

“Know Your Rights”

A Guide Produced by the Hindu American Foundation



**Edited by
Sujit Raman**

We are a nation whose strength and unity derives from its diversity. As our Great Seal proclaims: *E Pluribus Unum* (“out of many, one”). This is a concept that mirrors beautifully one of Hinduism’s core teachings, that Truth is One, but is manifested in many different ways.

Like Hinduism itself, Hindu Americans constitute a growing and increasingly visible piece of America’s religious mosaic. And like so much of what the Hindu American Foundation (HAF) does, this project aims to make the United States a stronger nation through education. HAF’s goal in publishing this guide is to make *all* Americans’ freedoms more secure by educating its constituents about their legal rights and duties. Some of these rights derive from the fundamental law of the Constitution; others flow from the actions of a State legislature or of the Congress. Whatever their source, these rights guarantee every American’s *liberty*; and they are enjoyed by all, *equally*.

This guide is a product of the *pro bono* efforts of lawyers associated with Hogan & Hartson, LLP, an international law firm based in Washington, D.C. The lawyers who volunteered their valuable time and expertise to this project include Sonja Ralston Elder, Eric Gillman, Geoffrey King, Philip Kovnat, and Laura Schabinger.

As you will see, these pages provide a good deal of introductory information regarding religious freedom and related issues in the United States. Legal references and citations are provided for those who wish to learn more; none of this material is meant to be comprehensive, however, nor should it be relied upon as legal advice. Nonetheless, the hope is that discussions of subjects ranging from religion in the public schools, to religion in the workplace, to bias crimes and other criminal justice issues, will inform your understanding of the important laws and values that make the United States the most successful experiment in pluralism and democracy the world has known.

If you have further questions or concerns, or would like to provide feedback, please contact HAF (at 301-770-7835, or via the internet at http://www.hinduamericanfoundation.org/contact_us). You can also learn more by consulting any of the many other dedicated organizations whose materials are referenced in the last chapter of this pamphlet.

A condensed version of this guide is available for quick reference and can also be downloaded from HAF’s website.

Sujit Raman
Editor

** Sujit Raman is a lawyer who lives in Washington, D.C. The views presented here are exclusively those of HAF, do not represent the views of any particular individual, and should not be construed as legal advice.*

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Chapter 1: Religion in Schools

Because they are operated by the government and because children spend so much time attending them, the American public schools are the place most people probably encounter the application of their First Amendment freedoms. Public schools, including public colleges and universities, must follow the First Amendment's prohibitions against establishing religion and interfering with the free exercise of religion. This applies to all of a school's activities including the curriculum, extra curricular activities, transportation, and the distribution of school resources.

It is unconstitutional for a public school officially or unofficially to preference one religion over others, or to preference religion over irreligion.¹ The purpose of the public schools is to educate children—not to promote a particular set of religious beliefs or activities. Although learning about religions may be an essential element of a well-rounded education, it is impermissible for a public school to endorse any religion. Public schools must balance the prohibition on leading children in prayers and religious ceremonies against the requirement of respecting each child's right to practice his or her own religion. Additionally, schools must protect children from the coercive attempts of others to religiously indoctrinate students in the academic environment.

What the First Amendment prohibits in public schools:

- A school may not post the Ten Commandments or other religiously motivated texts in classrooms.²
- A school or teacher may not require students to recite the Pledge of Allegiance.³
- A school may not include curriculum that endorses religion, such as the teaching of “intelligent design,” a religious philosophy, as an alternative to the scientific theory of evolution.⁴
- A school cannot invite clergy to give prayers at important student events like graduation.⁵
- A school cannot allow a peer-selected student to offer a prayer over the public address system at a high school football game.⁶
- A school official or student may not read scripture verses or prayers as part of the morning announcements either over the public address system or in the classroom.⁷

¹ Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819 (1995).

² Stone v. Graham, 449 U.S. 39 (1980).

³ W. Va. State Bd. of Educ. v. Barnette, 319 U.S. 624 (1943).

⁴ Kitzmiller v. Dover Area Sch. Dist., 400 F.Supp.2d 707 (M.D. Pa. 2005).

⁵ Lee v. Weisman, 505 U.S. 577 (1992).

⁶ Santa Fe Indep. Sch. Dist. v. Doe, 530 U.S. 290 (2000).

⁷ Wallace v. Jaffree, 472 U.S. 38 (1985).

- A school may not prohibit a student from engaging in non-disruptive, personal prayer in the cafeteria before a meal.⁸
- A teacher may not berate a student in front of the class because he does not share the faith of the teacher and the rest of the class.⁹ Such incidents may also violate the child’s right under some State laws to attend school free of harassment.¹⁰
- If a school allows student clubs to meet on campus after school, it cannot deny a religiously oriented student club that same opportunity.¹¹
- A school that has a no-hats policy cannot prohibit some students from wearing religious head-coverings if it makes exceptions to the policy for other students.¹²

What the First Amendment allows in schools:

- Schools may prohibit students from engaging in religious activities that disrupt the learning environment.¹³
- Schools may require students to attend sexual education and health courses and are not required to provide exemptions for students whose religious beliefs are offended by the course.¹⁴
- Schools may offer and even require students to take courses on world religions that include learning to identify the major holidays, traditions, and beliefs of various religions so long as the course does not teach that one religion is “correct.”¹⁵
- A music teacher may include religious songs in a choral repertoire and an art or history teacher may teach about religious paintings so long as there is a non-religious educational purpose to the music or art. Essentially, students are not prohibited from learning about the art, music, and architecture of the western

⁸ See id.

⁹ U.S. Dep’t of Justice, Guidance on Religious Discrimination, <http://www.usdoj.gov/crt/religdisc/religionpamp.htm>

¹⁰ See L.W. v. Toms River Regional Sch. Bd. of Educ., 886 A.2d 109 (N.J. Super. Ct. App. Div. 2005) (applying the hostile work environment standard to a claim by a student based on peer harassment).

¹¹ Good News Club v. Milford, 533 U.S. 98 (2001).

¹² U.S. Dep’t of Justice, Guidance on Religious Discrimination, <http://www.usdoj.gov/crt/religdisc/religionpamp.htm>

¹³ Bannon v. Sch. Dist., 387 F.3d 1208 (11th Cir. 2004); DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ., 196 F.3d 958 (9th Cir. 1999).

¹⁴ Leebaert v. Harrington, 332 F.3d 134 (2d Cir. 2003).

¹⁵ Stone, 449 U.S. at 42; see Sch. Dist. of Abington Tp., Pa. v. Schempp, 374 U.S. 203, 225 (1963) (“Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.”).

European Renaissance even though its subject matter is almost exclusively religious.¹⁶

- States may offer vouchers for private school tuition, which parents may spend at religious schools, so long as the program is motivated by secular goals and there are non-religious schools available.¹⁷
- A State may allow or prohibit students from using State scholarships to study theology at private colleges.¹⁸ Many States have laws prohibiting state money from being used to support religion; these laws are constitutional.

What to do:

If you feel your child has been discriminated against at school because of his or her religion or that your child's public school is violating the First Amendment, here are some things you can do:

- Identify the offender: was it another student, a teacher, an administrator, or the curriculum?
- If the problem is with other students harassing your child, talking to the teacher, the principal, or another school administrator like a counselor or psychologist may be the best course of action. Most school administrators and teachers aim to follow the law and keep students safe from all kinds of harassment, and they need your help to identify the problems.
- Help educate others about your religion. If the problem is with a teacher or administrator, it may be that he or she is unaware that what he or she is doing hurts your child's religious freedom. For example, if your religion prohibits the celebration of secular holidays like Thanksgiving and birthdays, a teacher who is unaware may ask your child to join in class activities about those holidays in an attempt to foster your child's social development rather than as an act of hostility to your religion. In such a case, explaining your family's religious practices to the teacher may go a long way towards resolving the issue. The more people know about diverse religious beliefs, the more tolerant they are likely to be, and teaching your child's teacher about your religion may help him or her be a better teacher to your child and help other students to be more understanding.

¹⁶ See Illinois ex rel. McCollum v. Bd. of Educ., 333 U.S. 203, 236 (1948) (Jackson, J., concurring) (noting that the study of religiously-inspired material can, in the correct setting, be made a part of a secular educational program: "Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view"); Bauchman for Bauchman v. West High School, 132 F.3d 542 (10th Cir. 1997) (upholding dismissal of an Establishment Clause claim over the religious music sung in the school choir).

¹⁷ Zelman v. Simmons-Harris, 536 U.S. 639 (2002).

¹⁸ Locke v. Davey, 540 U.S. 712 (2004).

- If the teacher or administrator is purposefully endorsing religion or being hostile towards your family's religion, you will need to consider both administrative and legal options for remedying the situation. In many cases, talking to the principal about a teacher's inappropriate behavior can resolve the issue. In others, you may need to file a complaint against the teacher; each district has a different process for doing this and your local school board's policy manual should explain how.
- Before filing a formal complaint against a teacher or administrator, you may want to consider how hostile the reaction from the school community will be. If you suspect it will be severe, you might want to first find out whether you can request that your child be reassigned to another school or classroom pending resolution of the matter.
- If the problem is one of school policy or curriculum, a lawsuit may be appropriate, and you should contact a lawyer for an assessment of your situation. Keep in mind that while some lawsuits are settled quickly with little fanfare, other can take many years and be very contentious. Many of the children at the heart of foundational civil rights cases in schools suffered serious backlash from their teachers and peers because of the lawsuit, even if they were ultimately victorious in court.
- Consider what community resources you have available to support you in a challenge to school policy. For example, the Hindu American Foundation was instrumental in securing changes to a California history and culture textbook that presented Hinduism in a negative light. Organizations such as HAF may be able to help negotiate a less contentious resolution of the policy issue with the school board.

Legal resources:

- If you believe that you or your child has been denied access to an educational program or otherwise discriminated against by a school operated by a State or local government, you can contact the U.S. Department of Justice Civil Rights Division's Educational Opportunities Section toll free at (877) 292-3804, or write to:

Educational Opportunities Section
 PHB, Civil Rights Division
 U.S. Department of Justice
 950 Pennsylvania Ave., N.W.
 Washington, D.C. 20530

Further information is available at www.usdoj.gov/crt/edo

- The American Civil Liberties Union frequently handles religious freedom cases dealing with the public schools. You can find your local affiliate here: <http://www.aclu.org/affiliates/>
- The Becket Fund for Religious Liberty also litigates cases regarding religion and the public schools. You can learn more about this organization here: <http://www.becketfund.org/index.php>

- Americans United for the Separation of Church and State also litigates cases concerning religion and the public schools. You can learn more about their views here: <http://www.au.org/issues/religion-in-public-schools/>

Chapter 2: Religion in the Workplace

Title VII of the Civil Rights Act of 1964 prohibits employment discrimination on the basis of race, color, religion, and national origin (among other categories).¹⁹ It is illegal for an employer to refuse to hire or promote a person or to fire him or her because of the person's race, color, religion, or national origin.²⁰ It is also illegal for an employer to allow a hostile work environment, which is a situation that unreasonably interferes with the employee's ability to perform well at work or creates an intimidating, hostile, or offensive work environment.²¹ A person's co-workers, superiors, clients, or others in the workplace can create a hostile work environment through their comments and actions like slurs, jokes, and other forms of ridicule; persistent, "unwelcome" proselytizing of subordinates or co-workers; and any "mandatory" religious activity in the workplace.²² To be illegal, the hostility must be focused on a protected characteristic such as race or religion. Furthermore, an employer may not retaliate against an employee who complains about workplace discrimination or harassment by firing, demoting, or otherwise adversely affecting him or her.²³

Title VII also requires that employers provide reasonable accommodations for employees' religious practices, such as Sabbath observance.²⁴ An accommodation is reasonable if it would not be an undue hardship for the employer.²⁵ That is, an employer must allow an accommodation for an employee for religious practice if doing so imposes no more than ordinary administrative costs.²⁶ Employers do not, however, have to violate the seniority terms of a labor contract to accommodate an employee's religious observance.²⁷ Employers are also not required to accommodate an employee's religious beliefs if it would result in the creation of a hostile or harassing environment for other employees.²⁸

Title VII applies only to employers with 15 or more employees.²⁹ Religious employers, such as temples, can be exempt from parts of Title VII and may consider an applicant's religion

¹⁹ See generally 42 U.S.C. §§ 2000e et. seq.

²⁰ 42 U.S.C. § 2000e-2(a); Wahi v. Northern Trust Corp., 2002 WL 1769983 * 5 (N.D. Ill. 2002) (rejecting defendant corporation's summary judgment motion with respect to Hindu plaintiff's claim of religious discrimination and allowing the case to go to a jury).

²¹ Fed. Comm'n Comm'n, Understanding Workplace Harassment, <http://www.fcc.gov/owd/understanding-harassment.html>

²² See Weiss v. United States, 595 F. Supp. 1050, 1056-57 (E.D Va. 1984); Venters v. City of Delphi, 123 F. 3d 956, 972-74 (7th Cir 1997); Young v. Southwestern Savings and Loan Ass'n., 509 F.2d 140, 142 (5th Cir 1975); Panchoosingh v. General Labor Staffing Services, Inc., 2009 WL 961148 * 6 (S.D. Fla 2009) (involving successful demonstration by Hindu plaintiff of *prima facie* case of religious discrimination under Title VII).

²³ 42 U.S.C. § 2000e-3(a)

²⁴ 42 U.S.C. § 2000e(j) (defining "religion" to include religious practices unless accommodation would be burdensome on the employer's business).

²⁵ Id.

²⁶ Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 84 (1977).

²⁷ Id. at 79-81.

²⁸ Peterson v. Hewlett-Packard Co., 358 F.3d 599 (9th Cir. 2004).

²⁹ 42 U.S.C. § 2000e(b).

when hiring those who perform religious work (such as priests and teachers) but not when hiring support staff like secretaries.³⁰ Some States also have human rights and religious freedom laws that extend broader protections against religious discrimination.

Examples of religious discrimination:

- An employee does not have the right to post offensive or harassing messages in the workplace even if they are motivated by the employee's religious beliefs.
- When an employee cannot work on a particular day for religious reasons, it is usually a reasonable accommodation for the employer to allow the employee to switch shifts with another willing employee, to allow the employee to use sick, vacation, or floating holiday time, or to reassign the employee to a different job that is substantially similar.³¹
- Within certain limits, an employee pharmacist may not be fired for refusing to dispense birth control pills when his religion prohibits him from so doing.³²
- An employer may not require employees to attend religious devotional services at work even if some business-related activities happen at the meetings.³³
- A hostile work environment exists where a supervisor insults an employee and mocks his religious beliefs, and threatens him with violence.³⁴
- A hostile work environment may exist where a supervisor or a co-worker continually preaches to employees regarding their prospects for salvation.³⁵
- An employee cannot be fired for insisting that his employer order his co-workers to remove photographs of nude women from the collective work area when viewing the photographs violated the employee's religious beliefs.³⁶

What to do:

If you think you are the victim of religious discrimination in the workplace, there are a few simple steps you should follow.

³⁰ See 42 U.S.C. § 2000(e-1)(a); International Union, United Auto., Aerospace & Agric. Implement Workers of Am. v. Johnson Controls, 499 U.S. 187 (1991).

³¹ See Trans World Airlines v Hardison, 432 U.S. 63 (1977).

³² Menges v. Blagojevich, 451 F. Supp. 2d 992 (C.D. Ill. 2006).

³³ EEOC Decision No. 72-0528 (1971).

³⁴ Johnson v. Spencer Press of Maine, Inc., 364 F.3d 368 (1st Cir. 2004).

³⁵ Tillery v. ATSI, Inc., 242 F. Supp. 2d 1051 (N.D. Ala. 2003).

³⁶ See Lambert v. Condor Mfg., Inc., 768 F. Supp. 600, 604 (E.D. Mich. 1991).

First, keep a record of everything that has happened: who did or said what, where and when it happened, who witnessed the event, and what you did about it. Having this information available will be useful later on if you have to file a complaint.

Second, report the incident to your supervisor or your company's human resources department. Many companies have complaint procedures in place to deal with incidents of harassment and discrimination. If your company has such procedures in place, try to follow them. In the mean time, try not to let the incident affect your job performance—if you are later fired, you will have a harder time proving that you were fired for religious reasons if your performance deteriorates than if your performance remains good.

Third, if the problem persists, your company does nothing, or the discrimination resulted in you not being hired for a job, you can file a charge with the federal Equal Employment Opportunity Commission or your State's equivalent bureau. You must file a charge with the EEOC and complete their complaint resolution process before you can file a lawsuit. To preserve your rights under the law, you must file the charge within 180 days of the violation. You can file a charge at your local EEOC office or you can submit information online (see <https://egov.eeoc.gov/eas/>) and an EEOC agent will contact you to follow up about filing a charge. To file, you need the following information:

- Your name, address, and telephone number;
- The name, address, and telephone number of the employer, employment agency, or union that is alleged to have discriminated, and number of employees (or union members), if known;
- A short description of the alleged violation (the event that caused the complaining party to believe that his or her rights were violated); and
- The date(s) of the alleged violation(s).

For employers:

As an employer, it is critical that you attempt to foster a work environment free of discrimination. A good way to start is to adopt a nondiscrimination policy and publicize it to your employees. This lets everyone know that you will not tolerate discrimination or harassment in the workplace. If an employee does come to you with a complaint, take it seriously, investigate the matter, and do what you can to resolve the issue and prevent it from recurring. Remember to keep good records of your actions as they may be essential to your defense in an EEOC investigation or lawsuit.

It may also be helpful to set up an objective system for making hiring and promotion decisions: how much experience is required, what type of training does an applicant need, what skills must an applicant demonstrate? Applying this system when you make personnel decisions can help you be objective and ensure that you are not being influenced by the personal preferences we all have in the backs of our minds.

In addition to Title VII, there are a number of other employment laws you must follow as a business owner. These includes complying with the tax code by withholding income taxes from your employees' earnings, ensuring that all your employees are legally eligible to

work,³⁷ paying the minimum wage, and obeying child labor restrictions.³⁸ There are also a number of other federal statutes that prohibit employment discrimination, including those related to age³⁹ and disability.⁴⁰ The legal environment of running a business is complex, and you should consider consulting an attorney for guidance when establishing your business and periodically as your business grows or changes.

As a business owner, you also need to be aware of your responsibilities in the broader community. In addition to preventing workplace harassment and discrimination, you must be proactive in preventing your employees from breaking the law in the conduct of your business. For example, it is illegal to sell certain household products to someone who tells the seller that he intends to use the products to make methamphetamine. In a recent sting operation in Georgia, 49 store owners, many of them South Asian, were arrested after they or their clerks sold cold pills, camping fuel, and matchbooks to undercover officers who told the clerks of their plans to make meth. These business owners faced the prospect of serious penalties (including jail time and fines) even though they may have been unaware of the law and did not personally sell the products. This is only one of many examples that underscore the importance of being informed of the law and effectively supervising one's employees to ensure compliance with the law. Establishing a positive, proactive relationship with local law enforcement may help you stay informed about what you can and cannot do and how to be a responsible corporate citizen.

For Further Information:

The EEOC provides a great deal of useful and important information regarding issues related to discrimination in the workplace.

- There is a webpage focusing on issues specific to Muslims, Arabs, Sikhs, and those perceived as such: <http://www.eeoc.gov/facts/backlash-employer.html>
- There is also an EEOC page for small business owners: <http://www.eeoc.gov/employers/smallbusinesses.html>

The Anti-Defamation League has produced a concise summary regarding religious accommodation in the workplace:

http://www.adl.org/religious_freedom/resource_kit/religion_workplace.asp

If you believe a State or local government has violated your rights under Title VII, you can call the U.S. Civil Rights Division's Employment Litigation Section at (202) 514-3831, or write to: Employment Litigation Section, Civil Rights Division, U.S. Department of Justice,

³⁷ U.S. Dep't of Labor, Employment Law Guide,
<http://www.dol.gov/compliance/guide/aw.htm#who>

³⁸ U.S. Dep't of Labor, Youth & Labor,
<http://www.dol.gov/dol/topic/youthlabor/agerequirements.htm>

³⁹ Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et. seq.*

⁴⁰ Americans with Disabilities Act, 42 U.S.C. §§ 12101 *et. seq.*; *see also* Dep't of Labor, Employment Checklist for Hiring Persons with Disabilities,
<http://www.dol.gov/odep/pubs/ek96/chcklist.htm>

950 Pennsylvania Ave., N.W., Washington, D.C. 20530. Further information is available at www.usdoj.gov/crt/emp

Chapter 3: Public Accommodations and Facilities

Title II of the Civil Rights Act of 1964 prohibits discrimination based on religion in public accommodations.⁴¹ This statute outlaws discrimination in hotels, motels, restaurants, theaters, and all other public accommodations engaged in interstate commerce. It also applies to discriminatory actions in any way supported by “state action,” whether or not the accommodation is involved in interstate commerce.

What is a Public Accommodation?

Places of public accommodation include, but are not limited to, hotels, theaters, restaurants, shopping malls, sports arenas, convention centers, hospitals, libraries, parks, and convenience stores.⁴²

What is NOT included:

- Title II does not apply to buildings containing fewer than five rooms for rent and actually occupied by the proprietor of the establishment.
- Title II does not apply to “private clubs.”

What Counts as Discrimination Based on Religion?

A public accommodation discriminates based on religion whenever it selectively denies equal treatment to a member of the public *because of* the religion he or she practices. Here are a few illustrative examples:

- *A municipality rents out space in its town hall to local groups for meetings and performances. A local Hindu group wants to rent the hall in order to hold a Diwali festival. The town tells the group that no religious activities may take place in the public town hall.*
- *A group of men go to a restaurant wearing bracelets and necklaces with religious significance. The owner refuses to seat the men until they remove their jewelry, saying that the restaurant has a policy against religious jewelry or dress.*
- *A hotel located on an interstate highway refuses to rent a Hindu family a room. The owner, a devoted Christian, says that he rents rooms only to “good Christian people.”*

All three of these examples are likely violations of federal law. The first two scenarios are examples of discrimination in favor of secular endeavors over religious ones. The last

⁴¹ 42 U.S.C. §2000a.

⁴² *Id.* at §2000a(b).

scenario is an example of denominational discrimination. Both kinds of discrimination are impermissible under Title II of the Civil Rights Act.

Who can sue?

Title II provides a private right of action for victims of discrimination in public accommodations. In other words, individuals can file suit themselves to enforce their rights under Title II if they believe they have been subject to discrimination based on their religion. Individuals may also bring suit under other federal statutes that may provide remedies for discrimination in places of public accommodation. Persons bringing claims under Title II may also be eligible to receive “attorneys fees” if they are successful (covering the cost of reasonable legal representation for their claim).

In addition, The United States Department of Justice has authority to bring a lawsuit under Title II when there is reason to believe that a person or establishment has engaged in a pattern or practice of discrimination in violation of the law, and the issue is of general public importance. However, the Department can only obtain injunctive relief (i.e. have the court order the owners of the public accommodation to stop discriminating on the basis of religion), and cannot seek monetary damages for discriminatory practices.

State Human Rights Statutes:

In addition to Title II, several States have enacted Human Rights statutes that provide an additional source of legal protection from religious discrimination. These statutes commonly contain provisions outlawing discrimination in public accommodations, as well as in employment and housing. Robust human rights statutes exist in a number of States and territories, including California, New York, New Jersey, and the District of Columbia.

Note to Owners:

Title II applies to all public accommodations “engaged in interstate commerce”. This phrase covers most hotels, restaurants, theaters, shopping malls, convention centers, hospitals, libraries, and parks. Even public accommodations that seem to be wholly local have been held to “substantially affect” interstate commerce and thus fall under the coverage of the Title II. If you serve interstate travelers, sell products that have moved in interstate commerce, or if you run any kind of business that affects the economy, then you are likely participating in interstate commerce, and are thus governed by the provisions of Title II.⁴³ Chances are, if you are the owner of a public accommodation, you are engaged in interstate commerce, and are not permitted to discriminate on the basis of religion.

Whom to Contact:

The Housing and Civil Enforcement Section of the Civil Rights Division enforces Title II and other federal statutes for the U.S. Department of Justice. The Section’s mailing address is:

⁴³ 42 U.S.C. §2000a(c).

U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Housing and Civil Enforcement Section
Northwest Building
Washington, D.C. 20530

The Section can also be contacted toll-free by phone at (800) 896-7743.

Chapter 4: Housing

The federal Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended and codified at 42 U.S.C. § 3601, *et seq.*) outlaws discrimination in the sale, rental, and financing of homes based on race, color, national origin, religion, sex, familial status, and handicap or disability.⁴⁴ Specifically, the Act prohibits both overt discrimination against members of a particular religion and more subtle actions, such as zoning ordinances designed to limit the use of private homes as places of worship.⁴⁵

Not all housing is covered by the Fair Housing Act. For example, in certain circumstances, the Act exempts (1) owner-occupied buildings with no more than four units, (2) single-family housing sold or rented without use of a broker, and (3) non-commercial housing operated by organizations and private clubs that limit occupancy to members.⁴⁶ (Thus, a Hindu temple that provides housing for its priests is likely not to be in violation of the law).

Department of Housing & Urban Development (HUD)

The U.S. Department of Housing & Urban Development (HUD) plays a major role in the enforcement of our nation's fair housing laws; this agency investigates individual complaints of housing discrimination. As HUD states on a 'know your rights' section of its website, the Fair Housing Act prohibits various discriminatory acts in the sale and rental of housing. People seeking housing, as well as those providing housing (including landlords and others involved in commercial real estate) should keep the following importance principles in mind:

It is illegal to take any of the following actions based on race, color, national origin, religion, sex, familial status, or handicap:

- Refuse to rent or sell housing
- Refuse to negotiate for housing
- Make housing unavailable
- Deny a dwelling
- Set different terms, conditions or privileges for sale or rental of a dwelling
- Provide different housing services or facilities
- Falsely deny that housing is available for inspection, sale, or rental
- For profit, persuade owners to sell or rent (blockbusting); or
- Deny anyone access to or membership in a facility or service (such as a multiple listing service) related to the sale or rental of housing.

HUD's website points out that, with respect to **mortgage lending**, it is illegal for anyone to discriminate based on the above factors, in:

⁴⁴ See generally, U.S. Dep't of Housing and Urban Development's "Fair Housing—It's Your Right" website, available at: <http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm>

⁴⁵ See U.S. Dep't of Justice Civil Rights Division's website for the Housing & Civil Enforcement Section, available at: http://www.justice.gov/crt/housing/housing_coverage.php#relig

⁴⁶ HUD "Fair Housing—It's Your Right" website, *supra* note 44.

- Refusing to make a mortgage loan
- Refusing to provide information regarding loans
- Imposing different terms or conditions on a loan, such as different interest rates, points, or fees
- Discriminating in appraising property
- Refusing to purchase a loan; or
- Setting different terms or conditions for purchasing a loan.

In addition, it is illegal for anyone to threaten, coerce, intimidate or interfere with anyone exercising a fair housing right or assisting others who exercise that right.

Finally, it is unlawful to advertise or make any statement that indicates a limitation or preference based on race, color, national origin, religion, sex, familial status, or handicap. This prohibition against discriminatory advertising applies to single-family and owner-occupied housing that is otherwise exempt from the Fair Housing Act.

Department of Justice Civil Rights Division

The U.S. Department of Justice Civil Rights Division's Housing and Enforcement Section handles cases involving either a pattern or practice of discrimination or a denial of rights to a group of persons when such denial raises an issue of general public importance. Further information can be found at the Section's website: www.usdoj.gov/crt/housing

For More Information:

- Consult the U.S. Department of Housing and Urban Development's 'know your rights' website at: <http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm>
- Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development. For more information or to file a complaint, contact:

Office of Fair Housing and Equal Opportunity
 U.S. Department of Housing and Urban Development
 451 7th Street, S.W. , Room 5242
 Washington, D.C. 20410

www.hud.gov/offices/fheo

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Chapter 5: Practicing Your Religion

The law of religious accommodation is somewhat complicated. The following is a basic explanation of the current legal regime governing the free exercise of religion.

The Constitution

The First Amendment to the U.S. Constitution begins: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”⁴⁷ This phrase is traditionally broken down into two clauses: (1) the establishment clause and (2) the free exercise clause. The establishment clause is intended to ensure that the government does not create or sanction any particular religious practice or belief as the official or preferred religion. The free exercise clause acknowledges that religion is an important aspect in the lives of many Americans, and that the government should make sure to protect the religious liberty of its people.

In 1963, the U.S. Supreme Court held that government practices which substantially burden the practice of religion must be the least restrictive means of furthering a compelling governmental interest.⁴⁸ This standard is often referred to as “strict scrutiny.” However, in 1990, in a case called *Employment Division v. Smith*, the Supreme Court held that the government need not provide religious exemptions from generally applicable laws that do not specifically target religious practice. In other words, the Court said that the government does not have to provide exemptions from a law that burdens a religious practice so long as the law was not aimed at disadvantaging a particular religion, or religious people in general.⁴⁹

Federal Law

Many supporters of religious liberty denounced the *Employment Div. v. Smith* decision. In response, Congress in 1993 passed the Religious Freedom Restoration Act (RFRA), which announced that the pre-1990 “strict scrutiny” standard should once again be the law of the land. However, in 1997, the Supreme Court ruled that RFRA was unconstitutional as applied to the states. Nonetheless, the heightened standard under RFRA still applies to actions taken by the federal government that burden the practice of religion.

In 2000, Congress passed the Religious Land Use and Institutionalized Persons Act (RLUIPA). RLUIPA directs courts to apply “strict scrutiny” to governmental actions that substantially burden the practice of religion in the context of land use (zoning) and institutionalized persons (e.g., prisoners).

⁴⁷ U.S. Const. amend. I.

⁴⁸ *Sherbert v. Verner*, 374 U.S. 398 (1963).

⁴⁹ *Employment Div. v. Smith*, 494 U.S. 872 (1990); *Church of Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520 (1993).

State Law

Since 1990, a number of States have passed laws that subject to strict judicial scrutiny *all* actions by State governments that substantially burden the free exercise of religion. To date, these laws exist in the following States:

Alabama
Arizona
Connecticut
Florida
Idaho
Illinois
Missouri
New Mexico
Oklahoma
Pennsylvania
Rhode Island
South Carolina
Texas

Summary of Law:

The Constitution protects religious citizens from being discriminated against on the basis of religion. However, State governments only have to show that their law was rationally related to a legitimate governmental interest in order to deny religious citizens an exemption from a generally applicable law under the Constitution. However, the federal government still has to grant exemptions from general laws for religious reasons unless they can show that the law is the “narrowly tailored” to achieve a compelling government interest. In addition, in the context of zoning or prison regulation, State and federal governments must grant exemptions for religious purposes unless they can meet this higher standard. Finally, exemptions must be granted in all contexts in the States listed above unless a similarly high level of justification is met by State governments. In short:

All Federal Laws	→	Easier to get religious exemptions
State or Local Zoning Laws	→	Easier to get religious exemptions
State Prison Rules	→	Easier to get religious exemptions
All State laws in States listed above	→	Easier to get religious exemptions
Other State laws	→	Hard to get exemptions

Places of Worship

When do Zoning Laws Burden the Practice of Religion?

- *A small church, mosque, or temple is denied a permit to operate out of a storefront in a commercial zone despite the fact that other non-profit groups are permitted within the same zone.*

- *A Hindu congregation is denied a building permit even though the place of worship meets all formal zoning requirements. Around the same time their permit was denied, the zoning board approved a building permit for a Lutheran church, a Methodist church, and a Jewish synagogue.*
- *A town's zoning ordinance requires all places of worship to obtain a variance in order to locate within its borders. Since the ordinance was adopted, every application for a new house of worship has been denied.*

All three of these scenarios potentially violate RLUIPA. The first scenario falls under the Equal Terms provision set forth in RLUIPA §2(b)(1). This section prohibits governments from imposing land use regulations in a manner that treats religious institutions or assemblies on less than equal terms with nonreligious institutions. The second scenario falls under the Nondiscrimination (often referred to as the denominational neutrality) provision in RLUIPA §2(b)(2). Under this section, the government is not allowed to pass or administer zoning laws in a way that treats certain religions or sects differently than other religious groups. Finally, the third scenario falls under RLUIPA §2(b)(3) which provides that no government shall impose or implement zoning regulations which totally exclude religious assemblies from a jurisdiction or unreasonably limits such assemblies within that jurisdiction.

Religion in the Home or Place of Business

Section 2 of RLUIPA also has potential implications for the practice of religion in one's home. Consider the following scenarios:

- *A religious leader holds prayer meetings in his home, usually attended by about 10 people. The city finds out about these meetings and he is cited for zoning violations for operating a house of worship in a residential zone.*
- *A group of religious believers meet in a conference room after work to discuss their beliefs. The owner of the business is cited for operating a house of worship in a commercial zone.*

These scenarios would also trigger the provisions of RLUIPA. Religious home or business owners may also challenge zoning decisions made by government officials that substantially burden the practice of their religion.

Prisons

Section 3 of RLUIPA applies heightened judicial scrutiny to prison rules that substantially burden the religious practice of an incarcerated person. Prisoners may bring claims against all prisons receiving federal funding (which includes the vast majority of prisons in America). The most common claims made by religious prisoners fall into three categories:

- *Diet*

- *A Vaishnava Hindu prisoner is denied a lacto-vegetarian diet by prison officials, who insist that he must secure written verification from clergy confirming his religious need for such a diet, when prisoners practicing other religions have no similar obligation in order to receive non-standard meals.*⁵⁰
- *A prisoner who practices Thelema is denied a non-meat diet he claims is part of his religious practice.*⁵¹
- *A prison refuses to provide a kosher diet for a Jewish inmate.*
- **Worship**
 - *A county jail has a policy prohibiting maximum security prisoners from participating in group worship out of a fear of possible violence. An inmate requested, and was denied, the opportunity to attend Bible study groups at the prison.*⁵²
 - *A State prison has a policy prohibiting prisoners from preaching or giving sermons in the prison. When the prisoner attempts to preach in the prison, he is prevented from continuing by prison guards.*⁵³
- **Grooming**
 - *The California Department of Corrections has a hair grooming policy which requires that all male inmates maintain their hair no longer than three inches. A Native American prisoner wants to challenge the policy because his religion tells him that he may cut his hair only upon the death of a loved one.*⁵⁴

All of the above scenarios are based on real cases brought by prisoners. In all of these cases, the court found that the prison policy substantially burdened the prisoner's religion and was not justified as the least restrictive means to further a compelling governmental interest. In short, prisoners are winning a fair number of their claims for religious accommodation. RLUIPA has proven to be a major boost for their chances.

And sometimes, cases do not even have to proceed to litigation. In 2008, for example, HAF was able—within just a few days of the organization's involvement—to secure a Hindu inmate vegetarian meals, as he repeatedly had been requesting for six weeks.

What to do:

Law firms or legal aid organizations may be willing to take prisoner cases on a *pro bono* basis. Also, you can contact the Becket Fund for Religious Liberty, the ACLU, or HAF if you believe your rights are being infringed. Each of these organizations has a strong record litigating on behalf of those whose religious freedoms have been curtailed.

⁵⁰ *Agrawal v. Briley*, 2004 WL 1977581 (N.D. Ill. 2004).

⁵¹ *Koger v. Bryan*, 2008 U.S. App. LEXIS 8852 (7th Cir. 2008).

⁵² *Greene v. Solano County Jail*, 2008 WL 170313 (9th Cir. 2008).

⁵³ *Spratt v. Rhode Island Dept. of Corr.*, 482 F.3d 33 (1st Cir. 2007).

⁵⁴ *Warsoldier v. Woodford*, 418 F.3d 989 (9th Cir. 2005).

Chapter 6: Bias Crimes

Bias crimes are those crimes motivated by the perpetrator's bias against a particular group of people on the basis of race, religion, national origin, sex, sexual orientation, age, or disability. Bias crimes are simultaneously impersonal and fundamentally personal. They are impersonal because the perpetrator usually does not know the victim and commits the crime against him because he was simply the first black, Muslim, Hindu, etc. person the perpetrator came across. And yet, these crimes are fundamentally personal because the victim was attacked because of a foundational part of his or her identity. Therefore, both because bias crimes are more difficult to deter and because they inflict greater harm on the victim than non-bias crimes, nearly every State punishes bias crimes more harshly than non-bias crimes. In most States, bias crime statutes function as a penalty enhancement to the underlying offense: e.g., a bias-motivated second-degree assault is punished as a first-degree assault. The federal government also collects information about bias crimes and provides aid to State prosecutors and law enforcement officials in bias crime cases.⁵⁵

Generally, the trigger for the penalty enhancement is the fact that the perpetrator selected the victim, in whole or in part, because of the victim's membership in a protected group, such as his or her national origin or religion. Things the perpetrator says or does during the crime, such as the use of racial or religious epithets; symbols the perpetrator uses, such as a swastika or burning cross; and other contextual factors serve as evidence of the perpetrator's motive. It is, however, important to remember that name-calling and the display of offensive symbols, no matter how vile, are not in-and-of-themselves criminal; in fact, such acts of expression are protected by the First Amendment's guarantee of freedom of speech.

In addition to physical assaults, bias crime statutes typically enhance the penalty for property crimes, including vandalism, and threats motivated by bias. The vandalism of religious buildings including temples, churches, mosques, and synagogues, and of other religious property like cemeteries is the most common type of bias-motivated property crime.

Examples of Bias Crimes:

- In April 2006, vandals destroyed a Hindu temple in Maple Grove, Minnesota, inflicting over \$300,000 in damage, toppling and dismembering sacred sculptures, and breaking windows and walls.⁵⁶
- In the fall of 1987, a street gang in Jersey City, New Jersey calling itself the "Dotbusters" assaulted a number of Indians, including Navroze Mody who was

⁵⁵ Hate Crime Statistics Act of 1990, 28 U.S.C. § 534.

⁵⁶ See "Hindus Teach Forgiveness Lesson to Temple Vandals," available at: <http://pluralism.org/news/view/22434>. The Hindu community of Minnesota forgave the vandals and the young men who committed the crime have come to respect the faith. See *id.* See also <http://www.hafsite.org/?q=media/pr/mn-temple-attack>

beaten into a coma with bricks. The gang also committed acts of vandalism and harassed Hindu and Indian men and women.⁵⁷

- Many instances of bias crimes against Hindus are based on the perpetrator's mistaken belief that the victim is Muslim or Arab. For example, in the summer of 2003, an Indian graduate student was beaten in Boston by perpetrators who shouted "go back to Iraq" and similar anti-Arab slurs.⁵⁸

What to do:

If you are the victim of any crime, call the police immediately and make a report. Write down as much information as you can remember about what the perpetrators looked like, what they said, and what they did. If the crime resulted in injury or property damage, take photographs of the injuries before you fully heal (of course, do not wait to seek medical attention) or of the damage before cleaning up. If the problem is a pattern of harassment or threats, keep a log of what has happened including dates and times, locations, perpetrators, and witnesses. Such evidence is critical for police, prosecutors, and civil rights attorneys who can help put an end to such treatment. Also, community response is particularly important to combat bias crimes. Notify your local Hindu or Indian community leaders, including local affiliates of the South Asian Bar Association, and the Hindu American Foundation, so that a coordinated, unified response can be formulated promptly. The appropriate response is a non-violent one that, along with law enforcement, involves people of different faiths, races, nationalities, and backgrounds coming together to denounce hateful messages, prejudice, and violence.

Useful Information:

- The Anti-Defamation League has collected information on hate and bias crimes http://www.adl.org/combating_hate/
- FBI statistics on bias crimes: <http://www.fbi.gov/ucr/ucr.htm#hate>

⁵⁷ Wikipedia, Dotbusters, <http://en.wikipedia.org/wiki/Dotbusters>

⁵⁸ <http://www.pluralism.org/research/profiles/display.php?profile=74090> (also citing a fall 2003 bias crime in which a teenager vandalized a Hindu temple by spray painting anti-Arab and anti-Sikh epithets)

Chapter 7: Criminal Justice

Racial / Ethnic / Religious Profiling

Profiling refers to the selection of an individual for routine criminal investigation or other law enforcement action based on generalized stereotypes regarding his or her race, ethnicity, religion, or national origin.

The United States Supreme Court has yet to rule directly on the practice of profiling. The Court has held that a practice does not automatically generate heightened judicial scrutiny based solely on the fact that it disproportionately affects one group over another if no intent to discriminate can be shown.⁵⁹ In addition, a pretextual stop is generally considered lawful if it is based on an independent, legitimate justification such as a traffic violation.⁶⁰ A federal law barring the effects of racial profiling does not exist. However, since 2003, it has been the official policy of the U.S. Justice Department to ban racial profiling by federal law enforcement officials.⁶¹

Despite the lack of a federal statute, several States have passed laws that attempt to address profiling. In addition, a number of police departments have instituted data collection measures and “best practices” guidelines to mitigate racial profiling. And of course, intentional discrimination in the absence of independent, individualized suspicion is illegal and unconstitutional.⁶²

It is sometimes difficult to know whether you have been stopped legitimately. Therefore, it is best to follow the basic advice regarding interactions with the authorities that follows.

Interactions With Law Enforcement

Officers, like all people, will often treat you with the respect with which you treat them. It is therefore important that you conduct yourself calmly and politely during any encounter with law enforcement. You should never physically resist or otherwise touch an officer, even if you think you are being unfairly detained or searched. If an officer is aggressive despite your best efforts, do not escalate the situation. Try to remember and record everything you can, including the officer’s name and badge number, the time and date, and any potential witnesses, and file a complaint later.

In dealings with law enforcement officials, you have the right to remain silent, the right against unreasonable searches and seizures, and, if taken into custody, the right to an attorney.

⁵⁹ Washington v. Davis, 426 U.S. 229 (1976).

⁶⁰ Whren v. United States, 517 U.S. 806 (1996).

⁶¹ See U.S. Dep’t of Justice, “Justice Department Issues Policy Guidance To Ban Racial Profiling: Action Fulfills President Bush’s Promise,” (June 17, 2003), available at http://www.justice.gov/opa/pr/2003/June/03_crt_355.htm

⁶² Whren, 517 U.S. at 813.

The Right to Remain Silent

Anything you say to a police officer can be used against you in a court of law. However, your right against self-incrimination attaches in all dealings with the police. Although your refusal to speak to a police officer might make him or her suspicious, your silence in custody cannot be used against you if you make it clear that you are exercising your right to remain silent or if you have been read your rights.

There are some limited situations in which you may be compelled to identify yourself to an officer. If you are in your car, for example, you must provide your driver's license, registration, and proof of insurance. On the street, you may be required to identify yourself, although you do not have to answer any other questions. If you are arrested, you have a right to request a lawyer and, apart from giving your name and address, you have no obligation to provide any information. While there may ultimately be benefits to cooperating with law enforcement and providing a statement, you have a right to consult with an attorney first. Never lie to law enforcement officials.

The Right Against Unreasonable Searches and Seizures

Except in an emergency, a law enforcement officer cannot enter your home without consent, a search warrant, or an arrest warrant. If you are stopped on the street or in your car, an officer can hold you for a short period of time if he or she has a reasonable suspicion that a crime has occurred or is about to occur.

If you are stopped in your car or on the street, the police may "pat you down" if they think you might have a concealed weapon. If a pat-down does occur, you have a right to state that you do not consent to a further search. Similarly, if an officer asks for your consent to search your home or car, you have a right to refuse, and your refusal cannot be used against you.

The officer may search you anyway, but if it turns out that he or she did not have probable cause to do so, your refusal of consent can lead to the evidence being suppressed later. In all cases, use common sense, and do not be afraid to set boundaries. Never physically resist an officer; there are stiff penalties for doing so, and you may get hurt. You can always challenge the officer's actions in court or through a complaint.

If You Are Arrested

If you are arrested, you have no obligation to give any information other than your name and address before you consult with a lawyer, whom you can immediately ask to see. The police have the power to search you and your immediate surroundings incident to your arrest. You have a right to a local phone call to any person within a reasonable time after your arrest, although the police may listen in on a call that is not to a lawyer. If you cannot afford a lawyer, one will be assigned to you.

For a more complete, compact version of this information, see the American Civil Liberties Union's "Bust Card" at: http://www.aclu.org/FilesPDFs/dwb%20bust%20card7_04.pdf

Airports

Although you do not give up your constitutional rights when you travel, some special rules apply to airports, where there is a heightened need for security.

Transportation Security Officers have broad discretion as to who may be selected for screening that goes beyond the minimum required of other passengers. This additional screening may consist of a metal detection wand or a “pat-down” by a screener of the same sex.⁶³ Like encounters outside of airports, however, this decision may not be based solely on a protected category such as ethnicity, national origin, or religion.⁶⁴ Additional screening may include an examination of religious garments or effects.⁶⁵

If you feel you have been discriminated against by an airline, you can contact the Federal Aviation Administration (FAA) 24 hours a day at (202) 366-2220 or at: <http://www.dot.gov/airconsumer/disform.pdf> >.

If you feel you have been discriminated against by a security officer, you should consult a lawyer.

International Travel and Electronic Devices

If you are traveling internationally, you may be selected for a customs inspection of your belongings. Courts have upheld⁶⁶ the government’s power to seize, copy or search the entire contents of any electronic device—including a laptop computer—of international travelers (including United States citizens) without any suspicion whatsoever. Anecdotal evidence suggests that many of those selected for searches of their electronic devices are of Muslim, Middle Eastern, or South Asian descent or appearance.⁶⁷

For guidance on how to avoid a breach of one’s confidential or personal data while traveling abroad, see <http://www.eff.org/deeplinks/2008/05/protecting-yourself-suspicionless-searches-while-t>>.

Electronic Surveillance

Your international phone calls and e-mail may be monitored even if you are not suspected of any wrongdoing. Under new amendments to the Foreign Intelligence Surveillance Act, few restrictions exist on the targeting of communications of individuals abroad, which may

⁶³ Know Your Rights—Airport Screening, SALDEF (Sikh American Legal Defense & Education Fund), [available at](http://www.saldef.org/content.aspx?a=1469) <http://www.saldef.org/content.aspx?a=1469> (last visited November 20, 2009).

⁶⁴ Whren, 517 U.S. 806, at 813. See also Choi v. Gaston, 220 F.3d 1010, 1012 (9th Cir. 2000) (holding that a persona cannot be discriminated against or improperly profiled by a government agent). In addition, AIR-21 Act § 706 (2000) prohibits discrimination based on these criteria, although it applies only to air carriers, and not to security personnel.

⁶⁵ Your Rights and Avenues of Action as a Victim of Airport Profiling, THE SIKH COALITION, [available at](http://www.sikhcoalition.org/AirportProfiling.pdf) <http://www.sikhcoalition.org/AirportProfiling.pdf>.

⁶⁶ See, e.g., United States v. Arnold, 523 F.3d 941 (9th Cir. 2008).

⁶⁷ Ellen Nakashima, Clarity Sought on Electronic Searches, THE WASH. POST, Feb. 7, 2008, [available at](http://www.washingtonpost.com/wp-dyn/content/article/2008/02/06/AR2008020604763.html) <http://www.washingtonpost.com/wp-dyn/content/article/2008/02/06/AR2008020604763.html>.

include communications with people inside the United States. The government is required to secure a warrant before eavesdropping on your domestic communications, although language in the new law states that any communication may be monitored without a warrant if the government does not know that the sender and all intended recipients of a message are located within the United States. E-mail is particularly susceptible to this exception.

For More Information:

Visit the websites of other community groups, including:

- Sikh American Legal Defense & Education Fund (www.saldef.org)
- Muslim Advocates (www.muslimadvocates.com/get_involved/got_rights/html)

Chapter 8: Immigration and Asylum/Domestic Violence

Due Process

Regardless of your immigration status, you have a number of rights that you must assert in the context of an immigration matter, or risk losing them. Those rights include:

- The right to speak to an attorney before answering questions or signing a document;
- The right to a hearing before an immigration judge;
- The right to have an attorney present at the hearing and any interview with the Department of Homeland Security;
- The right to request release from detention; and
- The right against self-incrimination.⁶⁸

Significant differences exist between immigration and criminal proceedings. Unlike in a criminal proceeding, for example, the government will not pay for your attorney in an immigration proceeding.⁶⁹ In addition, although you also retain the right against self-incrimination in an immigration hearing, the assertion of that right may lead to an adverse inference against you, as immigration proceedings are civil, not criminal, in nature.⁷⁰ The exclusionary rule does not apply in an immigration proceeding.⁷¹

If you are approached by immigration authorities, you should contact a lawyer before speaking with them.

Asylum

Hindus face persecution in a number of countries, including India, Bangladesh, Pakistan, Afghanistan, Indonesia, Kazakhstan, Malaysia, Saudi Arabia, Fiji and Trinidad.⁷²

⁶⁸ Know Your Rights If You Are Stopped for Immigration Questioning, NATIONAL LAWYERS GUILD, Sept. 20, 2001, available at <http://www.immigrationlinks.com/news/news1115.htm>.

⁶⁹ Id.

⁷⁰ 8 U.S.C. § 101. See also United States ex rel. Bilokumsky v. Tod, 263 U.S. 149, 154 (1952) (“Since alienage is not an element of the crime of sedition, testifying concerning [petitioner’s] status could not have had a tendency to incriminate him. There was strong reason why he should have asserted citizenship, if there was any basis in fact for such a contention. Under these circumstances his failure to claim that he was a citizen and his refusal to testify on this subject had a tendency to prove that he was an alien”) and United States v. Balsys, 524 U.S. 666, 718 (1998) (“nothing would prevent the Government, in a civil proceeding, from arguing that an adverse inference should be drawn from the witnesses’ silence on particular questions . . .”).

⁷¹ I.N.S. v. Lopez-Mendoza, 468 U.S. 1032, 1050 (1984) (“In these circumstances we are persuaded that the . . . balance between costs and benefits comes out against applying the exclusionary rule in civil deportation hearings held by the INS”).

⁷² See Hindu American Foundation, “Hindus in South Asia and the Diaspora: A Survey of Human Rights 2008,” available at <http://www.hinduamericanfoundation.org/pdf/HHR2008.pdf> (last visited November 20, 2009).

Depending on the level of official repression, Hindus seeking refuge in the United States may be able to claim asylum. An individual claiming asylum must show the following:

- Awareness of his or her beliefs by the foreign government;
- Evidence that he or she has been singled out for persecution;
- Prior punishment of Hindus; and
- Specific threats as a result of his or her religious beliefs.⁷³

General discrimination against Hindus constitutes insufficient grounds on which an individual may base a claim of asylum. In addition, private discrimination is sufficient grounds for asylum only where it is pervasive and the foreign government has—but declines to exercise—the ability to control those private actors.⁷⁴ If a family member or acquaintance has fled to the United States to escape persecution, it is best to consult with an immigration lawyer for guidance going forward.

Domestic Violence

Domestic violence is an issue that transcends religious affiliation, education, national origin, economic level, or immigration status. Laws forbidding domestic violence are generally enforced by state or local authorities.

There are many organizations around the United States dedicated to addressing domestic violence issues, specifically in the Indian American community. Sakhi, a community-based organization in the New York metropolitan area, has compiled a comprehensive list of South Asian anti-domestic violence organizations in the United States. Contact any of these local organizations if you need help: <http://www.sakhi.org/gethelp/southasianorgs.php>

For More Information – Immigration Rights

Many organizations are actively involved in furthering education about rights in the immigration context. Here are just a few examples:

- Sikh Coalition www.sikhcoalition.org
- SALDEF www.saldef.org
- Muslim Advocates www.muslimadvocates.org

⁷³ CJS ALIENS § 990: Standard of Proof.

⁷⁴ Korablina v. I.N.S., 158 F.3d 1038 (9th Cir. 1998).

Chapter 9: Media Relations/Public Awareness

One of the Hindu American Foundation's principal goals is to work with the media to ensure fair, accurate, and balanced coverage of Hinduism. While the First Amendment to the U.S. Constitution guarantees a speaker's fundamental right to free speech, the United States is also a pluralistic, diverse nation in which hurtful and denigrating speech, including the spread of misinformed and ignorant stereotypes of religious minorities, damages the nation's strength as a whole.

Over its history, HAF has actively pursued various means to promote respectful and accurate coverage of Hinduism in the public discourse. In 2007, for instance, HAF published a path-breaking report that identified and analyzed websites that target Hindus and their faith.⁷⁵ In a widely publicized community effort, HAF also has successfully and cooperatively brought about changes to California school textbooks that originally misrepresented Hindu beliefs.⁷⁶ HAF and its members continue actively to promote accurate views of Hinduism and to dispel stereotypes through op-eds and letters to the editor of both local and national publications.⁷⁷

If you become aware of any inaccurate, misleading, or offensive depictions of Hinduism in public discourse, whether they are in advertising, print media, speeches, or on-line, please contact the Hindu American Foundation so that the organization can work with you to formulate an appropriate response.

For More Information

HAF has published a 'media toolkit' on its website that you can use to help educate yourself, and others, about common oversights and omissions in the media's coverage of Hinduism: http://www.hinduamericanfoundation.org/issues/media?q=resources/media_toolkit

⁷⁵ See "Hyperlink to Hinduphobia: Online Hatred, Extremism, and Bigotry Against Hindus," available on-line at http://www.hafsite.org/pdf/hate_report_2007.pdf

⁷⁶ See generally, "HAF Finalizes Lawsuit Terms with California State Board of Education," http://www.hafsite.org/issues/academia?q=issues/academia/haf_finalizes_lawsuit_with_california

⁷⁷ See <http://www.hafsite.org/issues/media>

Chapter 10: Hypotheticals

Having reviewed the principles discussed in this guide, consider these hypothetical situations, and think about how they implicate American legal values.

School and Public Institutions of Learning:

- *A Hindu student athlete's football team starts every game with a student-led prayer in which the coach also participates, though the coach does not ever lead the prayer. Thus far, student athletes have recited prayers invoking, "Our Savior, Lord Jesus Christ." The Hindu student, though very uncomfortable, participates in the prayer for fear that the coach may not give him equal playing time as Christian student athletes.*
- *A sixth grade teacher pulls aside a Hindu student after the social studies unit on Hinduism and calls her faith "evil" and one characterized only by caste, idolatry, and witchcraft. The teacher urges the student to read and accept the truths in the Bible so that the child's soul can be saved.*
- *A Hindu student group is denied space to meet on campus after school despite other religiously-oriented student clubs being given space.*

Employment:

- *A Hindu worker is demoted after making several complaints to a supervisor about fellow employees harassing her for being vegetarian. Over several months, fellow employees purposefully made statements such as, "Mmmm, this dead cow sandwich is delicious" and ordered only meat food items during staff meetings so that the Hindu worker was be the only worker left with nothing to eat.*
- *A Hindu woman working as a public school teacher is told that she cannot wear a sari to class. The Hindu woman explains to the school administration that the sari is a traditional Hindu dress, according to her family's and community's religious traditions; is appropriate attire; and in no way hinders her ability to teach or her students' ability to learn the subject she teaches. The administration dismisses the teacher for insubordination.*
- *A Hindu temple is in need of an office manager. They advertise that only Hindus will be considered for the position. A highly qualified prospective employee applies, but is denied employment solely on the basis of his being Jewish.*

Public Accommodations and Facilities:

- *A municipality that rents out its town hall for meetings and other such engagements denies a Hindu group use of their premises to hold a Diwali celebration.*
- *A Hindu-owned motel refuses to rent a Muslim family accommodation for the evening.*

Housing:

- *A second generation Hindu couple responds to an “Apartments for Rent” advertisement for a unit in an apartment building. They call ahead to inquire and the property manager assures them that there are at least two units available. When the couple arrives at the site for a viewing, the property manager realizes his error in assuming that the couple was “American,” and says he just rented out the last unit. The advertisement continues to run in the paper for several weeks thereafter.*
- *A Hindu couple enters into a contract to purchase a home. The seller pulls out of the contract when she finds out that the couple, according to Hindu custom, would, along with their children, have one set of parents residing in the home with them.*
- *A Hindu woman holds a small balavihar in her home. About ten children attend every Saturday morning. Her neighbor, who also sits on the local city council, doesn’t appreciate the “foreigners” coming into “his” neighborhood. The neighbor successfully lobbies for the passage of a zoning ordinance restricting the use of private homes as schools. The Hindu woman is subsequently cited for violating the newly passed ordinance.*

Religious Practice:

- *A municipality cites a mandir for violating an ordinance outlawing bonfires. The previous weekend, the temple as part of its annual Shivaratri celebration, held a traditional fire ceremony in a secure, concrete structure built specifically for such ceremonies. Despite the ordinance having existed on the books for decades, bonfires are commonplace in the municipality, especially during the fall. In fact, the municipality itself sponsors a bonfire on the last night of its annual Fall for the Leaves Festival.*
- *A county board begins each of its meetings with a prayer. Local clergy can sign up to lead such prayer. A Hindu priest applies but her application is denied. The county board states that only those leading prayers invoking a Judeo-Christian God may participate.*
- *A Hindu prisoner requests accommodation for vegetarian meals and a japa mala. The warden denies the request for meals stating that he has read that being vegetarian is not required by the tenets of Hinduism and that kosher and halal meals are already available. The warden also denies the prisoner a japa mala by citing alleged security risks, even though another prisoner has been allowed a rosary.*

Bias Crimes:

- *While some teenagers vandalize a local Hindu family’s home with toilet paper and eggs, they paint a burning cross on the garage door in fluorescent orange paint with the words, “Burn in hell cow lovers!!!” written below.*

- *A street gang in a large metropolitan area calling itself the “Dotbusters” targets Hindu and Indian men and women and commits acts of violence, vandalism, and harassment against them.*
- *Many instances of bias crimes against Hindus are based on the perpetrator’s mistaken belief that the victim is Muslim or Arab. An Indian graduate student was beaten in Boston by perpetrators who shouted “go back to Iraq” and similar anti-Arab slurs.*

Quick Reference: Community and Legal Resources

Schools and Public Institutions of Learning:

- Hindu American Foundation: www.hafsite.org
- U.S. Department of Justice Civil Rights Division's Educational Opportunities Section: www.usdoj.gov/crt/edu or call toll free (877) 292-3804
- American Civil Liberties Union: www.aclu.org/religion-belief/religion-and-schools
- Americans United for the Separation of Church and State: www.au.org/issues/religion-in-public-schools/
- Becket Fund for Religious Liberty: www.becketfund.org/index.php/topic/7.html

Employment:

- U.S. Civil Rights Division's Employment Litigation Section: www.usdoj.gov/crt/emp or (202) 514-3831
- Anti-Defamation League: www.adl.org/religious_freedom/resource_kit/religion_workplace.asp

Public Accommodations and Facilities:

- U.S. Department of Justice, Housing and Civil Enforcement Section, Civil Rights Division: <http://www.justice.gov/crt/housing/file.php> or toll-free (800) 896-7743.
- The American Civil Liberties Union: <http://www.aclu.org/affiliates>
- The Hindu American Foundation: www.hafsite.org

Housing:

- The U.S. Department of Housing and Urban Development plays a major role in enforcing the Fair Housing Act. *See* <http://www.hud.gov/offices/fheo/FHLaws/yourrights.cfm>
- The U.S. Department of Justice's Civil Rights Division's Housing and Enforcement Section handles cases involving either a pattern or practice of discrimination or a denial of rights to a group of persons when such denial raises an issue of general public importance. Further information can be found at the Section's website: www.usdoj.gov/crt/housing
- Complaints of Fair Housing Act violations may be filed with the U.S. Department of Housing and Urban Development. For more information or to file a complaint, contact Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 7th Street, S.W. , Room 5242, Washington, D.C. 20410 or www.hud.gov/offices/fheo. You can also call toll-free (800) 669-9777 (voice).

Immigration Rights:

- Sikh Coalition www.sikhcoalition.org
- SALDEF www.saldef.org
- Muslim Advocates www.muslimadvocates.org

Bias Crimes:

- Sikh American Legal Defense & Education Fund: www.saldef.org
- Muslim Advocates: www.muslimadvocates.com/get_involved/got_rights/html