Hearings on Religious Freedom in India and Pakistan: Panel 3 Question and Answer

September 18, 2000

(Note: These are unedited and uncorrected transcripts)

Chairman Elliot Abrams

U.S. Commission on International Religious Freedom

Panel III: Situation Analysis - India and Pakistan (left to right):Prof. Tamara Sonn, Hon. Robert Oakly, Prof. Sumit Ganguly, Dr. Marshall Bouton

CHAIRMAN ABRAMS: Thank you [Dr.Bouton].

If I could, I'd like to lead off with a question. The picture you paint is a somewhat different picture from that which was painted earlier today and which appears in some of the reporting of human rights organizations and even, I would say, the State Department's own report, and I would describe the difference this way, I hope accurately, and ask for your reaction.

As I understand it, you're drawing a picture of certain forces in society which are, on occasion, engaged in actions against religious minorities on the one hand and, on the other hand, a government that is dedicated to religious freedom. The picture others have painted suggests that at least elements of the government are involved in these incidents; that to some extent, the government party, the ruling party, has built popularity by creating a climate which is less open to religious minorities.

And so, the picture is one of a less reactive government than you're painting. Assuming that that's a correct portrait of the difference, why do you come to a different conclusion, I guess is my question.

DR. BOUTON: I would describe the difference perhaps a bit

differently. First, let us talk about the ideology of the ruling party, of the BJP. It is, of course, well-known that the BJP has been associated with groups, political and otherwise, in Indian society that argue various versions of what some people call Hindu fundamentalism, although many of us think that's an oxymoron, and others call Hindu nationalism but which broadly argues for a kind of majoritarian cultural ideology which centers around Hinduism as a religious and cultural phenomenon.

One can have a long discussion about the ideology itself, but that that ideology has been taken advantage of by certain elements to discriminate against non-Hindus in Indian society; my observation would be that the BJP as a political party has actually been forced to distance itself from that ideology and certainly from anything like the practices that are sometimes associated with that ideology in order to gain power.

I just mentioned in my testimony, Mr. Chairman, that the BJP was soundly defeated in the state assembly elections following the destruction of the Babri Mosque. The BJP, following its coming to power and both--on all three occasions has disassociated itself from those three planks of its policies that were most associated with Hindutva, the Hindu nationalism; that is, the uniform civil code for Hindus and Muslims; the repeal of Article 370; and--I've lost the third--yes, and rebuilding the temple at Ayodia [ph].

There is no question that there are elements in the BJP which are associated with elements in the other entities that make up the so-called Sangh Parivar that have been implicated in some of these incidents. I tried to make clear in my testimony what I am suggesting to you is that there is no systematic effort on the part of this government or, in fact, on the part of the BJP itself as a political party to pursue that ideology and to engage in policies and actions which flow from--which allegedly flow from that ideology.

That is not to say that there are not elements and individuals which can become engaged with some actions of that sort. And that's why I've said also in my testimony that those must be repudiated clearly and forcefully by BJP leaders. That has not always been the case in my view, and that, certainly, is something that the international community but first and foremost Indians should hold their leaders responsible for.

RABBI SAPERSTEIN: Thank you very much for a helpful presentation. Let me toss a question to you which I hope later some of the others can comment on also. Two things: first, your contrast between the current level of engagement and a broader engagement that you think would be helpful; could you spell that out a little bit more, and is the broader engagement going to be more helpful to us because broad engagement generically is, or because there are pieces that are

missing now that would be specifically helpful? And if there's time, Elliott, I have one more.

DR. BOUTON: The broad engagement is not--I do not suggest is some panacea, first of all let me make it clear. Our two countries will continue to have differences on a number of issues. But for the most part, over the last four or five decades, this has been a very strained relationship in which India has, first of all, been relatively low down the priority list of American foreign policy concerns, and secondly, our relationship has been driven by what I have sometimes called the sort of litmus test approach.

You know, there was a Cold War litmus test and more recently a nuclear nonproliferation litmus test and other litmus tests, and the relationship was constrained by real and perceived failure of India to meet those litmus tests.

In fact, I would argue that the United States is more likely to achieve its interests in a relationship with India over time, including influence over India's social and economic and political development, if it has the traction that a broader, deeper relationship will provide. That includes more regular or extensive high-level, medium-level contact between our two governments. We all know that the Prime Minister of India just completed a visit to the United States after President Clinton paid the first visit in 22 years to India.

We have lacked contact at that level. We have lacked contact at virtually every other senior level of our two governments. Similarly, our economic intercourse; our--the contact between our educational and cultural and scientific institutions for a variety of reasons have been limited. The more contacts there are of that sort, the more opportunities there are to define and share interests; to develop cooperation and to influence each other's views and actions and policies.

RABBI SAPERSTEIN: Just very quickly, if I can just ask you one other thing. You mentioned private communications, and you mentioned sanctions. There are, of course, a range of steps in between that might be taken. I think there probably is an argument that a number of people in the United States would be sensitive to that in a case where people are being killed, and the government is directly or indirectly implicated, and just without a specific incident in mind, let's say theoretically fails to act once that takes place, that that might be appropriate for public comment, and the risk of not doing that is that there's a double standard between the way, let's say, we deal with China or other countries as opposed to India.

What--I mean, was that private--a first step or a rule that really should be kept to except in the most extraordinary situations?

DR. BOUTON: By private, do you mean--

RABBI SAPERSTEIN: You said private communications, there ought to be private communications between the United States--

DR. BOUTON: Okay.

RABBI SAPERSTEIN: --and the Indian Government.

DR. BOUTON: Yes; I actually first started with the word private, and then, I thought I ought to use the word quiet diplomacy.

RABBI SAPERSTEIN: Quiet.

DR. BOUTON: Because diplomacy, by its nature, is not private.

Well, I do not exclude the possibility that there should be public discussion of these concerns when warranted. I think for the most part, given, as I've outlined to you in my view, that overall congruence of values and principles, we're more likely to be effective with the quiet diplomacy than with public diplomacy.

I want to come back to one point you made. I think we have to be very careful about describing the involvement of Government in violence and attacks. I mean, I would be the first to say I do not have an encyclopedic knowledge of these attacks and their circumstances and the people involved and so forth, and that's among the reasons I'm very sorry I missed the testimony this morning.

But my impression is that the connections are, for the most part, indirect, distant; that governmental agencies, per se, are very seldom directly and heavily and regularly involved. There is some guilt

by association which deserves to be addressed, at least to be explored. There are clearly failure of governmental agencies to act quickly and forcefully; often, local authorities, police and so forth.

These are failures we have in our own society. I think the greatest burden on this government at the center, on the state governments, is to ensure that India's own laws are properly enforced and that incidents of this kind are clearly denounced by those in power.

CHAIRMAN ABRAMS: Well, thank you very much.

In the interests of time, we need to move on to the other panelists, but we very much appreciate your being here and understand the need to depart early.

DR. BOUTON: Thank you.

CHAIRMAN ABRAMS: Thank you very much.

Questions: I will ask the first one, if I might. The human rights debate is an old one, and we've had elements of it here today, and I guess I'd like to ask you all for clarification. I understand perfectly well the point about invidious distinctions that make us appear to have double or triple or quadruple standards by objecting to something in one country that we ignore in another country.

It's the quiet diplomacy point that I want to ask about, because while I think we can all grant the potential effectiveness of quiet diplomacy, there are problems with it or at least potential problems. One of them is that we are Congressionally mandated--the State Department is--to do two reports a year, which are very public, one on religious freedom; one on human rights more generally. We have a mandate to do an annual report as well.

And if you proceed with quiet diplomacy, you run into the following possible problem: an incident occurs, a bad incident occurs, and it is really upsetting, demoralizing, frightening to a religious minority which has just been attacked. Is the suggestion that the United States should not comment on this publicly? That we should say to the government of India or Pakistan this was really bad, and you

should prevent it from happening again, without a public manifestation of our outrage that this incident, which presumably has some background, that this incident has now been permitted to occur?

What are you recommending in terms of our response to human rights violations in the field of religious freedom?

AMBASSADOR OAKLEY: Well, what I'm recommending for the United States Government is a policy of more emphasis upon a quiet dialogue and less public expression of outrage, you can call it. If the Congress wishes to express outrage, they're free to do so, but one has to make a distinction, and you know it as well as I do--the difference between trying to get things done for the good and trying to look good.

And it's sometimes difficult. Politicians are different than diplomats. The Congress is different from the Executive Branch. NGOs are different still; private business, foundations are different still. I'm not saying don't talk about it, but I'm saying put your emphasis so far as the U.S. Government is concerned on private dialogue. Occasionally, you need to make public statements, and I would say that the severity, if you will, of the tone of public statements needs to be calibrated to the degree of which you think the Government is actually trying to deal with the problem.

Given all of the other problems that it faces, is it trying to deal with this one? So your degree of criticism needs to be calibrated upon the degree of whether you think the Government is sincerely trying to cope with the issues or whether it's not. That's so far as the public view is concerned.

Privately, as people have said, with India, I would build upon Indian heritage and the Indian Constitution; rather than coming in and saying you've got to do it our way, say do it your way, but really do it. Don't just talk about it. I think Sumit Ganguly is right. At the moment, for political reasons, the Indians take it a little bit soft on some of these groups. The Pakistanis, for political reasons, are having even more difficulty.

But occasionally, in Pakistan, something that I noticed while I was there, and I think it may still be true so far as the Supreme Court is concerned. The best way to deal with individual cases of blasphemy, given the fact that no Prime Minister elected or military, so far, no chief executive has been able to repeal the blasphemy law; what they did, because these things come up through the Islamic courts, is to wait until they get to the Supreme Court, which is the high court for both the Islamic courts and the secular courts, at which point it's been thrown out.

There were a number of American citizens sentenced to death while I was there. Quietly, I would talk to people who said be patient; when you get to the Supreme Court, we'll take care of it. We can't do it before that.

So there are ways of going about things quietly. This doesn't mean that the blasphemy law isn't blasphemous, outrageous. But nonetheless, our ability to get that law off the books is not there.

PROFESSOR SONN: But again--and I agree; I think that--

DEAN YOUNG: I'm sorry; I just want to clarify one thing, Mr. Ambassador, if I may. When you said the Government should engage in quiet diplomacy, you meant the administration, I take it.

AMBASSADOR OAKLEY: The Executive Branch, yes.

DEAN YOUNG: Okay; I mean, Congress is part of the Government, but you say it is not inappropriate for them to speak out, but the administration should--I'm just trying to clarify use of terms.

AMBASSADOR OAKLEY: From the President all the way down, depending on your level of concern. You can do it quietly. You may also wish to make carefully calibrated public statements once in awhile.

DEAN YOUNG: I'm just trying to clarify that your use of the word government is administration.

AMBASSADOR OAKLEY: Yes.

DEAN YOUNG: Is that correct?

That's all.

PROFESSOR SONN: I had the same experience in Pakistan. The blasphemy law is not popular among the politically-engaged. They consider it a tool. They consider the government being held hostage to it. It's not a popular law. It's a useful law when it's necessary for whoever considers it necessary to incite public pressure for some policy issue or other. And as Ambassador Oakley pointed out, it hasn't been implemented, because it does get cut down at the Supreme Court, but that's a perfect example of what I was talking about: the fear of Talibanization of Pakistan.

But in response to your question, again, I'd like to take the broader view. I think that to make a comment at the time of a severe incident is not the major issue. The issue is to have a policy in place to work--the time for quiet diplomacy is to establish a context in which both governments can feel free to make the condemnations of violent incidents so that it's not the United States blaming someone, and the government, say, in this case, the Pakistani Government, the government wouldn't feel as if or be made to look as if it's succumbing to U.S. pressure in order to condemn a situation.

Work behind the scenes before or in a broader context before these events happen to have a policy in place so that the Government of Pakistan itself can feel free to make the condemnations that it--or the condemnations are made behind closed doors, but for fear of public response among the non-politically engaged, it is not free to make the public statements now.

We need to work behind the scenes to establish a context in which the United States isn't calling the shots in Pakistan on these condemnations.

CHAIRMAN ABRAMS: Let me just follow up on the distinction you make between the politically engaged and the non-politically engaged. I'm not sure of your definitions. When you say politically engaged, are you talking about political elites?

I guess another way of asking the question I'm asking is do you have a judgment--I understand we don't have any numbers--but a judgment as to how large a portion of the Pakistani population would approve or disapprove, for example, of the blasphemy law? Are you talking about the most educated 5 percent of the population or half the population? Again, I realize numbers are impossible but--

PROFESSOR SONN: It's impossible; again, as I said, 35 percent literacy at best, and of that, still, a smaller proportion who actually vote, and of that, a smaller proportion who actually are aware of the issues upon which they vote; that is, vote in Federal elections rather than just local elections.

In those cases--and these are the people I talked to, I mean, in the context I'm talking about now, across the board, absolute frustration at the existence let alone the continued existence--the initial existence and the continued existence of the blasphemy law among other things, but that's such a good example. There is no need for a blasphemy law, I was told over and over again.

It's a tool of people who are trying to gain an edge on various issues that people are trying to gain access to the government. But it's the kind of tool that can be useful among the non-politically engaged, and by that, I mean people who are not aware of national issues; are not aware, certainly, of the global context but are aware of whether or not they achieve their next job or their next meal or any health care in a global--sorry, in a local context because the local people have access to money and tell them how to vote.

CHAIRMAN ABRAMS: Mr. Ambassador?

AMBASSADOR OAKLEY: I'd just like to make a point about politically engaged. Unfortunately in Pakistan, the politically engaged within the country have a reputation of being so corrupt and so self-serving that they are, in fact, advancing the cause of extreme Islam. And so, you have a real problem there. The army has cast them out; the people have cast them out; and certainly, the Islamists are feasting off of the appearance of corruption and banality or to say you have no recourse but to turn to us.

The military government is not doing it; the civilian government's politicians didn't do it. Therefore, we are the ones you have to turn to. And that's the fear that I have about Pakistan.

PROFESSOR SONN: There is that fear, and let me clarify, though, that that's not the politically engaged level I'm talking about.

AMBASSADOR OAKLEY: Well, that's the question you were asked.

PROFESSOR SONN: I'm talking about students.

AMBASSADOR OAKLEY: Oh.

PROFESSOR SONN: Professionals; people who actually vote, who actually are aware of the global situation, and yes, it is an elite; it is an elite who are able to read and who are able to go to full university level education. But those are the people I'm talking about, and it's on a par with the politically engaged in this country. It's just that we have a higher literacy rate.

CHAIRMAN ABRAMS: Can I ask the same question of Professor Ganguly with respect to India? Presumably, there are people in the now-ruling party who believe that there are some votes to be gotten by taking what we call a Hindu nationalist position. And I guess they wouldn't be in power if they didn't have some sense of what makes for good politics. Can you make a judgment as to what portion of the population is really enthusiastic about this direction for Indian politics?

PROFESSOR GANGULY: It's, again, extraordinarily difficult to assign numbers. And within the ruling party itself, not the ruling coalition, but even within the ruling party, there are deep divisions about what constitutes Hindu nationalism and how far should one go. There are people who are already starting to play fast and loose with textbooks. They're changing school curricula in India, reflecting a particular reading of Indian history.

They have attempted to stack particular institutions in India like the Indian Council for Historical Research with people who are their acolytes.

On the other hand, there are others who feel that this cultural Hindu agenda is not what's important; that what really India needs to pursue is economic reform, military prowess and the like. So there are divisions even within the ruling party. But if one were to--can one assign a number? No; because these things fluctuate enormously. Sectarian appeals sort of reached their apogee, I would argue, in the mid-1990s. The BJP has not been able to have a complete sweep of the country, because India's heterogeneity prevents the creation of this monolithic Hinduism, because other facets of identity come into play: linguistic identity, regional identity, class identity and the like.

As a consequence, I believe that the power of the BJP and the Hindu nationalists has sort of reached its apogee.

CHAIRMAN ABRAMS: Any other--Judge Smith?

JUSTICE SMITH: I've been concerned in hearing reference to the courts as the bulwark of freedom in both India and in Pakistan. At the risk of sounding self-righteous with our own system, where we assure ourselves of an independent judiciary, I wonder to what extent the intervention of a government such as the United States Government in quiet diplomacy or loud diplomacy could reinforce the power of the courts in India and in Pakistan to further assure basic fundamental human rights and fundamental dignity, and in asking that question, and I would ask either one of our fine panelists to respond to it, I would say that no one of us would ever predict a result from any court in any jurisdiction.

I sit on the highest court of my state with nine justices. We have court on Thursday. I could not predict the outcome of the cases we will be hearing. I can only say that we are each independent, and we are dedicated to fundamental fairness. That's as far as I would go.

Could either or all of you respond to the role of the courts, the power of the court, the need for reinforcement of the power of the courts in either or both countries, Pakistan or India, in this regard?

PROFESSOR GANGULY: Let me speak about India, because I know far more about the courts in India than I do on Pakistan. I leave Pakistan to my two colleagues who are more able and can speak more authoritatively on Pakistan. But I can speak with some authority on the Indian courts.

The upper echelons of the Indian court system would be the pride of any democracy anywhere in the world. You get extraordinarily able opinions, carefully calibrated language, allusion to other democratic court systems and decisions and extraordinarily erudite and sophisticated courts which literally should be the admiration of almost any court system in the world.

Unfortunately, the lower echelons of the judiciary are often inept; on occasion corrupt; and often grossly overladen. Justice Sandra Day O'Connor, when she visited India along with the members of the

Supreme Court some years ago used a phrase that is common in American jurisprudence that justice delayed is justice denied. And perhaps nowhere is this more evident than in India.

Can we predict a different definite outcome of any particular Indian court? No. I wholeheartedly agree with you. Can the United States make a difference? It already has in some measure, because key American judgments are cited on occasion, particularly, even though the constitutions are different, people allude to things that have been done in America.

Furthermore, because the upper echelons of the Indian judiciary are sophisticated, cosmopolitan, well-traveled and the like and basically defend the edifice of secularism, of constitutional secularism, they have also attempted to make judicial innovation, and if I may take a moment, one of the most important judicial innovations that have taken place which would actually give American--proponents of American judicial restraint the willies--that would be the principle of what is called public interest litigation.

As an Indian citizen, all you need to do is send a post card to the Supreme Court and say that an existing law that is on the books is being violated, and nine cases out of 10, the Supreme Court will respond to you. Tragically, some of this has become frivolous, but on the other hand, it has brought the government to book on a number of occasions.

This was an innovation done by an eminent justice of the Supreme Court, Justice B.N. Baghwati [ph]. And this tradition, even though there is no legal dispensation for this, there is a legal precedent, and the court has started to expand its powers, and most recently upbraided the government for sectarian appeals during an election, expanding the penumbra of its powers.

So I'm answering your question in a somewhat longwinded way: yes; there is--there are subtle ways of influencing the highest court in the land.

AMBASSADOR OAKLEY: I'm going to let Professor Sonn comment in more detail if she wishes, but the Pakistani judiciary was not quite as good at the upper levels as the Indian judiciary, but it wasn't bad when I left Pakistan 10 years ago. Now, it's been emasculated except for the Supreme Court, which has stood firm. It's stood firm to a degree against the previous prime minister, and he turned his strong arm boys loose; they sacked the Supreme Court and beat up the justices because he didn't like the decision.

By and large, the Supreme Court of Pakistan is not bad; the other courts, justice has been dismissed, suborned, threatened; not much there. It's going to have to be rebuilt.

PROFESSOR SONN: I would just agree.

CHAIRMAN ABRAMS: We're running out of time, and I therefore ask the following question with a certain degree of reluctance because none of us wants to be here until 6:00. But the second group of people who spoke to us today spoke about Kashmir, and I wanted to ask for your views about U.S. policy.

Now, I say that with one proviso, and that is this Commission is not charged with suggesting U.S. policy toward Kashmir but only toward policy moves that might increase religious freedom or reduce religious intolerance or acts of intolerance in Kashmir. One could argue that that cannot be done without a broader settlement, or one could argue that it could be done today within today's political context by taking certain actions.

So I would just lay that on the table and ask if any of you would care to make a comment about the situation of religious freedom in Kashmir or whether there's anything useful the United States might do to address it.

AMBASSADOR OAKLEY: Well, let me make a point before answering your direct question. I think Kashmir is no longer primarily a religious issue. It started as part of the most sensitive, explosive issue in the subcontinent, which is religion, which led to a separation of Pakistan and India, which Kashmir is the vestige; therefore, it's the point, the center of gravity, if you will, about which all of this--but it has become so politicized, and religion is being used as a political vehicle, not religion in itself.

The Mujahadeen, the most intolerant Taliban-like freedom fighters who have come into Kashmir after the war with the Soviets was over in Afghanistan, have done so with the assistance of the Pakistani Government, who felt adding a religious element might give the Kashmiri mix the same potency that it did in Afghanistan, where the Soviets were thrown out, and maybe this is the key to getting the Indians out of Kashmir, not that they would have come anyway, but because they wanted something to do, and their jihad over there was finished.

But this is the politicization of religion, which you see all the time, and which you look at in one country after another. So I think that if the Kashmir dispute were to be settled, it certainly would have a positive long-term effect upon religious tolerance in both India and Pakistan. I think it has contributed to the rising influence of radical Islam in Pakistan, which in turn has made radical Hindu movements in India more powerful.

I think it would be a help. I don't think there's any magic solution as far as I can see, but that's my comment.

PROFESSOR GANGULY: Two very quick responses.

One, I completely agree with Bob Oakley that the pristine quality of the insurgency in 1989 when it was a popular uprising has been lost. The Kashmiris probably today wish a pox on all your houses. That's sort of their view. They would basically like to be left alone. And the religiosity that one sees amongst the insurgents is not really a religiosity, and these people would probably bring about a social order which would be far more oppressive than Kashmir has ever seen.

These are people who are genuinely intolerant even of people who do not adhere to their particular, very sectarian, austere and narrow-minded parochial vision of Islam. That's number one.

Secondly, the Government of India actually has not been insensitive to international criticism. In 1992, it created the National Human Rights Commission faced with a barrage of criticisms and justifiable criticism for the record of the--the behavior of its paramilitary forces in Kashmir.

When it was first created, many of us, myself included tragically, said that this is simply a governmental lap dog, and this is a sop, basically, to international criticism. To my surprise, and I've had to recant in print, that they have not proven to be a lap dog. They have actually brought the government to book not as much as I would like, but nevertheless, it represents an important movement forward, and the organization has acquired a degree of organizational autonomy and has brought the government to book for prison conditions within Kashmir; for the use of torture on occasion and the like.

But the basic point is that the religious element that exists

in Kashmir is not really the central issue. The central issue really is preventing human rights violations in the conduct of this insurgency, and that remains a legitimate concern.

CHAIRMAN ABRAMS: Professor Sonn?

PROFESSOR SONN:
I'd like to agree with Ambassador Oakley on the domino effect of the Kashmir situation. The radicalization of Muslims in Pakistan; the radicalization of Hindus in India as a result; they are interconnected.

I do think that it's very clear that there are measures in place that could be implemented and that the United States could increase its moral stature, if you will, its influence in the subcontinent simply by advocating the implementation of United Nations resolutions or, if not United Nations resolutions that apply to Kashmir which have never been implemented then a substitute, something that the United States finds agreement on with all participants as a way to negotiate resolution to the Kashmir issue in accordance with the wishes of the Kashmiri people.

Without United States pressure, there is no reason for India to agree to achieve a negotiated settlement, it seems. This is the position of the Pakistanis. And without United States making a stand on the need to implement those resolutions or similar measures, the United States is in a very difficult position when it comes to speaking out about other violations of United Nations resolutions.

So in order to keep ourselves from being able to be cast as people with double standards, it's, I think, a very good point for us to participate in or at least try to bring pressure on participants to implement United Nations resolutions with regard to Kashmir.

CHAIRMAN ABRAMS: Thank you very much.

I want to thank all three of you for being willing to come here today and for the information you've given us and opinions you've given us, judgments about the situation in India and Pakistan; they have been extremely helpful to us, and we have your written testimony as well.