

## INDIA

Progress in achieving justice for victims of past large-scale incidents of communal violence in India continued to be slow and ineffective. In addition, intimidation, harassment, and occasional small-scale violence against members of religious minority groups continued, particularly against Christians in states with anti-conversion laws. While there has been no large-scale communal violence against religious minorities since 2008, and despite the Indian government's recognition of past communal violence and the creation of some structures at various levels to address these issues, the deleterious pace of the judicial responses and the adopted anti-conversion laws enable impunity. Based on these concerns, USCIRF again places India on its Watch List for 2012.\*

### 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. 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 against religious minorities over the years, most notably against Christians in Orissa in 2007-08, against Muslims in Gujarat in 2002, and against Sikhs in 1984. 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. The records of these structures is mixed, due to limited capacity to investigate and prosecute cases, inconsistent use, political corruption, and religious bias, particularly at the state and local levels. In addition, limited public information makes it difficult to ascertain whether decisions, when rendered, were fair. 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 and create a climate of impunity for the on-going intimidation, harassment, and occasional violence against religious minorities. These incidents are more common in states with “Freedom of Religion Act(s)” intending to limit forced religious conversions. These laws infringe on rights guaranteed under India's constitution and international human rights law.

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

## Religious Freedom Conditions

***Redress for Orissa Victims:*** In December 2007, in Kandhamal, Orissa, violence between Christians and Hindus resulted in several deaths, dozens of injuries, churches and homes destroyed, and displacement. 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.

According to the non-governmental organization All India Christian Council, state police documented an estimated 3,500 complaints related to the violence and registered 827 cases with the local and state court system. Of these, approximately 300 cases have now been heard, with 68 individuals found guilty and incarcerated and 412 individuals given minor punishments such as monetary fines. Around 200 cases were dismissed for lack of evidence, and reportedly over 300 cases are pending. 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 and ordered him to pay a small fine. Despite that conviction and pending charges for seven other crimes associated with the 2007-08 violence, Pradhan was released on bail and remains a member of the Orissa state legislature.

***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.

Hundreds of court cases related to the Gujarat violence remain unresolved and are slowly moving through the judicial process. A large number of cases have been closed by Gujarati police, citing the unavailability of witnesses. In November 2011, a fast-track court in Gujarat sentenced 31 people to life imprisonment for their involvement in the violence, while 42 others were acquitted. Developments in Gujarat during the past year also highlight the political corruption and religious bias that hampers state and local efforts to provide justice to victims. In May 2011, Sanjiv Bhatt, a former senior police officer, filed an affidavit with the national Supreme Court stating that the Chief Minister of Gujarat, Narendra Modi (who stills holds the position), ordered police not to stop the violence because "they [Hindus in Gujarat] had a right to vent their anger." Reportedly, Bhatt has faced intimidation, including from the Gujarat Minister of State for Home Affairs, and he fears for his and his family's safety.

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. In April 2009, the Congress Party dropped two individuals from its candidate roster for their suspected roles in the riots. In December 2009, the government amended the Code of Criminal Procedure, making it easier for victims of religious persecution to appeal judgments. Ten days later, the High Court accepted an appeal to bring two alleged perpetrators to justice.

There have been few developments in the past year relating to the 1984 violence. However, in a case currently pending in a New Delhi court, Resham Singh, a Sikh, alleges that he witnessed Congress Party leader Jagdish Tytler leading rioters. Singh has requested to testify before the court gives its final decision, which is expected sometime in March 2012.

***“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. It should be noted that there are credible reports that some proselytizing groups use tactics that Hindus perceive as coercive or offensive.

### **Recommendations for U.S. Policy**

Since 2004, the U.S. and India have pursued a strategic relationship based on shared concerns about the growing threat of terrorism, energy, and security, 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 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 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;

- Urge India to encourage states that have adopted “Freedom of Religion Act(s)” to repeal them, so as to conform with international standards;
- 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 violence against and harassment of religious minorities, women, and low-caste members publicly, and to communicate to all members and affiliates that acts of violence or harassment will not be tolerated.

**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. I also continue to be deeply concerned over past and present religiously-motivated violence in India, when it occurs, and the need to pursue accountability.

As the Commission notes, India is “the world’s largest democracy and has a deeply religious plural society” and “in recent years, the national and several state governments have taken positive steps to improve religious freedom...” In identifying India for “Watch List” status this year, the Commission has cited concerns that “justice for past communal violence continues to be slow and ineffective” and that there is harassment of members of minority groups, “particularly Christians in states with anti-conversion laws.” Yet it is widely acknowledged that special structures for investigating and prosecuting past religiously motivated violence have been created by Indian governmental actors at the federal and state levels. Data reveals hundreds of persons have been convicted, although many more remain to be processed through India’s slow moving but highly regarded courts. India’s judiciary can work effectively to hold the perpetrators responsible and this is in progress.

In my view, the Commission’s decision to place India on the 2012 Report’s Watch List is ill-advised. It ignores the logic of its own observations – namely, that the Indian national government and Supreme Court have taken a range of commendable and significant steps demonstrating the will to prevent new outbreaks of large-scale religiously motivated communal violence, to reign in excesses or to correct insufficient action at the state level, to ensure accountability of those responsible for past cases, and to provide rehabilitation and restitution to victims. For example, prior to the Ayodhya mosque verdict, Indian authorities issued public appeals, placed advertisements in newspapers urging respect for the rule of law, and mobilized tens of thousands of security forces to prevent violence.

The Commission has inexplicably failed to credit the national government for the very measures that demonstrate the capacity and will of the government to be proactive and to prevent large-scale violence. Instead, it merely acknowledges that there has been no large-scale violence since

2008 – and trivializes the Fast-Track courts, Special Investigative teams, and independent investigative commissions, citing their mixed record as evidence of irrelevance.

While the functioning of some of these structures in some of the local settings may indeed reveal such inconsistencies and even bias, the results of them, taken together, should be understood to be substantial. Even though many of those initially accused have been acquitted or had charges dropped, and more remains to be done, such results are neither a “slow” nor “ineffective” response.

The Commission also raises, as decisive for Watch List status, the existence of “freedom of religion” laws that prohibit coercion or allurement or fraud in decisions on changing religion. The Commission reports that states with these laws have had “higher incidents of intimidation, harassment, and violence against religious minorities, particularly Christians.” Hindu and other groups point out that the laws prohibit coercive measures or forced conversion, not all acts of conversion per se, and Commission staff have confirmed that that these laws have resulted in few arrests and no convictions. Based on this evidence, they do not present an adequate basis for listing India as a Watch List country. Moreover, the Hindu-American Foundation has written to the Commission about so-called “predatory proselytization,” claiming that the measures taken by Christian missionary organizations seeking converts in parts of India has denigrated individual believers and the Hindu religion itself and gives vent to added religious intolerance. Commendably, the Commission has noted this year, for the first time, “reports that some proselytizing groups use tactics that Hindus perceive as coercive or offensive.”

These “anti-conversion” laws are not without their shortcomings. The former UN Special Rapporteur on Freedom of Religion has expressed concern about the vague and overbroad terms in them, which have enabled local authorities to use “unfettered discretion” in interpreting and applying them. She called for authorities to “reconsider” them, and to take a number of proactive measures, from promoting public debate to developing specific safeguards to avoid abuse of the laws, to other preventive steps such as creating a central telephone hotline for allegations against police. USCIRF, in its recommendations in 2011, called for an impartial public commission to study the matter of religious conversion, including allegations of forced conversion in those states that have such laws. A public commission and further forthright discussion of the issue, including at the national level, could also help to clarify whether these laws, in themselves, and their application in the states where they exist, are so arbitrary and restrictive as to merit national action.

India has the legal and democratic traditions to deal with religious intolerance and should be strongly encouraged to continue to do so. Its central government has demonstrated both will and capacity to bring about accountability for violent abuses. Its vibrant civil society is uniquely placed to urge sustained efforts to strengthen the ability of the national authorities and central police to prohibit and punish cases of religious violence, and to monitor those responses in the public arena.