

# India: Freedom of religion or belief

September 2018 · For public use

## Introduction

India's religious diversity and vitality surpasses that of almost any other country in the world, yet pluralism is under significant threat from an extreme Hindu nationalist ideology known as Hindutva, espoused by the Sangh Parivar.

## Communal violence

Communal violence is a leading concern. Often triggered by hate speech by far-right Hindu nationalist groups, it fuels hostility towards religious minorities. The situation is abetted by officials in the ruling Bharatiya Janata Party (BJP), who fail to take measures to prevent and investigate attacks and are known to allow the spread of hate through social media and various publications. Such acts are illegal under Section 153(A) of the penal code.

Given the environment, right-wing groups are emboldened to act with impunity. The abuses against religious minorities are reinforced by the failures of the criminal justice system, resulting in prolonged injustice. The survivors of communal violence in Gujarat in 2002, in Kandhamal in 2008, and in Muzaffarnagar in 2013, have not received justice. Perpetrators of communal violence often go unpunished due to state negligence or complicity, creating the climate of impunity that is a leading reason for the continuing communal violence in several parts of the country.

Large-scale 'homecoming' (religious reconversion) ceremonies across the country are spearheaded by offshoots of the Sangh Parivar, who claim to be 'protectors' of the Hindutva ideology. Their justification for pursuing these campaigns is their claim that all Indians were once Hindus and were later converted to Christianity and Islam through force or allurement.

## Anti-conversion legislation

The 42nd amendment of the constitution clearly states that the freedom to choose and change one's religion is a fundamental right of every citizen. Article 25(1) declares that 'all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion'.

However, anti-conversion laws are routinely used to justify violence against Christian targets and to create hostility towards minorities. The former UN Special Rapporteur on freedom of religion or belief, Asma Jahangir, visited India in 2008 and wrote that she was "deeply concerned" that anti-conversion laws were "being used to vilify Christians and Muslims", and that these laws "should be reconsidered since they raise serious human rights concerns." The laws are ambiguous and worded in a way that presumes individuals are incapable of making their own informed decisions regarding matters of faith. They contravene constitutional and international laws on the right to freedom of religion or

belief (FoRB). The state's silence on the behaviour of those promoting Hindutva has encouraged further abuse of the laws.

On 5 September 2017 Jharkhand State became the seventh state to pass an anti-conversion law. These laws, known as Freedom of Religion Acts, are already fully enforceable in Gujarat, Himachal Pradesh, Chhattisgarh, Madhya Pradesh, Arunachal Pradesh and Odisha States. The vague wording of the laws has enabled fundamentalist groups to act with impunity, often causing disruption to places of worship and violence against religious minorities. Anti-conversion laws have also removed the right of free choice and given the state the power to decide whether someone may change their religion.

The Jharkhand Law is identical to that in Gujarat, which criminalises conversion through allurement, force and fraud, but lacks a clear definition of these terms. Conviction carries a prison sentence of up to three years and/or a fine up to INR50,000 (approximately GBP600). The prison term and fine increases when the person converting is a minor, a woman or member of a scheduled caste or tribe – communities which have been historically disadvantaged. It also states that converting one's religion requires the prior permission of the District Magistrate.

Dalits who adopt other religions, particularly Christianity or Islam, lose their legal status as Scheduled Castes and consequently their eligibility to access the benefits that are available to Dalits of a different religious background.

## Legislation on foreign funding

The Foreign Contribution Regulation Act (FCRA) of 2010 has been used to revoke the licences of non-governmental organisations (NGOs), leading to concerns that members of civil society and NGOs, as well as foreign corporations that provide them with funding, are becoming targets of state repression.

In June 2016 the UN Special Rapporteur on the situation of human rights defenders, Michel Frost; the UN Special Rapporteur on freedom of opinion and expression, David Kaye; and the UN Special Rapporteur on the rights to freedom of peaceful assembly and association, Maina Kiai, called on India to repeal the FCRA, stating: "We are alarmed that FCRA provisions are being used more and more to silence organisations involved in advocating civil, political, economic, social, environmental and cultural priorities, which may differ from those backed by the Government."

**CSW** everyone  
free to believe

## Shrinking space for civil society

Political officials and nationalist groups often hold campaigns demonising religious minorities. In this regard, the inflammatory public statements by the incumbent Chief Minister of Uttar Pradesh, Yogi Adityanath, are of particular concern. His public statements calling for forced sterilisation of Muslims and Christians, or for Hindus to fight back against the perceived attack from Muslims and Christians, for Muslim voting rights to be revoked, or asserting that India is facing a battle between demons and gods, are perceived by some to give moral legitimacy to communal violence.

The space for Indian journalists, writers and other human rights defenders has shrunk since 2015. Since then, many writers, filmmakers and artists across India have voiced their concerns about the everyday acts of violence in the name of religion, with more than two dozen writers returning their awards as a mark of protest against the rising culture of intolerance towards freedom of expression and opinion. The killings of eminent Indian writers such as Govind Pansare (2015), M. M Kalbugi and Gauri Lankesh (2017) who questioned Hindu right-wing politics, and wrote about attacks on freedom of expression, have resulted in self-censorship among other writers.

Incidents of mob lynchings in the name of protecting cows and for alleged beef consumption are of concern. According to local monitoring groups, 97% of the attacks were reported after the BJP government took office in May 2014 and half the attacks take place in states governed by the BJP. The overwhelming majority of attacks are against Muslims and the Dalit community.

## Recommendations

- Urge the government of India to repeal or amend the Foreign Contribution (Regulation) Act 2010, which is arbitrarily used by the state to interfere with the legitimate work of human right defenders.
- Call on the government of India to repeal anti-conversion legislation currently in force in seven states, namely Gujarat, Himachal Pradesh, Chhattisgarh, Madhya Pradesh, Uttarakhand, Odisha and Jharkhand.
- In the 2017 Universal Periodic Review (UPR) at the UN, India accepted recommendations to ensure that laws are fully and consistently enforced to provide adequate protection of members of religious minorities. India should do more to reverse the culture of impunity that leads to communal violence by ensuring that perpetrators are brought to justice and adequate levels of compensation are granted to victims.
- Urge the government of India to pursue policies to reform its law enforcement agencies, including establishing mechanisms to increase the accountability of law enforcement officers, and ensuring that First Information Reports are effectively investigated and prosecuted.
- In the 2017 UPR India noted recommendations to take effective measures to combat rising instances of violence and discrimination. India must uphold the rights to free speech and freedom of expression, and protect civil society and journalists who exercise these rights, by investigating and prosecuting the perpetrators of crimes against these groups.
- In the 2017 UPR India accepted recommendations to adopt a national plan on human rights, and must do so in order to prevent violence committed in the name of religion, and other forms of oppression related to religion or belief. It must also continue to work towards the introduction of a comprehensive framework to deal adequately with communal and targeted violence.

As Christians, we stand with everyone facing injustice because of their religion or belief.