious place.<sup>27</sup>

This incident illustrated that the Chinese governments may be involved in the construction and operation of religious activity places. Although Article 36 of the Constitution does not explicitly express the separation of church and the State, but both the government and the academic community agree that separation of church and the state is a principle implicit in the Constitution. In 1999, the General Secretary of the CCP and the State President Jiang Zemin openly expressed at the Central Ethnicity Work Conference that the principle of separation of church and the state should be upheld, implying that no religion shall have any privilege over the Constitution and laws, and no religion shall be allowed to interfere with the State functionality in administration, judiciary, and education.<sup>28</sup> Article 36 of the Constitution should be taken to mean the other half of the principle, namely, that the state should not interfere with religious affairs. The preceding case illustrated, however, that the governments was involved too deeply in religious affairs, thus creating the impression that the government was in favor of a certain religion or sect. In countries committed to separation of church and the state, such governmental involvement will be deemed unconstitutional.

The preceding case also illustrated the obvious difference between tourist construction and religious construction. If the purpose was to develop tourism, there is nothing unconstitutional for the government to invest in the project. But once the government invests a large amount of money, time, and energy in the construction and opening ceremony of a religious image, then it is natural to suspect that the government has engaged in the construction of religious facilities, which would constitute an involvement with the religious affairs. Spending the taxpayer's money on the construction of a holy image, the government may have infringed upon the rights of secular taxpayers, who constitute the vast majority in China. The principle of separation of church and the state not only prohibits religions from intervening in secular affairs, but also prohibits state functionaries from intervening in and taking over religious affairs. While the former is partially emphasized in China, the latter seems to be easily neglected. To make things worse, many party and government officials even take their religious involvements as important achievements in their performances.

## 2. Religious Schools

The principle of separation of church and the state does not mean, of course, that the state has nothing to do with religions. In fact, any government is more or less involved in religious activities; the key question is rather the purpose and consequences of such involvement. Public funding of religious school is one example. In China, the prospect for private endowment is not as optimistic as that in other countries, and the lack of fund is a prominent issue for each religious academy. In order to cope with this issue, governmental assistance becomes inevitable.

In 1996, State Administration of Religious Affairs issued the Suggestion on the Enhancement and Improvement of the Work of Religious Academy, which required various channels to be available to funds raisings for religious education. The religious activity places earning good profits should

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<sup>27</sup> See Tong Zhiwei, "Legal issues involved in the religious projects invested by local governments", *Legal Science*, No. 11, 2005; "We should not integrate politics into religion: A brief note on the academic symposium on Sanya Nanshan Guanyin Holy Image construction and the relationship between church and state, *Science and Antitheism*, No. 2, 2006.

<sup>28</sup> Guo Yanjun, "The principle of handling church-state relations", *Legal Science*, No. 6, 2005; and Han Dayuan, "Tentative Discussion on the constitutional value of the principle separation of church and state", *Legal Science*, No. 10, 2005.

donate certain funds to support the religious academies. In addition, the religious academies can charge the religious activity places a certain amount of tuitions if they send students to the academies. In recently years, foreign investment and funds from overseas Chinese have been accepted as sources to finance the religious education. Any donations free from additional conditions and potential harm to the independence principle with respect to the religious establishment can be accepted. Large donation is supposed to file reports and applications for approval pursuant to the central rules.<sup>29</sup>

In reality, both central and local governments have invested directly in religious academies. Take the Buddhist academies as an example, their funds mainly come from the following three sources: (1) government support for academies organized by religious groups, such as the Chinese Buddhist Academy and its Qixiashan Branch; (2) appropriations by the provincial Buddhist Associations for these academies, such as the Buddhism Academies in Fujian and Shanghai; (3) self financing by the Buddhist temples for these academies, such as Minnan Buddhism Academy and its Lingyanshan branch, as well as the Buddhism Academies in Caixi, Yunmen, Putuoshan, and Ermeishan. Funds derived from the first avenue are guaranteed but insufficient, while the funds derived from the second avenue have no guarantee, and those from the third avenue guaranteed to an extent. Added together, these funds are insufficient to improve the conditions of Buddhist teaching, less to expand the scale of the academy. Over the years, the central government has provided considerable amount of funds to the Chinese Buddhist Academy and its Qixiashan Branch in Nanjing, particularly for improving their teaching conditions, which have reportedly encouraged the Buddhist community and enhanced the confidence and strength of Buddhist academies.<sup>30</sup> Under the current circumstance in China, if the government support is struck down for violating the constitutional principle of separation of church and the state, the Buddhist academies across the country may well to find the shortage of funds so severe as to threaten their subsistence. The public investment should at least be made more transparent, however, and based on the principle that the religious educations should be primarily self-reliant and that the government should gradually withdraw from religious funding. The active government involvement in the Sanya case is obvious unconstitutional.

### 3. The Appraisal System for Religious Personnel

The Chinese governments have set up appraisal systems for the religious personnel. It was reported that,

*as one of the key counties in Chongqing Municipality, Liangpin County currently has Buddhism, Catholicism and Christianity, with 9 churches, 41 religious personnel and 85 thousand believers. In order to enhance the moral and political education of the religious personnel, continuously improve their personal qualities, implement orderly management of the religious activity places, the United Front Work Department of Liangpin Party Committee formulated the Implementation method for the Performance Appraisal of Religious Personnel, which uses a quantitative appraisal method, adopts a spot-test-and-concentrative-inspection measure in conducting an integrated appraisal of legally registered religious personnel in the county in seven aspects, i.e. patriotism and religious love, religious activity, service to the believers, observance of laws, contribution to the society, political life, and personal work summary, which should be examined by the end of each year. Anyone who scores 85 or above will be classed as "excellent" and will be praised by the county's religious administrative department; anyone who scores below 60 shall be regarded as a failure and subject to remonstrations by his associates according to the command of the county's religious affairs department; any one fails the appraisal for cumulative two years shall be deprived of his religious status by relevant religious groups under the recommendation of the county religious affair department.*

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<sup>29</sup> *Zhongfa* (1991) No. 6.

<sup>30</sup> Shenhui, "Inheriting traditions and adapting to modern time: Report on the Buddhist education and cultural work committee" (BAC 3<sup>rd</sup> session of the 7<sup>th</sup> Executive Board, 24 September 2005), <http://lsbbs.lingshan.cn/Article/ShowArticle.asp?ArticleID=52>.

The said report reveals that the governments at various levels pervasively intervene in the religious affairs and evaluate religious activities on the basis of secular standards, which may constitute severe prejudice against religious freedom.

Authorizing the government religious affairs department to recommend deprivation of the religious status amounts to serious intervention in the religious affairs. In November 2005, the Hangzhou Buddhist Association asked Zhejiang Provincial Buddhist Association for instruction by submitting Report about the Cancellation of Shi Yuezhao's Religious Status. This report was about a religious personnel, who was in Qinglian Temple, Leqing County, Zhejiang Province in 1988. In May 2000, Shi Yuezhao was invited to be the abbot of Mount Tianmu Temple. In October 2004, he was detained and arrested by Beijing Public Security Bureau for committing fraud, and was sentenced to two years imprisonment for illegal access to the national secret. Article 45 of the Religious Affairs Regulations of the State Council provides that, "if a religious instructor violates a law, regulation, or rule while engaging in a religious educational activity, he shall be prosecuted according to law, and the department of religious affairs shall recommend that the relevant religious group rescind his instructor status." The report submitted by Lin'an city Buddhist Association recommended to rescind Shi Yuezhao's Buddhist instructor status. In December 2005, the Zhejiang Buddhist Association approved the report, whose decision was later affirmed by the Buddhist Association of China.<sup>31</sup> In this case, Buddhist associations were literally acting on the recommendations of local government officials. Such a practice is likely to make the religious associations assume quasi-official power, and subsequently carry out the decisions made by the administrative agencies. As a result, the religious associations become a channel by which the governments can administer and restrict religious activities, inevitably creating the entanglements between church and the state as well as religious reliance on government appointments.

#### 4. Religious Association in China

In recent years the religious associations in China have increasingly become quasi-state organization, with their independence continually declining. The official traits are unmistakable in their Articles of Association. First, the tenet of such Articles, like the articles of the Chinese People's Political Consultative Conference or a political party, bear obvious political characteristics. In 2002, for example, the Seventh National Congress of the Buddhist Association approved the Articles of the Chinese Buddhist Association, in which Article 2 stipulates as the duty of the Association "to assist the people's government with implementing the policy on religious freedom, to uphold the legal rights and interests of the Buddhist societies, [and] to actively participate in the construction of the socialist material and spiritual civilization." Likewise, the Seventh National Congress of Taoist Association passed in 2005 the Articles of Chinese Taoist Association, in which Article 4 states that "the tenet of this association is to abide by the Constitution, laws, regulations and rules, uphold the peace of religions and social harmony, assist the people's government in implementing the policy on religious freedom, protect the legal rights and interests of Taoist society, [and] promote the adaptability of Taoism to socialist society." Perhaps the most prominent reflection of official nature of religious associations can be found in the Articles of Chinese Islamic Association passed at the Sixth National Congress of Islamic Association in 2006, which reads almost identical to a party or government document. Article 3 provides that

*the tenet of this association is to assist government in propagandizing and implementing Chinese policies on religious freedom, represent the legal rights and interests of the Islamists of different nationalities in the country, exert the function as a bridge and ligament, uphold the banner of patriotism, spread Islam basic spirits and excellent traditions, independently handle religious affairs and conduct various Islam careers, actively direct Islam in order to adapt to the socialist society; support the leadership of Chinese Communist Party and socialist system, follow the guidance of Deng Xiaoping Theory and the important thought of "three representative", uphold ideals of scientific development, encourage Islamists of various ethnicities to participate in the construction of socialist material, political, and spiritual civilizations, strive for the realization of harmonious society and*

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<sup>31</sup> See "Reply to the issue of rescinding the religious instructor status of Shi Yuezhao" *Fayin*, No. 3, 2006.

*wealthy society, uphold religious harmony, abide by the socialist moral standard, enhance ethnic solidification, maintain social stability, promote and uphold the unification of China, and uphold world peace.*

Second, all religious associations are explicitly subordinate to the administrative organs. Article 3 of the Taoist Articles stipulates that “the superior organ of the association is the State Administration of Religious Affairs”. Similarly, Article 4 of the Islamic Articles prescribes that “this association is subject to the guidance and supervision of the State Administration of Religious Affairs and the Ministry of Civil Affairs.”

Third, the missions of these religious associations overlap considerably with those of a state organ. Article 6 of the Taoist Articles defines 10 missions, the first few being to “assist the Party and government in implementing the policies on religious freedom; strengthen the study of the Constitution, laws, regulations, rules, current affairs and policies, improve Taoist patriotic awareness and the initiative to adapt to the socialist society; uphold the dignity of laws, solidification of peoples, and unification of China. And the same is provided in Article 3, paragraph 2, of the Buddhist Articles. These mission statements of the religious associations obviously conflate religious matters with secular tasks properly belonging to a civil government. In comparison, Article 6 of the Islamic Articles seems to be more pertinent to religious matters, with major missions confined to Islamism:

*the major work and missions of the association are: (1) conduct Islamist activities within the range as provided in the Constitution, laws, regulations, rules and policies; (2) as to religious problems concerned by Muslims, give explanations that comply with the requirements of the social development based on the script; (3) conduct Islamic education, cultivate Islamic instructors; (4) find out and sort out the excellent historical cultural heritage of Islamism, develop study of Islamic academic culture, compile and publish books and scriptures; (5) establish and perfect various internal management regulations and systems of Islamism; (6) direct the work of the associations in various places, exchange experiences; (7) encourage Islamic Associations and mosques in various places to set up public utilities and self-support undertakings; (8) take charge of organizing Islamists all over the country in pilgrim to Mecca; (9) launch friendly exchanges with Muslims and Islamist organizations in various countries, promote intercommunication and cooperation.*

Fourth, the tenure of the religious associations is affected deeply by state administration. According to Article 10 of the Islamic Articles, the National Congress will be held every five years, while the term used to be four years before 2000. The reason of alteration was provided in the Several Explanations on the Amendment to Articles of Chinese Islamic Association in 2000: “the purpose of this alteration is to be adaptive to the schedule of the NPC and the PCC, so as to duly and properly consider personnel arrangement as well as the arrangement of our association’s work and conferences”. It seems even the term of the association is made to better serve the state administration of the religion.

Fifth, for some associations, the qualifications of the religious personnel include a state position as the prerequisite. For example, the Article 16 of the Islamic Articles stipulates that “the Chairman, vice Chairman, and secretary general of the association must satisfy the following requirements: (1) uphold the leadership of Chinese Communist Party, uphold socialism system, and excel in political quality; (2) have substantial influence in the association in terms of practical operation; (3) healthy and able to stay on regular work; (4) with full civil capacity.”

Sixth, funds appropriated by the governments have become an important part in the activity outlay of the religious association. Article 30 of the Taoist Articles stipulates that “the sources of the funds for the association comes from: (1) local Taoist groups, temples and contributions made by disciples; (2) self-support incomes; (3) social donations; (4) government supports; (5) other legal incomes.” Article 23 of the Islamic Articles states that “the sources of funds for the association come from (1) funds raised by the standing committee; (2) voluntary contributions of Muslims; (3) incomes of self-support undertakings; (4) government supports; (5) other legal incomes.” Similarly phrases can be found in Article 30, paragraph 1, of the Buddhist Articles. As the religious associations in China are becoming more identified with the state with respect to the tenets, missions, tenures and post qualifications, they also become more reliant on the government provisions of funding, without which the



religions find increasingly more difficult to sustain their activities.

## **V. Conclusions**

It is difficult to talk about the religious issues, much less to compare religious freedom in China with that of the western countries, in light of the significant cultural differences. Although religious conflicts have threatened serious social disruptions in modern China, they have failed to arouse extensive attentions until recently. Since, in comparison to the western history, the Chinese history is not so replete with religious conflicts as to remind one of the necessity for truce, toleration, and mutual accommodations, it is difficult for Chinese to understand the paramount importance of religious freedom. In the eyes of the Chinese, most western cases on the nitty-gritty of school financing are trifling and hardly worth paying close attention; on the other hand, the Chinese establishment of quasi-official religious associations may strike a westerner as barbarous state intervention of religion. China seems to be so different from the west that meaningful dialogue on this subject can hardly proceed. While the Chinese may not understand why western countries spent so much precious judicial resources on those seemingly insignificant issues, the western people may feel aghast about the Chinese government's tough treatments of and heavy involvements in religious matters. The discrepancy between the oriental and western cultures can be found in the attitude toward the Falungong incident, which led to serious ideological and political confrontations between China and western states. While the Chinese government took for granted the right to suppress any "heretic cult", the westerners viewed that very notion as an infringement upon the constitutional freedom of religious belief. There is still hope, however, to bridge the gap in the understandings of religious freedom through dialogues. After all, Article 36 of the Chinese Constitution, just as its western counterparts, does provide for religious freedom, and serious dialogue about normative meaning of this provision is the very first step toward taking religious freedom seriously; failure to take seriously such vital freedom has produced, and will continue to produce, what Justice O'Connor noted as "violent consequences" to the Chinese society.