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Human rights situations that require the Council's attention

Written statement* submitted by the Jubilee Campaign, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Freedom of religion or belief in India**

Introduction

The Jubilee Campaign, together with Christian Solidarity Worldwide (CSW), seeks to draw the Council's attention to the situation of human rights and freedom of religion or belief (FoRB) in India.

India is a state party to several international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Convention on the Elimination of Racial Discrimination (ICERD). India has also engaged substantially with UN Special Procedures, and recently issued a standing invitation to Special Procedures.

Legislation

India has a strong domestic framework protecting FoRB, although there are some significant exceptions to this.

Firstly, the Government of India (GoI) has established several measures to address the social, political and economic disadvantages faced by Dalits and adivasis (tribal groups), including a system of quotas (reservations) in the public sector, and a law addressing caste-based violence. However, the designation of Scheduled Castes (SCs), the legal category for Dalits eligible for these benefits, is linked to religion: SCs only include Hindus, Sikhs and Buddhists.

Dalits who adopt other religions lose SC status and consequently eligibility for benefits available to Dalits of a different religious affiliation. Acts of violence against these Dalits cannot be prosecuted under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act. The justification for the SC classification along religious lines is that caste is not practised within Muslim or Christian communities, but there is evidence to the contrary, and Muslim and Christian Dalits are still regarded as Dalits by wider society.

There is no equivalent element to the classification of adivasis as Scheduled Tribes (STs), although local officials in adivasi-majority areas often deny to non-Hindus their rightful entitlements as STs.

This configuration is being challenged in the Supreme Court. In response to the court's request for an opinion, the GoI appointed the National Commission for Religious and Linguistic Minorities (NCRLM) to undertake a study and issue a recommendation. In May 2007, the NCRLM recommended that SC status should no longer be linked to religion. The National Commission for Scheduled Castes (NCSC) and National Commission for Minorities (NCM) have issued equivalent recommendations. The Supreme Court continues to await the response of the GoI.

The NCRLM recommendation has been echoed by the UN Special Rapporteur on freedom of religion or belief (FoRB)¹ and the UN Committee on the Elimination of Racial Discrimination (CERD),² thereby creating an overwhelmingly strong mandate.

^{**} Christian Solidarity Worldwide (CSW), an NGO without consultative status, also shares the views expressed in this statement.

Secondly, several states have passed legislation criminalising the act of one person converting another by means of “force”, “fraud” or “inducement”/“allurement” and imposing obligations on persons involved in conversions. Such “anti-conversion laws” are in force in Orissa, Madhya Pradesh, Chhattisgarh, Himachal Pradesh, and Gujarat, and have been passed but not implemented in Arunachal Pradesh and Rajasthan. Penal provisions are severe in the more recent laws, exceeding even those for causing death by negligence.

These laws are problematic for several reasons:

- There is no specific need for them, since coercive techniques used for conversions can be prosecuted under existing provisions of the Indian Penal Code (IPC).
- Their vague definitions place legitimate, peaceful religious activities in an ambiguous position under the law, since any activities which involve the possibility of conversion are at risk of prosecution. For example, charitable or educational services provided by religious groups could be portrayed as “allurement” to adopt the religion of those offering that service, or making doctrinal statements could be portrayed as “force”, since this definition includes “a threat of divine displeasure”.
- They have a damaging normative effect on religious minorities: the Special Rapporteur on FoRB was “deeply concerned that laws and bills on religious conversion in several Indian states are being used to vilify Christians and Muslims”³ and established that “such laws or even draft legislation have had adverse consequences for religious minorities and have reportedly fostered mob violence against them”.⁴
- They violate the freedom to change religion, enshrined in ICCPR article 18 (and interpreted by UN Human Rights Committee General Comment 22, clause 5). The Gujarat law stipulates that prior permission must be sought before a person changes their religion; the Himachal Pradesh law stipulates that a person intending to convert should notify the district magistrate, who should then inquire into the matter. The UN Special Rapporteur on FoRB has stated that the rights to adopt and change religion “have an absolute character and are not subject to any limitation whatsoever”.⁵
- They violate the freedom to propagate religion, which the UN Human Rights Committee has held to be part of the right to manifest religion. The former Special Rapporteur on FoRB found “constitutional provisions prohibiting proselytism to be inconsistent with the 1981 Declaration [on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief]”,⁶ and stated that “any generalized State limitation (e.g. by law) conceived to protect ‘others’” freedom of religion and belief by limiting the rights of others to conduct missionary activities should be avoided”.⁷

The Special Rapporteur on FoRB recommended that these laws “should be reconsidered since they raise serious human rights concerns”.⁸

¹ A/HRC/10/8/Add.3, paragraph 71

² CERD/C/IND/CO/19, paragraph 21

³ A/HRC/10/8/Add.3, paragraph 47

⁴ A/HRC/10/8/Add.3, paragraph 50

⁵ A/HRC/10/8/Add.3, paragraph 51

⁶ A/60/399, paragraph 60

⁷ A/60/399, paragraph 62

⁸ A/HRC/10/8/Add.3, paragraph 70

Communal violence and impunity

Communal violence arises from an extremist mindset that seeks to aggravate tensions between religious communities. Certain factors usually underlie episodes of communal violence: antagonism between religious communities; specific events triggering emotive responses from members of different religious communities; a sense among perpetrators and their communities that violence is justifiable; a sense among perpetrators that police reactions would be absent, ineffective or in their favour.

External actors, principally extremist Hindu nationalist organisations, create communal tensions where they did not previously exist. Such groups are increasingly carrying out campaigns which demonise minorities in ST-majority communities across central India. Hindu extremists often use generalised and unsubstantiated accusations about conversions or cow slaughter to spur anti-minority violence. In November 2011, Vishwa Hindu Parishad (VHP) General Secretary, Praveen Togadia, stated publicly that the Constitution should allow those who convert Hindus to be beheaded. Statements such as these by public figures are perceived to give legitimacy to communal violence.

The majority of instances of communal violence have been perpetrated by Hindu extremists against Muslims, including notoriously in Gujarat in 2002 and in numerous episodes since. Christians have been targeted repeatedly, although attacks on this community usually take the form of frequent, individual attacks, most numerous in Karnataka. In August-September 2008, there was a serious outbreak of communal violence in Orissa, which lasted nearly eight weeks, caused around 90 deaths and displaced over 50,000. Many of the murders were extremely brutal, and among those killed were Hindus opposing the rioters. Victims were forcibly subjected to ceremonies to convert them from Christianity to Hinduism.

Absent, ineffective or partisan police responses reinforce a culture of impunity. In Orissa, police responses were initially poor, although the federal government intervened to send a battalion of officers and establish two fast-track courts. According to local sources, the conviction rate is higher than the national average at approximately 30 percent, but it is misleading to assess the judicial system solely on the basis of convictions, as many cases did not enter the legal system when police failed to register them properly. Statistics from 2009 indicated that of 3,223 complaints submitted, only 831 had been registered properly and would be subject to investigation.

The government has taken steps towards introducing a law to prevent, control and deal with the aftermath of communal violence, tailored to its particular contingencies. Although the test of such legislation will be its implementation, the concept is broadly to be welcomed. An initial bill introduced in 2005 was redrafted wholesale in consultation with civil society stakeholders, and a new draft, the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, was produced in 2011. It has yet to pass through the legislative process, but it has the potential to add positively to Indian legislation by addressing the specific demands of communal violence.

Recommendations

The Jubilee Campaign and CSW recommend that the Human Rights Council should:

- Encourage the GoI to adopt the recommendations that religion should no longer be used as a criterion for determining eligibility for SC membership;

- Encourage India to repeal anti-conversion legislation currently in force, and ensure that instances of coercive behaviour in the manifestation of religion are prosecuted under the IPC;
 - Commend the GoI for its efforts to pass legislation dealing with communal violence, and encourage it to see this process through and take steps to ensure any such law is implemented effectively;
 - Urge the GoI to reverse the culture of impunity for perpetrators of communal violence, and implement existing legal provisions to prevent the advocacy of religious hatred, incitement to religious violence and political exploitation of communal distinctions.
 - Encourage the GoI to implement all the recommendations made by the Special Rapporteur on FoRB in the report of her visit to India in 2008.
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