

## Universal Periodic Review – 13<sup>th</sup> Session

### CSW – Stakeholder Submission

### INDIA

#### Introduction

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1. Christian Solidarity Worldwide (CSW), a human rights NGO specialising in freedom of religion or belief (FORB) for all people, wishes to draw attention to India's domestic human rights situation over the period 2007-2011 with respect to its international obligations.
2. CSW wishes to focus specifically on the right to FORB. Although India has a generally strong legislative framework protecting this right, there are some important exceptions to this. Communal violence affecting religious minorities is another significant problem, requiring a comprehensive solution.

#### Scope of International Obligations

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3. India is a state party to several international human rights treaties. Among others, it has acceded to the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has ratified the International Convention on the Elimination of Racial Discrimination (ICERD).
4. **Recommendation: India should be commended for its commitment to the international human rights framework, but should ensure that it meets its reporting responsibilities in a timely fashion and engages with the full range of recommendations made by treaty bodies.**

#### Constitutional and Legislative Framework

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5. The Indian Constitution and federal legislation generally provide for the right to FORB, although there are some important exceptions. Firstly, the government has created a set of remedial measures to address the social, political and economic disadvantages faced by Dalits and adivasis. These include a system of quotas (reservations) in public sector education and employment, and a law designed to protect them from the particular forms of violence, humiliation and exploitation which they face. However, the designation of Scheduled Castes (SCs), the legal category for Dalits eligible for these measures, is linked to religious affiliation: SCs include only Hindus, Sikhs and Buddhists. Dalits who adopt other religions, usually Christianity or Islam, lose their SC status and consequently their eligibility to access benefits available to Dalits of a different religious background.
6. There is no equivalent religious element to the classification of adivasis as Scheduled Tribes (STs), although often in adivasi-majority areas, local officials deny to non-Hindu STs their rightful entitlements.
7. The justification for the SC classification is that caste is not practised within Muslim or Christian communities, but there is evidence to the contrary and, more importantly, Muslim or Christian Dalits are still regarded as Dalits by wider society. This classification effectively imposes penalties upon those adopting Christianity and Islam. In practice, beneficiaries of reservations often conceal their religious affiliation, afraid of losing their jobs. Acts of violence against Dalit Christians or Dalit Muslims cannot be prosecuted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. Additionally, Dalit Christians and Dalit Muslims were not eligible to be counted as

Dalits in the 2011 census count of caste, religion and poverty, which will provide disaggregated data relevant to tackling social exclusion.

8. This configuration is being challenged in the Supreme Court. In response to the court's request for an opinion, the government appointed the National Commission for Religious and Linguistic Minorities (NCRLM) to undertake a study and issue a recommendation. In May 2007, the NCRLM recommended that SC status should no longer be linked to religious identity. The National Commission for Scheduled Castes (NCSC) and the National Commission for Minorities (NCM) have issued recommendations to the same effect.<sup>1</sup> The Supreme Court case continues to await the response of the government, and has been repeatedly adjourned. The NCRLM recommendations have been echoed by the UN Special Rapporteur on freedom of religion or belief (FORB)<sup>2</sup> and the UN Committee on the Elimination of Racial Discrimination (CERD)<sup>3</sup>, thereby creating an overwhelmingly strong mandate.
9. Secondly, several states have passed legislation criminalising the act of one person converting another by means of "force", "fraud" or "inducement"/"allurement" and imposing obligations on persons involved in conversions. Such "anti-conversion laws" are in force in Orissa, Madhya Pradesh, Chhattisgarh, Himachal Pradesh and Gujarat states. They exist on the statute books but have not been implemented in Arunachal Pradesh and Rajasthan states. Penal provisions are disproportionately severe in the more recent laws, exceeding even those for causing death by negligence.
10. The laws are problematic for several reasons:
  - There is no need for them: coercive techniques used for conversions can be addressed under existing provisions in the Indian Penal Code (IPC), such as sections 295A or 298.<sup>4</sup>
  - Their vague definitions place legitimate and peaceful religious activities in a position of legal ambiguity, at best. This applies to charitable services, education and any activities which involve the possibility of conversions. Each law includes in the definition of "allurement"/"inducement", the offer of "any gift or gratification". The definition of "force" includes "a threat of divine displeasure", which could conceivably include a doctrinal statement.
  - They have a damaging normative effect on religious minorities: perpetrators of communal violence against Christians in states both with and without anti-conversion legislation often seek to give moral justification to their actions through accusations that the victims were carrying out conversions. The Special Rapporteur on FORB reported being "deeply concerned that laws and bills on religious conversion in several Indian states are being used to vilify Christians and Muslims"<sup>5</sup> and established that "such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them".<sup>6</sup>
  - They violate the freedom to change religion, enshrined in ICCPR article 18 (and as interpreted by UN Human Rights Committee General Comment 22, clause 5). The Special Rapporteur on FORB stated that the rights to adopt and change religion "have an absolute character and are not

<sup>1</sup> NCM, 'Dalits in the Muslim and Christian Communities', <http://ncm.nic.in/pdf/report%20dalit%20%20reservation.pdf>

<sup>2</sup> A/HRC/10/8/Add.3, paragraph 71

<sup>3</sup> CERD/C/IND/CO/19, paragraph 21

<sup>4</sup> Commenting on a proposal for a similar law in Sri Lanka in 2005, the Special Rapporteur on FORB stated that "cases of alleged 'unethical' conversion should be addressed on a case-by-case basis, examining the context and circumstances in each individual situation and dealt with in accordance with in accordance with the common civil and criminal legislation." 'United Nations General Assembly: Human rights questions: human rights questions including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms', A/60/399, 30 September 2005, paragraph 68

<sup>5</sup> A/HRC/10/8/Add.3, paragraph 47

<sup>6</sup> A/HRC/10/8/Add.3, paragraph 50

subject to any limitation whatsoever”.<sup>7</sup> The Gujarat law requires those “performing” or participating in any “ceremony” for conversion to seek prior permission; the law in Himachal Pradesh requires a person to notify the district magistrate of his/her intention to convert, and the magistrate to enquire into the matter. These requirements, combined with social pressures, the political influence of extremist Hindu nationalist groups, the hostility of many authorities to conversions and the realities of the hierarchical caste system, mean that potential converts often face practically insurmountable obstacles to change their religion. The extent of this has been confirmed by testimony heard consistently by CSW in several states.

- They violate the right to propagate religion, which the UN Human Rights Committee has held to be part of the right to manifest religion. The Special Rapporteur on FORB has reiterated the view of her predecessor, finding “constitutional provisions prohibiting proselytism to be inconsistent with the 1981 Declaration [on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief]”.<sup>8</sup> She also stated that “any generalized State limitation (e.g. by law) conceived to protect ‘others’ freedom of religion and belief by limiting the rights of others to conduct missionary activities should be avoided”.<sup>9</sup> She noted that “article 19 of the ICCPR ... is formulated in a way that also covers missionary activities” and that, “The Human Rights Committee’s constant jurisprudence has deemed the protection afforded by article 19 extremely strong”.<sup>10</sup>

11. The Special Rapporteur on FORB recommended that these laws “should be reconsidered since they raise serious human rights concerns”.<sup>11</sup> There is no evidence that India has engaged with this recommendation, and since its first review under the UPR, the state government of Gujarat has formally implemented its anti-conversion law.
12. More positively, the government has made steps towards introducing a law to prevent, control and deal with the aftermath of communal violence, tailored to the particular contingencies of such episodes. Although the test of such legislation will be its implementation, the concept is to be welcomed. A bill was introduced on 26 November 2005, which underwent a series of revisions before being presented to the Rajya Sabha as the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2009. The substance of this bill was heavily criticised by civil society groups, and the Special Rapporteur on FORB recommended that the government should take into account the concerns of religious minorities in this legislation.<sup>12</sup> The government took these concerns seriously, and the National Advisory Council, chaired by Indian National Congress President Sonia Gandhi, established a working group to review the bill. On 14 July 2010, the working group established an advisory group and a drafting committee to develop a new draft bill. The outcome of this process was a new draft, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011. A further civil society consultation yielded criticism of the new draft on several points, most of which have been addressed. The draft has yet to pass through the legislative process before it can become law. However, such a law has potential to add positively to Indian legislation by addressing the specific demands of anti-minority violence, and it could provide a useful model to other countries in the region confronting similar problems.
13. **Recommendation: India should adopt the recommendations of its NCRLM and other bodies and of the Special Rapporteur on FORB<sup>13</sup> and CERD,<sup>14</sup> that religion should no longer be used as a criterion in determining eligibility for SC membership.**

<sup>7</sup> A/HRC/10/8/Add.3, paragraph 51

<sup>8</sup> A/60/399, paragraph 60

<sup>9</sup> A/60/399, paragraph 62

<sup>10</sup> A/60/399, paragraph 61

<sup>11</sup> A/HRC/10/8/Add.3, paragraph 70

<sup>12</sup> A/HRC/10/8/Add.3, paragraph 67

<sup>13</sup> A/HRC/10/8/Add.3, paragraph 71

14. India should repeal anti-conversion legislation currently in force in Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh states, and introduced but not implemented in Arunachal Pradesh and Rajasthan states. This would satisfy the recommendation of the Special Rapporteur on FORB.<sup>15</sup> India should ensure that any instances of coercive behaviour in the manifestation of religion should be prosecuted instead under the provisions of the IPC.
15. During the interactive dialogue in India's first review under the UPR, the United Kingdom asked for further information on such anti-conversion legislation. India should provide such information, including by engaging with the substance of criticisms of such legislation made by the Special Rapporteur on FORB.
16. India is commended for its attempt to pass legislation dealing with communal violence, and should be encouraged to see this process through. India should ensure any such law is implemented by officials at all levels throughout the country.

#### Interaction with International Human Rights Mechanisms

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17. The Special Rapporteur on FORB visited India in 2008 and produced a detailed report.<sup>16</sup> The Independent Expert on the situation of human rights defenders visited India in 2011 and issued a statement<sup>17</sup>, to be followed up with a final report to the UN Human Rights Council in March 2012. The statement commended India's legislative protections for human rights and bodies such as the National Human Rights Commission (NHRC), but expressed concern about "widespread deficiencies" in the implementation of such laws and the functioning of the NHRC and state-level counterparts. It noted that the effectiveness of the judiciary is "hampered by backlog and significant delays" and that the NHRC often failed to provide adequate redress because complaints were investigated by police, who are in many cases perpetrators of the alleged violations. It specifically raised concern about the situation of human rights defenders working on behalf of marginalised groups, including Dalits, adivasis and religious minorities.
18. There are currently no plans for any Special Procedures mandates to visit India. However, on 14 September 2011, India issued a standing invitation to Special Procedures wishing to visit the country, thereby implementing recommendations made by Latvia and Switzerland during India's first review under the UPR.
19. **Recommendation:** India is commended for its standing invitation to Special Procedures. However, it should ensure that recommendations made by Special Procedures, including the Special Rapporteur on FORB and the Independent Expert on the situation of human rights defenders, are implemented fully.
20. With respect to the report by the Special Rapporteur on FORB, India is commended for taking action to implement part of the recommendation in paragraph 67 by creating opportunities for religious minority representatives to engage with drafting the bill on communal violence. However, India should do more to implement the recommendations in paragraphs 60-74.

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<sup>14</sup> CERD/C/IND/CO/19, 5 May 2007, paragraph 21

<sup>15</sup> A/HRC/10/8/Add.3, paragraph 70

<sup>16</sup> A/HRC/10/8/Add.3

<sup>17</sup> "Statement of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, as she concludes her visit to India",  
<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10660&LangID=E>.

## Freedom of Thought, Conscience and Religion

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21. Although several areas of legislation infringe this right, most violations are carried out by non-state actors. Often they are carried out with impunity, or official responses are partisan, ineffective or extremely slow.
22. 'Communalism' is a significant challenge in India: this is an extremist mindset that seeks to aggravate tensions between members of different religious communities, and is the stimulus for targeted violence against religious minorities. Experts agree that communal violence is most likely to occur in a situation where several factors are present:
  - Antagonism between religious communities;
  - A specific event triggering emotional responses from members of different religious communities;
  - A sense among perpetrators and their communities that communal violence is justifiable;
  - A sense among perpetrators that police reactions to violence would be absent, ineffective or favourable towards them.
23. The majority of instances of communal violence have been perpetrated by Hindu extremists against Muslims, including the most notorious episode of recent years in Gujarat in 2002: 59 Hindu pilgrims were burnt to death on a train in Godhra, but this was followed by retaliatory riots in which 2,000 people, mostly Muslims, are estimated to have been killed. Allegations of complicity at the highest levels of the state government have not been addressed satisfactorily.
24. Communal violence has also been carried out on a significant scale against the Christian community, increasingly during recent years. Such attacks occur with greatest frequency in the state of Karnataka. Unlike anti-Muslim violence, this typically takes the form of frequent, individual attacks rather than mass violence, partly a consequence of the Christian community being mostly in small pockets rather than large concentrations. Targets of attacks include church leaders and the fabric and content of church meeting places. Absent, ineffective or partisan police responses reinforce a culture of impunity.
25. Campaigns by Hindu extremist organisations which demonise minorities are increasingly taking place in ST-majority areas across central India.
26. Extremist Hindu nationalists often use generalised and unsubstantiated accusations about conversions to spur anti-Christian violence. In November 2011, Vishwa Hindu Parishad (VHP) General Secretary, Praveen Togadia, stated in a public meeting that the Constitution should allow for those who convert Hindus to be beheaded. Public statements such as these, especially against the background of anti-conversion laws, are perceived by some to give moral legitimacy to communal violence.
27. In August-September 2008, there was a serious outbreak of communal violence against Christians in Orissa, which lasted nearly eight weeks, caused around 90 deaths and displaced over 50,000. Many of the murders were extremely brutal, and among those killed were Hindus opposing the rioters. Victims were forcibly subjected to ceremonies to convert them from Christianity to Hinduism; some have stated to CSW that these did not constitute true conversions, but were in violation of their right to FORB.
28. Local police responses were poor, but the federal government eventually dispatched a battalion of Central Reserve Police Force (CRPF) officers and established two fast-track courts. According to local sources, the conviction rate is higher than the national average at approximately 30 percent, but it is

misleading to assess the judicial process solely on the basis of convictions, as many complaints did not enter the legal system when police failed to register them properly. Statistics from 2009 indicated that of 3,223 complaints submitted, only 831 had been registered properly and would be subject to investigation, prosecution and trial. This amounts to a picture of widespread impunity.

29. Some official compensation has been delivered, but victims have consistently reported two failings in its delivery: firstly, there has been no independent assessment of damages on which to base the level of compensation; secondly, compensation intended for the reconstruction of homes was not complemented by any support for livelihoods, so many spent their first tranches of compensation on urgent basic needs rather than rebuilding and have not therefore been eligible for the second instalment. The root problem is the arbitrary nature of the official compensation scheme. Many have been dependent on private sources of funding for the rebuilding of homes, but 2,000-3,000 families were estimated to be without homes in early 2011.
30. Victims of a December 2007 episode of communal violence in the same area had been visited by the Special Rapporteur on FORB<sup>18</sup> and by the NCM. Detailed recommendations made by the latter were not implemented. The current situation in Orissa is peaceful only in the sense of an absence of violence; underlying causes have not been addressed satisfactorily.
31. **Recommendation: India should do more to reverse the culture of impunity for perpetrators of communal violence. The Special Rapporteur on FORB made such a recommendation.<sup>19</sup> This may require the provision of legal aid.**
32. **India should implement existing legal provisions to prevent the advocacy of religious hatred, incitement to religious violence and political exploitation of communal distinctions. The Special Rapporteur on FORB made such a recommendation.<sup>20</sup>**
33. **India should carry out further remedial measures to address the aftermath of communal violence, including by bringing perpetrators to justice and delivering an adequate level of compensation.**

<sup>18</sup> A/HRC/10/8/Add.3, paragraphs 18-19

<sup>19</sup> A/HRC/10/8/Add.3, paragraph 63.

<sup>20</sup> A/HRC/10/8/Add.3, paragraphs 64 and 69.