

Special Rapporteur on freedom of religion or belief - Mr. Heiner Bielefeldt (Ms. Asma Jahangir until 2008)	
<p>Report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt (A/HRC/22/51) 22nd HR Council session, December 2012</p>	<p>Focus on the need to respect and protect freedom of religion or belief of persons belonging to religious minorities</p> <p>2. Specific areas of violations</p> <p>41. The following violations of the rights of persons belonging to religious minorities constitute a non-exhaustive list of patterns observed by the mandate holders during their country visits and in communications sent to States.</p> <p><i>(c) Structural discrimination and exclusion</i></p> <p>44. Persons belonging to religious minorities often suffer from systematic discrimination in various sectors of society, such as educational institutions, the labour market, the housing market or the health-care system. Scores of examples account for structural discrimination in those and other important societal areas. Minorities are frequently underrepresented in the public sectors as well, including in the police force, the military, public media and high-level posts in public universities. Members of certain groups, once identified as such, may not have access to higher education¹⁷ or certain public positions, or may be expelled from previously held positions. Moreover, many members of religious minorities experience multiple, intersectional and otherwise aggravated forms of discrimination, for instance a discriminatory link between scheduled caste status and affiliation to specific religions, or a combination of religion and ethnicity-based violence. Women or girls often have to cope with gender-based and religious discrimination, for example dress code regulations that discriminate against persons belonging to religious minorities, in particular women.</p>
<p>Mission report from country visit to India A/HRC/10/8/Add.3 (10th session HR Council, March 2009)</p>	<p>In this addendum, the Special Rapporteur Ms. Asma Jahangir concludes on her country visit to India from 3 to 20 March 2008, which was conducted upon the invitation of the Government. In the report, the Special Rapporteur focuses on the following issues of concern: the situation of religious or belief minorities; justice for victims and survivors of communal violence; freedom of religion or belief in Jammu and Kashmir; the negative impact of laws on religious conversion in several states; and implications of religion-based personal laws.</p> <p>Summary</p> <p>The Special Rapporteur appeals to the authorities to take quick and effective measures to protect members of religious minorities from any attacks and to step up efforts to prevent communal violence. Any specific legislation on communal violence should take into account the concerns of religious minorities and must not reinforce impunity of communalized police forces at the state level. While inquiries into large-scale communal violence should not be performed hastily, they should be accorded the highest priority and urgency by the investigation teams, the judiciary and any commission appointed to study the situation. Furthermore, the laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular because of the use of vague or overbroad terminology and discriminatory provisions. In addition, the eligibility for affirmative action benefits should be restored to those members of scheduled castes and scheduled tribes who have converted to another religion. Finally, religion-based personal laws should be reviewed to prevent discrimination based on religion or belief and to ensure gender equality.</p> <p>Situation of religious or belief minorities</p> <p>(a) Christians</p> <p>18. Widespread violence in the Kandhamal district of Orissa in December 2007 primarily targeted Christians in Dalit and tribal communities. The Special Rapporteur received credible reports that members of the Christian community alerted the</p>

authorities and politicians in advance of the planned attacks of 24-27 December 2007. The police, too, had warned Christian leaders about anticipated violence. In its report on the events of December 2007, the National Commission for Minorities confirmed that “destruction on such a large scale in places which are difficult to access could not have taken place without advance preparation and planning”.

19. The situation in Orissa has reportedly deteriorated again after 23 August 2008, when Swami Lakhmananda Saraswati, a local leader of the Vishwa Hindu Parishad (VHP), and four other VHP members were killed. Although a Maoist leader had claimed responsibility and the Christian leadership had condemned the killings, organized mobs subsequently attacked Christians in Dalit and tribal communities. By the end of September 2008, more than 40 people had allegedly been killed in Orissa, over 4,000 Christian homes destroyed and around 50 churches demolished. Around 20,000 people were living in relief camps and more than 40,000 people hiding in forests and others places. The Special Rapporteur was profoundly alarmed by the humanitarian situation in relief camps where access to food, safe drinking water, medical care, proper sanitary arrangements and adequate clothing were reportedly lacking.

(c) Sikhs, Jains and Buddhists

27. Further problems can arise for members of the Scheduled Castes, especially when they want to convert to a different religion, since government benefits for Scheduled Castes are by law limited to Hindus, Sikhs and Buddhists. The Constitution (Scheduled Castes) Order 1950 provided that no person who professes a religion different from the Hindu religion shall be deemed to be a member of a Scheduled Caste. This provision was subsequently amended in 1956 and 1990 to also include Sikhs and Buddhists.¹⁴ However, the Special Rapporteur’s interlocutors pointed out for example that Sikhism and Buddhism did not recognise the caste-system. She was also informed that when a member of a Scheduled Caste left Hinduism and converted to Christianity or Islam, the previous caste status and related social bias would often remain at the social level while the person would legally no longer be eligible to government benefits for

Scheduled Castes. In some cases, there are separate churches and cemeteries for members of the Scheduled Castes who converted to Christianity.

28. The legal link between Scheduled Caste status and affiliation to specific religions seems problematic in terms of human rights standards. The Special Rapporteur would like to recall that the Committee on the Elimination of Racial Discrimination noted with concern that Dalits who convert to Islam or to Christianity to escape caste discrimination reportedly lose their entitlement under affirmative action programmes, unlike converts who become Buddhists or Sikhs (A/62/18, para. 179). In 2008, an independent research study commissioned by the National Commission for Minorities found that there is a strong case for offering Muslims and Christians of Dalit origin the same constitutional safeguards already available to Hindu, Sikh and Buddhist Dalits. The report by the National Commission for Religious and Linguistic Minorities, headed by Justice Renganath Misra, recommended to delete paragraph 3 of the Constitution (Scheduled Castes) Order 1950 - which originally restricted the Scheduled Caste net to the Hindus and later opened it to Sikhs and Buddhists - and to make the Scheduled Castes net fully religion-neutral like that of the Scheduled Tribes.

Justice for victims and survivors of communal violence

31. The Special Rapporteur fully agrees with the analysis by the National Commission for Minorities that communal violence is not merely a “law and order” problem but has a serious socio-economic basis and ramifications. Sectarian riots are most likely to occur when the

following elements are present: (i) severe long-standing antagonism on religious lines in particular villages and urban localities; (ii) an emotional response of members of

religious communities to a precipitating event; (iii) a feeling in the minds of rioters and the larger religious group to which they belong that sectarian violence is justifiable; and (iv) the assessment by the rioters that the reaction from the police to sectarian violence will be either absent or partisan or ineffective.

(c) Communal violence after the Godhra train burning incident (2002)

36. With regard to the Gujarat massacre in 2002, the Special Rapporteur met a large number of eyewitnesses as well as people who visited Gujarat during the communal violence and she also received numerous reports, from both official bodies and civil society organisations. The Special Rapporteur also met a former Prime Minister of India and Members of Parliament who visited Gujarat soon after the riots in 2002. The state government reported that, prior to the Godhra train burning incident, Gujarat had witnessed 443 major communal incidents between 1970 and 2002. However, the massacre that took place after the tragic deaths in the Godhra train burning incident on 27 February 2002, is all the more horrifying since at least a thousand people¹⁵ were systematically killed. While the Special Rapporteur notes the controversy about the different conclusions of various public enquiries concerning the question whether the Godhra train burning incident was an accident or a deliberate criminal act, she would like to emphasize that there can be no justification for the large-scale killings and violence after 27 February 2002. In addition, there are credible reports that inaction by the authorities was evident and most of the Special Rapporteur's interlocutors, including politicians, alleged complicity by the state government.

37. While discussing the events with victims, the Special Rapporteur could see their continuing fear which was exacerbated by the distress that justice continues to evade most victims and survivors. A large number of criminal cases relating to the communal violence in 2002 remain un-investigated or have been closed by the Gujarat police and the plight of those internally displaced from their home continues. In addition, there is increasing ghettoization and isolation of Muslims in certain areas of Gujarat, for example in one part of Ahmedabad which is colloquially called "little Pakistan". The assertion of the state government that development by itself will heal the wounds does not seem to be realistic. The Special Rapporteur believes that it is crucial to recognise that development without a policy of inclusiveness of all communities will only aggravate resentments.

38. During her visit to Gujarat, the Special Rapporteur was also disturbed that at various meetings with members of civil society, plain-clothed government agents took names of her interlocutors and also made their presence felt afterwards. On several occasions, the Special Rapporteur had to insist that police officers left the room during her non-governmental meetings. The terms of reference for fact-finding missions by Special Rapporteurs (E/CN.4/1998/45, appendix V) guarantee confidential and unsupervised contact of the Special Rapporteur with witnesses and other private persons. Furthermore, she would like to remind the authorities in Gujarat of the Government's assurance according to these terms of reference "that no persons, official or private individuals who have been in contact with the special rapporteur/representative in relation to the mandate will for this reason suffer threats, harassment or punishment or be subjected to judicial proceedings".

V. CONCLUSIONS AND RECOMMENDATIONS

61. The National Commission for Minorities, too, has taken up several challenges. Their members took prompt action and issued independent reports on incidents of communal violence with concrete recommendations. However, the performance of various state human rights commissions depends very much on the selection of their members and the importance various governments attach to their mandates. It is vital that members of such commissions have acute sensitivity to human rights issues and they must reflect the diversity of the state, particularly in terms of gender, since women are often subject to religious intolerance. The inclusion of women in such commissions would be welcomed by the Special Rapporteur as she noticed that

	<p>women’s groups across religious lines were the most active and effective human rights advocates in situations of communal tension in India.</p> <p>62. All of the Special Rapporteur’s interlocutors recognised that a comprehensive legal framework to protect freedom of religion or belief exists, yet many of them – especially from religious minorities - remained dissatisfied with its implementation. Since the political system of India is of a federal nature and states have wide powers, including in the field of law and order, the level of action of the Government to protect its citizens in terms of freedom of religion or belief varies from state to state. The Special Rapporteur would like to recognize the efforts and achievements of the central Government. However, several issues of concern with regard to intolerance and discrimination based on religion or belief remain pertinent, especially in the context of certain states.</p> <p>63. Organised groups claiming roots in religious ideologies have unleashed an allpervasive fear of mob violence in many parts of the country. Law enforcement machinery is often reluctant to take any action against individuals or groups that perpetrate violence in the name of religion or belief. This institutionalised impunity for those who exploit religion and impose their religious intolerance on others has made peaceful citizens, particularly the minorities, vulnerable and fearful.</p> <p>71. The Special Rapporteur would like to recall the recommendation by the Committee on the Elimination of Racial Discrimination (A/62/18, para. 179) to restore the eligibility for affirmative action benefits of all members of Scheduled Castes and Scheduled Tribes having converted to another religion. The Special Rapporteur recommends that the Scheduled Caste status be delinked from the individual’s religious affiliation.</p>
<p>Report of the Special Rapporteur on freedom of religion or belief, Ms. Asma Jahangir</p> <p>Addendum</p> <p>MISSION TO INDIA</p> <p>(10th session of the Human Rights Council, March 2009)</p>	<p>Summary</p> <p>The Special Rapporteur appeals to the authorities to take quick and effective measures to protect members of religious minorities from any attacks and to step up efforts to prevent communal violence. Any specific legislation on communal violence should take into account the concerns of religious minorities and must not reinforce impunity of communalized police forces at the state level. While inquiries into large-scale communal violence should not be performed hastily, they should be accorded the highest priority and urgency by the investigation teams, the judiciary and any commission appointed to study the situation. Furthermore, the laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular because of the use of vague or overbroad terminology and discriminatory provisions. In addition, the eligibility for affirmative action benefits should be restored to those members of scheduled castes and scheduled tribes who have converted to another religion. Finally, religion-based personal laws should be reviewed to prevent discrimination based on religion or belief and to ensure gender equality.</p> <p>III. DOMESTIC LEGAL FRAMEWORK ON FREEDOM OF RELIGION OR BELIEF</p> <p>11. A number of Indian states have adopted specific laws which seek to govern religious conversion and renunciation. Five states have passed and implemented the so-called Freedom of Religion Acts (Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh). Similar laws have been passed but not yet implemented in two other states(Arunachal Pradesh and Rajasthan). All of these laws stipulate that “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”. The term “force” is defined to “include a show of force or a threat for injury of any kind including threat of divine displeasure or social excommunication”. These laws carry penalties of imprisonment and fines with harsher penalties in case children, women or persons</p>

belonging to the Scheduled Castes or Scheduled Tribes are forcibly converted. Furthermore, in some states anyone converting another person from one religion to another is required to obtain prior permission from state authorities thirty days before the date of such intended conversion⁴ or submit a related intimation.⁵ In other states with such laws, anyone intending to change his or her religion needs to give prior notice⁶ or intimation after the conversion ceremony.⁷

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provided that no person who professes a religion different from the Hindu religion shall be deemed to be a member of a Scheduled Caste. This provision was subsequently amended in 1956 and 1990 to also include Sikhs and Buddhists.¹⁴ However, the Special Rapporteur's interlocutors

pointed out for example that Sikhism and Buddhism did not recognise the caste-system. She was also informed that when a member of a Scheduled Caste left Hinduism and converted to Christianity or Islam, the previous caste status and related social bias would often remain at the social level while the person would legally no longer be eligible to government benefits for Scheduled Castes. In some cases, there are separate churches and cemeteries for members of the Scheduled Castes who converted to Christianity.

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5. Religion-based personal laws

57. During her visit, the Special Rapporteur also received reports of violence and rape, for example in Uttar Pradesh, as a reaction to cases of intermarriage between believers of different religions or castes. Acts of violence continue to occur while perpetrators are dealt with some sympathy by the law enforcement agents. This bias is deep-rooted in certain sections of society and it makes the protection of the victims even more difficult. In this regard it seems important to apply a gender perspective and to protect women effectively against any forms of violence or discrimination.

V. CONCLUSIONS AND RECOMMENDATIONS

62. All of the Special Rapporteur's interlocutors recognised that a comprehensive legal framework to protect freedom of religion or belief exists, yet many of them – especially from religious minorities - remained dissatisfied with its implementation. Since the political system of India is of a federal nature and states have wide powers, including in the field of law and order, the level of action of the Government to protect its citizens in terms of freedom of religion or belief varies from state to state. The Special Rapporteur would like to recognize the efforts and achievements of the

central Government. However, several issues of concern with regard to intolerance and discrimination based on religion or belief remain pertinent, especially in the context of certain states.

63. Organised groups claiming roots in religious ideologies have unleashed an allpervasive fear of mob violence in many parts of the country. Law enforcement machinery is often reluctant to take any action against individuals or groups that perpetrate violence in the name of religion or belief. This institutionalised impunity for those who exploit religion and impose their religious intolerance on others has made peaceful citizens, particularly the minorities, vulnerable and fearful.

64. In this report the Special Rapporteur would also like to follow-up on her predecessor's country visit to India in 1996 and on his pertinent recommendations. As the communal violence in Gujarat in 2002 evidences, Mr. Amor was unfortunately prophetic in his country report, in which he expressed his fears that "something in the nature of the Ayodhya incident will recur in the event of political exploitation of a situation" (E/CN.4/1997/91/Add.1, para. 46). She is also very much concerned about the degree of polarization in some pockets of different faith groups and about the danger of chain reactions that can be triggered by communal tensions. The Special Rapporteur would like to emphasize that there is at present a real risk that similar communal violence might happen again unless political exploitation of communal distinctions is effectively prevented and advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence is adequately addressed.

65. It is a crucial - albeit difficult - task for the State and civil society to challenge the forces of intolerance. The Special Rapporteur would like to refer to encouraging examples where private individuals have come to each other's rescue during communal violence, crossing all religious boundaries. Indeed, a large number of victims in Gujarat recognized the positive role played by some national media channels and other courageous individuals who effectively saved lives during the communal violence in 2002.

66. The visual arts industry in India has played an important role in public education regarding religious tolerance and can contribute to the prevention of communal tensions. However, due to its visibility and potential impact on the population, the visual arts industry remains a target of mob pressure and intimidation by non-State actors. While any advocacy of religious hatred that constitutes incitement to discrimination, hostility or violence needs to be prosecuted, this subtle form of self-censorship begs the question how the State could prevent the build-up of an atmosphere of fear of repercussions and mob pressure.

67. The Special Rapporteur appeals to the Indian authorities to take quick and effective measures to protect members of religious minorities from any attacks and to step up efforts to prevent communal violence. Legal aid programmes should be made available to survivor groups and minority communities in order to effectively prosecute and document cases of communal violence. Furthermore, a central telephone hotline might be set up to accept complaints and to register allegations concerning police atrocities. Any specific legislation on communal violence should take into account the concerns of religious minorities and must not reinforce impunity of communalised police forces at the state level.

69. Concerning vote-bank politics and electoral focus on inter-communal conflicts, the Special Rapporteur would like to reiterate her predecessor's suggestion to debar

	<p>political parties from the post-election use of religion for political ends. In addition, the Representation of the Peoples Act 1951 should be scrupulously implemented, including the provision on disqualification for membership of parliament and state legislatures of persons who promote feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community or language.</p> <p>70. The laws and bills on religious conversion in several Indian states should be reconsidered since they raise serious human rights concerns, in particular due to the use of discriminatory provisions and vague or overbroad terminology. A public debate on the necessity of such laws, more information on their implementation and safeguards to avoid abuse of these laws seem vital to prevent further vilification of certain religious communities. The Special Rapporteur is concerned that such legislation might be perceived as giving some moral standing to those who wish to stir up mob violence. She would like to emphasize that the right to adopt a religion of one's choice, to change or to maintain a religion is a core element of the right to freedom of religion or belief and may not be limited in any way by the State. She also reiterates that peaceful missionary activities and other forms of propagation of religion are part of the right to manifest one's religion or belief, which may be limited only under restrictive conditions.</p> <p>71. The Special Rapporteur would like to recall the recommendation by the Committee on the Elimination of Racial Discrimination (A/62/18, para. 179) to restore the eligibility for affirmative action benefits of all members of Scheduled Castes and Scheduled Tribes having converted to another religion. The Special Rapporteur recommends that the Scheduled Caste status be delinked from the individual's religious affiliation.</p> <p>72. With regard to religion-based personal laws, the Special Rapporteur would like to recommend that such laws be reviewed to prevent discrimination based on religion or belief as well as to ensure gender equality. Legislation should specifically protect the rights of religious minorities and of women, including of those within the minority communities.</p> <p>74. Finally, the State, non-governmental organizations and all members of civil society are encouraged to join their efforts with a view to taking advantage of the media and cultural institutions to provide the individual with relevant knowledge in the field of freedom of religion or belief. In this regard, setting up educational institutions for the whole South Asian region or encouraging joint movie productions might contribute to strengthening peace, understanding and tolerance among individuals, groups and nations.</p>
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