

# INDIA

India has been a nominally secular state since it gained its independence from Britain in 1947. This independence came with the separation of the Hindu majority India and Muslim majority Pakistan (which also included contemporary Bangladesh) commonly referred to as Partition. Despite this religious divide, India was established as a secular state and has remained so since.<sup>1</sup> This has not stopped occasional and bloody religious conflict across the country, beginning with the violence sparked off at Partition and renewed with both domestic issues, such as the assassination of Indira Gandhi by her Sikh bodyguards in 1984, or as a result of the ongoing animosity with Pakistan.<sup>2</sup> Currently, questions as to the religious and tolerant future of India are once again under debate since the electoral victory of the Hindu nationalist Bharatiya Janata Party (BJP) in the 2014 national elections.

India is the birthplace of a few of the world's largest religions and home to many more. The population of 1.2 billion is 79.8% Hindu, 14.2% Muslim, 2.3% Christian, 1.7% Sikh, and 2% other and unspecified.<sup>3</sup> Among those unspecified are Jains and Buddhists, religions originating in India. For the most part, these different religions are respected and the religious plurality of India is celebrated. Laws relating to and protecting religion are mostly passed on a state-by-state basis.

Recent discussions on religion have centred around the issue of targeting religious persons on non-religious charges and conversion. Personal feuds and mistrust of other religions have caused individual incidents of discrimination on the basis of religion. These are scattered, unique, and largely undocumented. What are documented however, are the cases of illegal conversions. In six of India's twenty-nine states, religious conversions either depend on official register or are illegal altogether. These states are Madhya Pradesh, Maharashtra, Orissa, Himachal Pradesh, Gujarat, and Chhattisgarh.<sup>4</sup> As such, changes in individual convictions are often found to be illegal in some states. Proselytization is therefore also illegal. This is often seen as a conflict between the officially secular and unofficially Hindu natures of the country.

## Christians in Prison

### Laxmananda Murders and Arrests

In 2008, a number of armed assailants raided an ashram in Orissa state and assassinated Swami Laxmananda Saraswati, the leader of the Vishva Hindu Parishad (VHP), a right-wing Hindu nationalist party. The attack was quickly condemned by other members of the VHP and

<sup>1</sup> Central Intelligence Agency. 'The World Factbook: India'.

<sup>2</sup> Hindustan Times. 'Father didn't kill Indira Gandhi to make Sikhs happy'.

<sup>3</sup> Central Intelligence Agency. 'The World Factbook: India'.

<sup>4</sup> South Asian Human Rights Documentation Centre. 'Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights'.

local police officials as the work of Maoists, but other Hindu nationalists blamed Christian radicals.<sup>5</sup> The resulting violence directed against the Christian community saw an estimated thirty-eight people dead and more than 25,000 fleeing their homes. The riots lasted for over a month and are often considered the worst violence directed against Christians in the state's history.<sup>6</sup>

Following the assassination, **Munda Badmajhi, Sanatana Badmajhi, Gornath Chalanseth, Budhadeb Nayak, Bhaskar Sunamajhi, Durjo Sunamajhi, Bijay Kr Sunseth**, all members of the local Christian community, were arrested on charges of the murder of Laxamananda.<sup>7</sup> This occurred despite a Maoist group claiming responsibility and two of the members of that group who surrendered themselves into police custody confessing.<sup>8</sup>

In 2013, those seven Christians were sentenced to life in prison. A report made by the Justice AS Naidu Commission in 2015 found that evidence further implicates the Maoists in the murders, but Hindu nationalists continue to insist on Christian radicals as the perpetrators. As such, the reconsideration of the original court decision has been either slow or denied outright.<sup>9</sup>

### **Evangelical Anti-Conversion Arrests**

In May 2016, Evangelical pastor AB Anthony and two of his female associates were arrested on charges of attempted forced conversion of a Hindu man and his two friends in Madhya Pradesh state. The Hindu man claimed that after providing him and his friends with jobs and pay, pastor Anthony then 'forced' him to denounce his faith and join Christianity. The actions of Anthony and his two associates were then reported to the local police station, wherein they were arrested under the state's Freedom of Religion Act.<sup>10</sup>

Religious conversions are illegal in six states in India on the basis of Freedom of Religion acts which seek to protect people from forced religious conversion by making some proselytization practices illegal.<sup>11</sup> Other people from across these states have been temporarily jailed or fined for conversion, sometimes of others but often of themselves. A group of twelve were held temporarily also in Madhya Pradesh state in January for holding a Christian gathering, under charges of having illegally converted to Christianity. They were soon released, but a few of their leaders were given fines. They all claimed not to have converted and thus did not break

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<sup>5</sup> Debabrata Mohanty. 'Slain VHP man was conversion king'.

<sup>6</sup> Express News Service. 'Naidu Panel Points at Maoists in Swami's Murder'.

<sup>7</sup> Indo-Asian News Service. 'Eight get life sentence in Swami Laxmanananda Saraswati murder case'.

<sup>8</sup> Debabrata Mohanty. 'Accused in Laxmanananda murder, Maoist couple surrender'.

<sup>9</sup> Express News Service. 'Naidu Panel Points at Maoists in swami's Murder'.

<sup>10</sup> CB Condez. 'Christians in India arrested for allegedly 'forcibly converting' three Hindu locals'.

<sup>11</sup> Eric Metaxas. 'Anti-Conversion Laws in the World's Largest Democracy'.

the law; rather they had remained Hindus and taken up praying to Jesus in addition to other Hindu deities. The matter was settled by the local gram panchayat (village council).<sup>12</sup> Other such cases have apparently occurred but much of the reporting is minimal, and the jurisdiction for such decisions often falls on these local panchayats, making the gathering of information on individual cases much more difficult.

The full list of documented cases of FoRB prisoners for each denomination is available on the USB key attached to this report and on our website: <http://hrwf.eu/forb/forb-and-blasphemy-prisoners-list/>

## **Laws Used to Criminalize Religious Activities**

Freedom of Religion Acts, commonly referred to as anti-conversion laws, are written with the ostensible intention of restricting the use of force, coercion, or fraud in proselytising. The prevalence of such incidents is high according to proponents of such laws, and thus prohibitions on forced conversion are deemed as necessary in order to promote religious freedom. This is often used to restrict religious conversions outright, particularly when those conversions are from the majority religion of a given area.

### **Constitution of India<sup>13</sup>:**

(Preamble) We, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens... liberty of thought, expression, belief, faith and worship.

(25.1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

Despite this freedom to propagate religion, in particular, many states have made use of Article 295-A of the Indian Penal Code prohibiting acts intended to ‘outrage religious feelings’ to expand their definitions of religious from to include freedom from proselytising activity and conversion.<sup>14</sup> The state of Orissa was the first to pass such an Act.

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<sup>12</sup> Saji Thomas. ‘Indian village fines people for saying ‘Christian’ prayers’.

<sup>13</sup> Government of India: Ministry of Law and Justice. ‘The Constitution of India’.

<sup>14</sup> Legislative Council. ‘The Indian Penal Code’.

## **Orissa Freedom of Religion Act, 1967<sup>15</sup>:**

(Article 2)(a) ‘conversion’ means renouncing one religion and adopting another;  
(b) ‘force’ shall include a show of force or threat of injury of any kind including threat of divine displeasure or social excommunication; ...

(d) ‘inducement’ shall include the offer of any gift or gratification, either in cash or in kind and shall also include the grant of any benefit, either pecuniary or otherwise;

(Article 3) No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means not shall any person abet any such conversion.

(Article 4) Punishment of up to one year in prison and/or a fine of five thousand rupees. This punishment is double if committed with respect to a registered vulnerable group.

Other acts in other states are based on this same model. The problems with these pieces of legislation reside with the ambiguity of their terms. Due to the fact that most religions include some form of divine displeasure either in non-believers or in those who break that religion’s rules, the potential for application of the definition of ‘force’ is very wide. This essentially rules out active proselytization. Further, the definition of inducement has also resulted in employers of usually minority belief indicted for making references to religion due to the pecuniary nature of an employment relationship. Also, charitable acts are fundamental parts of many religions and thus are another potential form of misuse.

Another illustration of the problems related to the interpretation of these laws is demonstrated in Chhattisgarh state’s law, which excludes from its restrictions on conversion ‘returning to one’s forefather’s religion or his original religion’. In most cases, this has been interpreted to mean returning to Hinduism, which is seen as the original religion of India and its people.<sup>16</sup> Therefore, while forcible conversion is illegal from Hinduism or between other minority religions, with this interpretation it is often condonable to convert to Hinduism.

This contradiction with the constitutional provision of freedom of religion is accounted for in the exception given to ‘public order, morality and health and to the other provisions of this part’. Given that India is roughly 80% Hindu, social cohesion is often tied to this issue.<sup>17</sup>

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<sup>15</sup> Legislature of the State of Orissa. ‘The Orissa Freedom of Religion Act, 1967’.

<sup>16</sup> South Asian Human Rights Documentation Centre. ‘Anti-Conversion Laws: Challenges to Secularism and Fundamental Rights’.

<sup>17</sup> Ibid.

## **National Standards for Detention Conditions**

### **Constitution of India<sup>18</sup>:**

(Article 21) No person shall be deprived of his life or personal liberty except according to procedure established by law.

(Article 22 (2)) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

**There are no articles in the Indian constitution that explicitly prohibit torture or other forms of mistreatment of prisoners.** Instead, the National Human Rights Commission of India relies on the guidelines set forth in international treaties, mainly the United Nations Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR). India is also a signatory of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment but has not been ratified.<sup>19</sup> A bill for the protection against torture was passed by the Lok Sabha (national parliament) in 2010 but was bogged down in scrutiny. In early 2016, the Modi government announced new amendments to the bill ahead of a reintroduction.<sup>20</sup>

## **International Reports on Prison Conditions in India**

### **2016 Report prepared by the Asian Legal Resource Centre (ALRC) for the United Nations Human Rights Council<sup>21</sup>:**

Policy makers in the country believe that without the use of torture, India cannot be policed. Public statements repeatedly made by police officers, bureaucrats, ministers, and judges confirm this. India's policing policy is premised around the image of a rough and tough cop, who is expected to show no mercy to the suspect. A large number of Indian public believe that police officers have the right to torture, and that torture is a legitimate method of crime investigation, and use of force is an effective instrument for law enforcement. It is common for police officers to assault people as a part of maintaining law and order.

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<sup>18</sup> Government of India: Ministry of Law and Justice. 'The Constitution of India'.

<sup>19</sup> National Human Rights Commission. 'The Protection of Human Rights Act, 1993 [As amended by the Protection of Human Rights (Amendment) Act, 2006–No. 43 of 2006]'.

<sup>20</sup> Times of India. 'Amended draft of Anti-Torture Bill ready: Govt'.

<sup>21</sup> Human Rights Council. 'Written statement submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status'.

Judges, particularly those in the lower Judiciary, believe that it is morally wrong to challenge a police officer on the question of torture. This is because the judges are aware that the crime investigation agencies in India often do not have any means to investigate crimes apart from resorting to the use of force. Therefore, even when a detainee complains about physical abuse by the police officer, magistrates ignore the complaint, fail to record the complaint, and fail to provide the basic protection to which that detainee is entitled during custody against torture, i.e. a medical examination.

### **Universal Periodic Review (UPR) from 2012<sup>22</sup>:**

(Para. 54) [The UN Working Group on Human Rights (WGHR)] indicated that a study concluded that 1.8 million people were victims of police torture and ill-treatment in India every year. ALRC stated that the practice of torture was widespread; perpetrated in all forms of custody; condoned in conflict areas; and was a common technique for criminal investigations. Successful prosecution for torture was extremely low.

### **United Kingdom Home Office Summary of Prison Conditions from 2014<sup>23</sup>:**

1.3.3 Prison conditions are severe and taking into account the use of torture, extensive pretrial detention, as well as the levels of overcrowding and inadequate food and medical care, have the potential to reach the Article 3 ECHR threshold in individual cases. Incidences of mistreatment, abuse, rape, violence and torture in detention have been reported in relation to minorities, members of lower castes, women, insurgents and alleged terrorists.

The Indian prison system operates differently in each state; however, the national constitution protects the equal treatment of all regardless of ethnic, religious, or caste background. Each of these states has their own set of laws and regulations governing the operation of prisons and the treatment of prisoners, and all have independent mechanisms for compliance. These mechanisms, however, are not effective. While there seems not to be much systematic discriminatory policies in prisons on the basis of religion or caste, a lack of effective oversight and monitoring has led to cases of targeted abuse. The problem is therefore more an issue of accountability and impunity. Regular conditions in prisons are harsh, with problems of overcrowding and inadequate access to food, potable water, sanitation, and medical care.<sup>24</sup> These

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<sup>22</sup> Human Rights Council Working Group on the Universal Periodic Review. 'Summary of stakeholder' information. India (2012)'.  
<sup>23</sup> United Kingdom Home Office. 'Country Information and Guidance, India: Prison conditions'.

<sup>24</sup> Ibid.

problems are potentially exacerbated due to the lack of social cohesion of those from minority groups in such prisons. Treatment from wardens and other prisoners is worse for religious prisoners than for others.

## Conclusions

The Orissa Freedom of Religion Act remains a regrettable obstacle to religious liberty in India, given the vast diversity which exists across the religious landscape of the country. The law's undergirding principle, upheld by the Indian Supreme Court,<sup>25</sup> is dismissive of anyone's right to freely convert to another religion. It obviously targets missionary efforts within India while bolstering the country's disturbing trend toward Hindu nationalism. It runs counter to the free exercise of the right to 'liberty of thought, expression, belief, faith and worship,' which is prominently guaranteed by the Indian Constitution.

Religious division tends to follow the fault lines of India's social groups. Local legislators have been known to suppress religious rights of minorities where Hindu nationalists are dominant, such as in Madhya Pradesh and Orissa. Conversion between Hinduism and Islam has historically been a strategy for consolidating political support, contributing to the rise of various movements aimed at strengthening religious unity in north India, such as Tablighi Jamaat, the Deobandi movement, Arya Samaj, and Vishwa Hindu Parishad (VHP)<sup>26</sup>. Prohibitions on conversion are largely a reaction to the tension that sometimes turns violent between competing communities.

India would do better to focus on the prevention of violence rather than the prohibition of peaceful proselytizing. This should include a harder stance toward the culture of torture and abuse that is perpetuated by police, prison officials, and local authorities. India has a history of tolerance towards the various religions within its borders. This is India at its best.

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<sup>25</sup> Rev. Stainislaus v. State of Madhya Pradesh, (AIR 1977 SC 908)

<http://www.thehindu.com/opinion/lead/conversion-and-freedom-of-religion/article6716638.ece>

<sup>26</sup> Mayaram, Shail. *Hindu and Islamic Transnational Religious Movements*. January 2009. Web accessed 24 November 2016.