

SBAMUN-18 BACKGROUND GUIDE

Lok Sabha



AGENDA

Discussing the religious
rights and addressing the
ANTI CONVERSION
BILL

Rishab Doshi
Speaker, Lok Sabha

Letter from the Speaker

Dear Delegate,

My name is Rishab Doshi and I have the distinct pleasure of serving as the speaker of LOK SABHA at SBA-MUN 2018. I am pursuing my degree in BCA from Jain University and have been involved in Model UN since Grade 9. I have enjoyed every step of my 44 Model UN's I have been a part of and I hope you will too. This year at SBAMUN, we have chosen a pressing issue that is basic in the sense that delegates can easily research and inform themselves on, but also complex and requires a speedy answer quickly. The agenda for this conference is: **Discussing the religious rights and addressing the ANTI CONVERSION BILL**

The Lok Sabha (House of the People) is the lower house of India's bicameral Parliament, with the upper house being the Rajya Sabha. Members of the Lok Sabha are elected by adult universal suffrage and a first-past-the-post system to represent their respective constituencies, and they hold their seats for five years or until the body is dissolved by the President on the advice of the council of ministers. We hope you will find this Background Guide useful as an introduction to the topics for this committee. It is not meant to replace further research. We highly encourage you to explore your country's internal policies in depth and note each party's and individual's stance on the agenda.

If you have any questions concerning your preparation for the Committee or the Conference itself, feel free to contact me:

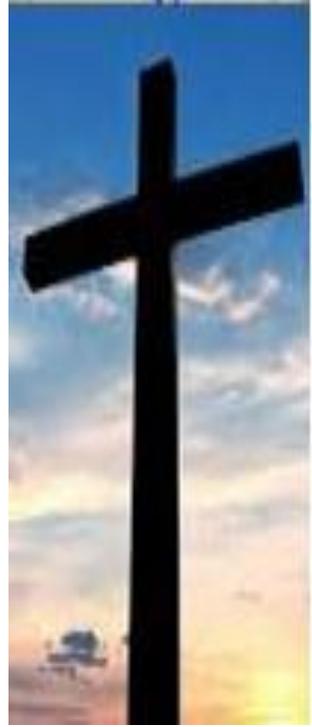
Rishab Doshi – rishdv3@gmail.com

We wish you all the best in your preparations and look forward to seeing you at the Conference!



Agenda Overview

Before engaging with the topic as representative of your respective portfolios, you must understand why these questions are the center of parliamentary conversations and discussions. A part of what is called the “Basic Structure” (1) of the Indian Constitution states that India must be a secular country. Secularism, and the models which implement the idea of equality of religion in the eyes of the State have always been debated and modified according to changing understanding of secularism as a concept. While there is an understanding that propagates indifference towards religion completely on behalf of the State, there has also been a school of thought that advocates specialized recognition and rights to the diversity of religions in India as a true implementation of Secularism. The latter is called a ‘pluralist’, in other words, take on a multicultural society. How religious practices are manifested has always been at the heart of these questions. Such practices have always been under the jurisprudence of the State and its intervention in these practices arbitrary. India has adopted the stance of keeping personal laws in the domain of religious bodies and clustering those which aren’t religions with a large population, under the banner of others. Two members of the BJP, including Amit Shah, have announced that anti-conversion bills are to be introduced in both houses of Parliament “so as to criminalize religious conversion without the government’s consent.” (2) However, the BJP government’s plan to enact national legislation reportedly “hit a roadblock” with the Ministry of Law and Justice, which advised against the move, stating that it is “not tenable” since it is “purely a state subject” (3)—i.e., a matter that lies purely under the constitutional domain of the states under the State List in Schedule Seven of the Constitution.



Religion and Law-Interpretation of Secularism in India and Multiculturalism

Since Independence, Indian secularism has evolved as a political ideology and a set of institutions designed to effect national unity, providing a forum for conflict resolution among India's vast and diverse cultural communities. Yet while secular institutionalism was originally adopted as a tool to achieve such goals, secularism has been interpreted more as a means to negotiate stability among religious communities rather than situate the state as an abstract distributor of spiritual tolerance. Indian secularism is a process backlit by more traditional concerns for universalism and individual autonomy, and yet one which led to the development of a proactive, interventionist secularism in the name of practical need.

The founding political elites assumed rightly that such 'unity' demanded that processes of compromise be directed toward balance—processes that emphasized the role of religious identities as the epistemic communities of choice, if not necessity. Secularism—while propounding neutrality with respect to gender, religious denomination, class, and so forth—has tended to capture (and even manufacture) essentialized identities within its legal and political apparatuses. Asking who and what are the subjects of secularism, then, is a crucial question, especially in light of continued aggravation and the reification of religio-cultural and gendered identities within modernity and, for the purpose of this analysis, contemporary Indian politics.

During the tenure of Jawaharlal Nehru, secularism was proposed as an answer to various social dilemmas; now, and especially since the rise of the Hindu right in the mid-to-late 1980s, secularism is a more of a framework, a question, a polemic. Like the varied cultural landscapes of the Subcontinent, the definitional boundaries of 'secularism' have fractured. In the last two decades political and legal elites have allowed secularism to shrink its egalitarian ambitions and, according to many scholars, morph into an imprecise, tainted and disfigured creature of

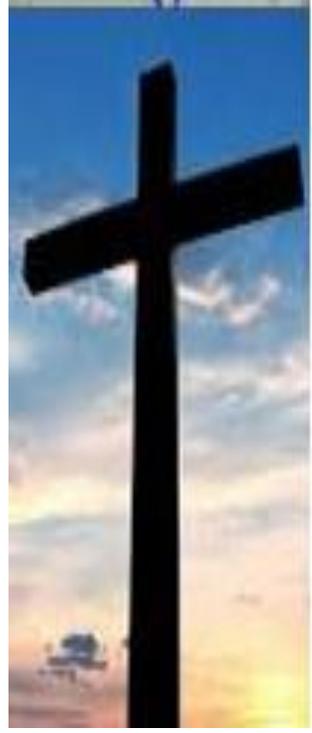


law and politics, diluted to the status of a catch-word in some cases, or a post- Independence badge of internal colonialism in others. And yet Indian secularism in its successes and defeats— continues to wage a war of position against the following question: “How are minority religious groups to be brought into the modern nation and protection extended to their claims to certain rights and privileges guaranteed to all members of that nation, without at the same time effacing either their unique religious differences or the content of their religious beliefs?”



Religious Rights

The characterization of the Indian state's idealistic 'secular' impulses has been put into question time and time again, most notoriously in the Constitutional protection of 'rights to culture' as proscribed in Articles 25-30. This has been especially visible in court cases that juxtapose these multicultural laws against the fundamental rights embodied in Articles 14-24, laws more clearly based upon traditional interpretations of liberal individualism. Much debate has arisen over questions regarding whether religious rights are fundamental rights, whether under Article 25 there is really a right to propagate religion, whether under Article 26 religious communities have a right to a certain measure of autonomy vis-à-vis the state, whether there is an absolute right to 'preserve' the cultures of religious communities under Article 29, whether these communities have a right to establish and manage their own educational institutions toward the end of safeguarding certain cultural artifacts of language and script, etc. To the extent that the Indian state was already seeking out a comprehensive and practical secularism, the word 'secular' was only added to the preamble of the Indian Constitution in 1976 through passage of the 42nd Amendment. This important addition to the Constitution emphasized that the Indian State would not be biased toward any one or group of religions, that it would be neutral toward religious communities and doctrines, that it would not discriminate between communities of faith. In short, religious particularity would not play a role in the governance of the Indian state.



Debate on Uniform Civil Code

The Indian Parliament has also debated if a cultural code of conduct be developed beyond religious specificities. This debate formulated what is called the Uniform Civil Code. What is the Uniform Civil Code? Uniform civil code is the ongoing point of debate within Indian mandate to replace personal laws based on the scriptures and customs of each major religious community in India with a common set of rules governing every citizen. Article 44 of the Directive Principles expects the state to apply these while formulating policies for the country. Apart from being an important issue regarding secularism in India & fundamental right to practice religion contained in Article 25, it became one of the most controversial topics in contemporary politics during the Shah Bano case in 1985. The debate then focused on the Muslim Personal Law, which is partially based on the Sharia law and remains unreformed since 1937, permitting unilateral divorce, polygamy in the country and putting it among the nations legally applying the Sharia law. The Bano case made a politicized public issue focused on identity politics—by means of attacking specific religious minorities versus protecting its cultural identity. The demand for a uniform civil code was first put forward by women activists in the beginning of the twentieth century, with the objective of women's rights, equality and secularism.

Till Independence in 1947, a few law reforms were passed to improve the condition of women, especially Hindu widows. In 1956, the Indian Parliament passed Hindu Code Bill amidst significant opposition. Though a demand for a uniform civil code was made by Prime Minister Jawaharlal Nehru, his supporters and women activists, they had to finally accept the compromise of it being added to the Directive Principles because of heavy opposition. But is India prepared for a Uniform Civil code.



Conversion

Broadly speaking, conversion is a movement between or among faiths, a change in legal status, a political statement, a spiritual engagement. Challenging and unsettling, the act of conversion brings into question not merely the substance of political tolerance as defined by secular thought, but illustrates the boundaries of such tolerance as a legal category and a normative claim, as well as underscores the ways in which faith is delimited and transformed by modern institutions and social expectations. The study of the disorienting, redistributive quality of conversion in the case of India seems to also entail the study of conquest, colonial domination, the dynamics of spiritual and electoral imbalance, and the negotiation of gendered citizenship through the politics of religious freedom.

MAJOR QUESTIONS:

What questions will the Lok Sabha be asking when deciding to centralize the control over protection from conversion, while the implementation is local?

Why is this decided to be a Union issue NOW

SPECIFICALLY?

What are the implications of policing conversions? Will it mean policing thought?

How does one really identify (legally speaking) the difference between voluntary and involuntary conversion?

How does one account for the possible misuses of this bill?

How will a Union bill radically change the way conversions are taken care of by State laws now?



Anti-conversion Bill

History

India is a nation that is home to a diversity of religious beliefs and practices. The Indian subcontinent is the birthplace of four major world religions—Hinduism, Buddhism, Sikhism, and Jainism. According to reported 2011 census data, 79.80% of the population of India is Hindu, 14.23% Muslim, 2.30% Christian, 1.72% Sikh, 0.70% Buddhist, and 0.37% Jain.

Laws restricting religious conversions were originally introduced by Hindu princely states during the British Colonial period—mainly during the latter half of the 1930s and 1940s. These states enacted the laws in an attempt to preserve Hindu religious identity in the face of British missionaries. There were over a dozen princely states, including Kota, Bikaner, Jodhpur, Raigarh, Patna, Surguja, Udaipur, and Kalahandi which had such laws. Some of the laws from that period include the Raigarh State Conversion Act (1936), the Surguja State Apostasy Act (1942) and the Udaipur State Anti-Conversion Act (1946).

Attempts to restrict conversions began as soon as the modern Indian state was born in 1947. Parliament saw two bills being introduced under the Jawaharlal Nehru government that sought to clamp down on the freedom to change one's faith. Both were opposed by Prime Minister Nehru, who saw how dangerous any policing of thought could be. Speaking in the Lok Sabha in 1955, Nehru said:

“I fear this bill will not help very much in suppressing the evil methods [of gaining converts], but might very well be the cause of great harassment to a large number of people. Also, we have too



take into consideration that, however carefully you define these matters, you cannot find really proper phraseology for them. The major evils of coercion and deception can be dealt with under the general law. It may be difficult to obtain proof but so is it difficult to obtain proof in the case of many other offences, but to suggest that there should be a licensing system for propagating a faith is not proper. It would lead in its wake to the police having too large a power of interference.

Anti-Conversion Bills Today-Overview:

India's Freedom of Religion Acts or "anti-conversion" laws are state-level statutes that have been enacted to regulate religious conversions. The laws are in force in six out of twenty-nine states: Arunachal Pradesh (8), 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 reconversions 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. Some of the laws provide for stiffer penalties if women, children, or members of scheduled castes or schedule tribes (SC/ST), are being converted. 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 is the Christian belief that only people who accept Jesus will be saved from damnation also then “force”? 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, from a rationalist point of view, all religions indulge in “misrepresentation”. So then is propagating Christianity or Islam itself fraud under this law?

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 favors this requirement and says it reduces the likelihood of voluntary converts changing their story down the line to say they were forced.

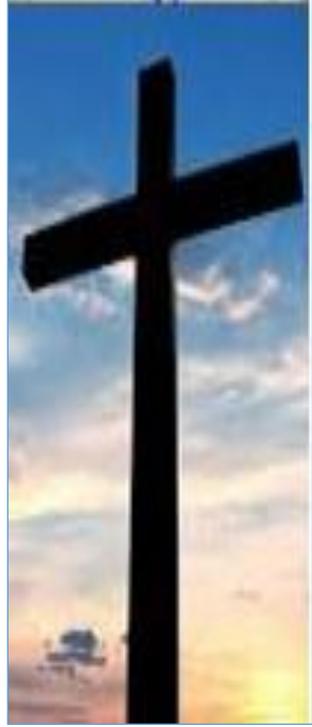


National Debate on the Bill

In the background to the debate: a tussle over whether India should introduce a nationwide anti-conversion law. India's winter session of Parliament, which ended last month, was disrupted for days as opposition members protested against Hindu hardline groups for allegedly forcing religious minorities to convert to Hinduism. The Hindu groups, some of which are close to the governing Bharatiya Janata Party, deny the allegations and say the conversions were voluntary. Prime Minister Narendra Modi's BJP has suggested that the creation of a national law could help prevent forcible religious conversions, according to a national spokesman of the BJP.

The right wing and conversion

The Dharam Jagaran Samiti (DJS) — an offshoot of the Rashtriya Swayamsevak Sangh (RSS) and the Bajrang Dal — only recently announced that it aims to meet a target of converting one lakh Muslims and Christians into Hinduism every year. Earlier this month in Agra, the DJS reportedly converted some 200-odd Muslims to Hinduism. The event came to light after the supposed converts, many of who are among the most impoverished sections of the society, alleged that they had been misled into believing that they would be offered Below Poverty Line cards by consenting to the conversion. In spite of these contentions, the Sangh Parivar remains unmoved in its agenda. According to a report on the website scroll.in, the Vishwa Hindu Parishad (VHP) has already made plans to mark the 50th anniversary of the group's founding on February 6 with a Ghar Vapsi in Faizabad next year. Making matters worse, the VHP has claimed, as The Hindu reported, that those Muslims or Christians who reconvert to Hinduism in such programs would be allowed to choose a caste for themselves once the VHP has investigated the tradition, faith, and culture of the convert's ancestors.



Sharing these snippets of the debate I found online for your perusal:

- 1) BJP members plan for anti-conversion bill in Parliament-
<http://india.ucanews.com/news/bjp-members-plan-for-anticonversion-bill-in-parliament/30286/daily>
- 2) The Arguments for and Against a National Anti-Conversion Law- “While organized events of conversion can incite violence and hatred, the enforcement of a national anti-conversion law, as some advocate, is not the panacea. Besides inflicting greater damage, it would render our rights to freedom of conscience and religion valueless, and derail efforts at achieving a peaceful, democratic society.”
<https://blogs.wsj.com/indiarealtime/2015/01/09/the-arguments-for-and-against-a-national-anti-conversion-law/>
- 3) “A law banning the use of coercion in seeking religious conversion seems to be in consonance with general principles of a democratic society. However, our experience with such legislation — as can be gathered from the impact of such statutes in Madhya Pradesh and Gujarat — shows us that these laws would inevitably be fraught with interpretive maladies that often strike at the root of our right to religious freedom. What’s more, a legislation of such a nature would be simply unenforceable without applying a duplicitous standard of statutory construal. The better choice, in these circumstances, is to prosecute illegitimate acts of force and coercion, which evoke genuine sentiments of communal hate, through the general operation of the penal law aimed at maintaining public order, while leaving conversions largely unmonitored.”
<http://www.thehindu.com/opinion/lead/conversion-and-freedom-of-religion/article6716638.ece>



Is the bill anti-constitutional in the sense that it in any way takes away freedom of religion?

Absolutely constitutional. Technically the freedom to follow and freedom to propagate a religion of your choice is a constitutional guarantee. By last count 6 states (Arunachal Pradesh, Gujarat, Himachal Pradesh, Madhya Pradesh, Chhattisgarh and Odisha) have "anti-conversion" laws whose constitutional validity have been upheld.

What is this bill all about?

Since the BJP government has not actually shared any draft bill, I will try to draw parallels to the existing "Freedom of Religion"/"anti-conversion" bills.

Almost all these bills have two broad themes.

Firstly - they define what constitutes "illegal" conversion and also define how to punish illegal conversions.

Some of the existing laws can be reused or applied to prevent illegal conversions. However, there is lack of full legal clarity. For instance, if you claim that you were "fraudulently" converted, what is your "loss" through this fraud? How can a judge decide an appropriate punishment for this supposed "fraud"? Hence the need for such a law. Secondly - they require the local administration to be notified in case anyone is converting his/her religion.

