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RELIGIOUS FREEDOM IN INDIA

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RELIGIOUS FREEDOM IN INDIA

SECTION 1: LEGAL FRAMEWORK

Introduction

1. The Constitution of India and the Indian Penal Code contain provisions for the protection of religious freedom; however, some state and local governments' anti-conversion laws and ineffective investigation and prosecution of violence against minority religious members demonstrate that these provisions do not protect religious minorities in practice.¹ India's Ministry of Home Affairs, in its 2009-10 annual report, documented 826 acts of communal and religious violence which resulted in 125 deaths and 2,424 injuries.²

ICCPR

2. India acceded to the International Covenant on Civil and Political Rights (ICCPR) in 1979 with a reservation, *inter alia*, regarding the application of Article 19(3)³ (requiring conformity with Article 19 of India's constitution).⁴ India has not yet ratified the Optional Protocol of the ICCPR.⁵ Although India has not fully committed to implement Article 19⁶ of the ICCPR, it has committed to uphold Articles 18⁷ and 27,⁸ obligating India to protect religious freedom, which includes "the right to replace one's current religion or belief with another."⁹ This right does not exist in India for minority religious groups. India has failed to uphold its obligations under Articles 18 and 27 of the ICCPR.

Population

3. India has a population of 1.15 billion people with Hindus comprising 80.5 percent of the population; the remaining population is 13.4 percent Muslim (85 percent of Muslims are Sunni), 2.3 percent Christian, 1.9 percent Sikh, and 1.1 percent are Buddhist, Jain, Parsi, Jew, or Bahai.¹⁰

¹ U.S. DEP'T OF STATE, *July-December, 2010 International Religious Freedom Report: India*, § II, at 2-3 (13 Sept. 2011) [hereinafter *July-December, 2010 Int'l Religious Freedom Report*], <http://www.state.gov/documents/organization/171754.pdf>.

² *Id.* § III, at 18.

³ *Status of Treaties, Ch. IV Human Rights, 4. ICCPR Status*, United Nations Treaty Collection, (21 Nov. 2011 17:00 am), http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

⁴ See e.g., INDIA CONST. art. 19(2)-(3), available at <http://lawmin.nic.in/coi/coiason29july08.pdf>.

⁵ Optional Protocol to the International Covenant on Civil and Political Rights art. 1, Dec. 16, 1966, 999 U.N.T.S. 171.

⁶ International Covenant on Civil and Political Rights art. 19, 16 Dec. 1966, 999 U.N.T.S. 171 [hereinafter ICCPR], available at <http://www2.ohchr.org/english/law/ccpr.htm>.

⁷ *Id.* art. 18.

⁸ *Id.* art. 27.

⁹ See U.N. Human Rights Comm., *General Comment No. 22: The Right to Freedom of Thought, Conscience and Religion (Art. 18)* ¶5, CCPR/C/21/Rev.1/Add.4 (1993), available at <http://www.unhchr.ch/tbs/doc.nsf/MasterFrameView/9a30112c27d1167cc12563ed004d8f15?Opendocument>.

¹⁰ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 1, § I, at 1–2 (citing the 2001 census).

Muslims, Sikhs, Christians, Parsis, and Buddhists have been granted official minority status.¹¹

Religious Constitutional Provisions

4. The Constitution of India guarantees that “[t]he State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”¹² Article 15 prohibits discrimination based on religion, among other categories.¹³ Additionally, Article 25 specifically protects freedom of conscience and “the right to freely profess, practise and propagate religion,” but subjects those rights to “public order, morality and health,” among other things.¹⁴ Also subject to public order, morality, and health, Article 26 grants the right to establish and maintain religious institutions.¹⁵ Religious speech also receives limited protection. Article 19 addresses protected speech, expression, and assembly, but it subjects those rights to restrictions based on, *inter alia*, India’s sovereignty, State security, public order, decency, or morality.¹⁶

Religious Statutory Provisions

5. The following Penal Code provisions are generally applied in an unequal manner and are routinely not enforced, failing to protect religious minorities. Penal Code Section 153A of Act No. 45 broadly prohibits creating “disharmony or feelings of enmity, hatred or ill-will between different religious . . . groups or castes or communities,” whether by “words, either spoken or written, or by signs or by visible representations or otherwise.”¹⁷ Section 153A also prohibits acts that would prejudice maintaining harmony between religious groups, castes, or communities.¹⁸ Violations are punishable by fines or up to three years imprisonment, or both.¹⁹ A violation committed in “any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies” carries a more severe punishment, up to five years in prison and fines.²⁰ As discussed below, Section 153A’s broad language infringes upon religious freedom, particularly in conjunction with India’s anti-conversion laws.

6. Section 295A of the Penal Code²¹ punishes, by fine or up to three years imprisonment, or both, those who “deliberate[ly] and malicious[ly]” intend to outrage “the religious feelings of any class” or insult (or attempt to insult) others’ religion or the religious beliefs of any class.²² Section 295 prohibits injuring or defiling places of worship with intent to insult any class’ religion,²³ and Section 296 also criminalizes disturbing any “assembly lawfully engaged in the performance of religious worship, or religious ceremonies”²⁴ Likewise, Section 297 protects

¹¹ *Id.* at 2 (citing the 1992 National Commission for Minorities Act).

¹² INDIA CONST. art. 14, *supra* note 4.

¹³ *Id.* art. 15, § 1.

¹⁴ *Id.* art. 25, § 1.

¹⁵ *Id.* art. 26, § (a)-(b).

¹⁶ *See e.g., id.* art. 19(2)-(3).

¹⁷ PEN. CODE § 153A, § 1(a) (6 Oct. 1860) (“substituted by Act 35 of 1969, § 2”), *available at* <http://indiacode.nic.in/> (relevant Penal Code sections in full are attached hereto in the Appendix for reference).

¹⁸ *Id.* § 1(b).

¹⁹ *Id.*

²⁰ *Id.* § 1(c).

²¹ *Id.* § 295.

²² *Id.* § 295A (“inserted by Act 25 of 1927, § 2”).

²³ *Id.* § 295.

²⁴ *Id.* § 296.

religious assemblies at funerals and burial places against perpetrators who intend to insult someone else's religion or cause emotional wounding.²⁵ Further, Section 298 forbids any deliberate intention to wound "the religious feelings of any person," whether through words, sounds, gestures, or through use of objects in a person's sight; violation carries up to one year in prison or a fine, or both.²⁶

7. In addition, five Indian states have passed anti-conversion laws²⁷ that permit abuse in their enforcement. Many state statutes loosely define their terms. For example, the Madhya Pradesh Freedom of Religion Act, 1968 defines "allurement" as "any temptation in the form of (i) any gift or gratification . . ." and "(ii) . . . any material benefit, either momentary or otherwise."²⁸ This definition could cover even intangible benefits or forgiveness of sins by God. In a further example, the Orissa Freedom of Religion Act, 1967 defines "force" as a "threat of injury of any kind, including threat of divine displeasure or social excommunication."²⁹ Under this definition, a Christian could violate the law by quoting any Biblical passage mentioning divine punishment.

8. While these anti-conversion laws, on their face, appear to protect religious adherents from attempts to induce conversion by improper means, the failure to clearly define what makes a conversion improper also bestows governments with unfettered discretion to accept or reject the legitimacy of religious conversions. For instance, there are several cases where the courts sentenced priests for converting people even after the converts provided statements that they voluntarily converted.³⁰

9. Often, Hindu nationalist organizations claim lower caste individuals have been forced to convert to Christianity, alleging they have been lured with free education and healthcare; Christians disputed these allegations.³¹ For example, on 25 October 2011 in Uttar Pradesh, 150 Hindu extremists attacked a medical camp, accusing the medical team of "forcefully converting people under the guise of medical treatment."³² The extremist mob leader was eventually arrested, but not before the mob physically abused the medical team, threatened to lock the team in a building to be burned, and pressured police to arrest the medical camp coordinator. This

²⁵ *Id.* § 297.

²⁶ *Id.* § 298.

²⁷ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 1, § II, at 4. The Indian states of Chhattisgarh, Gujarat, Himachal Pradesh, Madhya Pradesh, and Orissa have passed anti-conversion laws; Arunachal Pradesh also has an anti-conversion law, but the rules for enforcement have not been enacted yet. *Id.*

²⁸ *See, e.g.*, Madhya Pradesh Freedom of Religion Act, No. 27 of 1968, § 2(a)(i), *available at* http://indianchristians.in/news/images/resources/pdf/madhya_pradesh_freedom_of_religion_act-text_only.pdf; Orissa Freedom of Religion Act, No. of 1968, § 2(d).

²⁹ *See, e.g.*, Orissa Freedom of Religion Act, No. 2 of 1968, § 2(b), *available at* http://indianchristians.in/news/images/resources/pdf/orissa_freedom_of_religion_act-text_only.pdf.

³⁰ Laura Dudley Jenkins, *Legal Limits on Religious Conversion in India*, 71 *LAW & CONTEMP. PROB.* 109, 116 (2008); *see also* Section 2, ¶ 23, herein (pastor accused by local grand mufti of forcibly converting seven youths, despite youth's testimony that they converted voluntarily; pastor arrested for "creating 'enmity' between religious communities and hurting religious sentiments").

³¹ *July-December, 2010 Int'l Religious Freedom Report*, *supra* note 1, § II, at 16.

³² *Recent Incidents of Persecution*, COMPASS DIRECT NEWS (21 Nov. 2011), http://www.compassdirect.org/english/country/india/article_123505.html.

incident is one among many that demonstrate the constant harassment and persecution that Christians face in India under vague and overbroad anti-conversion laws.³³

10. In 1977, the Indian Supreme Court found two states' anti-conversion laws constitutional,³⁴ holding that the right to "propagate religion" did not include the right to undertake to convert another person to one's own religion.³⁵ There is a stark difference between openly discussing one's faith with another (which is protected under international law) and coercing conversion by force (which is not protected). These rulings and abusive enforcement of anti-conversion laws directly violate Articles 18, 19, and 27 of the ICCPR.

11. In the United States Commission on International Religious Freedom's (USCIRF) 2011 Annual Report, USCIRF observed that "[s]tates with [anti-conversion] laws seem to have more reported cases of attacks on and harassment of religious minority communities, and greater problems of impunity, than elsewhere in India."³⁶ For example, in March 2011, twelve tribal people were arrested for "converting to Christianity without a permit."³⁷ In December 2010, Hindu extremists "disrupted a prayer meeting and falsely accused the pastor and the Christians that were present of forcible conversions."³⁸ The Christians were not charged, but neither were those who disrupted the meeting; instead, police warned the Christians against holding home prayer meetings.³⁹ In yet another incident that December, Hindu extremists beat a man for two hours for distributing gospel tracts. They then brought him to the police station for forcibly converting others, but police took no action against the attackers.⁴⁰

SECTION 2: SPECIFIC CASES OF RELIGIOUS PERSECUTION

12. The Open Doors World Watch List 2011 (covering Nov. 2009 through 31 Oct. 2010) ranked countries based on their degrees of religious intolerance.⁴¹ India's rank decreased by six places (down to no. 32 from no. 26 out of 50 states) during the 2010 reporting period.⁴² The drop was due in part to a "watered-down average between fiercely Hindu[] states like Karnataka and Madhya Pradesh and states where Christians form the majority religion like Nagaland and Meghalaya."⁴³

³³ *Id.*

³⁴ Laura Dudley Jenkins, *supra* note 30, at 115 (citing *Rev. Stainislaus v. State of Madhya Pradesh*, A.I.R. 1977 S.C. 908 (India)).

³⁵ *Id.*

³⁶ U.S. COMM'N ON INT'L RELIGIOUS FREEDOM, *USCIRF Annual Report 2011, The Commission's Watch List—India*, 251 (May 2011) [hereinafter *Annual Report 2011*], <http://www.uscirf.gov/images/book%20with%20cover%20for%20web.pdf>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 251-52.

⁴⁰ *Id.* at 251.

⁴¹ OPEN DOORS, *The Open Doors World Watch List, 2011* 1, <http://www.opendoorsuk.org/resources/documents/WorldWatchList.pdf>.

⁴² *Id.* at 12.

⁴³ *Id.*

13. USCIRF also placed India on its Watch List for 2011.⁴⁴ India has been on USCIRF's Watch List since 2009.⁴⁵ India earned this position because of its “slow and ineffective” justice for instances of communal and religious violence.⁴⁶

14. India has also been ranked by the Pew Forum as greatly infringing on religious liberties, both socially and governmentally. The Pew Forum on Religion in Public Life published its August 2011 report, *Rising Restrictions on Religion* (the “Pew Forum Report”), rating 198 countries and self-governing territories concerning their infringement on religious beliefs and practices.⁴⁷ The August 2011 report (period covering mid-2006 through mid-2009) rated each country based on governmental restriction and social hostility levels.⁴⁸ The Governmental Restrictions Index (“GRI”) assessed “government laws, policies and actions that restrict religious beliefs or practices,”⁴⁹ while the social hostilities index (“SHI”) measured “acts of religious hostility by private individuals, organizations and social groups.”⁵⁰ The Pew Forum Report ranked India second in the top 5% of countries scoring “very high” on the Pew Forum’s SHI.⁵¹ The SHI defines the “very high social hostilities” category as having “severe levels of violence and intimidation on many or all of the 13 measures that make up the Social Hostilities Index.”⁵² The Pew Forum Report also rated India as “high” on its GRI, citing the anti-conversion laws in six of India’s 28 states as “intense” governmental restrictions.⁵³

15. The U.S. Department of State observed that, pertaining to trials of those charged with violence in Orissa from 2008, over a thousand accused were acquitted with relatively very few convictions.⁵⁴ Many victims have complained that offenders have been acquitted,⁵⁵ “some extremists continued to view ineffective investigation and prosecution of attacks on religious minorities as a signal that they could commit such violence with impunity”⁵⁶

16. The Evangelical Fellowship of India (EFI), in its mid-year 2011 report, recorded sixty-four acts of violence against Christians since January 2011.⁵⁷ Reverend Dr. Richard Howell, the general secretary of EFI, says, “Christians continue to face the worst ever persecution.”⁵⁸ For example, several Christians were beaten by local villagers in Jharkhand, and one woman was

⁴⁴ *Annual Report 2011*, *supra* note 36, at 243.

⁴⁵ *Id.*

⁴⁶ *Id.* (specifically mentioning the violence in Orissa in 2007–08, Gujarat in 2002, and against Sikhs in 1984).

⁴⁷ The Pew Forum on Religion & Public Life, *August 2011 Rising Restrictions on Religion*, THE PEW RESEARCH CENTER, 7 (9 Aug. 2011), <http://www.pewforum.org/uploadedFiles/Topics/Issues/Government/RisingRestrictions-web.pdf>.

⁴⁸ *Id.*

⁴⁹ *Id.* at 9.

⁵⁰ *Id.* at 10.

⁵¹ *Id.* at 46.

⁵² *Id.* at 48; *see also id.* at 111-117 (describing 13 measures comprising the SHI).

⁵³ *Id.*

⁵⁴ *July-December, 2010 Int’l Religious Freedom Report*, *supra* note 1, § III, at 20.

⁵⁵ *Id.*

⁵⁶ *Id.* § II, at 4.

⁵⁷ John Malhotra, *EFI Records 64 Incidents of Persecution This Year*, CHRISTIAN TODAY (10 Aug. 2011), <http://in.christiantoday.com/articles/efi-records-64-incidents-of-persecution-this-year/6542.htm>.

⁵⁸ *Id.*

abducted; no arrests were made.⁵⁹ According to EFI, the government solution is to force compromise agreements between attackers and their victims.⁶⁰

17. In November 2011, police in the Muslim-majority Kashmir Valley detained and beat seven people who converted from Islam to Christianity.⁶¹ Police learned the converts' and the pastor's identity from a video of a baptism service that was provided by the local grand mufti, who also is the head of the shariah court.⁶² The pastor, Reverend Chander Mani Khanna of All Saints Church in Srinagar, was summoned to appear before the grand mufti on allegations that he was converting Muslims by offering them money. The pastor denied those allegations, stating that those who converted did so voluntarily, and that the converts told this to the police. The pastor also told reporters that those who converted were willing to sign affidavits stating that their conversion was free of duress and allurements.⁶³ Two days after the mufti held his hearing, police arrested the pastor on November 17, 2011 for "creating 'enmity' between religious communities and hurting religious sentiments."⁶⁴ The pastor was remanded to judicial custody for fifteen days.

18. In Karnataka on October 17, 2011, Hindu extremists forced Christians to exhume the body of a Christian woman who had just been buried, complaining to the police that the pastor had illegally buried the body.⁶⁵ Police arrested and detained the pastor until midnight, released him after the local leaders' intervention, but later brought him back to the police station for further questioning.⁶⁶ Police conduct in this incident directly conflicts with the Indian Penal Code Section 297 mentioned above, showing the lack of equal law enforcement.⁶⁷

19. On 16 October 2011, in Andhra Pradesh, Hindu extremists forced their way into a Christian youth service, beat the youth attending, and took them to the police.⁶⁸ When the local pastor arrived at the police station, the extremists beat him and damaged his car.⁶⁹ The extremists then filed a false charge against the pastor, alleging he forcibly converted the youth.⁷⁰ The pastor also filed charges against the extremists, after which the youths were released from custody without charges.⁷¹

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Police Detain, Beat Convert from Islam in India*, COMPASS DIRECT NEWS (10 Nov. 2011), http://www.compassdirect.org/english/country/india/article_122974.html.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Pastor's Arrest Stir's Anti-Christian Sentiment in Kashmir, India*, COMPASS DIRECT NEWS (23 Nov. 2011), http://www.compassdirect.org/english/country/india/article_123594.html.

⁶⁵ *India Briefs: Recent Incidents of Persecution*, COMPASS DIRECT NEWS (31 Oct. 2011) [hereinafter *India Briefs: Recent Incidents of Persecution*], http://www.compassdirect.org/english/country/india/article_122456.html.

⁶⁶ *Id.*

⁶⁷ See PEN. CODE, ch. XV, § 297.

⁶⁸ *India Briefs: Recent Incidents of Persecution*, *supra* note 65.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

20. On 30 December 2010, Hindu extremists attacked Pastor Devanand Dantale and accused him of forcibly converting others when distributing religious literature.⁷² Police initially refused to allow the pastor to file a complaint against his attackers, and instead police rebuked the pastor. No arrests were made during 2010.⁷³

21. In March 2010, World Hindu Council extremists attacked students and teachers at a Christian youth center. They burned Bibles and other gospel literature, but police detained three Christians on charges of “insulting the national flag”; their attackers were not charged with any crimes.⁷⁴

⁷² *July-December, 2010 Int’l Religious Freedom Report*, *supra* note 1, § II, at 11.

⁷³ *Id.*

⁷⁴ *Id.*, § II, at 10.

Appendix

Relevant Portions of the **INDIAN PENAL CODE**

153A. Promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.—

(1) Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, [or]

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

PEN. CODE § 153A (6 Oct. 1860) (“substituted by Act 35 of 1969, § 2”), *available at* <http://indiacode.nic.in/>.

295. Injuring or defiling place of worship, with intent to insult the religion of any class.—

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

PEN. CODE § 295 (6 Oct. 1860) (“substituted by Act 35 of 1969, § 2”), *available at* <http://indiacode.nic.in/>.

295A. Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs.—

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of [citizens of India], [by words, either spoken or written, or by signs or by visible representations or otherwise] insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of either description for a term which may extend to [three years], or with fine, or with both.

PEN. CODE § 295A (6 Oct. 1860) (“substituted by Act 35 of 1969, § 2”), *available at* <http://indiacode.nic.in/>.

296. Disturbing religious assembly.—

Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship, or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

PEN. CODE § 296 (6 Oct. 1860) (“substituted by Act 35 of 1969, § 2”), *available at* <http://indiacode.nic.in/>.

297. Trespassing on burial places, etc.—

Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture, or any place set apart for the performance of funeral rites or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

PEN. CODE § 297 (6 Oct. 1860) (“substituted by Act 35 of 1969, § 2”), *available at* <http://indiacode.nic.in/>.

298. Uttering words, etc., with deliberate intent to wound religious feelings.—

Whoever, with the deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

PEN. CODE § 298 (6 Oct. 1860) (“substituted by Act 35 of 1969, § 2”), *available at* <http://indiacode.nic.in/>.