

## **THE TANDEM PROJECT**

<http://www.tandemproject.com>.

### **UNITED NATIONS, HUMAN RIGHTS, FREEDOM OF RELIGION OR BELIEF**

#### **INDIA**

#### **FREEDOM OF RELIGION OR BELIEF AND OTHER REPORTS IN THE UNIVERSAL PERIODIC REVIEW**

First Session U.N. Human Rights Council Universal Periodic Review (7-18 April, 2008)

#### **A. Description of the methodology and the broad consultation process for the preparation of information provided under the Universal Periodic Review:**

The Tandem Project, a *UN NGO in Special Consultative Status with the Economic and Social Council of the United Nations*, submits information for the Universal Periodic Review on issues related to Article 18 of the International Covenant on Civil and Political Rights, and the 1981 UN Declaration on the Elimination of all Forms of Intolerance and of Discrimination Based on Religion or Belief.

The US State Department 2007 Religious Freedom Report is the source of this information. There are excerpts to comply with the five page limit for NGO Submissions under General Guidelines for the Universal Periodic Review and a link to the complete report.\*

The Universal Periodic Review is a process beginning with presentation of a National Report by a UN Member State and inter-active dialogue with the UN Human Rights Council. A troika of Human Rights Council Members then drafts a Working Group Report on the outcome of the Universal Periodic Review. There is a link to the UN Working Group Report. Other Reports are linked to an archived audio/visual UN web cast of the Member State presentation of the National Report and inter-active dialogue with the Human Rights Council.

#### **B. Background of the country under review and framework, particularly normative and institutional framework, for the promotion and protection of human rights: constitution, legislation, policy measures, national jurisprudence, human rights infrastructure including national human rights institutions and scope of international obligations identified in the “basis of review” in resolution 5/1, annex: section 1.A.**

##### **1. The Right to Freedom of Religion or Belief**

##### **Religious Demography:**

The country has an area of 1.3 million square miles and a population of 1.1 billion. According to the 2001 Government census, Hindus constitute 80.5 percent of the population, Muslims 13.4 percent, Christians 2.3 percent, Sikhs 1.8 percent, and others, including Buddhists, Jains, Parsis (Zoroastrians), Jews, and Baha'is, 1.1 percent. Slightly more than 90 percent of Muslims are Sunni; the rest are Shi'a. Tribal groups (members of indigenous groups historically outside the caste system), which are generally included among Hindus in government statistics, often practiced traditional indigenous religions (animism).

Large Muslim populations are found in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala, and Muslims are the majority in Jammu and

Kashmir. Christians are concentrated in the northeast, as well as in the southern states of Kerala, Tamil Nadu, and Goa. Three small northeastern states (Nagaland, Mizoram, and Meghalaya) have large Christian majorities. Sikhs are a majority in the state of Punjab.

There are Buddhist, Christian, Hindu, Jewish, Muslim, and Sikh missionaries operating in the country.

Approximately 200 million persons or 17 percent of the population belong to the Scheduled Castes and Scheduled Tribes (SC/ST, formerly called "untouchables"). Some converted from Hinduism to other religious groups, ostensibly to escape widespread discrimination.

### **Legal/Policy Framework:**

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 by enacting or amending "anti-conversion" legislation, and by not efficiently or effectively prosecuting those who attacked religious minorities.

The country is a secular state with no official religion. The Constitution protects the right of individuals to choose or change their religion as well as practice the religion of one's choice. Many NGOs argue that state-level "anti-conversion" laws are unconstitutional and may reinforce the dominance of the Hindu majority. While the law generally provides remedy for violations of religious freedom, it was not enforced rigorously or effectively in many cases pertaining to religious-oriented violence. Legal protections existed to cover discrimination or persecution by private actors. The country's political system is federal and accords state governments the exclusive jurisdiction over law enforcement and the maintenance of order, which limits the national government's capacity to deal directly with state-level abuses, including abuses of religious freedom. The country's national law enforcement agency, the Central Bureau of Investigation (CBI), cannot investigate a crime committed in a state without the State Government's permission. However, the National Government's law enforcement authorities, in some instances, have intervened to maintain order when state governments were reluctant or unwilling to do so.

There are active "anti-conversion" laws in 4 of the 28 States: Orissa, Chattisgarh, Madhya Pradesh, and Himachal Pradesh; however there were no reports of convictions under these laws during the reporting period. Gujarat and Arunchal Pradesh have inactive "anti-conversion" laws awaiting accompanying regulations needed for enforcement. In September 2006 the Gujarat State Assembly passed an amendment to make further clarifications on the provisions of the law, but the Governor did not take action by the end of the reporting period. The Rajasthan law passed the State Assembly during the previous reporting period, but was refused twice by the Governor and forwarded to the President on June 20, 2007, for legal review and guidance on its constitutional merit.

**C. Promotion and protection of human rights on the ground: implementation of international human rights obligations identified in the "basis of review" in resolution 5/1, annex, section IA, national legislation and voluntary commitments, national human rights institutions activities, public awareness of human rights, cooperation with human rights mechanisms.**

#### **1. The Right to Freedom of Religion or Belief**

### **Restrictions on Religious Freedom:**

No religious organizations were banned under UAPA during the reporting period. The Government renewed the ban on the Student Islamic Movement of India on February 15, 2007, for the fourth time, based on concerns about terrorism. In 2005 the Government extended the ban on the Muslim group Deendar Anjuman until 2007.

In contrast to previous years, the Gujarat Charity Commissioner did not request financial statements from faith-based charities.

During the reporting period, press reports documented the activities of foreign missionaries who entered on tourist visas and illegally proselytized. Foreigners with tourist visas who engage in missionary activity are subject to deportation and possible criminal prosecution. Foreigners are responsible for requesting the correct type of visa; generally, there are no provisions for changing a person's immigration category once admitted.

### **Societal Abuses/Discrimination:**

The country's population of 1.1 billion includes innumerable religious traditions; there were instances of societal discrimination and violence based in whole or in part on religion. Many such incidents were linked to politics, conversion, retaliation and/or revenge. Economic competition between different religious communities also played an important role in such conflicts. According to the Ministry of Home Affairs' 2006 Annual Report, there were 698 instances of communal violence or violence along religious lines in which 133 persons were killed and 2,170 injured.

### **D. Identification of achievements: best practices, challenges and constraints.**

#### **1. The Right to Freedom of Religion or Belief**

#### **Improvements and Positive Developments in Respect for Religious Freedom:**

The Prime Minister's Office released the Sachar Report, a study on the socio-economic status of Muslims in the country, during the reporting period. It presented data documenting that Muslims lagged behind the general public in many social indicators. In January 2007 based on this report, the UPA government directed all banks to provide preferential loans to minorities. Furthermore, in April 2007 the Prime Minister said that efforts would be made to ensure women and minorities are "properly represented" at all levels in government.

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\* Source: US State Department 2007 International Religious Freedom Report; India

Direct Link: <http://www.state.gov/g/drl/rls/irf/2007/90228.htm>

Links to State Department sites are welcomed. Unless a copyright is indicated, information on the State Department's main website is in the public domain and may be copied and distributed without permission. Citation of the U.S. State Department as source of the information is appreciated.

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## G. Presentation by the State concerned of the follow-up to the previous review.

Direct Link: Report of the Working Group for the Universal Periodic Review India. This report includes Conclusions and Recommendations.

[http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A\\_HRC\\_8\\_26\\_India\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/IN/A_HRC_8_26_India_E.pdf)

Direct Link: U.N. Human Rights Council Web Cast Archives for all India Reports. You can **download** Real Player (free) for access to the Web Cast: **Scroll** half way down the Web Cast to find the India Reports. Click to open the video/audio and inter-active delegations dialogue.

<http://www.un.org/webcast/unhrc/archive.asp?go=080410>

These reports may be read by clicking on the Direct Link to the OHCHR Archives **above**. Not all reports are in the UN official six languages.

*Only contributions submitted in one of the United Nations official languages are admissible and posted on this webpage*

**Date of consideration: Thursday 10 April 2008 - 2.30 p.m. - 5.30 p.m.**

**National report <sup>1</sup>:** [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)  
Corrigendum : [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

**Compilation of UN information <sup>2</sup>:** [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

**Summary of stakeholders' information <sup>3</sup>:** [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)



**Outcome of the review :**

**Report of the Working group :** [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Addendum 1 : [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

Addendum 2 : [A](#) | [C](#) | [E](#) | [F](#) | [R](#) | [S](#)

### THE TANDEM PROJECT OBJECTIVES

These Tandem Project Objectives are on Dialogue and Education: (1) Use International Human Rights Standards on Freedom of Religion or Belief as a universal platform for inclusive, in-depth dialogue within and among nations, all religions and other beliefs. (2) Adapt these human rights standards to early childhood education, teaching children, from the very beginning, that their own religion is one out of many and that it is a personal choice for everyone to adhere to the religion or belief by which he or she feels most inspired, or to adhere to no religion or belief at all.<sup>1</sup>

Multi-cultural perspectives, lack of understanding and opposition to international human rights on freedom of religion or belief make the achievement of these objectives a challenge. Human rights standards on freedom of religion or belief are international law and essential as codes of conduct for peaceful cooperation, respectful competition and resolution of conflicts. They are universal, inalienable, interdependent and indivisible with other human rights.

International Human Rights Standards on Freedom of Religion or Belief and the identification of achievements, best practices, challenges and constraints on them, should be part of the follow-up to the India Universal Periodic Review.

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**STANDARDS:** [http://www.tandemproject.com/program/81\\_dec.htm](http://www.tandemproject.com/program/81_dec.htm)

**The Tandem Project:** a non-governmental organization founded in 1986 to build understanding, tolerance and respect for diversity, and to prevent discrimination in matters relating to freedom of religion or belief. The Tandem Project, a non-profit NGO, has sponsored multiple conferences, curricula, reference materials and programs on Article 18 of the International Covenant on Civil and Political Rights – Everyone shall have the right to freedom of thought, conscience and religion - and 1981 United Nations Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.

The Tandem Project initiative is the result of a co-founder representing the World Federation of United Nations Associations at the United Nations Geneva Seminar, *Encouragement of Understanding, Tolerance and Respect in Matters Relating to Freedom of Religion or Belief*, called by the UN Secretariat in 1984 on ways to implement the 1981 UN Declaration. In 1986, The Tandem Project organized the first NGO International Conference on the 1981 UN Declaration.

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*The Tandem Project is a UN NGO in Special Consultative Status with the  
Economic and Social Council of the United Nations*

*Closing the Gap – International Standards for National and Local Applications*, considers the question of a Convention on Freedom of Religion or Belief followed by a Response from the Special Rapporteur on Freedom of Religion or Belief and The Tandem Project Concept, an option that reflects the inclusive values of the Universal Declaration of Human Rights through human rights-based *Dialogue and Education*.

*Closing the Gap - International Standards for National and Local Applications*

**Objective:** Build understanding and support for Article 18, International Covenant on Civil and Political Rights –Everyone shall have the right to freedom of thought, conscience and religion - and the 1981 UN Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief. Encourage the United Nations, Governments, Religions or Beliefs, Academia, NGOs, Media and Civil Society to consider the rule of law and international human rights standards as essential for *long-term solutions* to conflicts based on religion or belief.

**Challenge:** In 1968 the United Nations deferred work on an International Convention on the Elimination of all Forms of Religious Intolerance, because of its apparent complexity and sensitivity. In the twenty-first century, a dramatic increase of intolerance and discrimination on grounds of religion or belief is motivating a worldwide search to find solutions to these problems. This is a challenge calling for enhanced dialogue by States and others; including consideration of an International Convention on Freedom of Religion or Belief for protection of and accountability by all religions or beliefs. The tensions in today's world inspire a question such as:

Should the United Nations adopt an International Convention on Freedom of Religion or Belief?

**Response:** Is it the appropriate moment to reinstate the drafting of a legally binding international convention on freedom of religion or belief? Law making of this nature requires a minimum consensus and an environment that appeals to reason rather than emotions. At the same time we are on a learning curve as the various dimensions of the Declaration are being explored. Many academics have produced voluminous books on these questions but more ground has to be prepared before setting up of a UN working group on drafting a convention. In my opinion, we should not try to rush the elaboration of a Convention on Freedom of Religion or Belief, especially not in times of high tensions and unpreparedness. - *UN Special Rapporteur*

*on Freedom of Religion or Belief, Asma Jahangir, Prague 25 Year Anniversary Commemoration of the 1981 UN Declaration, 25 November 2006.*

**Option:** After forty years this may be the time, however complex and sensitive, for the United Nations Human Rights Council to appoint an Open-ended Working Group to draft a United Nations Convention on Freedom of Religion or Belief. The mandate for an Open-ended Working Group ought to assure nothing in a draft Convention will be construed as restricting or derogating from any right defined in the Universal Declaration of Human Rights, the International Covenants on Human Rights, and the 1981 UN Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.

**Concept:** *Separation of Religion or Belief and State – SOROBAS.* The First Preamble to the 1948 United Nations Universal Declaration of Human Rights; “*Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.* This concept suggests States recalling their history, culture and constitution adopt fair and equal human rights protection for all religions or beliefs as described in General Comment 22 on Article 18, International Covenant on Civil and Political Rights, UN Human Rights Committee, 20 July 1993 (CCPR/C/21/Rev.1/Add.4):

**Article 18:** protects *theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.* The terms belief and religion are to be broadly construed. Article 18 is not limited in its application to traditional religions or to religions and beliefs with international characteristics or practices analogous to those of traditional religions. The Committee therefore views with concern any tendency to discriminate against any religion or belief for any reasons, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility by a predominant religious community. **Article 18:** permits restrictions to manifest a religion or belief only if such limitations are prescribed by law and necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

#### *Dialogue & Education*

**Dialogue:** United Nations Secretary General Ban Ki Moon, at the Alliance of Civilizations Madrid Forum said; “Never in our lifetime has there been a more desperate need for constructive and committed dialogue, among individuals, among communities, among cultures, among and between nations.” A writer in another setting has said, “The warning signs are clear: unless we establish genuine dialogue within and among all kinds of belief, ranging from religious fundamentalism to secular dogmatism, the conflicts of the future will probably be even more deadly.”

Norms and standards on human rights and freedom of religion or belief are international law and essential codes of conduct for peaceful cooperation, respectful competition and resolution of conflicts. International Standards on Human Rights and Freedom of Religion or Belief is a universal platform for inclusive and in-depth dialogue within and among nations, all religions and other beliefs. They are universal, inalienable, interdependent and indivisible with other human rights.

**Education:** Ambassador Piet de Klerk addressing the Prague 25 Year Anniversary Commemoration of the 1981 U.N. Declaration said; “Our educational systems need to provide children with a broad orientation: from the very beginning, children should be taught that their own religion is one out of many and that it is a personal choice for everyone to adhere to the religion or belief by which he or she feels most inspired, or to adhere to no religion or belief at all.”<sup>1</sup>

The 1981 U.N. Declaration states; “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, and shall not be compelled to receive teaching on religion or belief against the wishes of his parents, the best interests of the child being the guiding principle.” With International Human Rights safeguards, early childhood education is the best time to begin to teach tolerance, understanding and respect for freedom of religion or belief.