

# LIVING BY THE SWORD: THE FREE EXERCISE OF RELIGION AND THE SIKH STRUGGLE FOR THE RIGHT TO CARRY A KIRPAN

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In the newspapers and speeches following the Constitutional Convention, American intellectuals of the late 1700s debated the pros and cons of the proposed Constitution. One of the primary complaints regarding this newly-authored Constitution was the lack of protection for the free exercise of religion,<sup>1</sup> which led to its inclusion in the eventual adopted Bill of Rights.<sup>2</sup>

However, the founders' experience with religious diversity only extended to the hodgepodge of Christian denominations in the former colonies. The First Amendment was not written with Muslims, Jews, Hindus, Sikhs, Jains, and Buddhists in mind. In fact, the possibility of non-Christians and those from the East coming to the United States was argued in opposition to the free exercise clause because they were considered "heathens" that "might endanger the character of the United States."<sup>3</sup>

However, with the rapid influx of immigrants, the Constitution and American democracy have had to accommodate the many people who have come to the United States, though often by impacting the practices of those immigrants. Among these growing immigrant populations are Sikh-Americans: immigrants hailing from Punjab, a northwestern province of India, who follow a growing religion. Unlike other South Asian religions, Sikhs "stand out." The outward symbols of Sikhism – the turban, the uncut hair, the ceremonial sword, the steel bracelet – serve as daily reminders to Sikhs of their faith, and also remind the American public that these individuals are different.

One of the many challenges the Sikh community faces is the right to wear these religious symbols. This article focuses on the conflict between American anti-weapons regulations and a Sikh's duty to carry the kirpan, a ceremonial sword symbolizing the need to fight against oppression. Because Sikhism is little understood outside of its homeland, I begin with a brief discussion of its origins and beliefs, to shed light on the importance of the kirpan. Next, I relate some of the day-to-day problems and recent issues facing kirpan-carrying Sikhs in the United States, and finally examine the current inadequacies of free exercise jurisprudence as applied to the kirpan.<sup>4</sup> Reviewing the current law, I conclude by outlining several suggestions for the acceptance and accommodation of kirpans.

## A PRIMER ON SIKHISM AND THE KIRPAN PUNJAB AND THE FOUNDING OF SIKHISM

Sikhism originated in the Punjab region of India more than five hundred years ago.<sup>5</sup> The history of Punjab in the last millennium was ripe with clashes between India's Hindu civilization and Islam.<sup>6</sup> Through this exchange of culture and clash of religion, a new movement emerged with the birth of Guru Nanak in 1469.<sup>7</sup> As a child, Nanak began preaching what became the foundation of his movement – "there is no Hindu,

there is no Muslim."<sup>8</sup> In his lifetime, Nanak made four great journeys through the entire Indian subcontinent as far west as the Arabian peninsula, visiting Mecca and Baghdad, writing poetry and preaching that "there is but one God, he is the Supreme Truth."<sup>9</sup> His followers were known as "Sikhs," deriving from the Sanskrit word meaning "disciple."

Sikhism only became generally recognized as a separate order in 1699 when the tenth Guru, Guru Gobind Singh, ceremoniously established a Sikh brotherhood known as the Khalsa, translated as "pure ones."<sup>10</sup> Instead of naming a successor, Guru Gobind Singh named the Granth Sahib, the compilation of the living Gurus' works, as the eleventh Guru and the holy book of Sikhism.<sup>11</sup>

Sikhism began as both a religious and social movement. Sikhs rejected the Hindu caste system, asceticism, and mysticism. Sikhs declared that Hindus, Muslims, and members of all religions were equal, and that there was no difference between genders.<sup>12</sup> To distinguish themselves from the rest of the Punjabi social mosaic, Sikhs adopted five spiritual symbols, known as the five "K's"<sup>13</sup>: "kes," uncut hair to preserve the natural state of the body; "kanga," a small wooden comb to keep this uncut hair tidy, symbolizing cleanliness; "kachcha," a military-style undergarment to emphasize chastity and self-control; "kara," a steel bangle on the right hand as armor to protect the sword-wielding hand and to remind one of his or her faith; and "kirpan," a ceremonial sword or dagger symbolizing a Sikh's duty to fight for good over evil, and to always support freedom above oppression.<sup>14</sup> Finally, Sikhs adopted the surname "Singh," meaning "Lion," to show the strength of the Sikhs and of their ideals.<sup>15</sup>

## THE KIRPAN

There are a number of reasons for the adoption of a sword as a symbol of Sikhism. Undeniably, the experience of Sikhs during the founding days of the faith contributed to its glorification of military symbols such as the kirpan,<sup>16</sup> kara, and kachcha. Two of the 10 Gurus of the faith, Guru Arjun Dev and Guru Tegh Bahadur, were brutally tortured and killed by the Muslim Mughal rulers of the day.<sup>17</sup> Guru Hargobind, who carried two swords around his waist, symbolizing both spiritual and temporal power, was determined to build a Sikh army to prevent further intimidation from the Mughals.<sup>18</sup> But the kirpan's significance was not fully established until Guru Gobind Singh and his reign over the Sikh movement. Gobind Singh directed the Khalsa to carry a kirpan at all times as a requirement of the faith, and wrote that "when all avenues have been explored, all means tried, it is rightful to draw the sword..."<sup>19</sup> The sword had protected the followers of the young faith when it was under attack from outsiders and gradually gained tremendous religious sig-

nificance.

The Sikh *Rehat Maryada*, or Code of Sikh Conduct, prescribes that Sikhs wear a “strapped kirpan,” but notably does not specify the length of the blade.<sup>20</sup> Perhaps as a result, kirpans come in many varied sizes. Kirpans range in size from several feet long, which are kept in a *Gurudwara* (Sikh Temple) used for ceremonial purposes, to two- or three-inch unsharpened blades kept sown or strapped on the inside of one’s clothing. Generally, these kirpans are kept encased in a wooden sheath. Other Sikhs, rather than carry a sword or dagger with them, choose to wear a small kirpan pendant or medallion as a necklace. As discussed later, many Sikhs do not believe that a symbolic kirpan is sufficient to satisfy the “strapped kirpan” requirement in the *Rehat Maryada*; these Sikhs believe that a strapped kirpan implies that the kirpan be a wieldable weapon. This distinction between the kirpan as a symbol and the kirpan as a weapon is a point of crucial debate within both the Sikh community and in American jurisprudence surrounding the kirpan.

### THE KIRPIN TODAY

The kirpan is not only a symbol of profound significance for Sikhs; it is also the cause of much controversy as the Sikh population grows and shifts from its Punjabi homeland to the outside world. Wearing the kirpan in daily life can cause trouble for Sikhs. In the United States, carrying a dagger or sword clashes directly with the norms of American life.<sup>21</sup> Frequently, this leads to situations where Sikhs must decide if they want to keep their faith or keep their job.<sup>22</sup> In one such case, the Equal Employment Opportunity Commission “EEOC” sued a major corporation for firing an employee because she carried her kirpan.<sup>23</sup>

Perhaps the greatest controversy surrounding the kirpan, however, arises when Sikh children wear kirpans to school. In Canada, this issue has been resolved through the court system. In *Multani v. Commission Scolaire Marguerite-Bourgeoys*, decided earlier this year, the Canadian Supreme Court held that prohibiting a student from carrying a kirpan infringed on his religious freedom as guaranteed by the Canadian Charter of Rights and Freedoms.<sup>24</sup> The Court further allowed school districts to create reasonable restrictions on this right. It reasoned that “a total prohibition against wearing a kirpan to school undermines the value of this religious symbol and sends students the message that some religious practices do not merit the same protection as others.”<sup>25</sup>

However, in the United States, the only major kirpan case of this nature to reach federal court was *Cheema v. Thompson*. In the early 1990s, three Sikh children in California were expelled for carrying a kirpan on their public school’s grounds.<sup>26</sup> Affirming its earlier reversal of the district court, the Ninth Circuit found that the district court did not abuse its discretion and that the children were entitled to a preliminary injunction allowing them to carry the kirpan.<sup>27</sup> In March 2006, 15-year-old Amandeep Singh was suspended from his Hartsdale, New York high school for wearing a kirpan to school in violation of state anti-

weapons regulations. After attorneys for the family and public interest groups intervened, the school district eventually compromised, allowing Singh to bring a smaller, more secured version of the kirpan to school.<sup>28</sup>

### THE KIRPIN AND THE FREE EXERCISE CLAUSE

The First Amendment provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.”<sup>29</sup> Through the incorporation doctrine, the Supreme Court made the First Amendment enforceable against the states.<sup>30</sup> The manner in which the Court has interpreted the First Amendment indicates that the free exercise of religion protects not only the right to believe in a faith, but also the right to act in accordance with that faith’s beliefs.<sup>31</sup> For nearly three decades, the Court has held that the government may only burden a person’s right to free exercise if the government can offer a compelling interest that outweighs the right of the individual, and that in furthering that interest the government took the least restrictive means possible.<sup>32</sup>

But this right was sharply curtailed by *Employment Div., Dep’t of Human Res. of Oregon v. Smith*.<sup>33</sup> The Supreme Court held that the free exercise of religion does not relieve an individual of his obligation to “observe a generally applicable law that requires the performance of an act that his religious belief forbids.”<sup>34</sup> In contravention of this ruling, Congress reacted by passing the Religious Freedoms Restoration Act “RFRA.”<sup>35</sup> Although the Court eventually ruled the RFRA unconstitutional,<sup>36</sup> the RFRA provided authority for one of the most instructive cases dealing with the kirpan, *Cheema v. Thompson* (“*Cheema I*”).<sup>37</sup>

In *Cheema I*, Rajinder, Sukhjinder, and Jaspreet Cheema, siblings who were baptized Sikhs, wore their kirpans to their elementary school in the Livingston (California) Union School District.<sup>38</sup> One day, while Rajinder was playing basketball, one of his classmates realized that he was wearing a kirpan under his clothing.<sup>39</sup> As soon as school officials discovered the Cheemas’ kirpans, they suspended the students from school.<sup>40</sup> The parents immediately filed suit, requesting a preliminary injunction barring the district from applying its no-weapons policy against the Cheemas.<sup>41</sup>

The District Court sided with the school district that the kirpan indeed constituted a threat to the school’s security.<sup>42</sup> The Ninth Circuit reversed, reasoning that the Cheemas were entitled to an injunction because they produced sufficient evidence to indicate that there were lesser restrictive means to further the governmental interest and that the Cheemas would suffer irreparable injury by missing school.<sup>43</sup> On remand, the District Court imposed a compromise plan for terms of the injunction with several provisions: limiting the length of the kirpan, requiring the blade be dulled, tightly sown to its sheath, and worn underneath the clothing, and granting the school district the right to inspect the kirpan for compliance.<sup>44</sup> The school district appealed this plan to the Ninth Circuit, which affirmed the district court’s compromise plan.

The heart of the kirpan conflict is evident when reading the opinions in *Cheema I* and *Cheema II*. The majority criticized the school board for failing to prove why the Livingston Union School District refused to make the same accommodations as other school districts.<sup>45</sup> The majority also criticized the school district's failure "to build a meaningful record to demonstrate the lack of a less restrictive alternative" to avoid accommodating the school children who followed a central tenet of the Sikh faith.<sup>46</sup>

Another RFRA case recognized the religious significance of the kirpan. In *State v. Singh*, the First District of the Ohio Court of Appeals considered an appeal from a district court where a Sikh man, Dr. Harjinder Singh, was prosecuted under an Ohio concealed weapons law for carrying a kirpan.<sup>47</sup> Singh's lawyers used an expert witness to inform the court about the necessity of the kirpan.<sup>48</sup> The expert testified that the kirpan was designed and worn only as a religious symbol, a particularly important distinction for this particular case because the concealed weapons statute in question criminalizes the carrying of a deadly weapon only if it is "designed or specially adapted for use as a weapon or possessed, carried, or used as a weapon."<sup>49</sup> The Court analyzed the nature and history of the kirpan and, despite evidence to indicate that it could be used as a weapon, agreed with the expert testimony that the kirpan was essentially "a religious symbol to remind Sikhs of their obligations to do justice."<sup>50</sup> Since the kirpan was only a symbol, it did not meet the statute's deadly weapon requirement.<sup>51</sup>

With the holding in *City of Boerne v. Flores*, the Supreme Court struck down the portion of the RFRA compelling state enforcement, rendering the RFRA essentially unconstitutional. Several circuits have nevertheless interpreted *Boerne* narrowly, holding that *Boerne* only ruled unconstitutional the portion of the RFRA that enforced its provisions against the states through § 5 of the Fourteenth Amendment and beyond Congress' power.<sup>52</sup> These courts continue to apply the remaining portion of the RFRA and its standards to the federal government.<sup>53</sup> However, the inapplicability of the RFRA to the states has again placed the kirpan in uncertain legal status.

In those circuits that read *Boerne* as rendering the entire RFRA unconstitutional, it is unlikely that a kirpan case would succeed under the reigning logic of *Smith*. *Smith* does not extend the rights of the free exercise clause to exempt the observance of physical acts that a generally applicable law either prohibits or requires, unless another constitutional right is implicated.<sup>54</sup> Laws prohibiting the carrying of weapons are generally applicable laws; these laws do not specify Sikhs or the kirpan as specifically prohibited.<sup>55</sup> Furthermore, one would be hard pressed to argue that carrying a kirpan implicates another constitutional provision.<sup>56</sup> Thus, the First Amendment's free exercise clause currently provides little constitutional protection to Sikhs who carry a kirpan. If prosecuted, a Sikh's only recourse is to prove that a kirpan is not intended as a deadly weapon as defined under weapons statutes.

Current First Amendment jurisprudence has failed to protect the Sikh population's right to carry a kirpan. Yet the growing number and influence of Sikhs will bring these problems to the forefront, just as they have in other countries with large Sikh populations, such as the United Kingdom and Canada. There are also other avenues beyond the First Amendment available for Sikhs hoping to carry a kirpan legally in the United States.

### STATUTORY EXCEPTIONS

No American jurisdiction currently exempts the kirpan from weapons laws. The laws of the United Kingdom and Canada, two nations with large Sikh populations, are instructive in this regard, particularly since the American legal system is based upon the English legal system. The weapons laws in the United Kingdom include a specific exemption. A general statute criminalizing the possession of a blade or knife longer than three inches in a public place, contains an exemption for a blade kept for religious reasons or as part of a national costume.<sup>57</sup> A kirpan, as a religiously mandated article of faith, fits within this exception. As a result, Britain's Sikhs, numbering more than half a million, are protected from prosecution for carrying a kirpan.

Since the overruling of *Cheema I*, the need for such legislation is again apparent, especially in states such as California with large, longstanding Sikh populations. Such legislation may indeed be possible if the Sikh community actively mobilizes in favor of such measures. The increasing visibility of the Sikh community and recognition of its distinct identity which prompted Congress to include a statement in the USA PATRIOT Act condemning violence against Sikhs after the attacks of September 11, 2001.<sup>58</sup>

### STATE-LEVEL RFRAS

Since the Supreme Court's ruling in *Boerne*, several states have passed state-level RFRAs restoring the Court's pre-*Smith* free exercise standard, or have passed legislation increasing accommodations on the basis of religion.<sup>59</sup> Two states – Florida and Illinois – have passed state-level RFRAs, which are particularly instructive regarding the bounds of these laws because of the extent to which the state laws mirror the RFRA's language.<sup>60</sup> Few cases have been brought under these provisions, and most of these have dealt with zoning issues.<sup>61</sup> In only one case was a court willing to use the RFRA to prevent enforcement of a city or state law.<sup>62</sup> Although no kirpan cases have been brought under these statutes to date, decisions under the RFRA such as *Cheema I* may be instructive to a court applying pre-*Smith* free exercise standards to a kirpan.

### THE WORKPLACE RELIGIOUS FREEDOMS ACT

After the RFRA, many religious-based organizations have sought a method to increase accommodations of religious beliefs, especially in places like the workforce. One measure currently under consideration is the Workplace Religious Freedoms

Act “WRFA”, proposed by a bipartisan coalition of senators and representatives in both houses of Congress.<sup>63</sup> Rather than attempting to change the Supreme Court’s interpretation of the free exercise clause as the RFRA did, the WRFA takes a very different approach. The bill proposes to amend Title VII of the Civil Rights Act of 1964 to incorporate religious accommodations into the workplace.<sup>64</sup> Except for small businesses and those employers for which this would be an undue hardship, the WRFA would require that an employer accommodate religious practices related to clothing or holidays.<sup>65</sup>

The bill is currently pending before the Subcommittee on Employer Employee Relations in the House, which has already held hearings on the WRFA.<sup>66</sup> A number of religious organizations have voiced support for the legislation, including supporters from Christian, Jewish, Muslim, and Sikh groups.<sup>67</sup> Although it does not directly create a protected right to carry a kirpan, this legislation would decrease discrimination against Sikhs where it is most common – the workplace.

### THE DECISION NOT TO PROSECUTE

Prosecutorial and judicial discretion, while by no means a true legal protection of the right to carry a kirpan, have also insulated the Sikh community from prosecution for wearing a kirpan. In one such case, *People v. Singh*, a Sikh man<sup>68</sup> standing on a subway platform in Queens, New York., was arrested for possession of a knife in violation of the New York City administrative code.<sup>69</sup> Discussing the nature of the Sikh religion and its tenets, the court balanced a Sikh’s right to free exercise of religion and the government interest in public safety.<sup>70</sup>

The court concluded that the City of New York possessed the right to prosecute the defendant because “the intrusion on the defendant’s [F]irst [A]mendment rights are de minimus [sic] and must yield by necessity to the State’s primary duty to protect its citizens.”<sup>71</sup> However, the court recognized its duty to fairly balance between religious freedom and enforcement of criminal statutes, and suggested that a kirpan be “encased in a solid protective element such as plastic or lucite” so that it would no longer be considered a knife or a weapon.<sup>72</sup> Despite finding a right to prosecute the defendant, the court invoked judicial discretion and *sua sponte* dismissed the prosecution in the interest of justice.<sup>73</sup>

Law enforcement authorities have also proven unhelpful to Sikhs who carry a kirpan. On September 12, 2001, more than 60 police officers of the Providence, Rhode Island Police Department converged on an Amtrak station searching for “suspicious men” who might have information on the events that had taken place the day before.<sup>74</sup> Probably without probable cause,<sup>75</sup> police stopped and searched Sher J.B. Singh, a 29-year-

old engineer and co-founder of a communications business, and arrested him for possession of a concealed knife with a blade longer than three inches.<sup>76</sup> After the story received notoriety, the mayor of Providence, as well as the Attorney General of the City of Providence decided not to prosecute Singh for the kirpan.<sup>77</sup> His kirpan was returned to him, along with an apology from the police department and the City.<sup>78</sup> Although Singh had initially considered filing a civil rights suit against the city based on his arrest without probable cause, he decided against it, and instead said that he was glad his arrest educated others about Sikhism.<sup>79</sup>

Moreover, at least one prosecutor’s office has issued advisory memoranda to the police regarding the kirpan and denoting circumstances where the office would not prosecute a Sikh for carrying a kirpan. The District Attorney for Santa Clara County, California issued prosecution guidelines for kirpans under the California Penal Code.<sup>80</sup> The guidelines state that while the law does criminalize the concealed possession of a kirpan-like knife, the law contains an exception for knives carried in sheaths that are worn openly suspended from the waist of the wearer are not concealed in the meaning of the statute which may exempt Sikhs.<sup>81</sup> The guidelines also state that, regardless of how the kirpan is worn, a Sikh may still violate the penal code if the kirpan is “capable of ready use as a stabbing weapon that may inflict great bodily injury or death.”<sup>82</sup> Thus, the guidelines suggest that if the kirpan cannot be easily removed from its sheath, if it is not capable of ready use, or if it is dulled or rounded such that it is incapable of inflicting great bodily injury or death, a Sikh carrying the kirpan does not violate the law.<sup>83</sup>

Both *People v. Singh* and the Sher J.B. Singh incident in Providence reflect that, even if laws specifically protecting the right to carry a kirpan are absent, prosecution of Sikhs carrying a kirpan would “result in injustice and would serve no useful purpose.”<sup>84</sup> The cases also indicate that the use of prosecutorial and judicial discretion in the favor of Sikhs could be a tremendous help to those Sikhs prosecuted under weapons

laws. Guidelines such as those issued by the Santa Clara District Attorney’s Office are also a tremendous benefit to the Sikh community, as they clarify exactly for what type of kirpan a Sikh can or cannot be prosecuted.

### CONCLUSION

As the Sikh community in the United States grows in size and strength, its vitality is affected by American acceptance of the outward symbols of the Sikh faith. Occasionally, Americans have looked to Sikh beliefs with respect and wonder. At other times, these symbols have drawn misguided parallels between Sikhs and media-generated images of terrorists and terrorism.

The kirpan is a religiously-mandated article of faith. Its origin stems from an imminent mandate to protect the Sikh religion and the oppressed of any faith, even by the sword if all other options have failed. The danger of physical aggression, one of the main reasons for the kirpan, seldom threatens persons of the Sikh faith anymore. However, the kirpan serves as a constant reminder of that duty. Sikhs no longer fight for their identity on the battlefield; they now fight to maintain that identity in their daily lives, often at work or in school, and even in the courtroom.

Like many minority groups, Sikhs have looked to the courts and the constitution for vindication of their rights. This has given Sikhs some past successes through the free exercise clause of the First Amendment. However, the viability of prior successes is unlikely to guarantee future victories given the presently narrow interpretation of the free exercise clause. Even if the courts continue to interpret the free exercise clause narrowly, other avenues remain available to affirm the legal right to carry a kirpan.<sup>85</sup>

If Sikhs cannot turn to the courts, the legislatures, or state law for help, they must turn towards education. The truth is that

most Americans still do not know of the existence of Sikhism, much less understand the faith and its symbols. Amardeep Singh, a Sikh civil rights attorney and legal director of the Sikh Coalition, once pinpointed the need to educate those in the American legal system about Sikh beliefs: “We’re giving a mini history and religion lesson ... we [have] to sort of give the courts that background knowledge because, how can you apply a rule against a group who you don’t understand?”<sup>86</sup> Knowledge of religion and its articles of faith, whether that article is a weapon, a symbol, or both, gives pause to punish someone for their beliefs. It may not violate the free exercise of religion *per se*, but it still violates our personal notion of free exercise.

I believe it is that same notion which compelled the court in *People v. Singh* to sua sponte dismiss a legally-sound prosecution, and which stopped the Providence Police Department from prosecuting a man who had clearly violated the letter of the law. In the words of Judge Milano, punishing a Sikh for following his religious beliefs “would not be in the furtherance of justice.”<sup>87</sup>

## ENDNOTES

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<sup>1</sup> See Samuel Bryan, THE ANTIFEDERALIST, Centinel II (1787).

<sup>2</sup> U.S. CONST. amend. I.

<sup>3</sup> See Rev. David Caldwell and Samuel Spencer Continue the Debate on Religious Toleration (July 30, 1788), in THE DEBATE ON THE CONSTITUTION: PART TWO, at 908 (Bernard Bailyn ed.) (1993) (questioning the Bill of Rights’ granting of free exercise of religion).

<sup>4</sup> Many of the stories discussed in this article are based on my personal work as a law clerk at the Sikh American Legal Defense and Education Fund (SALDEF). I am grateful to SALDEF for allowing me to write this piece, as well as for providing me with the opportunity to work with Sikhs who experience legal difficulties in their daily life because of their faith. Their website is located at <http://www.saldef.org>.

<sup>5</sup> See PATWANT SINGH, THE SIKHS 16-17 (Doubleday 1999) (“THE SIKHS”).

<sup>6</sup> See KUSHWANT SINGH, A HISTORY OF THE SIKHS, VOLUME 1: 1469-1839 (Oxford Univ. Press 1999) (1963) at 3-5, 13-16, 28-29 (“A HISTORY OF THE SIKHS”).

<sup>7</sup> THE SIKHS, *supra* note 5, at 17; A guru in the Sikh religion is a master or teacher.

<sup>8</sup> THE SIKHS, *supra* note 5, at 18.

<sup>9</sup> A HISTORY OF THE SIKHS, *supra* note 6, at 31-33 (quoting GURU GRANTH SAHIB, Japji Sahib 1).

<sup>10</sup> Guru Gobind Singh established the Khalsa brotherhood in Anandpur, India through the Sikh baptism ceremony, baptizing five volunteers who were willing to give their lives for their faith, and then himself being baptized by the five. The tradition of the “punj pyare” (five beloved ones) carries to this day, as a group of five baptized Sikhs officiate all major Sikh events. See THE SIKHS, *supra* note 5, at 54-57.

<sup>11</sup> THE SIKHS, *supra* note 5, at 36.

<sup>12</sup> See A HISTORY OF THE SIKHS, *supra* note 6, at 39-48 (describing the various central teachings of Guru Nanak).

<sup>13</sup> See THE SIKHS, *supra* note 5, at 53-54.

<sup>14</sup> See THE SIKHS, *supra* note 5, at 53-54.

<sup>15</sup> See THE SIKHS, *supra* note 5, at 53-54.

<sup>16</sup> The word “kirpan” is Punjabi and translates loosely to “grace of God.”

<sup>17</sup> Guru Arjun Dev was tortured and executed by order of Mughal Emperor Jahangir in 1606 by placement on a hot iron plate, pouring of burning hot sand and boiling water over him, and drowning in the Ravi River. Mughal Emperor Au-

rangzeb ordered Guru Tegh Bahadur’s execution for his refusal to convert to Islam; he first witnessed his three companions sawn in half, boiled to death in a cauldron, and burnt alive, then was himself publicly beheaded. See THE SIKHS, *supra* note 5, at 37-50.

<sup>18</sup> See A HISTORY OF THE SIKHS, *supra* note 6, at 63.

<sup>19</sup> See A HISTORY OF THE SIKHS, *supra* note 6, at n.5.

<sup>20</sup> See *Rehat Maryada* § 6, available at [http://www.sgpc.net/rehat\\_maryada/section\\_six.html](http://www.sgpc.net/rehat_maryada/section_six.html) (last visited Oct. 4, 2006). The Sikh Rehat Maryada, or Sikh Code of Conduct, is the codification of Sikh practices and procedures adopted by the Shiromani Gurdwara Prabandhak Committee (S.G.P.C.), a democratically elected leadership of Sikhs managing the daily affairs of the Sikhs and their Gurudwaras (Sikh Temples) located in Amritsar, India. The Rehat Maryada was initially proposed in 1936, underwent amendments, and was adopted in its current form in 1945. The code in its entirety can be found on the SGPC website at <http://www.sgpc.net/sikhism/sikh-dharma-manual.html>.

<sup>21</sup> For example, Sikhs in the United States check their kirpans at the airport and avoid wearing them in court or other secured buildings.

<sup>22</sup> SALDEF has filed several U.S. Equal Employment Opportunity Commission complaints relating to the kirpan in the workplace. Some of these are in early stages of their filing, and in others, the complainants have chosen not to reveal their identities for fear of backlash from their employers.

<sup>23</sup> See Howard Fischer, *Two Firms Face Lawsuits Over Wearing Of Religious Items*, ARIZ. DAILY STAR, Sept. 28, 2004, at D (discussing EEOC suit filed in federal district court in Phoenix where Sikh woman was fired by Sanmina-SCI Corp. and deemed ineligible for rehire for violating company’s no-weapons policy).

<sup>24</sup> *Multani v. Commission scolaire Marguerite-Bourgeoys*, 1 S.C.R. 256, 2006 SCC 6 (2006).

<sup>25</sup> *Id.*

<sup>26</sup> *Cheema v. Thompson*, 67 F.3d 883, 887 (9th Cir. 1995) (“Cheema II”).

<sup>27</sup> *Id.* at 884.

<sup>28</sup> See Alison Bert, *Student may wear symbol of Sikh faith*, THE JOURNAL NEWS (Westchester County, N.Y.), Mar. 16, 2005, at 1B; *Student allowed to carry kirpan to school*, INDIA ABROAD (N.Y. ed.), Apr. 1, 2005, at A4; see also *The weapon that wasn’t*, THE JOURNAL NEWS (Westchester County, N.Y.), Mar. 17, 2005, at 8B (supporting the decision of the school board to accommodate the kirpan in school).

<sup>29</sup> U.S. CONST. amend. I.

<sup>30</sup> See *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940) (“The Fourteenth Amendment has rendered the legislatures of the states as incompetent as Congress to enact such laws [limiting free exercise of religion].”)

## ENDNOTES CONTINUED

<sup>31</sup> See generally *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (finding the compulsory school attendance law violated the free exercise clause by forcing Amish parents to send their children to public school after the eighth grade, in opposition to core Amish religious beliefs requiring them to remain “aloof from the world”); *Sherbert v. Verner*, 374 U.S. 398 (1963) (allowing claimant unemployment benefits after being terminated for declining to work on Saturdays because her religion forbade it).

<sup>32</sup> See generally *Wisconsin*, 406 U.S. at 205; *Sherbert*, 374 U.S. at 398.

<sup>33</sup> 494 U.S. 872, 878 (1990)

<sup>34</sup> *Id.*

<sup>35</sup> See 42 U.S.C.A. § 2000bb-1 (1993).

<sup>36</sup> See *City of Boerne v. Flores*, 521 U.S. 507 (1997) (finding Congress exceeded its authority under § 5 of the Fourteenth Amendment).

<sup>37</sup> 36 F.3d 1102, 1994 WL 477725, at \*1 (9th Cir. 1994).

<sup>38</sup> *Id.*

<sup>39</sup> See Dipanwita Deb, Note, *Of Kirpans, Schools, and the Free Exercise Clause: Cheema v. Thompson Cuts Through RFRA’s Inadequacies*, 23 HASTINGS CONST. L.Q. 877, 877-78 (1996) (citing *Cheema v. Thompson*, 1994 U.S. App. LEXIS 24260 (9th Cir. Sept. 2, 1994) (No. 94-16097)).

<sup>40</sup> *Cheema I*, 36 F.3d 1102, 1994 WL 477725, at \*1.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at \*2 (noting that other school districts allowed kirpans of shorter lengths when sown into their sheaths).

<sup>44</sup> *Cheema II*, 67 F.3d at 886.

<sup>45</sup> *Cheema II*, 67 F.3d at 886.

<sup>46</sup> *Id.* at 885 n.2, n.3.

<sup>47</sup> See *State v. Singh*, 117 Ohio App. 3d 381, 690 N.E.2d 917, 917-18 (Ohio Ct. App. 1996).

<sup>48</sup> *Id.*

<sup>49</sup> See OHIO REV. CODE. ANN § 2923.12(A) (criminalizing the knowing possession of a “deadly weapon”); see also OHIO REV. CODE. ANN § 2923.11(A) (defining “deadly weapon” as an instrument capable of inflicting death and either designed or specifically adapted for use as a weapon, or possessed, carried, or used as a weapon).

<sup>50</sup> *Singh*, 690 N.E.2d at 920.

<sup>51</sup> *Id.* at 920-1.

<sup>52</sup> See, e.g., *Kikumura v. Hurley*, 242 F.3d 950, 959 (10th Cir.2001) (concluding that the RFRA is constitutional under federal law in finding that prison violated the RFRA by denying inmate access to a Christian minister); *In re Young*, 141 F.3d 854, 858- 59 (8th Cir.1998) (holding the RFRA did not violate the Establishment Clause and that the portion of the RFRA applicable to the federal government was severable from the states).

<sup>53</sup> See *Kikumura*, 242 F.3d at 959; *In re Young*, 141 F.3d at 858-59.

<sup>54</sup> *Employment Div., Dep’t of Human Res. of Oregon v. Smith*, 494 U.S. 872, 877-81 (1990).

<sup>55</sup> See, e.g., MICH. COMP. LAWS. ANN. § 259.80f (criminalizing the carrying of knives into the sterile area of an airport, without mention of type of knife or blade length).

<sup>56</sup> Though a kirpan perhaps falls within the definition of a weapon or arms, the very limited scope of Second Amendment jurisprudence would certainly not create a right to carry a kirpan. See, e.g., Daniel E. Feld, Annotation, *Federal Constitutional Right to Bear Arms*, 37 A.L.R. FED. 626 (2002).

<sup>57</sup> Criminal Justice Act, UK St., 1988, c. 33 Pt. XI, s. 139.

<sup>58</sup> See *Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001*, Pub. L. No. 107-56, § 1002, 115 Stat. 272, (2001) (recognizing the Sikh religion and the contribution of its adherents in the United States, and condemning violence and bigotry against the Sikh-American community after September 11th, 2001).

<sup>59</sup> See Brian L. Porto, Annotation, *Validity, Construction, and Operation of State Religious Freedom Restoration Acts*, 116 A.L.R.5th 233 (2005) (describing the state-level RFRAs as a reaction to *Boerne* and providing notable cases under these state laws).

<sup>60</sup> See *id.*; see also FLA. STAT. ch. 761 (2005) (barring Florida state government from substantially burdening the free exercise of religion without a compelling state interest, and allowing a person to assert that their religious freedom was burdened as a claim or a defense in court); ILL. COMP. STAT. 35/15 (2005) (preventing Illinois state government from substantially burdening the free exercise of religion without a compelling state interest).

<sup>61</sup> See Porto, *supra* note 60.

<sup>62</sup> See *Abbott v. City of Fort Lauderdale*, 783 So. 2d 1213-15 (Fla. Dist. Ct. App. 4th Dist. 2001). In *Abbott*, a feeding program for the homeless sought a preliminary injunction preventing the city from enforcing a rule against business or

social services in parks based on the Florida RFRA. The trial court agreed that the program’s rights under the Florida RFRA were violated, and ordered the city to provide an alternate site for the program. The Fourth District Court of Appeals upheld the trial court’s determination that the city violated the program’s rights under the Florida RFRA, and also held that a trial court had the authority to make a determination as to whether the city’s compliance with its order was sufficient.

<sup>63</sup> See Workplace Religious Freedom Act of 2005, H.R. 1445, 109th Cong. (2005).

<sup>64</sup> See *id.* at § 2.

<sup>65</sup> See *id.* at § 2(a)(4) (adding religious accommodations into 42 U.S.C. 2000e (j)).

<sup>66</sup> See Bill Status and Summary, Workplace Religious Freedom Act of 2005, H.R. 1445, 109th Cong. (2005), available at <http://thomas.loc.gov/> (search “workplace religious freedom” under “Search Bill Text”; then click on “HR 1445”; then click on “Bill Status and Summary”) (last visited Oct. 5, 2006).

<sup>67</sup> See Press Release: Subcommittee Hears Testimony on Souder Workplace Religious Freedom Legislation, Nov. 10, 2005, available at <http://edworkforce.house.gov/press/press109/first/11nov/religiousfreedom111005.htm> (last visited Oct. 5, 2006).

<sup>68</sup> Although the case states that the man was a priest, this is a misleading label because Sikhism has no established clergy. There are, however, dedicated members of the faith who work daily at a Gurudwara and often lead services, and it is likely that this individual was one of them. However, any Sikh may lead a service. See *People v. Singh*, 516 N.Y.S.3d 412, 413 (N.Y. Civ. Ct. 1987); see also *Rehat Maryada* § 3, available at [http://www.sgpc.net/rehat\\_maryada/section\\_three\\_chap\\_four.htm](http://www.sgpc.net/rehat_maryada/section_three_chap_four.htm) (last visited Oct. 8, 2006).

<sup>69</sup> *Singh*, 516 N.Y.S.3d at 413; see also NEW YORK CITY ADMIN. CODE § 10-133 (criminalizing the possession of knives longer than four inches in public or the carrying of any exposed blade in public, with exceptions).

<sup>70</sup> *Singh*, 516 N.Y.S.3d at 413-15.

<sup>71</sup> *Id.* at 415.

<sup>72</sup> *Id.* at 416.

<sup>73</sup> *Id.*

<sup>74</sup> See Tom Mooney, *Charges Against Sikh Dropped*, PROVIDENCE (R.I.) JOURNAL-BULLETIN, Oct. 26, 2001, at A1.

<sup>75</sup> See *id.* (“We would have shown there was really no probable cause’ for the police to have searched Singh. He was stopped and searched ‘because of what he looked like.’”)

<sup>76</sup> *Id.*

<sup>77</sup> See *id.*

<sup>78</sup> See Tom Mooney, *Tolerance, understanding undo arrest – Weapons charge dropped; ceremonial religious dagger returned*, PROVIDENCE (R.I.) JOURNAL-BULLETIN, Nov. 1, 2001, at A1.

<sup>79</sup> See Tom Mooney, *Charges Against Sikh Dropped*, PROVIDENCE (R.I.) JOURNAL-BULLETIN, Oct. 26, 2001, at A1.

<sup>80</sup> See Advisory Memorandum Regarding the Sikh Practice of Wearing Ceremonial Swords, Jan. 6, 1998, available at <http://www.sikhcoalition.org/KirpanSantaClaraDA.pdf> (last visited Oct. 5, 2006); see also CAL. PENAL CODE § 12020(a)(4)(2005) (criminalizing the concealed possession of a dirk or dagger).

<sup>81</sup> See CAL. PENAL CODE § 12020(c)(25).

<sup>82</sup> See Advisory Memorandum Regarding the Sikh Practice of Wearing Ceremonial Swords, Jan. 6, 1998, available at <http://www.sikhcoalition.org/KirpanSantaClaraDA.pdf> (last visited Oct. 5, 2006).

<sup>83</sup> See *id.*

<sup>84</sup> *People v. Singh*, 516 N.Y.S.3d 412, 416 (N.Y. Civ. Ct. 1987).

<sup>85</sup> Some of these avenues involve statutory remedies, including expanding Title VII accommodations under the Civil Rights Act to include articles of faith or the inclusion of a concealed weapons law exception for the kirpan mirroring the United Kingdom’s exception. Other judicial options may include arguments under state-level RFRAs passed in the wake of *City of Boerne v. Flores*, 521 U.S. 507 (1997).

<sup>86</sup> Videotape: Dastaar (Sikh Coalition 2005), available at <http://www.sikhcoalition.org/> (last visited Oct. 8, 2006).

<sup>87</sup> *Singh*, 516 N.Y.S.3d at 416.