

POLICY BRIEF



India

Widespread violence and discrimination against 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".¹ The Constitution also recognizes the right of minorities to keep their culture and religion, providing non-discrimination clauses in Articles 29 and 30.²

72.5% of Indians practice Hinduism, constituting the major religious presence. Since the 1990s, Hindutva 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%).³ Though religion-based violence has existed for years, evidence suggests Hindutva extremists have created an environment of hate and intolerance toward minority religions in the recent years, primarily against Christians and Muslims. The Union government led by the Bharatiya Janata Party (BJP) has tightened its grip on civil society and made changes to the Foreign

Contribution Regulation Act, 2020 (FCRA) which includes stricter regulations for the inflow of foreign funds especially to religious organizations.⁴ FCRA accounts of 2257 religious-nature NGOs were no longer considered valid by the Indian government in January 2022.⁵

The escalating level of violence and discrimination.

There has been 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.⁶ Mob violence against Christians where victims report severe injuries and often death, as well as property looting and destruction, are concerning on the rise. Despite the significant increase of episodes of violence reported by Open Doors and other organizations, the authorities have not taken any concrete steps to address these violations, fostering a climate of impunity for the perpetrators and creating an environment where religious minorities live in fear of further violence. On 31 December 2020, Open Doors reported that a pregnant woman lost her baby following a violent mob in a village in the Barwani District,

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

² "We're Indians too: An analysis of escalating human rights violations against religious minority communities in India", *Open Doors*, January 2019, pp. 8.

³ "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).

⁴ US Commission on International Religious Freedom, Annual Report 2020, pp 22. Available at <https://www.uscifr.gov/sites/default/files/2021-04/2021%20Annual%20Report.pdf>.

⁵ FCRA overhaul: Major blow for Christian NGOs; 70% religious NGOs 'deemed to have ceased' aligned to Christian programmes, January 2022. Available at <https://thechristianuniverse.com/articles/fcra-overhaul-major-blow-for-christian-ngos-70-religious-ngos-deemed-to-have-ceased-aligned-to-christian-programmes->.

⁶ "We're Indians too: An analysis of escalating human rights violations against religious minority communities in India", *Ibid.*, pp. 3

Madhya Pradesh. On that day, members of the local church were organising a prayer meeting when they were attacked by a group of 35 individuals, who started beating the group of Christians while shouting insults against them and their faith. One of the victims of the beatings, Leela, was 8 months pregnant, and lost her child after going into labour while the mob was beating her.⁷ In 2021, there were 486 reported cases of violence against Christians in India.⁸ Many experts working with minority groups in India are of the opinion that this number is just the tip of the iceberg since reporting a crime in India is a challenge in itself.⁹ Social boycott and expulsion from villages for Christians has increased manifold. Hindutva extremists instigate villagers to prohibit Christians from using community resources like tube-wells, water wells, etc. and discourage them from providing any jobs to Christians in the village.

Freedom of religion laws

Often called anti-conversion laws, these laws currently exist in eleven states: Odisha, Madhya Pradesh, Jharkhand, Gujarat, Himachal Pradesh, Uttarakhand, Arunachal Pradesh (although here the law has not yet been formally implemented), Chhattisgarh, Uttar Pradesh, Karnataka and Haryana 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.¹⁰ 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.

Law enforcement officers regularly misinterpret anti-conversion laws and sections of the Indian Penal Code (IPC), especially but not exclusively sections 153A and 295A, often arresting or charging non-Hindu faith

adherents for conducting constitutionally protected religious ceremonies.¹¹ 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 IPC to support their charges.¹² Hindutva extremists see these laws as a permit to use violence against religious minorities.¹³ 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. Hindutva 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.¹⁴

Amendments made to the Himachal Pradesh Freedom of Religion Act (2006) in 2019 has increased the quantum of punishment and added new provisions.¹⁵ One of these provisions which includes penalizing a person who failed to give due notice before converting to another religion was earlier struck down by the High Court of Himachal Pradesh.¹⁶ Treading this path, the states of Madhya Pradesh and Gujarat have also amended their respective anti-conversion laws making all the offences cognizable and non-bailable. The quantum of punishment and fine to be levied for such offences has been increased. The burden of proof under these laws is entirely on the person accused.¹⁷

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,

⁷ Destructive Lies, Research Commissioned by Open Doors and conducted by researchers at the London School of Economics and Political Science, 2021.

⁸ According to a report by the United Christian Forum in 2021, Christians in India experienced a 75% increase in incidents of violence from 2020.

Available at <https://theprint.in/india/486-incidents-of-violence-against-christians-in-2021-up-75-since-2020-christian-rights-body/792328/>.

⁹ Crime Victimisation and Safety Perception, Commonwealth Human Rights Initiative, April 2016. Available at https://www.humanrightsinitiative.org/download/1461662128Crime%20Victimisation_Soft%20File_distribution.pdf.

¹⁰ 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>.

¹¹ *Ibid*, pp. 19.

¹² 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/>.

¹³ M. G., Fischer, "Anti-conversion Laws and the International Response", *ADF International*, 2018, pp. 9-26.

¹⁴ "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>.

¹⁵ Himachal's new anti-conversion law has an old provision quashed by high court, September 2019, *Indian Express*. Available at <https://indianexpress.com/article/india/himachal-pradesh-new-anti-conversion-law-has-an-old-provision-quashed-by-high-court-6009421>.

¹⁶ HC partially strikes down Himachal's anti-conversion law, August 2012, *The Times of India*. Available at <https://timesofindia.indiatimes.com/india/hc-partially-strikes-down-himachals-anti-conversion-law/articleshow/16036603.cms>.

¹⁷ Gujarat Assembly Passes Freedom of Religion Amendment Bill 2021. Available at <https://www.lawyersclubindia.com/articles/gujarat-assembly-passes-freedom-of-religion-amendment-bill-2021-13830.asp>. Also see, The Madhya Pradesh Freedom of Religion Ordinance, 2020. Available at https://prsindia.org/files/bills_acts/bills_states/madhya-pradesh/2021/Summary_MP%20Freedom%20of%20Religion%20Ordinance,%202020.pdf.

reinforced by Article 15, which explicitly prohibits discrimination on the basis of religion, race, caste, sex, or place of birth.¹⁸ However, since caste system is 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 1950.¹⁹ 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 outcastes 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.²⁰ 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, 2019.²¹ 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. This exclusion has also extended to denial of political representation of Dalits belonging to minority religions such as Christianity and Islam.²²

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.²³

Escalation in inciting speech and online abuse against minorities by Hindutva groups

There has been a considerable increase in the number of inciting speech incidences in the last few years in India. Data from the National Crime Records Bureau of India shows²⁴ more than a four-fold increase in the number of cases registered for inciting speech between 2015 and 2020.²⁵ Hindutva extremist group leaders have openly urged their followers to attack minorities and their militant messages call for actions which are tantamount to genocide.²⁶ Many members from the BJP, some also holding government portfolios, have made public statements inciting communal disharmony through calls for violence against minorities.²⁷ The police have tuned their actions to the ideals of the Hindutva extremists and either join them or are reluctant to exercise their discretions against them thus promulgating a culture of impunity.²⁸ Social media is also used to humiliate and harass women from minority groups by auctioning them on mobile applications such as Sulli Deal and Bulli Bai without their knowledge or consent.²⁹

Freedom of assembly

There has been a steady increase in the frequency of attacks or closure of places of worship belonging to religious minorities in the last few years. Vigilantes belonging to the Hindutva extremist groups have physically assaulted worshippers in churches and mosques on several occasions across the country. In many instances these groups have been aided by the police and members of India’s governing party. Violent mobs have also attacked weddings³⁰ and funerals of people who have converted to Christianity.

¹⁸ “The Constitution of India”, Art. 15 and 17. Available at: <https://indiankanon.org/doc/237570/>.

¹⁹ Clause 3 of the 1950 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>.

²⁰ “We’re Indians too: An analysis of escalating human rights violations against religious minority communities in India”, *Ibid.*, pp. 26.

²¹ The Constitution (One Hundred and Third Amendment) Act, 2019, 12th January 2019. Available at: <http://egazette.nic.in/WriteReadData/2019/195175.pdf>.

²² For 70 years, Dalits have been denied freedom of religion – through a presidential order, August 2020, Scroll.in. <https://scroll.in/article/970613/for-70-years-dalits-have-been-denied-freedom-of-religion-through-a-presidential-order>.

²³ “We’re Indians too: An analysis of escalating human rights violations against religious minority communities in India”, *Ibid.*, pp. 25.

²⁴ Crime in India Report, 2020. Available at <https://ncrb.gov.in/sites/default/files/CII%202020%20Volume%201.pdf>

²⁵ The number of cases registered under sections 153A & 153AA (i.e. promoting enmity between groups) of the Indian Penal Code, 1860. Available at <https://factly.in/data-more-than-a-four-fold-increase-in-the-number-of-cases-registered-for-hate-speech-between-2015-2020/>.

²⁶ As Officials Look Away, Hate Speech in India Nears Dangerous Levels, New York Times, February 2022. Available at <https://www.nytimes.com/2022/02/08/world/asia/india-hate-speech-muslims.html>.

²⁷ BJP Tops India’s ‘VIP’ Hate Pandemic, January 2022. Available at <https://www.ndtv.com/india-news/bjp-tops-indias-vip-hate-pandemic-ndtv-finds-2703827>.

²⁸ The Crime Vanishes: Mob Lynching, Hate Crime and Police Discretion in India, Bhat, Bajaj and Kumar, 11(1) Jindal Global Law Review (2020).

²⁹ Bulli Bai: Sulli Deals 2.0? All You Need To Know About The Online ‘Auction’ Of Muslim Women, Outlook India, January 2022. Available at <https://www.outlookindia.com/website/story/india-news-bulli-bai-sulli-deals-20-all-you-need-to-know-about-the-online-auction-of-muslim-women/408040>.

³⁰ Available at Christianity crackdown: Wedding party attacked by mob ‘with rods and sticks’ | World | News | Express.co.uk

Recommendations:

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.

2

The Indian Government as well as state governments and local government officials should take proactive steps to address the environment of hate, intolerance, inciting speech and subsequent violence against religious minorities by:

- Committing to promptly condemn any act of violence and discrimination against religious minority adherents including such acts carried out by public officials
- Committing to take appropriate legal action against perpetrators of violence and discrimination to deter further violations of inherent rights and prevent impunity.

3

To prevent the current extensive misuse of the “Anti-conversion laws” in the eleven aforementioned 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 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.

4

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.

5

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.

6

To ensure that the problem of ‘inciting speech’ is tackled in a way that complies with the right to freedom of expression, the Indian Government should:

- Revise all Indian legislations to ensure compliance with international human rights standards applicable to inciting speech. The advocacy of discriminatory hatred that constitutes incitement to hostility, discrimination, or violence should be prohibited in line with Arts. 19(3) and 20(2) of the ICCPR.