

Written Testimony
of
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for
**'Challenges & Opportunities: The Advancement of Human Rights in
India'**
by
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Introduction

India is a multi-religious, multicultural, secular nation of nearly 1.25 billion people, with a long tradition of pluralism. It's constitution guarantees equality before the law, and gives its citizens the right to profess, practice and propagate their religion. Religious minorities have, however, seen a steady erosion of their rights over the years and human rights abuses against them have reached alarming proportions, especially since the 2014 elections that brought the Bharatiya Janata Party (BJP) led by Mr. Narendra Modi to power.

The Hindu nationalists' overarching agenda is to homogenize a complex society with numerous ethnic communities under the myth of a Hindu monolith. Indeed, the Vice President of India Mr. Hamid Ansari warned against the dangers of imposing a homogenization agenda on India's complex social fabric at the inaugural address of the 75th session of Indian History Congress. He asserted that — *“Our 4,635 communities, according to the Anthropological Survey of India, is a terse reminder of the care that needs to be taken while putting together the profile of a national identity.”*¹

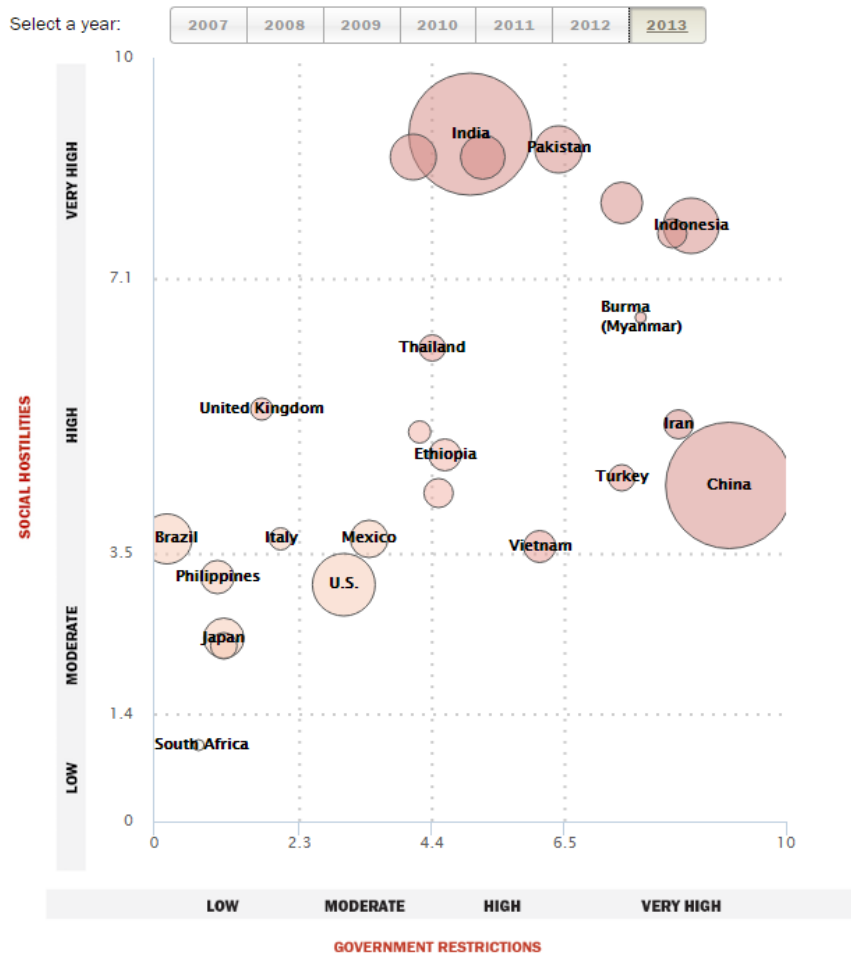
Violence against religious minorities, is not a new phenomenon in India. However, since the Hindu nationalist BJP government came to power in 2014, militant Hindu groups have become emboldened to carry out violence against minorities more openly. In many instances, violence has also been incited by union ministers and members of Parliament belonging to the BJP. The rapid growth of the Hindu nationalist militias, the inadequate representation of minorities in law enforcement, and a steady stream of incendiary rhetoric by individuals in positions of power and influence, has created a volatile situation in which anti-minority violence is breeding. A broken and paralyzed judiciary, having the largest backlog of cases in the world, leaves virtually no recourse to the victims of religiously motivated violence.

Given the dim prospect of redressal within India, it is all the more important that international engagement with India on the issues of human rights and religious freedom be established and strengthened. As India's own foreign policy against apartheid South Africa has demonstrated, human rights are a universal concern, involving not just the state but the larger international community.

¹ Idea of 'homogeneous' nation problematic: Hamid Ansari. The Hindu. 2014-12-29.

Religious violence, hate speeches and other forms of persecution

According to Pew Research's landmark reports on "Global Restrictions on Religions²", India has consistently been ranked in the top three countries of the world with the highest levels of social hostilities against religious communities³. India is at the top of the list in the latest Pew report that covers⁴ data from 2013.



Further, the trajectory of violence against minorities is on the rise. According to the latest data released by the BJP administration, incidences of religious violence jumped by 17% across the country in 2015, with 644 incidents being reported in 2014 and 751 in 2015. In 2015, 97 people

² Latest Trends in Religious Restrictions and Hostilities. Pew Research Center. 2015-02-26.

³ Restrictions and Hostilities in the Most Populous Countries. Pew Research Center. 2015-02-26.

⁴ India had highest level of social hostilities in 2013: Pew Research. DNA. 2015-02-27.

were killed and 2,264 injured⁵. Government data typically tracks religious conflict and usually does not include new forms of Hindu nationalist violence that are unilateral and low key, such as torture, harassment and lynching by cow protection militias, violence related to anti-conversion laws etc.

The Hindu Nationalist Agenda

It is important to address the issue of Hindu nationalism in the context of this testimony as India faces a critical decision point on whether it will retain its secular ethos or steer toward a *Hindu Rashtra*, or a Hindu nation. The campaign for a Hindu nation is being waged by Hindu nationalist movement that espouses the *Hindutva* ideology. It is championed by the Rashtriya Swayamsevak Sangh (RSS), and a “family” of organizations that are collectively known as the Sangh Parivar. Within its vast network of volunteers, the movement gives primacy to the struggle to homogenize the Hindu majority and bring about cultural and political hegemony of Hindus in India. Owing to its extremist activities, the RSS was banned three times since India’s independence including for the assassination of Mahatma Gandhi and the demolition of the 16th century Babri mosque.

The BJP is the political wing of the Hindu nationalist movement, with prominent leaders such as Prime Minister Narendra Modi having received their ideological indoctrination as members of the RSS.

A key aspect of Hindutva is the idea that all religions that originated in India, such as Jainism, Sikhism and Buddhism, should be considered as different sub-groups within Hinduism. This effectively denies Sikhs, Buddhists and Jains their right to self-identify as distinct religious communities. Religions that did not originate in India, such as Islam and Christianity are considered “foreign” religions. Consequently Christians and Muslims, are expected to accept the primacy of the Hindu religion and culture. This is exemplified in the words of Golwalkar, a key ideologue and one of the early chiefs of the RSS:

“Those only are nationalist patriots, who with the aspiration to glorify the Hindu race and Nation next to their heart are prompted [...] to achieve that goal.” The rest are “traitors and enemies to the National Cause.” - [M.S. Golwalkar, “We or our nationhood defined,” 1939]

V.D. Savarkar, one of the founding fathers of Hindu nationalism who provided the vision for a Hindu Rashtra, advanced the motto: *“Militarize Hindus and Hinduize politics.”* The barbarism that was witnessed at the hands of Hindu nationalists during incidents of mass religious violence

⁵ India witnessed 17% increase in communal violence in 2015, says home ministry. First Post. 2016-02-24.

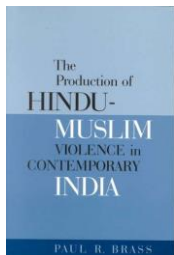
in Gujarat, Kandhamal and Muzaffarnagar has its roots in the teachings of Savarkar, who advocated the use of rape and brutal violence as a political tool⁶ against Muslims and Christians.

Religious Violence

For religious minorities, particularly Muslims and Christians, violence has traditionally come in the form of “communal riots”, a political euphemism employed to describe targeted and organized violence against minority communities. With the coming of the BJP to power in 2014, many new forms of issue-based violence have also emerged. These include violence for possessing and / or transporting beef or cattle, violence for not expressing patriotism using the specific slogan “Bharat Mata Ki Jai” (Goddess India is great), violence following accusation that a Christian or Muslim has converted a Hindu, “Love Jihad” related violence where Hindu nationalists first accuse a Muslim youth of attempting to seduce a Hindu girl, and then attack Muslim houses in the locality.

Hate / Provocative speeches

Calculated provocative speeches that successfully polarise the communities are a staple of RSS family of organizations. Often, these are made in the campaigns leading up to election mobilization and invariably provide a windfall to the BJP. The BJP does not hesitate to emphasize that it is the protector of Hindu interests. Often, these speeches serve as the ignition to a tense build up based on minor and inconsequential skirmishes between individuals.



In the words of Paul R Brass in his work ‘*The Production of Hindu-Muslim Violence in Contemporary India*’, “Activation or enactment of a large-scale riot takes place under particular circumstances, most notably in a context of intense political mobilization or electoral competition in which riots are precipitated as a device to consolidate the support of ethnic, religious, or other culturally marked groups by emphasizing the need for solidarity in face of the rival communal group.”

The characters that indulge in these wilful provocations are not just the fringe elements, but ministers in the administration and party officials. Effectively, the discourse of blatant othering and incitement has been made mainstream. A sample set of well known figures indulging in hate speeches to polarise is included in Appendix A.

⁶ Reading Savarkar: How a Hindutva icon justified the idea of rape as a political tool. Scroll.in. 2016-05-28.

Cow related violence - killing humans to protect cows

Violence related to cow slaughter, possession of beef and transport of cattle carried out by militant groups has assumed an organized and institutionalized character. After the 2014 elections, the Vishwa Hindu Parishad, an extremist Hindu nationalist group implicated in several instances of mass religious violence against Christians and Muslims, intensified its expansion of dedicated state level organizations^{7 8} known as *Gau Raksha Dal* (Cow Protection Front). These *Dals* are armed with guns, batons and swords and conduct witch hunts across major cities as well as highways to nab people transporting cattle or possessing, consuming or selling beef. Once the victim is caught, they strip him naked, make repeat abuses against his professed faith, beat and torture him and upload the video of the torture on a video upload website⁹, youtube¹⁰ or their facebook page¹¹. The victim is sometimes lynched to death and if he is a cattle transporter, his truck is usually burnt down. On the India-Bangladesh border, Home Minister Rajnath Singh has in fact instructed¹² the Border Security Force to stop cow transport as a top priority. As a result, in a large number of cases, India's military is involved in torturing and lynching¹³ cattle traders¹⁴, who often come from impoverished Muslim or Dalit households.

While the torture and lynching in the name of cows has been going on since 2014, the issue grabbed international headlines when a senior Muslim man, Mohammed Akhlaq, was lynched by a mob in Dadri, Uttar Pradesh, merely on the suspicion that he possessed beef and planned to consume it. The shock was a tipping point that triggered the intolerance debate which saw hundreds of artists, actors, scientists and intellectuals return their awards to the government in protest. This did not deter the cow militia as they continued to lynch more people¹⁵. In the state of Haryana, the cow militia often teams up with the local police to visit lynching horrors on their victims. In December 2015, one Muslim man was shot and another injured as the cow militia aided by the local police force attacked them. Speaking to the media, the Inspector General admitted that police often aids the cow militia groups¹⁶.

The lynch mob violence related to cows represents a prime example of the complete failure of India's criminal justice system, for the fast growing cadre of this lynch mob instructs us that the

⁷ Now, VHP's Gau Raksha cell gears up for march to Dadri. Hindustan Times. 2015-10-06.

⁸ Cow Protection. Vishwa Hindu Parishad. <http://vhp.org/vhp-glance/dimensions/cow-protection/>

⁹ Gau Raksha Dal Punjab. Punjab News. 2014-07-04. http://www.dailymotion.com/video/x21f12n_gau-raksha-dal-punjab_news

¹⁰ Gai Ke Rakhwale Gau Raksha Dal Punjab. YouTube. 2013-06-17. <https://www.youtube.com/watch?v=WAPWlxltPgs>

¹¹ Gau Raksha Dal Telangana. Facebook. <https://www.facebook.com/gowrakshadal/posts/1237893102888992>

¹² BSF must check cow smuggling, says Rajnath. The Hindu. 2016-05-21.

¹³ Paramilitary force kills three cattle smugglers in West Bengal. ANI News Service. 2015-02-11. <https://www.youtube.com/watch?v=AFyedFrS2al>

¹⁴ Bangladesh anger over India torture video. BBC. 2012-01-19.

¹⁵ Villagers in Himachal Pradesh kill Muslim accused of smuggling cows - police. Reuters. 2015-10-17.

¹⁶ BSF must check cow smuggling, says Rajnath. The Hindu. 2016-05-21.

state has lost control of its ability to implement the rule of law. In the case of the state of Haryana, the law enforcement actually plays the role of a junior partner aiding the Hindu nationalist militant groups in their quest for “righteous justice”.



Ghar Wapsi and the Business of Forced and Fraudulent Conversions

Following the election success of the BJP government in 2014, the Dharm Jagran Samiti, an affiliate of the RSS and VHP dedicated to converting Muslims and Christians to Hinduism,

expedited its campaign of Ghar Wapsi to establish a Hindu state and “convert all Muslims and Christians in India to Hinduism”. The modus operandi of Dharm Jagran Samiti is apparent from a statement given by its functionary to media wherein he stated: “Muslims and Christians will have to convert to Hinduism if they want to stay in this country¹⁷.” Dharm Jagran Samiti shot to national prominence in 2014 when they converted 57 impoverished Muslim families in Agra to Hinduism through a combination of force and fraud. The event resulted in widespread panic among the local Muslim community with many fleeing their homes¹⁸. The Uttar Pradesh state minorities panel termed the conversion “an act of fraud¹⁹”.

In its annual report presented in July 2015, the Vishwa Hindu Parishad, with which the Dharm Jagran Samiti is linked, claimed it had converted 33,975 people to Hinduism and “prevented” another 48,651 Hindus from converting to other religions²⁰. These conversions and preventions were carried out in the states of Odisha, Gujarat, Chhattisgarh, Jharkhand and Assam. The Dharm Jagran Samiti also distributed pamphlets for its fundraising drive where the cost of converting a Muslim was fixed to Rs. 500,000 (\$7,500) and the cost of converting a Christian was listed as Rs. 200,000 (\$3,000), further making transparent the element of allurement as part of their strategy for conversion. BJP MP Satish Gautam welcomed the Dharm Jagran announcement²¹. Another BJP MP, Yogi Adityanath, who runs his own militant group known as Hindu Yuva Vahini, has participated in many such “Ghar Wapsi” programs²² claimed that Ghar Wapsi will not be stopped until all conversions are banned.

Love Jihad

Allegations of Muslim youth luring non-Muslim women through love for conversion to Islam has been a potent propaganda tool used time and again by the Hindutva organizations. In a conservative society steeped in traditions, conversion of women to marry outside their faith is seen as a dishonor to the family. This sentiment has been thoroughly utilized by Sangh Parivar organizations to polarise communities wherever an instance of inter-religious marriage involving a Muslim is found. This malicious campaign was sustained by the Hindutva organizations triggering official investigations by Karnataka and Kerala state police, both of which failed to establish any organized effort^{23 24}.

¹⁷ 'We will free India of Muslims and Christians by 2021': DJS leader vows to continue 'ghar wapsi' plans and restore 'Hindu glory'. Daily Mail. 2014-12-18.

¹⁸ Indian Agra Muslim fear conversions to Hinduism. BBC. 2014-12-11.

¹⁹ Agra conversion an act of fraud: UP Minority panel. Indian Express. 2014-12-22.

²⁰ VHP Claims Huge Success in 'Ghar Wapsi' Campaign. New Indian Express. 2015-07-05.

²¹ BJP left red-faced over forced conversions after 'leaked letter' from RSS-linked group asks for money to fund ceremonies. Daily Mail. 2014-12-11.

²² Ghar wapsi to continue till conversions are banned: Adityanath. The Hindu. 2015-02-24.

²³ "Kerala police have no proof on 'Love Jihad'". Deccan Herald. 2009-11-11.

²⁴ "Karnataka CID finds no evidence of 'Love Jihad'". The Hindu. 2009-11-13.

Additionally, the love jihad propaganda feeds into another popular myth propagated by the Sangh Parivar that Muslim population will overtake Hindu in numbers due to larger family size. While the population growth numbers for Muslims are slightly above the Hindu numbers owing to a variety of factors such as significantly less female infanticide in the community, the idea that Muslims (15%) will reach anywhere near the percentage of majority (80%) by fertility rate alone do not have any serious takers.

Several local groups affiliated with the RSS have threatened and separated couples of inter-religious marriages forcibly, often with the police looking the other way. Apart from the constitutionally guaranteed freedoms being trampled upon in forcing consenting adults from marrying by their choice, the very same organizations openly encourage the conversion of Muslim girls through campaigns such as the '*beti bachao, bahu lao*' (save your [Hindu] daughter, get a [Muslim] daughter-in-law), which seek to get Muslim girls to marry Hindu boys. The role of judiciary has been less than stellar in restoring the individual rights in many cases, where the adult women were forced to stay with their parents while the case is being investigated, allowing them to be coerced by the family to separate. In most cases though, these women have rubbished claims of forced conversion and affirmed they did so on their own volition.

Counter-terror Scapegoating of Impoverished Muslim Youth

An alarming form of atrocity involving law enforcement is the arrest and imprisonment of dozens of Muslim youth on fake charges of terrorism. Often times these youth spend several years of their lives behind bars before being finally acquitted. They are stigmatized by society on account of their time in prison, and left to pick up the pieces of their lives.

In a report titled "Framed, Damned, Acquitted - Dossiers of a Very Special Cell," the Jamia Teachers' Solidarity Association documented 16 cases, of individuals arrested by the Special Cell of Delhi Police in India. They were accused of being agents of various terrorist organizations and charged with crimes against the state: sedition, war against the state, criminal conspiracy, planning and causing bomb blasts, training of terrorists, collection of arms, ammunition and explosives, and the transfer of funds for terrorist activities. The penalties demanded by the police and prosecution in these cases were, correspondingly, the most severe: in most cases, life sentence or the death penalty.

The report documents how false charges were filed against these men, and the extra-judicial immunity enjoyed by the "Special Cells." All 16 individuals were acquitted. Court judgements in all these cases note how evidence was fabricated or tampered with. One of these innocent men, Mohammed Amir Khan, was incarcerated for 14 years before being acquitted.

In the case related to the bomb blast at Akshardham temple, it was the Supreme Court that acquitted all the six Muslims accused, and severely criticized the Gujarat police for its shoddy investigation. One of those acquitted had been sentenced to death by the Gujarat High Court.

The Bench said in their judgment : "We intend to express our anguish about the incompetence with which the investigating agencies conducted the investigation of the case of such a grievous nature, involving the integrity and security of the nation. Instead of booking the real culprits responsible for taking so many precious lives, police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing"²⁵.

Dozens of other cases, of scapegoating have been documented, and some involve custodial death as well.²⁶

²⁵ SC acquits Akshardham terror strike convicts, slams Gujarat Police probe. Business Standard. 2014-05-16.

²⁶ Muslim youth: India's most wanted!. TwoCircles.net. 2013-05-23.

Curbs on Religious Freedoms of Minorities

Caste based reservation only for Hindus; Muslims and Christians excluded

In India, reservations are a form of quota-based affirmative action. These are meant for individuals and communities classified as “scheduled castes (SC),” “scheduled tribes (ST),” or “other backward classes (OBC).”

In a blatant form of religious discrimination²⁷, a Presidential Order from 1950 allows reservations for Scheduled Castes to be reserved only for persons constitutionally deemed as Hindus²⁸. The text states:

“4 (3). Notwithstanding anything contained in paragraph 2, no person who professes a religion different from the Hindu 5 [the Sikh or the Buddhist] religion shall be deemed to be a member of a Scheduled Caste]”

Fifteen percent of all seats in educational institutions as well as vacancies for employment are reserved for the Scheduled Castes. The Presidential order of 1950, by describing Scheduled Castes as only belonging to Hindu faith, also denies reservation benefits to any Scheduled Caste person who converts to Islam or Christianity. Further, reservations for OBC are based on classes and are further segmented by class types. Reservations for Muslims and Christians under OBC remain a paltry and insignificant allocation. Further, while the SC, ST and OBC quotas were initially selected from a pool of Hindu and Tribal castes (or outcastes), any attempt to add Muslim or Christian backward communities to the list of OBCs is challenged and is often thrown out by the court under the claim that community to be added is entirely defined on the basis of religion (as castes are neither significant nor defining identities of communities among Muslims and Christians).

No distinct identity for Sikhs, Buddhists and Jains

Article 25 of India’s constitution states that “*Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religions, and the reference to Hindu religious institutions shall be construed accordingly.*” In other words, the constitution denies recognition of Sikhism, Jainism and Buddhism as distinct religions. It further requires adherents of these religions to be governed by Hindu Personal Laws as defined in the following legislation:

²⁷ Strong case for deleting Presidential Order of 1950: A response to Social Justice Minister Gehlot. TwoCircles.net. 2014-10-15.

²⁸ Indian Constitution does not allow reservation on religious grounds - A myth or reality. TwoCircles.net. 2012-06-02.

1. Hindu Marriage Act 1955
2. Hindu Succession Act 1956
3. Hindu Minority and Guardianship Act, 1956, along with the Indian Majority Act 1875 and Wards Act 1890
4. Hindu Adoption and Maintenance Act 1956

Sikhs, Jains and Buddhists are forced to register their marriages, inherit their properties, and adopt children by classifying themselves as Hindus. Additionally, since they are considered Hindu by law, they are denied access to social services or educational preferences available to other religious minority communities.

Anti-Conversion Laws and the Hindu Nationalist Agenda

Anti-conversion laws, euphemistically titled “Freedom of religion laws” have been legislated in six Indian states. These are Gujarat, Madhya Pradesh, Odisha, Chhattisgarh, Arunachal Pradesh and Himachal Pradesh. The BJP had announced that it will institute a national anti-conversion law if voted to power.²⁹ However it is yet to get a majority in the upper house of the parliament.

These laws are theoretically aimed at attempts to convert people from one religion to another by means of “*force, fraud or allurement*”. The terms “*force, fraud or allurement*” are vaguely defined giving local officials unfettered power to determine the legitimacy of conversions at their own discretion or personal bias.

Further, ‘*force*’ refers to ‘*show of force or threat of injury or threat of divine displeasure or social ex-communication.*’ In other words, the law specifically targets Abrahamic faiths as conversion to any religion that has the concept of hell or heaven is implicitly assumed to be a forcible conversion. Further, ‘*inducement*’ or ‘*allurement*’ is defined as inclusive of ‘*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.*’ Since charitable acts are a feature of numerous religions, this definition is an infringement upon followers in the practice of their religious beliefs. These provisions are also specifically aimed at targeting Christianity, given Christian missionary organizations run schools, hospitals and other charitable works where non-Christians have historically been provided free services³⁰.

Many of these laws require that a permission from a government official be obtained up to 30 days prior to the act of conversion . If the government official determines that the conversion was forceful, a penalty of up to 3 years (seven years for converting tribals) and up to Rupees twenty five thousand can be instituted . Failure to give notice of conversion is also a punishable offense . The punishment demonstrates the manner in which the Government has tried to

²⁹ ‘BJP will bring law against religious conversions if voted to power’. The Hindu. 2013-04-09.

³⁰ Submission of The Becket Fund for Religious Liberty to UNHRC UPR for India. 2007.

criminalize religious conversions. The penalty is harsher than the penalty for offences like rioting, causing death by negligence and wrongful restraint .

Some of the anti-conversion laws also exclude the act of '*reconversion*' to one's native faith, from the definition of conversion. Section 2(b) of the Chhattisgarh Freedom of Religion (Amendment) Act 2006 specifically excludes '*returning to one's forefather's religion or his original religion*' from the ambit of conversion. This language is often interpreted to allow conversion from other faiths to Hinduism, as the original religion of the forefathers of all Indians. Despite thousands of Christians and Muslims being converted to Hinduism, often under duress, not one case of forced conversion is known to have been applied to conversions into Hinduism. For example, Christian population that was ethnically cleaned out of Kandhamal by Hindu nationalist militias, was allowed to return only under the condition that they renounce Christianity, and yet no case of forced conversion has been applied to date to any Hindu group or individual. Application of anti-conversion laws to Christians and Muslims have significantly increased under the current federal and state dispensations governed by Hindu nationalist parties.

A Broken and Paralyzed Judiciary

Myth of a functioning judiciary

The perception of India having a vibrant, independent and functioning judiciary is only a myth. A closer look at the judicial system reveals a resource starved institution that is clogged with a backlog of 30 million pending cases³¹, four million of which are being adjudicated in its 24 high courts³², while sixty thousand cases remain pending in the federal Supreme Court which has only 31 judges³³. According to the statement made by former prime minister Manmohan Singh to the Indian Parliament, India has the largest backlog of cases in the world³⁴. It will take between 300-400 years³⁵ to clear this backlog³⁶. Over 50 million cases are filed every year while the judiciary comprising of 18,000 judges and magistrates is only capable of disposing 20 million cases. According to the current Chief Justice of India, the judiciary will require another 70,000 judges to clear the backlog³⁷. It is often joked that a trip through the Indian judicial system is as close to experiencing eternity as a living soul can get. A new database of high courts has even unearthed a case that has been pending for 57 years just in the Jharkhand High Court³⁸.

India's tiered judiciary comprises of lower courts, high courts and a single Supreme Court. It takes an average of ten years to adjudicate a case in the court. Once a verdict is given in a lower court, the appeals process to the Supreme Court can take several decades. As a result, India's prisons house nearly 400,000 inmates, only a third of whom have been convicted³⁹.

Frivolous cases and abuse of judicial process

According to the Asian Human Rights Commission, a shortfall in judges is not the only reason causing the gigantic backlog. Another primary cause of the judiciary's ineffectiveness is the willingness of judges across the country, to entertain frivolous⁴⁰, often politically motivated lawsuits that have no basis in Indian law. For example, Tamil actress Khushboo faced 23 criminal cases across multiple states for committing the crime of speaking about pre-marital sex on television. These cases went all the way to the supreme court which then dismissed them as

³¹ India's Stagnant Courts Resist Reform. Bloomberg Businessweek. 2015-01-08.

³² Over 40 lakh cases pending in high courts, 65,661 in SC. Hindustan Times. 2013-12-18.

³³ Court News. Vol IX - Issue No. 1. January - March, 2014.

³⁴ India has world's largest backlog of court cases: PM. NDTV. 2009-08-16.

³⁵ It would take Delhi HC 466 yrs to clear backlog: CJ. The Indian Express. 2009-02-13.

³⁶ Courts will take 320 years to clear backlog cases: Justice Rao. The Times of India. 2010-03-06.

³⁷ We require more than 70,000 judges to clear pending cases: Chief Justice of India TS Thakur. The Economic Times. 2016-05-08.

³⁸ New database of High Courts unearths a 57-year-old case. The Hindu. 2015-05-04.

³⁹ India: Is the justice system broken?. Jason Overdorf. The Global Post. 2013-01-14.

⁴⁰ INDIA: Frivolity Judiciary's real crisis, not backlog. Asian Human Rights Commission. 2016-03-15.

frivolous⁴¹. Cases are even filed against or on behalf of mythological Hindu deities. In February of this year, a litigant successfully filed a case against Hindu deity Rama's alleged cruelty towards his wife Sita⁴². Such "five minutes of fame" petitions are not restricted just to scoring political points. In 2010, the Hindu deity *Ram Lalla* even managed to win one third of the land in the controversial Babri Masjid/Ramjanmabhumi lawsuit⁴³, exposing the ridiculousness of the antiquated legal system that has, despite its secular credentials, an inherent bias towards Hinduism.

A large number of these frivolous cases are filed by law enforcement agencies against poor and marginalized sections of the society that do not have the wherewithal for engaging in a protracted legal battle against the state. A case in point is the state sponsored persecution of tribals in India. Tribals, who have lived on forest lands for millennia, are often thrown in jail for "stealing wood" or "encroaching forest land". The magnitude of the problem is apparent for the announcement made by Jharkhand government that they would withdraw *one hundred thousand* cases⁴⁴ against tribals (arguably to win the next election). Similarly, the Indian state has been scapegoating impoverished Muslim youth in false terror charges to compensate for the incompetence of the Indian security establishment.

Such a gargantuan backlog persists because the judicial system allows itself to be abused by those with the means of doing so. This effectively minimizes the chances of the poor and marginalised in seeking redress.

Corruption in the judiciary

Corruption in the judiciary is widespread⁴⁵. It is most rampant across the lower rungs of judiciary⁴⁶. Former Chief Justice of India, V.N. Khare, has described "bribes for bail" as endemic across the judicial system. In a sworn affidavit, celebrated Supreme Court lawyer Prashant Bhushan has claimed that half of the 16 to 17 Chief Justices of India he worked with were corrupt⁴⁷, a claim that has also been echoed by former Chief Justice of India, Markandey

⁴¹ Khushboo pre-marital sex comments: All cases dismissed. NDTV. 2010-04-29.

⁴² Man files case against Lord Rama for 'cruelty' towards his wife Sita. Hindustan Times. 2016-02-01.

⁴³ Apex Court's sharp wrap on High Court knuckles: A legal analysis of the Babri Masjid case. Haider Abbas. The Milli Gazette. 2011-06-16.

⁴⁴ Jharkhand: 1 lakh cases against tribals withdrawn. NDTV. 2009-10-12.

⁴⁵ The Indian Judiciary on Trial: Tackling Corruption in India's Courts. The Global Corruption Blog. Narayana Renu Kumar. 2016-02-12.

⁴⁶ 'Corruption Is Rampant In The Lower Courts': Former chief justice of India on corruption in judiciary. Outlook. 2012-07-09.

⁴⁷ 'My Honest And Bonafide Perception' - Full text of the affidavit filed by activist lawyer Prashant Bhushan against corruption in Supreme Courts. Outlook Magazine. 2009-12-09.

Katju⁴⁸. According to Transparency International, 36% of citizens reported paying bribes to the judiciary⁴⁹.

Destruction of evidence

Many state officials accused of mass murder and gross human rights violations have simply found it convenient to connive with bureaucrats and destroy any official evidence against them rather than fight a protracted legal battle with potential consequences⁵⁰. In this pattern of averting justice, a bureaucrat destroys crucial evidence from official government records needed to secure the conviction of the accused and presents it as an “inadvertent mistake.”⁵¹ The court in return nominally reprimands the bureaucrat or in rare cases, charges levied against her are either subsequently dropped or get clogged into the endless backlog that can last for decades. Gujarat police officer Geeta Johri’s case is an example. Johri destroyed crucial evidence from government records that would have convicted then Gujarat Home Minister Amit Shah for orchestrating fake encounter killings against Muslims⁵². As an investigating officer reporting to the accused Home Minister, Johri’s destruction of key evidence was severely criticized by the Supreme Court. However, charges filed against her were eventually dropped by the special CBI court⁵³, which is often influenced by the government in power.

Lack of constitutional protections

According to Asia Legal Research Center, crimes committed by the armed forces of the Union are excluded from being registered as crimes by the local police. In places where the notorious Armed Forces (Special Powers) Act (AFSPA), 1958 is in operation, the law provides statutory impunity to the armed forces from prosecution of crimes. In states like Jammu and Kashmir, and Manipur, where the armed forces deployed in these areas commit criminal offences with impunity in large numbers, including rape of women and extrajudicial execution of civilians⁵⁴, there has been no prosecutions so far of the armed forces in a civilian court⁵⁵.

The uniformed forces of the state commit a substantial number of human rights violations⁵⁶. This includes offences committed by the local police and the armed forces of the Union, of varying nature and gravity, including custodial rape, torture and extrajudicial executions. The fact that there is no independent crime-investigating agency in India (such as Internal Affairs in the

⁴⁸ 50% of higher judiciary corrupt, says ex-SC judge Markandey Katju. Hindustan Times. 2015-09-28.

⁴⁹ 2013 India Report. Transparency International.

⁵⁰ Gujarat govt, SIT destroyed evidence related to Godhra riots: Sanjiv Bhatt. The Economic Times. 2012-02-11.

⁵¹ Who is Geeta Johri?. NDTV. 2010-07-30.

⁵² Who is Geeta Johri?. NDTV. 2010-07-30.

⁵³ Sohrabuddin fake encounter case: Charges against Geeta Johri dropped. The Hindu. 2015-03-02.

⁵⁴ India: Repeal Armed Forces Special Powers Act. Human Rights Watch. 2011-10-19.

⁵⁵ India’s Controversial Armed Forces (Special Powers) Act. The Diplomat. 2015-07-02.

⁵⁶ The mass graves of Kashmir. The Guardian. 2012-07-09.

United States), places the responsibility of investigating such crimes with the same agency negating the premises of independence and honesty in investigations.

India today also lacks a legislation that provides witness protection⁵⁷. Threatening and intimidating of witnesses particularly in cases where the victims are pursuing a criminal complaint against a state agent, like a police officer is common in India. Several witness protection issues were seen, for example, in the prosecution of cases related to the Gujarat pogroms of 2002⁵⁸.

Often the Public Prosecutor, who appears for the victim in a criminal case, joins forces with the prosecuted state agent, thereby undermining the security of the victim as well as the witnesses in the case. Additionally, the office of the Public Prosecutor, is one of the most corrupt and inept institutions in the entire criminal justice administration setup in the country that is least spoken about or investigated so far.

India also lacks a legal and normative framework that sets universally acceptable standards for punitive and monetary compensation in cases where financial compensations are awarded for human rights abuses. Monetary compensation awarded for a human rights violation varies wildly between jurisdictions and are often arbitrary in nature, allowing for bias to play out in cases relating to religious violence⁵⁹.

This quagmire of a clogged, corrupt and paralyzed judiciary weakened by lack of key constitutional protections has resulted in widespread impunity for India's security apparatus. Police often assume the role of judge, jury and executioner in rendering extrajudicial justice, as is evidenced by rampant fake "encounter" killings, illegal detentions, police torture, custodial death.

The choked judiciary has also come as a boon to militant Hindu nationalist groups, who often work with the state law enforcement to implement mob justice to religious minorities.

⁵⁷ Witnesses in the wilderness: Why India needs a witness protection programme we can trust. First Post. 2016-02-19.

⁵⁸ Perjury earns Best Bakery's key witness Zaheera Sheikh jail term. InfoChange Human Rights. 2006-03-09.

⁵⁹ INDIA: Remedies to human rights violations a mirage. Asia Legal Research Center. 2014-02-27.

Recommendations

US India Strategic Dialogue

The Constitution of India guarantees all citizens the right to profess, practice and propagate the religion of their choice. Freedom of Religion has been a cornerstone of American democracy. With India's longstanding tradition of pluralism under threat, President Barack Obama rightly cautioned India during his visit, stating unequivocally that India cannot progress if it is splintered along religious lines. In the same vein it becomes incumbent upon the United States, as an ally and partner of India, to work with the latter on issues of human rights and religious freedom.

Per the US Department of State, "The U.S.-India Strategic Dialogue has been the primary forum to advance shared objectives in regional security, economic cooperation, defense, trade, and climate challenges since 2009. In January 2015, President Obama and Prime Minister Modi elevated the U.S.-India Strategic Dialogue to the Strategic and Commercial Dialogue, reflecting the United States and India's shared priorities of generating economic growth creating jobs, improving the investment climate, and strengthening the middle class in both countries."

I believe the Strategic and Commercial Dialogue should go beyond security, defense, economic cooperation etc, to enable both nations to build on their shared values of democracy, freedom of religion and the rule of law. Through this dialogue, the United States must impress upon Indian officials the need to strengthen protection for religious minorities, to uphold freedom of religion by ensuring justice is done in cases of religious violence, and to enact laws that protect whistleblowers and activists from official retribution.

Human Rights Workers' Exchange Program

India has a vast network of Non-Governmental Organizations that are working on various aspects of civic life. Many of these NGOs have faced unprecedented harassment and intimidation since the BJP government came to power. Some of these organizations have rendered yeoman service to the cause of justice and pluralism, and must be recognized for their contributions.

Towards that end, the United States must work with India to establish an exchange program with India, so that prominent human rights activists in both countries can visit each other, exchange best practices in addressing issues related to human rights and identify areas of partnership. This would also be a means to provide recognition to individuals who have made significant accomplishments in the field of human rights and religious freedom.

USCIRF's Assessment of Religious Freedom in India

The US Commission for International Religious Freedom (USCIRF) is an important body assessing the state of religious freedom in countries across in the world. In many cases, USCIRF needs to perform on the ground assessment, by visiting the country in question.

Since 2009, India has been on USCIRF's Tier 2 list of countries where religious freedom is at risk. Given the deteriorating situation of human rights and religious freedom in India as outlined in this report, it is imperative that USCIRF officials be able to visit India, meet with government bodies as well as NGOs, and assess the state of religious freedom firsthand. Unfortunately USCIRF was denied a visa to visit India and assess the state of human rights and religious freedom in India first hand.

This matter must be taken up with India at the highest levels, albeit in a way that respects India's sovereignty. USCIRF must be allowed to continue its work unhindered, and provide the most accurate picture of the state of religious freedom in India.

Conclusion

From the Declaration of Independence to the First and Fourteenth Amendments to the Constitution, religious freedom is an important aspect of our democracy, and an ideal we strive to foster both at home and abroad.

In 1998, the United States passed the International Religious Freedom Act (IRFA), effectively committing our nation to support religious freedom abroad. Indeed religious freedom is rightly cited as the foundation of all other freedoms. Every individual or group must have the right to profess, practice and propagate a religion that is aligned with their beliefs, values and voice of conscience. It is also imperative that individuals professing the religion of their choice can be safe from persecution, and be able to contribute to the wider society without discrimination on the basis of religion.

As a nation, we have our own lessons from the civil rights movement. Whether an individual is discriminated against on the basis of race or caste or religion, it is a violation of the individual's fundamental human right. Such discrimination is demeaning to human dignity and an impediment in the path to progress of human civilization.

The United States continues to be the most influential country in the world. It is imperative that the US leverage its influence to be a force for good. By utilizing its position as a friend and ally of India, the United States can make a meaningful difference to the state of human rights in India, impacting the lives of hundreds of millions of people.

The struggle to save India's tradition of pluralism may be daunting but it is a struggle that millions in India and around the world have taken up as their own. The forces of division may be strong, but they cannot and must not be allowed to overpower people's natural yearning for peace. As Martin Luther King Jr. said, "The arc of the moral universe is long, but it bends towards justice."

Appendix A: Hate / Provocative speeches

MP Yogi Adityanath (BJP)



Mr. Yogi Adityanath, a current member of Parliament from the ruling party, has made many inflammatory and provocative statements during election rallies and public meetings. Following are some examples:

- "If they take one Hindu girl, we will take 100 Muslims girls." ⁶⁰
- "... the family of Mohammad Akhlaq, who was lynched in Dadri by a mob who suspected he had kept beef at home, should face charges for cow slaughter and be stripped of the benefits they were given after his killing." ⁶¹
- "... Muslims should "relocate" to the countries where the Shariat law is in force..." ⁶²
- "... growth in the country's Muslim population was a "threat"" ⁶³

⁶⁰ Love Jihad row: Yogi Adityanath's hate speech caught on camera. India Today. 2014-08-27.

⁶¹ Dadri lynching: Charge Mohammad Akhlaq's family, drop their benefits, says BJP MP Yogi Adityanath. Scroll.in. 2016-06-01.

⁶² Muslims should relocate to nations where Shariat laws are in force: Yogi Adityanath. Economic Times. 2016-04-18.

MP Sakshi Maharaj (BJP)



- "Hindu women must produce at least 4 children to 'protect' the religion" ⁶⁴
- "Ram temple will be built in Ayodhya under BJP rule" ⁶⁵
- "When Muslim dies, they give 20 lakh rupees, but Hindu doesn't even get 20 thousand rupees" ⁶⁶
- "We are ready to kill and get killed to protect our mother - cow" ⁶⁷
- "... a strict law should be made against the family that has more than two or three children" ⁶⁸

⁶³ Adityanath again: Growth in Muslim numbers a threat, bring law to curb it. Indian Express. 2015-12-26.

⁶⁴ Sakshi Maharaj: Every Hindu woman must produce 4 kids. Times of India. 2015-01-07.

⁶⁵ 5 times BJP MP Sakshi Maharaj made controversial statements. India Today. 2015-10-06.

⁶⁶ 5 times BJP MP Sakshi Maharaj made controversial statements. India Today. 2015-10-06.

⁶⁷ 5 times BJP MP Sakshi Maharaj made controversial statements. India Today. 2015-10-06.

⁶⁸ 'Raat gayi, baat gayi', ready to face gallows if I've done anything wrong: Sakshi Maharaj. Pradesh18 E Tv. 2015-01-08.

- "Women in Islam are no better than footwear" ⁶⁹
- "People having more than two children must be barred from voting in elections and any facility he receives from the government must be stopped" ⁷⁰
- "Godse was an aggrieved person. He may have done something by mistake but was no anti-national. He was a patriot." ⁷¹

Sadhvi Prachi Arya



- "... dire consequences if Muslims offer Namaz on roads of Hyderabad from today onwards." ⁷²
- "Those who consume beef deserve such actions against them" (justify lynching murder) ⁷³
- "They are trapping our daughters through 'love jihad'. These people who give birth to 35-40.... Are spreading love jihad..... They are trying to make Hindustan into Darul Islam." ⁷⁴

⁶⁹ Women in Islam no better than footwear, says BJP MP Sakshi Maharaj. India Today. 2016-04-16.

⁷⁰ Sakshi Maharaj now wants people with more than 2 kids barred from voting. India Today. 2016-05-03.

⁷¹ Nathuram Godse a 'patriot', says BJP MP Sakshi Maharaj, retracts later. FirstPost. 2014-12-11.

⁷² Sadhvi Prachi makes inflammatory remarks, warns against offering Namaz on roads. Siasat. 2016-04-16.

⁷³ Sadhvi Prachi justifies Dadri murder, says beef-eaters deserve such treatment. Zee News. 2015-10-03.

- "... So, we need four children. One can go to protect the borders, one can serve the society, give one to the saints and one to VHP to serve the nation and protect the culture."⁷⁵
- "Shah Rukh Khan is an agent of neighbouring country Pakistan as he reflects their (Pakistan's) ideology. Such a man should go to Pakistan,"⁷⁶
- "... Mother Teresa used to convert lower caste Hindus to Christianity".⁷⁷

Sadhvi Deva Thakur



- "The population of Muslims and Christians is growing day by day. To rein in this, Centre will have to impose emergency, and Muslims and Christians will have to be forced to undergo sterilisation so that they can't increase their numbers".⁷⁸

⁷⁴ VHP leader Sadhvi Prachi stokes fresh controversy with communal rants. Daily News and Analysis. 2015-02-02.

⁷⁵ VHP leader Sadhvi Prachi stokes fresh controversy with communal rants. Daily News and Analysis. 2015-02-02.

⁷⁶ Sadhvi Prachi targets Shah Rukh, Aamir for 'tarnishing' India's image. Hindustan Times. 2014-10-08.

⁷⁷ Sadhvi Prachi: Hindus should boycott films by 3 Khans, Rahul Gandhi should marry an Indian. India Today. 2015-03-02.

- "... idols of Hindu gods and goddesses should be placed in mosques and churches." ⁷⁹

Baba Ramdev



A well-known Yoga teacher, known for his outspoken Hindu nationalist views, even declared he would decapitate millions were it not for the law. His remarks did not elicit any condemnation from senior members of the Hindu nationalist movement or the administration.

- "... We respect this country's law and the Constitution, otherwise if anybody disrespects Bharat Mata, we have the capability of beheading not one but thousands and lakhs" ⁸⁰

⁷⁸ Muslims, Christians should be forcibly sterilised: Sadhvi Deva Thakur. India Today. 2015-04-12.

⁷⁹ Impose Emergency and sterilise Muslims, Christians forcibly, says Hindu Mahasabha leader. Daily News and Analysis. 2015-04-11.

⁸⁰ If no law, would have beheaded lakhs who don't say Bharat Mata Ki Jai: Ramdev. Indian Express. 2016-04-04.

MP Sanjay Raut (Shiv Sena)



- “... Balasaheb had demanded that the voting rights of Muslims should be taken away. What he said is right”⁸¹

⁸¹ Sanjay Raut says revoke Muslims' voting rights, faces flak. Hindustan Times. 2015-04-08.
