

## CAN THE STATE COMPEL YOU TO DISCLOSE YOUR RELIGION?

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*“Religion is a matter which lies solely between man & his God.”<sup>1</sup>*

- Thomas Jefferson

### Abstract

State was devolved with powers of God in the modern era *i.e.*, to govern. But with great power comes great responsibility. State has to be objective, impartial and neutral to create balance in the society governed and affected by the vices of inequality and prejudices. Enabling an environment wherein individuals are free from such evils, State ensures the inherent human rights vested in every individual in form of some of the basic fundamental rights in our Constitution. In the era of global village, we tend to be connected from each other in ways never imagined before. Inspiration to curtail and stop such vices can be drawn from various well developed grundnorms around the world. Thus, respecting and protecting every human soul’s right which it surrendered to State to protect, in the way it was supposed to be.

### **I Introduction**

### **II Part I Fundamental rights and compulsory disclosure**

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### **I Introduction**

OFTEN INDIVIDUALS are out rightly required by various government bodies to fill ‘forms’ or ‘declarations’ for different purposes varying from admission to school/university, application for a job, registration for birth certificate, to avail medical facilities or social benefits and so on.<sup>2</sup> In most of such forms, there is a column to declare one’s religion with

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<sup>1</sup> Letter from Thomas Jefferson, President of United States, to Nehemiah Dodge, Ephraim Robbins & Stephen S. Nelson, Danbury Baptist Association, Connecticut, (Jan. 1. 1802) (on file with the Library of Congress).

<sup>2</sup> Nidhi Sharma and Dilip Singh, “Religion Column Introduced in Indian Citizenship Application Form” *The Economic Times* (Oct. 25, 2018), available at:

[https://economictimes.indiatimes.com/articleshow/66356023.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/articleshow/66356023.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (last visited on Nov. 15, 2019).

different categories to choose from, like Hindu/Muslim/Christian and others.<sup>3</sup> Often, filling this column is compulsory, without which the form is rejected as incomplete.<sup>4</sup>

An individual is outrightly rejected for a job by the state for not choosing any category under the column of religion leading to severe discrimination.<sup>5</sup> In such a situation, three different fundamental rights that are intrinsic to the values of democracy, equality and secularism are violated by the state. This would amount to treating an individual differently, without an objective and reasonable justification, in relevantly similar situations.<sup>6</sup>

In order to answer the central question here *i.e.*, *whether the State can compel an individual to disclose one's religion*, few incidental questions can also be tied up to the discussion like: *whether right to privacy includes freedom of not disclosing one's religious beliefs? Whether right to religious ideas, beliefs, faith and worship includes right to keep one's religious beliefs secret?*

This paper is divided into three parts to answer these questions. Part-I will elaborate upon the wide ambit of right to dignity, right to privacy and right to religious ideas encapsulating within themselves the right to keep one's religious beliefs secret from the state. Part II will detail the international precedents against the compulsory disclosure of religious beliefs to the State. Part III will discuss various developed jurisdictions which have addressed this concern by providing robust provisions in their law books.

## **II Fundamental rights and compulsory disclosure**

### **Right to dignity**

Right to life shares unbreakable bond with human dignity and finds its due mention in the foremost words of our Constitution *i.e.*, Preamble. The framers aimed to protect individual rights which consolidate to shape the community rights. Thus, envisioning protection from dictatorial encroachment in individual's life '*fraternity*' in Preamble was worded to provide dignity to every individual.<sup>7</sup>

Stripping a person of his dignity would devoid him of his personhood<sup>8</sup> which is more than mere animal existence and physical existence.<sup>9</sup> Right to dignity encapsulates expressing

<sup>3</sup> Eur. Parl. Deb. OJ C (Annex 299) (Dec. 8, 2006) (remarks of Ferrero Waldner).

<sup>4</sup> Nidhi Sharma and Dilip Singh *supra* note 2.

<sup>5</sup> Ronald Alsop, "Does Religious Bias Begin with your CV?", *BBC* (July 31, 2014), *available at*: <http://www.bbc.com/capital/story/20140730-reveal-religion-on-your-cv> (last visited on Nov. 15, 2019).

<sup>6</sup> *Religionsgemeinschaft der Zeugen Jehovas v. Austria*, (2008) 762 ECtHR.

<sup>7</sup> *Justice Puttaswamy (Retd.) v. UOI*, (2017) 10 SCC 1.

<sup>8</sup> *Prem Shankar Shukla v. Delhi Administration*, (1980) 3 SCC 526.

oneself in different forms without any obligation of intermixing with fellow beings.<sup>10</sup> State has to follow 'reasonable', 'fair' and 'just' procedure in accordance with rule of law<sup>11</sup> to limit the right to dignity and endeavour to facilitate it to individuals with active steps.<sup>12</sup>

Forcible encroachment in an individual's mental space devalues human dignity.<sup>13</sup>The ultimate aim of the Constitution is served when an individual is able to pursue the pursuit of happiness built on autonomy and dignity, essential attributes of privacy.<sup>14</sup>

### Right to privacy

Article 21 of the Indian Constitution encompasses within itself right to privacy.<sup>15</sup>In *Kharak Singh v. The State of U.P.*<sup>16</sup> the Supreme Court held that 'personal liberty' in article 21<sup>17</sup> is comprehensive enough to include all varieties of rights which shape the personal liberty of a man.<sup>18</sup>Subba Rao J writing for the minority opined that the word 'liberty' in article 21<sup>19</sup> was exhaustive enough to include Right to privacy also even though, not expressly worded in the Constitution. Recently, the Supreme Court in the case of *Justice Puttaswamy (Retd.) v. UOI*<sup>20</sup> recognised privacy not just as a fundamental right emanating from article 21<sup>21</sup> but as an inalienable natural right of every human being. Privacy is essential for meaningful exercise of other freedoms enshrined in Part-III of the Constitution<sup>22</sup> such as "freedom of speech and expression",<sup>23</sup> "freedom of conscience"<sup>24</sup> and personal liberty"<sup>25</sup>.

There is a consensus across all the six separate opinions, that privacy protects an individual's right to dignity, autonomy and informational control. In this context, Justice Chandrachud's (who wrote for himself and three other judges) observations are the most apt to quote:<sup>26</sup>

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<sup>9</sup>*Francis Coralie Mullin v. Union Territory of Delhi* (1981) 1 SCC 608.

<sup>10</sup>*Ibid.*

<sup>11</sup>*Id.* at 9.

<sup>12</sup>*M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

<sup>13</sup>*Selvi v. State of Karnataka*, (2010) 7 SCC 263.

<sup>14</sup>*Supra* note 7.

<sup>15</sup>*Ibid.*

<sup>16</sup> AIR 1963 SC 1295.

<sup>17</sup> The Constitution of India, 1950, art. 21.

<sup>18</sup>*Govind v. State of Madhya Pradesh*, 1975 SCC (Cri) 468.

<sup>19</sup>*Supra* note 17.

<sup>20</sup> (2017) 10 SCC 1.

<sup>21</sup>*R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632.

<sup>22</sup> The Constitution of India, 1950.

<sup>23</sup> The Constitution of India, art. 19.

<sup>24</sup> M P Jain, *Indian Constitutional Law* 1168 (Lexis Nexis, Wadhawa, Nagpur, 7<sup>th</sup> edn., 2016).

<sup>25</sup> *Supra* note 7.

<sup>26</sup>*Ibid.*

Privacy has distinct connotations including (i) spatial control; (ii) decisional autonomy; and (iii) informational control. Spatial control denotes the creation of private spaces. Decisional autonomy comprehends intimate personal choices such as those governing reproduction as well as choices expressed in public such as faith or modes of dress. Informational control empowers the individual to use privacy as a shield to retain personal control over information pertaining to the person.

Individuals have right to decisional autonomy, within one's mental space, to make *personal choices* in various facets of life including the *belief and religion* one wants to espouse or not.<sup>27</sup> The other right which immediately follows the aforementioned one is the individual's right to hold that information within the four walls of his mind and not disclose it to the world in absence of the sufficient reasons to do so.<sup>28</sup> Every individual has a right to be let alone<sup>29</sup> in his sphere to safeguard privacy of his own and his family<sup>30</sup> and be able protect other interests and rights.<sup>31</sup> The individual has a right to deny publication of personal information without his consent whether truthful or not<sup>32</sup> except where a reasonable basis of intrusion exists like prevention of crime, disorder, protection of health and morals or protection of rights and freedoms of others.<sup>33</sup> The state does not have limitless powers to curtail the right to privacy.<sup>34</sup>

The state must fulfil three requirements to curtail or appropriate an individual's privacy. *Firstly*, the curtailment should derive its basis from an expressly worded law. *Secondly*, the curtailment of privacy aims to pursue a legitimate aim and should be reasonable as per article 14. *Thirdly*, the curtailment was proportionate to the aim sought to be achieved. The three-fold percolation sieve was devised to rule out arbitrariness and to protect right to privacy inherent part of liberty and life of an individual.<sup>35</sup>

Collection of private data for non-essential purposes *i.e.*, other than welfare of the marginalised sections is not legitimate purpose. Curtailment of privacy except on grounds of national security, scientific, historical or statistical purposes is neither legitimate nor

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<sup>27</sup> *Evangelical Fellowship of India v. State of Himachal Pradesh*, (2012) SCC OnLine HP 5554.

<sup>28</sup> *Jane Roe v. Henry Wade*, 410 U.S. 113 (1973).

<sup>29</sup> VN Shukla, *Constitution of India* 198 (Eastern Book Company, Lalbagh, Lucknow, 11<sup>th</sup> edn., 2011).

<sup>30</sup> *Supra* note 28.

<sup>31</sup> Charles Warren and Louis D. Brandeis, "The Right to Privacy" 4 *Harvard Law Review* 193 (1890).

<sup>32</sup> *Supra* note 29.

<sup>33</sup> 'X' v. Hospital 'Z', (1998) 8 SCC 296.

<sup>34</sup> *Directorate of Revenue v. Mohammad Nisar Holia*, (2008) 1 SCC 789, 800.

<sup>35</sup> *Supra* note 7.

proportional to the aim sought to be achieved.<sup>36</sup> Thus, the obligation on individuals to disclose one's religion from schools to jobs is a disproportionate measure and fulfils no legitimate purpose.

In simpler words, privacy allows a free mental space where one can create his own ideas, thoughts and conceptions of conscience and religion.<sup>37</sup> The personal information created within the free space, on which, the state has no right to get access to by way of compulsory disclosure<sup>38</sup> in the manner highlighted above. This means that what form of religion or beliefs one wants to follow is a matter of personal choice, and therefore, should be left upon the individual's own conscience, and at the same time, the individual should not be directly or indirectly compelled by the state or private actors to disclose his religion.<sup>39</sup> Thus, there is right to individuals to prevent unauthorised publication of secret personal information<sup>40</sup> and to prevent transgression in the private realms.<sup>41</sup>

### **Right to religion**

Religion is the belief which binds spiritual nature of men to super-natural being.<sup>42</sup> The scope of freedom of conscience can be explained through already rooted constitutional principles.<sup>43</sup> Article 25(1)<sup>44</sup> guarantees every individual equal aegis to 'freedom of conscience' and the 'right freely to profess, practise and propagate religion'.<sup>45</sup> The 'freedom of conscience' forms a part of the free speech and liberty<sup>46</sup> under article 19(1)(a)<sup>47</sup> and article

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<sup>36</sup> Regulation 2016/ 679, of the European Parliament and of the Council of April 27, 2016 on the Protection of Natural Persons with regard to the Processing of Personal Data and on the Free Movement of such data, and repealing Directive 95/46/EC, 2016 O.J. (L 119/1) 5, 23; *Supra* note 7.

<sup>37</sup> *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

<sup>38</sup> Julie C. Inness, *Privacy, Intimacy and Isolation* 91 Oxford University Press Oxford, U.K., 1996); Daniel J. Solove, "Conceptualizing Privacy", 90(4) *California Law Review* 1122 (2002).

<sup>39</sup> Oscar M. Ruebhausen and Orville G. Brim, Jr., "Privacy and Behavioral Research" 65 *Columbia Law Review*. 1184, 1189 (1965).

<sup>40</sup> Richard Stone, *Civil Liberties and Human Rights* 338 (Oxford University Press, Oxford, U.K., 10<sup>th</sup> edn. 2014).

<sup>41</sup> D D Basu, *Commentary on The Constitution of India* 3139 (Lexis Nexis, Wadhwa, Nagpur, 8<sup>th</sup>edn. 2008).

<sup>42</sup> *P.M.A Metropolitan v. Moran Mar Marthoma*, 1995 AIR 2001.

<sup>43</sup> M. Afzal Wani, "Freedom of Conscience: Constitutional Foundations and Limits" 42(2/4) *Constitutional Law Special Issue, Journal of the Indian Law Institute* 290 (2000).

<sup>44</sup> The Constitution of India, art. 25(1).

<sup>45</sup> J. Patrocínio de Souza, "The Freedom of Religion under the Indian Constitution" 13(3/4) *The Indian Journal of Political Science* 67 (1952).

<sup>46</sup> *Supra* note 7.

<sup>47</sup> The Constitution of India, art. 19 (1)(a).

21<sup>48</sup>. Preamble states that people of India have four ultimate aims to achieve including “Justice, Liberty, Equality, and Fraternity.”<sup>49</sup>

Freedom of conscience, by its very nature, is broader in meaning than professing, practicing and propagating a religion and has to be interpreted in conjunction with the broader principles of secularism<sup>50</sup> and democracy that form the core of our Constitution.<sup>51</sup> It emanates from the ‘natural rights’ inherent to an individual by mere existence and converted in legal rights by the state.<sup>52</sup> Such right is inalienable in any circumstance and grant autonomy to an individual.<sup>53</sup>

There are two aspects of ‘freedom to profess, practice and propagate religion’<sup>54</sup> which have emerged, *first* is the ‘*internal*’ aspect, where there is absolute freedom to hold religious ideas and convictions rooted in a person’s conscience and therefore cannot be subject to public order and the State’s control and *second* is the ‘*external*’ aspect wherein the exercise of this right affects public order and thus are matter of concern for State authorities.<sup>55</sup>

Religious convictions of a person stem from the depth of the heart and mind<sup>56</sup> and are an object of conscientious devotion, faith and pietism.<sup>57</sup> The State, individual or society cannot compel divulsion of one’s religious beliefs because religious beliefs are very privy to an individual.<sup>58</sup> The wordings of the High Court of Himachal Pradesh would be most apt to quote here: “A person not only has a right of conscience, the right of belief, the right to change his belief, but also has the right to keep his beliefs secret.”<sup>59</sup>

A man's mind is the impregnable fortress in which he thinks and is invasion-proof unless the person is expressing or propagating his thoughts in such a manner that will cause public disorder or affect the unity or sovereignty of the country.<sup>60</sup> Man’s relation to his God is no

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<sup>48</sup> The Constitution of India, 1950.

<sup>49</sup> Liav Orgad, “The Preamble in Constitutional Interpretation” 8 *International Journal of Constitutional Law* 714 (2010).

<sup>50</sup> R. Rajarajan, “Secularism in Indian Politics: Theory and Practice” 68 *The Indian Journal of Political Science* 406 (2007).

<sup>51</sup> *Supra* note 24.

<sup>52</sup> Edwin W. Patterson, “A Pragmatist Looks at Natural Law and Natural Rights” in Arthur L. Harding (ed.), *Natural Law and Natural Rights* 62- 63 ( Southern Methodist University Press, Dallas, 1955).

<sup>53</sup> *Ibid*; *supra* note 7.

<sup>54</sup> The Constitution of India, art. 25(1).

<sup>55</sup> Research Division of Council of Europe/European Court of Human Rights, “Overview of the Court’s case-law on Freedom of Religion”, (October, 2013); *Supra* note 35.

<sup>56</sup> *Lily Thomas v. Union of India* (2000) 6 SCC 224.

<sup>57</sup> *Ibid*.

<sup>58</sup> *Ranjeet Suryakant Mohite v. The Union of India*, 2014 SCC OnLine Bom 1121; *Supra* note 7.

<sup>59</sup> *Ibid*.

<sup>60</sup> *Sri Lakshmana Yatendrulu v. State of Andhra Pradesh* (1996) 8 SCC 705.

concern of the state.<sup>61</sup> There is a difference between the outer and inner man.<sup>62</sup> One's religion comes under the internal aspect of the religion of an individual's life and family and his home. Thus, infringement by the state in internal aspect of the '*freedom to profess, practice and propagate religion*',<sup>63</sup> would amount to violation of right to religion of not only that individual but his family too.<sup>64</sup>

### III International precedents against compulsory disclosure

The international jurisprudence on the compulsory disclosure of religion, elaborated by various courts is consistently clear. Courts have consistently reiterated that an individual has a right not to reveal his religious beliefs to be invaded by the State in name of law.

The United States Supreme Court in *NAACP v. Patterson*<sup>65</sup> was adjudging the challenge to State of Alabama's demand from National Association for the Advancement of Coloured People (NAACP) to disclose its list of members. Such imperatively disclosure of the NAACP's membership lists, was held to be violative of the privacy of group association, an essential to the '*freedom of association*'. The court noted that:

We think it apparent that compelled disclosure of the petitioner's membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate.

The court stated that the compulsory disclosure would discourage individuals from joining the association.<sup>66</sup>

In July 2001 Data Protection Authority in Greece removed a compulsory obligation on Greek citizens to divulge their religion beliefs on the Greek ID card, on the grounds that such practice would promote presumptions drawn on the citizens on the basis of their religion and

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<sup>61</sup> *Commissioner of Police v. Acharya Jagdishwarananda Avadhuta* (2004) 12 SCC 770; *Supra* note 7.

<sup>62</sup> Milton R. Konvitz, "Privacy and the Law: A Philosophical Prelude" 31(2) *Law and Contemporary Problems* 272 (1966).

<sup>63</sup> *Supra* note 37.

<sup>64</sup> *Supra* note 27.

<sup>65</sup> *NAACP v. Patterson*, 357 U.S. 449, 464 (1958).

<sup>66</sup> Vasudev Devadasan, The Rajasthan High Court's Religious Conversion and Marriage "Guidelines": Some Privacy Concerns, *Indian Constitutional Law and Philosophy* (Aug. 28, 2017), available at: <https://indconlawphil.wordpress.com/2017/08/28/the-supreme-courts-right-to-privacy-judgment-ii-privacy-the-individual-and-the-public-private-divide/> (last visited on Nov. 20, 2019).

would be violative of the ‘*neutrality principle*’,<sup>67</sup> a basic tenet of the pluralistic, democratic and secular state. Thus, it held that:<sup>68</sup>

No-one may be obliged by any means to reveal, directly or indirectly, their religion or religious convictions; consequently, no-one may be obliged to act or refrain from acting in ways that could serve as a basis for presumptions regarding the existence or otherwise of these convictions. Democratic and secular policies were given weightage. The Court recognised and emphasised the point that extraction of such data from nationals posed a natural challenge of subjectivity and discrimination therefore would run to the very principles of the State.

Mandatory requirement on people entering in public offices to compulsorily divulge their religion by taking oath in presence of everyone was challenged and was held to be violative of European Convention on Human Rights which guarantees “*freedom of thought, conscience and religion*”<sup>69,70</sup>. Compulsory disclosure of one’s religion in any form tantamounted to violation of right to manifest his beliefs as one wishes and right to keep one’s belief secret from public, such disclosure is unconstitutional and would tantamount to violation of basic fundamental rights guaranteed to every individual.<sup>71</sup>

The same line of reasoning can be found in the decision in *Sinan Isik v. Turkey*<sup>72</sup> where the mere presence of religious box on the mandatory identity card for citizens was held as compulsory disclosure of religious beliefs. The court held that the freedom to manifest one’s religion or beliefs had a negative aspect, namely an individual’s right not to be obliged to disclose his or her religion or to act in a manner that might enable conclusions to be drawn as to whether or not he or she held such beliefs. Such requirement or mandate by the state violated its religious neutrality promise to its citizens. According to the court this would lead the State to make assessments on individuals on the basis of their religious convictions resulting in discrimination. The court held that the mere presence of religious box on the identity card or the form required to make one was against the rights of the individuals.

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<sup>67</sup> Julian Baggini, “A Secular State Must be Neutral’ – What does that Mean Exactly?”, *The Guardian*, Feb. 16, 2012, available at: <https://www.theguardian.com/commentisfree/2012/feb/16/what-mean-secular-state-neutral> (last visited on Nov. 15 2019).

<sup>68</sup> *Ibid.*

<sup>69</sup> European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, art. 9.

<sup>70</sup> *Alexandridis v. Greece*, (2008) (not yet reported) App. Nos. 19516/06 ECtHR.

<sup>71</sup> *Supra* note 37.

<sup>72</sup> *Sinan Isik v. Turkey* (2010)1 ECtHR.



In *Dimitras v. Greece*,<sup>73</sup> mandatory disclosure of one's religion in order to be witnesses, complainants or suspects in criminal proceedings in Greece was held unconstitutional. The court reiterated that '*freedom of thought, conscience and religion*',<sup>74</sup> which went concurrently with pluralism, was one of the foundations of a "*democratic society*"<sup>75</sup> and was an essential part of any believer's identity in his religious dimension. Thus, freedom to manifest one's religious beliefs included an individual's right not to be constrained to reveal one's faith or religious beliefs. Hence, '*freedom of thought, conscience and religion*',<sup>76</sup> did not sanction any compulsory requirement on individuals to disclose their religious convictions, and the interference was neither justified nor proportionate to the aim pursued.<sup>77</sup>

Therefore, in a democratic society in the modern world, in which several religions or branches of the same religion coexist within one and the same population,<sup>78</sup> it may become imperative to place restrictions on this freedom in order to reconcile the interests of the various groups to ensure that everyone's beliefs are respected.<sup>79</sup> However, in exercising its regulatory power in this sphere and in its relations with the various religions, denominations and beliefs, the State has a duty to remain neutral and impartial.<sup>80</sup> If the State fails to ensure neutrality, stake preservation of pluralism and the proper functioning of democracy will be at stake. Right to religious beliefs has a negative aspect to be protected by the State i.e. not to be obliged to disclose one's religion that would enable conclusions to be drawn to whether one holds particular beliefs or not.<sup>81</sup>

#### IV Suggestions

Various developed, progressive and leading jurisdictions all over the world have explicitly provided means against the compulsory disclosure of one's beliefs or religion in any manner or form to either state or an individual or society.<sup>82</sup> Thus, guarantying and protecting '*right to*

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<sup>73</sup>*Dimitras v. Greece*, (2010) 18 ECtHR.

<sup>74</sup>*Supra* note 37.

<sup>75</sup>European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, art. 8 and 9.

<sup>76</sup>*Supra* note 37.

<sup>77</sup>*Ibid.*

<sup>78</sup>Manoranjan Mohanty, "Secularism: Hegemonic and Democratic" 24(22) *Economic and Political Weekly* 1219-1220 (1989).

<sup>79</sup>*Supra* note 7.

<sup>80</sup>*Supra* note 9.

<sup>81</sup>*Supra* note 56.

<sup>82</sup>Constituição da República Portuguesa, Constitution of the Portuguese Republic, 1976, art. 41, cl. 3; Constitution Espanola, Spanish Constitution, 1978, n.311, art. 16, cl. 2.

dignity’, ‘right to privacy’, right to freedom of speech and expression’, ‘right to liberty and ‘right to religion’ to keep one’s religious beliefs secret. Some of them are as follows:

- **Poland:**

Poland is the most religious country in the Europe by a recent survey.<sup>83</sup> It’s population majorly comprises of Roman Catholics (87.5% as per 2011 census).<sup>84</sup> To protect Poland from becoming a State identified by only one religion, constitutional measures were provided by the drafters.<sup>85</sup>

Polish constitution counts itself among the most jurisprudentially reasoned and progressive texts. Polish Constitution was adopted in 1997<sup>86</sup> and has incorporated progressive legal protections inspired from other developed jurisdictions. Article 53 of the Polish Constitution provides for ‘Freedom of Religion and faith’<sup>87</sup>. Paragraph 7 of Article 53 of the Polish Constitution provides protection against compulsory disclosure and is as follows:

*“No one may be compelled by organs of public authority to disclose his philosophy of life, religious convictions or belief.”*<sup>88</sup>

- **Germany:**

Germany, the most populous state of Europe (completely lying in Europe)<sup>89</sup> saw the most gruesome cleansing of minorities on the basis of religion in modern era. Around two- third of its population believes in Christianity with a significant portion belonging to various religious minorities and atheists.<sup>90</sup>

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<sup>83</sup>Harriet Sherwood, “Christianity as Default is Gone: The Rise of a non-Christian Europe”, *The Guardian, March 21<sup>st</sup> 2018*, available at: <https://www.theguardian.com/world/2018/mar/21/christianity-non-christian-europe-young-people-survey-religion> (last visited on Nov. 14, 2019).

<sup>84</sup> Statistics Poland, available at: <https://stat.gov.pl/en/national-census/national-census-of-population-and-housing-2011/> (last visited on Nov. 14, 2019).

<sup>85</sup>Kyriaki Topidi, “Religious Freedom, National Identity, and the Polish Catholic Church: Converging Visions of Nation and God” 10(5) *Religions* 293(2019).

<sup>86</sup> The Constitution of the Republic of Poland.

<sup>87</sup> The Constitution of the Republic of Poland, 1997, art. 53.

<sup>88</sup> The Constitution of the Republic of Poland, 1997, art. 53 (7).

<sup>89</sup> Zensus 2011, available at: <https://ergebnisse.zensus2011.de/?locale=en#StaticContent:00,,,>(last visited on Nov. 14, 2019).

<sup>90</sup>Zensus2011, available at: [https://ergebnisse.zensus2011.de/?locale=en#dynTable:statUnit=PERSON;absRel=ANZAHL;ags=00;agsAxis=X;yAxis=RELIGION\\_AUSF](https://ergebnisse.zensus2011.de/?locale=en#dynTable:statUnit=PERSON;absRel=ANZAHL;ags=00;agsAxis=X;yAxis=RELIGION_AUSF) (last visited on Nov. 14, 2019).

Germany as back as in 1919 incorporated legal protections against compulsory disclosure to state.<sup>91</sup> The provisions were borrowed from the Weimar Constitution 1919 in the German Constitution of 1949<sup>92</sup> for preservation of basic human rights and fulfilment of State's duty. Article 136, paragraph 3 of the Weimar Constitution of 1919,<sup>93</sup> which also form part of the current Constitutional Law in the Federal Republic<sup>94</sup> is as follows:

*No person shall be required to disclose his religious convictions. The authorities shall have the right to inquire into a person's membership in a religious society only to the extent that rights or duties depend upon it or that a statistical survey mandated by a law so requires.*

### V Conclusion

Rights and freedoms laid down by the Constitution to the individual, his personality and things associated with his personality are be free from official interference from the State except where a reasonable basis for intrusion exists.<sup>95</sup> In Indian Constitution 'right to privacy' is a fundamental right<sup>96</sup>and safeguards the individual autonomy in making personal choices governing a way of life and the control over the personal information.<sup>97</sup> 'Right to religion' encompasses 'freedom of conscience'<sup>98</sup> and the 'right freely to profess, practise and propagate religion'<sup>99</sup> to every individual and equal entitlement. Religious beliefs come under the internal aspect of the religion of an individual's life and family and his home protected from State intervention.<sup>100</sup>

International precedents from across the globe have dealt with the same questions and have upheld the right to keep one's religious convictions secret. Compulsory disclosure discourages individuals to be associated to a religion, violates 'neutrality principle' and pluralism. In the end, we looked at the examples of the legal protections incorporated by the

<sup>91</sup> Report on International Religious Freedom - Germany, United States Department of State, *Available at:* <https://www.state.gov/documents/organization/269062.pdf> (last visited on November 14, 2019).

<sup>92</sup>Grundgesetz, The Constitution of the Federal Republic of Germany, 1949.

<sup>93</sup>Die Verfassung des Deutschen Reichs, The Constitution Of The German Reich, 1919.

<sup>94</sup>The Constitution of the Federal Republic of Germany, *supra* note 92., art. 140.

<sup>95</sup>*Govind v. State of Madhya Pradesh*, 1975 SCC (Cri) 468.

<sup>96</sup>*Collector of Customs v. Calcutta Motor & Cycle Co.*, AIR 1958 Cal. 682 (687); *Ram Swarup v. State*, AIR 1958 All. 119 (121).

<sup>97</sup>*Supra* note 17; *Justice Puttaswamy*, *supra* note 7.

<sup>98</sup>DD Basu, *Commentary on The Constitution of India* 469 (Lexis Nexis, Wadhwa, Nagpur, 14<sup>th</sup>edn. vol. 1 reprint 2011).

<sup>99</sup>*Ibid.*

<sup>100</sup>Milton R. Konvitz, *supra* note 61.

various developed jurisprudences to protect their citizens from any form of transgression from the state's side.

As the great American President Thomas Jefferson said, an individual's religion is a matter just between man and God and not between man and state<sup>101</sup> therefore, compelling anyone to divulge and explain such connection would be inhumane, immoral and unlawful act to the protected rights given to every individual. Religion, faith or belief of a person is immaterial to the state.<sup>102</sup>

Moreover, disclosure of religious beliefs serves no useful purpose.<sup>103</sup> The State must do away with the column of religion from all its 'forms/declarations' and must refrain from seeking information about the religious beliefs of an individual for all of its secular purposes<sup>104</sup> except for the survey purposes. This would ensure that state fulfils its true responsibilities that are to protect its citizens from any bias or prejudice and upholds basic tenets of constitution like secularism and pluralism which are part of the basic feature of the Constitution.<sup>105</sup>

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<sup>101</sup>*Supra* note 1.

<sup>102</sup> B.P. Jeevan Reddy, J., *S.R. Bommai v. Union of India* (1994) 3 SCC 1.

<sup>103</sup>*Supra* note 36.

<sup>104</sup>*Supra* note 3.

<sup>105</sup>*S.R. Bommai v. Union of India* (1994) 3 SCC 1.