

**How have actors aiming to protect human rights represented the rights associated with religion?**

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## **Abstract**

This paper will argue that there is an inherent tension between the individual and the group-based aspects of religious rights. While Ghanea (2008) argues that in the legal sphere the concept of freedom of religion is used far more frequently than the concept of religious minorities to promote and protect the rights associated with religion, it will be argued here that, in the discourse of civil society and governmental actors in this case study, the idea of minority rights is far more prominent. However, it will be argued that even within this focus on the minority, the complexities and tensions of the individual/group problem can be observed. It will be suggested that the need to incorporate some kind of conception of the group to the notion of religious rights can be observed through the prominence of the religious frame. However, the discursive practices examined will be seen to show the tensions of such an attempt within prevailing religious rights models, rather than completely successful attempts to reconcile the individual with the group in the religious rights context.

## **1. Introduction**

The central focus of this paper will be the relationship between the individual and the collective in the context of religious rights. Religion presents something of a paradox, because on the one hand it is a matter of private and individual belief, and on the other it tends to require certain actions in the social world, some of which are controversial within wider society. Thus in order to protect the rights associated with religion, it is necessary to protect both individual and collective dimensions to these rights. Here I will consider the ways in which the concepts of freedom of religion (as a framework for the protection of the individual right) and minority rights (as a framework for the protection of the collective right) interact in the discourse of actors seeking to protect human rights.

Ghanea (2008, p.310) argues that ‘When religious minorities face discrimination and persecution as a group, then, their case is addressed under the ‘freedom of religion and belief’ umbrella in international human rights and not under minority rights’. She goes on to suggest that in the context of the Middle East, it is likely to be more helpful to use a minority rights framework as this is more closely aligned to traditional Islamic thought in the region. Using the case study of India between 2008 and 2009, here documents produced by actors seeking to protect human rights, both governmental and non-governmental, will be analysed to ask whether Ghanea’s assertion about the primacy of the freedom of religion frame holds true outside of the legal sphere, and in a different region.

This study, therefore, aims to analyse the discourse of a variety of actors who have sought to protect and promote religious rights in India to consider a) the extent to which the concepts of freedom of religion and minority rights are used in documents produced by such actors, and b) to consider what roles the rights frameworks play in the discourse

of civil society and governmental actors – *how* are the concepts used? It will be argued that the minority frame is used more frequently and more persuasively than the freedom of religion frame; however, it will be suggested that the tension between the individual and collective dimensions of religious rights - which are so notable at the theoretical and legal levels - result in tensions and ambiguities in the application of the religious rights frameworks.

## **2. Religious Rights in International Law**

The focus here will be on the theoretical issues surrounding the issues of freedom of religion and minority rights, and the ways in which these problems have been negotiated in the documents produced by human rights practitioners. However, these concepts are rooted in international law, and so a brief account will be given of international standards on religious rights. On the international level, freedom of religion is protected in Article 18 of the International Covenant on Civil and Political Rights (ICCPR) (Appendix 1). Non-binding international protections of freedom of religion can be found in Article 18 of the Universal Declaration on Human Rights (UDHR) and in the 1981 Declaration on the Elimination of all Forms of Intolerance and of Discrimination based on religion or belief (Appendix 2). The concept of freedom of religion is divided into two parts, typically described as the *forum internum* and the *forum externum*. Danchin (2008a, p.261) explains concisely that ‘The purported distinction is thus between thought and conscience on the one hand and action related to belief on the other.’ The individual’s right to form, maintain and change her own private beliefs is unlimited, whilst her right to manifest these beliefs is subject to some, restricted, limitations.

This distinction has been widely discussed and critiqued, and is unique to the law concerning religion. Danchin (2008a, p.269) points out that it would be ‘preposterous...to say that while you can hold political views, any attempt to persuade others of such views is subject to certain limitations’. Additionally, Ghanea (2008, p.304) writes that this two-part structure of the right is ‘more legal myth than of practical consequence. Although having or changing religion or belief is not subject to limitation, clearly extensive limitations on manifestation can put such pressure on individuals and communities of religion or belief that ‘having’ itself is actually limited.’ The right to have or change belief has been controversial – and again, this controversy is intrinsically related to the tension between the individual and the public aspects of religion. While the UDHR protects the individual’s rights to ‘change his religion or belief’, the ICCPR protects the ‘freedom to have or to adopt a religion or belief of his choice’. The 1981 Declaration protects the individual’s ‘freedom to have a religion or whatever belief of his choice’. Observing the chronological development from the UDHR in 1948, it seems as if there has been a weakening of the standards on freedom of religion in the area of changing one’s belief. However, in General Comment 22, paragraph 5, the Human Rights Committee ‘observes that the freedom to "have or to adopt" a religion or belief necessarily entails the freedom to choose a religion or belief, including the right to replace one's current religion or belief with another or to adopt atheistic views, as well as the right to retain one's religion or belief.’ Taylor (2005, p.42)

concludes that ‘the right to change one’s religion seems firmly established in...the United Nations’ system .

The second part of the right to freedom of religion concerns the manifestation of religion or belief. Article 18 of the ICCPR says that everyone shall have the ‘freedom, either individually or in community with others and in public or private, to manifest his belief in worship, observance, practice and teaching’ (18.1). This freedom is subject to limitations, if these are ‘prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others’ (18.3). Article 6 of the 1981 Declaration provides a detailed list of types of protected manifestations of belief (see Appendix 2). Ghana (2008, p. 307) says of Article 6 that ‘All the provisions of this article relate to the collective aspects of this freedom...While (it) does not refer explicitly to the collective right to freedom of religion or belief, or indeed to religious minorities...it is significant that virtually all the concrete examples of the protected freedom in Article 6 involve the collective right.’ Indeed, it is hard to see how this could be otherwise; consider even the short list of protected types of manifestation in Article 18 – worship, observance, practice and teaching. In reality, all of these are generally performed by communities as communities, and the bringing together of the members is often considered part of the meaning of the act.

While freedom of religion is generally considered to be an individual right, therefore, the concept of collective practice can be, to some extent, observed in the Declaration. Lerner (2006, p.15) goes further, arguing that the reference in Article 18 of the UDHR to the freedom ‘either alone or in community with others’ to manifest religious belief suggests ‘that religious rights are more than a strictly individual issue. A right to be exercised in community with others must therefore refer to something more than simply the collection of rights of individuals’. Similarly, he argues that Article 6 of the 1981 Declaration ‘addresses individual rights, collective rights, and rights that can only be exercised by a group’ (p.34)<sup>1</sup>. This, he argues, ‘represents important progress, especially as it anticipates the needs of religious communities or congregations...only groups can establish and maintain places of worship and religious institutions, or appoint religious leaders, or establish federations’ (p.34). It has therefore been suggested that the 1981 Declaration into the concept of freedom of religion. It should be remembered that the Declaration is non-binding, and so these changes are normative and cannot be said to represent changes in the States’ obligations. Nonetheless, for the purposes of this study, which is concerned with the discursive practices surrounding religious rights, this element of collective practice in the Declaration represents an example of the tension and interplay between individual and group dimensions.

In the UN era, the protections afforded to minority groups have been minimal and largely an afterthought to the individual human rights system. Article 27 of the ICCPR (Appendix 3) protects the right of persons belonging to ‘ethnic, religious or linguistic minorities...in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.’ Minority rights are also outlined in the Declaration on the Rights of Persons Belonging

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<sup>1</sup> The differences between these types of rights will be discussed in more detail below.

to National, Ethnic, Religious and Linguistic Minorities (Appendix 4). Neither of these standards defines what a minority actually is, however, which is problematic. Francesco Capotorti's definition has been widely used. He writes that

‘A minority is a group which is numerically inferior to the rest of the population of a State, in a non-dominant position, whose members—being nationals of the State— possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language’ (1979, para.568).

Even here, in the protection of the religious minority, which by its very nature implies group or collective elements, the tension between the individual and collective aspects of group rights can be identified. Sinha (2005, p.361), for example, discussing Article 27, says that ‘the language used emphasizes that the rather tepid protections offered should be understood as predominantly individual rather than collective rights’. Furthermore the rights guaranteed by Article 27 are somewhat limited; Sigler says that ‘The Covenant represents a minimalist version of minority rights. Minority rights are not promoted by such a provision’. Instead, he argues, the provision merely represents the most basic level of protection. The Declaration is slightly more extensive, albeit non-binding, but Lerner (2006, p.47) argues that, in terms of religious minorities, the Declaration provides very few useful advances in protection.

### **3. Literature Review**

Danchin (2008a, p.251) writes that:

‘International and regional human rights instruments recognize at least four rights directly related to religion and belief: the right to freedom of thought, conscience and religion; the right of equal protection of the law, including the prohibition of discrimination on the basis of religion; the right of persons belonging to religious minorities to profess and practice their religion; and the right to protection from incitement to discrimination, hostility or violence.’

In this paper, two of the rights Danchin identifies, ‘the right to freedom of thought conscience and religion’, and ‘the right of persons belonging to religious minorities to profess and practice their religion’, will be considered. These two types of rights raise interesting questions about the protection of religious rights in international human rights systems; in particular, there seems to be something of a paradox connected with the interaction of the group and the individual. It has been argued widely that freedom of religion standards are based upon a concept of religion which is Westernised and individualistic; Spinner-Halev (2005, p.28), for example, has argued that the very concept of religious tolerance ‘is based on an idiosyncratic religion, Protestant Christianity’ which ‘takes individual faith and conscience to be at the center of religion’.

As he demonstrates in a discussion of Hinduism, this is not the only way to understand religion - in other traditions, the essence of religion is not private belief but action in the social world. He writes that, within Hinduism, 'Religious affiliation is not a matter of belief-the Hindu can believe whatever she likes-but of social belonging' (p.36). Derrett (1968, p.556) also argues that 'Europe learnt, painfully, through the century after 1540 or thereabouts that faith could be detached from behaviour, so that liberty of faith could be secured, provided behaviour did not *necessarily* derive from or rationally reflect it.' He thus argues that the concept of freedom of religion is therefore rooted in a privatised model of faith, a model drawn from European Christian conceptions of religion, which may well not fit understandings of religion in the world more broadly. He suggests that in India, for example, 'Religious affiliation is not a question of an individual's belief, for on that footing he is free to believe or not to believe in anything he wishes, but of social *belonging*'(p.58). Freedom of religion, it has been argued, sees the individual conscience as the primary locus of religious experience, and privileges belief over practice.

Similarly, Danchin (2008a, p.263) writes that the law on freedom of religion, with its division between belief and manifestation, 'both constructs and reflects the idea of a legal subject possessing an inviolable inner realm of idea and beliefs separate from one's actions and 'being in the world', and argues that this distinction is likely to be easier to draw in law than in practice, and Bhargava (2010) writes that the Western idea of secularism 'appeared to rest on an active hostility to the public role of religion and an obligatory, sometimes respectful indifference to whatever religion does within its own internal, *private* domain'. He goes on to argue that 'this form of secularism has persistent difficulties in seeking to cope with community-oriented religions that demand a public presence, particularly when they begin to multiply in society'. There seems to be a clear reason for supposing, then, that freedom of religion inadequately takes into account the group and community aspects of religion and religious practices. However, this is different to arguing, as Barbieri (1999, p.920) does that religion is *primarily* a collective concept. He argues that:

'Religious freedom is abrogated by any laws, policies or actions that have the effect of harming the religious welfare of an identifiable set of persons. Of course, an individual dimension to this structure of domination does exist: persons may be coerced publicly to renounce their beliefs, forced to act counter to their convictions, or denied the opportunity to fulfil religious obligations. At root, however, religions function as communal phenomena not reducible to the beliefs of their individual members – who, after all, are partly constituted by their religious context. Not incidentally, some of the most severe threats facing them, likewise, operate at the level of groups'.

Rather, I suggest that Thakur (1993, p.651) identifies what is paradoxical and interestingly complex about the conceptualisation of the right to freedom of religion. He argues that it is:

‘simultaneously an individual right-the right of any person to choose between religions-and a collective right-that of the members of any religion to maintain the beliefs, practices, and symbols of their faith. The individual's right would be an empty concept if unaccompanied by the right of the group. A Muslim in India has the right to believe in and practice Islam; the Muslims in India have the corresponding right to maintain the Islamic community. Neither is complete without the other.’

Gilbert (1997, p.113) too argues that ‘while religious minorities display both internalized and collective rights, in reality the rights of the members and the group itself cannot be separated out’. Religious rights then are complex, I would suggest, because they suggest both group and individualistic dimensions. Gunn (2003) demonstrates this well when he argues that, while religion is too complex to be discussed clearly in the abstract, in the context of religious rights abuses, three key factors can be identified: religion as belief, religion as identity and religion as way of life. Religion as belief refers to the importance of particular doctrines and theological convictions, religion as identity concerns the role religion plays in defining the boundaries of a group, as ‘something akin to family, ethnicity, race or nationality’(2003, p.200). Religion as way of life emphasises the importance of religion as the dominant factor in shaping crucial aspects of behaviour on a day-to-day level, which might include praying at certain times, for example. All of these aspects, from ‘belief’ to ‘way of life’ need to be protected; this indicates that it is difficult to conceive of religion as either entirely an individual phenomena or entirely a collective one. Jones (1999, p.89-90) argues that ‘the respect and concern that leads us to ascribe to people individually held rights to freedom of worship and individually held rights against religious discrimination should also lead us to ascribe to people rights that their sacred sites be respected. Yet, the right of the members of a religious faith that their sacred sites be respected really make sense only as a right that those members hold collectively’. These individual and collective factors exist for religious rights, I would suggest, in a complex interplay.

Given this complexity, the question of how to best promote and protect the rights associated with religion arises. Firstly, it should be considered whether – if religion does involve collective elements as I have argued – religious rights should be protected through collective rights. The term ‘collective rights’ is highly contested and controversial within rights theory, and it can mean a number of different things. Kymlicka (1995, p.45) calls the term ‘unhelpful’ because it sustains too many possible interpretations and because it does not differentiate those group rights which mediate the group’s relationship with the outside world, the State for example, (which he calls external protections) and those which allow the group to possess rights in relation to its members (internal restrictions’. His larger critique of the concept is that the phrase collective rights seems to suggest that such rights must pertain to the group qua group – he, by contrast, maintains that in some versions of collective rights, it is individuals who possess the relevant rights. Thus a broad division exists in the understanding of group

rights between those theorists who argue that collective rights in some instances can pertain to groups as groups, and those who argue, using various justifications, that collective rights should instead mean individual rights to collective goods.

Van Dyke (1974) has argued that in practice many states do give rights to groups as such, and that these groups tend to be ‘characterized by weakness that calls for protection or disadvantage that calls for compensatory action’ or to have ‘a shared sense of a community of interest that is relatively fundamental, important and enduring’ (p.741). Thus he shows that rights can in practice be given to the group as a group. Barbieri (1999, p.917) also argues that the group itself can possess rights. He argues that ‘*people* experience domination – sometimes as individuals (e.g. random victims of torture), sometimes as members of groups (e.g. victims of racial discrimination), and sometimes as groups per se (e.g. targets of genocide)...A consequence of this diversity is that the form, subject and other features of human rights properly vary in accordance with the social referents of the rights concerned.’ McDonald also argues that the group can be a rights-holder, suggesting that the models in which individuals jointly hold rights to collective goods are not sufficient because ‘a major aim of group rights is to protect interests that are not thus severable into individual interests, for the rights in question benefit the group itself by providing collective benefit’ (p.134). Some interests, he suggests, are bigger than the interests of individuals, relate to the collective as a whole and cannot be reduced to rights of individuals.

Directly opposing this view however, Millar (2009, p.331) writes that ‘collective rights are joint rights to collective goods possessed in part in virtue of membership of a social group’. Kymlicka (1995) argues that it because cultural membership is crucially important for the individual, the group which provides this cultural context should be protected. He argues that it is only by protecting the group that the individual’s right to freedom and autonomy can be guaranteed, because the ability to make moral decisions and judgements about the right way to live can only be made in the context of a culture which provides such meanings. Where minority cultures within a state provide such a culture, if their existence or ability to provide such a culture is threatened, then they should be protected to safeguard this individual freedom. The way to do this, however, is not to provide rights for the group as an entity, but to provide different citizenship rights for individuals, based on their membership of groups. Raz (1988) bases an account of group rights on the idea that a right is built on an interest and a correlative duty. He argues that a group right might exist when one individual’s interest is not, by itself, weighty enough to impose a duty on somebody else, but the combined interests of a number of individuals creates a corresponding duty. The key point in the understandings described here is that rights are held by individual members of groups, rather than the group as distinct entity, but the right can only be held if the individuals in question are members of the group. Theories like Raz’s, Kymlicka’s and Millar’s all have in common the idea of the individual as the rights bearer on the one hand, and on the other, the idea that there are certain goods which only exist because of the existence of the group.

I would suggest that because the individual/community dynamics concerning religion are so complicated anyway (consider for example the debates surrounding external influence on individual's right to belief, or the critiques of the somewhat artificial divide between belief and manifestation) that this more general discussion about the theoretical possibility of rights belonging to groups merely adds another layer of complication to the debate. This is especially so when considering the tenuous and under-examined position religious minorities have held within the wider debate on minorities. Kymlicka's theory of minority rights, for example, posits the concept of the 'societal culture' – an all-encompassing social base. These kinds of cultures should be protected, he argues, because they provide the context for true individual freedom. Religious beliefs in this understanding are just one part of what makes up such a group, and purely religious minorities are not considered in *Multicultural Citizenship* at all. It is unclear what rights members of a simply religious minority might possess, if any, in Kymlicka's scheme. Gilbert (1997, p99-100) similarly points out the problems associated with specifically religious minorities:

'To examine the rights of religious minorities involves a multi-threaded analysis: there exist minorities whose sole interest is their religious identity and its preservation; other so-called religious minorities require a broader range of rights because they perceive their group as a national or ethnic minority where religion is but one distinguishing feature; finally, when examining 'religious rights' of minorities, one often looks at guarantees that will adhere to religious majorities and even individuals.'

This, he argues, means that when the rights for specific groups are being considered, the particularities of the group in question should be taken into account, because the balancing of individual, State and group is so complex. In this case, to evaluate the use of the minority and religious rights frames, this means establishing an understanding of the kinds of groups who might be considered 'religious minorities' in India. Similarly, Alfredsson (2005, p.166) writes that: 'an ethnic minority with a broad range of its own characteristics is in need of more extensive rights protection than a religious minority which, apart from the religion, shares the identity of the majority population.' I would suggest that there is a clear need to incorporate or consider the group/individual dynamic within religious rights. But as Alfredsson and Gilbert argue, the role and nature of the religious minority, the most internationally prominent way of incorporating such a group understanding into religious rights, is not clear or well-established. The rights of the religious minority may be more limited than certain other types of minority rights, for example.

In presenting the arguments surrounding the individual/group dynamics of religious rights, my intention is not to support either side of the debate, but merely to observe that in both freedom of religion and minority standards, the tension between the individual and the collective can be observed. In the rest of the paper I will go on to consider the way in which actors working to promote religious rights have used the minority and freedom of religion concepts. Contra Ghanea (2008), I will argue that the minority

frame can be seen to be far more prominent and is used far more frequently, and in more analytically important ways than the freedom of religion frame. This I suggest supports the contention that religious rights must incorporate some community or collective element. However, I will argue that the concepts as they are applied in this case study reveal more of the tensions and complexities of the individual/group dynamic than they reveal a coherent strategic use of the concepts. Before moving on to do this however, the situation of religious rights in India will be briefly discussed. Because of limits of space, it is not possible to begin to explore the complexities of the religious situation in that country; however, the next section will provide some background on how the individual/collective dynamic is dealt with there.

### Religious Rights in India

According to the 2001 census (Government of India, 2001), India's population is just over 1 billion people (1,028,610,328) and there is a high degree of religious diversity. The majority of the population, 827,578,868 people, are Hindus. The largest minority religion is Islam, with 138,188,240 adherents. There are 24,080,016 Christians, 19,215,730 Sikhs, 7,955,207 Buddhists, 4,225,053 Jains, 6,639,626 people of other faiths, and 727,588 people who did not state their religion.

Religion is highly important in Indian society (see for example Nussbaum (2007) and Cossman and Kapur (2001)). To begin with, as Castellino and Redondo (2006, p.63) argue, the boundaries of the independent Indian state were configured on the basis of religion: 'significant numbers of Muslims and Hindus who found themselves on the wrong side of the newly created religious boundary were forced to flee and seek refuge across the boundary. Thus at the very birth of the new state of India, the 'minority problem' was also born, with 'minority' being identified as its remaining Muslim population'. The role of religion – and particularly the group dimensions of religion – in public life has not lessened in the following decades. Indeed, Larson (2005, p.99) says that 'the discussion of community in India is inextricable from the discussion of religion.'<sup>2</sup> Recent years have seen the rise of the Hindu nationalist movement, which critiques what it sees as the special treatment of religious minorities and stresses the relationship between Hinduism and the identity of India. Nussbaum (2007, p.156) writes that the RSS<sup>3</sup> 'portrays itself as a social movement dedicated to unifying the nation under the idea of Hindu purity' and Bakker (1991, p.95-6) argues that 'the current situation in India...is characterized by the disintegration of the population into several sections whose identity is chiefly based on religious beliefs'. Dhavan (1987, p. 212) argues that this process has been ongoing since Independence: 'As socio-political life in Independent India adapted itself to elections and the patronage that flowed from the electoral process, many of India's politicians favoured the familiar policy of defining electoral support along communal lines...Indeed, the reasons for many allegedly

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<sup>2</sup> Earlier in the paper I questioned whether a religious minority could provide the kind of all-encompassing culture Kymlicka describes as being necessary for individual freedom, and that thus supports group-differentiated citizenship. In a society like India, where religion has played such a strong role in shaping identity, the religious minority could well be seen to provide such a group.

<sup>3</sup> A glossary of relevant Indian political terms can be found in Appendix 5.

'communal' tensions and religious clashes in contemporary India can be attributed to the manner in which politicians (and their supporting band of ideologists) have politically appropriated religious group life to their own purposes.' Religion thus plays an important albeit controversial role in society. As Chatterjee (1998, p.377) writes, the problem is 'not so much the existence of bounded categories of population...but rather the inability of people to negotiate, through a continuous and democratic process of self-representation, the actual content of those categories'. Thus it can be seen that the role of religion in India is highly complex and that some of these difficulties clearly reflect the difficulties of balancing the roles of individuals and collectives.

The Indian Constitution protects the individual's right to 'profess, practice and propagate religion', subject to 'public morality, order and health' (Article 25) and, notwithstanding the theoretical debates discussed above, gives minority religious groups certain rights as groups. In Article 26, religious 'denominations' are given the right to freely manage their own affairs; Article 30 gives minorities the right to establish educational establishments (see Massey, 2002). India is a constitutionally secular state, but secularism in the Indian context is quite unlike the Western separation of church and state. Pantham (1997, p.524) writes that 'secularism in the West is usually taken to be emphasizing the separation of state and religion, whereas Indian secularism stresses the equal tolerance of all religions.' He goes on to write that 'the Western antonym of "secular" is "religious." In India, by contrast, it is "communal" that is the antonym of "secular"...given the pervasive religiosity of the people and the pluralism of religions, an ethico-politically appropriate pattern of relationship between religion and state had to be one that stressed the equal respect of all religions, rather than the construction of any insurmountable "wall of separation" between the state and religion' (p.525-526). Again, the prominence of religion in Indian society and the co-existence of a number of different religious groups within one polity can be identified.

## **2. Methodology**

In order to attempt to explore the way in which actors seeking to protect and promote human rights have negotiated the tension of the individual/collective elements of religious rights, a qualitative analysis of a number of documents produced by such actors was undertaken. I sought to identify a) how much the ideas of freedom of religion and minority rights were used and b) to explore how these frameworks were used, through an analysis of the themes and patterns of discourse which emerged. The documents all relate to the period 2008-2009. The sources of the documents were chosen to represent different organisational mandates and approaches: governmental, quasi-governmental, international NGO (general), international NGO (minority rights), domestic civil society actors (one think-tank, one NGO). The actors were chosen because they had completed advocacy work on issues connected with religious rights in India; the documents they produced for this purpose were then analysed. The majority of the documents are reports; there was also one press release (Amnesty International, 2008) and one action document, aiming to encourage supporters to take certain actions in support of victims (Amnesty International, 2008a).

The documents produced by a governmental body analysed in the study are the US State Department's 'Annual Report(s) on International Religious Freedom' for 2008 and 2009 in which the State Department's Office of International Religious Freedom describes 'the status of religious freedom in each of the 195 countries in the world'. The Office 'has the mission of promoting religious freedom as a core objective of U.S. foreign policy'. Two annual reports of a quasi-governmental body, USCIRF, were also analysed. USCIRF was established by the US government to monitor international religious freedom; the commissioners are appointed by the President and Congress, but the body aims to critique the work of the State Department in promoting freedom of religion. The civil society actors whose documents were analysed include two international NGOs – one, Amnesty International, which has a general human rights focus, the other – Minority Rights Group International – which is focussed on minority rights, and whose specifically religious intolerance-focused report is examined here. Finally two Indian civil society actors' documents were analysed. One, the Centre for Study of Society and Secularism, is a think-tank which runs seminars and produces research on the meaning of secularism in contemporary India. The reports it has produced which are considered here are annual summaries of violence between religious groups. The other is the generally-focused Indian human rights organisation the People's Union for Civil Liberties. Both of the PUCL reports analysed here were produced in collaboration with a number of other smaller Indian human rights organisations; they will be referred to as PUCL reports however for ease of reference. All of the reports were broad in scope, considering the general picture for religious rights in India, except for the 2008 PUCL report, which was focussed on violence against Christians, the 2009 PUCL report which dealt with the large-scale violence against Christians in Orissa and Karnataka in 2008, and the Amnesty International report, which concerned indigenous rights in Orissa. The Amnesty International press release and action document were both about the violence against Christians in Orissa.

The focus here will be on *how* governmental and civil society actors have used the theories of minority rights and freedom of religion in advocacy relating to religious minorities in India, rather than *why* they have done so. There are be some possible explanations which will be gestured towards in the conclusion, but I would suggest that before attempting to understand why certain decisions have been made, it is necessary to understand what exactly the decisions are, and how these shape the discourse produced. Institutional mandates and audiences will of course be taken into account when analysing the data produced (for example, it is unsurprising that MRG prominently uses the concept of minority rights). The reasons for use or non-use of the concepts are likely to be rooted in complex institutional decisions and in the context of political discourse. To attempt a coherent theory of why, say, a governmental body in the US and an NGO in New Delhi and an international NGO in London use different strategies is beyond the scope of this study. Instead the aim is to try and understand if broad patterns or themes can be identified in the uses of the frameworks.

The principle aim of the analysis is to understand to what extent governmental and civil society actors have used the concepts of freedom of religion and minority

rights to advocate for religious rights in India. These concepts provided the first two themes which were coded in the analysis – I coded explicit references to the concepts and also coded implied or suggested references. Finally I coded alternate frames to freedom of religion or minority rights – that is, places in the documents in which both freedom of religion and minority rights were eschewed for other concepts with which to present the violations described. For the two concepts which are the major focus of this study, I collected word count data related to the use of the concepts, a simple count of the number of times across the documents freedom of religion or minority rights were mentioned explicitly (Fig. 1, below). However, because this type of analysis of the findings is somewhat crude, the other sub-categories in the thematic analysis were focussed on considering ways in which the frameworks can be inferred from the documents, even if they are not explicitly referenced. Word count data does not take into account the relative length of the documents. However, the relative use of ‘freedom of religion’ and its associated terms and ‘minority’ and its associated terms in each of the documents can be seen from the data.

**Figure 1 – Word Count**

	Freedom of Religion	Minority Rights
USCIRF 2008	3	14
USCIRF 2009	11	22
US State Department 2008	16	27
US State Department 2009	16	20
Amnesty International Press Release 1/10/08 (2008)	0	4
AI Action Document 24/10/08 (2008a)	0	8
Amnesty International: This Land is Ours, report. (2009)	0	5
PUCL 2008	3	12
PUCL 2009	1	15
CSSS 2008	0	8
CSSS 2009	0	1
MRG	2	7

### **3. Freedom of Religion**

#### **i. Use of the Freedom of Religion or Belief framework**

The first topic coded in the documents was freedom of religion or belief. In this section were included: explicit mentions of freedom of religion as a concept; references to freedom of religion standards, both international and domestic; use of the terminology

associated with freedom of religion, and references to mechanisms associated with freedom of religion, particularly the UN Special Rapporteur. The first thing which should be noted is the paucity of references to freedom of religion. Across all of the documents analysed, there were few specific mentions of freedom of religion. This of course does not mean that the concept was not used in the documents at all, and ways of using it without explicit or repeated uses of the phrase ‘freedom of religion’ itself, or references to freedom of religion standards, will be considered below. However, in purely numerical terms, there were few references to the concept or to mechanisms or standards on freedom of religion in the documents. None of the documents produced by Amnesty International or CSSS included any explicit references to freedom of religion at all, for example. The reports with the highest proportion of references to freedom of religion were the US State Department and USCIRF reports.

### Freedom of Religion: the concept

The fact that USCIRF and the US State Department reports use the freedom of religion concept explicitly is to some extent unsurprising, because these reports are the only ones to have freedom of religion concerns as part of their mandates. I would suggest that in these reports, two types of use of the framework can be identified: use as a structuring concept, and use as an analytic category. The 2008 USCIRF report begins by saying that there were continuing ‘positive developments in India affecting freedom of religion or belief’ (p.286), due to changes of government. Later in the report, it says that despite these changes ‘concerns about religious freedom remain’ (p.288). These, except for a reference to the State Department’s religious freedom report, are the only two uses of the phrase freedom of religion in the report. This, I would argue, is use of religious freedom as a structuring concept. It provides a shape to the analysis, but it does not help to interpret the detail of the rights violations. In the US State Department reports, freedom of religion as a concept can also be seen to structure the documents; sections are entitled ‘Restrictions on Religious Freedom’; ‘Abuses of Religious Freedom’; ‘Improvements and Positive Developments in Respect for Religious Freedom’. In this way, the rights abuses are placed in the context of religious freedom.

However, in the State Department’s reports this emphasis on freedom of religion is not just evident in the way the documents are structured. Consider, for instance, this statement of the US government’s priorities in the 2008 report: ‘The US Embassy and its consulates promoted religious freedom in their discussions with the country’s senior leadership, as well as with state and local officials, and supported initiatives to encourage religious and communal harmony’ (para.9) Here, ‘religious freedom’ is ‘promoted’ whilst ‘religious and communal harmony’ is ‘supported’, which indicates a sense of priority. More importantly, however, individual events are described and presented as violations of religious freedom. For example, the 2008 report says that ‘While there were no reports accusing the National Government of committing abuses of religious freedom, human rights activists criticized it for alleged indifference and inaction in the face of abuses committed by state and local authorities and private citizens committed’ (para. 56) The report then presents a number of such incidents, including one in which ‘a secular group alleged that police joined rioters in attacking

Muslim properties'. By contrast, in the USCIRF reports, 'freedom of religion' acts as a type of broad descriptive phrase; because it is used so infrequently in the document, it does not contribute greatly to the analysis of the violations of rights described. The references to religious freedom act as headings more than as terms which interpret; mentioning freedom of religion in this way does not help the reader to understand the events recounted, it serves rather to signal the beginning of sections in the document. This will be discussed in more detail below, but by contrast, in the same document the third paragraph, which is thirteen lines long, contains 5 references to minorities.

### Freedom of Religion: Mechanisms and Standards

The MRG report contains two uses of the phrase 'freedom of religion', but both of these reference other organisations or people working on the issue; it says that 'India suffered a major blow to its reputation for fostering religious pluralism' when it was 'put on the USCIRF watch-list of countries with violations of freedom of religion' and it reports that 'the UN Special Rapporteur on freedom of religion or belief came down strongly on India' (p.117). Perhaps unsurprisingly for a minority rights organisation, these uses of freedom of religion do little more than show an awareness that the concept exists; both of them report outside condemnation of India using the concept of freedom of religion, but while this links MRG's analysis to the freedom of religion concept, it does not represent an application of it. Instead freedom of religion is presented, I would suggest, as an external idea which has some relevance to the main body of the report.

Only the State Department reports and the PUCL reports reference the Indian Constitution's protections of freedom of religion. The former merely notes, in its 2009 report, that 'The Constitution provides for freedom of religion, and the National Government generally respected this right in practice; however, some state and local governments limited this freedom' (para.14). The 2009 PUCL report discusses the constitutional protections of freedom of religion in the context of critiquing the Sangh Parivar's concept of conversion. It argues that the problems with the Hindu Right's rhetoric on conversion are firstly that conversion is 'dealt with as an act by which somebody is made to change one's faith' (p.36), and therefore does not take into account the individual's agency or personal convictions. Secondly the report argues that the anti-conversion rhetoric 'undermines a citizen's right to choose one's own faith and to practice, profess and propagate one's own religion as guaranteed by the Constitution of India (Article 25.1)' (p.37). The 2008 PUCL contains an in-depth analysis of the Indian Constitution's protections of freedom of religion. The report says that 'The Constitution, in Article 25, clearly gives three rights in relation to the freedom of religion: the right to profess, practice and propagate the religion of one's choice...If the right to propagate one's religion is given in addition to the right to profess and practice, it cannot be confined to again professing or practicing the religion. It necessarily includes the right to spread one's religion by inviting others to join it' (PUCL 2008, p.51). There is here a focus on the standards of freedom of religion, but what is notable about both of these considerations of the constitutional protections of freedom of religion is that neither occur in the context of analyzing violence; both reports explicate freedom of religion in order to critique the understanding of conversion promoted by the Sangh Parivar.

Freedom of religion is not the rights framework used explicitly in relation to the rights of those killed and injured in the violence which is the major focus of both reports. Instead, freedom of religion is invoked to oppose the discursive practices of the Hindu Right.

Moreover, both PUCL reports offer an interesting perspective on the freedom of religion standards. The 2008 report says:

Even if there can be some argument about the right of Christian missionaries to convert people, there can be no doubt about the right of the oppressed communities beyond the pale of or on the margin of Hindu society to choose to become Christians or Muslims...in actual reality what is involved is the right of the oppressed communities of Hindu society to choose a religion that will treat them with dignity. (p.50-51)

Similarly, the 2009 report quotes four converts to Christianity. One of these says 'we became more clean after converting to Christianity. We had good clothes. And had education' (p.37). The report says 'Do these voices figure in the "conversion debate"? And, do they not tell us of the deep-seated inequality of the oppressive caste structure from which people stepped out?' (p.37). The 2008 report strongly supports the right of conversion, which is at the core of the right to freedom of religion as protected in international human rights standards (see for example General Comment 22, paragraph 5). But two factors in its analysis are problematic for traditional conceptions of freedom of religion. Firstly, the report does not defend the right of individuals to change religions; it frames the right concerned as the 'right of the oppressed communities...to choose a religion'. This implies that conversion is not a matter of individual choice and conviction, as it has been traditionally understood, but that the freedom to choose a religion may also operate on the group level. Secondly, both reports present the rationale for conversion to be the desire to escape caste-based economic oppression.

This reflects some of the academic work which has been completed on the meanings of religion in India, discussed above. Derrett (1968, p.58) for example says that in India 'Religious affiliation is not a question of an individual's belief, for on that footing he is free to believe or not to believe in anything he wishes, but of social *belonging*.' However, in this application of the concept of freedom of religion, the tension between the collective and the individual can be observed. For example in international freedom of religion standards, religion is typically understood primarily as a matter of personal belief and conscience, with communal manifestations of belief as a secondary component. Krishnaswami, for example, writes that freedom 'to maintain or to change religion or belief falls primarily within the domain of the inner faith and conscience of an individual. Viewed from this angle, one would assume that any intervention from outside it not only illegitimate but impossible' (p. 231). Here, then, some problems for actors seeking to use the freedom of religion concept to consider violence of religious rights in India can be identified. Firstly, freedom of religion protects the individual's right to change religion – it does not consider the freedom of groups or communities to

change religion. This is a serious problem, if the right of conversion can be seen to exist on the group level, because while freedom of religion protects the right of the individual to change religion, minority rights are concerned with the right of the minority to *preserve* its distinct identity – religious minorities have the right to ‘profess and practise their own religion’ (ICCPR, Article 27). Neither freedom of religion nor minority standards considers the existence of a group right to conversion. The lack of concern with the role of the group is due to the tendency to view religion as primarily concerned with individual belief, and not with what Derrett calls ‘social belonging’ (p.58). Thirdly, in the PUCL reports freedom of religion is primarily used to deal with the issue of the Sangh Parivar’s anti-conversion rhetoric. The right to freedom of religion is not applied in the descriptions of violence against minorities – it is used instead to consider the types of social discourse which were used to inflame tensions before the violence.

Therefore while explicit use of the freedom of religion concept can be seen in the PUCL reports, the way the concept is being used demonstrates well the tensions connected with the collective and individual dimensions to religious rights. Additionally, the right to freedom of religion is not invoked in the context of religious violence. As in the USCIRF and MRG reports, while freedom of religion is in referenced, freedom of religion is not seen to be the right which is violated in the cases of religious violence which are the reports’ central concern.

## **ii. Implied References to Freedom of Religion of Belief**

The use of the concept of freedom of religion can be identified not just through uses of the specific phrase ‘freedom of religion’ but also through the application of the system of ideas, concepts and types of analysis freedom of religion connotes. Under this heading, I coded references to individuals as the primary victims of religious rights violations and analysis of controversies to do with conversion because, as the discussion above indicates, the right to choose or change religion is a central feature of international freedom of religion standards. I also coded places in the documents where freedom of religion can be seen to be implied, such as mentions of manifestation of religion.

I have argued that freedom of religion is thought to be a strongly individualistic right, despite Lerner’s suggestion that there are increasing attempts at the international level to reflect the collective aspects of the right. The way in which the State Department reports are organised imply an individualistic understanding of religious rights. They include a detailed breakdown of separate acts of violence in which individual victims are differentiated and often named. For example, in paragraph 66 of the 2008 report, it says that ‘On February 22 2008, members of the Bajrang Dal attacked five Christians meeting in a home in the town of Balaghat in Madhya Pradesh. On February 27, the newly elected president of the Balaghat Christian Association, Robin Singh, a medical doctor, was beaten for providing legal help to the previous victims.’ Here, although the religious communities of the victims are identified, the list format and the differentiation of individual cases, frames the violence as individual rights abuses – not abuses of the rights of the group as a whole. This implies a conception of

religious rights in which abuses against the individual are the key determinants of rights abuses. Moreover, these separate incidents are presented as a list; there is no explicit attempt to suggest patterns of violence between groups. Incidents of violence are recounted, one after the other, according to geographical location. This, I suggest, is an individualistic interpretation of religious rights, and contrasts strongly with the use of the group as the key unit of analysis in the PUCL, MRG and Amnesty International documents discussed below.

Another way in which the idea of freedom of religion is apparent in the documents is through the topic of conversion and anti-conversion legislation. As discussed above, and as Lerner and Taylor show, the issue of conversion is central to the idea of freedom of religion. It concerns the forum internum, the most protected element of the concept, the individual's freedom to choose her own convictions, and it has been considered central in the drafting of all of the standards of freedom of religion, as reflected in the extensive debate over what exactly constitutes coercion, and how free an individual is to maintain a religion or belief, (see for example Taylor's (2005) discussion of the *travaux preparatoires* of the ICCPR, p.28). Similarly Neufeldt (2005, p.383) argues that in the process of drafting the Indian Constitution 'the rights relating directly to conversion were front and centre in the discussion of religious freedom'. In the State Department reports state laws which place restriction on conversion are discussed in detail on a state-by-state basis for the five states which have such laws, examining the framing of the laws and the penalties for breaking them. For example, the 2008 report says that 'On March 20, 2008, the Government of Rajasthan passed an "anti-conversion" law in the state, which restricts and regulates religious proselytism. The law prohibits an individual from using "force, inducement or fraudulent means" when contributing, in speech or conduct, to another individual's religious conversion' (para.28). The USCIRF reports also discuss anti-conversion legislation. The 2008 report, for example, says that 'Several BJP-led states have laws against "forced" or "induced" religious conversions' (p.289). Although it goes on to say that there are few cases of prosecutions under these laws, it argues that they 'can sometimes result in a hostile atmosphere for religious minorities, as states in which these laws exist tend to be those in which attacks by extremist groups are more common' (p.289). This works to link violence against minorities to the typical individual freedom of religion concern of anti-conversion. Anti-conversion legislation links so well to individual freedom of religion because it concerns the inner core of an individual's belief and conscience, and the attempt to alter it by outside influence. By linking the legislative attempt to restrict conversion with violence against minorities, the individual rights framework can be extended to take India's frequent riots (and their group dynamics) into account. The cause and effect which is suggested is that the laws create an atmosphere which makes attacks more common. This enables violence (and explicitly group-based violence) to be linked with a central concept of freedom of religion.

The issue of conversion is considered again in the 2008 PUCL report, which argues that Christian missionaries' attempts at conversions where legitimate whilst the attempts of Hindu groups to do the same were not for three reasons: proselytism was not the only aim of the Christians' educational provision, religious education was a part, but not the

whole, of the Christian education – students were also given lessons in other subjects which would be useful to them – and thirdly the Christians never used violence to convert people (p. 11). In this way the report considers the nature of freedom of religion in its attempts to distinguish legitimate and illegitimate attempts at conversion. Even though freedom of religion per se is not mentioned, by considering the way in which attempts to convert can be accepted – for example, where they do not form the whole of the education provision, and where violence is not used – the report here considers the way in which the right to change religion can legitimately be exercised. The same point can be seen later in the report: ‘The Sangh Parivar's condition for their return is clear and categorical: they should give up Christianity (‘re-convert’ in the language of the Sangh Parivar). It is remarkable that the overwhelming majority of the displaced Christians are not willing to abide by this condition, even if it means living the lives of refugees for ever. Perhaps there is no better answer to the charge that these people converted due to inducements’ (p.36-7). Here again, the concerns of a religious freedom frame can be identified, including the comparison of ‘false’ and ‘true’ conversions. The conversions are seen to be legitimate because even when they are not allowed to return to their homes, the displaced persons refuse to convert to Hinduism.

The concept of freedom of religion can be most prominently identified in the concern with conversion, and protecting the right to conversion, as identified in the PUCL, USCIRF and State Department reports. However, other elements of the rights framework can also be identified. For example, the State Department report considers the situation for missionaries in India in some detail; this is an area which is not dealt with in any of the other reports and this again, considering the controversy surrounding the right to propagate one’s religion, places it squarely within the individual freedom of religion frame. Other topics which can also be seen to be indicative of the freedom of religion frame, covered in the US State Department reports include: the laws relating to religious education and to the adoption of children, banned religious organisations and state laws restricting construction of religious buildings. Many of the activities and the details of the Sangh Parivar’s rhetoric which are presented in the 2008 PUCL report as contributing to manipulating the tension between the groups are issues which fit well within the freedom of religion frame. This report is the only one which examines in detail the role and activities of Lakshmanananda Saraswati which are presented in this report as being primarily religious in focus, including attempts to convert people to Hinduism, conversion ceremonies and anti-Christian rhetoric. In the other reports, the murder of Lakshmanananda is noted as the event which began the violence against Christians in Orissa, but by presenting his life in such detail, 2008 PUCL report links the violence much more strongly to a freedom of religion frame because it connects the outbreak of violence to conflict over attempts to change religious belief.

The MRG report considers the situation for Muslims in India but it does not consider violence in this respect. Instead, it notes that the ‘situation for Muslims in some parts of India remains tense’, and illustrates this through consideration of the Indian government’s counterterrorism policies and a Supreme Court decision, in the case of a Muslim student expelled from a Christian school because he would not shave off his beard, in which (according to MRG’s analysis) ‘The presiding judge ruled that it was

against India's secularism and associated sporting a beard with terrorism and extremist values' (p.118). The MRG report references the CSSS' report for 2009, but summarises it by saying that 'In 2009, communal riots in India, mainly those conducted by Hindu extremist groups against religious minorities, claimed 23 lives, while 73 people were injured' (p.118). However, the high number of cases in which the victims were Muslims (which can be seen in the CSSS report) are not used to provide evidence for the claim that 'the situation for Muslims...remains tense.' The problems for the Muslim community which are analyzed in the report place them within a freedom of religion frame, I would suggest. Including as one of the major pieces of evidence for the claim that 'the situation for Muslims...remains tense' an issue of religious manifestation clearly frames the religious rights problems for Muslims in India as individual rights violations as understood in the freedom of religion frame. Debate surrounding the right to wear the symbols of religious belief is a very familiar site of contestation. At present, it may well be the most prominent discussion around freedom of religion in much of Europe, as the result of the French ban of face-covering clothing, a similar Belgian proposal and a number of European Court of Human Rights' decisions on related cases. While the violence against Christians in Orissa is discussed prominently in the MRG report, and is linked consistently to the minority frame, as will be discussed in the next chapter, the situation for Muslims in India is framed in terms of freedom of religion, at least implicitly.

In conclusion, then, it can be seen that in numerical terms there are few references to freedom of religion in the documents. Where it is used it acts as a heading or structuring device more than as an analytic concept, and it tends not to be used to analyze or consider violence. The way the concept is used in the PUCL reports reveals certain tensions surrounding conversion, in which conversion is considered at the group level.

#### **4. Minority Rights**

##### **i. Use of the minority rights framework**

Explicit references to minority rights were coded under this heading. This included uses of the words 'minority' and 'minorities', as well as references to India's National Commission on Minorities. Here the aim is to investigate how much the concept of the minority is used in relation to religious rights in India, considering the marginal role the religious minority has played in the development theoretical perspectives on minorities, due to the marginal or problematic nature the religious minority as identified by Gilbert (1997) and Alfredson (2005), and discussed above. In addition, Ghanea argues that typically rights abuses of religious minorities are discussed (within the sphere of international law) as violations of freedom of religion rather than as violations of minority rights, and this part of the coding also aims to investigate whether this is true of the discourse of civil society and governmental actors. Secondly, coding these references allows an analysis to be made concerning the way the minority frame is used in practical advocacy, concerning the tensions already discussed.

As can be seen in the word count table above (Fig. 1), in every one of the documents analysed here there are more references to minorities than to freedom of religion. Even in the US State Department report, which uses the freedom of religion frame more than any of the other documents, there are still more references to minorities than to freedom of religion. Merely comparing word count data here is not entirely useful, as the term minority is more flexible and refers to a greater number of phenomena than freedom of religion – so to this extent it is not surprising to see a high number of uses of the term, even in a document using the freedom of religion frame prominently. Having seen then that the concept of the ‘minority’ is referenced in the documents far more frequently than the concept of ‘freedom of religion’, the ways in which the concept is used can be explored. However, this analysis too supports the interpretation suggested by the word count data, which is that the minority concept is prominent in the documents and acts as an important interpretative and analytical tool.

A particularly good example of the prominence of the concept of the minority can be seen in the 2008 USCIRF report, in which there are five references to minorities in the thirteen-line third paragraph. For example, the report says that ‘religious minorities in India have been the victims of violent attacks by fellow citizens, including killings, in what is commonly called communal violence’ (p.286). This is an interesting use of the minority frame, because there seems to be some ambiguity about the way the minority frame is being used – is it the minority itself which is the victim of the violence or the members of the minority community? The fact that it is ‘religious minorities’ who are the victims, suggests it is the group qua group. But a ‘citizen’ is a person, not a group (in fact, the ‘citizen’ as a category has frequently been opposed to the notion of the minority group in Indian political discourse – see Larson (2005)). This makes it difficult conceptually, for ‘minorities’ to be attacked by ‘fellow citizens’ – it is surely persons belonging to such minorities who have been attacked in this way. In the third line of the paragraph, it is explicitly the members of the minority who are pictured as victims: ‘there was a marked increase in violent attacks against members of religious minorities’ (p.286). However, the other three references to minorities in the paragraph could perhaps suggest a more group oriented understanding of minority rights; the report says that ‘it was believed that attacks on religious minorities could be carried out with impunity’, that the BJP was ‘not directly responsible for instigating the violence against religious minorities’ but that it did not ‘counteract the prevailing climate of hostility against these minority groups’ (p.287). In this last phrase, in particular, it can be seen that the minority as a collective is being discussed and considered, rather than the individuals belonging to the group.

Perhaps it is the case that – considering the lack of an international minority treaty, or agreed definition of a minority that the two understandings of the minority rights are able to be used flexibly and somewhat interchangeably here. This ambiguity reflects the ambiguity in minority rights theory concerning the holder of minority rights. However, the crucial point here is that the abuses are presented as stemming from the victims minority identity. Even when it is individuals who are presented as the victims, their

victim status is a result of their minority identity, their membership in the group, rather than their individual capacity.

This emphasis on the concept of the minority is a recurrent pattern in the documents. The USCIRF 2008 report's first recommendation is that the government should increase its efforts to 'halt the violent attacks against religious minorities' (p.289). In the MRG report 'a number of cases of human rights violations' are reported to have occurred in the reporting period 'against ethnic and religious minorities' (p.117). In its press release of the 2<sup>nd</sup> October 2008, Amnesty says in its first line that 'India should match its words with its actions and ensure that members of the Christian minority community in the eastern state of Orissa are protected.' Here the point of the press release, the cause for Amnesty's concern, is the protection of members of the minority group. This attention to the protection of members of a group who are vulnerable because of their group status is a quintessential minority rights approach. The Amnesty International action document of the 24<sup>th</sup> October 2008 also demonstrates clear and unambiguous use of the minority rights framework. The document is entitled 'India: Orissa – violence against religious minorities' and the concept of the minority is used three other times in document. The document's first line says that 'Acts of violence are being committed against the Christian minority' and paragraph six that 'Christian religious minorities continue to be subjected to violence in Orissa'. Finally, in the penultimate paragraph, it is reported that 'Many allege that the Orissa state government has been derelict in its duty to protect the rights of minorities'. In this way, then, the violence which is being committed is presented as being committed against minorities; and at the end of the document this is clearly presented as a violation of their rights as minorities, rather than rights which are possessed as discrete individuals.

Similarly, in the 2008 CSSS report, minorities are clearly presented as the victims of violence; the report says that 'minorities received drubbing'; and that 'year after year minorities suffer in these riots'. A clear distinction can therefore be drawn between the way the documents tend to use the concept of freedom of religion and the way they tend to use the idea of minority rights. Where freedom of religion is, in general, used to discuss theoretical, discursive issues (such as the rhetoric of the Sangh Parivar), the minority rights framework is linked to religious violence. For example, even when the USCIRF report links anti-conversion legislation to religious violence, its way of discussing this violence involves the minority concept: it says that the anti-conversion laws 'can sometimes result in a hostile atmosphere for religious minorities, as states in which these laws exist tend to be those in which attacks by extremist groups are more common' (p.289). Moreover this pattern can be observed even in the State Department reports where the freedom of religion frame is more prominent; when discussing violence, it is the minority concept which is used. For example the 2008 report says that 'there were organized communal attacks against minority religious groups' (para.5) and that 'those who attacked religious minorities' were not effectively prosecuted (para.14) In addition to the numerical frequency of references to the minority concept, it can be shown that it is frequently used in the documents in connection with physical violence and rioting.

Another important way in which the concept of the minority is used concerns the politicization of minority/majority identities in India. For example, the 2008 CSSS report says that the ‘BJP is determined to widen its political base...it does so by targeting minorities’ and that ‘The Sangh Parivar was never in such foul mood against this tiny minority, which has rendered great services in the field of education and health.’ This can be seen again in the section of MRG’s report in which it reports the words of Father S.M. Michael<sup>4</sup>. For example, he is reported as saying that ‘fundamentalist groups’ want to ‘create some kind of obstacle or hindrance to religious minorities’ and that ‘there are constitutional guarantees in India for religious minorities and then there is the practical reality. These don’t always correspond’ (p.119). In this way an important consideration when discussing the way in which the minority frame is used can be observed: religious minorities in the Indian context are highly controversial, and have been the subject of much criticism from the Hindu right. For example, Cossman and Kapur argue that the Sangh Parivar’s ‘discourse of secularism and equality is an unapologetic appeal to brute majoritarianism and an assault on the very legitimacy of minority rights...In the hands of the Hindu Right...special protection for the rights of minorities (is) rejected as a violation of secularism’ (p.67). The CSSS and MRG reports place minority rights, therefore, into the context of a society in which they are questioned and controversial. In the final section of this paper I will consider other ways of dealing with the complex political connotations of minority issues - in these reports, however, it should be noted that the political situation is in directly linked to the *religious* identity of the minority communities. In other documents, which will be examined in the final section, this is not so explicit.

## ii. Implied use of the group rights framework for religious rights

Minority rights are part of a wider, much-contested, notion of group rights. In this section I will consider the way in which the documents present the role of the religious group and community. It can be seen that group-based and community-based analysis is frequent in the documents.

The PUCL 2009 report, for example, says that ‘Christian communities and their institutions were attacked’ (p.9). The analysis stresses the role of the group as fundamental unit; here it is not a ‘large number of Christians’ who are attacked. Instead, the victims are seen to be the ‘Christian communities’ themselves – that is, the group *qua* group. Likewise, the institutions belong to the community, not to individual members of it. Similarly in the 2009 USCIRF report’s final paragraph, the report notes the Commission’s earlier concern that the violence in Orissa ‘has had particularly severe consequences on the minority Christian community’ – the concern here being expressed for the ‘community’. In the Amnesty International report on the attempts to mine Bauxite in Orissa (Amnesty International, 2009), the rights abuses are predominately presented within the indigenous rights frame, a concept which has strong links to the idea of the minority, but is separate and therefore outside the purview of this piece. But

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<sup>4</sup> Father Michael is presumably a Christian leader in Orissa, although this is not explicitly stated.

it is worth noting the way in which the group's identity and its religion are presented in the report. The victims of the potential rights abuses are described variously as 'a remote and ancient community' (p.2), the 'Dongria Kondh community'(p.2) or 'communities' (p.3) and 'the Dongria Kondh' (p.2 and 3). It is 'the Dongria Kondh', for example, who 'are protesting that the proposed mining site is on land that they consider sacred' (p.2). It would be entirely different, I suggest, to discuss the views of individual members of the group, or to present the opinions of the group's leaders. Instead 'the Dongria Kondh' are presented as one discrete entity, the group. The AI report also features this quotation prominently on its first page: 'The hill is our God and the earth our Goddess. Between the two, we have the rains and water. Those wanting to mine here will slowly take over all this. Where will we go then?' This strongly suggests, in a slightly different way to the examples used so far, the group dimension to certain religious practices – the hill is described as 'our', for example. The religious meanings implied here are seen to pertain to the group.

This can also be seen in this sentence, which says that the hills Sterlite plans to mine 'are central to their collective identity, religious beliefs, traditional way of life and culture' (p.2). The 'collective identity' and 'traditional way of life' are clearly collective goods, good held by the group – and the fact that 'religious beliefs' are placed in the middle of these two goods suggests that this is the way we are to read these beliefs, too. 'Religious beliefs' seems at first to fit the freedom of religion frame, through its concern with belief rather than, say practice, as potentially in danger through the building of the mine. But placed in this context, between two clearly collective goods, and pictured as belonging to the community, rather than the individual (the hills 'are central to *their* religious beliefs', emphasis added), it suggests rather that what is endangered here is something which belongs to the group, rather than to any one individual.

A further way in which the group frame can be observed in the documents is in the issue of relationships between groups. In the USCIRF 2009 report, the outbreak of violence against Christians is repeated viewed in the context of mutual tension between Christians and Hindus. For example, the violence in 2007 is presented as 'violence between Christians and Hindus' and the report describes 'the tensions between the Christians, many of whom are from low-caste communities, and the Hindus, many of whom are from tribal communities' which 'were well-known and longstanding'. This appears to be an attempt to show balance in the consideration of the two religious communities, but it contrasts strongly with the CSSS reports which are explicit in blaming Hindu extremism. For example, the CSSS 2008 report says that the 'VHP...went on killing spree' and that 'Even pastors had to run away into woods to escape the wrath of VHP marauders.' This is explained by the fact that 'the BJP is determined to widen its political base in Orissa and as in other states, it does so by targeting minorities...Those who are in the know of the BJP politics know very well how it expanded its political base in Gujarat by repeatedly organizing communal carnage in Gujarat from 1969 onwards and finally succeeded in thoroughly communalize Gujarat and come to power there with thumping majority. It seems to have similar plans in Orissa.' Here, the violence in Orissa is linked without equivocation to Hindu nationalist groups and organisations and the actions attributed to them are linked to a political

rationale which places the events in the context of other violent riots. This is a quite different framing of the situation than the USCIRF's understanding of violence against Christians in the wider context of tensions between the two groups. Where the USCIRF presents two groups in conflict, the CSSS emphasises the ways in which group identity is not natural or concrete, and the ways it can become problematic and contentious. This suggests one of the problems of the minority framework might be connected with the problems of how to represent minority groups when they play complicated social roles.

Similarly, the 2008 PUCL report does not present the violence as a conflict 'between' Hindus and Christians; it places the ultimate blame for the conflict with the Bajrang Dal. It says that the Kandhas 'were susceptible to incitement against the Christian Panos because of the socio-economic relations between the two communities.' The report discusses in detail the differences and points of dispute between the two communities, basing this on historical record, discussions with local people and an analysis of Scheduled Tribe and Scheduled Caste laws as they apply to the Kandhas and Panos. It concludes, contrary to the USCIRF report, that 'the points of difference... are real but they do not add up to any thing that would even remotely explain the vicious violence unleashed on the Panos.' Here, I would suggest, one of the ways in which the group frame is used in the report can be identified – in the USCIRF report, there is a sense of the interaction of groups, with some sense of mutual culpability. In the CSSS and PUCL reports there is a much stronger sense of the manipulation of group identity. Nonetheless, in both cases it is the group, and the role of the group, which is prominent, and the difficulties of articulating the political roles of groups within a minority frame can be shown.

The PUCL (2009) report also argues that it is the politicization of community identity which led to the violence in Orissa. For example, in referring to the murder of Laxmanananda, the report says that 'A large section of the media...blamed the Christian community without any credible evidence' (p.16). Later, in the conclusion, the report argues that 'social division or difference, be it caste or religion, does not lead to communal strife. Rather, strife happens when that difference is manipulated to create an atmosphere of hatred against the perceived 'other' community' (p.40). In both of these examples, PUCL argues that it is the politicization of group identity which is at the root of the kind of violence detailed in the report. This highlights the complicated and potentially divisive role of the group in Indian political discourse, and thus stresses the role of the group as a factor in the analysis. This is evident also in the CSSS report (2009), which includes the following incident:

In the centre of Nanded town near Railway station two youth belonging to Hindu and Muslim communities had quarrel and soon it acquired communal overtones and five youth were injured and had to be hospitalized. It began with eve teasing<sup>5</sup> of girls belonging to one community and youth of two communities came out on the streets and violence erupted.

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<sup>5</sup> I.e. sexual harassment

Here, the chief motivating factor in the violence is seen to be the ‘community’; the ‘two youth’ are described as being from different communities; the girls are from one of the communities, and the violence which followed is presented as a clash between the two communities. Analysis which stresses the role of the group is a feature of the CSSS reports. For example, it says that ‘A 14 year old Muslim girl was murdered by a non-Muslim youth who later committed suicide. The girl's throat was slit with sharp edged weapon. This led to clashes between two communities’. Here again, the crucial role of the group as a concept can be seen – the conflict describes here is seen to be based around community identity; the victim of the first murder was a Muslim, her killer a non-Muslim, and this results in violence ‘between two communities’. There is, therefore, a repeated emphasis in many of the reports on the role of the group in relation to violations of rights connected with religion. In addition to the frequent use of the explicit concept of the minority, I suggest that this supports the argument that religious rights need to contain a strong group rights element; however, the issue of the relationships between groups emphasises the difficulties of using this frame when minority identity becomes politicised.

## **5. The Limits of the Framework: Other ways of framing rights abuses**

The use of the central frameworks has been analysed, but this section will consider the gaps in the use of the frameworks, and some of the alternate frameworks employed. Coded in this section were ways of framing the rights abuses discussed in the documents, other than the two primary frameworks, and ways of combining or applying the frames concurrently. This adds a further complicating dynamic to Ghanea’s analysis, because it reveals that a significant theme in the documents is an attempt to use concepts which fall outside of the religious rights framework entirely. This, I will argue, suggests that there may be significant problems or complications associated with the religious rights concepts.

In a number of places, the freedom of religion and minority frames are used together. For example, in the 2009 USCIRF report the two frames plus the idea of communal violence are all used within one sentence: ‘The Commission grew concerned about religious freedom conditions in India in 2002 after observing a disturbing increase in communal violence against religious minorities associated with the rise of organizations with Hindu nationalist agendas’. Here the situation for religious minorities is presented as part of the overall religious freedom picture in India; communal violence is not an alternative political concept but is also incorporated into the notion of overall religious freedom. This can be similarly seen later in the report, as it is noted that ‘The UN Special Rapporteur has also expressed her concern over the impact of these laws on religious minorities and their inconsistency with international norms guaranteeing the freedom to change one’s religion, and has called for their repeal.’ Here the authority of the UN Special Rapporteur is invoked, with the consequent implication of the freedom of religion frame, and two areas of her concern are mentioned and summarized: firstly, the implications for ‘religious minorities’ and secondly, the way the laws contradict

freedom of religion standards. Freedom of religion and the minority frame are not opposed or contradictory and so can be used together as these examples show.

However, despite this example of the religious rights concepts working together, there is also a significant pattern of non-use of the religious rights framework. The starting point for this analysis has been the ways in which civil society and governmental actors concerned with the promotion and protection of human rights in India have framed human rights abuses connected with the byzantine complications of the religious situation. Considering this complexity, it is perhaps unsurprising that certain of the documents have used religious concepts and ideas minimally. I have already discussed the way in which the Amnesty International action document on the situation in Orissa, published on the 24 October 2008, contains prominent use of the religious minority rights framework. However, this document is also notable for another theme, that of a purely political understanding of the situation. Swami Lakshamanananda Saraswati, for example, is described as a ‘prominent right-wing politician’; those who claimed responsibility for his killing as ‘armed leftist groups’. In the second paragraph, he is described as ‘a senior Vishwa Hindu Parishad (VHP) leader’; there is no additional contextual information on the VHP. The major theme of the press release is that the violence against Christians in Orissa is political, a case of mistaken identity.

In the first paragraph of the ‘Background Information’ section, it is noted that the ‘armed leftist groups’ had given a motivation for the killing which began the violence – they were ‘accusing him of dividing people on the basis of religion and ethnicity.’ This is the only explicit mention of the links between religion and politics, and yet it appears in the document in brackets and from the mouths of ‘armed leftist groups’ voluntarily confessing to a murder. In paragraph seven, the press release says that ‘many human rights activists allege that there is sufficient evidence to prove that the violence is politically motivated’; in the final paragraph, it is the ‘political situation’ which ‘continues to be tense’. Clearly, there are complex and significant links between religion and politics in India (see for example Nussbaum and Cossman and Kapur, among many others)<sup>6</sup>, but because so many references are made to politics, there seems to be a clear emphasis on a political framing of the violence. Similarly, the CSSS report explains this explicitly: ‘All this abundantly proves that communalism is a political and not a religious phenomenon and that communal graph goes up and down depending on political dynamics of a region... If communal violence erupts it is more because of weakness of secular forces than the strength of communal forces.’ This clearly argues that violent incidents can be understood to result from political manipulations of community difference, rather than from religious causes. I would suggest, therefore, that in these documents a type of tension or paradox can be identified, between the religious

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<sup>6</sup> This can also be observed by comparison with the PUCL report, which argues that the RSS has promoted the idea that the god Jagannath of Puri, who is ‘practically the symbol of Hinduism’ in Orissa, has ‘adivasi...roots’, in order to build popular support in the region, which has a large adivasi population.’ This example, given as background information to the violence in Orissa in 2008, draws attention to the manipulation of religion and its use as a political tool. As it is presented in this report, there is a clear religious and political dimension to the violence.

minority concept and the attempt to use political, rather than politico-religious interpretations.

## **6. Conclusion**

A number of conclusions can be drawn from this case study. Firstly, it can be seen that, in contrast to Ghanea's analysis of the use of the minority and freedom of religion frames at the international legal level, that the concept of religious minority rights is far more prominent than the concept of freedom of religion in the discourse of these civil society and governmental actors. It is the minority frame which is associated with the most egregious, physical violations listed in the documents, where the freedom of religion frame tends to be used as a tool to discuss rhetorical or legal concerns, such as the Sangh Parivar's rhetoric, or anti-conversion laws. Where freedom of religion is linked explicitly with the violence, as in the 2008 USCIRF report, the concept of the minority is still invoked. Freedom of religion tends not applied directly to violence in the reports. In contrast to Ghanea's analysis, therefore, the importance and prominence of the concept of the religious minority can be observed. This supports the types of arguments made by Derrett and Bhargava, amongst others, that religious rights need to contain some dimension which relates to the group, and to the social practices of religion. The prominence of the concept of the minority in the documents, in addition to the various uses of the group concepts more broadly therefore suggests the importance of collective ideas connected with religion.

However, it can also be concluded that there are a number of tensions connected to the role of the individual and the group in religious rights theories. Where the minority frame is used there is often an ambiguity as to the conceptualisation of the minority rights frame – are the victims the individual members of the minority, or the minority itself? This ambiguity reflects the ambiguity at the theoretical and legal levels concerning minority rights. A further ambiguity can be observed in the way the 2008 PUCL report makes use of the concept of freedom of religion. In doing so it draws on elements of collective rights, and introduces a group-based analysis which considers religious choice on the group level. In the group-based analysis there are also a range of interpretations of the political dimension to the minority identity. This complicates the picture, because the minority here is associated not just with rights but also with complex and controversial political rhetoric and discourse. Despite the prominence of the minority concept in the documents which were analysed, the political facets of the issue in Indian society posed problems which different reports dealt with in different ways. The PUCL reports very clearly examined the links between religion and politics, where the Amnesty International press release and action document, and the CSSS reports tended to stress the political interpretation over the more complicated religious and political implications. I would suggest, then, that in the discourse of the actors examined here, the minority rights frame is more apparent than the freedom of religion concept; however, where the minority concept is used, it is subject to a number of problems and complications, many of which are inherent to the ambiguous and unresolved group rights discourse, especially as it concerns the relationship between the individual and the group.

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## **Appendix 1**

### Article 18

#### International Covenant on Civil and Political Rights

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

## **Appendix 2**

### 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief

#### The General Assembly,

Considering that one of the basic principles of the Charter of the United Nations is that of the dignity and equality inherent in all human beings, and that all Member States have pledged themselves to take joint and separate action in co-operation with the Organization to promote and encourage universal respect for and observance of human rights and fundamental freedoms for all, without distinction as to race, sex, language or religion,

Considering that the Universal Declaration of Human Rights and the International Covenants on Human Rights proclaim the principles of non-discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief,

Considering that the disregard and infringement of human rights and fundamental freedoms, in particular of the right to freedom of thought, conscience, religion or whatever belief, have brought, directly or indirectly, wars and great suffering to mankind, especially where they serve as a means of foreign interference in the internal affairs of other States and amount to kindling hatred between peoples and nations,

Considering that religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life and that freedom of religion or belief should be fully respected and guaranteed,

Considering that it is essential to promote understanding, tolerance and respect in matters relating to freedom of religion and belief and to ensure that the use of religion or belief for ends inconsistent with the Charter of the United Nations, other relevant instruments of the United Nations and the purposes and principles of the present Declaration is inadmissible,

Convinced that freedom of religion and belief should also contribute to the attainment of the goals of world peace, social justice and friendship among peoples and to the elimination of ideologies or practices of colonialism and racial discrimination,

Noting with satisfaction the adoption of several, and the coming into force of some, conventions, under the aegis of the United Nations and of the specialized agencies, for the elimination of various forms of discrimination,

Concerned by manifestations of intolerance and by the existence of discrimination in matters of religion or belief still in evidence in some areas of the world,

Resolved to adopt all necessary measures for the speedy elimination of such intolerance in all its forms and manifestations and to prevent and combat discrimination on the ground of religion or belief,

Proclaims this Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief:

#### Article 1

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

#### Article 2

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on grounds of religion or other beliefs.

2. For the purposes of the present Declaration, the expression "intolerance and discrimination based on religion or belief" means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

#### Article 3

Discrimination between human beings on grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

#### Article 4

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.

2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

#### Article 5

1. The parents or, as the case may be, the legal guardians of the child have the right to organize the life within the family in accordance with their religion or belief and bearing in mind the moral education in which they believe the child should be brought up.
2. Every child shall enjoy the right to have access to education in the matter of religion or belief in accordance with the wishes of his parents or, as the case may be, legal guardians, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents or legal guardians, the best interests of the child being the guiding principle.
3. The child shall be protected from any form of discrimination on the ground of religion or belief. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, respect for freedom of religion or belief of others, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.
4. In the case of a child who is not under the care either of his parents or of legal guardians, due account shall be taken of their expressed wishes or of any other proof of their wishes in the matter of religion or belief, the best interests of the child being the guiding principle.
5. Practices of a religion or beliefs in which a child is brought up must not be injurious to his physical or mental health or to his full development, taking into account article 1, paragraph 3, of the present Declaration.

#### Article 6

In accordance with article 1 of the present Declaration, and subject to the provisions of article 1, paragraph 3, the right to freedom of thought, conscience, religion or belief shall include, inter alia, the following freedoms:

- (a) To worship or assemble in connexion with a religion or belief, and to establish and maintain places for these purposes;
- (b) To establish and maintain appropriate charitable or humanitarian institutions;
- (c) To make, acquire and use to an adequate extent the necessary articles and materials related to the rites or customs of a religion or belief;
- (d) To write, issue and disseminate relevant publications in these areas;
- (e) To teach a religion or belief in places suitable for these purposes;
- (f) To solicit and receive voluntary financial and other contributions from individuals and institutions;
- (g) To train, appoint, elect or designate by succession appropriate leaders called for by the requirements and standards of any religion or belief;
- (h) To observe days of rest and to celebrate holidays and ceremonies in accordance with the precepts of one's religion or belief;
- (i) To establish and maintain communications with individuals and communities in matters of religion and belief at the national and international levels.

#### Article 7

The rights and freedoms set forth in the present Declaration shall be accorded in national legislation in such a manner that everyone shall be able to avail himself of such rights and freedoms in practice.

#### Article 8

Nothing in the present Declaration shall be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights and the International Covenants on Human Rights

### **Appendix 3**

#### ICCPR Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

### **Appendix 4**

#### Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

The General Assembly ,

Reaffirming that one of the basic aims of the United Nations, as proclaimed in the Charter, is to promote and encourage respect for human rights and for fundamental freedoms for all, without distinction as to race, sex, language or religion,

Reaffirming faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,

Desiring to promote the realization of the principles contained in the Charter, the Universal Declaration of Human Rights, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, and the Convention on the Rights of the Child, as well as other relevant international instruments that have been adopted at the universal or regional level and those concluded between individual States Members of the United Nations,

Inspired by the provisions of article 27 of the International Covenant on Civil and Political Rights concerning the rights of persons belonging to ethnic, religious and linguistic minorities,

Considering that the promotion and protection of the rights of persons belonging to national or ethnic, religious and linguistic minorities contribute to the political and social stability of States in which they live,

Emphasizing that the constant promotion and realization of the rights of persons belonging to national or ethnic, religious and linguistic minorities, as an integral part of the development of society as a whole and within a democratic framework based on the rule of law, would contribute to the strengthening of friendship and cooperation among peoples and States,

Considering that the United Nations has an important role to play regarding the protection of minorities,

Bearing in mind the work done so far within the United Nations system, in particular by the Commission on Human Rights, the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the bodies established pursuant to the International Covenants on Human Rights and other relevant international human rights instruments in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Taking into account the important work which is done by intergovernmental and non-governmental organizations in protecting minorities and in promoting and protecting the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Recognizing the need to ensure even more effective implementation of international human rights instruments with regard to the rights of persons belonging to national or ethnic, religious and linguistic minorities,

Proclaims this Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities:

#### Article 1

1. States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity.
2. States shall adopt appropriate legislative and other measures to achieve those ends.

#### Article 2

1. Persons belonging to national or ethnic, religious and linguistic minorities (hereinafter referred to as persons belonging to minorities) have the right to enjoy their own culture, to profess and practise their own religion, and to use their own language, in private and in public, freely and without interference or any form of discrimination.
2. Persons belonging to minorities have the right to participate effectively in cultural, religious, social, economic and public life.
3. Persons belonging to minorities have the right to participate effectively in decisions on the national and, where appropriate, regional level concerning the minority to which they belong or the regions in which they live, in a manner not incompatible with national legislation.
4. Persons belonging to minorities have the right to establish and maintain their own associations.
5. Persons belonging to minorities have the right to establish and maintain, without any discrimination, free and peaceful contacts with other members of their group and with persons belonging to other minorities, as well as contacts across frontiers with citizens of other States to whom they are related by national or ethnic, religious or linguistic ties.

#### Article 3

1. Persons belonging to minorities may exercise their rights, including those set forth in the present Declaration, individually as well as in community with other members of their group, without any discrimination.
2. No disadvantage shall result for any person belonging to a minority as the consequence of the exercise or non-exercise of the rights set forth in the present Declaration.

#### Article 4

1. States shall take measures where required to ensure that persons belonging to minorities may exercise fully and effectively all their human rights and fundamental freedoms without any discrimination and in full equality before the law.
2. States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.
3. States should take appropriate measures so that, wherever possible, persons belonging to minorities may have adequate opportunities to learn their mother tongue or to have instruction in their mother tongue.
4. States should, where appropriate, take measures in the field of education, in order to encourage knowledge of the history, traditions, language and culture of the minorities existing within their territory. Persons belonging to minorities should have adequate opportunities to gain knowledge of the society as a whole.
5. States should consider appropriate measures so that persons belonging to minorities may participate fully in the economic progress and development in their country.

#### Article 5

1. National policies and programmes shall be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.
2. Programmes of cooperation and assistance among States should be planned and implemented with due regard for the legitimate interests of persons belonging to minorities.

#### Article 6

States should cooperate on questions relating to persons belonging to minorities, inter alia , exchanging information and experiences, in order to promote mutual understanding and confidence.

#### Article 7

States should cooperate in order to promote respect for the rights set forth in the present Declaration.

#### Article 8

1. Nothing in the present Declaration shall prevent the fulfilment of international obligations of States in relation to persons belonging to minorities. In particular, States shall fulfil in good faith the obligations and commitments they have assumed under international treaties and agreements to which they are parties.
2. The exercise of the rights set forth in the present Declaration shall not prejudice the enjoyment by all persons of universally recognized human rights and fundamental freedoms.
3. Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights.

4. Nothing in the present Declaration may be construed as permitting any activity contrary to the purposes and principles of the United Nations, including sovereign equality, territorial integrity and political independence of States.

#### Article 9

The specialized agencies and other organizations of the United Nations system shall contribute to the full realization of the rights and principles set forth in the present Declaration, within their respective fields of competence.

#### **Appendix 5**

Glossary of Indian political terms:

**BJP** – political party with links to the RSS and which promotes, inter alia, a version of Hindu nationalism.

**RSS** - Rashtriya Swayamsevak Sangh, volunteer organisation of the Sangh Parivar.

**Sangh Parivar** – collective term for the ‘family’ of Hindu right organisations.

**VHP** - Viśva Hindu Pariṣad, or World Hindu Council; Hindu nationalist organisation which is strongly linked to the BJP and RSS