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USCIRF Annual Report 2010 - The Commission's Watch List: India

FINDINGS: India is a critically important country in terms of religious freedom for several reasons: it is the world's largest democracy; its multitude of religious communities have historically coexisted peacefully; it occupies a key geopolitical position; and its stature is rising on the global stage. Nonetheless, India's progress in protecting and promoting religious freedom during the past year was mixed. The Indian government at various levels recognized the problem of communal violence and created some structures to address these issues. However, justice for victims of communal violence was slow and often ineffective, thereby perpetuating a climate of impunity. While there was no large-scale communal violence against religious minorities during the reporting period, attacks on Christians and Muslims and their places of worship continued, along with incidences of intolerance against both.

Because the governmental response at the state and local levels continues to be largely inadequate and the national government has failed to take effective measures to ensure the rights of religious minorities in several states, USCIRF again places India on its Watch List for 2010.* USCIRF placed India on its Watch List for the first time in 2009.

Despite the current national government's commitment to religious tolerance, communal violence has continued to occur with disturbing regularity, and the governmental response, particularly at the state and local levels, has been largely inadequate. Following incidents and reprisals at and after Christmas 2007, the murder of an influential Hindu leader in August 2008 sparked a prolonged and violent campaign targeting Christians in the state of Orissa. Over several weeks, at least 40 individuals were indiscriminately killed, the vast majority of whom were Christians, church properties and thousands of homes were destroyed, and tens of thousands fled their homes, seeking refuge in the jungle or in government relief camps. An inadequate police response failed to quell the violence, and early central government intervention had little impact.

Mass arrests following the Orissa violence did not translate into the actual filing of many cases, and the courts prosecuting the claims absolved a disproportionately high percentage of cases for lack of evidence. Also, efforts continue to lag to prosecute the perpetrators of the 2002 Hindu-Muslim riots in Gujarat, in which the official death toll was 1,272 (with some groups estimating double that number of actual fatalities), the majority of whom were Muslim.

PRIORITY RECOMMENDATIONS: Infrastructure for investigating and prosecuting cases of religiously-motivated violence or harassment exists in India, but the legal system's capacity and will is severely limited and is utilized inconsistently. These deficiencies have resulted in a culture of impunity that gives members of vulnerable minority communities few assurances of their safety, particularly in areas with a history of communal violence, and little hope of perpetrator accountability. USCIRF urges the U.S.

government to encourage and assist the government of India to undertake measures to make more vigorous and effective efforts to halt violent attacks against members of religious minorities, as well as women and individuals deemed to be of lower caste; conduct timely investigations and prosecutions of individuals alleged to have perpetrated violence; hold state governments and officials accountable for violence and unlawful acts in their states; and enact policies to encourage religious tolerance in accordance with India's rich history of religious pluralism and the peaceful coexistence of different linguistic, ethnic, and religious groups. USCIRF also urges the U.S. government to integrate concern for religious freedom and related human rights into all bilateral contacts with India and the U.S. ambassador to India to speak out against, and seek to visit sites of, communal violence such as Orissa.

*Commissioner Gaer dissented from the placement of India on the Commission's Watch List. The full dissent can be found at the end of this chapter.

Religious Freedom Conditions

Challenges Facing Democratic India

Unlike many of the other countries of concern to USCIRF, India has a democratically elected government with a tradition of secular governance. A country with a Hindu majority, India has one of the world's largest Muslim populations, the current, two-term Prime Minister is Sikh, the past president is Muslim, and the head of the national governing alliance is a Catholic. Buddhist, Christian, Hindu, Muslim, Sikh, and Parsi holidays are recognized as public holidays. India also has an independent judiciary, an independent media that is relentlessly critical of the government, and a dynamic civil society with numerous non-governmental organizations (NGOs) that provide oversight of government activities. In practice, however, India's democratic institutions charged with upholding the rule of law, most notably state and central judiciaries and police, lack capacity to execute those functions and have emerged as unwilling or unable consistently to seek redress for victims of religiously-motivated violence or to challenge cultures of impunity in areas with a history of communal tensions.

The Commission's concerns about religious freedom conditions in India originated in 2002, based on a disturbing increase in communal violence against religious minorities associated with the rise of organizations with Hindu nationalist agendas, including the Bharatiya Janata Party (BJP), one of the country's major political parties. Under the national leadership of the BJP (in power from 1998 to 2004), USCIRF found the Indian government's response to violent attacks against religious minorities to be inadequate. In response to severe riots in the state of Gujarat and elsewhere, the Commission recommended that India be designated as a "country of particular concern" (CPC) in 2002 and 2003.

India was removed from USCIRF's CPC list following the election in 2004 of the Congress Party, as the new government espoused an inclusive platform and repeatedly pledged its commitment to religious tolerance. This commitment was reiterated by the Congress Party in the 2009 general elections for the lower house of Parliament, in which the Congress Party emerged victorious.

Hindu nationalist organizations retain broad popular support in many communities in India, and their activities, especially those with an extremist agenda or history of using violent force against minorities, often negatively impact the status of religious freedom in the country. Many of these organizations exist under the banner of the Sangh Parivar, a "family" of over 30 organizations that includes the Vishwa Hindu Parishad (VHP), Bajrang Dal, Rashtriya Swayamsevak Sangh (RSS), and the BJP. Sangh Parivar entities aggressively press for governmental policies to promote a Hindu nationalist agenda, and adhere in varying degrees to an ideology of *Hindutva*, which holds non-Hindus as foreign to India.

The failure to provide justice to religious minorities targeted in violent riots in India is not a new development, and in some cases has helped foster a climate of impunity. In

1984, anti-Sikh riots erupted in Delhi, killing thousands following the assassination of Prime Minister Indira Gandhi by Sikh bodyguards. Few of the perpetrators of the anti-Sikh violence have been held accountable. In the late 1990s, there was a marked increase throughout India of violent attacks against members of religious minority communities, particularly Muslims and Christians, including incidents of killings, torture, rape, and destruction of property. Perpetrators were rarely held responsible. For example, there has been little justice for the victims of riots between Hindus and Muslims after the 1992 destruction of the Babri mosque at a contested religious site in Ayodhya. At least 900 people, mostly Muslims, were killed in Bombay in the 1992-1993 riots, but few perpetrators have been successfully prosecuted. For instance, several high-profile trials that commenced over 10 years after the riots resulted in acquittals. A probe by India's Central Bureau of Investigation (CBI) into one high-profile act of riot violence was announced in February 2009, 16 years after the riots. Attacks on Christian churches and individuals, largely perpetrated by individuals associated with these Hindu nationalist groups, continue to occur across the country, and perpetrators are rarely held to account.

Orissa Violence in 2007 and 2008

The Kandhamal district of the state of Orissa has been the site of repeated attacks by Hindu extremists against Christians. Kandhamal is the country's poorest district, and unlike the rest of the state, it is 25-27 percent Christian. Several of Kandhamal's 2,500 villages are entirely Christian. Religion has played a significant factor in the violence in Kandhamal, with the Hindu majority often raising concerns about alleged "forced conversions." However, according to the National Commission for Minorities, there have been no cases of forced conversions registered in Kandhamal in the past 40 years. In addition to religion, socio-economic tensions between Dalits and tribal groups also motivated the killings, assaults, and property destruction.

In December 2007, violence in Kandhamal district between Christians and Hindus resulted in several deaths, dozens of injuries, the destruction of at least 20 churches and hundreds of homes, and the displacement of hundreds, many from minority religious communities. Reportedly, the influential local VHP leader Swami Lakshmanananda Saraswati played a central role in fomenting and encouraging the violence against Christians. Swami Saraswati was murdered on August 23, 2008, with Maoist extremists claiming responsibility. However, the murder sparked a violent campaign targeting Christians in Orissa. The State Department reported 40 individuals were killed and 134 injured, although some Christian groups report more. In addition, thousands of church properties and homes were destroyed; at least 24,000 fled their homes to government-run relief camps, and thousands more were driven into hiding in jungles. There was no immediate police or state government reaction. Indian Christian leaders, religious leaders and aid agencies were denied access by state and/or district officials to refugees in the hardest-hit areas.

Returns have been hampered by efforts to "reconvert" returning villagers to Hinduism. Numerous press and National Commission for Minorities (NCM) reports document widespread forced conversions of Christians to Hinduism in villages and relief camps in Orissa following the 2008 attacks. Insecurity and the threat of harassment, property destruction, and/or additional violence allegedly have caused many Christians to partake in "reconversion" ceremonies. According to a report by the NCM, even retired high-ranking officials were "threatened with every sort of retaliation if they did not forthwith change their religion and embrace Hinduism." There was no immediate police or state government reaction.

In both 2007 and 2008, the ineffective and/or belated police response failed to quell the violence in Orissa, and initial central government intervention was largely inadequate. In both years' violence, the synchronization of some attacks across wooded and remote terrain suggests premeditation, as well as the awareness and perhaps assistance of local officials and/or police. While the 2008 violence was still ongoing, the Orissa state government permitted a funeral procession for Swami Saraswati to cover a distance of 150 kilometers across Kandhamal two weeks after his murder, despite calls from religious leaders that such a procession could further inflame communal tensions.

According to news reports, some police watched passively as violence occurred. Central government paramilitary forces did not arrive in Orissa until August 27, but were reportedly prevented from reaching the most sensitive areas because of the strategic felling of trees across key access roads.

In March 2009, Orissa's ruling party, the Biju Janata Dal (BJD), ended its 11-year coalition with the BJP, a decision brought about in part by the BJD's repudiation of the BJP's Hindu nationalist agenda, and the alleged support of some state BJP officials for the VHP, the Sangh Parivar entity implicated in riots. Several high-profile state and central government investigative teams have visited Orissa. Almost none of the dozens of recommendations for state reform offered by the NCM, the UN Special Rapporteur, and Indian Christian organizations have been implemented. Nevertheless, fears that violence would resume in Orissa on Christmas 2008 were assuaged by a series of preventative measures undertaken by the government, and the holiday occurred without incident.

Despite mass arrests following the Orissa riots, victims have experienced difficulty in actually filing cases, exacerbating the existing culture of impunity. When attempting to file First Information Reports (FIRs), victims of the 2008 violence reported intimidation and lack of cooperation by police. Nevertheless, 3,223 complaints were filed, but only 831 cases were registered. Among those accused in the violence were 85 members of the RSS, 321 members of the VHP, and 118 members of Bajrang Dal. After preliminary investigations, 133 cases have been dropped.

The Indian government set up two fast-track courts in April 2009 to deal with the complaints lodged after the Kandhamal violence. However, this process has been slow and a large number of cases have been dismissed because of "insufficient evidence." The State Department reported approximately 60 to 70 convictions and 100 acquittals, with 13 people sentenced to several years in jail. The effectiveness of the fast-track courts is limited by the fact that the prosecuting attorneys generally do not speak Oriya, the local language in which the trials are conducted. Furthermore, the majority of prosecutors are inexperienced in prosecuting cases of communal violence and have an excessively large case load. There also are reports of widespread witness intimidation as well as prejudice against the victims and their families.

The Indian government has appropriated funds to rebuild some of the damaged homes and churches, as well as to provide assistance to families whose family members were killed. Approximately 4,600 houses were damaged, out of which 1981 are reportedly in some stage of repair or have been completely restored. Of the 196 religious institutions, including prayer halls and churches, which were destroyed, 100 have received financial compensation for repairs from the state and national government. The state and national government also appropriated funds for victims and their families on a case-by-case basis.

In late 2008, the state government of Orissa commissioned Justice Mohapatra, a retired judge of the Orissa high court, to conduct investigations into the Kandhamal violence. His interim report in July 2009 found that the "sources of the violence were deeply rooted in land disputes, conversion and fake certificates" and recommended the government take steps to resolve land issues. He also reported that the state government should expedite the freeing of tribal land in possession of non-tribals, clear the fake certificate cases, and be vigilant about conversion and reconversion. Hindu hardliners have focused on land disputes as the main cause of the violence, minimizing religious factors.

Violence in Karnataka State and Other Recent Incidents

On September 14, 2008, shortly after the outbreak of violence in Orissa, over a dozen prayer halls and churches in three Karnataka state districts were attacked by individuals allegedly associated with the Bajrang Dal, a Hindu nationalist organization. In one district, six individuals were injured after attacks on two New Life Church prayer halls. The New Life Church has been accused of distributing pamphlets denigrating Hinduism.

The state response to these attacks has been inconsistent, as police cases have been registered following some but not all of the incidents. Karnataka Chief Minister BS Yeddyurappa did not order additional state security for churches and prayer halls until over a week after the first attack. On September 19, 2008, Karnataka state leader of the Bajrang Dal, Mahendra Kumar, was arrested by state police after he publicly announced his group's leading role in the attacks. However, in the aftermath of the attacks Mr. Yeddyurappa attributed the violence to conversion activity.

As a response to the rising incidents, the Karnataka state government appointed a commission of inquiry, headed by Justice B.K. Somashekara, to probe the attacks. In February 2010, this commission submitted its interim report to the state government, in which it found members of the BJP responsible for the 2008 attacks on churches and places of worship. The report also stated that high-ranking police officials collaborated with Bajrang Dal and the right-wing Hindu nationalist group Sri Ram Sena in "directly or indirectly" attacking the churches. Although it implicates the aforementioned organizations, the interim report did not take a strong stance against the attacks or the lack of perpetrator accountability. Despite this report, Karnataka Chief Minister Yeddyurappa maintains that the attacks were carried out by an organized group seeking to tarnish the image of the BJP. There has yet to be any justice meted out to the perpetrators identified in the report.

Attacks in Karnataka state continued during the 2009-10 reporting period against Christians and church properties. For instance, in February 2010 Hindu extremists reportedly beat two Christian pastors unconscious after literally dragging them from their church compound. In March 2010, a pastor was assaulted during a prayer service when reportedly 15 Hindu extremists forced themselves into the meeting. In neither case did authorities bring charges against the attackers. However, in recent months, police in Karnataka have detained several pastors and held them overnight on charges of "forcible" conversions. In March 2010, about 30 Hindu extremists reportedly forcibly entered the private home of a Christian family and accused the pastor of "forceful" conversions. Police arrested the pastor based on these allegations, while no action was taken against the intruders.

Hindu nationalist groups have been implicated in attacks against Hindus as well. In January 2009, about 40 members of Sri Ram Sena attacked a group of women at a pub in Mangalore, Karnataka, on the premise that the women's behavior violated Hindu values. The attacks sparked a national outcry from activists, and several arrests were made, although all were released on bail. In July 2009, rioting between Muslims and Hindus resulted when a dead pig was thrown into the compound of a mosque in Karnataka. Dozens were reportedly injured but no known arrests were made. There were also repeated reports of incidents in Karnataka's Dakshina Kannada district of Hindu extremists groups attacking women visiting pubs and Muslim boys who were seen talking to Hindu girls. Any response by authorities is unknown.

Reports of attacks on Christian leaders repeatedly arose in 2010, with violence occurring throughout the country. In New Delhi, a Christian pastor was attacked by 25 RSS members wielding hockey sticks. Police did file an FIR, but no charges have been brought to date. In the state of Andhra Pradesh, Hindu extremists attacked a pastor and his wife, accusing them of preaching in the area. Local police reportedly refused to file an FIR. In the state of Chhattisgarh, an estimated 40 Hindu extremists from Bajrang Dal, reportedly motivated by concerns about "forced conversion," crashed a Sunday worship service, destroying Bibles and Christian materials. The Bajrang Dal members called the police and the pastor and some church members were held for several hours; the police refused to file a report against the Bajrang Dal members. In Madhya Pradesh, approximately 45 Bajrang Dal supporters, accompanied by police, reportedly broke into a church service. Several church members were taken into custody on suspicion of "conversion activities" and were later released without charges since their activity was not illegal.

In September 2008, a bomb attack in Malegaon, Maharashtra that killed seven and injured over 70 was traced to "Hindu extremists." Eleven individuals were arrested by the Maharashtra Anti-Terrorism Squad. This attack and the ensuing arrests prompted a

national debate regarding the contours of emergent "Hindu terrorism" and allegations of anti-Hindu bias by political parties seeking to appease minority electorates. In Chhattisgarh state in November 2007, a mob of 150 members of a Hindu extremist group attacked a church, destroying the church building, beating the pastor, and kidnapping a young member of the church, who was later found dead. Despite the fact that the police were provided with the names of the attackers, officials reportedly waited until the following day to file a complaint. In January 2008, also in Chhattisgarh, more than 80 people were injured in an attack on a large Christian meeting carried out by extremists. The attackers reportedly beat the Christian worshippers and vandalized the makeshift church structure. The State Department also reports communal clashes between Hindus and Muslims in several districts in Maharashtra and Gujarat in 2007 and 2008, causing injuries and the destruction of property.

The State Department reported that the "levels of societal and insurgent violence declined in [the state of] Jammu and Kashmir," but insurgents continued to kill individuals associated with the government or rival factions, as well as civilians. Because of the violence, over the past decade thousands of Kashmiri Pandit Hindus have left for other regions of India. In August 2009, the state government of Jammu and Kashmir reportedly provided approximately 16 billion rupees (\$32 million) for the return and rehabilitation of Kashmiri Pandits to the state. In December 2009, around 40 people were injured when police fired tear gas and used batons to break up religious processions during the Muharram commemoration by Shi'a Muslims in Jammu and Kashmir. Local police also arrested 40 people. Large public gatherings of this sort have been banned since 1989. Authorities allow only small mourning rallies and processions in areas with sizable Shi'a populations, leading to annual friction between police and mourners.

Gujarat Violence in 2002

In February 2002 in the state of Gujarat, a train fire reportedly set by Muslims resulted in the death of 58 Hindus returning from the disputed holy site of Ayodhya. Consequently, 1,200-2,500 Muslims were killed across Gujarat by Hindu mobs, thousands of mosques and Muslim-owned businesses were looted or destroyed, and more than 100,000 people fled their homes. Christians were also victims in Gujarat, and many churches were destroyed. Many have not returned, as a study recently commissioned by the NNCM found that approximately 5,000 Muslim families have still not been able to return to their homes and are currently housed in 46 different camps across the state. Their physical situation was described as "precarious." India's National Human Rights Commission (NHRC), an official government body, found evidence of premeditation in the killings by members of Hindu nationalist groups, complicity by Gujarat state government officials, and police inaction in the midst of attacks on Muslims. In 2007, the investigative newsmagazine *Tehelka* revealed further evidence of state government and police complicity in the riots, including the complicity of the then and current Gujarat Chief Minister, Narendra Modi. Chief Minister Modi has been re-elected twice since the riots.

Court convictions of alleged perpetrators of the Gujarat riots are rare, due to the slow pace of prosecutions, the lack of evidence, insufficient effort by local police officials, or a combination of the three. Since there were many eyewitnesses to the attacks, the low number of convictions suggests endemic impediments to justice continue to exist within the police, the judiciary, and the state government apparatus. In August 2004, the Indian Supreme Court ordered the Gujarat government to reopen its investigation of the 2002 violence, criticizing the local police officials for poor investigative practices and inadequate follow-up. In July 2006, a report from a committee attached to the Prime Minister's office again chastised the Gujarat government for failing to improve the situation for Muslims in that state, noting that a "state of fear and insecurity" still existed for many Muslims there. This was corroborated by the January 2009 report of the UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, who visited India in March 2008 and noted the systemic economic and social marginalization of members of Gujarat's Muslim community. In February 2009, seven years after the riots, the Gujarat state government declared that the 228 (predominantly Muslim) individuals still missing would be presumed dead. Family members petitioned the Gujarat high

court to direct the state government to release compensation, and the state government reportedly complied.

In response to a complaint filed by the widow of Congress MP Ehsan Jaffri, who was killed in the 2002 riots, the Supreme Court in 2009 ordered the Gujarat police to register a complaint against the Chief Minister and 60 other high-level officials of the Gujarat government regarding their alleged involvement in her husband's murder. In January 2010, a Special Investigative Team (SIT) established by the Supreme Court disclosed that the Gujarat government had been uncooperative and did not relinquish copies of speeches that Chief Minister Modi made in the immediate aftermath of the riots and other requested documents. That same month, the Supreme Court ordered the Gujarat state government to immediately release to the SIT copies of these materials to facilitate the probe. The SIT summoned Chief Minister Modi to appear before the Supreme Court in March 2010. Initially, he failed to appear on the date specified, claiming he had not been summoned. However, he did appear before the Supreme Court several days later, and was questioned for ten hours about his role in the Gujarat violence. The investigation is ongoing.

International human rights groups have identified the VHP, RSS, BJP, and Bajrang Dal as perpetrators of the violence in Gujarat, as well as other acts of violence against non-Hindus. The Supreme Court in April 2009 agreed to look into NGO allegations that the SIT is ignoring evidence against the perpetrators. After a controversial 2002 non-governmental organization report described links between a Maryland-based charity and India's RSS and other "violent and sectarian Hindu organizations," Silicon Valley companies Cisco and Oracle suspended matching company donations to the charity. India's central and state police and judicial apparatuses have neglected to examine consistently or adequately the evidence linking Sangh Parivar entities such as the BHP, RSS, BJP, and Bajrang Dal to acts of violence.

The State Department reported that on June 4, 2009, the Gujarat state government appointed a commission of inquiry to study "settlement patterns" in the state from 1947 to the present, so as to make recommendations for "stopping the polarization of population in the state." The membership of the commission was criticized by civil society groups, as it is comprised of one member, a judge viewed to have made several anti-Muslim rulings. In light of the violence in 2002 and the lack of accountability, Muslim groups fear that the charting of their locations could be used in future attacks. The commission's report is due by January 2011.

The 1984 anti-Sikh Riots

In 1984, anti-Sikh riots erupted in Delhi following the assassination of Prime Minister Indira Gandhi by Sikh bodyguards. Over four days, nearly 3,000 Sikhs were killed, allegedly with the support of Congress Party officials. Few perpetrators were ever held accountable, and then only years after the fact. In April 2009, the Congress Party dropped two individuals, Jagdish Tytler and Sajjan Kumar, from its roster of general election candidates over their suspected role in the 1984 riots. As of early 2010, court proceedings in the Delhi high court against these two individuals were ongoing. As with many cases regarding the prosecution of alleged perpetrators of communal violence, Mr. Kumar and Mr. Tytler have been accused of delaying the trial and intimidating the witnesses and their families. The CBI, which is overseeing the investigation of the anti-Sikh riots, has also drawn criticism for not vigorously investigating and prosecuting the accused. In December 2009, amendments were made to the Code of Criminal Procedure, making it easier for victims of religious persecution to appeal judgments in court. Ten days after the amendment was enacted, the High Court accepted an appeal from a victim of the 1984 anti-Sikh riots, Gurbakshish Singh. The case was ongoing at the end of the reporting period.

Responses to Terrorism and the Prevention of Communal Violence

Threats and fear of terrorism in India, perpetrated or threatened by domestic actors (including Maoists) and foreign, regional actors (particularly Pakistanis and

Bangladeshis), remains high. India continues to witness terrorist bombings; however, unlike with the cases discussed previously, swift state and central government action followed to prevent communal violence. In May 2008, bomb attacks killed almost 100 bystanders in crowded markets next to Hindu temples in Jaipur. At least 45 individuals died in bomb blasts in November 2008 in Ahmedabad, the capital city of Gujarat. Severe casualties also resulted from 2008 bomb attacks in Delhi and Bangalore. The central government's immediate appeals for calm and peace and the rapid response of state police helped prevent communal riots, despite varying religious undertones to the attacks, some of which occurred near places of worship, and/or were orchestrated by Islamic extremists.

In November 2008, 163 people were killed in coordinated attacks on ten prominent Mumbai sites, including two luxury hotels and a Jewish center. These attacks were carried out by members of the extremist Islamic organization Lashkar-e-Taiba, a group active in Kashmir and understood to have linkages with Pakistan's intelligence agency. Lashkar-e-Taiba has been designated by the State Department as a foreign terrorist organization. The attackers purposefully sought out an American-born rabbi and his Israeli wife residing in the upper floor of an apartment building as targets for their murder.

In February 2010, a bomb exploded in the German Bakery in Pune, Maharashtra, killing 17 and injuring over 50. The bakery was a popular meeting place for locals and tourists alike, prompting suspicion to fall on terrorist groups such as Lashkar-e-Taiba. This was the first major terror attack in India after the 2008 Mumbai attacks. Although the investigation is ongoing, the newspaper *The Hindu* reported that a spokesman for a group called Lashkar-e-Taiba al-Almi, an offshoot of Lashkar-e-Taiba, had claimed responsibility and asserted that the attack was in response to India's "'refusal' to discuss the disputed region of Kashmir." As was the case with the Mumbai attacks, no backlash against Muslim communities resulted following the attack in Pune. However, some observers attribute this to the level of education, integration, and efforts of the people of Pune rather than any endeavor by the government to ease inter-religious tensions.

Legal Climate

While the Indian Constitution protects the right of citizens to change and propagate their religion, five Indian states – Chhattisgarh, Himachal Pradesh, Gujarat, Madhya Pradesh, and Orissa – have controversial laws against "coerced" religious conversions. A law restricting religious conversions in the state of Arunachal Pradesh awaits implementing regulations for enforcement and is considered "inactive." The Rajasthan state government passed an "anti-conversion" law in March 2008 that would restrict proselytism, but the governor refused to sign it into law. When the BJP lost to the Congress Party in December 2008 state assembly elections, no additional attempts were made to pass the law. Anti-conversion laws require government officials to determine what is or is not a "sincere" conversion. These laws provide for fines and imprisonment for anyone who uses force, fraud, "inducement," and in some cases, the threat of "divine displeasure" to convert another. In 2007, the Andhra Pradesh state government enacted a law against the "propagation of other religion in places of worship or prayer," which prohibits the distribution of religious materials near the place of worship of another religion.

The State Department reported approximately 17 arrests under "anti-conversion" and other restrictive laws in the states of Chhattisgarh, Madhya Pradesh, and Maharashtra. These laws create a hostile atmosphere for religious minorities, particularly given that they exist in states in which attacks by extremist groups are more common – and often happen with greater impunity – than elsewhere in India. For example, the NCM report on the December 2007 violence in Orissa concluded that an important factor behind the attacks was the "anti-conversion" campaign carried out by groups associated with the Sangh Parivar. The UN Special Rapporteur has also expressed her concern over the impact of these laws on religious minorities and their inconsistency with international norms guaranteeing the freedom to change one's religion, and has called for their repeal.

According to the State Department, India's central government maintained a list of banned books. The books were prohibited from importation or sale because censors deemed their content "inflammatory and apt to provoke communal or religious tensions." The Rajasthan state government also banned books considered blasphemous of Hindu gods.

An additional factor exacerbating tensions between Hindus and Christians in Orissa – tensions that erupted into violence in 2007 and more prolonged rioting in 2008 – is a quota scheme offering certain benefits to India's most disadvantaged groups, the Scheduled Tribes and Scheduled Castes (also known as Dalits or "untouchables"). In Orissa, Hindus who are members of Scheduled Castes receive job quota benefits, but Christians and Muslims from Scheduled Castes do not, as they are considered to have removed themselves from the caste system. Although affirmative action is not an internationally recognized right, the quota system, which was enacted because Scheduled Castes and Tribes represent a historically underprivileged and impoverished demographic, is frequently applied discriminatorily so that disadvantaged Christians and Muslims are excluded from benefiting. However, in many cases, the economic and social challenges facing this demographic do not appear to be eliminated by their religious affiliation. The UN Special Rapporteur has condemned this discriminatory system and called for the abolition of links between religion and caste or tribal status. Christian groups have filed a case with the Supreme Court to allow converts to Christianity and Islam to access the same reservations as other Scheduled Castes. The Court was considering the case at the end of the reporting period.

In November 2006, the Sachar Committee reported that Indian Muslims face discrimination and other hardships and Prime Minister Singh pledged to "address the imbalances." Reports conflict about how many of the 22 recommendations have actually been implemented. In January 2009, the government announced that *madrassa* degrees would be equivalent to university degrees. In May 2008, at least 40 unarmed protesters were killed and hundreds were detained during weeks of violent protests and counter-protests regarding the Jammu and Kashmir government's decision to transfer 100 acres of forest land to the government-run, Sri Amarnath Shrine Board for the lodging of Hindu pilgrims. The state government's decision to transfer the property in the Muslim-majority state was seen by many Kashmiri Muslims as an expression of pro-Hindu bias and an attempt by the Indian government to increase Hindu religious tourism and skew state religious demographics. In March 2009, at the urging of the Election Commission, BJP general election candidate Varun Gandhi of the Gandhi political dynasty was arrested by Uttar Pradesh state police under the National Security Act on charges of hate speech against Muslims during a campaign rally. After over two weeks in jail, the Supreme Court ordered Gandhi's release on bail, pending his upholding of a commitment not to promote "disharmony or feelings or enmity, hatred or ill-will between different religion, racial, language or regional groups or castes or communities." Varun Gandhi was elected to the lower house of India's national parliament in the 2009 national elections but subsequently faced a legal challenge on the grounds that his alleged hate speech rendered his victory invalid.

In December 2009, the Singh government announced amendments to the Code of Criminal Procedure. Changes to Section 372 permit individuals to appeal a court order without permission from the law enforcement or prosecuting agency. Previously, an appeal could be filed only after the prosecutor approved the appeal. The amendment makes it easier for victims of religious persecution or other violence to appeal unfavorable court judgments.

U.S. Policy

Since the end of the Cold War, India and the United States have enjoyed increasingly closer ties, with India now described as a "strategic" and "natural" partner of the United States, especially considering the two countries represent the two largest democracies in the world. India is a rising international power, with its economy growing rapidly over the past decade despite large-scale challenges of poverty, overpopulation, and corruption. Since 2004, Washington, DC and New Delhi have pursued a "strategic relationship" based on common concerns regarding the growing threat of terrorism,

energy security, and global warming, as well as on the shared values of democracy and the rule of law. Most notably, three decades of U.S. nonproliferation policy toward India have been reversed through an initiative launched by President Bush in 2005 and finalized by the 110th Congress in 2008. In March 2010, India and the United States successfully concluded negotiations allowing India to reprocess spent nuclear fuel, a development which will open commercial opportunities for U.S. nuclear energy companies.

In 2009, Secretary of State Hillary Clinton traveled to India to launch the "Strategic Dialogue," which called for greater collaboration in a number of areas, including energy, climate change, trade, education, and counterterrorism. However, human rights and religious freedom were not a part of the stated agenda. The first state visit hosted by President Obama was for Prime Minister Singh during his November 2009 visit to Washington, DC. The United States views as important India's role in its efforts of fighting and disrupting terrorist networks of al-Qaeda and other militant groups on the subcontinent, such as Lashkar-e-Taiba. Military-to-military ties have increased, especially after the signing in 2005 of a ten-year defense framework agreement expanding bilateral security cooperation. India purchased \$25 million worth of arms through the Foreign Military Sales programs in 2006 and \$93 million in 2007.

Bilateral tensions have increased, however, with India concerned about increasing U.S. military aid to Pakistan, which New Delhi fears bolsters the Pakistani military capabilities against India rather than for counter-insurgency operations. There are also concerns about the Obama administration's desire to increase relations with China and President's Obama's proposed protectionist and anti-outsourcing policies that may affect India's economy. However, U.S. aid programs continue. USAID funds for FY 2009 were \$78 million and requested funds for FY 2010 are \$99 million. The largest appropriations are for health-related programs and food aid.

USCIRF Activities

During the reporting period, USCIRF Commissioners and staff met with State Department officials as well as a variety of NGOs and religious groups to learn more about the religious freedom situation in India. In June 2009, USCIRF requested to visit India to discuss religious freedom conditions with officials, religious leaders, civil society activists and others, but the Indian government did not issue visas to the USCIRF delegation. Nor did the Indian government offer alternative dates for a visit, which the Commission requested. USCIRF would still welcome the opportunity to visit India.

Recommendations

I. Advancing Religious Freedom through U.S. diplomacy

The U.S. government should:

- integrate concern for religious freedom and related human rights into all bilateral contacts with India, such as with the follow-up work from the 2009 Strategic Dialogue; and
- make clear to the Indian public the high priority the U.S. government gives this issue by directing the U.S. ambassador to: publicly denounce attacks against any religious community, be it in the majority or the minority; seek to visit the sites of communal violence, such as Orissa state; and meet with state and local officials to raise these concerns.

II. Strengthening Law Enforcement and the Judiciary

The U.S. government should urge the government of India to:

- strengthen the ability of the state and central police and other law enforcement

bodies to provide effective measures to prohibit and punish cases of religious violence, and protect victims and witnesses by:

- ensuring that complainants are able to file "First Information Reports" (FIRs);
- ensuring adequate protection for witnesses and complainants after an FIR has been filed;
- ensuring that cases relating to religious violence are processed in a timely manner, including by ensuring that a sufficient number of investigators and public prosecutors are supplied to districts in which acts of communal violence have occurred, and that all such individuals are impartial and adequately trained on human rights and religious freedom standards;
- providing protection for witnesses in danger of retaliatory violence;
- ensuring that all complainants are able to obtain legal representation, regardless of religion or caste status;
- ensuring that standardized procedures for documenting and collecting evidence are promptly followed in instances of communal conflict;
- ensuring that prosecutors have a working knowledge of the language of the court to which they are assigned; and
- ensuring that trials at all levels of the justice system are impartial, including by investigating allegations of corruption or official complicity in any acts of alleged religious violence;
- strengthen the state and central judiciary by implementing measures to ensure that:
 - cases involving religious violence or harassment are processed and resolved in a timely manner; and
 - survivors of communal violence are made aware of their rights and avenues for legal recourse, for example by establishing free or low-cost community legal aid clinics in riot-hit areas;
- ensure that the state and central police and other law enforcement agencies have the training and resources necessary to avert future communal violence, including by sharing information among central and state law enforcement bodies about measures that successfully prevented outbreaks of violence in previous high-tension situations;
- provide training on human rights and religious freedom standards and practices to members of the state and central police and judiciary, particularly in areas with a history or likelihood of communal violence;
- ensure that the perpetrators of terrorist attacks are brought to justice, and the victims and their families are provided aid and counseling; and
- fulfill a pledge made in 2004 to enact a law criminalizing inter-religious violence.

Regarding Orissa

The U.S. government should urge the government of India to:

- initiate a Central Bureau of Investigation probe into the murder of Swami Lakshmanananda Saraswati and the ensuing violence in Orissa;
- continue to pursue, investigate, and bring charges against the perpetrators of the killings and arson in Orissa, as well as any forced reconversions [see specific recommendations above under II. Strengthening Law Enforcement and the Judiciary];
- allow aid groups, regardless of religious affiliation, access to internally displaced persons still unable or unwilling to return to their home communities;
- facilitate relocation of the more than 1,000 persons still displaced from the riots by assuring their safety;
- establish appropriate mechanisms to ensure that all compensation schemes, including those promised by Prime Minister Manmohan Singh soon after the outbreak of the Fall 2008 violence, are carried out in a timely manner and any families unable to produce the body of an individual killed by rioters are not excluded from compensation schemes;
- take steps to ensure police access to Kandhamal district and other areas that may be prone to communal violence, including by improving road infrastructure and building capacity;
- mobilize the necessary security forces over the timeframe necessary to ensure that internally displaced persons residing in government relief camps or elsewhere are allowed to safely return to their villages, without the threat of violence or harassment;
- ensure that the use or threat of violence or harassment to bring about forced conversions or "reconversions" are prosecuted promptly under existing laws prohibiting harassment and violence; and
- recognize the unique link between poverty, tribal identity, and communal violence in Orissa, and implement development schemes to address poverty, disadvantages associated with tribal or caste status, the lack of economic opportunity, and the lack of adequate education and health infrastructure.

Regarding Gujarat

The U.S. government should urge the government of India to:

- continue to pursue, investigate, and lay charges against any individuals responsible for the deaths at Godhra, and the perpetrators of the killings, sexual violence, and arson in Gujarat in 2002;
- urge the Supreme Court to look into allegations of its Special Investigative Team's having disregarded evidence;
- ensure that any efforts to bring a case against Gujarat Chief Minister Narendra Modi are allowed to proceed in accordance with the law;
- send a central government investigative team to Gujarat to assess the security of individuals displaced by the 2002 riots and look into reports that such individuals are systematically economically and socially marginalized, and provide recommendations for improving communal harmony in Gujarat; and
- facilitate relocation of the more than 5,000 families still displaced from the riots by assuring their safety.

III. Reforming Existing Legislation That May Undermine Freedom of Religion or Belief

The U.S. government should urge the government of India to:

- establish an impartial body of interfaith religious leaders, human rights and legal experts, and other civil society representatives to study religious conversion activity and any allegations of forced, induced, or otherwise illegal or improper conversions in states with legislation regulating conversions and to make recommendations as to if and how such laws should be changed to comply with international standards on the freedom of thought, conscience, and religion or belief; and
- investigate job allocation and government benefit schemes for Scheduled Tribes and Castes to assess whether religion is used unfairly to provide or deny access to benefits.

IV. Taking New Measures to Promote Communal Harmony, Protect Religious Minorities, and

Prevent Communal Violence

The U.S. government should urge the government of India to:

- call on all political parties and religious or social organizations, including entities of the Sangh Parivar, including, but not limited to the Bharatiya Janata Party, Rashtriya Swayamsevak Sangh, Bajrang Dal, and Vishwa Hindu Parishad, to: publicly denounce violence against and harassment of religious minorities, women, and low-caste members; acknowledge that such violence constitutes a crime under Indian law; and communicate to all members and affiliates that acts of violence or harassment will not be tolerated and will be prosecuted to the full extent of the law;
- take immediate legal action against any charitable, social, or political organizations, or individuals associated with such organizations, about whom evidence of participation in acts of communal violence is found;
- establish effective State Minority Commissions charged with the responsibility for examining minority affairs, including minority religious communities, issuing recommendations, and serving as a repository for minority grievances in those states that do not currently have such commissions, including Orissa, and ensure that these commissions are transparent, adequately funded, inclusive of women and minorities, and subject to periodic independent review; and
- establish measures to build confidence among religious communities in areas with a history or likelihood of communal violence, including truth and reconciliation councils and social and cultural programming.

Dissenting Statement of Commissioner Felice D. Gaer:

I respectfully dissent from the decision to recommend that India be placed on the Commission's Watch List of countries with egregious, severe violations of religious freedom that fall short of the statutory requirement for "countries of particular concern." I continue to be deeply concerned over the religiously-motivated violence in India in recent years – and the loss of life, physical abuse, displacement, and more – as well as over the many matters of accountability or other remedies that remain to be addressed. However the Commission's conclusion that the system's "capacity and will is severely limited" and that government response to such incidents has been "largely inadequate" seems to fly in the face of the evidence of serious measures that have been undertaken.

The responses of the Indian government during the past year have been significant. They have ranged from formal amendments to the Code of Criminal Procedure that have enabled appeals of judgments of past incidents (including one from the 1984 anti-Sikh riots), to establishing fast track courts to take up cases in Orissa which according to the State Department had already resulted in 60-70 convictions, to appropriating funds for rebuilding and paying compensation to victims or the families of victims, to permitting a 10-country delegation of the European Union to travel to the region for a first-hand examination. National governmental bodies have taken other steps to correct insufficient action on the state level. For example, the Supreme Court has challenged Gujarat state authorities – ordering special investigative teams, summoning the Chief Minister to testify, demanding documentation, etc. Such pro-active measures suggest that the state's capacity and will can be and are being applied to prevent further outbreaks of inter-religious violence, including to address past evidence that its independent, albeit slow-moving and frequently unresponsive, judiciary can work to hold perpetrators accountable as well. Such measures should be continued.

India has carried out these and other measures despite the ongoing threats of terrorist attacks and violence such as in Mumbai in 2008, in which 163 persons were killed. While there were no comparable attacks of this kind in 2010, it is nonetheless reliably reported that a total of 398 persons were killed in 2010 in violent incidents in Kashmir and Jammu, which remains a sizable and deeply troubling number, even if it is somewhat smaller than in 2009, as noted by the USCIRF report.

The religious diversity and tolerance that exists in India has been remarked upon in the USCIRF report, and observers should also note the vibrant civil society with many independent and outspoken non-governmental organizations that monitor and publish their findings on Indian government responses to such violence. Their actions draw attention to the unfinished business needed to redress religious-based violence in India. They are uniquely placed to urge sustained efforts to strengthen the ability of the state and central police to prohibit and punish cases of religious violence, and to monitor those responses in the public arena. India's free press has widely reported on these matters as well.

India has the legal and democratic traditions to deal with religious intolerance and should be strongly encouraged to do so. USCIRF recommendations that call for measures to strengthen law enforcement bodies, including the police and judiciary, merit sustained attention and follow-up. U.S. diplomacy has a role here as well; American diplomats have been unusually quiet on these matters in bilateral relations with India. USCIRF recommends that senior American diplomats should be more vocal in denouncing attacks against any religious community and seek to visit the sites of communal violence as well, making clear that the United States places a high priority on preventing such attacks, punishment of perpetrators and protection of victims and witnesses.
