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USCIRF STATUS: Tier 2

BOTTOM LINE: Justice for past incidents of sectarian violence targeting Muslim, Christians and Sikhs has not been achieved fully. Anti-conversion laws adopted in some states have led to higher incidents of intimidation, harassment and violence against religious minority communities, particularly Christians and Muslims. In addition, rape has become a common feature of communal violence.

There has been no large-scale communal violence against religious minorities in India since 2008, and in recent years the Indian government has created special investigative and judicial structures in an effort to address previous such attacks. Nevertheless, in the past year, progress in achieving justice through these structures for the victims of past incidents continued to be slow and ineffective. In addition, members of religious minority communities, including Muslims, Christians, Sikhs, and Jehovah's Witnesses, reported an increase during the reporting period of intimidation, harassment, and violence, particularly in states with anti-conversion laws. Based on these concerns, USCIRF places India on Tier 2 in 2013. India had been on USCIRF's Watch List since 2009.

BACKGROUND

India is the world's largest democracy with an estimated 1.22 billion population, and has a deeply religious plural society. A country with a Hindu majority, India is estimated to have the third largest Muslim population in the world and a Christian population of over 25 million. The current two-term Prime Minister is Sikh, the past president is Muslim, and the head of the national governing alliance is Catholic. Buddhist, Christian, Hindu, Muslim, Sikh, and Parsi holidays are recognized as public holidays. India also has an independent judiciary, independent media, and a dynamic civil society. Additionally India has created several governmental bodies that monitor human rights violations and provide financial support for minority welfare programs. For example the National Commission on Minorities, established in 1992, makes recommendations to the national and state governments on the effective implementation of special protections for minorities provided in the national constitution and can investigate specific complaints made by an individual or community. In recent years, the national government and several state governments have taken positive steps to improve religious freedom, including increasing support for governmental bodies that provide financial support for minority groups and programs.

Despite these positive characteristics, India has seen periodic outbreaks of large-scale communal violence targeting religious minorities over the years, most notably against Christians in Odisha (formerly Orissa) in 2007-08, against Muslims in Gujarat in 2002, and against Sikhs in 1984, which still impacts the religious and political landscape of the country. The Indian government, at all levels, has created structures to attempt to address these issues, including Fast-Track Courts, Special Investigative Teams (SITs), and independent investigative commissions. However, the effectiveness of these structures is mixed, due to limited capacity, inconsistent use, political corruption, and religious bias, particularly at the state and local levels. Moreover, limited public information makes it difficult to ascertain whether decisions, when finally rendered, respected due process. In addition, problems that plague the Indian legal system generally – including low ratios of police and judges to the population and an overburdened and antiquated judicial system – hamper redress for victims of religiously-motivated crimes. As a result, the lack of penalties encourages the ongoing intimidation, harassment, and occasional violence against religious minorities and fosters a climate of impunity. These incidents are more common in states with "Freedom of Religion Act(s)." Although purporting to limit forced religious conversions, these vague laws encompass conduct beyond that and infringe on rights guaranteed under India's constitution and international human rights law.

RELIGIOUS FREEDOM CONDITIONS

Redress for Odisha (formerly Orissa) Victims: In December 2007, in Kandhamal, Odisha, violence between Christians and Hindus resulted in several deaths, dozens of injuries, churches and homes destroyed, and displacement of thousands. The murder of an influential Hindu political leader in August 2008 sparked a further violent campaign targeting Christians, even though Maoist extremists claimed responsibility. The State Department reported 40 deaths, 134 injuries, the destruction of churches and homes, and over 10,000 fleeing the state. There was no immediate police or state government reaction. Religious leaders and aid agencies were denied access.

An estimated 3,500 complaints were documented by state police, but only 828 cases were registered by the police with the local and state court system. Two hundred cases were dismissed due to lack of evidence, approximately 350 cases have been heard thus far, and the rest are still pending. Of the cases heard, approximately 465 individuals were convicted of crimes including murder, rape, arson, and destruction of property. However, the vast majority, approximately 400 individuals, were given minor punishments such as monetary fines.

Shortcomings in the system are evident in the case of Manoj Pradhan, a leader in the Hindu-nationalist BJP party. In September 2010, he was charged for the murder of 11 individuals. However, the state's high court convicted him only for the culpable homicide of one person, ordered him to pay a small fine, and released him on bail. In January 2011, India's Supreme Court overturned his release, but following a brief return to jail, state authorities again released him on bail. He also was allowed to return to his post in the Odisha state parliament, despite having as many as 7 other cases stemming from the violence pending against him. In November 2012, another murder case against Pradhan was dismissed for lack of evidence. NGOs allege that police investigations were religiously biased and intentionally defective. In addition, NGOs report that 7 Christians accused of killing the Hindu leader that sparked the violence have been jailed for more than 3 ½ years, despite Maoists claiming responsibility. Bijay Kumar Sunseth, Gornath Chalanseth, Budhadeb Nayak, Bhaskar Sunamajhi, Durjo Sunamajhi, Munda Badmajhi, and Sanatan Badmajhi have had their trial delayed numerous times, despite a court ruling that there was insufficient evidence and the trial should proceed quickly.

Some victims from the Odisha violence have received compensation from the state and central government. Victims whose homes were completely destroyed received 50,000 rupees and 20,000 rupees for partially destroyed homes. Reportedly, however, it costs on average 85,000 rupees to construct a new home. In addition, reports continue to arise that Christians are prevented from

returning unless they convert to Hinduism. Several churches and businesses received 300,000-500,000 rupees from state and central governments.

Redress for Gujarat Victims: In February 2002 the state of Gujarat erupted in communal violence. In response to a train fire reportedly set by Muslims, Hindu mobs killed 1,200-2,500 Muslims, forced 100,000 people to flee, and destroyed homes. Christians were also killed and injured, and many churches were destroyed. India's National Human Rights Commission found evidence of premeditated killing by members of Hindu nationalist groups, complicity by state government officials, and police inaction.

In the last two years approximately 100 people have been convicted of various crimes, with punishments ranging from minor monetary fines to life imprisonment, and more than 100 individuals have been acquitted because of lack of evidence, witnesses refusing to testify or the death of witnesses. Additionally, Gujarati police have closed a large number of cases, citing the unavailability of witnesses. Notably in the last year, Mayaben Kodnani, the former Minister for Women and Child Welfare, was sentenced to 28 years in jail for her involvement in the Gujarat violence. However, it was widely reported in the media that many in the Muslim community believe she was the "fall guy" for Narendra Modi, the Chief Minister of Gujarat at the time of the riots (who still holds that position and was recently reelected).

Notably, in early February 2012, the Gujarat High Court strongly chastised the Gujarat government and Chief Minister Modi for "inaction and negligence" during the violence. The court has also ordered the government to pay compensation for the over 500 houses and businesses that were destroyed during the violence.

Redress for Victims of 1984 Anti-Sikh Riots: In 1984, anti-Sikh riots erupted following the assassination of Prime Minister Indira Gandhi. Nearly 3,000 Sikhs were killed, allegedly with the support of Congress Party officials. There have been few developments relating to prosecuting perpetrators of the anti-Sikh riots. In late 2010 the Central Bureau of Investigation (CBI) requested the Delhi Additional Sessions Court to begin criminal proceeding against a Congress Party leader, Sajjan Kumar, and five others for their alleged role in the 1984 anti-Sikh riots. After pressure from the central government, the court accepted the CBI's request. Proceedings began in the spring of 2010 and still continue.

In another case currently pending, Resham Singh, a Sikh who was a taxi driver in 1984, alleges that he witnessed Congress Party leader Jagdish Tytler leading a mob of rioters. In late 2011 Singh requested that the Delhi court allow him to testify before the court gives its final decision which was expected sometime in March 2013, and before the CBI files its final report with the court. In mid-2012 an official court case was filed against Tytler, but the date for the trial is unknown as of this reporting.

"Freedom of Religion Act(s)"/Anti-Conversion Laws: Five Indian states have adopted "Freedom of Religion Act(s)," and several others are considering similar laws. While intended to reduce forced conversions and decrease communal violence, states with these laws have higher incidents of intimidation, harassment, and violence against religious minorities, particularly Christians, than states that do not. USCIRF has repeatedly received reports that societal actors who harass and intimidate minority groups often cite these laws. The laws require government officials to assess the sincerity of conversions and fine or imprison anyone using force, fraud, or "inducements" to convert others. In some states, those intending to change their religion must give the government prior notice of any conversion from Hinduism, but not toward it. Proponents allege that financial, educational, and/or other service-based benefits take advantage of economically-marginalized individuals. Opponents, however, note the laws' ill-defined terminology regarding inducements or coercive acts, leaving them open to abuse by biased officials, police, and societal actors. Some NGOs report that some proselytizing groups use tactics that Hindus perceive as coercive or offensive.

In August 2012, the High Court of the state of Himachal Pradesh struck down parts of its "Freedom of Religion Act" for violating the state constitution. The two offending provisions were: Rule 4 (obligation to notify the authorities within 30 days of one's intention to convert to a religion other than Hinduism), and Rules 3 and 5 (requiring the state to investigate conversions). This may prompt other states to review the legality of their own anti-conversion laws, or the federal government to require states to review their laws to ensure they are in line with the national constitution. However, as of this reporting, there are no signs that either any state government or the federal government is doing so.

Harassment and Violence against Religious Minorities: NGOs and religious communities, including Muslim, Christian, Sikh and Jehovah's Witnesses groups, have reported an increase in religiously-motivated harassment and violence by individuals and groups in society and by local police during the past year. In addition, rape is a common feature of communal violence, particularly of Muslim and Christian women, where the tactic spreads fear and humiliation on the community being targeted. Many NGOs and religious communities believe that religiously-motivated harassment and violence will increase before India's upcoming 2014 general election, as political parties use religious divides to bolster their political platforms and energize their voting base.

Since July and September 2011 terrorist attacks in Mumbai and New Delhi respectively, there have been reports of increased police harassment and detentions of Muslims on unfounded allegations of terrorist activities and membership in terrorist groups. For example, in a July 2012 report, the Tata Institute of Social Sciences (TISS) found that 96% of Muslims in jails in the state of Maharashtra are not linked to criminal gangs or terrorist groups, despite being detained on those allegations. Additionally, the report noted that 25% of those Muslims in jail do not have lawyers. The report also found that most prisoners were detained by police with just mere allegations of criminal or terrorist activities, and that evidence was not required.

Christian groups have also claimed an increase of harassment and violence, and report a perpetual fear of violence. For example in June 2012, a Pentecostal pastor was beaten up in the village of Mitrapur, Odisha. After the pastor's congregants took him to a hospital for treatment, a mob of 50 individuals attacked approximately 12 families associated with the Pastor's church, looting their homes and physically attacking 20 men, women and children. Reportedly, several women were raped.

Jehovah's Witnesses report an increase in mob attacks over the last two years, especially in Karnataka. The community reports that mobs of 20 to 50 individuals regularly harass and occasionally physically assault congregants or destroy religious property. For example, in July 2012, 15 young men beat up four Jehovah's Witnesses in Madikeri, Karnataka state, and took them to a police station, where the Jehovah's Witnesses were charged with "insulting the religion or religious beliefs of another class." The Jehovah's Witnesses were later released on bail.

Sikh NGOs that advocate for justice for the 1984 anti-Sikh violence report frequent harassment by both governmental officials and members of society. Reportedly the police often refuse to investigate acts of harassment targeting Sikhs.

Hindus mostly from the Sindh and Baluchistan provinces of Pakistan have been fleeing in recent years due to religious persecution, including kidnappings, forced conversion and violent attacks. The U.S.-based Hindu American Foundation reports that an estimated 1,000 Hindus flee Pakistan annually for India. After the end of the reporting year, the Indian Minister of State for Home Affairs announced that the Indian government would not recognize refugee status for these individuals.

RECOMMENDATIONS FOR U.S. POLICY

Since 2004, the U.S. and India have pursued a strategic relationship based on shared concerns about energy, security, and the growing threat of terrorism, as well as shared values of democracy and the rule of law. The U.S. government should:

- integrate concern for religious freedom into all bilateral contacts with India, and urge the Indian government to ensure that religious freedoms are protected at the federal and state level;
- urge India to increase training on human rights and religious freedom standards and practices for police and the judiciary, particularly in areas with a history or likelihood of communal violence;
- engage directly with Indian states with a history of communal violence or that have anti-conversion laws, encouraging them to strengthen the ability of state and central police to provide effective measures to prohibit and punish cases of religious violence to the fullest extent of the law while protecting victims and witnesses;
- urge the central Indian government and states that have adopted "Freedom of Religion Act (s)" to repeal or amend them, so as to conform with international standards;
- urge India to utilize the National Commission on Minorities to the fullest extent, including empowering it with enforcement mechanisms including the ability to conduct trials or hear appeals;
- encourage the establishment of an impartial body of interfaith religious leaders, human rights advocates, legal experts, and government officials to discuss and recommend actions to promote religious tolerance and understanding; and
- urge all political parties and religious and social organizations to denounce publicly violence against and harassment of religious minorities, women, and low-caste members, and to communicate to all members and affiliates that acts of violence or harassment will not be tolerated.

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