

Policy Brief

DISCRIMINATION, HATE CRIME AND VIOLENCE AGAINST THE FREEDOM OF RELIGION OR BELIEF IN INDIA

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LIST OF ACRONYMS /ABBREVIATIONS

- ATS - Anti Terrorism Squad
- FoRB - Freedom of Religion or Belief
- FRET - Freedom of Religion and Equal Treatment
- UDHR - Universal Declaration of Human Rights
- ICCPR - International Covenant of Civil and Political Rights
- ICESCR - International Covenant on Economic, Social and Cultural Rights
- OHCHR - Office of the High Commissioner of Human Rights
- UAPA - Unlawful Assemblies Prevention Act
- USCIRF - United States United States Commission On International Religious Freedom
- LSE - London School of Economics

EXECUTIVE SUMMARY

Hate crime and violence have manifestly exacerbated upon the minorities especially the religious minorities across India which is a cause of alarm and must be addressed on an emergency footing. The civil society has faced backlash by various means particularly through the audit rounds and cancellations of FCRA, 2010 and the members of the minority community has been pushed back to the wall through arbitrary laws and police action upon them. This is an experience that has been simmering over the years through discriminatory practices and laws in place despite a constitutional mandate of equality, affirmative action and the right to freedom of religion or belief.

Key Findings

- a. A nation wide animosity has been kindled against the minorities through constant vilification whether it is a day to day act of living or through creating a perception that the minorities are inherently criminals.
- b. Any upcoming election brings with it a new set of vilification programs and criminalisation unleashed on the religious minorities.
- c. The impunity enjoyed by the state mechanisms whether political leaders and ministers of a ruling party or the police is arbitrarily unchecked.
- d. Such impunities are often observed in the infliction of discriminatory practices on religious minorities further leading to hate crime or a premediated, orchestrated violence.

INTRODUCTION

This policy brief is aimed to be an advocacy tool including adequate recommendations to protect religious freedom and advance equal treatment of the minorities in India. While the religious minorities are still struggling to claim a social status recommended in the [Sachar](#)

[Committee Report](#), the bigger cause of concern for the last few years has been the systemic exacerbation of discrimination that has opened unfathomable ways of violence, both by the state and from the majority community's vigilantes against the minorities. This report attempts to find causal links between discrimination and violence due to religious belief and expression in India. In its [2020 Annual Report](#) the United States Commission On International Religious Freedom (USCIRF) has recommended to the United States' Government to designate India as a "country of Particular Concern" or (CPC), for "engaging in and tolerating systematic, ongoing, and egregious religious freedom violations, as defined by the International Religious Freedom Act (IRFA). (sic)¹

The [dotodatabase.com](#) records a majority of victims from the Muslim community (16292) in violence perpetrated by the majoritarian right wing Hindutva members (616) and maximum (640) in states ruled by BJP, the political party at the helm of central government in India. The persecution of Christians has increased at an alarming rate and [Open Doors](#) has put India in the World Watch List Top Fifty as the 10th 'country of concern' for ['extreme levels of persecution.'](#)

OBJECTIVE

The brief is prepared with an objective to assess the ground reality in terms of discrimination against the minorities that leads to violence. The causes of discrimination, why against certain communities and who benefits from constant hate. To understand the manner and methods of response to violence and effects on human rights defenders and the victims and if the legal system is victim friendly. Studying the risks of violence on individuals and the community from simply belonging to a different religion or its expression leads us to find ways of mitigation and redressal.

CONTEXT ANALYSIS

¹ Available at <https://www.uscifr.gov/sites/default/files/2021-05/India%20Chapter%20AR2021.pdf>

The population of Muslims are 14.2%; Christians 2.3%; Sikhs 1.7%, Buddhists 0.7%, Jain 0.4% and Parsis 0.006% according to the 2011 census.² It is important to identify the motivation and the pattern of how hate is propagated in the country especially against the minorities on the grounds of their religion. Freedom of religion and belief has been explicitly granted under the [Constitution of India](#).³ Although there are no riders to enjoy FoRB unless it is explicitly against the law, it is also not to be taken for granted. The practice and exercise of FoRB has been increasingly challenged for the minorities either by stifling their constitutional right or outright threats, discrimination and violence. The discrimination begins at home what is observed by a few [researchers of LSE](#) “*we discovered deeply held and widespread prejudices, loaded with resentment, suspicion, disgust, contempt and hatred against minority groups, especially Muslims and Dalits, amongst a significant section of upper and middle caste Hindu WhatsApp users.*” The same is fuelled further through public encouragement from relatives, society and the political parties people are inclined to. The report reveals staggering data around whatsapp users and their behaviour.⁴ It is encouraged by people at the helm of governmental affairs like the [Home Minister of India](#), said that he can make any message, real or fake, go viral. The consequence of such assurance to the majority community is often violence. Crimes against minorities have been normalised and are recorded and disseminated on social media as a call for validation, encouraging more incidents and overall fear inducement to the minorities. The results of [such calls](#) are never pleasant.

Encouraged by political leaders, the foot soldiers and vigilantes get to work immediately. This is a phenomena that could be checked by respective authorities like the election commission stopped some politicians from campaigning in 2020 Delhi elections taking cognizance under section 123 of the Representation of the People Act, dealing with

² Ministry of Minority Affairs, Government of India answering FAQs, available at <https://www.minorityaffairs.gov.in/sites/default/files/MsDP%20%28FAQs%29.pdf>

³ See Articles 25-28

⁴ Shakuntala Banaji and Ram Bhat With Anushi Agarwal, Nihal Passanha and Mukti Sadhana Pravin, *WhatsApp Vigilantes: An exploration of citizen reception and circulation of WhatsApp misinformation linked to mob violence in India* Department of Media and Communications, LSE

attempts to promote enmity or hatred.⁵ While such counter actions are mitigative, a larger consequence is yet to be seen.

- a. **Mapping and Analysing laws:** The global observation of conflict between religious freedom, belief and expressions is often the denial of certain services to consumers or other people because of the provider's personal beliefs. In India this experience is greater in terms of daily lived experience of certain communities and converts to any Abrahamic religion. Tehmina Arora points out the denial of freedom of religion to Dalit converts to Christianity and Islam who automatically fall outside reserved category by the virtue of their conversion.⁶ The major legal enablers are:
 - i. **Anti-conversion laws** - The Freedom of Religion Acts are applicable only in cases of conversion from the “original religion,” and keep out of their purview reconversion to “the religion of one’s ancestors.” Though “original religion” is not clearly defined, religious minorities interpret it to mean that a non-Hindu could freely revert to Hinduism, while those assisting a Hindu in converting to another religion may be punished.⁷ Ten states in India have an **anti-conversion law** namely Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Odisha, Rajasthan, Uttar Pradesh and Uttarakhand. The Uttar Pradesh Prohibition of Unlawful Conversion of Religion Act, 2021⁸ was brought in as an ordinance in a haste in 2020 and cases were filed against people. Lawyers working on the issue say they have not come across a case filed against persons converted to any other religion but Islam. Muslim refugees and undocumented immigrants are

⁵ FP Staff, January 29, 2020, available at <https://www.firstpost.com/politics/delhi-assembly-election-2020-election-commission-orders-removal-of-anurag-thakur-parvesh-verma-from-list-of-star-campaigners-in-delhi-polls-but-two-bjp-leaders-can-still-campaign-7970851.html> accessed in November, 2020

⁶ Tehmina Arora, Scroll.in, Dated August 21, 2020, available at <https://scroll.in/article/970613/for-70-years-dalits-have-been-denied-freedom-of-religion-through-a-presidential-order> accessed in November 2020

⁷ Deutsche Presse-Agentur, “Anti-Religious Conversion Bill in Indian State Hits Roadblock,” May 20, 2006

⁸ Daily Pioneer, dated March 25th, 2021, available at <https://www.dailypioneer.com/2021/state-editions/gazette-notification-on-anti-conversion-law-issued-by-govt.html> Accessed December 2021

prosecuted under by ATS and under UAPA otherwise the rest are usually prosecuted under the Passports Act.⁹

- ii. **Anti cow slaughter laws and cow vigilantism** happens to be the most common ground for people being lynched and brutalised. [Akhlaq](#) (51, Dadri) was killed on the “suspicion” of storing beef in his house. What followed in a streak of similar violence and [Pehlu Khan](#) (55, Alawar), [Junaid](#) (15, Asoti Mathura) and [Tabrez](#) (24, Jharkhand) were lynched to death regardless of the pretext.
- iii. **Mob Violence** The Ministry of Home Affairs has a dedicated department to combat left wing extremism¹⁰ but does not recognise right wing extremism at all which enables the right wing perpetrators of violence. Mob violence or lynchings have become a common phenomena. [Mohsin Sheikh](#) was lynched by a mob of people who had just stepped out of a meeting of the Sanatan Dharm in Pune and he happened to be the first Muslim whom they came across after their meeting and killed him. The pretexts are often the protection of cows even if the victims have records of valid licence.
- iv. **Places of worship** of the minorities [Gurgaon](#), [Tripura](#), [Malihabad](#), [Mathura](#), [Dwarka](#), are attacked with complete impunity to the perpetrators.

- b. **Minority protection in Indian law** - It is not the absence of the law that leaves way for discrimination and violence but the lack of political will or rather the presence of a political agenda in the broader sense of term. It is the non-effective implementation of the policies and the bias towards the perpetrators by the enforcement machinery. In Uttar Pradesh’s Kanpur¹¹, the police have filed cases

⁹As told to the Author. Identity of interviewee withheld for security reasons.

¹⁰ Ministry of Home Affairs, Government of India available at https://www.mha.gov.in/division_of_mha/left-wing-extremism-division

¹¹ As told to the author by the victim and family members of police shootouts in Kanpur in early 2020 in the wake of anti - CAA across India. In Uttar Pradesh the police picked anyone who looked or they knew to Muslims and booked them under criminal laws, even the ones who were injured or killed. The identities of the interviewees is withheld.

against the people who were injured by police firing. The gaslighting of the community has reached a point that there has been a deliberate attempt to pit members of the Muslim community against each other. While the injured were being treated at the police served them with recovery of public property notices and filed FIRs charging them of murder. The families of victims who lost their lives in the firing have tried to file another set of FIRs as the informants in order to ensure justice through their own experience and witness narratives to counter police claims. This is not the first time the police has filed an FIR against the aggrieved minorities. An FIR was filed by the Indore Police against the only Muslim family in the Piwda village attacked by the members of the majority community.¹² The shifting of blame gets darker.

Calls for Genocide : From [January 2021 event in Haridwar](#) calling for economic and social boycott of muslims to the [December 2021](#) calls for outright genocide, the vulnerability of the minorities has increased manifold.

The minority community in the state of Uttar Pradesh is one of the most vulnerable ones, to which the election campaigns occupying usually full pages of major daily newspapers prove dangerous. A systemic discrimination and strategic hate crime are violative of fundamental rights so much so that they cripple a life in general of a whole section of the society. The various forms observed in India are economic boycotts as observed in [Muzaffarnagar](#), in [online campaigns](#), to the street vendors see [here](#) and [here](#). The unrealistic fear mongering and hate campaign by channels like Sudarshan News terming the basic pursuits of life as ‘jihad.’ There is jihad in almost everything that a Muslim does like appearing for an exam like Union Public Service Commission is termed as UPSC Jihad. As Prof. Apoorvanand calls it the [criminalisation of a community](#).

Violence against women: The most outrageous though not surprising incident occurred in July of 2021 when vocal Muslim women were auctioned on a platform

¹² The Wire, October 10th, 2021 available at <https://thewire.in/communalism/muslim-family-attacked-for-not-leaving-village-in-indore-police-file-counter-fir-against-victims> accessed November 2021

called ‘Sulli Deals’ and a repeat of the same with the name ‘[bulli bai](#)’ occurred on the new year’s day 2022. The legal framework has been usually used as a backdoor entry of majoritarian views and politics. This often enables vigilantism in religious extremists groups who take the law into their own hands resulting in brutal ways of crime against the minorities.

- c. **State practices and the question of accountability** - The killing of [Moinul Haq](#) was nothing but Orwellian. It sums up the status of minorities in India especially who come from marginalised or economically humble backgrounds. The impunity that the police enjoy and the perpetrators, even those who are supposed to be neutral parties like the cameraman in this case do not make a safe company.¹³ In December, a [Bangalore MP](#) called for reversion of the converted people who were born Hindus in a blatant violation of their FoRB.
- d. **India’s obligations under international law/treaties** While India has explicitly through ratification of various important treaties, constitutional provisions and judicial pronouncements has agreed to oblige with the provisions FoRB, the practice in the country shows very little of it. The Citizenship Amendment Act, 2019 has been framed on religious grounds [excluding](#) the Muslims. India is a signatory to the Convention on the Prevention and Punishment of the Crime of Genocide but has not acted upon the genocidal calls against the Muslims so far. India’s obligation towards the international laws and treaties comes from [Article 51](#) of the Constitution. Having signed and ratified the two very important treaties on protection of human rights the ICCPR and ICESCR, India portrays its commitment to the international legal regimes. [Article 18](#) of the UDHR provides for freedom of thought, conscience and religion. India having ratified the ICCPR is also obligated to honour and comply with [Article 18](#) and [Article 27](#) of the treaty. Despite not being

¹³ An FIR has been filed against the dead and other injured and a separate FIR against the police personnel and the cameraman who stomped on Moinul Haq’s body. See details at <https://indiaaheadnews.com/india/assam-eviction-two-weeks-on-fir-registered-against-complaint-by-maynal-hags-family-injured-booked-for-violence-60031/> dated October 9th, 2021

a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, India by virtue of Article 51 of the Constitution has to respect [Article 12](#) of the Convention. The Human Rights Committee in its [General Comment No. 22](#) reiterates that “*the fundamental character of these freedoms is also reflected in the fact that this provision cannot be derogated from, even in time of public emergency, as stated in article 4 (2) of the Covenant.*”¹⁴ Article 6 of the [General Assembly Resolution 36/55](#) provides for FoRB but it is Article 7 that ensures its application to all beings. Talking at the High level Event in Commemoration of the [International Day to Combat Islamophobia](#), the General Secretary remarked, “Anti-Muslim bigotry is sadly in line with other distressing trends we are seeing globally - a resurgence in ethno-nationalism, neo-Nazism, stigma and hate speech targeting vulnerable populations including Muslims, Jews, some minority Christian communities as well as others.” (sic) Similarly Christophobia is increasing in India and the international [community](#) has taken cognisance of it specially since the [Odisha incident of 2008](#).

METHODOLOGY

The methodology employed for this research is doctrinal and non-doctrinal surveys, including primary sources by conducting semi-structured interviews with focus groups, key informants, and individual interviews. Secondary data and literature include national and international laws. Constitutional mandates and guarantees with respect to freedom of religion, statutes that add or are violative of constitutional guarantees at the behest of the ruling regime. The researcher has also surveyed and heavily relied on news sources and international press releases to derive the conclusions.

RECOMMENDATIONS

What the government could do:

¹⁴ Clause 1 of General Comment No. 22 on Article 18 of ICCPR, Human Rights Committee

1. Comply with the duties of the State as mentioned in [Article 4](#) of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities.
2. The key stakeholders in the legislature, police and judiciary must be well informed, sensitized and trained on matters of FoRB in line with the [Beirut Declaration](#).
3. Comply with the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious, and Linguistic Minorities. Strengthen the Commissions on Minority rights across all states in India.
4. Comply with the ratification of International Convention on the Elimination of All Forms of Racial Discrimination.
5. Implement the recommendations of the [Commission for Religious and Linguistic Minorities 2007](#) (Also known as The Ranganath Mishra Commission).
6. The Foreign Contribution Regulation Act (FCRA)¹⁵ must be used strictly for fiscal regulations and not to harass and hound [defenders](#).¹⁶
7. Ensure that the anti conversion laws hold the test of reasonability under the constitution and in fact aid in ensuring the right to freedom of religion and expression. Uphold the Constitution of India by guaranteeing the freedom of religion and belief.
8. Ensure safety, support and protection to the Human Rights Defenders in accordance with the [Resolution on Protecting Human Rights Defenders, UN Human Rights Council](#) (March 2013)
9. Adopt and apply the [FoRB indicators](#). The OHCHR recommends it as practical terms tools that enable States, “to assess their own progress on human rights, formulate human rights-based public policies and programs, and make precise information available to civil society and to national and international human rights monitoring mechanisms.”

¹⁵ The FCRA, 2010 was amended in 2016 to include retrospective implementation.

¹⁶ On the New Year's eve of 2022 the FCRA licence of Missionaries of Charity was withheld only to be [restored](#) later. However, an FIR has been filed against the Madurai based Human Rights Watch for allegedly a 10 year old violation.

10. Ensure democratic methods in passing laws
11. Ensure the constitutional validity of such laws
12. Ensure rule of law in its fair terms
13. Record data credibly. Identify crimes under violations of FoRB.
14. Make hate crimes legally accountable
15. Set ground rules for social media. For example: Shutting down the internet in violence affected areas can not be countered through internet shutdowns but flagging the misinformation and countering them with correct information.

The CSOs, activists and international human rights bodies could do the following:

16. CSOs and religious organisations must organise and put in a concerted effort to combat hate crime, violence and discrimination against religious minorities. Concerted means every organisation collaborates on their level of expertise, knowledge, social and financial capital to respond and curb violence and discrimination.
17. Track, map and record hate crimes. Recognise an offence against religious freedom and equal treatment as a hate crime. The Union or the states must work on enactment of legislation to curb hate crimes.
18. Identify the best possible mechanism for each case, national or international, to pursue individual and collective cases.
19. Engage the society in peace building efforts including religious and community leaders.
20. Network and create strong allyship amongst government and non-government stakeholders, policy makers and legislators.
21. Create tools for training and sensitization with key stakeholders like the police and the judiciary. Encourage and create space for knowledge exchange and assimilation of field experiences and academic researchers.
22. Engage with the local government and ensure legal protection to the minorities against any kind of violence inflicted towards them for expression of their religious beliefs and observing festivals.

23. Strategic representations, letters, public/open letters, petitions, calls for international solidarities by all concerned calling upon all concerned.
24. Facilitate and hold meetings with Special Rapporteurs and Standing Committees on the issue.
25. Ensure that FoRB and FRET is a part of every dialogue on human rights and makes a major part of the Universal Periodic Reviews.
26. Financial compensation as a matter of proactive state responsibility
27. Hold political leaders and ministers accountable.

Members of the religious minority community;

28. Leaders and members of religious groups must ensure that their work prioritises the promotion and propagation of religious tolerance and peace.
29. Create opportunities and space for interfaith dialogue.

APPENDICE

1. Al Jazeera, Hate speech and online abuse: India's growing extremism problem, The Listening Post dated January 8th, 2022 available on youtube at <https://www.youtube.com/watch?v=hSINHJdLDdk>
2. Arcot Krishnaswami, *Study of Discrimination In The Matter of Religious Rights and Practices*, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, United Nations 1960
3. Hate and Targeted Violence Against Christians in India, Half Yearly Report 2021, Religious Liberty Commission, The Evangelical Fellowship of India, available at <https://efionline.org/wp-content/uploads/2021/07/RLC-Half-Yearly-Report-2021.pdf>
4. Mahmood Mamdani, *Neither Settler Nor Native - The Making and Unmaking of Permanent Minorities*, The Belknap Press of Harvard University Press, 2020
5. Maria Green, What We Talk About When We Talk About Indicators: Current Approaches to Human Rights Measurement, *Human Rights Quarterly*, Volume 23, Number 4, November 2001, pp. 1062-1097 (Article) available at

<http://blendedlearning.rwi.lu.se/storage/system/9c93070e/article-2-maria-green-what-we-talk-about-when-we-talk-about-indicators-copy.pdf>

6. Scroll.in, Open calls for the mass murder of Muslims are now an everyday affair in India, Shoaib Daniyal, dated December 24th, 2021 available at <https://scroll.in/article/1013524/open-calls-for-the-mass-murder-of-muslims-are-now-an-every-day-affair-in-india>