



# RELIGIOUS FREEDOM:

## A GUIDE TO YOUR RIGHTS



# FIJI





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# FREEDOM OF RELIGION AND WORSHIP IN FIJI

## 1. WHAT IS THE RIGHT TO FREEDOM OF RELIGION AND WORSHIP?

The right to freedom of religion is the right to have, adopt, preserve or change your own religion. Closely tied to this right is the right to worship. The right to worship includes the right to believe, profess and practice, individually or collectively, the acts of worship or rituals of your preference. Likewise, people are free to abandon their religion, to not profess religious beliefs, and to refrain from practicing religious acts and rites.

The right to freedom of religion also protects people from being subjected to discrimination, coercion or hostility because of their religious beliefs, as well as the right to not be forced to testify about such beliefs.

## 2. WHAT IS THE RIGHT TO FREEDOM OF BELIEF?

This is a person's fundamental right to follow his or her personal reasoning and convictions and not to be subject to actions that are against his or her deeply held judgements of right and wrong.

## 3. WHAT ARE THE LAWS THAT PROTECT RELIGIOUS FREEDOM?

The Fijian laws that defend religious freedom are:

- Article 4 of the 2013 Constitution which sets out that Fiji is a secular state.

- Article 22 of the 2013 Constitution, which guarantees the right to freedom of religion, conscience and belief.
- Section 19 of the Human Rights and Anti-Discrimination Act 2009 (“HRADA 09”), which makes it illegal for any person to differentiate adversely or harass another person by reason of (among others) religion, opinions or beliefs in various areas, such as employment and education.
- Part 9 of the Employment Relations Act 2007 (“ERA 07”)

#### 4. WHAT IS THE OFFICIAL RELIGION OF FIJI?

The 2013 Constitution declares Fiji to be a secular state, meaning there is no official religion. Short of amending the Constitution, Parliament does not have power to establish or authorise an official religion.

#### 5. WHAT CAN I DO WHEN MY RIGHT TO FREEDOM OF RELIGION AND WORSHIP IS VIOLATED?

**The country is governed by laws and all persons have a duty to uphold the law. Therefore, when your religious rights are violated, do not take the law into your own hands. You have the following lawful means for redress:**

a. The High Court. The High Court is the protector of all fundamental human rights including religious freedom rights. Thus, a person may apply at the High Court for redress if that right is violated. The High Court can make a binding ruling for the protection of freedom of religion.

b. The High Court can also make decisions based on breaches of the ERA 07.

c. Alternative Dispute Resolution (ADR). ADR is preferable when judicial intervention is not possible or desirable. The process includes going through negotiations, mediation, and/or arbitration via mediators, arbitrators, or religious or community leaders.

d. Parliament. Government action could result in a loss of your right to religious freedom and worship. In this case Parliament could be another appropriate forum for resolution of your claim. In order to resolve the violation of your rights this way, you should speak to a Member of Parliament.

e. Human Rights and Anti-Discrimination Commission (HRADC). You may also raise a complaint with the HRADC for investigation and resolution of the violation.



# RELIGION IN THE PUBLIC SQUARE

## 6. CAN I EXPRESS MY RELIGIOUS VIEWS IN PUBLIC?

**Yes.** The right to religious freedom established in the Constitution states that every person has the right, either individually or in community with others, in private or in public, to manifest and practice their religion or belief in worship, observance, practice or teaching.

## 7. CAN I SHARE OR PREACH MY BELIEFS TO OTHERS?

**Yes.** Along with freedom of expression in public and in private, there is a right to share religious beliefs, ideas, thoughts, and opinions with others. Likewise, people can come together to establish a religion, to adhere to an existing religion, or change their religious affiliation. It is worth noting that religious freedoms under the Constitution may be subject to limitations to protect the rights and freedoms of other persons, public order, and prevent public nuisance.

## 8. CAN I BE PART OF A RELIGIOUS ENTITY OR ORGANISATION?

**Yes.** Under the law, people have the right to associate and participate in religious activities as communities, which includes, among other rights: the right to establish places of worship or gathering

for religious purposes; to freely exercise their own ministry; to establish their own internal hierarchy; and to have and direct their own institutes of places of religious instruction and theological studies.

The law does not require religious entities or organisations to accept people into their group as the freedom to disassociate and exclude is another important part of religious freedom.

## 9. WHAT ARE THE GOVERNMENT AUTHORITIES THAT REGULATE RELIGIOUS ENTITIES?

Fiji does not have one government agency overseeing all religious entities and activities.

For suits and holding of land, religious bodies must register a memorial of the names of registered Trustees with the office of the Registrar of Titles under the Religious Bodies Registration Act 1881. This memorial is to be signed by the principal or head of the religious body in Fiji, and at least two of the ministers or priests thereof resident in Fiji (or, if there are fewer than two ministers or priests resident in Fiji, by at least two members of such religious body).



# RELIGIOUS FREEDOM IN THE WORKPLACE

## 10. WHAT INFLUENCE DOES FREEDOM OF RELIGION HAVE IN THE RELATIONSHIP BETWEEN AN EMPLOYER AND AN EMPLOYEE?

The ERA 07 and HRADA 09 each have provisions protecting workers from discrimination based on religion.

The HRADA 09 (section 19) makes it illegal for any person to differentiate adversely or harass any person by reason of religion, opinions or beliefs, in employment or employment-related activities (among other things).

The ERA 07 makes it unlawful for employers to discriminate in employment matters (such as hiring, working conditions, termination, retirement) and in pay based on (among other things) religion, culture and conscience.

Further, article 22 of the Constitution has the effect of preventing employers from imposing religious obligations on its employees or from compelling employees to act in any matter contrary to that person's religion or belief.

General limitations apply to all of the above.

## 11. WHAT IS THE RELATIONSHIP BETWEEN RELIGIOUS FREEDOM AND WORKING HOURS?

There is no particular relationship between religious freedom and working hours in Fiji.

Religious public holidays in Fiji include: Good Friday, Easter Monday, Christmas Day, Prophet Mohammed's Birthday, and Diwali.

Employees should discuss situations which could potentially impact religious observance and/or prayer with their employers, and employers should work to accommodate employees' religious beliefs and the expression of their beliefs where possible. This is a balancing act that is best done in consultation with all employees.

## 12. CAN I WEAR RELIGIOUS CLOTHING TO WORK OR REFUSE TO WEAR PART OF A UNIFORM BECAUSE OF MY RELIGIOUS BELIEFS?

While these rights are not specifically protected by law, the Constitution provides for freedom of religion and the ERA 07 and HRADA 09 prohibit religious-based discrimination in employment. Employees should notify their employers in a timely manner of any needs or special circumstances that arise due to religious beliefs or practices. This allows the employer to be aware of such circumstances and honour the religious freedom of employees more adequately.



# RELIGIOUS FREEDOM IN SCHOOLS

## 13. CAN THERE BE RELIGION CLASSES IN PUBLIC SCHOOLS?

**Yes.** Section 11 of the Education Act 1966 states that provision for religious instruction may be made in any school. However:

- Teachers shall not be compelled to give or be present at such instruction against the dictates of their conscience; and
- If the parent of any pupil requests that that pupil be wholly or partly excused from attendance at religious instruction in the school, the pupil shall be so excused.

## 14. IS IT MANDATORY FOR STUDENTS TO ATTEND RELIGIOUS EDUCATION OR RELIGIOUS OBSERVANCES IN THEIR SCHOOLS?

**No.** Parents of pupils may request that the pupil be wholly or partly excused from attendance at religious instruction in a school.

Further, article 22 of the 2013 Constitution states that every person has the right not to be compelled to take an oath or take an oath in a manner that is contrary to their religion or belief or requires the person to express a belief that the person does not hold.

## 15. CAN STUDENTS REFRAIN FROM ATTENDING SCHOOL OR SCHEDULED SCHOOL ACTIVITIES BECAUSE OF THEIR RELIGIOUS BELIEFS?

Section 22 of the 2013 Constitution gives the right to every person, including students, not to be compelled to act in any manner that is contrary to the person's religion or belief.

Fiji has compulsory education for students for twelve years. This requirement cannot be waived for reasons of religious belief.

Absences from school should be justified by a written note from a parent or guardian. If a school is regularly holding activities that are contrary to a student's religion or belief, this may represent a constitutional breach or breach of rights and should be raised with the school. If this concern cannot be resolved at that level, it can potentially be escalated to one of the forums highlighted at 5, above, if appropriate.

## 16. CAN STUDENTS MODIFY SCHOOL UNIFORMS BECAUSE OF THEIR RELIGIOUS BELIEFS?

There is no explicit law addressing this, but under the Constitution and the HRADA 09, schools will not be able to prevent students from modifying their school uniforms to conform with their beliefs. For example, a school cannot prevent a Muslim student from wearing a hijab, or conversely, compel a non-Muslim student to wear one if that conflicts with their own beliefs.



## MILITARY AND PUBLIC SERVICE

### 17. IS THERE MANDATORY MILITARY OR PUBLIC SERVICE, AND IF SO, ARE THERE ANY RELIGIOUS EXEMPTIONS?

There is no mandatory military or public service in Fiji.

## RELIGION AND JUSTICE

### 18. CAN I REFRAIN FROM TAKING AN OATH IN LEGAL PROCEEDINGS BECAUSE OF MY RELIGIOUS BELIEFS?

**Yes.** When you appear in court as a witness, you are entitled under the law to abstain from taking an oath. You may be required to make a (non-religious) affirmation instead.

### 19. CAN JUDGES MAKE DECISIONS BASED ON THEIR RELIGIOUS BELIEFS?

**No.**

### 20. IS THERE ANY PROTECTION FOR STATEMENTS MADE IN CONFIDENCE TO RELIGIOUS LEADERS?

There is no legislation in Fiji that provides any such protection.

This has not been tested in the Courts. Thus, it is possible that there may be protections at Common Law.



# RELIGIOUS FREEDOM IN INTERNATIONAL LAW

In addition to the protection of religious freedom in each country, there are also different international instruments or legal documents that protect this right. In 1948, the right to freedom of religion and conscience was introduced by the Universal Declaration of Human Rights. Since then, there have been different covenants and conventions that establish and develop this right at the international level.

## WHAT PROTECTIONS DO I RECEIVE UNDER INTERNATIONAL LAW?

International instruments establish that all people are equal before the law, regardless of their religion. These laws also state that no one may be discriminated against on the basis of religion as this is an offense against human dignity and is condemned as a violation of human rights and fundamental freedoms.

## WHAT FREEDOMS DO THESE INTERNATIONAL INSTRUMENTS INCLUDE?

- **Freedom of thought, conscience, and religion.**

This freedom includes freedom of thought on all matters, freedom to hold beliefs, freedom of commitment to religion or belief, and freedom of personal conviction. It does not allow any

limitations on the freedom to have or adopt a religion or belief of one's choice. No one can be compelled to reveal his thoughts or adherence to a religion or belief.

- **Freedom to change religion or beliefs.**

All people have the right to leave their own religion or belief and to adopt another, or to remain without any belief at all. The use of physical force, penal sanctions, policies, or practices to force a person to adopt, change, or maintain a certain religion or belief is prohibited.

- **The freedom to manifest and profess your own religion or beliefs, individually and collectively, both publicly and privately.**


Everyone enjoys the right to peacefully manifest and share one's religion or belief with others, without being subject to the approval of the State or another religious community. This right is not limited to members of registered religious communities. Moreover, registration should not be compulsory for religious communities or organizations in order to enjoy their rights.

- **The freedom to manifest your religion through teaching, practice, worship, and observance.**

- **The freedom to manifest religion or belief in worship, observance, practice and teaching includes a broad range of acts:**

- Worship and observance extends to ritual and ceremonial acts giving direct expression to belief, as well as various practices integral to such acts, including the building of places of worship, the use of





ritual practices and objects, the display of symbols, and the observance of holidays and days of rest.

- Practice and teaching of religion or belief includes acts integral to the conduct by religious groups of their basic affairs, such as the freedom to choose their religious leaders, priests and teachers; the freedom to establish seminaries or religious schools; and the freedom to prepare and distribute religious texts or publications.
- **The freedom of parents and guardians to have their children or pupils receive religious or moral education that is in accordance with their own convictions.**

Children enjoy the right to have access to religious education in accordance with the wishes, religion, or convictions of their parents or guardians. Likewise, children should not be forced to receive religious instruction that is contrary to the wishes of their parents or guardians. In accordance with the principle of the best interests of the child, the State should encourage an atmosphere of religious tolerance in schools and promote respect for pluralism and religious diversity.

### **ARE THERE ANY LIMITATIONS TO THESE FREEDOMS?**

**Yes.** There are some limitations that are given by law and their purpose is to protect public safety, order, health, morals, and the fundamental rights and freedoms of others. However, restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner.

## **FINDING COMMON GROUND**

As people, we have the freedom to choose, share, and live what we believe. We generally hold our religious freedoms and beliefs dear, as guiding principles in our lives. Just as we value our own religion and beliefs, we should highly value all people's rights to religious freedom and belief. Knowing the importance of these freedoms, how can we share the principles of freedom of religion in our communities? Is there a way to find common ground when we interact with people holding different beliefs?

The following strategies may allow you to find common ground in your community:

### **BECOME INFORMED**

Before you can protect the religious beliefs of yourself or others, it is important to be informed and understand the rights and basic principles of freedom of religion. This brochure contains some relevant information with regards to your rights and the basics of freedom of religion. Seek to stay aware of changes in religious freedoms by watching the news for developments that may affect these freedoms.

### **LISTEN TO ALL SIDES**

Listen and show concern for other people's religions and sincere beliefs. Even if you disagree with the beliefs or convictions of another, focus on seeking to understand and to be respectful of his or her



perspective. People's words, beliefs and actions are influenced by many factors. You should be sensitive to the feelings of others as you explain and pursue your positions, and you should ask that others not be offended by your sincere religious beliefs.

## **PRACTICE CIVILITY**

In order to live as a community with differences of opinion and beliefs, it is critical to know how to debate and not just what to debate. Your communications on controversial topics should not be contentious. All people should treat one another with civility and respect while striving to be accurate and fair. When your positions do not prevail, you should accept unfavourable results graciously and civilly. Remember to reject persecution of any kind, including persecution based on race, ethnicity, religious belief or nonbelief, and differences in sexual orientation.

## **PROMOTE TOLERANCE**

People must be able to peaceably live together while having differences. To live peaceably does not mean you need to abandon your positions; rather, it means you should strive to live peacefully with others who do not share your values or accept the teachings upon which they are based. Strive to teach values and standards of behaviour to those around you without having them distance themselves or show disrespect to any who are different.

## **BUILD TRUSTED RELATIONSHIPS**

Build trusted relationships in your community among people of diverse opinions. You will be better able to find ways to protect the rights of others in a way that benefits everyone as you get to know more people and as those people come to understand each other's beliefs. Concentrate on what you have in common with your neighbours and fellow citizens. Then, as you work together, speak out for religion and the importance of religious freedom.

