

## INTRODUCTION

1. Christian Solidarity Worldwide (CSW) is a human rights organisation promoting freedom of religion or belief for all. CSW monitors and raises awareness of the human rights situation in India and undertakes fact-finding assignments to the country, with the latest undertaken in 2015. This submission seeks to draw attention to particular concerns regarding the right to freedom of religion or belief in India.

## CONSTITUTIONAL AND INTERNATIONAL LEGAL OBLIGATIONS

2. In the Preamble of India's Constitution, the country is defined as a secular state. The Constitution also designates freedom of religion as a fundamental right and prohibits discrimination on the basis of religion (Article 25). Other relevant articles in the constitution include Article 26, which protects the freedom to manage religious affairs.
3. India's obligation under international law includes its accession to the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). India has also ratified the Convention on the Rights of the Child. These conventions protect the right to freedom of religion or belief and the rights of persons belonging to minority religions.

## PREVIOUS UPR CYCLES

4. During the first and second Universal Periodic Review (UPR) cycles, India accepted the following recommendation relating to freedom of religion or belief: *(i) Share best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of Indian society, raised by Mauritius at India's first UPR cycle; (ii) Continue to fully involve the national civil society in the follow-up to the UPR of India as was done for its preparation, raised by the United Kingdom at India's first UPR cycle; (iii) Strengthen the Federal Government's effort to guarantee freedom of religion to everyone in this world's largest democracy, raised by the Holy See (observer) at India's second UPR cycle.*
5. The following recommendations were noted by India from its previous UPR cycles: *(i) Continue efforts to allow for a harmonious life in a multi-religious, multi-cultural, multi-ethnic and multi-lingual society, raised by Tunisia at India's first UPR cycle; (ii) Reconsider laws and bills on religious conversion in several Indian states in the light of freedom of religion or belief in order to avoid the use of vague or broad terminology and discriminatory provisions, raised by Germany at India's second UPR cycle; (iii) Abolish anti-conversion laws in relation to religion and grant access to justice to victims of religious violence and discrimination, raised by Italy at India's second UPR cycle; (iv) Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and Adivasi groups, as well as women, and trafficking victims, raised by the United States of America at India's second UPR cycle; (v) Take legislative action to ensure every person's right to freely choose one's religion in line with the Indian Constitution and effectively and swiftly prosecute acts of violence against religious minorities,*

raised by Austria at India's second UPR cycle; (vi) *Take the necessary measures to ensure birth registration on a universal basis, particularly for persons living in extreme poverty, belonging to religious minorities or in remote areas*, raised by Mexico at India's second UPR cycle; (vii) *Reconsider current local legislation on freedom of religion, that uses vague or broad terminology and discriminatory provisions, and impedes the possibility for conversion of faith for those who wish to do so*, raised by the Netherlands, at India's second UPR cycle; (viii) *Continue its legal efforts in the protection of women and children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities*, raised by Iran at India's second UPR cycle.

6. **Recommendation: India should implement the recommendations it accepted in previous UPR cycles, and to make every effort to accept and implement the recommendations noted previously.**
7. **Recommendation: India must ensure civil society participation in the UPR consultation, to enable civil society organisations to continue collecting information on the situation of freedom of religion or belief in India, and find ways to systematically use the information collected as part of an early warning system.**

## SCHEDULED CASTES

8. Paragraph 3 of the Constitution (Scheduled Caste) Presidential Order 1950, stipulates that 'no person who professes a religion different from Hinduism, Sikhism and Buddhism shall be deemed to be a member of a Scheduled Caste.' Christians and Muslims of Scheduled Caste origin thereby lose their access to benefits that are available to Scheduled Castes. Following a Supreme Court Order the government set up the National Commission for Religious and Linguistic Minorities (NCRLM) in 2007 to address this issue. The NCRLM recommended the removal of Paragraph 3, and proposed disassociating Scheduled Caste status from religion altogether. The NCRLM Report volume 1, p.141, sub division A notes that the 'Presidential Order 1950 is unconstitutional and is a black letter written outside the constitution introduced through the back door by an executive order. Para 3 of the presidential order is anathema which disfigures the beauty of the written Constitution of India.'
9. **Recommendation: India should adopt the recommendation of the NCRLM, removing religion as a criterion for Scheduled Caste status.**

## VIOLENCE AGAINST RELIGIOUS MINORITIES

10. Data collected by civil society in India shows that since the new government came to power in May 2014, there has been a rise in violations of freedom of religion or belief. The statistics indicate that at least 43 deaths in over 600 cases of documented violence (149 targeting Christians, and other incidents targeting Muslims), have occurred since the new government took power.<sup>1</sup> In the first six months in 2016 there were an estimated 134 separate incidents of

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<sup>1</sup> A Report: 365 Days Democracy & Secularism Under The Modi Regime (2015, published by Act Now for Harmony and Democracy (ANHAD)),

violence against Christians in 21 of India's 29 States<sup>2</sup>. Furthermore, the victim-survivors of violence in Gujarat in 2002, in Kandhamal in 2008, and in Muzaffarnagar in 2013, have not received justice. CSW anticipates that violence against religious minorities will continue to increase over time, exacerbated by police inaction and failure to arrest the perpetrators. The government's slow and ineffective actions in bringing the perpetrators of freedom of religion or belief-related violence to justice has created a culture of impunity, posing a real threat to freedom of religion or belief in India.

11. The scars of the 2002 Gujarat riots, along with the communal violence of Kandhamal and Muzaffarnagar, remain fresh in the minds of the victim-survivors. The pattern of these incidents of violence is well documented: cases remain unresolved and the victim-survivors must wait for compensation, for an unspecified length of time. In the district of Muzaffarnagar 534 cases were registered and 6,264 people in total were charged. However, during the investigation the Special Investigation Cell dropped charges against 2,544 of the accused. In the district of Shamli 29 cases were registered and 226 charged. Charges were dropped against 112 of the accused, following an investigation. Around 200 cases have been submitted to the courts as of December 2014.
12. The investigation of these cases has been slow, and meanwhile religious minority groups continue to be attacked. It has also been reported that 1 in 10 cases of religion-related communal violence involved gender violence. Some cases of communal violence have occurred alongside deliberate policies of exclusion on the basis of religion. There have been cases of religious minority families being denied rations and ration cards after refusing to 're-convert' to Hinduism, as demanded by Hindu fundamentalist groups affiliated to the ruling government.
13. Communal violence has also been triggered by hate speech where Hindu nationalist leaders and Members of Parliament from the Bharatiya Janata Party (BJP) have made inflammatory remarks and fallacious allegations about religious minorities in meetings, through social media and in various publications. Such acts contravene the Indian Penal Code, Section 153(A), which criminalises the promotion of 'enmity between different groups on the ground of religion'. Section 153(B) of the Indian Penal Code further affirms that 'imputations and assertions prejudicial to national integration' are a crime.
14. The rise of communal and targeted violence against religious minorities has coincided with the rise in attacks on places of worship. This has increased insecurity among religious minorities.
15. **Recommendation: India must act swiftly to stop acts of violence committed in the name of religion against individuals, groups and places of worship. India should actively pursue reform of the Indian Police Service, in particular by introducing legislation to reduce political interference; establishing mechanisms to increase accountability; providing human rights training; and significantly improving working conditions.**
16. **Recommendation: India should address the significant gaps in the delivery of justice and compensation to victims of communal violence in India by examining the legal and judicial process, including: (i) ensuring that First Information Reports (FIRs) are**

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<sup>2</sup> Hate and Targeted Violence Against Christians In India (2016, published by Evangelical Fellowship of India (EFI)).

**effectively investigated and prosecuted, particularly those which have been ignored; (ii) including sexual and gender-based violence in FIRs; (iii) taking proactive steps against programmes such as hate campaigns planned by Hindutva forces within the state, especially those which incite violence against religious minorities; (iv) providing protection to victims and witnesses before, during and after the trial process.**

## **FREEDOM OF CHOICE**

17. The 42nd amendment of the Indian Constitution makes it clear that India is a secular republic, and freedom to choose and change one's religion is a fundamental right of every one of the country's estimated 1.25 billion people. Article 25(1) declares that 'all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion'.
18. Religious statements protecting the interests of Hindutva, and remarks from Hindu nationalist parties about their aspirations for India, threaten India's secularism. It has also been reported in the media that large-scale 'homecoming' ceremonies, or *ghar wapsis*, have taken place across the country, where converts from Hinduism are forcibly converted back to Hinduism. These ceremonies are spearheaded by offshoots of the Rashtriya Swayamsevak Sangh (RSS) who claim to be 'protectors' of Hinduism. They attempt to justify these ceremonies by claiming that all Indians were once Hindus, but were later converted to Christianity and Islam through force or allurements. The rhetoric behind these statements is that the Hindu nation is a victim of conversion by foreign intruders; that the nation must therefore reclaim what it has lost; and that the only way to preserve the identity and culture of Hinduism is to carry out these 'homecoming' ceremonies.
19. Nationalist groups have made it clear that they will not stop these ceremonies until every Christian and Muslim is 'welcomed' back into Hinduism. The majority of the *ghar* are said to have targeted minority groups such as the Dalit<sup>3</sup> and Adivasi<sup>4</sup> communities.
20. Conversion campaigns include scaremongering among Hindu voters using the term 'love jihad'. This term illustrates the false accusations that Muslim men are marrying Hindu girls with the aim of converting them to Islam.
21. Hindu fundamentalists use social exclusion to deny food rations to religious minorities in rural India, who are entitled to these rations as members of Scheduled Castes, if they do not convert to Hinduism. This is a common form of harassment. Intimidation and violence are also used to threaten religious minority groups in an attempt to force them to convert to Hinduism; religious minority families are often subsequently ostracised in their villages.
22. Highly controversial anti-conversion legislation, commonly known as Freedom of Religion laws, exist in Odisha (enacted 1967), Madhya Pradesh (1968), Chhattisgarh (1968), Arunachal Pradesh (1978), Gujarat (2003), Himachal Pradesh (2006), and Rajasthan (2008). Asma Jahangir, the former UN Special Rapporteur on Freedom of Religion or Belief, stated: "There is a risk that 'Freedom of Religion Acts' may become a tool in the hands of those who

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<sup>3</sup> There are 201 million Dalits in India, or 16% of the population, according to the 2011 census. They are at the bottom of the hierarchical caste system.

<sup>4</sup> Adivasis are categorised as 'Scheduled Tribes' (see 'Scheduled Castes' section), and number 104 million according to the 2011 census.

wish to use religion for vested interests or to persecute individuals on the ground of their religion or belief. While persecution, violence or discrimination based on religion or belief need to be sanctioned by law, the Special Rapporteur would like to caution against excessive or vague legislation on religious issues which could create tensions and problems instead of solving them.”<sup>3</sup>

23. The laws are ambiguous, and worded in a way that presumes individuals are incapable of making their own informed decisions regarding matters of faith. These laws contravene constitutional principles of freedom of religion or belief; and the state’s silence on the behaviour of those promoting Hindutva has encouraged further abuse of the laws.
- 24. Recommendation: India should urge states with anti-conversion laws to repeal these laws or amend them to conform with internationally recognised human rights standards.**

## CIVIL SOCIETY AND HUMAN RIGHTS DEFENDERS

25. India’s Intelligence Bureau (under the Ministry of Home Affairs) published a report in June 2014 alleging that ‘a significant number of Indian Non-Governmental Organisations (NGOs) have been noticed to be using people centric issues to create an environment which lends itself to stalling development projects’. The report mentioned several campaigns targeting the government on economic and development issues.
26. There are significant concerns that human rights defenders and NGOs, and foreign organisations which provide them with funding, are becoming targets for state repression. This is exacerbated by nationalist groups who are calling on the government to curb the work of foreign NGOs in the country, claiming that foreign involvement is not conducive for India’s development.
27. Sweeping measures to clamp down on NGOs receiving foreign funding have undermined the work of civil society. Following the Intelligence Bureau’s report, the Ministry of Home Affairs barred several NGOs and human right activists with international links from receiving foreign funds, by suspending their licences for six months and freezing their bank accounts.
28. The Foreign Contribution (Regulation) Act (FCRA) 2010 restricts the work of human rights defenders, as do income tax regulations. The US government has expressed its concerns over the crackdown on the activities of both local and international NGOs using the FCRA. Three UN human rights experts – the Special Rapporteur on Human Rights Defenders, Michael Frost; the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai; and the Special Rapporteur on Freedom of Expression, David Kaye – have recently called on India to repeal the FCRA, as it is increasingly being used to obstruct civil society.
29. All NGOs receiving external funds are required by law to register<sup>4</sup> and submit periodic reports<sup>5</sup> of their activities to the Ministry of Home Affairs, under Section 12(4)(f) of the

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<sup>3</sup> Paragraph 50, UNGA (2009), Report of the Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, Human Rights Council Tenth Session, Agenda item 3 – Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Right of Development, January 2009

<sup>4</sup> Chapter IV Foreign Contributions (Regulations) Act (FCRA) 2010

FCRA. Where accepting donations is considered to prejudicially affect the harmony of religious, racial, social, linguistic, regional groups, castes or communities, or where it is considered to be against the public interest, foreign contributions will be withheld. In addition to the FCRA, the Finance Bill 2014 brought in a series of amendments to sections of the Income Tax Act 1961, covering tax exemption for NGOs, trusts and charitable institutions. These amendments give sweeping powers to the government to withdraw tax benefits or revoke these organisations' registration status. Moreover, the amendment is vague, with no clear definitions of the terms 'benefit of general public' or 'prohibited mode'.

30. In April 2016, an analysis by the United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, Maina Kiai, showed that the FCRA is not in conformity with international law principles and standards.

**31. Recommendation: India must ensure human rights defenders and NGOs have a safe environment in which to operate, one which is based on a national framework adequately supported by the appropriate legislative and regulatory texts. India should also provide more effective protection for human rights defenders, by removing the legal obstacles and societal repression undermining their legitimate activities to promote and protect human rights.**

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<sup>5</sup> *ibid.*