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BY DR. IQTIDAR KARAMAT CHEEMA

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BACKGROUND

India's population of over 1.2 billion people is only second to China's. Not only is it a large population, it is also religiously diverse: India's Hindu population is nearly 80 percent of its total population, with an estimated 172.2 million Muslims, which makes it the third-largest Muslim country in the world behind Indonesia and Pakistan. Additionally, there are an estimated 27.8 million Christians, 20.8 million Sikhs, and 4.5 million Jains.[1]

Since India gained its independence from the United Kingdom on August 15, 1947, it has always been a democratic, secular, and plural society. In recent years, however, religious minorities have witnessed a deterioration of their rights. The Indian government—at both the national and state levels—often ignores its constitutional commitments to protect the rights of religious minorities. National and state laws are used to violate the religious freedom of minority communities; however, very little is known about the laws. Violence against religious minorities, discrimination, forced conversions, and environments with increased instances of harassment and intimidation of religious minorities are not new phenomena in India, as they have occurred under both the Congress Party and Bharatiya Janta Party (BJP) governments.

Following the victory of India's right-wing BJP in May 2014, concerns have been mounting about the fate of religious minorities in India. As feared by many faith communities across India, threats, hate crimes, social boycotts, desecrations of places of worship, assaults, and forced conversions led by radical Hindu nationalist movements have escalated dramatically under the BJP-led government. India faces serious challenges to both its pluralistic traditions and its religious minorities. Muslims, Christians, Sikhs, and Jains generally are fearful of what the future portends. Moreover, Hindus classified as Schedule Castes or Tribes, commonly referred to as Dalits, also are increasingly being attacked and harassed.

India's constitution encompasses provisions that emphasize complete legal equality of its citizens regardless of their religion and creed, and prohibits any kind of religion-based discrimination. It also provides safeguards—albeit limited ones—to religious minority communities. Nevertheless, minorities face discrimination and persecution due to a combination of overly broad or ill-defined laws, an inefficient criminal justice system, and a lack of jurisprudential consistency.

This report analyzes:

- The Indian model of secularism, in which separation between religion and the state exists neither in laws nor in practice;
- Discriminatory constitutional provisions, which favor the majority religion and curtail the distinct identity of minorities;
- Constitutional provisions on the elimination of "untouchability" (to include a detailed account on discrimination against Dalits);
- Freedom of Religion Acts, commonly referred to as anti-conversion laws;
- The impact of the Foreign Contribution Regulation Act on civil society and nongovernmental organizations;
- Cow protection legislation, enacted in 24 out of 29 Indian states; and
- How Sikhs, Buddhists, and Jains have been denied their own personal status laws.

The report concludes with recommendations to the Indian government for revising laws to align with the country's constitution and international human rights standards. The report also makes recommendations to the United States government on ways to promote religious freedom in India.

IS INDIA SECULAR?

India terms itself a "secular" country; however, its concept of the term is vitally different from the comparable American idea of secularism—which requires complete segregation of church and state—and also the French model of *laïcité*—which guarantees the neutrality of the state toward religious beliefs, and the complete isolation of the religious and public spheres. The first constitution was adopted by the Indian constituent assembly on November 26, 1949; it went into effect on January 26, 1950. At the inception of its constitution, India was not declared a secular country. In fact, the preamble declared India a Sovereign Democratic Republic. It wasn't until January 3, 1977, that the bill for the Constitution Act, also known as the 42nd

[1] Tikku Aloke, *Muslim population grows marginally faster: Census 2011 data*, The Hindustan Times, Aug 26, 2015.

Amendment to the constitution, adopted the word "secular" along with "socialist."[2]

In the significant case of *S.R. Bommai v. Union of India* (1994), the Supreme Court of India comprehensively discussed constitutional matters of India and its secularism. Justice Kuldip Singh, who was on the nine-member judges' bench, wrote, "Whatever the attitude of the State towards religions, religious sects and religious denominations; the religion cannot be mixed with any secular activity of the State."[3]

Two failed attempts have been made to amend the Indian Constitution and make its statement of secularism clearer and stronger. Constitution (Forty-Fifth Amendment) Bill, 1978 proposed to define the expression "secular republic" as "a Republic in which there is equal respect for all religions." The Constitution (Eightieth Amendment) Bill, 1993 sought to empower Parliament to ban parties and associations that promote religious disharmony, and to disqualify members who indulge in such misconduct. Both of the bills, however, were not passed on "technical" grounds.

CONSTITUTIONAL NEPOTISM

The preamble of the Indian Constitution disallows the formation of a theocratic state and precludes the state from identifying itself with, or otherwise favoring, any particular religion. Additionally, the constitution encompasses several provisions that emphasize complete legal equality of its citizens irrespective of their religion and creed and prohibit any kind of religion-based discrimination between them. But neither in laws nor in practice does there exist any separation between religion and the state; in fact, the two often intervene in each other's domain within legally prescribed and judicially settled parameters. Article 290A is one of the core examples of India constitutionally favoring a particular religion. The article provides that the government of the Indian state of Kerala provide funds to maintain the Hindu temples in the former princely state of Travancore.[4]

"MINORITIES": A TERM UNDEFINED IN THE INDIAN CONSTITUTION

Articles 29, 30, 350A, and 350B of the Indian Constitution use the word "minority" and its plural forms, but do not define it. Recently, there has been significant debate in India on the question of precisely who constitutes a minority. The Supreme Court of India in *TMA Pai Foundation & Ors v. State of Karnataka & Ors (2002)* has held that for the purpose of Article 30 of the Indian Constitution, a minority—whether linguistic or religious—is determinable with reference to a state and not by taking into consideration the population of the country as a whole. Due to state-based recognition of religious minorities, some religious minorities have struggled to get national-level recognition by India's central government. Such is the example of the Jains, who were recognized as a religious minority in several states (Jharkhand, Maharashtra, Himachal Pradesh, Madhya Pradesh, Uttar Pradesh, and Uttarakhand). The Jains petitioned the Indian Supreme Court to seek a judgment by the central government for a parallel recognition at the national level. The Jains' demand was endorsed by the National Commission for Minorities in India, but the Supreme Court—without making a clear decision—left the matter to the central government of India.[5]

MISLEADING FREEDOM OF RELIGION ACTS–CONVERSION AND RECONVERSION

Of the 29 states in India, seven—Gujarat (2003), Arnachal Pradesh (1978), Rajasthan (2006), Madhya Pradesh (1968), Himachal Pradesh (2006), Odisha (1967), and Chhattisgarh (1968)—have adopted a Freedom of Religion Act commonly referred to as an anti-conversion law. These anti-conversion laws generally ban religious conversion by use of force, inducement, or any fraudulent means; aiding any person in such a conversion is also banned. However, these laws have resulted in inequitable practices against minorities. One of the debated points linked with freedom of religion for many years in India is whether the "right to freedom of conversion" is associated with the "right to freedom of religion" envisaged in Article 25 of the

[2] Henry C. Hart, "The Indian Constitution: Political Development and Decay," Asia Survey 20:4 (April 1980).

[3] *S. R. Bommai v. Union of India* (1994) 2 SCR 644 : AIR 1994.

[4] Constitution of India Article 290 A. http://www.lawzonline.com/bareacts/Indian-Constitution/Article290A-Constitution-of-India.html accessed 22/06/2016.

[5] Case No: Appeal (civil) 4730 of 1999, *Bal Patil & Anr v. Union of India & Ors* (8 August, 2005).

constitution. Dissimilar with some other countries' constitutions, which recognize freedom of conversion, there is no clear provision referring to "conversion" in the constitution of India.[6] Hence, Article 25 is usually cited with a perception that the "freedom of conversion" emerges from "freedom of conscience."

A 1954 Supreme Court of India judgment in the case of *Ratilal Panachand Gandhi v. State of Bombay* has made the provision of Article 25 clearer by confirming that

> every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgement or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others.[7]

However, in another judgment in the case of *Digyadarsan Rajendra Ramdassji v. State of Andhra Pradesh (1969)*, the apex court decided that "the right to propagate one's religion means the right to communicate a person's beliefs to another person or to expose the tenets of that faith, but would not include the right to 'convert' another person to the former's faith."[8]

In another case of *Rev. Stainislaus v. State of Madhya Pradesh (1977)*, the Supreme Court of India decided,

> What Article 25 (1) grants is not the right to convert another person to one's own religion by an exposition of its tenets. It has to be remembered that Article 25 (1) guarantees "freedom of conscience" to every citizen, and not merely to the followers of one particular religion, and that, in turn, postulates that there is no fundamental right to convert another person to one's own religion because if a person purposely undertakes the conversion of another person to his religion, as distinguished from his effort to transmit or spread the tenets of his religion, that would impinge on the "freedom of conscience" guaranteed to all the citizens of the country alike.[9]

Although the anti-conversion laws do not explicitly ban conversions, in practice these laws "both by their design and implementation, infringe upon the individual's right to convert, favor Hinduism over minority religions, and represent a significant challenge to Indian secularism."[10] While the laws apparently protect religious communities only from efforts to encourage conversion by inappropriate ways, the failure to clearly define what makes a conversion inappropriate gives state governments unregulated discretion to accept or reject the legitimacy of religious conversions. State governments in India have described "subtle forms of humanitarian aid and development carried out as a normal part of a Church's mission" as a cause of improper and unethical conversions.[11] India has always had this negative view of Christian humanitarian efforts: even the "Father of the Indian Nation" Mahatma Gandhi, before the transfer of power in India, once said,

> Who am I to prevent them? If I had power and could legislate, I should certainly stop all proselytizing. It is the cause of much avoidable conflict between classes and unnecessary heart-burning. But I should welcome people of any nationality if they came to serve here for the sake of service. In Hindu households the advent of a missionary has meant the disruption of the family coming in the wake of change of dress, manners, language, food and drink.[12]

Since the inception of India in 1947, various efforts were made by the central government to pass nationwide

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6 Shiv B Rao, *The Framing of India's Constitution,* Vol. II, P 173–174.

7 *Ratilal Panachand Gandhi v. State of Bombay,* Supreme Court of India, Decided 18 March, 1954. http://www.the-laws.com/Encyclopedia/Browse/Case?CaseId=004591740000.

8 *Digyadarsan Rajendra Ramdassji v. State of Andhra Pradesh*. https://indiankanoon.org/doc/537047/.

9 *Rev. Stainislaus v. State of Madhya Pradesh & Ors*. https://indiankanoon.org/doc/1308071/.

10 United States Commission on International Religious Freedom, *Annual Report 2007*, 244.

11 Tracy Hresko, "Rights Rhetoric as an Instrument of Religious Oppression," International & Comparative Law Review (2006): 123–127.

12 Berkley Centre for Religion, Peace, and World Affairs, "Mohandas Gandhi on Proselytizing as a Source of Conflict." https://berkleycenter.georgetown.edu/quotes/mohandas-gandhi-on-proselytizing-as-a-source-of-conflict.

legislation to control religious conversions in India. In 1954, Jethalal Harikrishna Joshi, a member of the then ruling Congress Party, moved in Parliament the Indian Converts (Regulation and Registration) Bill, 1954, which enforced licensing of missionaries and the registration of conversion with government officials. The bill was opposed by Christians. It was also strongly opposed by B. Pocker Sahib Bahadur, a Muslim member of the Indian legislature, on the basis of the fact that as a result of the bill, registration of any conversion would be dependent upon the discretion of the state authority, which he regarded as a "virtual denial of the right" in Article 25 of the constitution.[13] On December 2, 1955, then Indian Prime Minister Jawaharlal Nehru spoke out against the proposed legislation, reminding the House that various efforts to regulate conversion had been made at the time of the Constituent Assembly, yet an adequate solution had not been found. He cautioned the members that legislating against conversion would "cause great harassment to a large number of people" by giving local authorities too much power. He urged that the real solution for the uneasy feelings between religious communities was to create an atmosphere of tolerance by "respecting the other person's religion and avoiding any coercion," and he suggested the mover of the bill should drop it.[14] The bill was eventually rejected by the members of the lower house of the Indian legislature.

Muslims and Christians in various parts of India have long protested against these acts. The protests are based on the argument that although it was specified that the acts were meant to forbid conversion by objectionable means, it is clear in the Odisha Freedom of Religion Act that conversion itself is regarded as objectionable since it is said to undermine another faith. So, it is quite clear that despite the government's claims that there are no objections to "genuine conversion," the acts were intended to control or limit not only conversion done by undesirable means, but also conversion in general. Christians argue the meanings of the terms used in the acts have been exposed to misinterpretation, which leads to serious fears within their community. They regarded conversion as a personal matter, but it comes under the inspection of government officials without adequate protections against the misuse of legislation. Probably the strongest point against the acts is that India's first prime minister, Jawaharlal Nehru, warned the acts could create more problems than they solve. As the texts of the acts show, they were aimed to regulate the activity of the instigator of conversion rather than the one who converts to another religion.

The Freedom of Religion Acts are applicable only in cases of conversion from the "original religion," and keep out of their purview reconversion to "the religion of one's ancestors." Though "original religion" is not clearly defined, religious minorities interpret it to mean that a non-Hindu could freely reconvert to Hinduism, while those assisting a Hindu in converting to another religion may be punished.[15] In August 2007, the state government of Gujarat passed a bill that requires prospective converts from one religion to another to first seek permission from a magistrate's court.[16]

The Special Marriage Act of 1954 includes provisions that deny converts to non-Hindu religions (e.g., Judaism, Islam, and Christianity) of certain rights and privileges. For instance, under the act, if either parent of a Hindu child converts to Christianity or Islam, that parent loses the right to guardianship over the child. The Hindu Minority and Guardianship Act of 1956 disqualifies converts from Hinduism to be the guardians of their own children.[17] Similarly, under the law, a Hindu wife who converts to Christianity or Islam loses her right to marital support from her husband. Conversion from Hinduism can even be a basis for divorce.[18] Article 19 of the Indian Constitution protects freedom of speech, expression, and association. However, the Indian government has not allowed new resident foreign missionaries since the mid-1960s.

Ironically, the Freedom of Religion Acts are not enforced when the religious minorities are converted to Hinduism, which instead is interpreted as "reconversion." The terminology of *Ghar Wapsi* (homecoming) is

[13] Lok Sabha Debates 2/9 (Dec 24, 1954), 4075–4083.

[14] Lok Sabha Debates 2/9 (Dec 2, 1955), 1093–1119.

[15] Deutsche Presse-Agentur, "Anti-Religious Conversion Bill in Indian State Hits Roadblock," May 20, 2006.

[16] Vishal Arora, "State in India Modifies Anti-Conversion Law: Christians in Gujarat Fear Legislation Will Be Misused," *Secular India*, August 23, 2005. http://www.secularindia.com/news/2006/09/23State.htm.

[17] Clause 6 of The Hindu Minority and Guardianship Act of 1956.

[18] Forum18.org, "Situations of Religious Freedom in India." http://www.forum18.org/PDF/india.pdf.

widely used by fundamentalist Hindu groups to refer to "reconversion" to Hinduism. However, this term is "not included in the purview of any anti-conversion law."[19] Such exclusion of reconversion from the purview of the freedom of religion acts unavoidably suggests reconversion by use of force, fraud, or allurement is not punishable under the provisions of these acts.

FOREIGN CONTRIBUTION REGULATION ACT

The Foreign Contribution Regulation Act (FCRA), passed in 1976 and amended in 2010, has consistently been used against civil society organizations, charities, and other nongovernmental organizations (NGOs). Under this legislation, missionaries and foreign religious organizations must comply with the FCRA, which limits overseas assistance to certain NGOs, including ones with religious affiliation.[20] 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. Recently, the Indian government has been accused of targeting human rights activist Teesta Setalvad and her husband, Javed Anand, for allegedly violating the FCRA and receiving funds unlawfully.[21] Mrs. Setalvad is renowned for her supportive endeavors for victims of the 2002 anti-Muslim Gujarat riots. She has been campaigning to seek criminal charges against Indian officials, including Prime Minister Narendra Modi, for their alleged involvement in the anti-Muslim riots. The Ford Foundation—a New York-based private foundation with the mission of advancing human welfare—which supported Mrs. Setalvad's work, was also put on the FCRA's watch list. The U.S. Department of State has raised concerns over the constraints that were put on the Ford Foundation. In May 2015, the U.S. ambassador to India Richard Verma expressed concerns over challenges faced by civil society organizations in India and the "potentially chilling effects" of the regulatory measures focused on NGOs.[22] In June 2016, the Indian government cancelled the registration of Mrs. Setalvad's organization, Sabrang Trust, under the FCRA.[23] Earlier, in 2015, the Indian Home Ministry cancelled and suspended the licenses of approximately 8,000 NGOs under the FCRA.[24]

Section 9 of the amended FCRA (2010) enables the government of India to disallow acceptance of foreign donations where the government "is satisfied that the acceptance of foreign contribution . . . is likely to affect prejudicially . . . public interest."[25] Section 12(4) of the FCRA (2010) outlines the conditions for registration under the act, which includes that the acceptance of foreign donations is not likely to affect prejudicially, inter alia, the scientific or economic interest of the state or the public interest.[26] The notions used in the act are very ambiguous and open to abuse, as the act has not offered any definitions of the notions "security, strategic, scientific or economic interest of the State," or of "the public interest."

In June 2015, India also put a leading Christian charity, Caritas International, on its watch list under FCRA. The charity, which is considered to be a social arm of the Vatican, was scrutinized for alleged "anti-India activities."[27] In April 2016, the United Nations Human Rights Office of the High Commissioner issued a detailed info note on FCRA. United Nations Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association Maina Kiai analyzed the FCRA and clearly stated:

> Access to resources, including foreign funding, is a fundamental part of the right to

[19] Christian Solidarity Worldwide, "Briefing: Freedom of Religion Legislation in India," May 2006.

[20] United States Commission on International Religious Freedom, *Annual Report 2007*, 244.

[21] Human Rights Watch, "India: Stop Harassment of Activists," February 21, 2015. https://www.hrw.org/news/2013/10/31/india-end-funding-restraints-organizations.

[22] Suhasini Haidar, "Crackdown on NGOs Worries US," *Hindu*, May 6, 2015. http://www.thehindu.com/news/national/antin-go-action-could-have-chilling-effect-on-civil-society-us-ambassador/ article7176804.

[23] *Indian Express*, "FCRA violations: Government Cancels Teesta Setalvad NGO's Registration," June 17, 2016. http://indianexpress.com/article/india/india-news-india/teesta-setalvad-fcra-violations-government-cancels-ngo-registration-2857856/.

[24] Rajnish Sharma and Moyna Manku, "Govt to Change registration, Audit Processes for NGOs," *Live Mint*, September 18, 2015.

http://www.livemint.com/Politics/PA9eSViAu0cztXoOtvYoWN/Govt-to-change-registration-audit-processes-for-NGOs

[25] Foreign Contribution (Regulation) Act, No. 42 of 2010. http://www.icnl.org/research/library/files/India/ForeignContribution.pdf.

[26] Ibid, Section 12(4)(f) FCRA 2010.

[27] http://mattersindia.com/2015/06/caritas-international-comes-under-india-government-scanner/.

> freedom of association under international law, standards, and principles, and more particularly part of forming an association. Therefore, any restriction on access to foreign funding must meet the stringent test for allowable restrictions for the right to association developed by the international human rights bodies. Given this narrow test, restricting access to foreign funding for associations based on notions such as "political nature," "economic interest of the State" or "public interest" violates the right because these terms or definitions are overly broad, do not conform to a prescribed aim, and are not a proportionate responses to the purported goal of the restriction. Such stipulations create an unacceptable risk that the law could be used to silence any association involved in advocating political, economic, social, environmental or cultural priorities which differ from those espoused by the government of the day. These restrictions as defined by the Foreign Contribution Regulation Act (2010) and Rules (2011), do not meet the obligations of the Union of India under international law, standards and principles.[28]

Ironically, in March 2016 the BJP government hastily and silently introduced an amendment to the FCRA during the budget session to legalize funding by foreign entities to political parties. The amendment came into effect retroactively from 2010, when the FCRA was introduced. The amendment was in response to a 2014 Delhi high court decision, in which the court determined that both the BJP and Indian National Congress were guilty of violating the FCRA because they received millions of dollars from foreign entities for their 2014 election campaigns. The court ordered the authorities and the election commission to act against both the political parties.[29]

The amendment to the FCRA clearly contradicts the basic purpose of the original legislation, which was intended to forbid political parties, politicians, and election candidates from accepting foreign donations to prevent foreign interests from affecting the Indian electoral process. The amendment enables foreign Hindu organizations to send money to India-based radical Hindu organizations. Allegedly, radical groups have been seeking funds for the controversial Ghar Wapsi campaign.

The South Asia Citizens Web has released a report titled "Hindu Nationalism in the United States." The report discusses the policies and actions of Hindu radical groups in the United States, and covers tax records, newspaper articles, and other sources on the NGOs in the United States affiliated with the Sangh Parivar, a family of Hindu nationalist groups that includes the Rashtriya Swayamsevak Sangh (RSS), Vishwa Hindu Parishad (VHP), Bajrang Dal, and BJP. According to the report, "India-based Sangh affiliates receive social and financial support from its U.S.-based wings, the latter of which exist largely as tax-exempt non-profit organizations in the United States." The report has identified U.S.-based organizations—among them Hindu Swayamsevak Sangh (HSS), Vishwa Hindu Parishad of America (VHPA), Sewa International USA, Ekal Vidyalaya Foundation-USA, and the Overseas Friends of the Bharatiya Janata Party-USA (OFBJP)—as affiliates of the Sangh Privar.[30]

While the Indian government continues to use the FCRA to limit foreign funding for some NGOs, Hindutva supporter organizations have never come under the scrutiny of the FCRA. With the new amendment to the FCRA, these foreign-based radical Hindu organizations will be able to send funds to India, without restriction, to support hate campaigns. Under the new definition of the FCRA, so long as the foreign company's ownership of an Indian entity is within the foreign investment limits prescribed by the government for that sector, the company will be treated as "Indian" for the purposes of the FCRA.

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[28] United Nation Human Rights, Office of the High Commissioner, "Analysis on International Law, Standards and Principles Applicable to the Foreign Contribution Regulation Act 2010," 2016, 3.

[29] M.K. Venu, "Revealed: Jaitley Redefines 'Foreign' as 'Indian' to Get BJP, Congress off the Hook for FCRA Violation," *The Wire*, April 2, 2016. http://thewire.in/27134/revealed-jaitley-gifts-bjp-congress-a-clean-chit-retrospectively-on-fcra-violation.

[30] South Asia Citizens Web, *Hindu Nationalism in the United States: A Report on Non-profit Groups*, July 2014, 3.

ARTICLE 48: PROTECTION OF COWS LEGISLATION

Cows are considered to be sacred in Hinduism. Article 48 of the Indian Constitution and most Indian states (24 out of 29, as of 2015) significantly restrict or ban cow slaughter.[31] Those found guilty of cow slaughter are subject to fines, imprisonment, or both.

Cow slaughter in India has remained a perpetual source of tensions between Hindu and Muslim and Dalit communities. The ban on cow slaughter is often termed as "food fascism" by the religious minorities' activists. Beef is a critical source of nutrition for various minority communities, including Dalits, Christians, and Muslims. Members of these communities work in the cattle transportation and beef industries, including slaughter for food consumption, hauling items, and producing leather goods. Slaughtering animals, including cows, for the Islamic festival Eid-ul-Adha is also an essential practice in Islam.

The ban on cow slaughter has been challenged on various occasions in Indian courts. In the 1958 case, *Mohammad Hanif Quareshi v. State of Bihar*, a group of Muslim butchers challenged the constitutional validity of the acts on the grounds they infringed on their fundamental rights guaranteed under Articles 14, 19(1)(g), and 25 of the Indian Constitution. However, the court—referencing provisions of cow protection under Article 48 of the constitution—determined "that a total ban on the slaughter of cows of all ages and calves of cows and calves of she-buffaloes, male and female, is quite reasonable and valid and is in consonance with the directive principles laid down in article 48."[32]

In 2004, the lower house of the Indian legislature, led by the BJP, adopted a resolution seeking a national ban on cow slaughter. Hindu ultranationalist organizations during the 2014 election campaign of Prime Minister Modi widely used the slogans, *Modi ko matdan, gai ko jeevan dan* (Vote for Modi, give life to the cow) and *BJP ka sandesh, bachegi gai, bachega desh* (BJP's message, the cow will be saved, the country will be saved). Cow protection was also one of the key conditions laid down by Hindu right-wing organizations to back Narendra Modi as the BJP's prime ministerial candidate.[33]

The cow protection laws are often mixed with anti-Muslim sentiment. One of the most recent and clear examples of Muslim persecution through the politics of cow protection is the killing of Mohammad Akhlaq by Hindu mobs in September 2015. Mr. Akhlaq, age 50, was dragged from his home in the village of Bisara—45 miles from the capital of Delhi—and beaten to death by an angry Hindu mob due to rumors that his family had been eating beef and storing the meat in their home.[34] Vishal Rana, son of a local BJP leader, and his cousin Shivam are accused of leading the mob to Mr. Akhlaq's house and assaulting the family.[35]

Additionally, it is illegal to transport cows across state lines. Current Indian Home Affairs Minister Rajnath Singh has instructed the Border Security Force to stop cow transport as a top priority. As a result, the Indian Army is allegedly involved in various cases of torturing and lynching cattle traders. These traders usually belong to disadvantaged Muslim or Dalit communities.[36]

Radical right-wing Hindu groups have started their own gangs, known as *Gau Raksha Dal* (Cow Protection Front), across India. These groups are mostly armed with firearms, batons, and swords. They patrol major cities and highways, attacking people transporting cattle or possessing, consuming, or selling beef. Once the victim is caught, they strip him naked, make repeated abuses against his professed faith, beat and torture him, and upload a video of the assault to YouTube or Facebook.[37]

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[31] United States Commission on International Religious Freedom, *Annual Report 2016,* 161.

[32] *Mohd. Hanif Quareshi & Others v. The State of Bihar* on 23 April, 1958. https://indiankanoon.org/doc/93885/.

[33] Elizabeth Soumya, "Sacred Cows and Politics of Beef in India," *Aljazeera.com*. http://www.aljazeera.com/indepth/features/2014/04/india-bjp-piggybacks-cow-milk-votes-20144171421545671 21.html.

[34] BBC News, "Why India Man Was Lynched over Beef Rumors," October 1, 2015. http://www.bbc.co.uk/news/world-asia-india-34409354.

[35] Aditi Vasta Apurva, "BJP leader's Son among 15 Named in Dadri Lynching Charge Sheet," *Indian Express*, December 24, 2015. http://indianexpress.com/article/india/india-news-india/bjp-leaders-son-among-15-named-in-dadri-lynchingchargesheet/.

[36] Mussadique Thange, *Written testimony before Tom Lantos Human Rights Commission*, 7 June 2016, 6.

[37] Jayshree Bajoria, "India's Cow Protection Groups Raise Tensions," *Human Rights Dispatch*.

THE INDIAN CONSTITUTION AND LEGAL ASSIMILATION OF SIKHISM, BUDDHISM, AND JAINISM INTO HINDUISM

Article 25, sub-clause 1 of the Indian Constitution guarantees that "subject to public order, morality and health, all persons are equally entitled to freedom of conscience and the right to freely to profess, practice and propagate religion."[38] However, its sub-clause 2 (B) and its corresponding Explanation II is considered very controversial. While Explanation I states that the wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion. Explanation II in sub-clause 2 (B) states, "Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly."[39] This constitutional provision is very discriminatory, as it connotes that even as a multi-faith state, India seems to be concerned about the social welfare of only one religion (Hinduism) and its religious institutions. The appended Explanation II effectively groups Sikhs, Buddhists, and Jains into Hinduism. Explanation II has also led to other discriminatory laws against these religions, including the Hindu Succession Act (1956), Hindu Marriage Act (1955), Hindu Adoptions and Maintenance Act (1956), and Hindu Minority and Guardianship Act (1956). These laws are largely viewed to force legal assimilation of these religions into Hinduism, rather than recognizing them as distinct religious identities.

The government of India constituted the National Commission to Review the Working of the Indian Constitution in February 2000, with Justice M.N. Venkatachaliah as its chair. The Commission submitted its two-volume report in March 2002 to the government of India. The Commission recommended the following with regard to Article 25 of the Indian Constitution:

> The commission, without going into the larger issue on which the contention is based, is of the opinion that the purpose of the representations would be served if explanation II to Article 25 is omitted and sub-clause (b) of clause (2) of that Article is reworded as follows—(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jain or Buddhist religious institutions of a public character to all classes and sections of these religions.[40]

More than 14 years have passed, but the Indian government has not adopted the Venkatachaliah Commission's recommendation.

CONSTITUTIONAL PROVISIONS AGAINST UNTOUCHABILITY AND STATUS OF THE DALITS

Article 17 of the Indian Constitution officially makes the practice of "untouchability"—the imposition of social disabilities on persons by reason of their birth into "untouchable" castes—a punishable offense. Article 15 eliminated untouchability and discrimination based on caste. However, the caste system is a fundamental part of Hinduism, the majority religion of India. According to Hindu scripture, individuals are born inherently unequal into a graded, caste-based structure that defines their status and opportunities in life. The core Hindu scripture, *Bhagavad Gita* (Song of the Lord) declares: "Four castes have been created by Hindu god Krishna."[41] *Manu-Smriti*, an ancient Hindu legal text, sets out the main castes as each having been created from a different part of God's form, and codifies the respective God-given duties of each.[42] Hinduism has described this caste system based on the principles of *varna* (the Sanskrit word for "color"). The system is based on four main castes: the Brahmins (priests and teachers), Ksyatriyas (rulers and soldiers), Vaisyas (merchants and traders), and Shudras (laborers and artisans). A fifth category falls outside the *varna* system and consists of those known as untouchables, or Dalits. Dalits—which literally means "broken, destroyed, crushed"—fall outside the four-fold caste system of Hinduism, and are considered "untouchables" by the Hindu

[38] Article 25 of Indian Constitution. https://indiankanoon.org/doc/631708/.

[39] Ibid.

[40] *National Commission to Review the Working of the Constitution—Report*. http://lawmin.nic.in/ncrwc/ncrwcreport.htm.

[41] *Bhagvad Gita*, "Chapter 4 Verse 13." http://www.bhagavad-gita.org/Gita/verse-04-13.html.

[42] George Buhler, *The Laws of Manu*, 1969, 87.

community.[43] Matters related to caste-based offenses and discrimination are dealt with under the Prevention of Atrocities Act (1989). However, India's National Crime Bureau statistics exhibit a 44 percent rise in caste atrocities over the past five years.[44]

The practice of untouchability continues to blight the lives of millions of Dalits today. The manifestation of such oppression has taken and continues to take many forms. Age-old customs included prohibiting Dalits from walking public streets in the event they cross "upper-caste" Hindus, and requiring Dalits to mark themselves with black bracelets, string a broom around their waists so as to sweep the path they walk on, or hang an earthen pot around their necks "lest [their] spit falling on the earth should pollute a Hindu who might unknowingly happen to tread on it."[45]

Indian Prime Minister Manmoohan Singh became the first Indian prime minister to publicly acknowledge discrimination against the Dalits, the practice of untouchability, and apartheid.[46] In a speech delivered at the Dalit-Minority International Conference in New Delhi on December 27, 2006, Prime Minister Singh explained that "Dalits have faced a unique discrimination in our society that is fundamentally different from the problems of minority groups in general. The only parallel to the practice of untouchability was Apartheid in South Africa. Untouchability is not just social discrimination. It is a blot on human society."[47] The majority of Dalits live on less than US$1 per day. Every week, thirteen Dalits are murdered and five Dalit homes are destroyed. Three Dalit women are raped and eleven Dalits are assaulted every day—a crime is committed against a Dalit every eighteen minutes.[48]

Caste discrimination persists and caste categories are legally recognized in order to implement a form of affirmative action known as "reservations." Reservations are a quota-based system that classifies individuals and communities as "Scheduled Castes". The basis for this discrimination is provided by the Presidential Order of 1950, in which clause 3 states: "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."[49] Fifteen percent of all places in educational institutions, as well as jobs, are reserved for the Scheduled Castes. The Presidential Order of 1950, by describing Scheduled Castes as only belonging to the Hindu faith, also denies reservation benefits to any Scheduled Caste person who converts to Islam or Christianity. India's Centre for Public Interest Litigation filed a writ petition (no.180 of 2004) in the Indian Supreme Court to challenge the constitutional validity of the Constitution (Scheduled Caste) Order of 1950, which excludes Dalit Christians and Dalit Muslims from the Scheduled Caste list, thus denying them religious freedom in India. It has now been more than a decade that the Supreme Court of India has unnecessarily delayed its judgment on the case. A *Zee News* editorial raises a very important question: when the government has amended the constitution to give reservations to Dalit Sikhs (1956) and Buddhists (1990), why is it delaying the matter when it comes to Dalit Muslim and Christians?[50]

The policy of reservations has benefited very few Dalits in the country. Growing illiteracy and dropout rates among Dalits mean very few are able to avail themselves of constitutional rights in public sector employment and education. A number of key sectors also continue to remain outside the purview of the reservation policy, and caste-based discrimination continues to be practiced in the sectors where reservations are secured, leading to underenforcement. Segregation between Dalits and non-Dalits is routinely practiced in housing, schools, and access to public and private sector services.

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43 Smita Narula, "Broken People: Caste Violence against India's 'Untouchables,'" *Human Rights Watch*, 1999, 285.

44 Chaitanya Mallapur, "Sexual Assault, Rape Top Crimes against Scheduled Castes," *India Spend*, October 26, 2015. http://www.indiaspend.com/cover-story/sexual-assault-rape-top-crimes-against-scheduled-castes-34410.

45 Smita Narula, "Entrenched Discrimination: The Case of India's Untouchables," *International Council on Human Rights Policy* (Seminar), 1999.

46 Maseeh Rahman, "Indian Leader Links Caste System to Apartheid Regime: Millions of Dalits Still Face Oppression, Says PM," *Guardian*, December 28, 2006.

47 Ibid.

48 48- Smita Narula, op.cit, 285.

49 Syed Mahmood, "Strong Case for Deleting Presidential Order of 1950," *TwoCircles.net*, October 15, 2014. http://twocircles.net/2014oct15/1413376337.html#.V5J6nI-cFdg.

50 Yousuf Ansari, "The Voice Unheard," *Zee News India*, February 23, 2008.

Article 46 of the Indian Constitution states: "The State shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation."[51] Furthermore, Article 15 (4) encourages the state to make any special provisions for the advancement of any socially and educationally backward classes of citizens, or for Scheduled Castes and Scheduled Tribes.[52]

The majority of Dalit students are registered in government schools with inadequate classrooms, teachers, and learning resources. Government schools by and large teach in local languages, as opposed to private schools—whose students are predominantly upper caste—that teach in English. The inability to speak English further disadvantages Dalits in the private sector and the global market.[53]

The discrimination and untouchability practices in schools remain a reason for the disturbingly high rates of dropping out and illiteracy among Dalit children, particularly Dalit girls. Dalit women and children are primarily engaged in "civic sanitation work" (e.g., manual scavenging, even though this has been outlawed), followed by leather fraying in tanning. Dalits are relegated to the most menial of tasks as manual scavengers, removers of human waste and dead animals, leather workers, street sweepers, and cobblers. Dalit children make up the majority of those sold into bondage to pay off debts to upper-caste creditors.[54]

In 2004, the Indian government constituted a National Commission for Religious and Linguistic Minorities under the chairmanship of the former chief justice of India, Ranganath Misra. In 2007, the Commission recommended as follows:

> Para 3 of the Constitution (Scheduled Caste) Order 1950—which originally restricted the Scheduled Caste net 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 delink the Scheduled Caste status from religion and make the Scheduled Castes net fully religion-neutral like that of the Scheduled Tribes.[55]

It has been nine years, but the government of India has yet to implement the recommendations of the National Commission for Religious and Linguistic Minorities, and the BJP has publicly criticized the Commission's recommendations. On February 9, 2014, during his prime ministerial campaign, Narendra Modi strongly criticized the Commission's report.[56]

RELIGIOUS MINORITIES AND DISCRIMINATORY PERSONAL STATUS LAWS

The Hindu Marriage Act of 1955 serves to modify and categorize the laws relating to marital relationships among Hindus. Under this act, the ceremonial marriage is mandatory. However, because Sikh, Jain, and Buddhist communities are deemed Hindu per Article 25 sub-clause (B), they are issued marriage certificates under the Hindu personal status laws. Muslims, Christians, and Parsis have been given the benefit of being governed by their own matrimonial laws.

In 2012, through an amendment to the Anand Marriage Act passed by the Indian Parliament— legislation that proceeded India's independence from the United Kingdom—Sikhs should be given the opportunity to register their marriages under the Anand Marriage Act instead of the Hindu Marriage Act. The 2012 amendment provides that Indian states should introduce regulations to enable registration of Sikh marriages under the Anand Marriage Act. However, except for the state of Haryana, no state has yet to frame the rules under the amended act. The Jain and Buddhist communities also still must register their marriages under the Hindu Marriage Act.

The Indian Divorce Act of 2001, which restricts inheritance, alimony payments, and property ownership of people from interfaith marriages, is problematic for

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[51] Article 46 of Indian Constitution. https://indiankanoon.org/doc/352126/.

[52] Article 15 (4) of Indian Constitution. https://indiankanoon.org/doc/251667/.

[53] Emily Wax, "India's Lower Castes Seek Social Progress in Global Job Market," *Washington Post*, August 20, 2007, A01.

[54] Artatrana Gochhayat, "Human Rights Violation and the Dalits: A Theoretical Background with Special Reference to Odisha," *IOSR Journal of Humanities and Social Science* 8:1 (January–February 2013): 55.

[55] Syed Mahmood, op.cit

[56] *Hindu*, "Modi Pitches BJP as 'Third Alternative' in Kerala," February 10, 2014.

religious minority communities in India. The act also interferes in the personal lives of Christians by not allowing marriage ceremonies to be conducted in a church if one of the partners is non-Christian.

CONCLUSION

As stated at the outset, India's constitution encompasses provisions that emphasize complete legal equality of its citizens regardless of their religion or creed, and prohibits any kind of religion-based discrimination. It also provides safeguards—albeit limited ones—to religious minority communities. However, the report demonstrates that there are constitutional provisions and state and national laws in India that do not comply with international standards of freedom of religion or belief, including Article 18 of the UN Declaration of Human Rights and Article 18 of the International Covenant on Civil and Political Rights.

Under Congress Party and BJP-led governments, religious minority communities and Dalits, both have faced discrimination and persecution due to a combination of overly broad or ill-defined laws, an inefficient criminal justice system, and a lack of jurisprudential consistency. In particular, since 2014, hate crimes, social boycotts, assaults, and forced conversion have escalated dramatically.

In order to see measurable improvements for freedom of religion or belief in India, the Indian government and the United States government should pursue the following recommendations.

RECOMMENDATIONS FOR THE INDIAN GOVERNMENT

The government of India should:

- Increase training opportunities on human rights and religious freedom standards and practices for the members of its legislature, police, and the judiciary.
- Operationalize the term "minority" in its federal laws and comply with the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities.
- Drop Explanation II in Article 25 of its constitution and recognize Sikhism, Buddhism, and Jainism as distinct religions with their own separate religious identities. The government of India also should adopt the recommendations of the Venkatachaliah Commission (2000–2002).
- Not impose Hindu personal status laws on Sikh, Buddhist, and Jain communities, but instead provide them with a provision of personal status laws as per their distinct religious beliefs and practices.
- Adopt the International Convention on the Elimination of All Forms of Racial Discrimination.
- Implement the recommendations of the Commission for Religious and Linguistic Minorities (2007).
- Stop its harassment of nongovernmental organizations, religious freedom activists, and human rights defenders under the Foreign Contribution Regulation Act (FCRA) of 2010. The discriminatory amendment in the FCRA (introduced in March 2016 with retroactive implementation from 2010) should be revoked.
- Reform the anti-conversion laws and appreciate that both conversion and reconversion by use of force, fraud, or allurement are equally bad and infringe upon a person's freedom of conscience.
- Establish a test of reasonableness surrounding the Indian state prohibitions on cow slaughter. If the Indian government is keen to maintain this legislation based on religious sentiments, then it should also introduce legislation to recognize as hate crimes the desecration and mockery of sacred texts of any religion, places of worship, or prophets of any religion.

RECOMMENDATIONS FOR THE UNITED STATES GOVERNMENT

The United States government should:

- Put religious freedom and human rights at the heart of all trade, aid, and diplomatic interactions with India.
- Help in the training of Indian legislators and policy makers so they better understand the U.S. model for separating church and state.
- Urge the Indian Central Government to push Indian states that have adopted anti-conversion laws to repeal or amend them to conform to international norms.
- Encourage India to sign the 1977 Additional Protocols of the Geneva Convention of 1948 and withdraw its reservations on the Genocide Convention (1948); International Convention on the Elimination of All Forms of Racial Discrimination

(1965); International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social, and Cultural Rights (1966); Convention on the Elimination of All Forms of Discrimination against Women (1977); Convention against the Taking of Hostages (1979); and Convention on the Rights of the Child (1990).

- Urge the Indian government to immediately lift its sanctions against nongovernmental organizations working for the welfare of the minorities in India.
- Identify Hindutva groups that raise funds from U.S. citizens and support hate campaigns in India. Such groups should be banned from operating in the United States if they are found to spread hatred against religious minorities in India.
- Require the United States Embassy and consulates in India to continue to examine conditions of religious freedom for all faiths and beliefs and meet with individuals and organizations that promote religious freedom and related human rights as well as targeted religious communities.

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