



# Constitutional Equal Rights Across Religion and Belief

- Freedom of religion has long been recognized as a fundamental value. At the same time, throughout history, individuals and governments have invoked religion to justify discrimination and violence
- International and regional treaties and agreements—including the Universal Declaration of Human Rights—guarantee freedom of religion and prohibit religious discrimination, and recognize a set of key principles:
  - “Freedom of religion” applies equally to the freedom to believe and the freedom to *not* believe
  - Freedom of religion is divided into beliefs and practices: there are no restrictions on beliefs, but practices may be limited to protect the rights of others
  - Freedom of religion cannot be used to justify discrimination or human rights violations
- Constitutions can advance these rights and principles by:
  - Ensuring that the government does not privilege one religion over other religions or beliefs, or privilege religion generally over non-belief
  - Prohibiting religious discrimination
  - Protecting freedom of belief
  - Protecting the freedom to practice religion up to the point where it infringes on others’ rights
- Globally, many constitutions at least partly fulfill this vision:
  - 41% of constitutions establish secularism or separation of religion and state
  - 78% of constitutions explicitly guarantee equality or non-discrimination based on religion or belief
  - 95% of constitutions guarantee freedom of religion or belief
  - 25% of constitutions explicitly guarantee the freedom to *not* believe, practice, or



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## NUMBERS TO NOTE

**78%**

*of constitutions explicitly guarantee equality or non-discrimination based on religion or belief*

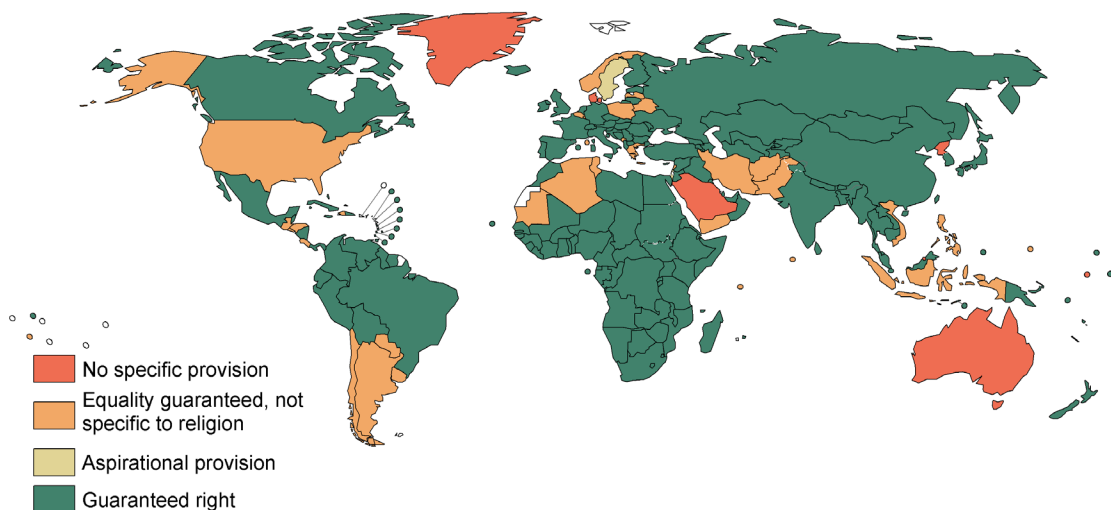
**46%**

*of constitutions explicitly prohibit freedom of religion from infringing in any way on the rights and freedoms of others*

**48%**

*of constitutions that include a commitment to secularism also include language privileging a specific religion or religion generally*

## Does the constitution explicitly guarantee equality or non-discrimination across religion?



## ABOUT ADVANCING EQUALITY

To learn more, please see [Chapter 5](#) of the open-access book [Advancing Equality: How Constitutional Rights Can Make a Difference Worldwide](#) (Jody Heymann, Aleta Sprague, and Amy Raub; University of California Press, 2020).

Analyzing the constitutions of all 193 United Nations countries, *Advancing Equality* traces 50 years of change in constitution drafting and examines how stronger protections against discrimination, alongside core social and economic rights, can transform lives.

disclose one's religion

- 46% of constitutions explicitly prohibit freedom of religion from infringing in any way on the rights and freedoms of others
- However, many constitutions contain contradictory provisions:
  - 9% of constitutions guarantee freedom of religion but also establish a state religion that governs public and/or private life
  - 18% of constitutions guarantee freedom of religion but also give special recognition to a specific religion
  - Nearly half of constitutions that include a commitment to secularism also include language privileging a specific religion or religion generally
- Moreover, 15% of constitutions include at least one provision limiting rights for minority religions, such as those:
  - Specifying that religious law can prevail over some or all constitutional provisions (4%)
  - Stating that legislation cannot contradict religious law (5%)
  - Establishing that religion governs public life by requiring the executive to be a member of a specific religion and/or having religious law govern public as well as family life (10%)

- Across countries, constitutional protections of religious freedom and non-discrimination have made a difference:
  - In **Germany**, the Constitutional Court invalidated a legal provision that banned teachers from wearing religious attire but made an explicit exception for Christian symbols and traditions
  - In **Malaysia**, where Islam is the state religion, the Kuching High Court ruled that the constitutional freedom of religion nevertheless guaranteed the right to convert to another faith
- However, the gaps and contradictions in many countries' constitutions threaten the rights of many religious minorities and non-believers
- Further, other constitutional provisions can influence whether religiously motivated discrimination takes precedence over equal rights in the courts:
  - In the **U.S.**, arguing in favor of a bakery that refused to make a cake for a same-sex wedding, the Department of Justice noted that equal rights on the basis of sexual orientation, unlike equal rights on the basis of race, received no special constitutional protection
  - In **South Africa**, citing the constitution's guarantee of gender equality, the Constitutional Court ruled that the Marriage Act entitled a widow to inherit the home she'd shared with her husband, even though she had been married under Islamic law rather than civil law



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## Does the constitution explicitly protect freedom of religion from infringing on the rights of others?

