

**United Nations Human Rights Council  
Universal Periodic Review  
India**

**Submission of The Becket Fund for Religious Liberty**

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*The Becket Fund is a nonprofit, interfaith, public interest law firm protecting the free expression of all religious traditions.*



## **United Nations Human Rights Council Universal Periodic Review of Member-State India**

The Becket Fund for Religious Liberty, in special consultative status with ECOSOC, submits this analysis of religious freedom law in India as a contribution to the Universal Period Review of UNHRC member-state India.

### **1. Legal Framework**

Although India's constitutional framework contains strong protections for religious freedom, the implementation of these protections at the local and regional level pose serious threats to religious freedom in India.

The Indian Constitution, which was written in 1950 soon after the passage of the Universal Declaration of Human Rights, guarantees that "all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion."<sup>1</sup> Additionally, the Indian Constitution complies with the International Covenant on Civil and Political Rights, which includes the right to choose a religion or belief, the protection from coercion which might impair the freedom to have or adopt a religion or belief, and the freedom to manifest one's religion or beliefs.<sup>2</sup>

Thus, India is to be commended for its constitutional protections of religious liberty. With this constitutional structure and an advanced judicial system, the Indian government should be able to implement policies that secure religious liberties for all. Unfortunately, the regional and local implementation of religious freedoms guaranteed by the Indian Constitution fail to meet international religious freedom standards.

### **2. Implementation**

The most troubling legal challenge to religious liberty in India is the existence of "freedom of religion" laws discouraging conversion ("anti-conversion laws") at the provincial level, because of their overbreadth, how they are interpreted, and their normative social effects.

#### **2.1. Status Of State Anti-Conversion Laws**

Currently four Indian states, Orissa, Chhattisgarh, Madhya Pradesh, and Himachal Pradesh, have active anti-conversion that have been implemented.<sup>3</sup> Gujarat and

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<sup>1</sup> Indian Constitution art. 25.

<sup>2</sup> International Covenant on Civil and Political Rights art. 18, G.A. Res. 2200A, at 21, U.N. GAOR, 1496<sup>th</sup> plen. Mtg., U.N. Doc A/RES/2200(XXI) (December 16, 1966) ("ICCPR").

<sup>3</sup> Orissa Freedom of Religion Act, No. 21 (1967); Chhattisgarh Freedom of Religion (Amendment) Act, No. 18 (2006); Madhya Pradesh Freedom of Religion Act, No. 27 (1968); The Himachal Pradesh Freedom of Religion Bill, 2006, No. 31.

Arunachal Pradesh have anti-conversion laws that await enforcement regulations, and Rajasthan’s anti-conversion law has been forwarded to the President for legal review.<sup>4</sup> Tamil Nadu passed an anti-conversion law in 2002, but it has since been repealed.

Although these laws were established at different times, they are very similar in their content. While there are a few variations in wording, all of these anti-conversion laws seek to prevent conversions “carried out” by “forcible” or “fraudulent” means or by “allurement” or “inducement.”<sup>5</sup>

Proponents of anti-conversion laws cite the alleged use of violent or coercive tactics in conversion efforts to justify the anti-conversion laws. There has been little to no documentation of such activity; however, even if there were, there are civil and legal remedies to address such problems that do not entail stifling freedom of conscience. For example, there are already laws in force against assault, false imprisonment, blackmail, defamation, and fraud. The anti-conversion laws only target ideas being preached or otherwise persuasively shared, not the forced imposition of religion.

## **2.2. Interpretation Of Anti-Conversion Provisions Are Overbroad**

The text of the Orissa law, established in 1967 and the earliest such law, states in Article 3:

No person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or by inducement or by any fraudulent means nor shall any person abet any such conversion.<sup>6</sup>

Definitions of “force” and “inducement” in the Orissa law provide an example of the overbreadth in the way anti-conversion laws are interpreted. In the Orissa act, “force” is defined as “a show of force or a threat for injury of any kind including *threat of divine displeasure or social excommunication*.”<sup>7</sup>

The inclusion of the “threat of divine displeasure” is not only vague but also prohibits the expression of many religious teachings. Further, “inducement” in the Orissa law is defined as “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.”<sup>8</sup> This definition of

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<sup>4</sup> See Rajasthan Freedom of Religion Act, No. 12 (2006); Gujarat Freedom of Religion Act, No. 24 (2003); U.S. Department of State, International Religious Freedom Report (2007), India: “The Rajasthan law... was refused twice by the Governor and forwarded to the President on June 20, 2007, for legal review and guidance on its constitutional merit.”

<sup>5</sup> Christian Solidarity Worldwide, *Briefing on Freedom of Religion Legislation in India* (May 2006).

<sup>6</sup> Orissa Freedom of Religion Act, No. 21, art. 3 (1967).

<sup>7</sup> *Id.* at art. 2 (emphasis added).

<sup>8</sup> Virtually all religions, including Hinduism, Buddhism, Christianity, Islam, and Judaism, appeal to the character of a divinity that takes pleasure or displeasure at people’s acts or omissions. This definition of

“inducement” threatens the philanthropic or charitable activity of many religious groups. Giving to someone of another faith out of a desire to fulfill religious obligations toward the poor, or even simple acts of kindness toward someone of another faith, can be considered coercive under these definitions, and thus interpreted as violations of the anti-conversion laws.

### **2.3. Conversion Registration Serves As A Deterrent To Religious Expression**

Freedom of conscience is a natural right that cannot be denied by any external entity. A state cannot control a person’s internal conscientious choice of religion, only the circumstances under which that choice is made.<sup>9</sup>

Many of India’s state anti-conversion laws require a converted person to register his or her intention to convert to another religion.<sup>10</sup> In Gujarat, the convert also requires the prior permission of a district magistrate, and the conductor of conversion ceremonies must also notify state officials, including the police, about his intent to conduct such ceremonies.<sup>11</sup> Rules requiring the registration of converts and conversion ceremonies act as forms of official intimidation by powerful majority faith communities.

Proponents of anti-conversion legislation argue that they are needed to protect vulnerable populations and test their sincerity. However, as discussed, *supra*, there are already civil and legal remedies in India to address tactics that might induce someone to undergo a religious ceremony against his or her will, including laws against assault, false imprisonment, blackmail, defamation, and fraud. Conversion registration does not add additional protections for vulnerable populations; to the contrary, such requirements only

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force would thus preclude the mere statement of a religious truth claim. While people disagree over truth claims, the assertion of truth claims is a fundamental part of religious expression.

<sup>9</sup> Anti-conversion laws assume that the act of conversion is a transitive action that occurs when one person causes another person to switch from one religion to another. Many of the arguments in favor of anti-conversion laws suppose that conversion is a physical act that one person can visit on another.

However, conversion should be understood as an internal, individual transformation of the heart, conscience, and belief system. Anti-conversion laws must be understood primarily as barriers to the manifestations of internal religious belief, including rites of conversion such as baptism, or other outward expressions of a person’s newly chosen faith. Thus the anti-conversion laws target converts by explicitly requiring registration not before a change of heart is made, but rather when there is public expression of that choice.

Although the plain text of the Indian Constitution protects non-coercive proselytism, the Supreme Court of India has held that the right to propagate religion does not include the right to convert another person to one’s religion, because this violates that person’s freedom of conscience. According to the landmark 1977 case of the *Rev. Stanislaus vs. State of Madhya Pradesh*, the right to propagate permits only the transmission of religion by the exposition of its tenets, presumably excluding any apologetical or persuasive religious speech. *See Rev. Stanislaus vs. State of Madhya Pradesh*, AIR 1977 SC 908 (1977).

<sup>10</sup> *See, e.g.*, Gujarat Freedom of Religion Act, No. 24, art. 5(2) (2003); Orissa Freedom of Religion Act, art. 5 (1967); Madhya Pradesh Freedom of Religion Act, No. 27, art. 5 (1968).

<sup>11</sup> *See* Gujarat Freedom of Religion Act, No. 24, art. 5(1) (2003).

enable persecutors to identify and target converts.<sup>12</sup> These measures are thus in violation of ICCPR Article 18, as they impair a person’s “freedom to...adopt a religion or belief of his choice” without “coercion.”

#### **2.4. Normative Effects of Anti-Conversion Legislation**

Like all laws, anti-conversion measures are both normative for and reflective of social realities. At the local level, widespread corruption and difficulties in enforcing rule of law exacerbate the vulnerability of disfavored religious and people groups, and the normative effect of the anti-conversion laws is to legitimate threats against members of religious minority groups.

Some state anti-conversion laws discriminate against specific minority religions or social classes. Members of the Scheduled Castes who choose to convert to non-Hindu religions face particular discrimination.<sup>13</sup> In several states, the penalties for persuading another to convert are increased if the converted person is a member of the Scheduled Castes (including Dalits, formerly referred to as “untouchables”).<sup>14</sup> More severe penalties for conversion of Scheduled Caste members signal the targeting of these groups’ freedom of religion as a way to prevent them from living outside of the caste system by leaving religious communities that adhere to the caste system.

Further, under current legislation, Scheduled Caste members who convert away from Hinduism, usually to Christianity or Islam, lose their Scheduled Caste status, and consequently the eligibility for benefits due to Scheduled Caste members under the system of Reservation.<sup>15</sup> However, caste discrimination is a multi-dimensional problem that can cross religious communities in India, and conversion out of Hinduism does not mean that Scheduled Caste members no longer face the same discrimination.<sup>16</sup> Thus Scheduled Caste is a violation of Scheduled Caste members’ religious freedom as it enforces social and economic penalties for those choosing non-Hindu faiths.<sup>17</sup>

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<sup>12</sup> Further, these registration requirements pose particular burdens on lower caste or illiterate believers with little to no access to judicial remedies.

<sup>13</sup>None of the “anti-conversion” laws includes “re-conversion” as a criminal act. “Re-conversion” is the term used by Hindu fundamentalist groups to describe their own efforts to convert, thus favoring the majority religion. See Christian Solidarity Worldwide, *Briefing on Freedom of Religion Legislation in India* (May 2006).

<sup>14</sup> See Orissa Freedom of Religion Act, No. 21, art. 4 (1967).

<sup>15</sup> See Christian Solidarity Worldwide, *India: Report on Fact-Finding Visit* (July 2007).

<sup>16</sup> Even if a member of a Scheduled Caste converts away from a caste discriminating form of Hinduism and does not face the same discrimination from his or her new religious community, she or he may continue to face such discrimination from the majority Hindu community even after conversion to another faith.

<sup>17</sup> According to Christian Solidarity Worldwide, “the legality of excluding Christians of Dalit background from the purview of the reservation system is the subject of a case in the Supreme Court (writ petition no. 180 of 2004). In March 2005, the government appointed the Justice Ranganath Mishra National Commission for Religious and Linguistic Minorities to undertake an investigation into this issue.” *India: Report on Fact-Finding Visi* at 16. In May 2007, the commission recommended that eligibility for membership of the Scheduled Castes should no longer be dependant upon religious status. Proponents of

Lastly, religious persecution exacerbated by anti-conversion laws are committed by non-governmental actors with implicit state approval and sometimes complicity.<sup>18</sup> These acts of persecution include murder, rape, arson, and assault, and are a major concern throughout India. The Indian government has failed to ensure that local and regional authorities enforce the rule of law in religious persecution cases.

### **3. Recommendations**

During the Universal Periodic Review, the UN Human Rights Council should take care to consider religious freedom in its evaluation of India. We respectfully recommend that the UNHRC not only base its evaluation of India on constitutional assurances of religious freedom, but also on the enforcement, or lack thereof, of these assurances, particularly at the local and regional levels. We encourage the Indian government to address enforcement problems in a systematic and active way.

The UNHRC should also evaluate the Indian government's failures to address the pernicious effects of anti-conversion laws. State inaction is often just as important a factor in the protection of human rights as state action. We encourage the UNHRC to request the Indian government provide more information on anti-conversion laws, including a study of how they are implemented, their necessity, and how abuse of the laws can be curbed.

Finally, we encourage the Indian government to extend open access to vulnerable religious communities, particularly in states with anti-conversion laws, to the UN Special Rapporteur on Freedom of Religion or Belief on her upcoming visit.

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Hindu nationalist Hindutva, including the Rashtriya Swayamsevak Sa (RSS), have strongly opposed the changes. *See id.*

<sup>18</sup> For example, in 2002, preceding the passage of the Gujarat "anti-conversion" law, major religious strife between Muslims and Hindus concluded with the systematic massacre of more than 850 Muslims in Gujarat over the course of more than 30 days. With reports of rape, torture, burning, and mutilation, Hindu nationalists conducted this violence with the tacit and sometimes active approval of the police. These attacks have never been satisfactorily addressed.

According to the Ministry of Home Affairs 2006 Annual Report, there were 698 instances of communal violence or violence along religious lines in which 133 persons were killed and 2,170 injured." *See U.S. Department of State, Office of International Religious Freedom, International Religious Freedom Report 2006 (2007).*

Following the passage of the Himachal Pradesh Freedom of Religion Act in late December 2006, religious press outlets reported increasing violence against religious minorities, including four acts of violence against Christians. On January 21, 2007, a group of Hindus harassed Pastor Timuhias Behal in Kangra, Himachal Pradesh, accusing him of unethical conversions and pressuring him to close his ministry and leave the area.