



IITI MODEL UNITED NATIONS 2022

AIPPM

BACKGROUND GUIDE

Letter from the Executive Board

Greetings Members!

It gives us immense pleasure to welcome you to this simulation of AIPPM at IITIMUN 2022. We look forward to an enriching and rewarding experience. The agenda for the session being

‘Deliberation on religious freedom in India in light of recent events’

This study guide is by no means the end of research, we would very much appreciate if the Parliamentarians are able to find new realms in the agenda and bring it forth in the committee. Such research combined with good argumentation and a solid representation of facts is what makes an excellent performance. In the session, the executive board will encourage you to speak as much as possible, as fluency, diction or oratory skills have very little importance as opposed to the content you deliver. So just research and speak and you are bound to make a lot of sense. We are certain that we will be learning from you immensely and we also hope that you all will have an equally enriching experience. In case of any queries feel free to contact us. We will try our best to answer the questions to the best of our abilities.

We look forward to an exciting and interesting committee, which should certainly be helped by the all-pervasive nature of the issue. Hopefully we, as members of the Executive Board, do also have a chance to gain from being a part of this committee. Please do not hesitate to contact us regarding any doubts that you may have.

All the Best!

Executive Board

Introduction to the Agenda

The Preamble to the Constitution of India declares India to be a 'Sovereign, Socialist, Secular, Democratic Republic'. What is Secularism? Why do we need secularism? How did secularism emerge in the first place? Are there different notions of secularism? Which notion does India follow? How far would it be correct for anybody to label India as being secular?

The Oxford Dictionary defines secularism as the belief that religion should not interfere, or be involved in the organization of a society, education, government, etc. It is the principle of separation of government institutions and persons mandated to represent the state from religious institutions and religious dignitaries. Giving a wider meaning to secularism, Donald E. Smith, in his study *India as a Secular State* (1963), defines a secular State as "a state which guarantees individual and corporate freedom of religion, is not constitutionally connected to a particular religion nor does it seek either to promote or interfere with religion."

The definition given by Smith reflects three aspects of secularism in the form of inter-related relations as:

- Religion and Individual
- Individual and State
- State and Religion

These relations can be comprehensively elaborate by this triangle. First of all these three angles, reflects the relationship between the religion and individuals. This relation contains 'positive freedom of religion' which implies 'reasonable unrestrained liberty of believing & practicing one's religion.' In other words, every person should be free to follow any religion, and to act upon its teachings and reject all other without any interference from the state.

Religious freedom is the soul of principle of liberty enshrined in the Preamble to the Constitution of India.

The second angular relation reflects the relationship between the state and individual. It contains 'negative freedom of religion.' By 'negative freedom of religion' mean 'absence of restrains, discriminations, liabilities and disabilities which a citizen might have been otherwise subject to.'

The third angular relation which emanates from the relationship between the state and its religion. It contains 'neutral freedom of religion.' It implies that state has no religion of its own and attitude of indifference towards all the religions by the state.

Origins of Secularism: Western Thought

The intellectual roots of secularism can be traced back to Ancient Greek and Roman philosophers like Epicurus and Marcus Aurelius, from enlightenment thinkers like John Locke, Voltaire and Thomas Paine, and from recent thinkers like Bertand Russell and Christopher Hitchens. To understand the concept of secularism in its entirety, it becomes necessary to understand the political thought of the intellectual forefathers of secularism. The English word 'secularism' is derived from the Latin 'saeculum', which means century or, more generally, 'an age' or 'the spirit of an age'.

Epicurus taught an ancient form of secular ethics called consequentialism. He preached altruism over self-interest. He called upon his fellow humans to lead a happy life. According to him, the best life of an individual is one that is lived with other people for the benefit of all. The idea of a modern tolerant society of all religions coexisting in a pluralistic environment, except those that are politically influencing, is traceable to Marcus Aurelius' attitude towards all religions, versus his attitude towards Christianity. Aristotle too, developing upon his denunciation of religion, backed secularism as it was a progress towards civilization. Similarly, Locke too, was in favour of toleration (which may well be viewed as a synonym for secularism) in wake of the Catholic takeover of Great Britain.

Thomas Paine has argued and vouched for a rejection of religion. His contribution was to popularize and explain his ideas in terms which ordinary men could comprehend and relate to. Everything he wrote was deeply embedded with the ideas of republicanism, liberty, anti-slavery, democracy, human rights, women rights, separation of state from religion, and the idea that government should serve the interests of ordinary people. Critics, however, have often denigrated him for failing to understand the subtle difference in being secular, and being an atheist. Being secular does not mean that one questions the existence of god or religion. It simply means that the state will either have nothing to do with all religion and keep an arms distance from it, or that the state will treat all religions equally.

In the mid-nineteenth-century England, George Holyoake coined the term “secularism” to name an orientation to life designed to attract both theists and atheists under its banner. He advocated a secularism accommodative of religion, a secularism that would emphasize diversities and co-existences in matters of faith. Holyoake believed that human enlightenment will be accompanied by a rational form of religious knowledge and experience, and will not be fractured by earlier divisions. Writing in the 1850s, Bradlaugh, a contemporary of Holyoake, believed in a secularism which rejected religion and made science his deity.

Origins of Secularism: Indian Thought

The earliest traces of secularism in India date back to the Bhakti- Sufi Period (8th Century AD – 15th Century AD). It was based on respect for different religions. The poorer and lower caste Hindus and Muslims were greatly influenced by the Bhakti movement. Unlike the religious orthodoxy in Hinduism and Islam, Bhakti and Sufi saints were highly tolerant and open to truths in other faiths. They never adopted sectarian attitudes and were never involved in power struggles. This was the first phase of secularisation of the masses. Another phase emerged around 1857 when the revolutionaries enforced secular laws like ban on cow slaughter in rebel held territory. The British started the process of codifying laws for each community, even though the Crown had assured Indians of non-interference in their personal lives.

Secularism in India’s context was never clearly defined by either our constitutional experts or political ideology. There are several ambiguities to defining secularism in the Indian context. Both during colonial and post-colonial periods, the Indian society has been a traditional society dominated by various customs and tradition with deep religious orientation. For the liberal and progressive intellectuals, on the other hand, secularism meant total exclusion of religion from political arena.

A question may arise here – is there an Indian notion of secularism: and if yes, how is it different from the Western notion? The political scholar and theorist, Rajiv Bhargava argues in the affirmative. Elaborating upon the difference in Indian and Western notions of secularism, he argues that unlike Western notion of secularism, Indian secularism did not erect a strict wall of separation, but proposed instead a ‘principled distance’ between religion

and state. Moreover, by balancing the claims of individuals and religious communities, it never intended a bludgeoning privatization of religion.

Comparing the views of the western scholars with that of Gandhi and Nehru, we find that Gandhi's notion of secularism that of *sarva dharma sambhava* is very similar to Holyoake's. Similarly, Bradlaugh's conception of secularism finds resonance in Nehruvian notion of secularism that religion should be kept away from the state. It is this similarity which made Nandy in *The Politics of Secularism and the Recovery of Religious Tolerance* note that while most non modern Indians opted unwittingly for the accommodative and pluralist meaning, India's westernized individuals have consciously opted for the abolition of religion from the public sphere. Rajeev Bhargava's explanation of the 'principled distance' between state and the religion does not mean that the state cannot intervene in religion and its affairs, but that any intervention should be within the limitations prescribed by the Constitution.

Secularism and the Indian Constitution

Secular undercurrents were also felt during the debates in the Constituent Assembly, which was vested with the responsibility to draft Independent India's Constitution. Professor KT Shah wanted to include Secular, Federal and Socialist in Article 1 and moved amendments twice for the same. However, Dr. Ambedkar rejected both the amendments at the meeting of the Drafting Committee. Dr. Ambedkar held that the Assembly should leave the policy of the state, and other socio-economic matters to the intellect of the people, as including the word secular would make future India undemocratic. Moreover, it was widely agreed upon that since India has been a secular country all along, it would continue to remain so in future as well. Many have argued that it wasn't so that the Constituent Assembly rejected secularism, but rather, it took it for granted considering that the fundamental rights as established in the Constitution could not be implemented without a secular ethic. Thus, the secular nature of the State was reflected through various articles in the Indian Constitution. It was much later in 1976, that the word secular was added in the Preamble to the Constitution (42nd Amendment Act, 1976).

Various articles in the Indian constitution present a picture of the secular nature of the state. Article 14 of the constitution provides for equality before law for all people. Article 15, inter alia, lays down that the state shall not discriminate any citizen on the ground of religion. Article 16 provides for equality of opportunity in matters of employment under the state,

irrespective of religion. Article 25 provides for freedom of conscience and the right to profess, practice and propagate the religion of one's choice. The constitution not only guarantees a person's freedom of religion and conscience, but also ensures freedom for one who has no religion, and it scrupulously restrains the state from making any discrimination on grounds of religion. Article 26 provides freedom to manage religious affairs and Article 27 prohibits compulsion to pay taxes to benefit any religious denomination. The impact of Secularism can also be seen in Article 28, which states that no religious instruction shall be provided in any educational institution wholly maintained out of state funds. Article 29 of the Indian constitution assures that the state shall not impose on a minority community any culture other than its own. Further, citizens of India cannot be denied admission in State aided or State managed educational institutions on the basis of religion, caste, race, etc. Article 30 grants the minority community, the right to establish and administer their own educational institution. The state will make no discrimination in matter of aids to such institutions.

The rest of the collective rights are defined by the Parliament through Acts. Case in example would be personal laws. Collective Rights are also difficult precisely because of the problems of recognising institutions of faith, and accounting for the extent of diversity in practice of religion in India. How many can be recognised and given a recognizable right to seek institutional concessions from the government? Will we end up excluding the very miniscule numbers of tribal, marginal, pagan systems of faith, small but existing nevertheless?

The constitution requires that there shall not be any state religion and that the state shall treat all religions equally. It does not, however, prevent the state from financially assisting educational institutions sponsored by the 'church' or religious organizations. The state has also reserved to itself and has sometimes exercised the right to interfere in the religious practices of various communities in the interest of their peaceful coexistence and cultural development.

Although freedom of religion is granted to all people as a fundamental right under Article 25 of the constitution, Article 44 directs the state to enact a uniform civil code applicable to all irrespective of their religious faith and beliefs. Further, the directive principles contain a special provision-enunciating ban on cow-slaughter as a desirable policy.

The 7th schedule of Indian constitution places religious institutions, charities and trusts into the Concurrent List, which means that both the central government of India, and various state

governments in India can make their own laws about religious institutions, charities and trusts. If there is a conflict between central government enacted law and state government law, then the central government law prevails. This principle of overlap, rather than separation of religion and state in India was further recognised in a series of constitutional amendments starting with Article 290 in 1956, to the addition of word 'secular' to the Preamble of Indian Constitution in 1975.

On closer examination, many scholars have argued that the Constitution itself has certain anti-secular traits in the form of Articles 290A and 28(2). While Article 290A makes a specific provision of money to be paid by the governments of Kerala and Tamil Nadu to the Travancore Dewaswom Funds, Article 28(2) allows central universities like Aligarh Muslim University and Banaras Hindu University to import religious instructions. Similarly, there's a history of controversial precedents being set by the legislature. In 1986 as a reaction to the Supreme Court's judgment in favour of Shah Bano in *Mohd. Ahmed Khan v. Shah Bano Begum*, the Parliament of India passed an act titled The Muslim Women (Protection of Rights on Divorce) Act, 1986, that nullified the Supreme Court's judgment in the Shah Bano judgment. Diluting the Supreme Court judgment, the act allowed maintenance to a divorced woman only during the period of iddat, or till 90 days after the divorce, according to the provisions of Islamic law. This was in stark contrast to Section 125 of the Code. The liability of husband to pay the maintenance was thus restricted to the period of the iddat only. This was seen by many as a clear divergence from the established principles of secularism, equality, justice to secure brownie points for securing the votes of Orthodox Muslim men.

Certain important characteristics of the Indian model of secularism can be established as follows:

- It has a place not only for the right of individuals to profess their religious beliefs but also for the right of religious communities to establish and maintain educational institution.
- It is concerned as much with inter-religious domination as it is with intra-religious domination.
- It does not erect a wall of separation between the state and religion. This allows the state to intervene in religions, to help or hinder them without the impulse to control them.
- It is not entirely averse to the public character of religion. Although the state is not identified with a particular religion, there is official and therefore public recognition granted to religious communities.

- Multiple values and principled distance suggest that the state tries to balance different, ambiguous but equally important values.
- This type of model makes its secular ideal more like a contextual, ethically sensitive, politically negotiated arrangement, rather than a scientific doctrine as conjured up by ideologies and merely implemented by political agents.

Comparative Analysis

In the West, the word secular implies three things: freedom of religion, equal citizenship to each citizen regardless of his or her religion, and the separation of religion and state. One of the core principles in the constitution of Western democracies has been this separation, with the state asserting its political authority in matters of law, while accepting every individual's right to pursue his or her own religion and the right of religion to shape its own concepts of spirituality. Everyone is equal under law, and subject to the same laws irrespective of his or her religion, in the West.

In contrast, in India, the word secular does not imply separation of religion and state. It means equal treatment of all religions. Religion in India continues to assert its political authority in matters of personal law. The applicable personal law differs if an individual's religion is Christianity, or Hindu.

In the U.S., the first amendment to the Constitution contains the famous “establishment clause”, which says that there can be no official state religion. There, in the case of *Lemon v. Kurtzman* (1971), the Supreme Court laid down a threepronged test—popularly referred to as the ‘Lemon Test’—and held that an activity is secular when:

- It pursues a secular purpose;
- Its effect does not advance or inhibit religion;
- It does not foster an excessive government entanglement with religion.

However, despite the establishment clause, in *Marsh v. Chambers* (1983), the U.S. Supreme Court upheld the Nebraska state legislature’s practice of starting each day with a prayer conducted by a Presbyterian minister paid by the government. Chief Justice Burger held that such practices were “deeply embedded in the history and tradition” of the U.S., that even in American courtrooms, proceedings commence with the announcement, “God save the United States and this Honorable Court.” However, in another case, *McCreary County v. ACLU*

(2005), the U.S. Supreme Court held that a public display of the ten commandments in a courthouse violated the establishment clause.

The term secularism in India also differs from the French concept for secularity, namely *laïcité*. While the French concept demands absence of governmental institutions in religion, as well as absence of religion in governmental institutions and schools; the Indian concept, in contrast, provides financial support to religious schools and accepts religious law over governmental institutions. The Indian structure has created incentives for various religious denominations to start and maintain schools, impart religious education, and receive partial but significant financial support from the Indian government. Similarly, Indian government financially supports, regulates and administers the historic Hindu temples, Buddhist monasteries, and certain Christian religious institutions; this direct Indian government involvement in various religions is markedly different from Western secularism.

Secularism and the Indian Judicial Pronouncements

The Supreme Court of India has from time to time dealt the concept of Secularism through various judicial pronouncements. The Supreme Court expressed his views on the Secular nature of the Constitution for the first time in the case: *SardarTaheruddinSyednaSaheb v. State of Bombay* wherein Ld. J Ayyangar, explained that the Articles 25 and 26 embody the principle of religious toleration that has been the characteristic feature of Indian civilization from the start of history. The instances and periods when this feature was absent should be treated as merely temporary aberrations. Besides, they serve to give emphasis to the secular nature of the Indian democracy which the founding fathers of Secularism considered to be the very basis of the Constitution. This case is also known as The Ex- Communication case.

Similarly, in *Keshwananda Bharti v. The State of Kerala*, the court is of the opinion that Secularism is a part of the Basic Structure of the Constitution. Enumerating the elementary features of the Constitution, Ld. J Sikri named “secular character of the Constitution” as one of them. Ld. J Shelat and Grover, stated that "secular and federal character of the Constitution" were amongst the main ingredients of the basic structure enumerated therein. Jaganmohan Reddy Ld. J, stated clearly that “Liberty of thought, expression, belief, faith, and worship” could not be amended at any cost as they are the part of elementary features of the Indian Constitution.

Though in *Keshwananda*, the Court in no uncertain terms laid down that secularism forms part of the basic structure of the Constitution, but in *Ahmedabad St. Xavier's College Society v. The State of Gujarat*, it indicated that it was uncertain about its views on the subject. Ld. J Matthew, and Chandrachud felt that it was only by implication that the Constitution envisaged a secular State. They gave a new dimension to the concept in the constitutional context thus: "The Constitution has not erected a rigid wall of separation between the Church and the State. It is only in a qualified sense that India can be said to be a secular State. There are provisions in the Constitution which make one hesitate to characterize our State as secular. Secularism in the context of our Constitution means only an attitude of animate and live developing into the attitude of living." Apparently, this view implied a contradiction between the judicially constructed concept of secularism and the thought evident in the text of the Constitution. The judgment also went on to lay down a modern concept of secularism in India.

In *Ziyauddin Burhanuddin Bukhari v. Brijmohan Ram Das Mehra*, the Supreme Court went on to define the concept of secularism in the realm of philosophy and in utilitarian terms. The Court set the role of the State to be neutral or impartial in extending its benefit to citizens of all castes and creeds and cast a duty on the State to ensure through its laws that disabilities are not imposed based on persons practising or professing any particular religion. Some judges of the Supreme Court however seem to have followed this logic in *Indra Sawhney* case. The opinion of Kuldip Singh, J. is indicative of this fact. According to him secularism envisages a cohesive unified and casteless society. Further, "caste poses a serious threat to secularism and a consequence to the integrity of the country". This view seems to be an enlargement of the concept of secularism beyond merely religious differentiation. This seems to indicate that the Court is still not decided as to what exactly the term means.

In the landmark judgment of *S.R. Bommai v. Union of India*, the Court in no uncertain terms declared that secularism is part of the basic structure. But the complication arose in formulating a definition. Ahmadi, Ld. J stated that secularism is based on the "principles of accommodation and tolerance". In other words, an espousal of a "soft secularism". He tended to agree with the broadened definition adopted by the Court in *IndraSawhney* case. The Court in *Bommai* ruled that religion and temporal activities do not mix. Freedom and tolerance of religion is only to the extent of permitting pursuit of spiritual life that is different from the secular life. The latter falls in the domain of the affairs of the State. The Court further said

that "the encroachment of religion into secular activities is strictly prohibited." Ramaswamy, Ld. J in his separate opinion declared that the State has the duty to ensure secularism by law or an executive order. He explained that programs or principles evolved by political parties based on religion amount to recognizing religion as a part of political governance which the Constitution expressly prohibited. According to him it is the duty of the court to bring every errant political party in line if it goes against the secular ethics like casteism and religious antagonisms. His opinion reiterates the view that secularism includes anti-casteism, and presents the rigid stance of the court. Jeevan Reddy and Agrawal, Ld. J broadly agreed with Ramaswamy, Ld. J. In fact, the Judges went on to say that the concept of secularism in the Indian Constitution is in broad agreement with the U.S. Constitution's First Amendment. They also expressed the view that the State has the power to legislate on religion including personal laws under Art. 44 and secular affairs of temples, mosques, and other places of worship. They also went on to say that even if a political party indirectly espouses a religious cause it is acting in an unconstitutional manner.

Specific cases of religious significance in India that you can look up are the following:

- Shah Bano case
- Hadiya case
- Babri Masjid Case
- Delhi Hanuman Mandir Case
- The Dawoodi Bohra Case

Constitutional, Penal and Legislative Provisions

The overlap of religion and state, through Concurrent List structure, has given various religions in India, state support to religious schools and personal laws. This state intervention while resonant with the dictates of each religion, are unequal and conflicting. For example, a 1951 Religious and Charitable Endowment Indian law allows state governments to forcibly take over, own and operate Hindu temples, and collect revenue from offerings and redistribute that revenue to any non-temple purposes including maintenance of religious institutions opposed to the temple. Indian law also allows Islamic religious schools to receive partial financial support from state and central government of India, to offer religious indoctrination, if the school agrees that the student has an option to opt out from religious indoctrination if he or she so asks, and that the school will not discriminate any student based on religion, race or other grounds. Educational institutions wholly owned and operated by

government may not impart religious indoctrination, but religious sects and endowments may open their own school, impart religious indoctrination and have a right to partial state financial assistance.

In matters of law in modern India, however, the applicable code of law is unequal, and India's personal laws – on matters such as marriage, divorce, inheritance, alimony - varies with an individual's religion.

Judicial Pronouncements on Secularism, including those done post Bommai have Sharia-based Muslim Personal Law, while Hindu, Christian and Sikh Indians live under common law. Indian law permits each religious group to implement their religious law if the religion so dictates, otherwise the state laws apply.

The various personal laws are:

- The Converts' Marriage Dissolution Act, 1866;
- The Indian Divorce Act, 1869
- The Indian Christian Marriage Act, 1872
- The Kazis Act, 1880
- The Anand Marriage Act, 1909
- The Indian Succession Act, 1925
- The Child Marriage Restraint Act, 1929
- The Parsi Marriage and Divorce Act, 1936
- The Dissolution of Muslim Marriage Act, 1939
- The Special Marriage Act, 1954
- The Hindu Marriage Act, 1955
- The Foreign Marriage Act, 1969
- The Muslim Women (Protection of Rights on Divorce) Act, 1986
- The Muslim Women (Protection of Rights on Marriage) Act, 2017

It is further complicated by the fact that many Hindu temples of great religious significance are administered and managed by the Indian government. Under section 494 of the Indian Penal Code, bigamy is an offence and a person, who contracts a second marriage while the first marriage is subsisting, is guilty of the offence. But this provision is inapplicable to those people who can have more than one wife as per their religion. The attempt to respect unequal, religious law has created a number of issues in India such as acceptability of child marriage,

polygamy, unequal inheritance rights, extra judicial unilateral divorce rights favourable to some males, and conflicting interpretations of religious books. `

Article 48 of the Constitution calls upon the state to prevent the slaughter of cows. Though this provision was ostensibly enacted because of the usefulness of the cow to India's agrarian economy, the Supreme Court upheld a ban on cow slaughter enacted in some states by taking into account the fact that "Hindus in general hold the cow in great reverence and the idea of the slaughter of cows for food is repugnant to their notions" [*Mohd. HanifQuareshi v. State of Bihar* (1958)].

Secularism in India, thus, does not mean separation of religion from state. Instead, secularism in India means a state that is neutral to all religious groups. Religious laws in personal domain, particularly for Muslim Indians, supersede parliamentary laws in India; and currently, in some situations such as religious indoctrination schools the state partially finances certain religious schools. These differences have led a number of scholars to declare that India is not a secular state, at least as per how the concept is widely understood in the West and elsewhere; rather it is a strategy for political goals in a nation with a complex history, and one that achieves the opposite of its stated intentions.

Indeed, as political theorist Rajeev Bhargava has argued, Indian secularism has not meant that the government abstains from intervening in religious matters. On the contrary, the state has decisively intervened in religious affairs in certain cases—by banning animal sacrifices, for instance, and by ensuring that temples are accessible to Dalits (those who occupy the bottom rungs of the traditional Hindu caste hierarchy, and who were once called untouchables).

Analysing Recent Law and Policy Developments

Anti-Conversion Laws

India's Freedom of Religion Acts or "anti-conversion" laws are state-level statutes that have been enacted to regulate religious conversions. Post-independence governments have upheld anti-conversion laws that originated during the period of British colonial rule, and only apply to conversion from the "original religion," which is assumed to be Hindu.

A long-standing antipathy to Christian conversions, in particular, is reflected in laws and public policy.

The laws are in force in six out of twenty-nine states: Arunachal Pradesh, Odisha, Madhya Pradesh, Chhattisgarh, Gujarat, Jharkhand and Himachal Pradesh. While there are some variations between the state laws, they are very similar in their content and structure. All of the laws seek to prevent any person from converting or attempting to convert, either directly or otherwise, any person through “forcible” or “fraudulent” means, or by “allurement” or “inducement.” However, the anti-conversion laws in Rajasthan and Arunachal Pradesh appear to exclude conversions to “native” or “original” faiths from their prohibitions. Penalties for breaching the laws can range from monetary fines to imprisonment, with punishments ranging from one to three years of imprisonment and fines from 5,000 to 50,000 Indian rupees. Laws passed by BJP state governments in Tamil Nadu, Gujarat, and Rajasthan, impose the stiffest penalties for the conversion of Dalits (also known as Untouchables and Scheduled Castes), women and tribals (also known as Scheduled Tribes). Scheduled Castes (SCs) and Scheduled Tribes (STs) is a constitutional designation of historically disadvantaged, low status and low-income groups. Despite criticism of India’s anti-conversion laws, some human rights bodies have acknowledged that these laws have resulted in few arrests and no convictions. However, some observers note that these laws create a hostile, and on occasion violent, environment for religious minority communities because they do not require any evidence to support accusations of wrongdoing.

All the state laws are similar in scope. They do not directly ban conversion but make conversion by “force, allurement, inducement or fraud” illegal. Of course, these terms are not defined, giving the state a wide berth to harass the powerless. For instance, in Jharkhand’s new law – the Religious Freedom Bill, 2017 – the word “force” also includes the “threat of divine displeasure”. So, what criteria do we evolve to situate threat of divine displeasure in this context?

How is the state supposed to prosecute on the basis of this? The term “allurement” is also not defined. So, is education or healthcare “allurement”? And what is “fraud”? Jharkhand’s Act defines it as “misrepresentation”. But then, considering the nature of religion itself, what does it even mean to indulge in “misrepresentation”?

They all prohibit conversion from one religion to another by the use of force or allurement or by fraudulent means. Allurement (also called inducement) is defined as a gift or material benefit, and force is defined as the threat of injury “including threat of divine displeasure or social excommunication.” A key difference is that in Gujarat and Chhattisgarh, a person

wishing to convert must seek permission from the district magistrate at least 30 days before the date of the intended conversion. In Himachal Pradesh, a person must notify the magistrate 30 days in advance that they intend to do so. In Orissa and Madhya Pradesh — which enacted their laws in the 1960s, almost four decades before the other states — no prior permission or notification is required, though in Madhya Pradesh the magistrate must be informed once the conversion has taken place. The requirement to tell a magistrate about an intention to convert is divisive. The BJP Government favours this requirement and says it reduces the likelihood of voluntary converts changing their story down the line to say they were forced. Most of all, all anti-conversion laws assume that the person actually being converted has no agency — political scientist Pratap Bhanu Mehta calls these laws “illegitimately paternalistic”.

Many scholars have argued that the anti-conversion law goes against the secular character of India and increases the state’s propensity to engage in surveillance and punishment, while undermining religious freedom. In some instances, the state has challenged individuals who said they had converted voluntarily. Asma Jahangir, United Nations Special Rapporteur on Freedom of Religion or Belief from 2004 to 2010, visited India in 2008 and reported that she did not encounter a single case of forced conversion in Odisha. She also commented on legal ambiguities in definitions of force, allurement, inducement, and fraud, all of which increase the discretionary powers of administrative officials.

Despite the fact that our Constitution confers a right to “propagate” religion, statutes enacted in several states, which make it difficult for preachers to proselytise and convert Hindus to religions like Christianity, have been upheld on the grounds that propagating religion does not include conversion. Under an order enacted by the President in 1950, Scheduled Caste Hindus who convert to Christianity are not entitled to contest elections from reserved constituencies. Enacted in 1955-56, the Hindu Code contains provisions which disincentivise Hindu conversion to other religions. For instance, a Hindu’s conversion to another religion furnishes a ground for divorce and children born after a Hindu converts to another religion cannot inherit the property of their Hindu family members unless they convert to Hinduism. The present Government has indicated its desire to introduce a nation-wide anti-conversion law. What would such a move mean for the secular fabric of the country? While the courts have upheld the validity of the state wide anti-conversion laws, however, how do we look at these from the lens of the principle of secularism, especially in light of non-discrimination and freedom to profess religion? How do we adequately differentiate between legally

professing one's religion and forcibly converting another? Should there be a need to do that at all? How do we judge the secular character of the law, in light of harassment by the state in one's personal choices or in light of the very letter and spirit of the law, or both?

Citizenship Amendment Act

In its 2014 parliamentary election manifesto, the BJP stated that Hindus who were fleeing persecution from other countries would find a home in India. In keeping with this promise, the Citizenship (Amendment) Act seeks to bring religious considerations to bear on the acquisition of Indian citizenship. Whereas the Citizenship Act of 1955 denies citizenship rights to all "illegal" immigrants, the proposed bill excludes "minority religious individuals"—specifically Hindus, Sikhs, Jains, Parsis, Buddhists and Christians—from "Muslim-dominated countries"—specifically Afghanistan, Bangladesh and Pakistan—from the category of "illegal immigrant." The Act further reduces the requirement for immigrants to be naturalized, from 11 to just 6 years of residence in India. The Act hence has would exclude such persecuted Muslim minorities as the Rohingyas from Myanmar, Ahmadiyyas from Pakistan, and Uighurs from China. Critics have claimed that through this the Modi government has sought to align Indian nationalism with Hindu nationalism. The central concern within this is the issue of granting citizenship on the basis of religion. Civil Society and the opposition have raised concerns that not only is such a measure exclusive and unprecedented, but it also goes against Article 14 of the Constitution and hence violates the secular ethos of India. Moreover, the North-eastern state have opposed it on the grounds that it violated the Assam Accord of 1985.

Does such a measure violate the secular fabric of India? Is it a violation of Article 14? How do we approach the question of citizenship with respect to religion and the principle of secularism? Are the criteria of granting citizenship on the basis of religious minorities and not persecuted individuals in line with the tenets of secularism?

Beef Ban

The RSS has long campaigned for a total national ban on cow slaughter, and BJP state governments in UP, Madhya Pradesh, and Jharkhand all adopted laws fully or partially

banning it in 2003. The Maharashtra and Haryana governments increased the penalties and jail terms for beef possession and cow slaughter in 2015. The Gujarat government increased the maximum punishment for cow slaughter from 7 years to life imprisonment and increased the penalty for transporting beef from 3 to 10 years in March 2017. Currently, 24 out of India's 29 states have regulations prohibiting either the slaughter or sale of cows. These laws have been criticized for having encouraged Hindutva activists to engage in violence against Muslims and Dalits whom they suspect of cow slaughter and beef consumption.

In May 2017, the Ministry of Environment imposed a ban on the sale of cows and buffalo for slaughter at livestock markets across India. The following month, the national government issued new regulations requiring that any person selling livestock produce a written guarantee that it would not be slaughtered. These regulations effectively ban the sale of buffaloes as well as cows for slaughter.

Beef is significantly cheaper than chicken and fish and is part of the staple diet for many Muslims, tribal people and dalits - the low caste Indians who used to be called untouchables. It is also the basis of a vast industry which employs or contributes to the employment of millions of people.

But, as with so much conflict in the world, the real reason the ban is such a sensitive issue here is religion. The Hindu majority - 80% of the country's 1.2 billion people - regard cows as divine; the 180 million-strong Muslim minority see them as a part of their staple diet and trading practice. Thus, many Muslims see the extension of the beef ban as evidence of an assault on the principle of secularism, as the laws effectively lend way to the might of the Hindu majority.

How do we look at the beef ban from the perspective of India's secular framework? Is the ban inherently discriminatory? Or does the Indian secular framework allow for accommodating such directives? If it does, is it a failure of the secular framework? How do we look at this from the angle of religious freedom – Is such a ban based on solid reasoning to restrict one's religious and economic freedom?

Question of funding religious practices and endowments: NDA's 2018 decision to cancel Haj Subsidy

The government in January 2018 abolished the subsidy being given to Haj pilgrims every year. The policy to support Muslims in making the pilgrimage to Mecca in Saudi Arabia, can be traced back to 1932, when the British enacted the Port Haj Committees Act. In the ensuing decades, the Act has undergone numerous changes. And in recent years it has called for significant criticism from various parties. In 2012, a Supreme Court order directed the Haj subsidy to be gradually phased out in the coming ten years. In 2017, a Central Haj Committee meeting decided to do away with the subsidy by the following year.

This policy move by the Government raises various pertinent question with respect to the relationship between the state and religion. While this has been termed anti-muslim by some sections of the society, many others have contended that the State should do away with subsidising or spending on religious events and activities altogether.

The Haj is not the only religious pilgrimage being funded by the State. A number of other religious tours are supported by the government. For instance, the state and central governments spend considerable amounts on the pilgrim facilities at the four Kumbh melas in Haridwar, Ujjain, Nashik and Allahabad. The Kailash Manasarovar yatra from North India to the mountains of Tibet is yet another pilgrimage which is organised by the government with arrangements being made for security and health facilities. Last week, the Uttarakhand government agreed to increase subsidy for the Mansarovar pilgrims from Rs 25,000 to Rs 30,000. Under Article 290A, the state of Kerala provides Rs46.5 lakh annually to the Travancore Devaswom Fund and Tamil Nadu gives Rs 13.5 lakh to the Devaswom fund for the “maintenance of Hindu temples” out of the consolidated fund. The Indian government spent Rs ten crore in developing infrastructure on the Amaranathyatra route. In the 2017-18 budget, the BJP government in Rajasthan allocated Rs 38.91 crore for the Devasthan Department, of which Rs 16 crore is for the pilgrimage of senior citizens. The Madhya Pradesh government sponsors senior citizens’ trips to Ajmer and other religious sites. Muslims also get financial support from the state: salary packages are given to Muslim imams of Gujarat. There are various other such cases wherein the state spends on or funds religious matters.

While one can debate whether this move is anti-muslim or not and thus discriminatory, however, the central question that this raise is of whether the state should at all fund or spend on religious matters? Is this in line with the ethics of secularism? Does the come under the

conception of state maintaining a principled distance with religion or not? How, through this act of the state do we look at the practise of secularism in India and the notion of principled distance?

De-operationalisation of Article 370: Question of maintenance of the secular fabric of India

On 5th August 2019, the Central Government led by BJP chose to de-operationalise Article 370 of the Constitution along with effective abrogation of Article 35A – provisions granting special status to the (former) State of Jammu and Kashmir. Along with this, a bill has been passed to bifurcate the state into the Union Territory of Jammu and Kashmir (with legislature) and the Union Territory of Ladakh (without legislature).

The move by the centre has met with a lot of fanfare as well as criticism. While some have been hailing it as an unprecedented move, the others have questioned the legality and morality of it. The move has been and can be debated from different angles – legal, political, social and moral. What we are looking at is to see if such a move fits within the secular ethos of India. Why this is particularly important is because Jammu and Kashmir is the only Muslim majority state, which has been marred in conflict and the politics and nature of the state has always been a central point of debate within the larger debate of secularism in India. How do we place the debate on secular ethics here? There is no one way of going about this. Critics of the decision to de-operationalise Article 370 have held that secure existence (by extending special provisions like 370) of the Muslim majority J&K in India validated the secular character of the country, which has been lost now with the decision to impose such a move, especially without consulting the populace or the leaders of the state. People on the other side of the debate claim that the existence of Article 370 actually represented a pseudo-secularist nature of the Indian state as it extended undue benefits and special provisions to the state of J&K. Thus, for them, de-operationalising and bringing J&K to the mainstream does not hamper the secular fabric of the country, but rather it gives legitimacy to it.

Most importantly, the biggest point of contention has been raised by critics who claim that such a move will result in the change of demographic of the state, thus, is regarded as a plot to achieve the goal of legitimizing Hindu majoritarianism and nationalism.

How do we look at the move to de-operationalise Article 370 from the lens of secularism? Do arguments claiming development and mainstreaming have a link with the secular fabric of India? Where do we place the idea of one-ness and mainstreaming within the larger debate concerning the secular fabric of India? Is differentiated citizenships in line with the principles of secularism or not?

Communal Disharmony and Religious Defamation

India has been a country of tolerance. Since Buddha to Mahatma Gandhi, Indian society is full of examples of tolerance and harmony as a way of life. But in recent times, there has been a rise in violence across the nation. Current instances of intolerance threaten the very social fabric of Indian society. With rise in communal disharmony and intolerance, there is threat to overall peace in the society. Mob-violence, lynching are some of the symptoms caused by various reasons.

Causes of rise in communal disharmony and intolerance:

1. **Vote Bank Politics:** The politicians use the communal card to align themselves to a particular community or for the purpose of breaking up the vote bank of another party often indulges in instigating a communal riot.
2. **Struggle for Identity:** In order to ensure their relevance in a system that appears to be highly biased, various classes of people, like the Dalits, the tribals and other minorities tend to project a collective front. Any threat to their class is furiously opposed, so as to make their voices heard in this oblivion.
3. **Conflict of Interests:** Communal conflicts are a means for communities to assert their communal identities and to demand their share in economic, educational and job opportunities. Especially in the present times of economic down turn the struggle for ensuring that the interests of their community is appropriately safeguarded is very firmly contested.
4. **Reports of Threat to Religious Ideologies:** The examples of these are burning down of Churches in Delhi, Hindu-Muslim riots in Muzzafarnagar in 2013, ethnic clashes over the disputed Nagaland-Assam border, Dadri lynching, etc. Caste-based violence was also reported in several states including Uttar Pradesh, Bihar, Karnataka and Tamil Nadu.
5. **Irresponsible Reporting by Media:** Many a times media broadcasts unconfirmed, sensitive and often biased reports on national television, just to sensationalise the issue and improve

their TRP. This often adds fuel to the fire and increases animosity between the two communities, as the minority community feels threatened and the majority community feels victimised.

6. **Resource Crunch:** As the availability of natural resources like land, water, minerals, etc. is reducing due to an exponentially growing population, the clamour for ownership of the available resources, which are there at the disposal of various communities is also increasing.
7. **Growing Intolerance Levels:** The social insecurities arising out of a life of deprivation and mistrust for everyone around has made the common individual irritable and intolerant. Further, fear psychosis among minorities is being percolated to the majority community as well. Instances of hate speech, data about the increase in population of minorities as a threat to majority interests generate a situation of intolerance in the community.
8. **State's support:** India has many hostile neighbours, who wish to make it weak through a communal divide. Pakistan is causing an unconventional war, which is more damaging to the national stability in the long term.

Rise in communal disharmony and intolerance- a threat to Indian plural democracy:

1. **Threat to minority:** Rise in intolerance and communal disharmony lead to majoritarianism and thus, suppress minorities and hinder their rights.
2. **Mob-violence:** Rise in disharmony has led to targeting of religious minorities and led to a rise in mob-violence, which has impacted the psyche of minorities and led to an atmosphere of threat to life.
3. **Threat to Rule of law:** With rise in incidence of mob justice, lynchings, there is a threat to rule of law. For instance, the recent killing of Rapists in Telangana by police, is being celebrated in India. The recent killing of policemen by mob is an example of eroding rule of law.
4. **Freedom of speech:** It has also impacted freedom of speech. Disharmony and intolerance has led to excessive scrutiny of speech and expression and prevent many to speak freely due to fear of life.
5. **Harmed human rights:** Deployment of large scale security forces dissipates the state exchequer and may result in occasional Human Rights abuses. The Human Development Index of the society is adversely affected by these hampering restrictions that are laid on the basic right to freedom of people.
6. **Regionalism:** The anti-national elements get adequate opportunity to fan regional feelings and work on creating an atmosphere to break the cohesiveness of our society.

7. **Lawlessness:** Lawlessness accruing out of communal disharmony is exploited by the divisive forces operating in the country because of which internal security risks gets heightens.
8. **Damage social fabric:** The social fabric of the society gets irreparably damaged and the conditions of mistrust serve as a catalyst for future conflicts on flimsy grounds.

The recent issue of BJP Spokesperson being involved in invoking Section 295A of IPC, further leading to communal tensions, killings and disharmony is a clear example of how dangerous things could get.

Way forward:

1. **Efficient administration:** Quick and appropriate decisions by the administration is needed. After identifying the type, stage and gravity of the disturbance, must take immediate actions to mitigate the losses and be proactive to requisition and detained personnel with provocative behaviour.
2. **Training:** Police forces especially trained for the purpose must be promptly deployed in adequate numbers with requisite equipment and proper gear to handle situations at the physical, as well as emotional level.
3. **Delegation:** Proper delegation of responsibility and authority must be defined so that no one looks over the shoulder at the time of crises. It is also very important to hold a person in charge accountable for any misgivings or overreach of authority.
4. **Media guidelines:** During the outbreak of a riot, the local people must be regularly kept updated regarding the prevailing situation through various forms of media, which must be provided with guidelines to ensure it does not aggravate the situation further.
5. **Fair probe:** Prompt and fair probe into all incidents that may take place during the riot be conducted and locals appraised of the action taken by the administration.
6. **Cyber-security:** Cyber police should be watchful of posts made in the social media and websites carrying any provocative content with the aim of spreading communal tension and bring to book such people.

The basic reason for all communal disturbances is the communal atmosphere pervading the country and the communal tension built up between different communities. We as an evolving society, especially the youth, need to unite together to fight the communal forces and rise above the pettiness for the sake of humanity and for the security of our great nation.

End Note: This guide is not meant to be exhaustive or authoritative. You are encouraged to go beyond the contents of this guide and even question the content mentioned here.