



India: Communalism in an election year

February 2014



“We are innocent victims and we are punished.
The perpetrators are not punished.”

Victim-survivor of communal violence in Kandhamal, Odisha State

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Executive Summary

As India approaches a general election, there is a significant level of trepidation among many, including religious minorities, about what the future might bring in terms of rising communalism and threats to freedom of religion or belief (FORB).

Current concerns around communalism, on which this briefing is focused, came to the fore again in September 2013 with an outbreak of violence targeting the Muslim community in Muzaffarnagar, Uttar Pradesh. The term 'communalism' connotes a mindset which construes relations between religious communities according to a zero-sum mentality and perceives conflict between them to be inevitable.

The most significant threat to pluralism in India derives from the extreme Hindu nationalist ideology known as Hindutva. Influential groups espousing Hindutva, known collectively as the Sangh Parivar, have propagated particular narratives which denigrate religious minorities, throwing into doubt their loyalty to the nation and status as true Indian citizens, and justifying violence and discrimination against them. Communalism is propagated variously through education, the media, and, crucially for 2014, electioneering.

The most visible outworking of communalism is the violence which it engenders against religious minorities. Communal violence often has a long genesis and significant after-effects. In spite of largely robust legislation, impunity is a recurrent factor in communal violence, often reflecting a level of complicity from the administration and deep systemic problems with the Indian Police Service. The lack of punishment provides no disincentive to the continuation of violence.

The impact of communalism continues to be seen in many parts of the country. This briefing highlights three geographical areas. In Kandhamal District, Odisha State, the fifth anniversary of traumatic anti-Christian violence in 2008 shows serious concerns still remain around community relations, the delivery of justice, and the rehabilitation of victims. Karnataka State has seen a serious pattern of communalisation

in recent years, and religious minorities continue to be targeted for violence and disinformation. Impunity is the norm. Among the adivasi (tribal) populations in southern Rajasthan State (as in Kandhamal in the years before 2008), Sangh Parivar groups have been particularly active in stoking communal tensions and targeting Christians in small-scale attacks. Vigilance is required to avert more serious outbreaks of violence in future.

Human rights defenders are an essential bulwark against violations of human rights, but many have experienced worsening harassment and intimidation. The way in which the Foreign Contribution (Regulation) Act of 2010 has been used to regulate and intimidate NGOs carrying out advocacy activities is a particular concern.

Various forms of legislation also play a role in underpinning communal tension and violence, and discrimination against minorities. Although India boasts an excellent constitution and a strong body of legislation providing for the right to FORB, there are some serious exceptions. Freedom of Religion Acts in several states violate key aspects of the right to FORB and contribute towards stigmatising religious minorities. Statutory discrimination against Dalits who are not Hindu, Buddhist, or Sikh compels many to conceal their religious convictions, while non-Hindu adivasis are increasingly denied their statutory rights by local officials. Blasphemy legislation subordinates freedom of expression to an imperative not to offend religious sentiments, and provides fertile ground to extremist groups.

However, the present government has also proposed two forms of legislation which, if enacted, could address key lacunae in the enjoyment of FORB across the country. Moves towards establishing an Equal Opportunity Commission and introducing a Prevention of Communal and Targeted Violence Bill both appear to have faltered, although the government should be encouraged to see them through.

Recommendations

In order to safeguard the right to FORB for all, it is recommended that India should implement all the recommendations of the former UN Special Rapporteur on freedom of religion or belief as given in the report of her 2008 visit to India.

In particular, India should:

1. Adopt and implement the recommendation of the NCRLM and other bodies, to delete Paragraph 3 of the Constitution (Scheduled Castes) Order 1950 and thereby end statutory discrimination against Dalits who are not Hindu, Buddhist, or Sikh;
2. Investigate and address widespread allegations that non-Hindu members of Scheduled Tribes are being denied their statutory benefits at the arbitrary determination of local officials;
3. Issue an advisory to state governments towards the repeal of Freedom of Religion Acts in Odisha, Madhya Pradesh, Chhattisgarh, Arunachal Pradesh, Gujarat, and Himachal Pradesh;
4. Work towards the reform of provisions against blasphemy in the Indian Penal Code, particularly Section 295A, in order to safeguard the right to freedom of opinion and expression;
5. Continue to work towards the establishment of an Equal Opportunity Commission;
6. Continue to work towards the introduction of a comprehensive framework to deal adequately with the contingencies of communal and targeted violence;
7. Develop a national standard for the delivery of reparations to victims of communal violence;
8. Implement the recommendations of the UN Special Rapporteur on the situation of human rights defenders as given in the report of her 2011 visit to India, particularly to establish an effective framework for the protection of human rights defenders across the country;
9. Reform the Foreign Contribution (Regulation) Act to introduce proper safeguards against arbitrary or politically-motivated curtailment of funding for NGOs;
10. Actively pursue reform of the Indian Police Service, in particular by introducing legislation to reduce political interference, establishing mechanisms to increase accountability, providing training on key human rights areas, and significantly improving working conditions;
11. Ensure that every state has an active commission for human rights and commission for minorities, and that members of each commission are appointed by transparent and non-partisan procedures;
12. Conduct a review of national human rights bodies in conjunction with civil society groups;
13. Promote awareness of the 2005 Press Council 'Norms of Journalistic Conduct' and promote compliance with them;
14. Address significant lacunae in the delivery of justice and compensation to victims of communal violence in Kandhamal District, Odisha State, as detailed in this briefing;
15. Ensure that victims of communal violence in Karnataka State are consistently able to access justice, and that perpetrators of violence are punished in accordance with the law;
16. Monitor the Sangh Parivar's activity among adivasi communities in central India, including southern Rajasthan, and ensure that incidents of violence and discrimination are punished in accordance with the law as a disincentive to the continued perpetuation of communal hostilities.

It is recommended that states and regional bodies should use appropriate means of dialogue to encourage India to implement these recommendations.

It is further recommended that states and regional bodies should extend support to human rights defenders, and should seek to carry out visits to locations in which communal violence has taken place and to implement projects to assist communities of victim-survivors.

Pluralism and communalism in India

“Indian secularism does not allow for the suppression of fanatics; this is taken as part of the religious picture.”

Senior police officer, Odisha State

As India approaches a general election with its cacophony of campaigning and media frenzy, the issues and concerns of many different communities will be hotly debated across the country. Communal politics are expected to play their part, with Hindu nationalist rhetoric on the rise, and there is a significant level of trepidation among many, including religious minorities, about what the future might bring.

India is a country of immense proportions, in which generalisations are dangerous. The religious diversity and vitality of the country perhaps surpasses that of any other in the world, and throughout India's long history, relations between religious communities have been characterised by both conflict and peaceful coexistence. Compulsions towards mutual respect and violent intolerance exist in parallel.

The objective of this briefing is to provide an insight into the state of freedom of religion or belief (FORB) in India in this election year. Following an introduction on the underlying issue of communalism, it assesses the solid foundations as well as the deficiencies in legislation, before focusing on three geographical areas meriting particular (albeit not exclusive) attention: Kandhamal in Odisha State, where deeply entrenched concerns remain five years after the largest outbreak of anti-Christian violence in the nation's history; Karnataka State, which has seen extensive communalisation and a rise in anti-minority violence during recent years; and adivasi (tribal) areas in southern Rajasthan State, where a growing and largely unnoticed campaign by Hindu extremist groups may yield greater hostilities against minorities in future.

Demographics

- According to the 2011 census, the total population of India was 1.21 billion, accounting for over 17% of the world's population.
- Scheduled Castes, the administrative category for Dalits, numbered just over 201 million, or 16% of India's population. Dalits are the group at the base of the hierarchical caste system, which continues to shape Indian society and societal attitudes to a large extent; and they face grievous patterns of discrimination, exploitation, and violence. Scheduled Tribes, or adivasis, numbered over 104 million.
- No data on religion has been made available from the 2011 census. The previous census, in 2001, showed Hindus to account for 80.5%, Muslims 13.4%, Christians 2.3%, Sikhs 1.9%, Buddhists 0.8%, Jains 0.4%, and others 0.6%. 0.1% reported no religion.
- Many adherents to non-Hindu religions, especially Buddhism, Christianity and Islam, are drawn from among Dalits, adivasis, and 'low' castes. In order to escape the statutory discrimination against Dalits who are not recorded as Hindu, Buddhist or Sikh, a significant number are likely to conceal their true religious affiliation. It is often among these marginalised communities that the most serious assaults on freedom of religion or belief occur.

India's vibrant civil society and media are often praised, and hailed as bulwarks against the worst violations of human rights. The praise is deserved, but it is also important to recognise the increasingly difficult circumstances under which civil society operates, and the sense of many human rights defenders that they are under threat. With regard to media freedom, Reporters Without Borders has ranked India 140th out of 180 countries in its [2014 World Press Freedom Index](#),¹ partly due to the killings of journalists highlighting human rights concerns. Protecting and strengthening advocacy for

¹ Reporters Without Borders, World Press Freedom Index 2014 <http://rsf.org/index2014/en-index2014.php>

human rights within India is a compelling imperative. Human rights defenders are an essential first line of defence in the struggle against communalism and in the promotion of FORB across India.

Muzaffarnagar : a tragedy and a warning

Current issues of communalism, on which this briefing is focused, came to the fore again in September 2013 with an outbreak of violence in Muzaffarnagar, Uttar Pradesh, which was covered extensively by human rights groups and the media in India. The violence was mostly carried out by the Jat community, a Hindu caste group, against the local Muslim population. According to official figures, 39 people were killed, six of them Jats and the remainder Muslims, and at least 25,000 were displaced, almost all Muslims. Local sources say the real figures may be significantly higher, with up to 53 deaths and 50,000 displaced.

A [fact-finding report](http://cpadelhi.org/papersreports/Muzaffarnagar%202013%20-%20Fact%20Finding%20Report%20I)² from the Delhi-based Centre for Policy Analysis found that the two communities used to live harmoniously together, but communal tensions between them were manufactured for political gain. It concluded that the state government failed at every stage of the violence: in prevention, control, and rehabilitation of the victims. The immediate trigger for violence was a confrontation between a Muslim man and two Hindu cousins on 27 August, which resulted in the deaths of all three men. Accounts of the incident differed, but it was capitalised upon by local politicians, Hindu extremist groups, and parts of the media, to claim Muslims posed an immediate threat. This claim was bolstered with a steady stream of disinformation. A few days later, on 7 September, members of the Jat community, many of them wielding weapons, gathered for a large meeting where anti-Muslim sentiments were stoked further. Fighting broke out between Jats and Muslims soon afterwards. It spread quickly and became increasingly one-sided against the Muslims, without being brought under

control. On 8 September the local administration imposed a curfew with the help of the army. Even at this stage, local media headlines reported 'Muslim terror' and 'Mass murder of Hindus by Muslims'.

One reason for the widespread attention paid to Muzaffarnagar was the way in which it altered the political calculus in that part of Uttar Pradesh, a bellwether state, to the advantage of particular parties. The forthcoming general election campaign, in which Bharatiya Janata Party (BJP) prime ministerial candidate and Hindu nationalist strongman Narendra Modi enjoys the limelight as India's most popular politician, could give rise to worsening communal tensions across many more areas of India. Mr Modi is stoutly unapologetic for the communal violence which engulfed Gujarat State in 2002 during the first months of his tenure as chief minister, in which 2,000 people, mostly Muslims, were killed. In 2013 Mr Modi, who continues to face allegations around his own role in the violence, infamously described his remorse in terms of a passenger sitting in a car which knocks over a puppy. Many in India are deeply concerned for what a possible Modi-led government could portend for FORB in the country.

Communalism and communal violence

The most significant threat to pluralism in India is the ideology known as Hindutva. This ideology is espoused by a body of organisations known collectively as the Sangh Parivar: its chief organ is the Rashtriya Swayamsevak Sangh (RSS), founded in 1925, which has a considerable reach throughout the cities, towns, and villages of India with its network of *pracharaks* (unmarried male activists) as well as schools and other institutions. The RSS has a number of subsidiary and associated organisations, including the Vishwa Hindu Parishad (VHP), the religious and cultural wing of the Sangh Parivar, which operates largely as an agency for grassroots mobilisation, and the Bajrang Dal, the youth wing of the VHP, which is often implicated in violence targeting religious minorities. Other branches of the Sangh Parivar include the Vanvasi Kalyan Ashram (VKA), established in 1952 to counter Christian

² Centre for Policy Analysis, 'Muzaffarnagar 2013: Violence by Political Design', 17 September 2013
<http://cpadelhi.org/papersreports/Muzaffarnagar%202013%20-%20Fact%20Finding%20Report%20I> 22 Jan 2014.docx

missionary activity among adivasis, and the Akhil Bharatiya Vidyarthi Parishad (ABVP), which operates among students. The BJP is the principal political wing of the Sangh Parivar.

Hindu and Muslim nationalisms grew in a symbiotic relationship in the context of the anti-colonial struggle. At the heart of the Hindu nationalist ideology is the concept of the 'Hindu *rashtra*', a term which encapsulates the essence of a Hindu nation, to the exclusion of non-Hindus. One of the early ideologues of Hindu nationalism was V.D. Savarkar, who coined the term 'Hindutva', which has come to encapsulate the ideology. Savarkar argued that Hindus saw India as a 'Holy-Land', whereas for Muslims or Christians India could never be more than a 'Father-Land' because their holy lands were far distant: 'Their mythology and Godmen, ideas and heroes are not the children of this soil...Their love is divided.'³ M.S. Golwalkar, another early ideologue and the second *sarsanghchalak* (supreme head) of the RSS, concluded, 'All those not belonging to the national i.e. Hindu Race, Religion, Culture and Language, naturally fall out of the pale of the real "National" life.'⁴

Hindutva was from the beginning propelled and shaped by fear. In 1909 U.N. Mukherjee published a book, *Hindus: A Dying Race*, in which he used census data and population projections to paint a stark picture of Hindus giving way to Muslims. The result was what P.K. Datta called a 'communal common sense' built around the myth that Hindus are in perpetual decline.⁵

Communalism in modern India is based upon a zero-sum mentality. The term 'communalism' bears a particular meaning in India which approximates to 'sectarianism' in some other contexts. In the classic definition given by Bipan Chandra, communalism is a mindset which perceives the 'secular' interests of a

religious community to be homogenous, and necessarily in conflict with other religious communities.⁶ In this paradigm, conflict between different religious communities is inevitable.

Communalism grows through what scholar Gyanendra Pandey has described as 'routine violence': 'There is a violence involved in the unrelenting construction of enemies of the nation, and in the concomitant denial of equal rights or respect to the latter.' He argues that the 'routinisation' of violence occurs not only in acts of aggression, nor even in the establishment of power structures, but 'also in the construction and naturalization of particular categories of thought, in history and in politics.'⁷

This propagation and entrenchment of particular categories of thought about religious minorities is a key strategy of Hindutva organisations. The loyalty of Muslims and Christians to the nation of India is cast into doubt. Narratives emerge around Muslims and terrorism, and around Christians and forcible conversions. Adivasis (indigenous people) are recast as *vanvasis* (forest people), a subtle change which makes it possible to suggest they are lapsed Hindus who migrated into forests to escape subjugation, and must now be reconnected to their religion.

Religious conversion is viewed asymmetrically in the Hindutva ecosystem: conversions away from Hinduism are dangerous and illegitimate, while conversions to Hinduism are not conversions at all but 'homecomings' or 're-conversions'. The Hindutva discourse around conversions casts Christians in particular as predators who force vulnerable people to adopt their (foreign) religion, and it leaves no space for interpreting a conversion as a positive choice. The discourse has evolved gradually, from emphasising the possibility that conversions can be brought about through force, to suggesting that conversions are by their very nature violent.⁸

³ V.D. Savarkar, *Hindutva: Who is a Hindu?*, Poona: S.R. Date, 2nd ed., 1942:92

⁴ M.S. Golwalkar, 'We or Our Nationhood Defined', in Christophe Jaffrelot, *Hindu Nationalism: A Reader*, Delhi: Princeton University Press, 2007:115-16

⁵ Pradip Kumar Datta, "'Dying Hindus": Production of Hindu Communal Common Sense in Early 20th Century Bengal', *Economic and Political Weekly* Volume 28, No. 25, June 1993:1305

⁶ Bipan Chandra, *Communalism in Modern India*, New Delhi: Vikas Publishing House, 1984:1-3

⁷ Gyanendra Pandey, *Routine Violence: Nations, Fragments, Histories*, New Delhi: Permanent Black, 2006:14-15

⁸ This idea was put forward by Swami Dayananda Saraswati in 1999.

Hindutva's deeply negative perception of conversions was again highlighted in a [recent article](#) on Swami Aseemanand, an extremist Hindu leader and former VKA activist on trial for his alleged role in a series of terrorist attacks.⁹ One of Mr Aseemanand's early influences was Hindu revivalist Swami Vivekananda, and according to the article, 'One particular line from Vivekananda dominated Aseemanand's reading: "Every man going out of the Hindu pale is not only a man less, but an enemy the more."' This motivated Mr Aseemanand to adopt a mission to counter Christian influence among adivasis; and this mission took an increasingly violent and coercive trajectory.

The spread of communalism occurs in a number of ways, including through education curricula, the media, and electioneering. Sangh Parivar organisations have targeted several particular areas in which networks of local *pracharaks* and schools use religious minorities as a foil to create assertive Hindu self-identification among rural populations. This is detailed in the case studies below on Odisha, Karnataka and southern Rajasthan.

The most visible outworking of India's communalism is the violence which it engenders against religious minorities. Echoing the National Commission for Minorities (NCM), the former UN Special Rapporteur on freedom of religion or belief stated after her 2008 visit to India that communal violence is most likely to occur in a situation in which the following conditions are found:¹⁰

- Longstanding antagonism along religious lines;
- A specific occurrence which triggers an emotional response among members of one religious community;
- A sense among perpetrators and the religious community to which they belong that communal violence is justifiable;
- A sense among perpetrators that the reaction of police to violence would be absent, partisan, or ineffective.

⁹ *The Caravan*, 'The Believer', 1 February 2014

<http://www.caravanmagazine.in/reportage/believer>

¹⁰ A/HRC/10/8/Add.3, 26 January 2009, Paragraph 31. The report may be accessed via the website of the OHCHR, <http://www.ohchr.org/EN/Pages/WelcomesPage.aspx>

The extent of communal violence across India can be difficult to determine due to poor or non-existent reporting of incidents in some areas, and wide discrepancies between official and unofficial figures. PRS Legislative Research, a think tank, released a [report](#) in 2011 citing conservative official figures about the scale of communal violence: from 2005 to 2009, 648 people were killed and 11,278 injured in 4,030 incidents.¹¹

The vast majority of communal violence in post-independence India has been perpetrated against Muslims. The most notorious incident in recent history occurred in Gujarat State in February 2002, when 59 Hindu activists were burnt to death on a train in Godhra. Massive retaliatory riots ensued in Ahmedabad and across the state, in which around 2,000 people, mostly Muslims, were killed. However, many more communities have been targeted. In 1984 approximately 3,000 Sikhs in Delhi were massacred after Prime Minister Indira Gandhi was murdered by her two Sikh bodyguards in retaliation for the military's 'Operation Blue Star' in Punjab State. The worst outbreak of violence against Christians occurred in Odisha State in 2008, although Christian communities, which are spread in small pockets throughout India, face frequent individual attacks in many parts of the country.

It is important to recognise that communal violence is not a naturally occurring phenomenon, but is perpetuated by vested interests, and sometimes facilitated by enabling legislation which legitimises the prejudices that lead to violence. Episodes of communal violence must be interpreted within their contexts: they often have a long genesis and significant after-effects.

In spite of largely robust legislation, impunity is a recurrent factor in communal violence, often reflecting a level of complicity from the administration. A senior Uttar Pradesh police officer, Dr V.N. Rai, is widely quoted as saying that if communal violence

¹¹ PRS Legislative Research, 'Vital Stats: Communal Violence in India', 15 June 2011

http://www.prsindia.org/administrator/uploads/general/1308201190_Vital%20Stats%20-%20Communal%20Violence%20in%20India%2014Jun11%20v2.pdf

continues beyond 48 hours, this can only be due to a level of official complicity.

There are deep structural problems involved here, with police overwhelmingly beholden to political authority as the relationship between the two remains largely unchanged since colonial times. The overall condition of the police system in India is highly concerning, with pervasive political interference, systemic corruption, understaffing, lack of training, and atrocious working conditions being among the most serious problems.¹² Police have a reputation across the country for being ineffective, partisan, and abusive, and the level of trust between police and the public is extremely low. Despite a series of recommendations, including from the Dharam Vira Commission in 1982, and a landmark Supreme Court ruling in 2006 that central and state governments must enact laws to reduce political interference in the police, comprehensive police reform has not been undertaken and continues to be a pressing unmet need for India.

The lack of punishment for perpetrating incidents of violence provides no disincentive to its continuation. Even when police take the side of the victims, inaction is commonplace. Sometimes 'compromises' are brokered between perpetrators and victims, which effectively exonerate perpetrators and take the place of justice. The UN Special Rapporteur noted in her 2009 report that 'the system of impunity emboldens forces of intolerance.'¹³

¹² Human Rights Watch published a report in 2009 detailing the key problems with the Indian police service: 'Broken System: Dysfunction, Abuse, and Impunity in the Indian Police'

<http://www.hrw.org/sites/default/files/reports/india0809web.pdf>

¹³ A/HRC/10/8/Add.3, Paragraph 30

FORB and the law: solid foundations and contradictions

India boasts an excellent constitution and a strong body of legislation providing for the right to FORB, banning discrimination based on religion, and protecting the rights of religious minorities. However, there are also some exceptions which seriously undermine FORB in the country.

Legal framework

OBLIGATIONS UNDER INTERNATIONAL LAW

India is a state party to several international human rights conventions. Among others, it has acceded to the International Covenant on Civil and Political Rights (ICCPR)¹⁴ and the International Covenant on Economic, Social and Cultural Rights (ICESCR),¹⁵ and has ratified the Convention on the Rights of the Child (CRC)¹⁶ and the International Convention on the Elimination of Racial Discrimination (ICERD).¹⁷

Article 18 of the ICCPR provides for the right to freedom of religion or belief:

- 1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching;*
- 2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice;*
- 3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others;*

¹⁴ Acceded 10 April 1979

¹⁵ Acceded 10 April 1979

¹⁶ Ratified 2 December 1992

¹⁷ Ratified 3 December 1968

4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

Article 27 of the ICCPR provides for the rights of persons belonging to minority religions:

In those states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

Article 2 of the CRC provides that all rights enunciated in the covenant must be exercised without discrimination on grounds of religion, Article 14 provides that 'States Parties shall respect the right of the child to freedom of thought, conscience and religion', and Article 30 extends to children belonging to religious minorities the right 'to profess and practise' their own religion.

CONSTITUTION

The constitution of India was introduced in 1950. Its 42nd amendment, passed in 1976, added the word 'secular' to the preamble, which now describes India as a 'sovereign socialist secular democratic republic'. The preamble also resolves to constitute 'liberty of thought, expression, belief, faith and worship'.

Article 15 prohibits discrimination, including on grounds of religion:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

Article 25(1) protects the right to FORB:

Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

Article 26 protects the freedom to manage religious affairs, including the right of every religious denomination 'to establish and maintain institutions for religious and charitable purposes', 'to manage its own affairs in matters of religion', and to own, acquire, and administer property. Article 27 provides that no tax proceeds shall go towards the promotion or maintenance of any particular religion. Article 30 provides for the right of minorities to establish and administer educational institutions.

Problematic areas of legislation

PRESIDENTIAL ORDER, 1950

Paragraph 3 of the Constitution (Scheduled Castes) Order 1950 creates statutory discrimination against Dalits who are not Hindu, Buddhist, or Sikh in the allocation of public sector benefits. This is subject to a long-running Supreme Court challenge, and successive government commissions and international human rights mechanisms have recommended a change in the law, but this has yet to be done.

The pervasive socio-economic discrimination and disadvantage experienced by Dalits and adivasis in India has been addressed through legislation in a number of ways. This includes a system of quotas (reservations) in public sector education, employment and welfare allocations, and a law designed to protect Dalits and adivasis from the particular forms of violence, exploitation, and humiliation which they face.¹⁸

Eligibility for these measures stems from membership of the [Scheduled Castes](#) or the

¹⁸ 'The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989', often abbreviated to the SC/ST (POA) Act

[Scheduled Tribes](#), which were designated in two presidential orders of 1950.¹⁹ However, the Scheduled Castes specifically only include Hindus, Sikhs, or Buddhists. Dalits who adopt other religions, usually Christianity or Islam, lose their status as Scheduled Castes and consequently their eligibility to access benefits available to Dalits of a different religious background.

According to Paragraph 3 of the presidential order relating to Scheduled Castes,

*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.*²⁰

This clause effectively imposes penalties on Dalits choosing to adopt a different religion, usually Christianity or Islam. In practice, beneficiaries of reservations often conceal their religious convictions, afraid of losing their jobs or homes. 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 counted as Scheduled Castes in the 2011 census count of caste, religion and poverty, which is to provide disaggregated data relevant to tackling social exclusion.

There is no mention of religious identity in the classification of Scheduled Tribes, although in practice, local authorities in some adivasi-majority areas are known to deny non-Hindu adivasis their rightful entitlements. These include land ownership rights, educational scholarships, access to public amenities, and Below Poverty Line (BPL) cards by which they are able to access welfare benefits. This problem has been confirmed repeatedly to CSW in the testimony of non-Hindu adivasis in different areas of the country.

¹⁹ The Constitution (Scheduled Castes) Order (<http://lawmin.nic.in/ld/subord/rule3a.htm>) and the Constitution (Scheduled Tribes) Order (<http://lawmin.nic.in/ld/subord/rule9a.htm>)

²⁰ The inclusion of Sikh and Buddhist religions was due to subsequent amendments.

The justification for Paragraph 3 is that caste is not practised within Muslim or Christian communities. However, Muslim or Christian Dalits are still regarded as Dalits by wider society, and there is considerable evidence of the practice of caste within the Christian community, established in several reports by government commissions. In 1955, the First Backward Classes Commission reported its findings from Kerala that:

We discovered with deep pain and sorrow that untouchability did obtain in the extreme south among Indian Christians, and Indian Christians were prepared in many places to assert that they were still guided by caste, not only in the matter of untouchability, but in social hierarchy of high and low. While the harijans²¹ amongst the Hindus, classified as Scheduled Castes, stand a fair chance of bettering their condition under the Indian Government's reservation policy, their Christian counterparts stand twice discriminated.

Similar conclusions were drawn in the Kumara Pillai Committee Report (1965), the Santhanam Committee (1970), the Chidambaram Report (1975), the Mandal Commission (1980), and the report of the High Power Panel on Minorities, Scheduled Castes, Scheduled Tribes and other weaker sections (1983).

The justifiability of Paragraph 3 of the presidential order is being challenged in a ten-year-old case in the Supreme Court.²² 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. The NCRLM delivered its [report](#) in May 2007, and recommended that Paragraph 3 be deleted and Scheduled Caste status no longer linked to religion:

²¹ *Harijan* is an archaic, now discredited, term for Dalits.

²² Writ Petition (Civil) No. 180 of 2004, filed by the Centre for Public Interest Litigation with Mr Franklin Caesar Thomas. This case has been combined with three other writ petitions from 2005 to 2006, two of which concern Dalit Christians and one of which concerns Dalit Muslims. The principle at stake is the same in each case.

*...Para 3 of the Constitution (Scheduled Castes) Order 1950 – which originally restricted the Scheduled Caste net only to Hindus and later opened it to Sikhs and Buddhists, thus still excluding from its purview the Muslims, Christians, Jains and Parsis, etc. – should be wholly deleted by appropriate action so as to completely de-link the Scheduled Caste status from religion and make the Scheduled Castes net fully religion-neutral like that of the Scheduled Tribes.*²³

The National Commission for Scheduled Castes (NCSC) and the NCM²⁴ have issued recommendations to the same effect.

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 belief²⁵ and the UN Committee on the Elimination of Racial Discrimination (CERD),²⁶ thereby creating an overwhelmingly strong mandate for the removal of Paragraph 3.

FREEDOM OF RELIGION ACTS

Several states have passed laws which criminalise the act of one person converting another by means of force, fraud, or inducement. The laws also impose obligations on persons involved in conversions. The justification for this form of legislation is to purge the use of coercion from religious persuasion in the interest of public order. However, it violates several key components of the right to FORB, and plays a role in undermining public order by stigmatising legitimate religious activities.

These laws have been enacted in Odisha (1967), Madhya Pradesh (1968), Chhattisgarh (1968),

Arunachal Pradesh (1978), Gujarat (2003), and Himachal Pradesh (2006). A similar law has been passed by the legislature but not signed into force in Rajasthan. Each law contains different nuances but all follow the same basic formula, which in the Odisha text is as follows:

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.

Each law also imposes procedural obligations upon the process of conversion, both upon the priest or person conducting the conversion (a notion which makes little sense in some religious systems), and upon the person changing their religion. The Gujarat law requires participants in any 'ceremony' for conversion to obtain the prior permission of the District Magistrate.

There are a number of serious legal objections against the Freedom of Religion Acts:

1. The laws criminalise action taken by one person (A) to convert another person (B), ostensibly to protect B. However, B may in turn be penalised for failing to report or obtain permission for his/her conversion. This is incoherent, and risks criminalising the alleged victim;
2. The laws raise concerns about the right to change religion (see below), the right to propagate religion,²⁷ the right to freedom of expression,²⁸

²³ 'Report of the National Commission for Religious and Linguistic Minorities', Paragraph 16.3.5
http://www.minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/volume-1.pdf

²⁴ National Commission for Minorities, 'Dalits in the Muslim and Christian Communities'

<http://ncm.nic.in/pdf/report%20dalit%20%20reservation.pdf>

²⁵ A/HRC/10/8/Add.3, Paragraph 71

²⁶ CERD/C/IND/CO/19, 5 May 2007, Paragraph 21. The report may be accessed via the website of the OHCHR, <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

²⁷ Article 25(1) of the constitution provides for the right to propagate religion, although this has been defined narrowly by the Supreme Court. The former UN Special Rapporteur on freedom of religion or belief stated, reiterating the view of her predecessor, 'Special Rapporteur Amor considered "constitutional provisions prohibiting proselytism to be inconsistent with the 1981 Declaration [on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief]"' (A/60/399, 30 September 2005, Paragraph 60). A/60/399 may be accessed via the website of the OHCHR, <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

²⁸ Article 19(1)(a) of the constitution provides for 'the right to freedom of speech and expression'. The former UN Special Rapporteur has also 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' (A/60/399, Paragraph 61).

and the right to privacy. The state should not restrict these freedoms in order to protect others. The UN Special Rapporteur on freedom of religion or belief has stated that ‘any generalized State limitation (e.g. by law) conceived to protect “others” freedom of religion and belief by limiting the right of individuals to conduct missionary activities should be avoided’;²⁹

3. The procedural requirements placed on the process of conversion violate the unconditional character of the right to change religion under Article 18 of the ICCPR.³⁰ As the UN Special Rapporteur noted in the report of her 2008 visit to India, ‘the right to freedom of religion or belief includes the right to adopt a religion of one’s choice, the right to change religion and the right to maintain a religion...these aspects of the right to freedom of religion or belief have an absolute character and are not subject to any limitation whatsoever’;³¹
4. The laws present sweeping powers to the state administration to inquire into religious conversions, but offer few safeguards against discriminatory action. In some states, no time frame is set for the administration’s inquiry into a conversion, nor is any appeal process established. This grants significant powers of jurisdiction to the state over deeply personal matters of individual conscience;
5. The Arunachal Pradesh law (which has not been implemented) is specifically applicable to conversions away from ‘indigenous faith’, as defined by the law. In a proposed amendment to the Chhattisgarh law, the act of returning to one’s ‘original religion’ (or that of one’s ancestors) ‘shall not be construed as “conversion”’. This is discriminatory and violates the right to equality under the law, enshrined in Article 14 of the constitution. It serves no apparent legal object, and instead plays directly into the hands of the Hindutva discourse, which claims that Indians are

by default Hindu and describes conversion to Hinduism as ‘re-conversion’ or ‘homecoming’.

In addition, the legislation creates an enabling environment for anti-minority hostility and violence. Anti-conversion rhetoric is used routinely to justify violence against Christian targets, and this is given legitimacy and credibility by the existence of legislation which uses the same discourse. There have been numerous cases in which victims of violence have subsequently been arrested under one of the Freedom of Religion Acts. Moreover, the definitions used in the laws are so vague that a wide range of legitimate and peaceful activities may be stigmatised. The UN Special Rapporteur indicated in the report of her 2008 mission to India that she was ‘deeply concerned that laws and bills on religious conversion in several Indian states are being used to vilify Christians and Muslims’³² and noted that ‘such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them’.³³ She concluded that these laws ‘should be reconsidered since they raise serious human rights concerns’.³⁴

The legislation is also emblematic of a paternalistic view of marginalised communities. The laws in Odisha, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh all stipulate a more severe punishment for cases in which the convert belongs to a Scheduled Caste or Scheduled Tribe. The justification for this is that members of these communities are more vulnerable and therefore more susceptible to coercion or material reward, but it only requires a short logical step to suggest that they are less capable or less deserving of the right to make decisions for themselves about their own religious beliefs. In a 1973 ruling on the Orissa (now Odisha) Freedom of Religion Act, the state’s High Court predicated part of its argument on the ‘depressed classes’ possessing ‘an undeveloped mind’,³⁵ a view which has not been repudiated adequately.

²⁹ A/60/399, Paragraph 62

³⁰ General Comment 22 of the UN Human Rights Committee defined the right to ‘have or to adopt a religion’ as necessarily including the right ‘to replace one’s current religion or belief with another or to adopt atheistic views’ (Clause 5). General Comment 22 may be accessed at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/9a30112c27d1167cc12563ed004d8f15?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/9a30112c27d1167cc12563ed004d8f15?Opendocument)

³¹ A/HRC/10/8/Add.3, Paragraph 51

³² A/HRC/10/8/Add.3, Paragraph 47

³³ A/HRC/10/8/Add.3, Paragraph 50

³⁴ A/HRC/10/8/Add.3, Paragraph 70

³⁵ Yulitha Hyde vs. Orissa, 1973

1. I State that I have been reading the bible and have been convinced of the teaching of Christ. I have also received a few months, the teachings on the various aspects of Christian faith. I have taken the help of many persons to understand more fully the essence of Christian life and its implication and relevance to my own life.
2. I state that after spending a long time in contemplation of all the above, I have finally decided to be a Christian and to follow Christ who would bestow upon me inner peace, fuller life, Love of God and love for many people and nation.
3. I would like to categorically state that the above decision taken by me is purely out of my own volition and free will. No person or organization is liable for this decision of mine.
4. I state and confirm that I have not been subjected to any force or allurement or fraudulent means by any person or organization in my quest of religious fulfillment as a token of which I am making this declaration before a notary, Public/commissioner of oaths.
5. I state that I take full responsibility for my decision and action.

Excerpt of a legal affidavit from Karnataka State, concerning the circumstances in which one person adopted Christian faith

The UN Special Rapporteur established a helpful principle in regard to this model of legislation, namely that cases of insensitive behaviour in the propagation of religion ought to be dealt with on an individual basis. This allows a distinction to be preserved between matters of principle and matters of practice: the basic principle should be upheld that a person's right to propagate their beliefs is a necessary and legitimate aspect of manifesting their religion, but their behaviour in doing so ought to comply with the parameters established by common civil and criminal law. As the Special Rapporteur argued,

...cases of alleged 'unethical' conversion³⁶ [should] be addressed on a case-by-case basis, examining the context and circumstances in each individual situation and dealt with in accordance with the common civil and criminal legislation. The Special Rapporteur is therefore of the opinion that the adoption of laws criminalizing in abstracto certain acts leading to 'unethical' conversion should be avoided, in particular where these laws could apply even in the absence of a complaint by the converted person.³⁷

BLASPHEMY LAWS

A number of recent incidents have drawn into the limelight the colonial-era blasphemy legislation in

³⁶ The legislation proposed in Sri Lanka was very close to that in India, and therefore it would be reasonable to substitute the Indian phrase 'conversion by force, fraud or allurement' for Sri Lanka's 'unethical conversion'.

³⁷ A/60/399, Paragraph 68

India, which insulates religious beliefs from criticism and poses a significant threat to freedom of opinion and expression.

"If we want the pleasures of pluralism, we have to accept the pain of being offended."

Kenan Malik, [editorial](#) in The Hindu³⁸

The much more stringent blasphemy laws in Pakistan are better known than those in India, but they share a common root in the 1860 Indian Penal Code (IPC). Section 295A, a typically colonial construction which served the agenda of preserving a fragile communal harmony in a divide-and-rule polity but sits very uncomfortably alongside a respect for individual human rights, was added in 1927:

Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs. –Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise], insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both.

Section 295A is sometimes applied in tandem with Section 298, on 'Uttering words, etc., with deliberate intent to wound the religious feelings of any person'. In a high-profile blasphemy-related case in February 2014, Penguin India took the decision after a legal battle with a group called Shiksha Bachao Andolan to recall all copies of Wendy Doniger's book *The Hindus: An Alternative History*, and pulp its entire stock.³⁹ Shiksha Bachao Andolan alleged in its petition that the book caused offence to the sentiments of Hindus, citing IPC Section 295A.

³⁸ *The Hindu*, 'Changing landscape of free speech', 12 February 2014

<http://www.thehindu.com/opinion/lead/changing-landscape-of-free-speech/article5677713.ece>

³⁹ Penguin India, 'Penguin India's Statement on "The Hindus" by Wendy Doniger', February 2014

<http://www.penguinbooksindia.com/en/content/penguin-india%E2%80%99s-statement-%E2%80%98-hindus%E2%80%99-wendy-doniger>

The case opened up a lively debate around questions of offence and freedom of expression. Penguin India said,

We believe...that the Indian Penal Code, and in particular section 295A of that code, will make it increasingly difficult for any Indian publisher to uphold international standards of free expression without deliberately placing itself outside the law.

In a statement widely circulated via social media (below), Wendy Doniger blamed the Indian law as 'the true villain of this piece', for criminalising anything which causes offence on grounds of religion.

There have been [numerous instances](#) of books being banned or withdrawn on similar grounds.⁴⁰ For example, on 29 August 2013, author Yogesh Master was arrested in Karnataka under IPC Sections 295A and 298 for his novel *Dhundi*, which was deemed offensive to Hindus due to its portrayal of certain gods. The book was withdrawn from circulation within days of its publication.

This approach is not uncommon, as members of every community assert their right not to be offended. In April 2012 a number of Christian NGOs and individuals filed blasphemy cases against Sanal Edamaruku, president of the Indian Rationalist Association, who had sought to debunk an alleged miracle at the Vile Parle Church in Mumbai and told

facebook



PEN Delhi

Tuesday at 09:20

Statement from Wendy Doniger:

I was thrilled and moved by the great number of messages of support that I received, not merely from friends and colleagues but from people in India that I have never met, who had read and loved *The Hindus*, and by news and media people, all of whom expressed their outrage and sadness and their wish to help me in any way they could. I was, of course, angry and disappointed to see this happen, and I am deeply troubled by what it foretells for free speech in India in the present, and steadily worsening, political climate. And as a publisher's daughter, I particularly wince at the knowledge that the existing books (unless they are bought out quickly by people intrigued by all the brouhaha) will be pulped. But I do not blame Penguin Books, India. Other publishers have just quietly withdrawn other books without making the effort that Penguin made to save this book. Penguin, India, took this book on knowing that it would stir anger in the Hindutva ranks, and they defended it in the courts for four years, both as a civil and as a criminal suit.

They were finally defeated by the true villain of this piece—the Indian law that makes it a criminal rather than civil offense to publish a book that offends any Hindu, a law that jeopardizes the physical safety of any publisher, no matter how ludicrous the accusation brought against a book. An example at random, from the lawsuit in question:

'That YOU NOTICEE has hurt the religious feelings of millions of Hindus by declaring that Ramayana is a fiction. "Placing the Ramayan in its historical contexts demonstrates that it is a work of fiction, created by human authors, who lived at various times....." (P.662) This breaches section 295A of the Indian Penal Code (IPC).'

Finally, I am glad that, in the age of the Internet, it is no longer possible to suppress a book. *The Hindus* is available on Kindle; and if legal means of publication fail, the Internet has other ways of keeping books in circulation. People in India will always be able to read books of all sorts, including some that may offend some Hindus."

⁴⁰ A list of books banned or challenged in India may be found on Wikipedia:

http://en.wikipedia.org/wiki/List_of_books_banned_in_India

the media that the church used fabrications such as this one to collect money. The hierarchy of the Catholic Church distanced itself from the First Information Reports (FIRs) against Edamaruku, while several leading figures in civil society spoke in his defence and a petition in his support attracted thousands of signatures, but he nonetheless left India to seek refuge in Finland.

Blasphemy legislation in India sets a dangerous culture whereby the right to freedom of opinion and expression is subordinated to the imperative that religious sentiments must not be offended. The offence is non-bailable, and therefore the risk of offending the religious sentiments of another person or group has serious ramifications. In effect, Sections 295A and 298 provide easy means for unpopular criticism of particular religious viewpoints to be silenced, and concurrently for galvanising communal religious sentiments around a sense of offence. This in turn provides fertile ground to extremist groups who wish to provoke communal fractures into hostilities.

Proposed remedial legislation

The present government has proposed two forms of legislation which, if enacted, could address key lacunae in the enjoyment of FORB across the country.

PROPOSED EQUAL OPPORTUNITY COMMISSION: A NEW PARADIGM

In November 2006, a committee chaired by Justice Rajindar Sachar published a [comprehensive report](http://minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/sachar_comm.pdf) on the social, economic and educational status of the Muslim community in the country.⁴¹ The Ministry of Minority Affairs has collated the recommendations and provided periodic [status reports](http://minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/status_reports)⁴² on action taken by the government to follow up. One of the most significant actions has been a move towards establishing an Equal Opportunity Commission for

India, particularly in response to recommendations 53 and 54:

The policies to deal with the relative deprivation of the Muslims in the country should sharply focus on inclusive development and mainstreaming of the community while respecting diversity.

A transparent and acceptable method of measuring diversity could be developed, linking a wide variety of incentives to this “diversity index”, thereby ensuring equal opportunity to all SRCs [socio-religious categories] in the areas of education, government & housing.

As of February 2014, the action reported by the government is as follows:

In pursuance of this decision, an Expert Group was set up on 31st August, 2007. The Expert Group submitted its report on 13th March, 2008. Based on the Expert Group Report, recommendations of Group of Ministers constituted for this purpose and comments/ inputs received from various stakeholders, a proposal for setting up of Equal Opportunity Commission (EOC) through an Act of the Parliament is under consideration of the Government.⁴³

There is potential for an Equal Opportunity Commission to herald a new paradigm in addressing the socio-economic deprivation of Muslims and other marginalised groups, and the government should be encouraged to pursue this.

PREVENTION OF COMMUNAL AND TARGETED VIOLENCE BILL: TOWARDS A SYSTEMATIC RESPONSE

There have been several phases in an effort to create a systematic legislative framework to deal adequately with the contingencies of communal and targeted violence from its incitement through to its aftermath. It now seems highly unlikely that this legislation will be passed, but the government should be encouraged to persevere with this project.

⁴¹ Ministry of Minority Affairs, ‘Sachar Committee Report’, November 2006
http://minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/sachar_comm.pdf

⁴² Ministry of Minority Affairs, Sachar Committee Report
<http://minorityaffairs.gov.in/sachar>

⁴³ Ministry of Minority Affairs, ‘Recommendation-wise follow up action on Sachar Committee Report’
http://minorityaffairs.gov.in/sites/upload_files/moma/files/Sachar_Committee_Recommendation-wise.pdf

A bill introduced in November 2005 was welcomed in principle by human rights defenders working in this area. However, its substance was severely criticised for a failure to deal adequately with core issues, specifically the likely complicity of state officials. The government took this criticism seriously, and the National Advisory Council chaired by Sonia Gandhi set up a working group to review the bill, which in turn established an advisory group and a drafting committee to develop a new draft. In 2011, the [Prevention of Communal and Targeted Violence \(Access to Justice and Reparations\) Bill](#) (or PCTV Bill)⁴⁴ was finalised, the result of a collaboration between government and civil society. A further civil society consultation yielded criticism of the new draft on several points, most of which were addressed.

The draft was founded on two key principles: the accountability of the state for its role in communal violence, and the empowerment of victim-survivors. A note accompanying the draft explained the rationale:

*Existing laws of the land and the machinery of the State are found to work relatively impartially when targeted identity-based offences are committed against dominant groups in a State, but not similarly for non-dominant groups. Every episode of communal and targeted violence has been followed by a political and public call for measures to equalise this institutional bias; to correct discrimination by the State in applying laws of the land equally for all, including in prevention of violence as well as in unbiased, impartial investigation and prosecution if violence occurs, followed by comprehensive relief, reparation and compensation afterwards.*⁴⁵

The draft bill languished for a lengthy period before being introduced into Parliament in a modified form on 5 February 2014. However, it was deferred after a

heated debate in which opposition parties united against the bill on the basis that it violates India's federalism by allowing the central government to intervene when communal violence is unchecked by state governments. Proponents of the bill argue this is a necessary contingency, due to the recurrence of state government complicity, and that such provision already exists in the constitution.

During India's 2012 Universal Periodic Review (UPR) at the UN, a number of countries issued recommendations around the PCTV Bill and its underlying objective:⁴⁶

*Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities (Germany);*⁴⁷

*...improve measures to prevent violence against women and girls, and members of religious minorities (Iran);*⁴⁸

*...effectively and swiftly prosecute acts of violence against religious minorities (Austria);*⁴⁹

*...grant access to justice to victims of religious violence and discrimination (Italy).*⁵⁰

The government of India should be commended for its efforts to deal systematically with the contingencies of communal violence through this bill and should be encouraged to see the process through, as unlikely an eventuality as this now appears. An effective legislative framework on communal violence would not only tackle a significant concern within India's borders, but could also provide a model to other countries in the region.

⁴⁴ PRS Legislative Research, 'Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill 2011'

<http://www.prsindia.org/uploads/media/draft/NAC%20Draft%20Communal%20Violence%20Bill%202011.pdf>

⁴⁵ National Advisory Council, 'Explanatory Note: Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill 2011'

⁴⁶ The 'Report of the Working Group' (A/HRC/21/10) may be accessed via

<http://www.ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>

⁴⁷ A/HRC/21/10, Paragraph 138.48

⁴⁸ A/HRC/21/10, Paragraph 138.79

⁴⁹ A/HRC/21/10, Paragraph 138.123

⁵⁰ A/HRC/21/10, Paragraph 138.124

Human rights defenders under threat

Human rights defenders working on issues of communalism and FORB have recently experienced increasing harassment and intimidation. The UN Special Rapporteur on the situation of human rights defenders visited India in January 2011, and highlighted a raft of significant concerns. In summary,

Throughout her mission, the Special Rapporteur heard numerous testimonies about female and male human rights defenders, and their families, who have been killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, falsely charged, placed under surveillance, forcibly displaced or had their offices raided and files stolen because of their legitimate work in upholding human rights and fundamental freedoms. They are often labelled as “Naxalites (Maoists)”, “terrorists”, “militants”, “insurgents”, “anti-nationalists” and “members of underground” and their rights to freedom of expression, peaceful assembly, association and movement is on many occasions unlawfully restricted.⁵¹

She noted also the widespread absence of trust in the police, judiciary, and statutory human rights bodies, arising from the climate of impunity which prevails in India and frequent examples of police complicity in human rights violations.

The UN Special Rapporteur’s report dealt separately with human rights defenders working on different issues, including those working on behalf of women and children’s rights, marginalised people and religious minorities, and those seeking accountability for communal pogroms. She noted being ‘particularly concerned at the plight of human rights defenders working for the rights of marginalized people, including Dalits, Adivasis (tribals) and sexual minorities, who face particular risks and ostracism

because of their legitimate activities’.⁵² However, in practice many human rights defenders work on a range of such issues, not least because individual victims of human rights violations often fall into more than one of these categories, and her conclusion could be applicable to other human rights defenders also.

“I work specially on FORB issues, and routinely receive threats to my life on mail, social media and the like. I have been to the police several times. In the past, the police did provide me with bodyguards for a while, but this is not a long term protection. India needs to put into place an effective policy on the protection of human rights defenders.”

Human rights defender, New Delhi

The means by which human rights defenders are harassed and intimidated vary. The Foreign Contribution (Regulation) Act (FCRA) of 2010 has been used to regulate and intimidate NGOs carrying out advocacy activities: the withdrawal or suspension of FCRA status has deprived a number of prominent NGOs of a funding lifeline, and other NGOs report that the threat of FCRA withdrawal alone intimidates them into a form of self-censorship. Others face frequent visits from the Intelligence Bureau, defamation in the media or from extremist groups, or threats from individuals.

While the most prominent human rights defenders in the country may be afforded some degree of immunity from state harassment by their high profile, their less well-known counterparts have come under increasing pressure from the government. Testimony received by CSW from human rights defenders in Odisha bears this out. One described speaking at a human rights training programme with an adivasi group; two intelligence officers observed the meeting throughout, and questioned him about links with Naxalite (Maoist) insurgents. He responded that his work was to strengthen the engagement of rural adivasis with the legal system, which ought to be regarded as part of the solution to Naxalite violence. Others described similar, unwarranted accusations of Naxalite sympathies, and said that they feel highly

⁵¹ A/HRC/19/55/Add.1, 6 February 2012, Paragraph 68. The report may be accessed via the website of the OHCHR, <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

⁵² A/HRC/19/55/Add.1, Paragraph 109

vulnerable and isolated.

Human rights defenders with international connections have come under greater scrutiny and pressure. NGOs which supply unflattering information to UN bodies may be regarded as a threat to India's prospects of a permanent seat on the UN Security Council. There has also been a trend whereby foreign human rights defenders, academics, journalists, or others with an interest in human rights concerns, have faced restrictions or been refused permission to enter the country. Not only is this inimical to the principles of an open democracy, but it further isolates human rights defenders within the country.

Some human rights protests on religious minority issues have drawn heavy handed responses. In December 2013, several priests and nuns were among those injured when police broke up a peaceful demonstration calling for an end to the statutory discrimination against Dalit Christians and Muslims on the basis of religion. As is often the case with demonstrations in New Delhi, the crowd courted arrest by defying a ban on protests along Sansad Marg (Parliament Street), but the police response with water cannon and *lathis* (canes) appears to have been disproportionately harsh.

Sangh Parivar organisations have also targeted human rights defenders in threatening campaigns. In one example, when Odisha-based Catholic priest and human rights defender Ajaya Singh was given the National Minority Rights Award by the NCM in 2013, Sangh Parivar groups immediately convened a press conference to defame him, including portraying him as a conspirator in the murder of Swami Lakshmananda Saraswati in Kandhamal (an act which triggered the 2008 violence), and his effigy was burnt in numerous locations across the state. The behaviour of online 'trolls' in seeking to defame, discredit, or intimidate those raising human rights concerns in online forums such as Twitter also gives rise to serious concern.

The UN Special Rapporteur noted that 'the absence of legislation on the protection of human rights

defenders is a significant lacuna'.⁵³ This echoes the view of human rights defenders, that India needs a strong and comprehensive framework to protect human rights defenders from harassment and intimidation, and to maintain appropriate and live links with international NGOs and human rights mechanisms without fear.

⁵³ A/HRC/19/55/Add.1, Paragraph 32

Case study: Kandhamal District, Odisha State

As it is mentioned in the report this incident at Kattigola should not be seen only as an isolated event, but should be seen as a part of a pre-meditated and well organized plan to harass and demoralize the Christians of Scheduled and Scheduled Tribes origin.

Excerpt of a letter from Catholic Archbishop Raphael Cheenath in 1988, concerning an attack in Kandhamal

Five years after the traumatic communal violence targeting the Christian community in Kandhamal and several other districts in August 2008, the reverberations of the attacks continue. Episodes of communal violence such as this need to be viewed in the context of a long historical time frame: they often have a long genesis, and their impact continues to be felt for years.

CSW is engaged in a project with local human rights defenders to document the broader trajectory of communal violence in Kandhamal in the form of a digital timeline, beginning with smaller incidents and the propagation of religious hatred from the 1970s onwards. Consistent failure to bring perpetrators to justice facilitated the continuation of violence.

In its 2012 UPR statement, the Indian government brushed away concerns about communal violence, saying that, 'Sporadic acts of violence were dealt with swiftly and effectively'.⁵⁴ The prevailing situation



To access the digital timeline, visit <http://i.mp/1aUSb7q> or scan the QR code

⁵⁴ A/HRC/21/10, Paragraph 131

in Kandhamal shows this to be a deeply inadequate response. Blanket assurances need to be translated into measurable action to protect and rehabilitate the community of victim-survivors.

There have been positives in Kandhamal: fast track courts secured some convictions and a limited measure of justice, while 2012 saw the first genuinely peaceful Christmas in the region for several years. However, the situation over the fifth anniversary shows that much more remains to be done.

Current situation of victim-survivors in Kandhamal

According to government figures, 38 people were killed. Local monitoring groups who have documented the impact of violence say that at least 90 people were killed⁵⁵ and 54,000 displaced. Approximately 5,600 houses were damaged or destroyed, as well as upwards of 300 churches.

This overview is based on several recent sets of interviews conducted with victims of the 2008 violence. The testimony of BD gives a typical snapshot of the experiences reported by many victim-survivors. He is the brother of a church leader who died after being attacked during the 2008 violence. The family has received no compensation from the government for the death. The murder case has yet to come to trial, five years later. BD is willing to work, but nobody from the Hindu community is willing to employ him. His wife collects firewood and makes plates from leaves to help them survive. They have no land, and no other source of income. The eldest of their three daughters failed the tenth grade at school, and is now living at home. They have been threatened by members of the local Hindu community, who taunt them, saying that just as his brother was killed, so he will also be killed.

COMMUNITY RELATIONS

A social dynamic characterised largely by deep mutual distrust and threats against the minority

⁵⁵ A precise death toll is difficult to establish, as some victims died much later as a result of their injuries or of secondary causes. The figure of 90 is regarded by local civil society as conservative.

Christians is seriously harming both the delivery of justice, and the rehabilitation and economic welfare of the victims. Communal divisions have trumped older ties of loyalty and kinship.

"They hate us."

Victim-survivor, Nandagiri Village

The physical separation of communities along religious lines is very evident in parts of Kandhamal. New villages have been built to accommodate Christian victim-survivors, often on the site of displacement camps where they had previously lived in tents. Consequently, the villages from which they fled are emptied of Christian populations, or the Christians live on the flanks or in neighbouring but separate settlements.

Relations between the communities range from relative normality to open hostility against the victim-survivors. In some locations, there is a healthy grassroots-level interaction between Christians and ordinary Hindus, but often in such places the victims say they are ostracised or threatened by the usually influential instigators of violence. Christians in Nandagiri Village report being vilified for belonging to an 'American religion', and receiving death threats against the male members of all their families, threats that their new churches and houses would be destroyed, and threats that villages which escaped physical violence in 2007 and 2008 would be attacked.

There have also been at least six unexplained deaths of Christians (including church leaders) in the area, some of them in apparent road accidents in remote locations. Local victim-survivors fear these may have been targeted killings. Police are accused of one such killing on 23 December 2013, reportedly claiming that the Christian youth who died was a Naxalite insurgent.

Threats and incidents such as these compound a strong sense of victimhood and fear. Although many threats have not been translated into action, the fact that they can be made freely against a backdrop of widespread impunity is deeply concerning, and locks Christians into stifling subjugation and fear. They

remember that communal violence often has a long build-up, and five years without extensive physical violence is no guarantee of lasting peace.

The trauma of many victim-survivors also remains raw and unresolved. Many experienced horrors themselves, while some were witnesses to brutal murders. This too contributes to a mindset of fear and alienation from their neighbours.

"They gather in the temple and plot against us, but don't reconcile with us."

Victim-survivor, Tiangia Village

Having perpetrated the violence in the first place, the Sangh Parivar continues to be highly active in the region through village-level meetings, its growing network of schools, and other means. There is evidence (and a strong perception) of a nexus between the local state administration and the Sangh Parivar: the state appears to view the cadre of the RSS and its associated groups, which have a 40-year history here, as a bulwark against the constant threat of Naxalite penetration. The government of neighbouring Chhattisgarh State also relies on non-state actors to keep the balance of power in its favour.

Since long before the violence, the Sangh Parivar's agenda has been to assimilate the local adivasi community, using a variety of strategies which included portraying Christians as a threatening 'other'. Records from the Christian community dating from the 1970s onwards articulate a growing sense of fear: Catholic Archbishop Raphael Cheenath wrote in a 1986 letter, 'I am sorry to say that unless the hostile and irritant elements that daily threaten the communal harmony in this area, are brought to the books [sic], we Christians are forced to live in constant fear and anxiety. The present situation is constantly one of tension.' Other letters express a similar concern.

Abundant testimonies of the Christian victims of violence in 2008 say that they were pressed to 're-convert' to Hinduism, and were effectively given the choice to convert, flee, or die.

Hindus influenced by the Sangh Parivar continue to insist on 're-conversion' and the withdrawal of police cases as preconditions for normalised community relations. Some Christians report that they have acceded to these demands out of desperation, in order to live in peace. Others have simply drifted from the area, in a migration which has shifted the religious demographic of the area and left remaining Christians more isolated.

JUSTICE

Although there have been a number of convictions recently, and the post-violence conviction rate is higher than the low national average, still the overall picture shows widespread impunity. Fast track courts set up to deal with communal violence cases have now been closed, and legal aid groups operating in the area say progress has slowed further as a result.

*"We are innocent victims and we are punished.
The perpetrators are not punished."
Victim-survivor, Nandagiri Village*

Following the violence, 827 FIRs were filed from the 3,232 complaints which local human rights defenders say were taken to the police. FIRs are pre-requisites for police investigations. Of these FIRs, 315 cases (almost 40%) were not pursued. In the 259 cases which have been concluded, 184 have resulted in acquittals, while 477 people have been convicted in 75 cases, mostly for lesser offences such as arson; and many have since been released. Only six have been convicted for their role in any of the killings.

Even some of the most serious cases have received cursory investigations or none at all. A young Hindu Dalit woman was gang raped, and she said that the police have done nothing for her, the fast track court did not give her an opportunity to testify, and those whom she identifies as her rapists are on bail in her own village and have made threats against her life. A Catholic nun was gang raped, and bravely read a statement to the press on 24 October 2008 to appeal for justice, believing that her case would be ignored by police. Many murder cases are also deemed to have been arbitrarily downgraded to lesser offences or dismissed, and human rights activists are preparing to move the Supreme Court to reopen

approximately 30 such cases.

Prospects for the delivery of justice are hampered by several factors.

Firstly, many victims and witnesses lack any confidence in the police, public prosecutors and courts. They perceive there to be a close relationship between the state administration and Sangh Parivar, and do not see the state as acting on their behalf. They believe that pursuing justice through the courts is unlikely to bring any benefits, and involves far higher risks to their safety than simply keeping a low profile and declining to cooperate. Without addressing this confidence issue, it is difficult to imagine any fundamentally different outcomes in future.

Secondly, a related factor is that witness intimidation has been widespread and has gone unchecked. Aggressors have frequently demanded that Christians should withdraw their police cases or face further violence. Victims or witnesses and defendants often live close to each other, in a region with very limited police cover. It is quite conceivable that they could travel home on the same bus after a court hearing. Yet the fears of victims and witnesses and their requests for protection are often treated with disdain: in one anecdotal example from 2012, a judge mockingly asked whether he was expected to stand outside a victim's house with a stick, in order to protect the witness. A Christian community leader told CSW about filing a case when he was threatened after testifying in a fast track court in early 2013, but he was granted no protection and now lives in fear. Episodes such as these further sap the confidence of victims or witnesses, making many unwilling to testify.

Thirdly, the court system is very difficult for victims to navigate, and in practice they are entirely reliant on the *pro bono* assistance of legal aid groups, which is inevitably limited in scope.

REHABILITATION

A significant proportion of the victims continue to suffer serious economic privation as a direct result of the communal violence and its effects. Some have lost land and livelihood (while in some cases still

owing microloans to the government) and have no means of supporting themselves. Compensation from the government has been awarded haphazardly and consistently falls short of meeting their needs. A large proportion of victims were daily wage labourers, but fear of ostracism by the economically dominant majority community deprives them of any prospect of work.

When asked about their most pressing need, many victim-survivors reply that they need a means of gaining a livelihood. This is often contingent on other factors, particularly peaceful inter-communal relations built on a foundation of justice, and a more appropriate level of reparation from the state.

An estimated 5,600 houses were damaged or destroyed during the violence in Kandhamal. The state government provided 50,000 rupees (approximately £480) as compensation for each 'fully damaged' house and 20,000 rupees (approximately £190) per 'partially damaged' house,⁵⁶ which was awarded in tranches. Local activists and aid providers have stressed repeatedly that these figures were arbitrary, not based on a proper assessment, and that the amount is insufficient to cover the cost of rebuilding. In practice, many victim-survivors felt compelled to spend the first tranche of funding on meeting urgent needs for food or medication, and therefore became ineligible for further compensation. A 2013 report entitled *Unjust Compensation*,⁵⁷ prefaced by Miloon Kothari (former UN Special Rapporteur on adequate housing, whose India-based organisation co-produced the report), also highlighted the absence of any compensation for the victim-survivors' loss of possessions and means of supporting themselves. Based on a survey of 122 families in three villages, it found that the average loss suffered by each family was 186,280 rupees

(approximately £1,800).⁵⁸

At some sites, displacement camps have been replaced by permanent housing, mostly funded by churches or NGOs around India. The solid constructions give the impression of economic stability; but those living within often have no income and cannot even afford food. In one such location, Nandagiri (previously Shanti Nagar displacement camp, near G. Udayagiri), villagers receive a small state subsidy for rice, but it is not enough to feed them adequately. They boil pumpkin leaves (pictured on the following page) to supplement their diet. In several places, they make a small living by collecting leaves from sal trees in the forest and sewing them into plates to sell; not counting the work of collecting the leaves, eight hours of sewing yields enough money to buy a kilogram of the lowest-grade rice. The lack of self-sufficiency encourages reliance on charity, which is clearly unsustainable.

The nexus between the state and the Sangh Parivar creates circumstances in which the economic hardship and social exclusion of victims is further accentuated. For example, numerous adivasi Christians in the G. Udayagiri area report that since the violence occurred, they have been unable to obtain the Scheduled Tribe certification to which they are legally entitled. This certification is a necessary prerequisite for basic exigencies such as owning land, benefiting from welfare schemes, or sending their children to school. This state of affairs is in violation of their constitutional rights, but it is increasingly common in adivasi areas which have an influential Sangh Parivar presence. Recent testimonies from adivasi Christians allege that the competent officials (usually at the level of Revenue Inspector) in G. Udayagiri receiving their applications say that they need validation from Kui Samaj, a local RSS-affiliated adivasi organisation. The Kui Samaj insists that they must convert from Christianity to Hinduism. Local human rights groups argue that this constitutes the state outsourcing administrative functions to the Sangh Parivar, and it greatly increases the latter's power.⁵⁹

⁵⁶ 'Notification Made by the Revenue Department (Government of Odisha) in 2009 on Relief and Rehabilitation entitlements for victims of Communal/ethnic disturbance in Kandhamal District',

<http://odisha.gov.in/revenue/kandhamal/kandhamal.htm>

⁵⁷ Centre for the Sustainable Use of Natural and Social Resources and Housing and Land Rights Network, *Unjust Compensation: An Assessment of Damage and Loss of Private Property during the Anti-Christian Violence in Kandhamal, India*, June 2013

<http://www.csfhr.com/publication/Unjust%20Compensation.pdf>

⁵⁸ *Unjust Compensation*, p.22

⁵⁹ There are also other examples, such as the widespread claim that biased local administrators deny Christian victims their full entitlements under the National Rural Employment



The situations of women and children are important dimensions of the current state of affairs. The violence left widows and their children in a desperate condition. In some cases, widows have not been issued with death certificates for their husbands and a number have been turned out by their husbands' families. Many children of victim-survivors have been withdrawn from school because of tensions and threats. That Christian children are excluded from education on account of their identity is a grave concern, not least because it risks transferring the poverty and marginalisation of the present generation of victim-survivors to their children.

Much of the infrastructure of the Christian community has been abandoned or exists in a state of ruin. Compensation was only offered for damage to houses, so numerous churches and other institutions have received no support for rebuilding or repair. These continue to be visible symbols of the

subjugation of an entire community. Pallishree Seva Sadan (pictured below), a welfare centre for the wider community in Paburia Village, has been swallowed up by the surrounding forest because its erstwhile patron cannot afford to rebuild it, and is himself in desperate poverty as his house was destroyed and he has no livelihood. He said, "My own case is very miserable. I am not able to recuperate, while perpetrators are thriving. My own place is still destroyed. I am also not well, my health is not well."

DISPLACED PEOPLE

An estimated 10-15,000 people fled Kandhamal altogether and have settled in other parts of India. A large migrant population has been absorbed into the slum areas around Bhubaneswar, the capital city of Odisha State, and many migrants pay a high economic price for their displacement.

"Life is miserable after the riot."

"Everything is dark in Kandhamal. We have no home there, no income, no money, nothing to eat."

Everything is desperate."

Victim-survivors, Salia Sahi, Bhubaneswar

The displaced victim-survivors in Bhubaneswar's slums struggle to eke out a living, like many rural migrants to urban areas. Women who previously worked the fields are now the main breadwinners, often engaged in domestic servitude to several wealthier families at a time.



Guarantee Scheme (NREGS), which guarantees every adult 100 days of waged labour or equivalent remuneration.

CSW has heard a number of testimonies from victim-survivors around Bhubaneswar, including the following illustrative sample:

- SN escaped the violence with her husband, a church leader, after they heard he was being hunted by the mobs. Their home was entirely destroyed and they did not manage to salvage anything. They spent two weeks in Raikia relief camp before moving to Bhubaneswar, where they eventually settled in Salia Sahi slum. Now SN works as a domestic servant in five homes, while her husband leads a small church but receives no income. She used to be a housewife, living off the small amount of cultivable land they owned, and finds her new work demeaning. They received compensation of 20,000 rupees (approximately £190) from the government and some assistance from a local Catholic agency, with which they have rebuilt a house. They have made several return visits to Kandhamal, but the last one precipitated death threats to her husband. They remain extremely fearful of returning.
- DB's wife works as a domestic servant and cook for seven families. He is 62 and has failed to find any work. They own some land in Kandhamal, and have been able to rebuild their house with some funds from a Catholic relief agency, but are too fearful to return. They heard from a Hindu friend that a Sangh Parivar group held a meeting in which they pledged to kill any Christians in the village. He has testified in two murder cases in which he was a witness, but summarised the trials as "not satisfactory", with six people convicted but released on bail.
- RD fled from the violence with her family to western Odisha, where they stayed for a year; but when they returned home, they found Hindu villagers insisting that they convert to Hinduism. They moved to Bhubaneswar, where she works as a domestic servant for four families and her husband struggles to find work as a daily wage labourer. Her entire income is spent on rent for their small house. They used to farm their own small plot of land and live in peace, but now she says they have to accept that if they cannot find work then they cannot eat, and they have little idea what the future holds. Their home and land

were taken over by Hindu villagers. Because they were away for a long period, they were not able to file a case or access compensation. Other people displaced from the same village say that threats have continued.

- KD fled directly to a slum area in Bhubaneswar when the violence took place. With no confidence at all in the police, she did not file a case. She once cultivated her own land, but now has little work, little income, and no expectation that she can return to Kandhamal.
- ID was once a businessman with a vehicle workshop and a grocery shop. He had developed them himself, and had become a relatively wealthy man. However, his businesses were looted and his house burnt down. He received 30,000 rupees (approximately £290) in compensation for the loss of house, but nothing for his businesses. He went to the relief camp in G. Udayagiri, but left for Bhubaneswar when many inhabitants began to fall ill. He rents a house with his family, and now works as builder's labourer. He brought his elderly mother from Kandhamal, but she became depressed and died.

Case study: Karnataka State

The Ministry of Home Affairs has recorded 222 incidents of communal violence in Karnataka State over the last three years and has identified it as the state with the highest number of attacks on religious minorities in south India.⁶⁰ Political commentators have spoken of Karnataka as a new Gujarat, referring to the deeply communal reputation of that state and the infamous violence of 2002. The three coastal districts, Dakshina Kannada, Udupi and Uttara Kannada, have been the focal points of communal tensions in the state.

*"Dalits, Christians, Muslims, and women are seen as non-people."
Human rights defender, Bengaluru*

⁶⁰ *Times of India*, 'Karnataka tops south in communal clashes', 25 October 2013
<http://timesofindia.indiatimes.com/city/bangalore/Karnataka-tops-south-in-communal-clashes/articleshow/24687889.cms?referral=PM>

A wave of targeted attacks on Christians took place from August to October 2008, during the same period as the violence in Kandhamal. These attacks were concentrated mainly in Dakshina Kannada District. Mangalore, which is situated in this district, had been identified as a communal flashpoint in the making as early as 2006.⁶¹

Sangh Parivar groups said that they carried out this violence in retaliation for a pamphlet which they deemed offensive towards Hindu deities, and which they claimed was distributed by New Life Fellowship Trust. However, New Life Fellowship Trust denied having printed the leaflets in question and there are strong indications that the pamphlet was a hoax. The violence consisted of attacks on Christian places of worship, physical beatings of Christian leaders and disruption of worship services.

The NCM sent a delegation to Karnataka in September 2008 to assess the situation. In the report which they published after their visit, they observed that the attacks appeared to be well-planned and that in several cases the police were not only complicit but also used a degree of force that was unwarranted.⁶²

Mahendra Kumar, local leader of the Bajrang Dal, claimed responsibility for the attacks on behalf of his organisation. The state government assured the NCM that he would be arrested and that they would take strict action against the offenders. However, he was released on bail after around six weeks. Justice Michael Saldanha, who conducted an 'Independent People's Tribunal Enquiry' into the 2008 violence, observed in his report that the absence of any substantial action being taken against the leaders of Hindu nationalist groups who were implicated in the attacks suggested a strong nexus between them and the BJP government in power at the time.

Although the BJP is no longer in government, Sangh Parivar groups continue to be active in spreading false propaganda against minorities. Incidents of

violence against Christians and Muslims have continued. According to some commentators, the BJP and its allies have been compensating for their political loss with increased violence: Christian lawyer S. Nova Bethania was recently quoted saying that "Hindu extremists want to show their existence by attacking the Christians, and sadly the present Congress government is not serious about these attacks launched against the Christians."⁶³

Sangh Parivar groups have employed different approaches to vilifying the Muslim and Christian populations in the state. Muslims have been frequent targets of a 'moral policing' campaign carried out by the Bajrang Dal, the Sri Ram Sena, and the Durga Vahini, among other groups. According to the Sri Ram Sena's official website, their objective is to serve and protect the 'Hindu Dharma'.⁶⁴

The Sangh Parivar has widely used a rhetoric of 'love jihad', alleging that Muslims have targeted Hindu girls for conversion by feigning love. This narrative has had a damaging effect on relations between Hindus and Muslims across the country, including Karnataka, and has played a role in the build up to numerous outbreaks of anti-Muslim violence. Although officials in Karnataka have investigated these claims, they found no evidence of a deliberate effort on the part of Muslim men to pursue Hindu women to force them to convert to Islam.⁶⁵ Frequent incidents of Sangh Parivar moral policing in Karnataka have included raids on pubs, and the physical assault of Muslims who mix with Hindus. For example, in August 2013, two college students from a Muslim background were assaulted by Hindu extremist groups after sharing an *Eid ul-Fitr* meal at a hotel with their Hindu friends.⁶⁶

With regard to Christians, the Sangh Parivar routinely alleges forcible conversions, in keeping with

⁶¹ *Outlook India*, A Piercing Conch Blows, 11 December 2006 <http://www.outlookindia.com/article.aspx?233362>

⁶² National Commission for Minorities, 'Visit of NCM Team to Karnataka (Mangalore, Udupi & Bangaluru), 16th to 18th September 2008' <http://ncm.nic.in/doc/NCM%20Karnataka.doc>

⁶³ *Morning Star News*, 'Persecution of Christians Rockets in Karnataka, India', 30 September 2013

<http://morningstarnews.org/2013/09/persecution-of-christians-rockets-in-karnataka-india/>

⁶⁴ Sri Ram Sena <http://www.sriramasena.org/index1.html>

⁶⁵ *The Hindu*, 'Karnataka CID finds no evidence of "Love Jihad"', 13 November 2009

<http://www.thehindu.com/news/article47922.ece>

⁶⁶ *The Hindu*, 'Two students assaulted for celebrating Id with Hindu girls', 10 August 2013

<http://www.thehindu.com/news/cities/Mangalore/two-students-assaulted-for-celebrating-id-with-hindu-girls/article5007574.ece>

the broader Hindutva discourse. They have campaigned consistently for the introduction of a Freedom of Religion Act in Karnataka, but in the meantime, false cases have been brought against Christians under various sections of the IPC. In one incident in October 2013, for example, a Christian church leader accused of conducting forceful conversions was arrested under Section 109 for 'suspicious behaviour'.⁶⁷ The anti-conversion rhetoric is often echoed by police; according to one testimony heard by CSW, a Christian church leader was told, "You can continue praying, but don't convert anyone."

Sangh Parivar groups have also embraced several divisive issues in Karnataka, in what appears to be a sustained effort to polarise Kannadigas on communal lines. They have consistently laid claim to the shrine of Sufi saint Baba Budangiri in Chikmagalur, which has been a place of worship for both Hindus and Muslims, by stating that it is a Hindu shrine alone, even calling it the 'Ayodhya of the south'.⁶⁸ These groups also spread the narrative that there are a growing number of Muslim terrorists in coastal Karnataka and that 'Hindu Dharma is under attack' in the state.⁶⁹

There has also been a long term campaign to denigrate the Muslim king, Tipu Sultan, as anti-Hindu and anti-Kannada. Tipu ruled Mysore, part of modern Karnataka, in the late 1700s, and is widely recognised within India as an effective freedom fighter against British rule. During the previous coalition government between the BJP and Janata Dal (Secular), the then higher education minister D.H. Shankaramurthy, an RSS activist, attempted to remove Tipu Sultan's name from the history textbooks. He reportedly stated that, "Most of the

history text books in the country depict Tipu Sultan, Akbar, Aurangzeb, Alexander and others as patriots, but the real ones are never brought to light."⁷⁰ This is one of a number of concerns that exist around distorted content in education curricula in Karnataka.

Attacks on Christians: an under reported crisis

Karnataka is the state with the largest number of attacks on Christians, who form 1.9% of the state population, as recorded in the 2001 census. Attacks on Christians in Karnataka have typically involved the disruption of prayer services, physical assault and damage to church property,⁷¹ and Christian educational institutions. Accusations are often brought against Christian leaders, charging them with forcibly converting Hindus.

"The incidents appear to be sporadic. When this incident is forgotten, another one takes place.

These incidents are consistent but not concentrated to a certain place. According to statistics, every third day there is an attack but it doesn't attract big media."

Church leader, Chamarajanagar District

Incidents of physical violence against Christians mainly occur in rural or semi-rural parts of the state and appear to be higher among those who are first-generation converts. As is the case across India, Dalits, adivasis, and women are especially vulnerable when communal violence takes place. Anti-Christian attacks have frequently targeted Christians belonging to independent evangelical or Pentecostal churches rather than those belonging to the more established denominations.

Often, incidents are preceded by low level harassment, such as damage to property and the blocking of access to basic amenities like water. In some instances, Hindutva supporters have

⁶⁷ *The Hindu*, 'Pastor in Sirsi held on the charge of conversion, released', 10 October 2013 <http://www.thehindu.com/news/cities/Mangalore/pastor-in-sirsi-held-on-the-charge-of-conversion-released/article5220377.ece>

⁶⁸ In 1992 Hindu extremists destroyed the Babri mosque in Ayodhya in Uttar Pradesh, claiming that it was originally the site of a Hindu temple. Nearly 2,000 people died in the riots that followed. This has remained a rallying point for Hindu nationalism for many years.

⁶⁹ South Asia Citizens Web, 'Letter from Karnataka Communal Harmony Forum', 1 October 2013 <http://www.sacw.net/article5781.html>

⁷⁰ Quoted in *Countercurrents*, 'Who Is Afraid of Tipu Sultan?', 26 January 2013

<http://www.countercurrents.org/gatade260113.htm>

⁷¹ *The Hindu*, 'Seven injured in attack on prayer hall in Udupi District', 10 March 2013

<http://www.thehindu.com/news/national/karnataka/seven-injured-in-attack-on-prayer-hall-in-udupi-district/article4492111.ece>

pressurised landlords to evict Christian tenants if they are holding prayer services in their homes.

According to the testimony of several Christians, they had also been called to *panchayat* (village council) meetings in their local area and asked to renounce their faith. When they did not comply, they faced physical assaults which prompted them to leave their villages. One woman told CSW she was forcibly taken to a nearby temple where *kumkum*, a red powder used by Hindus, was applied to her forehead to signify 're-conversion'. A church leader said he was taken to the temple and his tongue was burnt.

Impunity

The police response to communal violence in Karnataka has typically been very weak, and it is usually the case that perpetrators of the violence are not arrested. Victims have also attested to the active complicity of the police in the violence they faced, which has drained their confidence in the justice system. In some instances the police have been known to invite the perpetrators and victims to meet together to come to a compromise, rather than follow the formal course of justice. In the testimony of one woman heard by CSW, police said, "If your own people are asking you to leave Jesus, listen to them. Why are you creating problems in the society?"

"I have given a written complaint but the police didn't take any action. The police use very filthy language when they deal with me. But when BJP supporters file cases, police take action immediately either because the police are RSS supporters or because they are stationed in a Hindu majority area and they don't want to displease the majority."
Church leader, Chamarajanagar District

Case study: Southern Rajasthan State

Some of the most notorious Hindutva violence has been linked to major Sangh Parivar campaigns in the adivasi-majority areas across central India and

towards the north-east. Swami Aseemanand, currently on trial for his role in three terrorist attacks in which at least 82 people were killed, had been a VKA worker in West Bengal and on the Andaman Islands, and was living in the Dangs District of Gujarat when he is alleged to have plotted a series of bomb blasts.

In December 1998 Dangs District became the scene of the largest outbreak of anti-Christian violence to date. Earlier in the year, Mr Aseemanand had organised a mass rally which involved a major defamatory campaign against local Christians. According to a report in *The Caravan*, flyers were distributed saying 'The most burning problem of Dang District is the establishments being run by Christian priests...Wearing a mask of service these Satans are exploiting the adivasis...Lies and deceit are their religion.'⁷² Churches were destroyed in at least 25 villages during the December 1998 attacks. Mr Aseemanand was later given an award by the RSS leadership.

Like the 1998 episode in Dangs, the violence which erupted in Kandhamal District in 2007 and 2008 was also linked to a major campaign of the VKA and VHP. Abundant testimony evidence points to the role played by Swami Lakshmananda Saraswati, a VKA contemporary of Mr Aseemanand, in generating hatred and aggression towards the Christian community in the district.⁷³

Against this background, intensified Sangh Parivar activity in southern Rajasthan should be viewed with concern. The area has seen a significant investment in *pracharaks* and the construction of RSS schools. Local hate campaigns by the RSS have created or exploited fractures along religious lines, and local Christians have suffered rising ostracism, false charges and physical violence. It is noteworthy that the BJP won a landslide victory in the December

⁷² *The Caravan*, 'The Believer', 1 February 2014
<http://www.caravanmagazine.in/reportage/believer>

⁷³ For example, Fr Anselm Biswal described a *yagna* (a Vedic rite) in Kattingia Village in 1980: 'In the name of the Yagna, he launched his hate campaign against the Christian community, and against Christianity, in a series of inflammatory speeches' (Justice, Peace & Development Committee (ed.), *Faith Under Fire*, Delhi: Media House, 2008:183). In October 1988, there was an armed attack on Christians in the village.

2013 Rajasthan state election, almost taking a clean sweep of the four southern districts.⁷⁴

A former RSS *pracharak* from a village in Udaipur District told CSW that he was recruited by outside RSS men who focused on his immediate locality because of a cattle market in the village. They initially concentrated on promoting cow protection, but later shifted their attention to defaming local Christians and Muslims.

Testimonies from Southern Rajasthan

The following testimonies are illustrative of wider experiences of the minority Christian community in southern Rajasthan:

- HN (pictured below) recounted an incident in which he was praying with other Christians in Ambachikli Village, Pratapgarh District on 1 February 2011, when a group of local RSS leaders arrived with some adivasi men, took his mobile phone, covered his face, and beat him. His daughter was at the water pump in the same village, and some others went to beat her. They also threatened to burn down the house if this should happen again. Then they took HN by motorcycle to a remote location 15km distant, where they stripped him naked and beat him with canes, punches and kicks. They took all his belongings and threatened to kill him, then ran away. He walked naked for three hours until he



⁷⁴ The BJP won 26 out of 28 constituencies in the southern districts of Udaipur, Pratapgarh, Durgapur and Banswara. The party had won just 11 of these constituencies in 2008.

arrived at a police station, but police dismissed him as “a madman”. Only when a senior officer intervened did they file an FIR, but they had no further contact with HN. He said that RSS activity was steadily increasing in his area, with several schools established near pockets of Christians. There were two similar anti-Christian incidents in the same area during the following weeks, and the community was fearful.

“If we have a birthday party, if we give medicines to someone, they always say it is conversion.”

Christian leader, Udaipur

- P in Rishabhdeo, Udaipur District, observed that hostilities towards Christians have risen since 1998, manifesting in a series of small-scale incidents. In 2004 a mob surrounded the building in which he was preaching. In 2005, during the funeral of a church leader’s mother, assailants pulled her coffin out of the hole in the ground, and threatened to push in the assembled Christians, but the Christians ran away. In 2007 during a small church meeting one evening, schoolteachers tied two Christians to a tree and beat them. Police arrived the next morning, but the local *sarpanch* (head of the village council) beat the Christians again in their presence, and the police did not file a complaint. In 2008, police closed down a small Christian conference for which prior permission had been obtained.
- RM described the case of a pastor under his care in Ranjitpura Village, Udaipur District. On 10 October 2011 he was severely beaten by around ten men. His mother and sister tried to intervene, but they were also beaten. They tried to file an FIR, but police refused and tried to forge a compromise instead. Extremist Hindus continued to harass the family and demand they leave the village. Following some external pressure, police eventually filed a case, but a local politician intervened on behalf of the perpetrators, and no further police action was taken.
- RLM recounted an attack on a meeting of Christians in Badi Village, Udaipur District on 6 November 2011: a mob pelted stones through the roof and attacked the participants with sticks, causing serious injuries to several, while shouting

that they had no right to worship. Police were called, but pressurised the victims into a 'compromise' with the assailants. RLM noted that Sangh Parivar activity in this area has been on the rise, with RSS *pracharaks* now present in many villages actively propagating hostility towards the Christian community.

- SM is from Tidi Village, Udaipur District, and described an attack on 10 January 2010, in which a group of around 10 people armed with axes and sticks broke into a Christian meeting and assaulted those present. Police initially tried to broker a compromise, but eventually filed an FIR. However, local newspapers reported that the meeting had been a party which involved the consumption of meat and liquor. It had taken place during the Hindu holy month of *malmas*, which is not typically observed by adivasis. Six were arrested, but released on bail. The Christians did not trust the objectivity of the public prosecutor, so engaged an additional lawyer, but could not afford the fees to see the case to its conclusion.
- SM described an incident on 10 October 2011, near Aura Village, Udaipur District, in which he was taken into a police station after a minor traffic infringement. When police officers learnt his religion, they accused him of converting people and told him to tear up his Bible.
- RSB described the evolution of tensions in his village in Pratapgar District. In 2004 he informed other villagers that he had decided to become a Christian, but none objected. A number of others joined him. The RSS began to develop a presence in the area, and established a school nearby, after which the small group of Christians began to encounter hostility. One night in August 2010, a house in which they were meeting together was encircled by a mob, who threw stones and beat those present. They threatened to burn the house down, by which time the Christians telephoned the police, who intervened to stop the attack. However, from that time onwards the Christians were ostracised by their neighbours, who refused to offer them work or sell them firewood, and denied them the right to use the main road out of the village on grounds of their alleged 'impurity'. The perception of the

Christians was that the RSS was responsible for this change in attitudes.

- GC, a church leader in Borkheri Village, Banswara District, described a long sequence of physical assaults from 2000 onwards. He claimed that those who assaulted him were outsiders, not locals, but that local villagers were gradually being recruited to the RSS.

"Our enemies are increasing daily...one day they may kill me."

Christian in Pratapgar District

Although there have been no dramatic escalations in Rajasthan, parallels with districts such as Dangs and Kandhamal suggest that long term vigilance is required to ensure that small seeds of collective anti-Christian hatred which have already been sown do not develop into violence.