

NATIONAL SOLIDARITY FORUM (NSF)

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FREEDOM OF RELIGION IN INDIA: A REPORT TO THE UNITED NATIONS HUMAN RIGHTS COUNCIL FOR THE UNIVERSAL PERIODIC REVIEW 2012

1. This report is a Joint NGO submission by the **Forum for Freedom of Religion** related to India for the Universal Periodic Review scheduled for April 2012 on Religious Freedom in India. The Forum represents seventy-five Human Rights, Civil Society and Freedom of Faith groups coordinated by **National Solidarity Forum** in India who have endorsed this report.
2. **THE CONTEXT**
3. **Religious Minorities in India**
4. As per Census 2001, Hindus¹ constitute 80.5% (827,578,868), Muslims 13.4% (138,188,240), Christians 2.3% (24,080,016), Sikhs 1.9% (19,215,730), Buddhists 0.8% (7,955,207), Jains 0.4% (4,225,053) and other religions & persuasions constitute 0.6% of 1,028,610,328 population in India. The data of the 2011 is yet to be published. There is no official data for India's many indigenous native religions that predate Hinduism, Buddhism and Jainism..
5. Religious minorities are economically poorer and socially discriminated. Only 6.5% have access to institutional finance, 40% [by habitation]do not have health facilities, 35% do not have education facilities and 65.02% live in huts or temporary shelter.² The Constitution of India defines it as a secular state; the laws discriminate on the grounds of religion and caste. Scheduled Castes, formerly known as untouchable castes, who are given reservation in education, employment and politics, lose these if they chose to profess Christianity or Islam.³ The legality of the Presidential Order 1950 on which this denial rests, has been contested in the Supreme Court of India in 2004, is still in force as the government delays its response.
6. Many distinct faiths and traditions have flourished amongst the indigenous communities. Their unique is erased by treating them as Hindus in all official records, resulting in their virtual extinction. For the first time ever, the 2011 census enumerated the pre-Hindu

¹ The term use of the term Hindu as a religious identity has been questioned in recent years by scholars. A Supreme court judgement says emphasizes that the term does not only refer to a religion but is a way of life. In earlier times it designated a geographical space beyond the River Sindhu, and was first used by the British in administration. On the workings of the 1930s Indian Franchise committee Ambedkar writes that the "Hindus were opposed to the move which was calculated to increase the population of the Depressed Classes".

² Sachar Committee Report 2006.

³ Presidential Order of Scheduled Castes and Scheduled Tribes Order 1950

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Sanamahi religion practice amongst the indigenous Meitei community of Manipur as a separate religion. Though the data is not released, such best practices need to be shared and encouraged to built a genuine multi-cultural society in India.

7. Change of Religion / Faith in India

8. Change of religion / faith has been a part of Indian reality. In Manipur, entire communities became Vaishnav Hindus when their King changed his faith. In Punjab and other States, many changed their faith from Hinduism to Sikhism in the early Twentieth century. Jainism and Buddhism had challenged the caste hierarchy in Hinduism, much before the advent of Christianity and Islam in India,⁴ leading to conversions to these religions. Mass change of faith of Hindus to Buddhism and Islam have taken place in recent Indian history.⁵ The *Shuddhi or purification* movement, started by Swami Dayanand Saraswati, aimed to “reconvert” those who had left the folds of Hinduism. The Arya Samaj contued this trend, and now the Vishwa Hindu Parishad (VHP) has sharpened it into a *Ghar Vapasi* political campaign specially among indigenous groups *who* are primarily animists. These *Adivasis* are one of India’s most deprived and marginalized communities, have been a major target of attempts at forced religious conversion, often with overt and covert forms of violence, by Hindu religious right wing.⁶
9. Law experts have also faulted the so-called anti-conversion laws enacted by seven states including Orissa, ironically titled the Freedom of Religion Act, for violating freedom of religion guaranteed by the Indian Constitution.⁷ These laws are being used to harass and intimidate those who voluntarily change their faith from Hinduism. But the same laws do not address forcible conversions to Hinduism. In the violence in Kandhamal, the National Commission for Minorities (NCM) recommended that the provisions of the Orissa Freedom of Religion Act be used against “*the pernicious threats to Christians to convert forcibly to Hinduism or lose all their property and their right to return to their home.*”⁸ Despite such directives, the state agencies have deliberately failed to register, investigate and prosecute persons who initiated and conducted such forcible conversions. *For more details on anti-conversion laws, please see 2.1 of this Report.*

⁴ Dr. Ram Puniyani, ‘Manufacturing History’, 23 November 2003, available at <http://www.countercurrents.org/comm-puniyani231103.htm>, accessed on 13 March 2010

⁵ For example, a mass conversion of ‘*shudras*’ to Buddhism took place under the leadership of Dr. Ambedkar in 1956. In the 1980s, there were mass conversions of dalits to Islam in Meenakshipuram and other places.

⁶ See for example, the description of ‘ghar vapasi’ ritual in **From Kandhamal to Karavali: The Ugly Face of the Sangh Parivar, A fact-finding report of nine human rights organizations that visited Orissa & Karnataka in Sept. – Oct. 2008**, (March 2009) at pp. 21-22

⁷ See for example Dr. Ram Puniyani, ‘Question of Faith: Anti-Conversion Legislation in Tamil Nadu’, available at <http://www.nilacharal.com/news/view/v74.html>, accessed on 12 March 2010; John Dayal, ‘Hindutva Conspiracy Clear in Rajasthan Freedom of Religion Bill’, 6 April 2006, available at http://www.milligazette.com/dailyupdate/2006/20060406_hindutva_rajasthan.htm, accessed on 14 March 2010

⁸ Report of the Visit of the Vice Chairperson NCM to Orissa, 11th to 13th September 2008, available at ncm.nic.in/doc/Tour%20Report%20VC%20Orissa%20Sep.%202008.doc, accessed on 1 March 2010, at para 13

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10. Coercive Religious conversions are violative of the fundamental rights enshrined in the Indian Constitution, and also of international law. UN Special Rapporteur on Freedom of Religion or Belief has pointed out in her report that international human rights law clearly prohibits coercion that would impair the right to have or adopt a religion or belief, including the use or threat of physical force or penal sanctions to compel believers or non-believers to adhere to their religious beliefs and congregations, to recant their religion or belief or to convert. Similarly, a general prohibition of conversion by a State necessarily enters into conflict with applicable international standards.⁹

11. Recommendations:

12. The right of an individual to change one's faith should be protected as a fundamental right and the state should take steps where necessary to effectively protect and promote the safety, dignity and privacy of persons who change their faith voluntarily.
13. The state agencies should promptly register, investigate and prosecute persons who initiate and conduct forcible conversions against minorities.

14. Violence Against Religious Minorities

15. Religious minorities have been victims of targeted violence since India's independence on 15th August 1947. In February 1983, in Nellie town of Assam, thousands of Muslim civilians were killed, on the suspicion that they were illegal Bangladeshi immigrants. The anti-Sikh attacks in Delhi in 1984, Sikh men, women and children were brutally attacked, tortured, raped and killed.¹⁰ Following the demolition of the historic Babri Mosque by Hindu right wing activists in 1992, anti-Muslim attacks followed in many parts of the country, including Mumbai and Surat. A spate of incidents related to anti-Christian violence took place in the late 1990s.¹¹ In the Gujarat carnage of 2002, Muslim civilians in Gujarat were targeted for attacks, many having been killed, and their shops / properties looted or burnt down.¹² The violence in Kandhamal, Orissa in December 2007 and August 2008 targeted *dalit* and *adivasi* Christians.¹³ While these are some of the major incidents of

⁹ Report of the Special Rapporteur on Freedom of Religion or Belief, A/HRC/10/8/Add.3 dated 26 January 2009. The report is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/104/62/PDF/G0910462.pdf?OpenElement>, accessed on 14 March 2010 at para 52

¹⁰ Uma Chakravarti and Nandita Haksar, **The Delhi Riots: Three Days in the Life of a Nation** (New Delhi: South Asian Books, 1987); see also Madhu Kishwar, 'We Share Their Agony – Sikh Women Victims of 1984', **Manushi** and Parvinder Singh, **1984 Sikhs' Kristallnacht**, 2009, available at www.ensaaf.org/pdf/reports/kristallnacht.pdf, accessed on 5 April 2010; Manoj Mitta & H S Phoolka, **When a Tree Shook Delhi: The 1984 Carnage and its Aftermath** (New Delhi: Lotus Collection, 2007)

¹¹ See Communalism in Orissa: Report of the Indian People's Tribunal on Environment & Human Rights (Mumbai: Indian Peoples' Tribunal Secretariat, 2006) at pp. 23-28

¹² **Crime Against Humanity: An Inquiry into the Carnage in Gujarat**, Concerned Citizens Tribunal – Gujarat 2002 (Mumbai: Citizens for Justice and Peace, 2002), Vols I & II; Siddharth Varadarajan (ed.), **Gujarat: The Making of a Tragedy** (New Delhi: Penguin Books, 2002)

¹³ This has been documented in reports including **From Kandhamal to Karavali: The Ugly Face of the Sangh Parivar**, A fact-finding report of nine human rights organizations that visited Orissa & Karnataka in Sept. – Oct. 2008, (March 2009); **Kandhamal in Chaos: An Account of Facts** (Ahmedabad: Janvikas, 2009); see also Saumya Uma,

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religion-based, targeted violence that have blotted the Indian history. Minister of State for Home Mr Ajay Maken told Indian Parliament there were over 6,000 cases of such violence in the first decade of the 21st century. On a lower scale, attacks take place on a regular basis in various parts of the country. In such attacks, violence against women is not incidental. Gender-based violence has played a fundamental role as an engine for mobilizing hatred and destruction against religious minorities.¹⁴ A major area of concern is the complicity of state and public officials through culpable actions and failure to act.¹⁵

16. Recommendations:

17. India should end the culture of impunity that exists in religion-based targeted violence, as also suggested by the Prime Minister's Programme for the Welfare of Minorities, by taking prompt action and registering, investigating and prosecuting such perpetrators.
18. Free legal aid should be provided to victims-survivors of such violence, and they should be protected from intimidation .
19. India should implement existing provisions in the law to prevent acts of religious hatred, incitement to religious violence and political exploitation of religion-based distinctions.

20. LAWS, POLICIES & MECHANISMS

21. 2.1: The Legal Framework in India

22. The Constitutional Framework: Article 25 of the Indian Constitution guarantees every person - citizen and non-citizen - freedom of conscience and the right to freely profess, practice and propagate religion.¹⁶ This provision forms a part of the Fundamental Rights

Kandhamal: The Law Must Change its Course (edited by Vrinda Grover) (New Delhi: Multiple Action Research Group, 2010)

¹⁴ The report **Threatened Existence: A Feminist Analysis of the Genocide in Gujarat** speaks of the centrality of sexual violence to the Hindutva project, at pp. 33-45; see also Tanika Sarkar and Urvashi Butalia (eds.), **Women and the Hindu Right** (New Delhi: Kali for Women, 1995)

¹⁵ See for example, Human Rights Watch report titled 'We Have no Orders to Save You', highlighting state participation and complicity in the Gujarat carnage 2002. <http://www.hrw.org/reports/2002/india/>, accessed on 26 November 2011

¹⁶ Article 25 of the Indian Constitution states as follows:

25. Freedom of conscience and free profession, practice and propagation of religion.

(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.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) Regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I. The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II. In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the

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chapter, enumerated in Part III of the Constitution. It is not an absolute right, and is subject to restrictions such as public order, morality and health, other provisions of Part III (that is, other fundamental rights), laws providing for regulation or restrictions of economic, financial, political or other secular activity which may be associated with religious practice, and laws providing for social welfare and reform.

23. There are broadly two sets of freedoms protected by Article 25: the freedom of conscience and the right to freely profess, practice and propagate religion. Right to freedom of conscience ensures that a person is not liable to be questioned or made accountable for his / her religious beliefs, by the state or any other person.¹⁷ The right extends to acts done in pursuance of religious belief,¹⁸ to follow a particular faith; ceremonies, rituals and observances¹⁹; and most importantly, to transmit one's religion by the exposition of its tenets.²⁰ Article 26 guarantees the freedom of every religious denomination to manage its own religious affairs, subject to public order, morality and health.
24. Other Laws: Freedom of religion is also dealt with in the Indian Penal Code (IPC), Unlawful Activities (Prevention) Act (UAPA) 1967, the Religious Institutions (Prevention of Misuse) Act 1988, the Places of Worship (Special Provisions) Act 1991 and the Representation of the People Act (ROPA) 1951. Acts related to promoting enmity between different groups on the ground of religion are punishable offences under the IPC.²¹ Under the UAPA, an association that has an object of promoting enmity between different groups on the basis of religion can be considered an 'unlawful association' and its members subjected to prescribed punishments. The ROPA disqualifies a person convicted of the IPC offences mentioned above from being a member of either House of Parliament or Legislative Assembly or Legislative Council of a state.²²
25. Freedom of Religion Acts: Specific laws that govern religious conversions have been operative in Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh states, and passed but not implemented in two others – Arunachal Pradesh and Rajasthan.²³ These Acts prohibit persons from converting or attempting to convert any person from one religion to another through force, fraud or inducement. They prescribe imprisonment and fine for violations (and harsher penalties for conversion of children, women and persons belonging

reference to Hindu religious institutions shall be construed accordingly.

¹⁷E explained by the Supreme Court in *Sardar Syedna Taher Saifuddin Saheb vs. State of Bombay* AIR 1962 SC 872.

¹⁸ *Commissioner, Hindu Religious Endowments vs. Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt* AIR 1954 SC 282.

¹⁹ *N. Adithyan vs. Travancore Devaswom Board* (2002) 8 SCC 106; *H.H. Srimad Perarulal Ethiraja Ramanuja Jeeyar Swami vs. State of Tamil Nadu* AIR 1972 SC 1586

²⁰ Asghar Ali Engineer, Review: Changing Gods: Rethinking Conversion in India by Rudolf C. Heredia, available at <http://www.futureislam.com/20080701/Review/asgarali/Changing%20Gods-%20Rethinking%20Conversion%20in%20India.asp>, accessed on 28 February 2010

²¹ S. 153A and S. 504 of the IPC.

²² S. 8 of The Representation of the People Act 1951

²³ Madhya Pradesh Dharma Adhinyam 1967, Orissa Freedom of Religion Act 1967, and Arunachal Pradesh Freedom of Religion Act 1978, Chattisgarh Dharma Swatantraya (Samshodnan Abhiyan 2006, Gujarat Freedom of Religion Act 2006, Rajasthan Dharma Swatantraya Act, and Himachal Pradesh Freedom of Religion Act. Tamil Nadu passed a similar law in 2002 – Prohibition of Forcible Conversion of Religion Act – which was repealed in 2006.

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to Scheduled Castes and Scheduled Tribes), and some of them prescribe a procedure for permission from state authorities prior to the intended conversion. The National Commission for Minorities in its report for 1998-99 noted that ‘prohibition of conversion from one religion to another by use of force, by allurements or by fraudulent means’, provided for in these state laws, in practice seems to apply only in case of conversion to Christianity or Islam and not to ‘Suddhikaran’ (the purificatory ritual of reconversion to Hinduism) or ‘Operation Ghar Wapsi’ (Operation Return Home) conducted by the Sangh Parivar leaders.²⁴

26. Matrimonial Laws: The religion-based matrimonial laws in India contain many provisions that adversely impact a person’s exercise of freedom of religion. Under Hindu law, if the husband gets converted into Non-Hindu faith wife is entitled to live separately without forfeiting her right of maintenance but if she herself also ceases to be Hindu, she loses her claim of maintenance.²⁵ A Hindu wife will lose her right to maintenance if she converts to Islam and Christianity. Conversion also constitutes a ground for divorce.²⁶
27. Evolving legislation: Though provisions of the Indian Penal Code exist to tackle individual and group violence, conspiracy and creating enmity between groups, there is no legislation to deal with the particular circumstances in which violence is perpetrated against religious minorities. The National Advisory Council of the Government of India has recently evolved a draft law, provisionally called the Targeted Violence [Prevention, Control and Reparations] Bill 2011 to replace a controversial Bill moved in the Upper house of Parliament in 2005.²⁷ The 2011 Bill addresses issues of hate speech, impunity and rehabilitation, resettlement and reparations. The government has not taken necessary steps to introduce this Bill in the Parliament.
28. The Practice of Torture: Rituals associated with forced conversions constitute forms of torture, cruel, inhuman and degrading treatment. Specific instances of torture include forcible tonsuring of the hair of the head, forcibly making victims eat cow dung and drink cow urine as purification measures.²⁸ Many forms of torture have also been reported by non-state actors, particularly by politico-religious organisations against religious and other minorities in contexts of targeted religion-based violence, such as the Gujarat carnage 2002 and the Kandhamal violence 2008.²⁹ However India has failed to enact a domestic law to outlaw torture, and has not ratified the UN Convention Against Torture.
29. Other Repressive Laws: The Armed Forces Special Powers Act and anti-terror legislations have been misused primarily against the religious minorities. AFSPA acts as a legal

²⁴ Citation for NCM report

²⁵ S. 80 of the Hindu Adoption and Maintenance Act 1956

²⁶ S. 4 of the Dissolution of Muslim Marriages Act 1937; S. 13(1)(j) of the Hindu Marriage Act 1955 and S. 32(i) of the Parsi Marriage and Divorce Act 1936

²⁷ For details and draft of the Bill, see http://nac.nic.in/communal/com_bill.htm, accessed on 26 November 2011

²⁸ See for example, the description of ‘ghar vapasi’ ritual in **From Kandhamal to Karavali: The Ugly Face of the Sangh Parivar, A fact-finding report of nine human rights organizations that visited Orissa & Karnataka in Sept. – Oct. 2008**, (March 2009) at pp. 21-22

²⁹ Further details are contained in the Report of the National People’s Tribunal on Kandhamal, to be released on 2 December 2011

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protection for the soldiers acting deployed in areas where armed struggles are being wedged for right to self determination, especially in Kashmir and Manipur. Anti-Cow Slaughter laws are used as a basis for violence against dalits and minorities in vulnerable areas.

30. Recommendations:

31. Repeal Freedom of Religion Acts in the states where they exist.
32. After addressing civil society's concerns with regard to provisions of the Bill, the Government of India should take immediate steps to introduce the Targeted Violence [Prevention, Control and Reparations] Bill 2011 in Parliament.
33. The Indian government be directed to enact effective legislation to outlaw all forms of torture by state and non-state actors against non-combatants and civilians conforming to international standards.
34. Repeal the Armed Forces Special Powers Act
35. Ensure that anti-terror legislations and anti-cow slaughter laws are not misused to target minorities and vulnerable sections of society. State should take punitive action against public officials who do so.

36. 2.2 The International Legal Framework

37. Freedom of religion, recognized by the United Nations in the Universal Declaration of Human Rights³⁰ was further expanded in the International Covenant on Civil and Political Rights (ICCPR) where the right to freedom of thought, religion and conscience were specifically elaborated upon.³¹ India has ratified the ICCPR³² and other conventions that recognize and elaborate this right.³³ The UN Declaration on the Elimination of All Forms of

³⁰ Art. 18 of the UDHR states: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice."

³¹ Article 18 of ICCPR states as follows:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

³² By declaration dated 10.04.1979, the Government of India ratified the ICCPR with certain reservations, which do not cover the right to freedom of religion

³³ Article 13 of the International Covenant on Economic, Social and Cultural Rights 1966, Article 2 of the Convention on Elimination of Discrimination Against Women (CEDAW) and Articles 2, 14 and 30 of the Convention on the Rights of the Child are other international human treaties that contain the right to freedom of religion, ratified by the Indian government.

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Intolerance and of Discrimination Based on Religion or Belief, 1981, provides a legal framework and is pivotal in advancing the right to freedom of religion or belief. The UN Special Rapporteur on Freedom of Religion or Belief, an independent expert appointed by the UNHRC Ms. Asma Jahangir, in her report of 26 January 2009 discussed the anti-Christian attacks in Orissa in December 2007 and August 2008 as well as in other parts of the country.³⁴

38. India is a State party to the ICCPR,³⁵ the ICESCR³⁶, the CEDAW³⁷ (with substantive reservations to these three) the CERD³⁸ and the CRC,³⁹ and has signed but not ratified the Torture Convention. It has not ratified any of the Optional Protocols to these instruments, or accepted any of the individual complaints procedures under the conventions it has ratified.

39. The Criminal Justice System

40. Lack of political will to prosecute perpetrators, inadequacy of laws and procedures to deal with mass crimes, lack of impartial investigation and prosecution and a lack of sensitivity to survivors' experiences and needs have been among some of the major hurdles in victims' and survivors' access to justice and accountability⁴⁰

41. The criminal justice system has failed to respond promptly and positively to targeted violence against religious minorities. One major concern is the complicity, connivance, participation in and support to the violence by public officials through acts of omission and commission.⁴¹ Deliberate sabotage by the police through a combination of refusal to register crimes, shoddy investigations, diluted chargesheets, failure of the judiciary to appreciate the available evidence in the context of realities on the ground, and rampant intimidation of victims and witnesses makes justice for victims and survivors of religion-based targeted violence illusive.

³⁴ Report of the Special Rapporteur on Freedom of Religion or Belief, A/HRC/10/8/Add.3 dated 26 January 2009. The report is available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G09/104/62/PDF/G0910462.pdf?OpenElement>, accessed on 14 March 2010

³⁵ International Convention on Civil and Political Rights.

³⁶ International Convention on Economic, Social and Cultural Rights

³⁷ Convention on Elimination of Discrimination Against Women.

³⁸ Convention on the Elimination of Racial Discrimination

³⁹ Convention on the Rights of the Child.

⁴⁰ See Vrinda Grover, 'The Elusive Quest for Justice: Delhi 1984 to Gujarat 2002' in Siddharth Varadarajan (ed.), **Gujarat: The Making of a Tragedy** (New Delhi: Penguin Books, 2002) at pp. 355-388, where she discusses in detail the scuttling of justice through failure to register FIRs and deliberate, inaccurate registration of FIRs in contexts of communal violence.

⁴¹ See for example, Human Rights Watch report titled 'We Have no Orders to Save You', highlighting state participation and complicity in the Gujarat carnage 2002. <http://www.hrw.org/reports/2002/india/>, accessed on 26 November 2011

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42. Public officials enjoy legal immunity and cannot be prosecuted under the CrPC⁴² without prior government as well as under other laws.⁴³ This creates hurdles for securing accountability, since the Executive seeks to shield the guilty. There are inordinate delay of several years in providing justice to victims.⁴⁴ Judicial inertia is a manifestation of a deeper problem – the need for a different legal regime to deal with mass crimes such as communal violence.⁴⁵

43. There is a poor articulation of victims' / survivors' rights under criminal law which assumes that the interests of the victim are synonymous with that of the State. Hence the premise that the state represents the victim. This assumption cannot apply in cases of state-sponsored communal violence. A state that has, in myriad ways, been complicit in the violence, is unlikely to pursue rigorous prosecution against the accused.⁴⁶ There is also an urgent need for a legal regime on protection of victims and witnesses.

44. Recommendations

45. Enact and implement a law for protection of victims and witnesses, particularly for contexts of targeted, religion-based violence;
46. Delete / suitably modify S. 197 of the Criminal Procedure Code and other similar provisions that require a governmental sanction for prosecution of public servants, leading to their impunity;
47. Prosecute public officials for dereliction of duties, including their failure to protect victims prior to and during attacks, as well as for their effort at scuttling processes of justice through acts of commission and omission.

⁴² S. 132 of Cr.PC deals with law enforcement agencies and the armed forces of India for whom the sanction is required to be taken before commencing any criminal prosecution and it also gives them in immunity under certain circumstances; S. 197 of Cr.PC makes it mandatory to obtain sanction of the government for prosecution of public servants and judges, where such a person is accused of any offence alleged to have been committed in discharge of his official duty. The sanction is to be issued by the authority that has powers to remove the public servant by office - the Central government in cases of members of armed forces or officers of the Central government; and the state government in all other cases.

⁴³ Provisions similar to S. 197 of Cr.PC feature in S. 19 of Prevention of Corruption Act 1988 and S. 6 of the Armed Forces (Special Powers) Act 1958

⁴⁴ 19 police officials of UP's Provincial Armed Constabulary (PAC), charged with killing 43 Muslims in Hashimpura and throwing their bodies into canals in 1987, have successfully prolonged the trial for 22 years, during which time witnesses have died or become untraceable, crucial evidence has been lost, original documents destroyed and memories blurred, drastically weakening the prosecution's efforts to ensure accountability of the perpetrators. On 8 February 2010, the Delhi High Court directed all trial courts to conclude cases pertaining to the 1984 anti-Sikh violence within six months. In the Hari Masjid firing case that took place during the Mumbai communal violence 1992-93, it was only in 2009 that the court ordered the CBI to investigate the case.

⁴⁵ Discussed more elaborately in Saumya Uma, **Kandhamal: The Law Must Change its Course** (edited by Vrinda Grover) (New Delhi: Multiple Action Research Group, 2010) at pp. 155-166

⁴⁶ For example, the Gujarat government's appointment of public prosecutors associated with *Hindutva* forces to conduct prosecution of communal violence cases related to the Gujarat carnage 2002, and the partisan nature of prosecutors' work in those cases have been well documented. See for example, Smita Narula, 'Overlooked Danger: The Security and Rights Implications of Hindu Nationalism in India', **Harvard Human Rights Journal**, Vol. 16, Spring 2003 at p. 50

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48. Implement measures to guarantee the independence of the police force, prosecutors and the judiciary from political authorities (including by implementing a system of fixed tenures for senior police), and to increase their transparency and accountability;
49. Undertake a comprehensive programme of training of the police force, prosecutors and the judiciary, particularly to ensure the implementation of the above-mentioned legal protections, including by fully implementing the recommendations of the Dharma Vira Commission and other relevant commissions.

50. Policies and Mechanisms

51. National Human Rights Institutions: Institutional mechanisms to realize the human rights of religious minorities include the establishment of the National Human Rights Commission, National Commission for Women, and the National Commission for Minorities.
52. Ranganath Mishra Commission: The National Commission for Religious and Linguistic Minorities (NCRLM)⁴⁷ was constituted in October 2004 by the Government of India to recommend practical measures for the welfare of socially and economically backward sections among religious and linguistic minorities. The NCRLM report submitted to the government in May 2007 and tabled in the Lok Sabha on Friday, Dec 18, 2009 carried recommendations for the uplift of the socially and economically backward sections among religious and linguistic minorities.⁴⁸
53. Sachar Committee: The Prime Minister's High Level Committee, PMHLC (also known as the Sachar Committee) constituted in 2005, made recommendations including accountability, transparency in data on religious & linguistic minorities; an equal opportunity commission, ending discrimination; participation in governance; creation of common public places; sensitising government administration.⁴⁹ Both these committees were not given the mandate to study the infringement of religious freedom of minorities nor the human rights violations against them.
54. Reparations: While international law has adopted the broader and progressive concept of reparations, of which compensation is only a component, Indian law has focused only on

⁴⁷ Also called the Justice Ranganath Mishra Commission

⁴⁸ At least 15 % of seats in all non-minority educational institutions should be earmarked by law for the minorities as with 10 % for the Muslims (commensurate with their 73 % share in the total minority population at the national level) and the remaining 5 percent for the other minorities. 15 % share be earmarked for the minorities – with a break-up of 10 % for the Muslims in all government schemes like Rural Employment Generation Programme, Prime Minister's Rozgar Yojna, Grameen Rozgar Yojna, etc. 15 % of posts in all cadres and grades under the Central and State Governments should be earmarked for the minorities – with a break-up of 10 % for the Muslims.

⁴⁹ The report is available at <http://minorityaffairs.gov.in/sachar>, accessed on 26 November 2011

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compensation.⁵⁰ A Draft National Policy on Criminal Justice, 2007, mentions the need for a statutory scheme of ‘reparation’ to victims of communal violence.⁵¹

55. In the Gujarat violence 2002, more than 26000 housing and commercial property were damaged. However, the government did not use any standard procedure to assess the damages, leaving it to local government staff even though the victims were in relief camps. A similar process was followed in Kandhamal to assess damages to 5200 houses and nearly 210 churches and prayer halls.
56. While provisions exist in criminal procedural law for payment of compensation to victim-survivors of crimes,⁵² there is neither comprehensive legislation nor a well-designed statutory scheme or a policy statement permitting a crime-victim to seek compensation from an offender or the state as a matter of right.⁵³ The ad oc and arbitrary compensation in targeted religion-based crimes has been a token gesture rather than a means of substantial relief or an enforceable right.
57. Legal recognition of rehabilitation for victim-survivors of religion-based crimes is conspicuous by its absence with no uniform criteria set out for soft loans and grants for housing, educations, livelihood and income generation. Restitution, including rebuilding places of habitat, worship and education destroyed during such violence, and ensuring conditions conducive to the victims’ return to their homes, is also not an enforceable right.
58. Internally Displaced Persons: In Gujarat, 4800 families are permanently displaced, living in 83 relief colonies. In Kandhamal about 1200 families have been displaced and live in inhuman conditions in slums of Bhubaneswar. The government has no relief and rehabilitation policy in place. The UN Principles and Guidelines on Internal Displacement have not been followed.⁵⁴ The right against displacement, right to relief and humanitarian assistance, right to safe return or re-settlement, right to rehabilitation and reparation and the state’s duty towards peace-building and social re-integration have not been recognised in law.

⁵⁰ According to Article 75 of the Statute of the International Criminal Court, ‘reparations’ include compensation, restitution and rehabilitation.

⁵¹ A Draft National Policy on Criminal Justice, prepared by the Committee appointed to draft a Paper on National Policy on Criminal Justice for India, by Ministry of Home Affairs, Government of India, under the chairpersonship of Dr. Madhava Menon, March 2007 at p. 37

⁵² S. 357 of Cr. PC allows a court to direct the accused to pay compensation even in situations where fine is not imposed as part of its sentence. Other provisions include S. 250 (compensation to people accused by complainant without reasonable cause), S. 265A (compensation to victim in plea bargaining), S. 358 (compensation to persons arrested without sufficient grounds) and 359

(costs to complainant). A victim-survivor may also approach a higher court under S. 482 of the Cr. PC to claim compensation, as the said provision vests inherent power in courts in the interests of justice, as laid down by various judgments of the Supreme Court, including *Shri Bodhisattwa Gautam vs. Ms. Subhra Chakraborty* AIR 1996 SC 922

⁵³ K. I. Vibhute, ‘Justice to Victims: Emerging Trends and Legislative Models in India’ in K.I.Vibhute (ed.), *Criminal Justice* (Lucknow: Eastern Book Co., 2004)

⁵⁴ The Guiding Principles on Internal Displacement, E/CN.4/1998/53/Add.2, dated 11 February 1998.

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59. Recommendations:

60. Enact a legislation or policy providing for Equal Opportunity Commission to investigate discriminations, if any, against any Socio-Religious Categories (SRC) by the state or by the private sector.
61. Implement the recommendations of the Ranganath Mishra Report to include Christians and Muslims of Scheduled Caste Origin for constitutional guarantees. The eligibility for membership of the Scheduled Castes should not be linked to religious status.
62. Implement the recommendations of the Sachar Committee report;
63. Conduct independent reviews of the effectiveness of the various national- and state level commissions mandated to protect the rights of religious minorities.
64. Draft a policy for a standard procedure to be followed in damage assessment across various states of the country.
65. Spell out right to compensation as an enforceable right the government should be duty-bound to pay adequate and uniform compensation in a prompt manner.
66. Rehabilitation ought to be spelt out as a right of victim-survivors of communal violence to restore them at least to the condition they were in before the violence.
67. Right to restitution of victim-survivors should be legally recognized; state responsibility in restoring a person's life, liberty and dignity, including by ensuring conditions conducive to their return to their places of residence prior to the violence, as well as rebuilding places of habitat, worship and education destroyed during the violence, should be spelt out in law and effectively implemented.
68. The Indian government should be directed to adopt the UN Principles and Guidelines pertaining to Internally Displaced Persons.

69. RIGHT TO RELIGIOUS FREEDOM OF RELIGIOUS AND ETHNIC MINORITIES: A CASE STUDY OF KANDHAMAL, ORISSA

70. 24th August 2008 marked the beginning of gruesome violence against *dalit* and *adivasi* Christians in and around the Kandhamal district of Orissa. Violence against Christians in December 2007 in the same district was a sinister prelude.⁵⁵ The purported trigger for the August 2008 violence was the killing of Lakshmanananda, a Hindu religious leader, and four of his disciples, on 23 August 2008, by attackers unknown at the time. Despite the media's announcement the next day, quoting police sources, that Maoist involvement in the killings was suspected, the *Sangh Parivar* alleged that "extremist Christian groups" were responsible for the violence. The seeds of hatred against Christians sown for many years, became the foundation for the carnage that followed, executed in a planned, systematic and targeted manner for close to two months.⁵⁶ The National Commission for Minorities reported that '*there is no doubt that the Christian community and its places of worship were the principal target of attack*'. According to government figures, more than 600 villages

⁵⁵ An estimated 600-700 Christian houses, 90 churches and 100 other institutions were destroyed in the violence that started just prior to Christmas 2007 and continued beyond it. Many received grievous injuries, and the unofficial death toll is 11 persons, as stated by Angana Chatterji, 'Kandhamal: Hindutva's Terror', **Communalism Combat**, January 2008.

⁵⁶ For further details, see 'Kandhamal Violence Premeditated', *The Hindu*, 5 January 2008

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were ransacked, 5,600 houses were looted and burnt, 54,000 people were left homeless and 38 people were murdered. Human rights groups estimate that over 100 people were killed, including disabled and elderly persons, children and women during the violence from August to December 2008, in Kandhamal district alone. Large number of people suffered severe physical injuries and mental trauma. Women were sexually assaulted, but many more such victims are believed to have been intimidated into silence. 295 churches and places of worship were destroyed. 13 schools/ colleges/ offices of several non-profit organizations damaged. Over 56,000 people were uprooted, and 30,000 of them lived in relief camps for months. Many continue to be displaced. Over 2,000 people were forced to renounce their Christian faith. More than 10,000 children had their education severely disrupted.⁵⁷

71. Psychological Violence: psychological violence faced by the victim-survivors includes continued threats, intimidation and insecurity -- obstacles to their return to their homes.
72. Vandalism, Looting & Destruction of Moveable Properties: There was widespread destruction of movable properties such as household articles, valuables, documents and certificates and looting of ornaments and cash.
73. Destruction of and Damage to Places of Worship: Many churches and prayer halls were damaged and destroyed, and the religious artefacts were desecrated.
74. Destruction of and Damage to Other Institutions: Schools, orphanages, old age homes, leprosy homes, dispensaries, tuberculosis sanatoriums and NGO establishments were also looted and damaged or destroyed as were public infrastructure such as hostels and hospitals.
75. Forced Conversions: Thousands of Christians were chased and herded in groups into Hindu temples and forced to undergo 'reconversion' ceremonies with their heads tonsured. They were made to drink cow-dung water as a mark of 'purification'. Some of them forced to burn Bibles or damage churches to prove that they had forsaken the Christian faith. They were asked to sign a piece of paper saying that they were 'renouncing foreign religion'.⁵⁸
76. 3.8 Destruction of Evidence: Evidence of violence was systematically destroyed. It included cutting bodies into pieces and burnt, the ashes dispersed in rivers. In Kandhamal district, the district collector forced hostel staff to clear the debris to remove the evidence of attack on hostel.

⁵⁷ Report of the National People's Tribunal on Kandhamal, to be released on 2 December 2011

⁵⁸ Saumya Uma, **Kandhamal: The Law Must Change its Course** (edited by Vrinda Grover) (New Delhi: Multiple Action Research Group, 2010) at p. 33

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77. **Violence against Women:** *Women were abused, threatened, physically attacked, disrobed, paraded naked, gang-raped. The interim report of a National People's Tribunal on Kandhamal, held on 22-24 August 2010, headed by retired Delhi Chief Justice A.P. Shah observed the silence that prevailed on sexual assault, and stated that though witness testimonies show that sexual violence was rampant, there are only five reported cases, and an even smaller number that have been registered and were pending in the courts.*⁵⁹
78. **Psychological Impact of the Violence:** *Besides the physical impact of violence, victims continue to experience the trauma of witnessing the gruesome killings.*
79. **Housing, Livelihood and Financial Insecurity:** *Religious minorities fled their homes are unable to return to their homes. Their names are not entered in the census. In some cases, religious minorities are denied work opportunities and in some cases their lands, houses and other properties were grabbed by others. They were denied food grains in an economic boycott.*⁶⁰
80. **Impact on Self-Help Groups:** *Many women who were part of self-help groups lost their money during the violence.*⁶¹
81. **NREGA & Employment to Women:** *Many women face financial insecurity, loss of livelihood. Though the NREGA is intended to guarantee some form of livelihood, the law is flawed in its implementation.*⁶²
82. **Internal Displacement:** *Violence led to the forcible uprooting of entire families from their homes. Women were forced to fend for themselves and other family members in the villages, and were more vulnerable to violence and intimidation.*
83. **Violence on Children and Adolescents:** *Large number of children in hostels and orphanages were attacked by violent mobs had a direct impact on the physical security and mental well-being of the children and adolescents.*⁶³
84. **Mental Trauma and Psycho-Social Needs:** *Women and children went through trauma as they watched and heard the violent mob destroy the hostel, school, dispensary and the*

⁵⁹ See Sub-section C of the Interim Report, available at <http://johndayal.sulekha.com/blog/post/2010/08/interim-report-of-the-justice-shah-national-people-s.htm>, accessed on 12 November 2010

⁶⁰ Report of Nirmala Niketan College of Social Work, titled 'Study of the Conditions of Women Affected by Communal Violence in Kandhamal District, Orissa', presented to the National People's Tribunal on Kandhamal, Case Study 4, p. 96

⁶¹ A self-help group in Mediakia village, that engaged in income-generation activities such as planting vegetables and making turmeric powder. The group lost Rs. 1 lakh in cash, which had been kept at one of their homes, and have received no compensation despite reporting the loss to the governor.

⁶² Amaravati, a 49 year old widow with three sons, fled to the forest when a violent mob attacked her village on 24 August 2008. Her house was burnt by the mob. She went to a relief camp and was shifted to another village Ruthangia. Till the time of the interview by a team from Loyola college, she was unable to return to her village due to her Christian identity. In addition to having lost her house and household articles, she has also been denied a job under the National Rural Employment Guarantee Act (NREGA). She is psychologically affected by the violent incident, and has no means of livelihood. Report of Loyola College, Chennai, titled 'A Study of the Impact of Communal Violence on Women, Dalits and Their Livelihood', presented to the National People's Tribunal on Kandhamal, Case Study No. 3 on women.

⁶³ Fr. Basil Kullu, a Catholic priest with Madhupur church, Bargah district, described to the Tribunal his personal traumatic experience of having to protect over 370 children residing in the hostels managed by the church, from the violence, with very little help from the police.

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*church, defiling and destroying sacred articles, statues, places of worship, household items and all other belongings.*⁶⁴

85. **Role of statutory bodies:** *The role of statutory bodies like National Commission for Minorities, National Commission for Scheduled Castes, National Commission for Scheduled Tribes, National Commission for Women, National Commission for Children were limited to enquiries and recommendations. On 28 March 2009, a group of victims approached through KFPJ the Odisha Human Rights Commission formally with a prayer for immediate intervention and action for safety of the victims and human rights defenders involved in the process. The case was registered vide No. 472/2009. But no action was taken*⁶⁵ *During violence in Kandhamal district of Orissa, out of the 3,232 complaints filed by victims, only 832 were actually registered by the police. Between 75 and 123 people were killed in the violence, yet only 26 murder cases were registered by the police as of February 2010.*⁶⁶

86. Recommendations specific to the communal violence in the Kandhamal district of Orissa

87. Ensure that the First Information Reports of victims of violence are properly registered, regardless of religion or caste status;
88. Respond to the attacks under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; and ensure that full and proper compensation is given to victims of attacks, in line with the provisions of the same Act and its rules;
89. Address the widespread allegations (included those made by the National Commission of Minorities) of incitement to violence by Hindu extremist groups.
90. Adopt the recommendation of the National Commission of Minorities that an official White paper is released to clarify the issue of conversions, which has been exploited to vilify the Christian community;

91. RECOMMENDATIONS OF UN TREATY BODIES – STATUS OF COMPLIANCE

⁶⁴ Fr. Basil Kullu, head priest at Madhupur church and hostels; Due to the attacks, about 150 boys, along with two teachers, hid in the jungle from 25 August to 2 September 2008. So did four nuns along with 95 girls for four days. Another four nuns and two priests took ten children and went off to Ganjam district around 80 km away from Mondasur. Haq Centre reports that children were in extreme shock and clung to their teachers; A woman from Tiangia (Budedipada) village, G. Udayagiri taluka, described that her four year old daughter could not talk at all for many days after witnessing the brutal killing of her husband. The child had seen the father's limbs and neck being cut off by the violent mob, and his stomach being stabbed. The child was reportedly trembling and crying constantly due to the fear and shock.

⁶⁵ The ST Commission, the tribal welfare ministry and the Tribal Advisory Council are not seriously discharging their responsibilities to protect and safeguard the interests of the communities on which communal violence continued for months together in the Kandhamal district.' (Paul Pradhan).

⁶⁶ Saumya Uma, **Kandhamal: The Law Must Change its Course** (edited by Vrinda Grover) (New Delhi: Multiple Action Research Group, 2010) at p. 93

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92. The UN Special Rapporteur on Freedom of Religion or Belief visited India during 2nd -20th March 2008 up on the invitation of the Government of India. The following are the major recommendations:
93. ‘... there is at present a real risk that similar communal violence might happen again unless political exploitation of communal distinctions is effectively prevented and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is adequately addressed’. (A/HRC/10/8/Add.3 page 21, para 64)
94. ‘.... to take quick and effective measures to protect members of religious minorities from any attacks and to step up efforts to prevent communal violence. Legal aid programmes should be made available to survivor groups and minority communities in order to effectively prosecute and document cases of communal violence. Furthermore, a central telephone hotline might be set up to accept complaints and to register allegations concerning police atrocities. Any specific legislation on communal violence should take into account the concerns of religious minorities and must not reinforce impunity of communalised police forces at the state level’. (A/HRC/10/8/Add.3 page 21, para 67)
95. ‘While inquiries into large-scale communal violence should not be done in indecent haste, they should be accorded the highest priority and urgency by the investigation teams, the judiciary and any commission appointed to study the situation. Furthermore, the State could envisage setting up of truth and reconciliation commissions to create a historical account, contribute to healing and encourage reconciliation in long-standing conflicts, such as the one in Jammu and Kashmir’. (A/HRC/10/8/Add.3 page 22, para 68).
96. ‘The laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular due to the use of discriminatory provisions and vague or overbroad terminology. ... concerned that such legislation might be perceived as giving some moral standing to those who wish to stir up mob violence’. (A/HRC/10/8/Add.3 page 22, para 70).
97. ‘... such laws be reviewed to prevent discrimination based on religion or belief as well as to ensure gender equality. Legislation should specifically protect the rights of religious minorities and of women, including of those within the minority communities.’ (A/HRC/10/8/Add.3 page 22, para 72).
98. ‘The State should be proactive and take appropriate measures against all forms of intolerance and discrimination based on religion or belief which manifest themselves in school curricula, textbooks and teaching methods as well as those disseminated by the media and the new information technologies, including Internet.’. A/HRC/10/8/Add.3 page 22 & 23, para 73).
99. We believe that the Indian government has done very little to implement the recommendations stated above.

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100. The UPR Process: The Government of India submitted a National Report in accordance with paragraph 15(a) of the Annex to Human Rights Council Resolution 5/1 to the Human Rights Council, Working Group on the Universal Periodic Review, First session Geneva, 7-18 April 2008.⁶⁷ The government of India has accepted Recommendations 8 by Mauritius (concerning sharing of best practices etc) and Recommendation 18 by Tunisia (regarding continuance of efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic etc). In addition, the Committee recommends that the State party restore the eligibility for affirmative action benefits of all members of scheduled castes and scheduled tribes having converted to another religion.’ (Seventieth session 19 February – 9 March 2007 CERD/C/IND/CO/19 Page 8, Para 21).

101. The compliance of Government of India on these recommendations will be formally submitted for UPR scheduled in 2012. Government of India initiated processes to enact law for preventing violence based on religion and for providing access to justice and reparations to the victims ‘Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011’. However, the same has not been taken to its logical conclusion and has not been introduced in the Parliament. There has been no effective implementation of the other recommendations referred to above. Instead of harmonization among members of multi-cultural, multi-ethnic and multi-religious society, the ghettoization and polarization between members of religious minorities and the dominant Hindu community is increasing. The Indian government is doing little to bridge the gap and to promote a peaceful co-existence among them.

GLOSSARY

Adivasi: Literally means “original dwellers / inhabitants” and refers to indigenous peoples or Scheduled Tribes.

Dalit: The term means “oppressed people” and refers to persons belonging to a category at the lower end of the caste system, who are considered “untouchables”

Ghar Vapasi: Literally means “return home”; it refers to rituals conducted by Hindutva forces in relation to converting a person into the Hindu fold

Shuddhi movement: A movement for converting and re-converting persons into the Hindu fold

⁶⁷ United Nations, General Assembly, Human Rights Council, 8th Session, 26th August 2008; Report of the Working Group on the Universal Periodic Review; India: Response of the Government of India to the recommendations made by delegations during the Universal Periodic Review of India.