

Introduction

Since May 2019, the NDA¹-led Hindu nationalist Bharatiya Janata Party (BJP) government has come under serious scrutiny for conduct which is having nationwide ramifications on the future of India's secularism. Starting with the abrogation of Articles 370 and 35A, which gives Jammu and Kashmir (J&K) special status, in August 2019,² the Supreme Court's judgement in the Babri Masjid-Ram Janmabhoomi title case in November 2019, which has been criticised as reflecting the "majoritarian climate,"³ and the recent introduction of the Citizenship (Amendment) Act 2019 (CAA) and plans to implement an all-India National Register of Citizens (NRC), observers have raised concerns that the fabric of the Indian society could be torn apart.⁴

As well as government policies and laws, India's religious diversity is under threat from the spread of religious intolerance by non-state actors who act with impunity.

Communal violence

Hate speech by far-right Hindu nationalist groups fuels hostility towards religious minorities. The situation is abetted by officials in the BJP who fail to prevent and investigate attacks, and are known to permit the spread of hate. The current Chief Minister of Uttar Pradesh, Yogi Adityanath, has made public statements calling for forced sterilisation of Muslims and Christians, for Hindus to fight back against the perceived attack from Muslims and Christians, for Muslim voting rights to be revoked, and asserting that India is facing a battle between demons and gods. These are perceived by some to give moral legitimacy to communal violence.

Such acts are illegal under Section 153(A) of the penal code. In a September 2018 report to the UN General Assembly, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance noted that violence has been linked with inflammatory remarks made by BJP officials.

Right-wing groups are emboldened by a culture of impunity due to state negligence or complicity. The perpetrators of communal violence in Gujarat in 2002, in Kandhamal in 2008, and in Muzaffarnagar in 2013, have not been penalised. Such impunity is a leading reason for continuing communal violence across India.

Incidents of mob lynchings in the name of protecting cows and for alleged beef consumption are concerning. According to local monitoring groups, 97% of such attacks were reported after the BJP government took office in May 2014 and half of the attacks take place in states governed by the BJP. The overwhelming majority of attacks are against Muslims and the Dalit community.

Repressive legislation

Anti-conversion laws

Anti-conversion laws are routinely used to justify violence against Christians and Muslims and to create hostility towards minorities. The former UN Special Rapporteur on freedom of religion or belief (FoRB), Asma Jahangir, wrote that she was 'deeply concerned' that anti-conversion laws were 'being used to vilify Christians and Muslims.' The laws are vague and contravene constitutional and international laws on the right to FoRB. State silence on the issue has further led to abuse of the laws.

The laws, known as Freedom of Religion Acts, are enforceable in Gujarat, Himachal Pradesh, Chhattisgarh, Madhya Pradesh (repealed in 2020 with new provisions), Uttarakhand, Odisha, Jharkhand, Uttar Pradesh, Karnataka and Haryana States. The states of Rajasthan and Arunachal Pradesh have anti-conversion laws which are not in force.

Anti-conversion laws remove the right of free choice and give the state the power to decide whether someone may change their religion. These laws criminalise conversion through allurements, coercion, force and fraud. In the states in which they are in effect, conviction can carry prison sentences and/or fines. In Gujarat and Jharkhand, prison terms and fines increase when the convicted is a minor, a woman, or member of a scheduled caste or tribe – communities which have been historically disadvantaged. Local sources have said that there is yet to be a conviction under these laws, with some suggesting that they are solely used to instil fear and discourage the freedom to propagate religion or belief. The law also emboldens non-state actors to make false accusations of conversion and initiate wrongful legal proceedings.

Presidential Order 1950

Paragraph 3 of the Constitution (Scheduled Castes) Order 1950 discriminates against Dalits, in that anyone who

¹ National Democratic Alliance

² FoRB in Full, 'The face of Hindu Rashtra in India – Towards a majoritarian state', 19 December 2019
<https://forbinfull.org/2019/12/19/the-face-of-hindu-rashtra-in-india-towards-a-majoritarian-state/>

³ Frontline, 'Supreme Court denies justice', 6 December 2019
<https://frontline.thehindu.com/cover-story/article30014667.ece>

⁴ Carnegie Endowment for International Peace, 'Modi Prioritised Hindu Majoritarianism Over Economy', 7 February 2020
<https://carnegieendowment.org/2020/02/07/modi-prioritised-hindu-majoritarianism-over-economy-pub-81014>

professes a religion different from the Hindu Sikh or Buddhist religion shall not be deemed to be a member of the Scheduled Caste. The consequence of this is that Dalits who adopt other religions, particularly Christianity or Islam, lose their legal status as Scheduled Castes, and consequently their eligibility to access the benefits for caste-based socio-economic support in the public sector education, employment and welfare allocation.

Foreign Contribution (Regulation) Act 2010 (FCRA)

The FCRA 2010 was amended in 2020. The legislation has consistently been used selectively against civil society organisations, charities, and other nongovernmental organisations (NGOs). Missionaries and foreign religious organisations must comply with the FCRA, which limits overseas assistance to certain NGOs, including ones with religious affiliation. The FCRA controls foreign funding for NGOs, but the government has used it to block funds to hamper the activities of NGOs that question or condemn the government or its policies. As a result, the number of NGOs working on human rights, and vulnerable minorities in India have had their funding frozen or licence revoked. Since the BJP government took office in May 2014 until December 2019, as many as 14,500 NGOs had been barred from accessing foreign funding. The 2020 amendment has further tightened these restrictions.

Citizenship (Amendment) Act (CAA) 2019

The CAA came into force in January 2020. The Act determines eligibility for citizenship based on a person's religion, allowing Hindus, Sikhs, Buddhists, Jains, Parsis and Christians resident in India before 2014 to claim citizenship. The law excludes Muslims, including minority sects who have taken refuge in India. The UN High Commissioner for Human rights remarked that the law is "fundamentally discriminatory in nature."

The latest push for a National Register of Indian Citizens (NRIC) for the whole country through an administrative process of identifying 'foreigners,' has caused anxiety among Muslims, who fear that the NRIC will render them stateless.

The CAA-NRIC, which uses irrational and discriminatory criteria to determine who should be a citizen of India underlies the BJP-Rashtriya Swayamsewak Sangh (RSS) project to make India a Hindu nation. The government backed measures have far reaching implications which encourage homogenising India's historically diverse race and religious composition and imperil the wellbeing of minorities.

Shrinking space for civil society

The space for India's civil society – its writers, lawyers, poets, academics, journalists, students and human rights defenders has shrunk since the BJP came into power. The killings of eminent Indian writers who questioned right-wing Hindu extremism, such as Govind Pansare and M. M Kalbugi in 2015, and Gauri Lankesh in 2017, and attacks on freedom of expression have resulted in self-censorship among others. With space for free speech curtailed, dissenters are labelled as 'anti-nationals.'

Recent developments

Christians across the country continued to experience severe violations of FoRB throughout 2020, particularly in tribal communities. According to local monitoring group United Christian Forum (UCF) 279 cases of targeted violence against Christians were reported in 2020, four of which were fatal.

Examples of violations documented by CSW include, but are not limited to, false accusations leading up to arbitrary police detention, arrests and prosecution, forced conversion of Christians (Ghar Wapsi⁵), hate campaigns, Examples of violations documented by CSW include, but are not limited to, assault, death threats, illegal occupation of churches, forced displacement, acts of public humiliation, disruption of religious gatherings, and the looting and destruction of Christian homes, church buildings, and other church owned properties.

In the most severe cases, Christians have been killed by Hindu nationalists. For example, on 4 June, 14-year-old Samaru Madkami was murdered in the village of Kenduguda, Malkangiri District, Odisha. Mr Madkami was picked up from his house at about 11pm by several men who took him to a jungle approximately four kilometres from his home. His hacked body parts were later found buried in the ground by police who were taken to the scene by the alleged perpetrators who were being investigated. Local sources report that Mr Madkami was martyred for his faith, as his murder was carried out by Hindu nationalists who had been targeting him and other Christian families in their village.

On 7 June, Kande Mudu (Philip), a 27-year-old man who converted to Christianity in 2016, was murdered in Bari village, Khunti District, Jharkhand. Mr Mudu was reportedly killed by a group of six to eight men armed with sharp weapons and homemade pistols who broke down the door to his home and dragged him outside before proceeding to

⁵ Ghar Wapsi or homecoming ceremonies are aimed at converting Christians and Muslims back to the Hinduism.

violently hack Mr Mudu with their weapons, slitting his throat.

Father Stan Swamy

On 8 October, members of India's National Intelligence Agency (NIA) arrested Father Stan Swamy, a Jesuit priest and long-time activist on tribal rights in the country. He was subsequently taken into custody by the National Intelligence Agency (NIA) and charged under the Unlawful Activities (Prevention) Act in the Sessions Court after the authorities falsely alleged that he had links with far-left Maoists groups.

Father Swamy, who suffers from ill-health including Parkinson's disease, was initially expected to be held until 23 October, however he was denied bail by a NIA Special Court on that date and has remained imprisoned ever since despite repeated international calls for his release.⁶

Father Swamy has been an advocate for Adivasis (Scheduled Tribes) in Jharkhand state for more than three decades advocating against state-sponsored violations of laws, such as illegal state-backed land acquisition of mega projects for mining and infrastructure developments. The UN Special Rapporteur on the situation of human rights defenders, Mary Lawlor has condemned India of the treatment of civil society by stating that India does not "properly protect human rights defenders."⁷

COVID-19

The COVID-19 pandemic has increased communal polarisation in India, particularly affecting the Muslim community. In March 2020, an Islamic missionary organization called Tablighi Jamaat (TJ) held an event which was attended by approximately 8,000 Muslims. The event has been singled out by the police and government officials as being responsible for the spread of the virus, although the Delhi authorities had given prior go-ahead for the meeting to take place. Since then, Muslims have continued to be targeted as a perceived source of COVID-19, and in many cases have been denied medical treatment as a result of this rhetoric.

In April 2020, 22-year-old Dilshad Ali from Bhopal was dragged through the street and lynched for attending the Jamaat. During the lynching his attackers asked him "who were the others behind the conspiracy to infect Hindus."

On 7 April 2020, Gayur Hasan (60) from Keorak village, Kaithal District, learnt that his workshop was on fire from his son. He ran an ancestral iron and welding business in the village. Hasan referred to the rumors and conspiracy theories that have been circulating on social media about Muslims spreading Covid-19, which may have led to his workshop being targeted.

Recommendations

To the government of India:

- Conduct a review of the CAA and NRC, to ensure that it is in keeping with the country's commitment to its people under the Constitution.
- Conduct an independent inquiry into police responses to anti-CAA/NRC protests, to determine reports of disproportionate use of force, arrests and deaths of civilians.
- Pursue policies to reform its law enforcement agencies, including establishing mechanisms to increase the accountability of law enforcement officers, and ensuring that First Information Reports are effectively investigated and prosecuted.
- Repeal anti-conversion legislation currently in force in seven states, namely Gujarat, Himachal Pradesh, Chhattisgarh, Madhya Pradesh, Uttarakhand, Odisha and Jharkhand.
- Increase efforts to reverse the culture of impunity that leads to communal violence by ensuring that perpetrators are brought to justice and adequate levels of compensation are granted to victims, in line with recommendations accepted during the 2017 Universal Periodic Review (UPR).
- Uphold the rights to free speech and freedom of expression, and protect civil society and journalists who exercise these rights, by investigating and prosecuting the perpetrators of crimes against these groups.
- Adopt a national plan on human rights in order to prevent violence committed in the name of religion, and other forms of oppression related to religion or belief, in line with accepted recommendations during the 2017 UPR.
- Work towards the introduction of a comprehensive framework to deal adequately with communal and targeted violence.

⁶ The Unlawful Activities Prevention Act (UAPA) under which Father Swamy was charged is a non-bailable offence, however his lawyers submitted a bail application on the grounds that there is no evidence to charge Father Swamy under the UAPA, and given his old age and ill-health.

⁷ Scroll.in, 'India does not protect human rights defenders properly, says UN representative', 16 January 2021
<https://scroll.in/latest/984202/india-does-not-protect-human-rights-defenders-properly-says-un-representative>