

## INDIA\*

### Appendix A - Separate Opinion

Unlike other countries recommended for CPC designation, India has a democratically elected government, is governed essentially by the rule of law, and has a tradition of secular governance that dates back to the country's independence. Despite these democratic traditions, however, religious minorities in India continue to be subject to violent attacks, including killings, in what is called "communal violence." Those responsible for the violence are rarely held responsible for their actions. This violence against religious minorities has coincided with the rise in political influence of groups associated with the Sangh Parivar, a collection of Hindu extremist nationalist organizations that view non-Hindus as foreign to India and aggressively press for national governmental policies to promote the "Hinduization" of culture. The ascent to power in 1998 of the Sangh Parivar's political wing, the Bharatiya Janata Party (BJP), the current ruling party in the national government coalition, has helped to foster a climate in which extremists believe that violence against religious minorities will not be systematically punished.

At the end of February 2002, in the town of Godhra, a mob of Muslims set fire to a train resulting in the death of 58 Hindus. Within days, hundreds of Muslims were killed across Gujarat by Hindu mobs. In addition, hundreds of mosques and Muslim-owned businesses and other kinds of infrastructure were looted or destroyed. More than 100,000 fled their homes and, in the end, as many as 2,000 were killed. Many Muslims were burned to death; others were stabbed or shot. India's National Human Rights Commission (NHRC), an official body, found evidence in the killings of premeditation by members of Hindu extremist groups; complicity by Gujarat state government officials; and police inaction in the midst of attacks on Muslims. The NHRC also noted "widespread reports and allegations of well-organized persons, armed with mobile telephones and addresses, singling out certain homes and properties for death and destruction in certain districts-sometimes within view of police stations and personnel," suggesting the attacks may have been planned in advance. Christians were also victims in Gujarat, and many churches were destroyed. There have been cases of retaliatory violence against Hindus, including in September 2002, when Muslim gunmen opened fire at a Hindu temple in the town of Gandhinagar, killing 32 people. Unlike in Godhra, however, after this incident the Indian government called on citizens to refrain from taking the law into their own hands and further violence was averted. In August 2003, bombings in Bombay killed over 50 people; those arrested in connection with the bombings claimed that they carried out their actions "in revenge for the state-assisted killings of Muslims in Gujarat."

The BJP-led state government in Gujarat led by Minister Narendra Modi has been accused of being reluctant to bring the perpetrators of the killings of Muslims to justice. After almost two years, few persons have been arrested and held to account for the deaths; most of those initially arrested were released without charge. What is more, state officials have been accused of failing to protect witnesses in cases against Hindu extremists believed to have taken part in the attacks. In one instance, 21 Hindu

defendants accused of killing 14 men, women, and children were acquitted in June 2003 after the main prosecution witness changed her evidence after receiving several death threats. According to news reports, key witnesses were "pressured by a local BJP politician to recant their testimony." In response to the alleged failures of the Gujarat government, the high court of Gujarat admitted an amended criminal appeal filed by the state government seeking a retrial of those acquitted. In October 2003, police in Gujarat registered a case against a state BJP legislator and four others for allegedly intimidating witnesses in the incident. Also in October, after declaring that it had "no faith left" in the state's handling of the investigations, India's Supreme Court instructed the Gujarat state government to appoint new prosecutors to examine the religious violence of the previous year. In November, a court in Gujarat convicted 15 Hindus of the murder of 14 Muslims during the anti-Muslim rioting.

Since 1998, there have been hundreds of attacks on Christian leaders, worshippers, and churches throughout India. These attacks have included killings, torture, rape and harassment of church staff, destruction of church property, and disruption of church events. In January 2003, armed members of a Hindu extremist group attacked an American missionary and seven others with swords; two activists from the Rashtriya Swayamsevak Sangh (RSS), a part of the Sangh Parivar, were later arrested in the state where the attack took place. In a noted development, in September 2003-after years of reported stalling by the prosecutors involved-Dara Singh was found guilty, along with 12 others, of the 1999 murder by an extremist mob of Graham Staines, a Christian burned to death in his car along with his children.

Though there have been some convictions of a few perpetrators of the Gujarat violence and attacks on Christians, and though the BJP-led central government may not be directly responsible for instigating the violence against religious minorities, it is clear that the government does not do all in its power to pursue the perpetrators of the attacks and to counteract the prevailing climate of hostility against these minority groups. India's two most senior leaders, Prime Minister Atal Bihari Vajpayee and Deputy Prime Minister Lal Krishna Advani, are both members of the RSS and have never renounced its militant Hindu ideology. The severe violence in Gujarat provided the national government with adequate grounds-under the Constitution and existing laws to counteract communal violence-to invoke central rule in the state, yet the BJP government did not do so, despite many requests and the fact that the killing of Muslims continued (on a lesser scale) for many weeks. Prime Minister Vajpayee did not condemn the massacre of Muslims unequivocally until more than one year after the violence occurred. Quicker action to forestall Hindu-Muslim violence was taken by the Vajpayee government in October 2003, when police arrested 1,500 members of a militant Hindu group rallying in the town of Ayodhya and demanding a temple on the site where a mosque once stood, until it was torn down by a Hindu mob in 1992.

In March 2003, the Gujarat government passed a bill against religious conversions. (Though Article 25 of India's Constitution provides for "the right to freely profess, practice, and propagate religion," in 1977, the Indian Supreme Court ruled that the constitutional right to propagate religion did not include a right to convert (or attempt to convert) another.) The Gujarat bill, which is modeled on similar laws in the states of Tamil Nadu and Orissa, requires government officials to assess the legality of conversions and provides for fines and imprisonment for anyone who uses force, fraud, or "inducement" to convert another. Though worded to prohibit only "forced" religious

conversions, observers contend that the bill is targeted against conversions generally of Hindus to Christianity and Islam. To date, however, there are no reports of persons having been arrested under this law.

With regard to India, the Commission has recommended that the U.S. government should:

- urge the BJP leadership to denounce RSS militancy that supports violence and discrimination;
- make clear its concern to the BJP-led government that virulent nationalist rhetoric is fueling an atmosphere in which perpetrators believe they can attack religious minorities with impunity;
- persistently press the Indian government to pursue perpetrators of violent acts that target members of minority religious groups;
- urge the government of India to oppose any attempts to interfere with or prohibit ties between religious communities inside India and their co-religionists outside the country, and any government efforts to regulate religious choice or conversion;
- urge India to allow official visits from foreign government agencies concerned with human rights, including religious freedom; and
- take into account, in the course of working toward improvements in U.S.-Indian economic and trade relations, the efforts of the Indian government to protect religious freedom, prevent and punish violence against religious minorities, and promote the rule of law.

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\* Commissioners Bansal, Gaer, and Young dissent from the Commission's recommendation that India be designated a country of particular concern (CPC). Their views with respect to India are reflected in a separate opinion, attached to the letter to Secretary of State Colin L. Powell on February 4, 2004. Commissioner Chaput also joins this separate opinion, and would place India on the Watch List rather than recommend that it be designated a CPC.

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## **APPENDIX A**

### **SEPARATE OPINION OF COMMISSIONERS BANSAL, CHAPUT, GAER, AND YOUNG WITH RESPECT TO INDIA**

"We remain deeply concerned over incidents of religiously-based violence in Gujarat and other parts of India that have resulted in loss of life, physical abuse, displacement, and other abuses. Moreover, we are very concerned that justice has not been done for the victims of the violence against Muslims that took place in Gujarat in early 2002, and that incidents of mob violence against Christians, Muslims, and other religious minorities have continued in parts of the country, but we respectfully dissent from the decision to recommend that India be named a CPC.

"As noted in the dissent last year, India, unlike the other countries on the Commission's recommended CPC or Watch List, is a respected constitutional democracy with manifold religious traditions that coexist and flourish under extreme economic and other

conditions; has a judiciary which is independent, albeit slow-moving and frequently unresponsive, that can work to hold the perpetrators responsible; contains a vibrant civil society with many vigorous, independent non-governmental human rights organizations that have investigated and published extensive reports about the Gujarat government's handling of the situation and the rise of religiously-motivated violence; and is home to a free press that has widely reported on and strongly criticized the situation on the ground in Gujarat and the growing threats to a religiously plural society within India. In fact, some of the most vociferous critics of the Gujarat government's handling of the 2002 situation and the prosecutions thereafter have been Indian governmental bodies - including the National Human Rights Commission, the National Commission on Minorities, and the National Commission for Women, and much of the source material for critical analysis of the state of religious freedom in India derives from publications of the Indian media and of nongovernmental and other civil society groups within India.

"Moreover, since last year, national governmental bodies have taken a number of significant steps to reign in excesses or to correct insufficient action at the state level. The Indian Supreme Court has forcefully denounced Gujarat state authorities' handling of certain prosecutions, halted key trials, and paved the way for changes of venue to ensure justice. With such visible and proactive intervention, the Supreme Court has made clear that it will take action to ensure justice. In addition, initial convictions and life sentences for a dozen perpetrators of the Gujarat violence have been handed down recently. Justice has been done this year in the state of Orissa in the widely reported case involving the 1999 murder of an Australian missionary and his sons, with a death sentence having been rendered against the main perpetrator of that violence.

"Perhaps most notably, a series of actions by Indian officials during the past year have prevented similar outbreaks of large-scale religiously motivated violence in several volatile locales. In August 2003, twin deadly bombings in Mumbai by groups seeking to avenge the previous year's violence in Gujarat were followed by official statements seeking to defuse potential violence, and silent, rather than violent, marches in response. Most recently, arrests and diversion of thousands of demonstrators and deployment of troops in Ayodhya in October 2003 prevented a widely-expected potentially violence-inciting rally by religious nationalists.

"We remain very concerned about growing threats to the religiously plural foundations of Indian society. The pace of prosecutions against individual perpetrators of the Gujarat and other religious violence is slow. This is a moment when Indian government officials need to act in defense of religious freedom by forcefully denouncing and taking concrete steps to redress religious-based violence in order to preserve their own legitimacy with respect to human rights. Nonetheless, despite our concerns, we feel that adding India to the CPC list of nations is inappropriate at this time. India has the legal and democratic traditions to deal with religious intolerance and should be strongly encouraged to do so."