

Introduction

Since May 2019, the NDA¹-led 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

India's religious diversity is not just under threat from government instigated policies and laws, but also the spread of religious intolerance and impunity by non-state actors.

Communal violence

Hate speech by far-right Hindu nationalist groups fuels hostility towards religious minorities. The situation is abetted by officials in the ruling Bharatiya Janata Party (BJP) who fail to prevent and investigate attacks, and are known to permit the spread of hate. The incumbent 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 the 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 are routinely used to justify violence against Christian targets 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. The state's silence on the behaviour of those promoting Hindutva has led to abuse of the laws.

The laws, known as Freedom of Religion Acts, are enforceable in Gujarat, Himachal Pradesh, Chhattisgarh, Madhya Pradesh, Arunachal Pradesh, Odisha and Jharkhand States. Anti-conversion laws have removed the right of free choice and given the state the power to decide whether someone may change their religion. These laws criminalise conversion through allurement, 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, resulting in criticisms about the true intention of these legislation, which are 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.

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>

Dalits who adopt other religions, particularly Christianity or Islam, lose their legal status as Scheduled Castes and consequently their eligibility to access the benefits that are available to Dalits of a different religious background.

The Foreign Contribution Regulation Act (FCRA), passed in 1976 and amended in 2010, has consistently been used 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 in India continues to fall. Local sources report an estimated 22,000 NGOs were permitted to receive foreign funds in 2019.

The latest push for the CAA-NRC has drew widespread national and international criticism for being fundamentally anti-Muslim and reducing Muslims in India to second-class citizens. The CAA-NRC, 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 as it encourages homogenising India's historically diverse race and religious composition and imperilling the wellbeing of minorities. The CAA provides naturalisation of citizenship to illegal immigrants from Afghanistan, Bangladesh and Pakistan who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians who have fled religious persecution from these countries.

Shrinking space for civil society

The space for Indian writers and human rights defenders has shrunk since 2015. The killings of eminent Indian writers who questioned Hindu right-wing politics and attacks on freedom of expression, such as Govind Pansare and M. M Kalbugi in 2015, and Gauri Lankesh in 2017, have resulted in self-censorship among others.

According to local monitoring group United Christian Forum (UCF) at least 78 incidents of violence against Christians were reported in the first three months of 2020.

Recent developments

In March 2020, the Supreme Court of India ordered the arrest and imprisonment of Anand Teltumbe and Gautam Navlakha, both in their mid-sixties and with underlying health problems. Anand who has been critical of the caste system in India and advocated for the rights of Dalits had been critical of the Modi government and Gautam, has been writing critically about the government's human rights violations in Jammu and Kashmir and is a critical dissenting voice of repressive laws in India.

The Covid-19 Pandemic

The Covid-19 pandemic has also increased communal polarisation, which has particularly affected 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 disease, although the Delhi authorities had given prior go-ahead for the meeting to take place. Some BJP leaders have claimed that this is an Islamic conspiracy to infect Hindus with the virus, while some militant elements have taken on to social media and have labelled it 'corona terrorism' and 'corona jihad.' The Chairman of the Delhi Minorities Commission has said that the gathering was short-sighted, but noted that the whole focus has been on Muslims, while other political parties and religious groups had also flouted government restrictions.

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."

Most recently, a Member of the Legislative Assembly (MLA) from Badrinth, Uttarakhand urged people to boycott Muslims business in Najibabad.

On 13 April BJP leader Kapil Mishra, who courted controversy after he instigated a riot where gangs of Hindu nationalists attacks Muslim homes, mosques and businesses during unrest surrounding the CAA, took to social media and accused the attendees of the Tablighi Jamaat of deliberately spitting on doctors and health workers.

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.