

# POLICY BRIEF



## India

### Widespread persecution of minority religions

**India is the world's second most populous country and one of the world's fastest growing economies.**

According to the Indian Constitution, India is a secular state; article 25 of the Constitution recognizes the right to all persons to be “entitled to freedom of conscience and the right to freely profess, practice and propagate religion”.<sup>1</sup> The Constitution also recognizes the right of minorities to keep their culture and religion, providing non-discrimination clauses in Articles 29 and 30.<sup>2</sup>

72.5% of Indians practice Hinduism, constituting the major religious presence. Since the 1990s, Hindu extremists have gained momentum propagating the narrative that true Indians belong to an Indic faith, that Muslims and Christians are foreigners, and that India become a Hindu theocracy. The

second largest religion in India is Islam (14.4% of the population), followed by Christianity (4.8%).<sup>3</sup>

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#### The nature of the problem

Though religion-based violence has existed for years, evidence suggests Hindu extremists have created an environment of hate and intolerance toward minority

<sup>1</sup> “The Constitution of India”, Art. 25. Available at: <https://indiankanoon.org/doc/237570/>.

<sup>2</sup> “We’re Indians too: An analysis of escalating human rights violations against religious minority communities in India”, *Open Doors*, January 2019, pp. 8.

<sup>3</sup> “India: Country Dossier”, *World Watch Research, Open Doors*, January 2019. Available at: <http://opendoorsanalytical.org/wp-content/uploads/2019/01/India-WWR-COUNTRY-DOSSIER-January-2019-update.pdf> (password: freedom).

religions in the recent years, primarily against Christians and Muslims. This environment has seen an escalation of violence, social ostracism, property destruction, hate speech, disruption and condemnation of peaceful non-Hindu religious activities, and false accusations of “conversion” activities.<sup>4</sup>

## Freedom of religion laws

Often called Anti-conversion laws, currently exist in eight states: Odisha, Madhya Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Uttarakhand, Arunachal Pradesh (although here the law has not yet been formally implemented), and Chhattisgarh, and contribute to the corrosion of the right to freedom of religion or belief because of their extensive misuse, vague terms, and lack of clarity in proper enforcement.<sup>5</sup> The alleged purpose of the laws is to prohibit conversions by force, fraud or inducement, but the effect is that civilians and police officers often misuse the laws and use them to restrict the religious freedom of individuals from minority religions, especially Christians and Muslims.

## Extremists see these laws as a permit to use violence against religious minorities

Law enforcement officers are regularly misinterpreting Anti-conversion laws and sections of the Indian Penal Code, especially but not exclusively sections 153A

and 295A, often arresting or charging non-Hindu faith adherents for conducting constitutionally protected religious ceremonies.<sup>6</sup> Common prayer meetings and religious ceremonies are disrupted under the premises of being a conversion ceremony for non-Hindus, and faith leaders are arrested and charged for engaging in conversion activities even in states where there are no anti-conversion laws, by simply appealing to specific sections of the Penal Code to support their charges.<sup>7</sup> Extremists see these laws as a permit to use violence against religious minorities.<sup>8</sup> Furthermore, these laws are applied discriminatorily against minorities while often not applied to conversion activities of the majority, for example of Hindu groups seeking to convert individuals to Hinduism through ceremonies often involving coercion. Hindu extremists’ use of force, fraud, or inducement to convert individuals to Hinduism appear exempt from Anti-conversion laws, either by police unwillingness for its equal application, or because explicitly excluded.<sup>9</sup>

## Violations against Christian and Muslim Dalits and Minority Faith Adherents from Tribal Areas

Article 17 of the Indian Constitution abolishes untouchability and outlaws caste-based discrimination, reinforced by Article 15, which explicitly prohibits discrimination on the basis of religion, race, caste, sex, or place of birth.<sup>10</sup> However, the caste system is

<sup>4</sup> “We’re Indians too: An analysis of escalating human rights violations against religious minority communities in India”, *Ibid.*, pp. 3.

<sup>5</sup> In Rajasthan the State’s Parliament also passed an Anti-conversion law in 2006, but the State’s governor never signed off the legislation, and as of today the law is not enforced in this state. If implemented, the law would be one of the most problematic because it expressly exempts “reconversion” to Hinduism. See “State anti-conversion Laws in India”, *Library of Congress*, available at: <https://www.loc.gov/law/help/anti-conversion-laws/india.php>.

<sup>6</sup> *Ibid.*, pp. 19.

<sup>7</sup> For instance, a Pastor in Uttar Pradesh was beaten up by Hindu nationalists and then arrested by the police and charged under Section 151 of the Penal Code. Uttar Pradesh does not have an Anti-conversion law in force, but still minority religions followers can be accused and mistreated for ‘illegally’ converting others. See: <https://www.worldwatchmonitor.org/coe/indian-pastor-beaten-up-then-detained-after-11-hindus-convert-to-christianity/>.

<sup>8</sup> M. G., Fischer, “Anti-conversion Laws and the International Response”, *ADF International*, 2018, pp. 9-26.

<sup>9</sup> “United States Commission on International Religious Freedom: 2018 Annual Report”, *USCIRF*, April 2018, pp. 165. Available at: <https://www.uscifr.gov/sites/default/files/2018USCIRFAR.pdf>. See also “State anti-conversion Laws in India”, *Library of Congress*, available at: <https://www.loc.gov/law/help/anti-conversion-laws/india.php>.

<sup>10</sup> “The Constitution of India”, Art. 15 and 17. Available at: <https://indiankanoon.org/doc/237570/>.



Photo: Rural farmer Mohan and his family had to flee their village after village leaders sent a mob to destroy their home on hearing of their conversion to Christianity.





Photo: Persecuted Christian women from remote Indian villages are provided with direction and resources to come together to establish a cafeteria business.

deeply ingrained in the Indian society, hence caste categories are legally recognized to implement a form of affirmative action called reservations: a quota-based system that classifies individuals and communities as “Scheduled Castes” provided by a Presidential Order of 1950.<sup>11</sup> 15% of all places in educational institutions, as well as jobs, are reserved for the Scheduled Castes. Scheduled Castes include only Hindus, Sikhs and Buddhists, and excludes Dalits – the lower caste in the Hindu social system – belonging to other religions and Hindu Dalits who convert to another religion. Numerous recommendations from different commissions within the Indian Government have asked to wipe all references of “faith” from the reservations system, but until now these recommendations have not been implemented.<sup>12</sup> A Constitutional provision providing a 10% general reservation in government jobs and education to economically weaker sections – not based on castes – of the society has been passed by the Indian Parliament and came into force on January 14, 2019.<sup>3</sup> However, this

provision doesn’t neutralize the lack of special protection for Christian and Muslim Dalits as they face a double vulnerability on the basis of both their social status and their faith.

The Panchayats [Extension of Scheduled Areas] (PESA) Act of 1996 gives powers of self-governance to traditional village committees, “Gram Sabha”, over people living in “Scheduled Areas” of India, whose responsibility is to preserve the traditions, customs and identity of their community. This law is key to the preservation of traditional minority cultures living in India, but has been abused to target individuals from religious minorities who have converted from Hinduism. This provision has been used to prevent individuals not belonging to the mainstream religion from exercising their freedom of religion or belief, for example by building places of worship, practicing their religion, or just residing in that village.<sup>14</sup>

<sup>11</sup> Clause 3 of the 1050 Order states: : “Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu [the Sikh, or the Buddhist] religion shall be deemed to be a member of a Scheduled Caste.” “Constitutional and Legal challenges faced by religious minorities in India”, U.S. Commission on International Religious Freedom, February 2017. Available at: <https://www.uscifr.gov/sites/default/files/Constitutional%20and%20Legal%20Challenges%20Faced%20by%20Religious%20Minorities%20in%20India.pdf>

<sup>12</sup> “We’re Indians too: An analysis of escalating human rights violations against religious minority communities in India”, *Ibid.*, pp. 26.

<sup>13</sup> The Constitution (One Hundred and Third Amendment) Act, 2019, 12th January 2019. Available at: <http://egazette.nic.in/WriteReadData/2019/195175.pdf>.

<sup>14</sup> “We’re Indians too: An analysis of escalating human rights violations against religious minority communities in India”, *Ibid.*, pp. 25.

## To ensure the respect of fundamental rights of all Indians, particularly Christians and other minority religions, Open Doors recommends:

**1** The **International Community** should consider **religious freedom and human rights** a core and essential element of every trade, aid, and diplomatic relations with India.

not constitute criminal violations of above-mentioned sections of the Penal Code, and lay out a standard of evidence required before the arrest or charge under these provisions.

**2** To prevent the currently extensive misuse of the **“Anti-conversion laws”** in the eight afore-mentioned states and the misinterpretation of specific sections of the **Indian Penal Code**, the International Community should:

- Expand interactions and contact with parliamentarians and state level officials where such laws exist, and encourage local governments to repeal such laws, or alternatively, reform them to: (1) Narrowly define terms such as “force”, “fraud”, “inducement” and “allurement” and what is meant by “improper conversion”; (2) Reform the laws in a way that it applies equally to all religions; (3) Create a legal deterrence mechanism within the laws to prevent and punish false accusations of “improper conversions”;
- Consider how to offer training support to the states where such laws exist, to ensure that law enforcement officers and judges are properly interpreting the laws with respect to the rights recognized in the Constitution of India, and act in accordance with the correct interpretation of the law, human rights, and religious freedom standards;
- Call the Indian Government to clarify that the peaceful exercise of constitutionally protected rights – including the right to assembly, to profess and practice one’s religion – does

**3** To ensure equal opportunities and non-discrimination of **Dalit Christians and Muslims**, the International Community should:

- Urge the Indian Government to amend the classification for Dalits as defined in the Constitution (Scheduled Castes) Order 1950, removing all religious references to its application in a way that it applies equally to all faiths, including those who change their faith.

**4** To prevent the misuse of the **PESA Law** and the subsequent severe discrimination and persecution of religious minorities from tribal areas, the International Community should:

- Encourage the Indian Government to ensure that the law is not misused to target people practicing non-Hindu religions. Strict action should be initiated against members of the Gram Sabhas acting in an unconstitutional manner, including forcing religious minorities to leave the community or preventing them from exercising their constitutionally protected rights and freedoms.

Any questions? Please email [advocacy@od.org](mailto:advocacy@od.org)