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Shaista Shameem

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## New Impulses in the Interaction of Law and Religion: The Fiji Human Rights Commission in Context

*Shaista Shameem\**

### I. BACKGROUND

The Fiji Islands are located in the middle of the South Pacific, close to New Zealand and Australia. Numbering three hundred islands, the country is blessed with a mild, tropical climate and a combination of both high and low islands. The population of Fiji is approximately 775,000, with fifty-one percent indigenous Fijians and the rest being a combination of Indo-Fijians, Chinese, European, Pacific Islanders, and others.<sup>1</sup> The Indo-Fijians are the largest ethnic group other than the indigenous Fijians and constitute nearly forty-five percent of the population.<sup>2</sup> The Fijians are mostly of the Christian faith, whereas the majority of Indo-Fijians belong to other faiths, such as Hinduism and Islam. The country has a multi-ethnic and multi-religious persona developed over the past two hundred years of physical coexistence.<sup>3</sup>

While the majority of Fiji's people would like Fiji to be known and admired for its beautiful beaches, stunning mountain ranges, pristine reefs, and tropical forests, in reality, we are better known for the coups that took place in 1987 and 2000. The coups overthrew elected governments on the basis of indigenous rights. In both cases Christianity was an important ideological aspect of the upheavals.<sup>4</sup>

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\* Director, Fiji Human Rights Commission. This paper was presented at the Brigham Young University Conference, "New Impulses in Law and Religion," in Fall 2002.

1. See Fiji Census 1996, available at [http://www.statsfiji.gov.fj/s\\_census.html](http://www.statsfiji.gov.fj/s_census.html) (last visited April 1, 2003).

2. See *id.*

3. See generally Shaista Shameem, Sugar and Spice: Wealth Accumulation and the Labour of Women 1879–1930 (unpublished Ph.D. thesis, University of Waikato, New Zealand) (on file with author); AHMED ALI, PLANTATION TO POLITICS (1980); CONFRONTING FIJI FUTURES (A. Haroon Akram-Lodhi ed., 2000).

4. For example, after the 1987 coup there was a Sunday ban in place to prohibit sports, picnics, and trading on Sundays. See CONFRONTING FIJI FUTURES, *supra* note 3, at 7, 191–92.

Since the first coup in 1987, a disturbing trend has begun to emerge in Fiji. A number of holy places of the Hindus, such as temples and other places of worship, have been damaged, destroyed, or desecrated by unknown vandals who, in most cases, have not been caught by the police.<sup>5</sup> The Fiji Human Rights Commission is aware of these disquieting events and the call in 2002 by some indigenous political and religious opinion-shapers that Fiji should be declared a Christian state.

The Commission has played an important role in reaction to these complaints and has reminded people of the importance of religious freedom to the country, as evidenced both at home, through the 1997 Constitution of the Republic of the Fiji Islands, and abroad, through international human rights instruments to which Fiji is a party. Fiji is a member of the United Nations but unfortunately is not a signatory to the International Covenant of Civil and Political Rights<sup>6</sup> or to the International Covenant of Economic, Social and Cultural Rights.<sup>7</sup> It is, however, a signatory to the International Covenant on the Elimination of All Forms of Racial Discrimination.<sup>8</sup> This essay first introduces the instruments protecting religious freedom in Fiji and then explains the Fiji Human Rights Commission's role in protecting this important right.

## II. "NEW IMPULSES" IN THE INTERACTION OF RELIGION AND LAW IN FIJI: THE 1997 CONSTITUTION

Freedom of religion and conscience has always been constitutionally protected in Fiji since the country gained independence in 1970. Fiji's multi-cultural and multi-religious composition creates an environment where religious freedom is generally favored. People are certainly permitted to observe their religious practices, and important religious festivals are marked as national holidays. For example, Prophet Mohammed's Birthday is a national holiday, as is Diwali, the festival of lights of the Hindus.

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5. The Fiji Human Rights Commission has undertaken to investigate such complaints, but police have not been able to provide any information on this matter.

6. International Covenant on Civil and Political Rights, *opened for signature* Dec. 19, 1966, 999 U.N.T.S. 171.

7. International Covenant of Economic, Social, and Cultrual Rights, *opened for signature* Dec. 16, 1966, 993 U.N.T.S. 3.

8. International Covenant on the Elimination of All Forms of Racial Discrimination, *opened for signature* Mar. 7, 1966, 660 U.N.T.S. 195.

Everyone in Fiji looks forward to the annual Diwali holiday when people of the Hindu faith invite their friends for sweets and the lighting of the “diya,” or candles. Religious freedom is expressed in the constitution, and notwithstanding contrary proposals that Fiji become a Christian state, religious freedom is likely to be protected as one of the fundamental human rights of the country.

Fiji’s 1990 Constitution “provided that the Constitution was to be reviewed before the end of seven years after its promulgation.”<sup>9</sup> In 1995, Sir Paul Reeves of New Zealand, Tomasi Vakatora of Fiji, and Brij Lal of the Australian National University were appointed to the Constitutional Review Commission.<sup>10</sup> The Commission, later known as the Reeves Commission, gathered “694 recommendations for constitutional reform” from public hearings, debate among politicians, and expert research.<sup>11</sup>

On religious freedom, the Reeves Commission recommended that “one’s right to manifest or propagate religion or beliefs should be subject to limitations. In that context, the state might be justified in intervening to protect the public interest or the rights and freedoms of others.”<sup>12</sup> However, the Commission also declared that there was a “duty not to discriminate” on the part of all educational and training institutions wholly or partly funded by the state.<sup>13</sup>

The 1997 Constitution, which incorporated most of the recommendations in the report of the Reeves Commission, was passed by Parliament after wide consultation with the communities of Fiji.<sup>14</sup> It contains a respectable measure of rights and responsibilities based on United Nations human rights instruments. In particular, the constitution provides that freedom of religion and religious worship are rights belonging to every person.<sup>15</sup> However, religious freedom is still subject to limitations when necessary “to

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9. C.G. Powles, *The Constitution of 1997*, in CONSTITUTIONS OF THE COUNTRIES OF THE WORLD ix (Gisbert H. Flanz ed., 1998). After the initial review, the constitution is to be reviewed again every ten years. *See id.*

10. These members of the Constitutional Review Commission were appointed by a cabinet subcommittee instituted by Prime Minister Sitiveni Rabuka. *Id.* at ix–x.

11. Powles, *supra* note 9, at x. For an account of the process, see Paul Reeves et al., *Towards a United Future: Report of the Fiji Constitutional Review Commission*, Parliamentary Paper No. 34 (1996) [hereinafter Reeves Report].

12. Reeves Report, *supra* note 11, at 170–75.

13. *Id.*

14. *See* Powles, *supra* note 9, at ix–x.

15. *See* FIJI CONST. ch. IV, § 35 (1997).

protect the rights or freedoms of other persons,” to guard “public safety, public order, public morality, or public health,” or “to prevent a public nuisance.”<sup>16</sup> The relevant rights on freedom of religion are as follows:

(1) Every person has the right to freedom of conscience, religion and belief.

(2) Every person has the right, either individually or in community with others, and both in public and in private, to manifest his or her religion or belief in worship, observance, practice or teaching.

(3) The right set out in subsection (2) extends to the right of religious communities or denominations to provide religious instruction as part of any education provided by them, whether or not they are in receipt of any financial assistance from the State.

(4) The right set out in subsection (2) may be made subject to such limitations prescribed by law as are necessary:

(a) to protect:

- (i) the rights or freedoms of other persons; or
- (ii) public safety, public order, public morality or public health; or

(b) to prevent a public nuisance.

(5) Except with his or her consent or, in the case of a person under the age of 18, the consent of a parent or guardian, a person attending a place of education is not required to receive religious instruction or to take part in or attend a religious ceremony or observance if the instruction, ceremony or observance relates to a religion that is not his or her own or if he or she does not hold any religious belief.

(6) A person must not be compelled to take an oath, or to take an oath in a manner, that is contrary to his or her belief or that requires him or her to express a belief that he or she does not hold.<sup>17</sup>

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16. *Id.*

17. *Id.*

In addition, section 30 of the constitution, “Freedom of Expression,” expressly provides that the right to expression is limited by others’ right to be free from “hate speech” and the concern with “preventing attacks on the dignity of individuals, groups or communities or respected offices or institutions in a manner likely to promote ill will between races or communities or the oppression of or discrimination against, any person or persons.”<sup>18</sup>

The report of the Reeves Commission recommended that, in relation to the right to religious freedom, “one’s right to manifest or propagate religion or beliefs should be subject to limitations. In that context the state might be justified in intervening to protect the public interest or the rights and freedoms of others.”<sup>19</sup>

In addition, said the Reeves Commission, there was a “duty not to discriminate” on the part of all educational and training institutions wholly or partly funded by the state. These schools should be expressly required to admit students without discrimination on any ground prohibited by the constitution. However, the duty not to discriminate should take second place to the object of maintaining a school’s special character, although if the institution is in a position to admit students other than the category for whose benefit it was established, the admissions policy should not discriminate on any of the prohibited grounds.

Section 38 of the Fiji Constitution expressly sets out that (1) every person has the right to equality before the law and (2) a person must not be unfairly discriminated against on the grounds, *inter alia*, of actual or supposed personal characteristics or circumstances, including race, ethnic origin, place of origin, birth, primary language, and opinions or beliefs (unless the opinions or beliefs involve harm to others or the diminution of the rights or freedoms of others).<sup>20</sup>

A very important section of the constitution is section 43(2), which makes it mandatory for a court to “promote the values that underlie a democratic society based on freedom and equality and must, if relevant, have regard to public international law applicable to the protection of the rights set out in this [bill of rights] chapter.”<sup>21</sup>

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18. *Id.* § 30.

19. Reeves Report, *supra* note 11, at 170–75.

20. FIJI CONST. ch IV, § 38 (1997).

21. *Id.* § 43(2).

Section 42 of the constitution establishes the Fiji Human Rights Commission and outlines its duties and functions.<sup>22</sup>

The Fiji Constitution is the supreme law of the state, and the bill of rights binds the executive, legislative, and judicial arms of the State, including all holders of public office.<sup>23</sup>

Given its wide-ranging application, the bill of rights of the Fiji Constitution is a good example of rights law on an international scale. The Fiji Human Rights Commission would thus adopt these principles on religious freedom in Fiji and by so doing would actively promote the human rights idea that freedom of religion, conscience, and belief is a human right that cannot be derogated.

### III. THE FIJI HUMAN RIGHTS COMMISSION AND FREEDOM OF RELIGION AND BELIEF: DEVELOPING A POLICY FRAMEWORK FOR THE FUTURE

The establishment of the Fiji Human Rights Commission was timely, given Fiji's recent political past. The Commission's responsibilities include (1) educating the public about the role of Fiji's bill of rights in protecting human rights; (2) making recommendations to the government about state responsibility with respect to international human rights obligations; and (3) receiving complaints from the public about alleged human rights violations in accordance with its enabling statute, the Human Rights Commission Act of 1999. The Act allows the Commission to take unresolved human rights complaints to the courts for adjudication or, alternatively, through the Commission mediation and conciliation processes. The Commission is often requested to act as *amicus* to the courts when human rights are an issue in any particular case.

The Commission has been in existence for only three years and is already seen by the public to be providing a useful role in protecting and promoting human rights in Fiji. The Commission has also entered into partnership arrangements for specific projects with non-governmental organizations and governmental bodies and institutions. For example, the Commission will be launching its National Plan of Action for Human Rights Education in association with the Disciplined Services (prisons, police, and military) in April. The Commission sees its responsibilities from a holistic perspective.

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22. *See id.* § 42.

23. *Id.* § 21(a)-(b).

All rights protected in the bill of rights chapter are intertwined; for example, religious freedom, freedom of expression, and the right to equality cannot be severed from each other. The Commission is mindful of the United Nations dictum that human rights are inherent, inalienable, and indivisible.

In creating its policy framework for “new impulses” in human rights law and religion, the Fiji Human Rights Commission takes the following relevant international instruments into account: Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief;<sup>24</sup> and Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities.<sup>25</sup> Additionally, the Commission applies principles derived from international human rights jurisprudence, such as:

- ensuring equal treatment at the individual and group levels for religious minorities and groups;
- promoting equal opportunity for religious minorities and groups;
- creating an environment which allows everyone to maintain his or her dignity and identity within society;
- ensuring that the state does not put into place policies or legislation which denies the rights of religious groups and minorities to express their religion, as long as this expression does not prevent others from exercising their own rights to such freedom;
- ensuring that educational programs and curricula promote respect for distinctive characteristics and contributions of religious minorities and groups in the life of the nation as a whole, and ensuring that minorities have the opportunity to learn about their own religions, cultures, traditions, history or language;
- ensuring that the state does not put into place any assimilationist policies which would have the purpose or effect of assimilating minorities into the dominant culture;

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24. G.A. Res. 55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/684 (1981), *available at* [http://www.unhchr.ch/html/menu3/b/d\\_intole.htm](http://www.unhchr.ch/html/menu3/b/d_intole.htm) (last visited April 1, 2003).

25. G.A. Res. 135, U.N. GAOR, 47th Sess., Annex, Agenda Item 97(b), at 4, U.N. Doc. A/RES/47/135 (1992), *available at* <http://www.un.org/documents/ga/res/47/a47r135.htm> (last visited April 1, 2003).

- ensuring that religious minorities and groups have the opportunity to learn their own language or take religious instruction in their own language;
- recognizing the importance of spirituality as well as religion, particularly for those who do not follow an organized religion;
- ensuring that the rights of children and women of religious and minority groups are protected with respect to (a) registration at birth; (b) provision of health services; (c) educational opportunities and special protection in schools; and (d) awareness that religious minority women and children often face aggravated forms of discrimination; and
- ensuring that cultural practices detrimental to women and children are not used as justification for abuse, exploitation and violence against women and children.<sup>26</sup>

#### IV. CONCLUSION

The multi-cultural and multi-religious composition of Fiji's population means that a secular state, where all peoples are permitted religious freedom, is generally favored among the citizenry. This idea is expressed in the constitution and is likely to remain as one of the fundamental human rights laws of the country, notwithstanding the proposition that Fiji ought to become a Christian state. Because of its constitutional responsibility to promote and protect human rights in the country and its role in mediating between groups in situations of conflict or tension, the Commission can find itself with the responsibility for monitoring tensions arising out of the expression of religious freedom of one group and that of another. The Commission believes that religious institutions can exist side by side without problems. No one religious institution should impede the expression of religious freedom of another. It is fortunate that our constitution allows for resolutions within the law in difficult situations. While the Commission has not yet been called upon to resolve any major religious intolerance issues, there is confidence in the community that, should this be necessary, the Commission will be able to exercise that responsibility also.

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26. *See id.*