

# Sikhism as a Distinct Religion in Indian Law

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**Founders envisaged Sikhism as a distinct religion-** Guru Nanak, founder of Sikhism, established an original and distinct monotheistic religion. He denounced ritualism, asceticism and caste system prevalent in the existing religions. Though born in a Hindu family, he discarded the essentials of Hinduism. At the tender age of twelve years, he refused to follow the Hindu ritual of wearing *janeu* (sacred thread). His very first sermon was that “There is no Hindu or Muslim”, all are creatures of the Supreme Being. He laid down the doctrines of the new religion which were based on truth, justice, equality, service, sacrifice and pious deeds.

Guru Arjan Dev, fifth Nanak, who made Sikhism a complete religion by providing to his followers- ‘Ahle Muqam’, spiritual capital in the form of Harimandir Sahib (Golden Temple) at Amritsar; ‘Ahle Kitab’, divine book, Guru Granth Sahib; ‘Ahle Zuban’, Panjabi language with Gurmukhi script and ‘Ahle Shahad’, cherishing martyrdom becoming the first martyr of the faith. Besides, he started the institution of Daswandh (tithe) to sustain the infant religion. He frankly stated<sup>1</sup>:

I have broken free from Hindus as from Muslims.

Neither I go to Mecca to perform Hajj nor do I worship at Hindu pilgrimages.

I serve only the sole Lord and no other.

I neither perform the Hindu worship nor say the Muslim prayer.

I bow to the One Formless Lord in my heart.

We are neither Hindus nor Muslims.

Our body and soul belong to One Supreme Being.

Guru Gobind Singh, the tenth and last Guru, refused to have any truck with Hinduism and Islam and their religious preceptors and scriptures. In his words, “Ever since I have fallen at Thy feet, I do not recognise (bother about) anyone else. People talk about Ram, Rahim, Purans and Quran but I do not accept any of them. I also do not accept and recognize whatever is mentioned in Smritis, Shastras and Vedas. O God! Through Your mercy and grace, I am saying that You

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<sup>1</sup> Guru Granth Sahib, 1136.

ordained me to say.”<sup>2</sup> The Tenth Master addressed the large gathering at Anandpur Sahib on March 30, 1699 immediately after administering Amrit to Panj Pyaras saying, “Do not follow the old scriptures. Let none pay heed to the Ganga and other places of pilgrimage considered holy in the Hindu religion, or worship the Hindu deities such as Rama, Krishna, Brahma and Durga; but all should cherish faith in the teachings of Guru Nanak and his successors.”<sup>3</sup> He emphasized on distinct and unique identity of Sikhism. The Guru gave the Sikhs visibly distinct identity by prescribing 5K’s to obviate any confusion. Introduction of *nash* doctrine while administering Amrit emphasizes the distinctiveness of Sikhism. New entrant to the Khalsa order is told that baptism amounts to his new birth in the house of the Guru on that day and his previous affiliations to caste, tribe, religion etc., all have been obliterated.

Thus the words and actions of the founders of Sikhism amply exhibited their intention to establish an independent, separate and distinct religion. They were not elaborating, interpreting or reforming any existing religion. Gurus’ followers and contemporaries have correctly apprehended and found Sikhism as a new entrant in the list of religions. Bhai Gurdas, the amanuensis of Guru Granth Sahib, whose writings are considered as key to understand the Sikh Scripture and tenets, repeatedly recorded that Guru Nanak started a distinct and fresh religion which cannot be classified alongwith the existing religions.<sup>4</sup> The first non-Sikh writer on Sikhism is Sheikh Mohsin Fani who stayed with the sixth Guru at Kiratpur Sahib records in his comparative study of religions, *Dabistan-i-Mazahib*, in 1654, “The Nanak-Panthis who are known as Sikhs of the Guru, have nothing to do with idols in temples.....They do not observe any Brahmanical taboos about food and drinks. They have no regard for Sanskrit which the Hindus consider as the language of angels. The Sikh belief in transmigration distinguishes them from Muslims and Sikh insistence on unity of God distinguishes them from Hindus.”<sup>5</sup>

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<sup>2</sup> Ram Avtar in Dasm Granth.

<sup>3</sup> Ghulam Muhiuddin’s report of Guru’s address to Emperor Aurangzeb reproduced in Teja Singh & Ganda Singh, A Short History of the Sikhs, Bombay 1950, 68-69.

<sup>4</sup> Var 1 pauris 1 & 31; Var 38 pauris 9 & 11; Var 39 pauris 10-11.

<sup>5</sup> Mohsin Fani, Dabistan-i-Mazahib, (1654), Kanpur 1904.

**Confirmation of separate status of Sikhism by subsequent observers-** Qazi Noor Mohammed, who accompanied invader Ahmad Shah Abdali to India in 1764, writes: "Nanak showed the Sikhs a separate path (taught a distinct religion). They are not from amongst the Hindus, and have a separate religion of their own."<sup>6</sup>

M.A. Macauliffe, eminent British historian in his splendid work *Sikh Religion* (six volumes) describes, "Sikh religion is different from other religions from the aspect of authenticity of its doctrines, its scriptures and its commandments to.....It would be difficult to point to a religion of greater originality or to a more comprehensive ethical system"<sup>7</sup>

Ms. Dorothy Field, another eminent British author, wrote, "Sikhism should be regarded as a new and separate world religion, rather than a reformed sect of Hindus. This religion is also one which should appeal to the occidental (western) mind. It is essentially a practical religion. If judged from the pragmatical standpoint, in some quarters, it would rank almost first in the world."<sup>8</sup> According to Duncan Greenless, distinguished scholar and author of *World Gospel Series*, "Sikhism is no disguised sect but an independent revelation of the Truth of all sects; it is no variant of Muslim teaching.....It too is a distinct religion like other great religions of the world".<sup>9</sup> Another scholar calls Sikhism "a wholly new, original, independent and genuinely monotheistic religion."<sup>10</sup> Aurobindo Ghosh, saint and scholar from Pondicherry, described "the Sikh Khalsa as an astonishingly original and novel creation and its face is turned not to the past but to the future."<sup>11</sup> In the light of analysis by these authorities, it is totally naïve to doubt about the distinctiveness of Sikhism.

**Definition of Law-** To examine the legal recognition of the fact that Sikhism is an independent religion, it will be necessary to know what the word 'law' denotes. John Austin (1790-1859), known as 'father of English Jurisprudence', was the first to provide systematic definition of 'law'. He described law as 'command of the

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<sup>6</sup> Qazi Noor Mohammed, *Jang Namah* (1765), English translation by Ganda Singh, Amritsar, 59.

<sup>7</sup> M.A. Macauliffe, *The Sikh Religion, its Gurus. Sacred Writings and Authors*, Oxford, 1909, Vol. 1, Lv.

<sup>8</sup> *The Religion of Sikhs*, London 1914, 10 & 34.

<sup>9</sup> *The Gospel of the Guru Granth Sahib*, Madras 1952, 216.

<sup>10</sup> Edward Bittencourt, Foreword to Ranbir Singh, *Sikh Way of Life*, Delhi 1968, vi.

<sup>11</sup> Sri Aurobindo, *A Defence of Indian Culture, Religion, and Spirituality*, in *The Arya*, vol. vi, 1920.

sovereign' and all the rules emanating from the political superior are species of commands. A command, may be general, specific or occasional, is a law or rule. He said, law is law because it is made by the sovereign and sovereign is sovereign because he makes the law. Salmond, a modern author, defines law as the body of principles recognized and applied by the State in the administration of justice.

**Legal Recognition of Sikhism by Muslim Rulers-** Keeping the definition of law in view, it can be said that the law recognized Sikhism as a separate religion when Emperor Jehangir ordered execution of Guru Arjan Dev. Giving reasons for the said order, the Emperor says about the Guru :

“So many of the simple-minded Hindus, nay many foolish Muslims too, had been fascinated by his ways and teachings. He was noised about as a religious and worldly leader. They called him Guru, and from all directions crowds of fools would come to him and express great devotion to him. This busy traffic had been carried on for three or four generations. For years the thought had been presenting itself to my mind that either I should put an end to this false traffic, or he should be brought into the fold of Islam.”<sup>12</sup>

Another command of the Sovereign evidencing recognition of Sikhism can be referred to. “Aurangzeb ordered the temple of Sikhs to be destroyed and Guru’s agents (*masands*) for collecting the tithes and the presents of the faithful, to be expelled from the cities.”<sup>13</sup>

Further, after Banda Singh Bahadur took over the control of major area of Punjab, Emperor Bahadur Shah issued an edict on December 10, 1710 enjoining upon his *faujdar*s (officials) to kill disciples of Nanak (Sikhs)-men, women and children-wherever found. It resulted in an indiscriminate persecution and slaughter of Sikhs. In order that Hindus might not suffer along with them, the Emperor republished his earlier royal *firman* and also ordered all Hindus to shave off their beards to distinguish themselves from the Sikhs who would never-not even under pain of death- cut or shave their beards or whiskers or any hair whatever of their bodies'.<sup>14</sup> Farrukh Siyar, who took over the Delhi throne in 1713, not only implemented the above said order more harshly but reissued it along with offering money reward for the head of every Sikh brought to Lahore, dead or alive.

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<sup>12</sup> Tuzuk-i- Zehangiri quoted in Teja Singh and Ganda Singh, A Short History of the Sikhs, vol. I, Patiala 2006, 34.

<sup>13</sup> Khafi Khan quoted in J N Sarkar, History of Aurangzeb vol. III, 212.

<sup>14</sup> Teja Singh & Ganda Singh, A Short History of the Sikhs, 93.

Zakrya Khan, known as 'Khan Bahadur', was appointed Governor of Lahore in 1726. He was determined 'to exterminate the whole nation of the Sikhs once for all. He sent out moving columns in all directions to hunt out the Sikhs. Prizes were fixed on their heads. They were tortured and beheaded publicly in Lahore.

Nadir Shah was harassed and looted by the Sikhs on his way back to Persia after sacking Punjab and Delhi in 1739. During his halt at Lahore, he cautioned Zakrya Khan that 'the day is not distant when these rebels (Sikhs) will take over possession of the country.' This remark of the foreign invader made Zakrya to launch an all-out campaign against the Sikhs. Rewards were offered for the capture and destruction of the Sikhs. Ten rupees would be paid to the informer who got a Sikh arrested and fifty rupees for bringing the head of a Sikh. It was declared lawful to plunder their houses and to seize their property.

Yahiya Khan, the son and successor of Zakrya, was as relentless as his father. He had no soft corner in his heart. His diwan, Lakhpat Rai, vowed to erase the Sikhs' name from the page of existence. He got a general proclamation issued for the extirpation of Sikhs. To begin with, all the Sikhs living in Lahore were executed on March 10, 1746. It was followed by the First Holocaust in which about ten thousand Sikhs were killed after encircling them in the reedy marshes of Kahnuwan under the personal command of Yahiya Khan and Lakhpat Rai.

Mir Mannu was appointed new governor of Lahore on April 1, 1748. When Ahmad Shah conquered Lahore and Multan during his third invasion in April 1752, these provinces ceased to be part of the Mughal Empire and became a part of the Afghan empire. Shah reinstated Mir Mannu as Viceroy of these territories. He ordered combing of the area to find out the Sikhs and kill them at sight. Rewards were announced for those who brought Sikhs alive or their severed heads. Large number of Sikhs was put to death outside the Delhi Gate of Lahore and wells were filled with their heads. At times, Mir Mannu himself rode out for hunting Sikhs and was got accidentally killed in one of such pursuits on November 2, 1753. Another Governor of Lahore, Adeena Beg issued order in 1758 to all the zamindars of the Panjab to take measures to destroy the Sikhs wherever found.

Wadda Ghalughara (the Second Great Holocaust) in the Sikh history occurred on February 5, 1762 when Ahmad Shah invaded India for the sixth time. He reached the village of Kupp Rahira, near Malerkotla, where about 30,000 Sikhs were encamped with their families. He had issued orders to his soldiers to kill anyone

found in Indian dress. Thousands of Sikhs, mostly women and children, were killed in this carnage.

Sikh carnage of November 1984 killing thousands of Sikhs also occurred in pursuance of the official orders of the ruling class.

Independent and distinct identity of Sikhism is evidently recognized by the extermination orders issued by the different sovereign authorities from time to time. These were commands of the Sovereign and were fully recognized and applied by the State in the administration of justice. And justice in this context means what the sovereign of the time attributes to it. Legal recognition means when politically superior (sovereign) takes note of its existence. Above said examples are the acknowledgement of the subsistence of a new religion by the sovereign authorities.

**Legal Recognition of Sikhism during Sikh Regime:** When followers of Sikhism became sovereign themselves, it *ipso facto* amounted to political and legal recognition of their religion. They made and enforced the laws keeping in view the tenants of their religion. Under the leadership of Banda Singh, they acquired suzerainty of the entire province of Sirhind, extending from Karnal to Ludhiana yielding revenue of about thirty-six lakhs a year. He introduced an official seal. Banda Singh made Mukhlisgarh, a place near Sadhaura, as his capital. He assumed royal authority and struck coins in the name of Guru Nanak-Guru Gobind Singh. He started his own calendar year from the date of his conquest of Sarhind. He is known for abolishing Zamindari system prevailing in the country. The arrangement continued for a couple of months.

Again the Sikhs belonging to different groups gathered with their followers in large numbers at Amritsar on the Baisakhi day, March 29, 1748, and held discussion about the future of the Sikh Panth. It declared the creation of Khalsa state. Sardar Jassa Singh Ahluwalia was selected as the supreme commander of the Dal Khalsa. A fort named Ram Rauni was built at the outskirts of Amritsar. The leading Sikhs began to assert their rule over different parts of the Central Panjab. But the arrangement did not last for long.

After occupying many areas of Majha and Doab in 1761, the Sikhs entered Lahore and were welcomed by the citizens. S. Jassa Singh Ahluwalia was proclaimed as king with the title of Sultan-ul-Qaum. He coined money in the name of the Gurus. The entire Panjab, from the Indus to the Satluj, fell into the Sikhs' hands. But this arrangement lasted only a few months.

Sarbat Khalsa gathered at Baisakhi day at Amritsar in 1765 and resolved by a gurmata to take possession of Lahore. Kanhaiya and Bhangi Sardars, took over the city and its neighborhood. In a short while they liberated most of the areas from the foreign rule. They coined currency of their own by repeating the inscription which had already appeared on the seals of Banda Singh and the coins of Jassa Singh.

Thereafter, twelve Sikh *misls* (confederacies) ruled over the area. Maharaja Ranjit Singh established himself as ruler of the united Sikh kingdom at the turn of the century by integrating trans-Sutlej *misls*. He ruled efficiently till his death in 1839. His kingdom was known as Sarkar-i- Khalsa. He liberally contributed to Sikh Gurdwaras and advanced the cause of the Sikhs in every way. He submitted himself to Sikh religious authority for chastisement for some moral lapses.

Needless to say that Sikh rule *ipso facto* meant recognition of Sikhism as an independent religion. Sikhism was also recognised as an independent religion by the Mughal rulers.

## LEGISLATION

Legislation, i.e., enactment by the legislature, became the primary source of law after Montesquieu propounded his theory of separation of powers in 1748 and that was incorporated in the U.S. Constitution in 1774. The Britishers introduced legislation (codes) profusely in India in the second half of the 19<sup>th</sup> century. Sikhism is acknowledged as a distinct religion in and under various legislations during the British period and afterwards by making specific reference or provision for it. Such legislations can be listed under different categories as follows.

### Personal Laws

#### Special Marriage Act 1872-

- i) It allowed civil marriages between any two persons without undergoing any religious rites. Originally it required the parties to declare that he/she does not profess Hindu, Sikh, Buddhist, Jain, Muslim, Christian, Parsi or Jew religion but the amendment in 1922 to facilitated inter-religious marriages including those of the Sikhs.
- ii) Further, the 1872 Act provided that a member of the Hindu, Sikh, Buddhist or Jain joint family marrying under this Act will cease to be member of such family.
- iii) It allowed the Hindu, Sikh, Buddhist or Jain father whose only son married under this Act to adopt a son.
- iv) It also extended the protection of the Caste Disabilities Removal Act 1850 to a Hindu, Sikh, Buddhist or Jain marrying under this Act.

This Act has been repealed in 1954 by the Act of the same name.

However, its present version, the **Special Marriage Act 1954**, does not require any declaration of being non-religious. Sections 19 and 21 provide for the consequences of marriage under the Act. A Hindu, Sikh, Buddhist or Jain joint family marrying under this Act will cease to be a member of such family and succession to the property of such person and also of the issue of such a marriage shall be regulated by the provisions of the Indian Succession Act 1925. But both the disabilities will not be applicable to a Hindu, Sikh, Buddhist or Jain who solemnises marriage under this Act with a person professing Hindu, Sikh, Buddhist or Jain religion<sup>15</sup>. The Caste Disabilities Removal Act 1850 continues to be applicable to persons including the Sikhs marrying under this Act.

Privy Council decided **Rani Bhagwan Koer v. J C Bose**<sup>16</sup>, generally known as 'Majithia Will Case' in 1903. Dyal Singh Majithia had made a will of huge property in favour of Brahma Samaj. His widow challenged the will arguing that her husband, being a Sikh, was not governed by Hindu Law of Inheritance. Rejecting her argument, the Privy Council preferred the application of Hindu law over English law holding that Hindu law continued to be applicable to the Sikhs unless any custom or usage to the contrary is established. Sikh-baiters propagated that she lost because the court considered Sikhs as Hindus.

**Sir Lepel Griffin** had observed in 1870, "The Sikhs have abandoned the Hindu faith and with it the system of law which is the basis of the faith and which was inseparable from it. For a hundred and fifty years they had been governed as far as chiefships were concerned, by another code altogether and it was as reasonable for them to refer to Manu and the Shastras as the source of legal authority, as it would have been for Mohammedans who had embraced Sikhism to appeal to the Shariat."<sup>17</sup>

**Bhai Kahan Singh Nabha** had rightly argued in his reputed work, *Ham Hindu Nahin*, that laws are not framed alongwith the basic tenets of religion; these are developed later on as per the needs of the changing times. He also pointed out that there is no legal code based entirely on Hindu religious books.<sup>18</sup>

**Anand Marriage Act 1909**- Tikka Ripudaman Singh, member of the Imperial Legislative Council, introduced the Bill after convincing the British authorities

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<sup>15</sup> Section 21A inserted in the Act in 1976

<sup>16</sup> (1903) 30 Indian Appeals, 249

<sup>17</sup> *Rajas of the Punjab*, Lahore 1879, 338.

<sup>18</sup> Kahan Singh Nabha's *Ham Hindu Nahin*, translated in English by Jarnail Singh, *Sikhs- We are not Hindus*, Amritsar 2010, 131.

about its necessity. Louis Dane, Lt. Governor of the Punjab confirmed the leveling of allegation by Arya Samajis against *anand* marriage ceremony of the Sikhs after making the necessary inquiries. He had made the useful suggestion of introducing the Bill in the Imperial Legislative Council and its application to the whole of British India. Supporting the Bill, he said<sup>19</sup>, “The Bill has behind it the popular support of the vast majority of the Sikh community. It in no way infringes the civil, social or religious rights of the minority who have opposed it. It affords the basis for a valuable social reform in the direction of the reduction of marriage expenses which is one of the main causes of indebtedness in this province. It may prevent very costly and wide spread litigation. It would probably cause serious popular discontent if no action is taken in the matter of the Bill.”

As stated in its preamble, the Anand Marriage Act was passed to remove the doubts as to the validity of the Anand marriage ceremony which had become quite common amongst the Sikhs. So it was only to confirm the validity of marriages solemnised through Anand ceremony.

Besides removing the doubts about the authenticity and legality of Anand marriages and making inter-caste marriages and widow remarriages possible, the Anand Marriage Act contributed to the recognition of Sikhism as an independent and distinct religion with its own customs, traditions and ceremonies. Thus the Anand Marriage Act constituted a distinct break with Hinduism. Passing of the Act was certainly not a small event. Those who ridicule by calling it a lame and crippled Act have under-estimated its importance.

The Anand Marriage Act is not a comprehensive law relating to Sikh marriages. It dealt only with the ceremonial or solemnization aspect. After amendment of this Act in 2012, Sikh marriages solemnized through Anand can be registered under this Act. Besides it, the Sikh marriages continue to be governed by the Hindu Marriage Act 1955.

**Indian Succession Act 1925-** This Act contains general law of inheritance and also the law of testamentary succession. The Sikhs alongwith Hindus, Buddhists and Jains are exempted from the application of the law of inheritance but the law of testamentary succession is made specifically applicable to all of them.

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<sup>19</sup> Official Correspondence of January and March 1909, quoted in K.S. Talwar, The Anand Marriage Act, The Punjab Past and Present 1968, 400.

**The Hindu Marriage Act 1955** governs more than 85% of the Indian population including the Sikhs. Introduction of monogamy, divorce, judicial separation, nullity of marriage and gender equality; prohibition of child marriage and allowing inter-caste and inter-religious marriages by the Act were the major departures from old Hindu Law. All this totally transformed the content and spirit of Hindu marriage. Dr. Derrett's statement<sup>20</sup> that Hindu law of marriage has died on the passing of the Hindu Marriage Act, is no exaggeration.

A minute study reveals that there is hardly anything in the Act which can be termed as purely or distinctly 'Hindu'. Almost all the substantial provisions are borrowed from English Law. A number of provisions are verbatim copy while others incorporate substance of the English Law. The Parliament has imported English Law of marriage and imposed it upon the Hindus, Sikhs and others under the label of Hindu Marriage Act. Thus the Act is Hindu in name only but not in substance.<sup>21</sup>

Word 'Hindu' is not defined in section 3 of the Act which defines various terms and expressions in the Act. However, Section 2 of the Act is having its marginal heading as 'Application of the Act' and describes various religious categories of people who are governed by the Act. It reads as under-

2. Application of Act- (1) This Act applies-

(a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,

(b) to any person who is a Buddhist, Jaina or Sikh by religion, and

(c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion.....

(3) The expression 'Hindu' in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a

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<sup>20</sup> J.D.M. Derrett, *Death of A Marriage Law-Epitaph for Rishis* (1978), 54

<sup>21</sup> See Kashmir Singh, Is the Hindu Marriage Act Really Hindu, Amritsar Law Journal (1992), 17

person to whom this Act applies by virtue of the provisions contained in this section.

Clause (a) of S. 2(1) mentioning various branches, sects and sub-sects of Hindus does not include Sikhs as one of them. The Parliament has correctly kept Sikhism outside this Hindu religion category and specifically mentioned it as a religion in the list of religions other than Hinduism in clause (b) perceiving that Sikhism is not a branch of Hinduism. Thus the Act recognises Sikhism as an independent religion distinct from Hinduism. A combined reading of clauses (a) and (b) shows that four religions of Indian origin are treated at par and Hindu Marriage Act applies to the followers of these four independent religions.

Sub-section (3) of S. 2 further clarifies the position. It clearly says that the Act applies not only to persons who are Hindus by religion but to the followers of the other religions also mentioned in this Section. All the persons to whom this Act applies as per provisions of this Section shall be construed or presumed as Hindus for the limited purpose of application of this Act and for no other. Thus Hindu Marriage Act specifically recognises Sikhism as an independent and distinct religion and not merely an appendage or off-shoot of Hinduism.

Section 2 of the **Hindu Succession Act 1956**, Section 2 of the **Hindu Adoption and Maintenance Act 1956** and S. 3 of the **Hindu Minority and Guardianship Act 1956** are exactly the same as that of S. 2 of the Hindu Marriage Act 1955. So all the comments stated above are applicable to these enactments as well. All the four Hindu family law enactments of 1955-56 are having 'Hindu' prefixed in their title because Hinduism is dominant of the four religious communities to whom these Acts apply. Neither the nature nor substance of these enactments is Hindu nor are all those governed by them are Hindus. Therefore, the prefix 'Hindu' in the titles of enactments is not justified at all. The Sikhs, being adherents of an independent religion, object their subjection to personal laws enacted under 'Hindu' titles and their objection is perfectly valid.

### **Definition of 'Sikh'**

**Indian Census Act 1874**-The Sikhs were listed as a separate community in the census for the first time in 1868. The census reports of India since then list Sikhism as an independent faith. But the definition of 'Sikh' was supplied to the enumerators for the first time before the census of 1891. A person having unshorn hair who abstains from smoking could be listed as a 'Sikh'. For the 1911 census,

everyone who claimed himself to be a Sikh was entered as a Sikh to obviate any confusion.

**The Government of India Act 1919**, passed by the British Parliament, conceded separate electoral rights to the Sikhs in the Legislature. The Punjab Legislative Council comprising of 93 members was to have 15 Sikh members elected by the Sikh constituents. Sikhs having 12% of Punjab population got 18% representation though they were asking for 33%. Under the provision for nomination by the Governor, 3 additional members were nominated to the Punjab Council in 1920. In Central Legislative Assembly of 145 members, 3 were to be Sikhs and in Council of States, upper house, of 60 members, one seat was reserved for the Sikhs. Anyone, declaring himself to be a Sikh and being prima facie what he represented himself to be, was to be enrolled as a voter. The electoral officer was to accept the declaration of an elector unless he is satisfied that declaration is not made in good faith.

### **Gurdwara Management Laws**

Shiromani Gurdwara Parbandhak Committee got itself registered under the Societies Registration Act on April 30 1921. Its constitution, as registered, provided voting rights to adult Sikhs observing elementary rules of Sikh conduct including the five K's.

**The Sikh Gurdwaras and Shrines Act** was passed in 1922 to provide for the better administration and management, in cases of dispute, of certain Sikh Gurdwaras. It had to be repealed due to refusal of the Sikhs to participate in its working.

**The Sikh Gurdwaras Act 1925<sup>22</sup>** was passed to provide for the better administration of certain Sikh Gurdwaras and for settlement of disputes connected therewith. It made the Sikhs custodians of their places of worship. It constituted Shiromani Gurdwara Parbandhak Committee, Local Gurdwara Committees, Tribunal and Sikh Gurdwaras Judicial Commission besides providing for other details. After passage of the Act, Raja Narendra Nath, a Hindu member of the Punjab Legislative Council commented, "I must confess that movement of the separation of the Sikhs and of their being recognized as separate community from the Hindus has been looked upon with disfavor by the Hindus. But the fact is well

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<sup>22</sup> See for details Kashmir Singh, Commentary on the Sikh Gurdwaras Act 1925, Amritsar 2004.

established and well recognized that the Sikh do form a separate community.”<sup>23</sup>

Section 2(9) of the Act defined ‘Sikh’ as follows-

“Sikh means a person professing Sikh religion. If a question arises whether a person is or is not a Sikh, he shall be deemed to be or not to be a Sikh according as he makes or refuses to make following declaration- I solemnly affirm that I am a Sikh, that I believe in Guru Granth Sahib, that I believe in ten Gurus and that I have no other religion.” The Act recognised the claims of the Tat Khalsa to a cohesive and separate Sikh identity.<sup>24</sup>

Other enactments governing Gurdwara managements are also there.

**The Nanded Sikh Gurdwara Sachkhand Sri Hazur Abchal Nagar Sahib Act 1956** was passed originally by the Hyderabad state legislature, but Nanded area became a part of Maharashtra State on reorganization of Indian States in the same year. The Act is now within the purview of State of Maharashtra. The Sikh Gurdwaras in the city of Nanded, known as ‘Hazur Sahib’ and ‘Abchal Nagar’ by the Sikhs, are governed by this Act. Definition of ‘Sikh’ in this Act is the same as in the Punjab Act of 1925.

**The Delhi Sikh Gurdwaras Act 1971**<sup>25</sup> was passed by the Indian Parliament. It governs the management of historical Sikh Gurdwaras in Delhi. It defines ‘Sikh’ as believer of One God, Ten Sikh Gurus and Guru Granth Sahib; being Keshadhari and having no other religion.

**The Jammu and Kashmir Sikh Gurdwaras and Religious Endowments Act 1973-** The Jammu and Kashmir Legislature has enacted this piece of legislation for the management of Sikh Gurdwaras in the State of J&K. It is a skeleton legislation comprising 19 sections. Vast powers are delegated to the State Government under the rule making power to prescribe for the important matters. The Act provides for a Gurdwara Board and Gurdwara Parbandhak Committees at district level but the manner of their election and establishment is left to be prescribed by the rules. The Government has framed the Jammu and Kashmir Sikh Gurdwaras and Religious Endowment Rules, 1975 for the purpose.

**Constitution and Byelaws of Sri Takht Harimandir Ji, Patna Saheb, 1957-** is framed by the Patna administration under the powers conferred by the Religious Endowments Act 1863. It provides for the administration of Takht Harimandir Ji and other historical Gurdwaras in Patna Saheb. Definition of ‘Sikh’ in the Byelaws is exactly the same as that of the Punjab Act of 1925.

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<sup>23</sup> PLCD

<sup>24</sup> Rajiv A Kapur, *Sikh Separatism: The Politics of Faith*, London 1986, 191.

<sup>25</sup> See for details, Kashmir Singh, *Delhi Sikh Gurdwaras Law and Practice*, Delhi, 2014.

**Bihar Hindu Public Trusts Act 1950-** Section 2 (e) of the Act defines ‘Hindu’ as “a person professing any religion of Hindu origin and includes a Jain and a Buddhist but does not include a Sikh.”

Section 2 (l) defines ‘Religious Trust’ as “any.....trust created or existing created for any purpose recognized by Hindu Law....., but shall not include a trust created according to the Sikh religion or purely for the benefit of Sikh community.

**Karnataka Hindu Religious and Charitable Endowments Act 1997-** Section 2 (16) of this Act provides that the word “Hindu does not include a Buddhist, Jain or Sikh.”

**Bombay Public Trusts Act 1950** is applicable in the States of Maharashtra and Gujarat. It also extends to Sikh Gurdwaras other than the Nanded Gurdwaras.

**Mysore Religious Endowments Act 1959-** Explanation I to Section 1 reads, “The expression ‘Hindu religion’ shall include Jain, Buddhist and Sikh religion and the expressions ‘Hindu’ and ‘Hindu Public Religious shall be Institutions’ construed accordingly. The Madhya Pradesh Public Trusts Act 1951 and the Rajasthan Public Trusts Act 1959, UP Hindu Religious Institutions (Prevention of Dissipation of Properties) Act 1962 and Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act 1966 define ‘Hindu’ as inclusive of Sikhs. These enactments do recognize Sikhism as distinct religion by making specific mention of it and its followers. But the lurking intention of these legislatures to put Sikhism in a subsidiary position is not justified.

## **Constitution of India 1949 & other National Laws**

**Article 25 of the Constitution** reads as under:

25 (1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) Regulating or restricting any economic financial political or other secular activity which may be associated with religious practice;

(b) Providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I- The wearing and carrying of Kirpans shall be deemed to be included in the profession of the Sikh religion. Explanation II- In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.

Article 25 grants freedom of conscience and free profession, practice and propagation of religion subject to a number of limitations.

**Throwing open of Hindu Religious Institutions-** One of the limitations contained in second part of Article 25 (2)(b) empowers the State to make laws to throw open Hindu religious institutions of a public character to all classes and sections of Hindus. It is meant to abolish untouchability based on caste system of Hinduism.

Explanation II to the Article says that reference to Hindus in clause (2)(b) shall be construed as including a reference to persons professing Sikh, Jain or Buddhist religion. Though the Explanation recognizes Sikhism (Jainism and Buddhism) as distinct religion by making a specific mention as such but inclusion of Sikhism in it is totally misplaced and irrelevant. The twin objections of the Sikhs are-

- (i) The provision classifies religions in two categories. Four (Hindu, Sikh, Jain and Buddhist) religions which find mention in it are deemed to be in need of legislation for throwing open their public religious institutions to the adherents of those religions. The second category of religions like Islam, Christianity, Parsi and Jew which are not included in it are considered not having any problem as regards entry implying their shrines are already open for their followers and do not require any legislation or State help for the purpose. This classification is erroneous for categorizing Sikhism wrongly. The Constitution-makers simply included all the religions of Indian origin in the Explanation without considering the basis of inclusion. Inclusion of Sikhism is totally misplaced because Sikh Gurdwaras are open to one and all even to the non-Sikhs, a stage at which even the legislation under Article 25 (2)(b) does not and cannot envisage to reach. The Sikhs are justifiably agitated over their unjust clubbing with Hindus as it reflects distorted view of their religion. This gives wrong impression that Sikhism is also an orthodox religion oblivious of the principles of equality, liberty and fraternity. In fact the Sikh Gurus denounced caste system and untouchability

stoutly and did their best by precept and practice to root out these evils from society. So inclusion of Sikh religion in Explanation II is an aspersion on the fair name of this religion. It is either due to the ignorance of the Constitution-framers about the lofty ideals of Sikhism or their wickedness to present a distorted view of it.

- (ii) Explanation II also strikes at the independent status of Sikhism by presenting it as a subsidiary of Hinduism. Its reading gives the wrong impression as regards the distinct and separate identity of Sikhism. Its reading may lead to assume that Sikhism is a part, subsidiary, branch or an off-shoot of Hinduism which is factually incorrect.

National Commission to Review the Working of the Constitution [NCRWC] headed by Justice M N Venkatachaliah, former Chief Justice of India was constituted in the year 2000 by the earlier BJP Government. After reviewing the Sikh representations, the Commission recommended in 2002 for omitting Explanation II to Article 25 and replacing clause (2)(b) of that Article as follows-

(b) Providing for social welfare and reform or the throwing open of Hindu, Buddhists, Jains and Sikh religious institutions of a public character to all classes and sections of these religions.

The recommendations of the Commission have not been implemented by amending the Constitution though the Sikhs have been clamoring for the same. If implemented, it will remove only the second objection mentioned above while the first objection will continue as such. It is therefore suggested that the Sikhs should get Article 25 amended choosing any of the following alternatives-

Deletion of word 'Sikh' from Explanation II, or

Deletion of Explanation II as a whole without insertion of word 'Sikh' in sub-clause (b) of clause (2), or

Deletion of Explanation II and replacement of Clause 2(b) as follows-

(b) Providing for social welfare and reform or the throwing open of religious institutions of a public character to all classes and sections of the respective religion.

**Explanation I to Article 25** recognizes wearing and carrying of *Kirpan* included in the profession of Sikh religion. Sikhism is thus the only religion one of whose

basic tenet is specifically mentioned in the Constitution of India. It may be mentioned along with that the Supreme Court of India<sup>26</sup> has held that wearing of *Karra* by a Sikh is an integral principle of Sikh religion.

The Constitution of India makes several special provisions for the Scheduled Castes regarding reservations for them in jobs, legislatures, local bodies, educational institutions etc. Article 341 of the Constitution authorizes the Government (President of India) to declare certain castes, races or tribes as Schedule Castes and the list so declared can be amended from time to time by the Parliament.

**The Constitution (Scheduled Castes) Order 1950** was issued in exercise of that power. This Order specifically mentioned that one has to be a Hindu to be a Scheduled Caste. It was extended to the Sikhs in 1956 after a prolonged agitation. Buddhists were included in 1990. Paragraph 3 of the Order, as at present, provides, “...no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion shall be deemed to be a member of the Schedule Caste.

Exclusion of the Sikhs from the category of Scheduled Castes in spite of their repeated assertions in the Constituent Assembly and later their inclusion after an agitation highlights the separate identity of Sikh religion.

**Religious Institutions (Prevention of Misuse) Act 1988-** Section 4 of this Act reads- “No religious institution or manager thereof shall allow the entry of any arms or ammunition or any person carrying any arms or ammunition into the religious institution:

Provided that nothing in this section shall apply to the wearing and carrying of a *Kirpan* by any person professing Sikh religion.

**The Arms Act 1878** prohibited and made punishable the possession and carrying of arms without license. But the Arms Rules 1924 framed under the Arms Act exempted the Sikhs in provinces of the Punjab and Delhi from the prohibition and operation prescribed by the Act. Thus the legal restriction by the Act against the wearing and carrying of *Kirpans* by the Sikhs in Punjab and Delhi was withdrawn by the Rules after an agitation by the Sikhs. Similarly, exemptions were extended

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<sup>26</sup> All India Reporter 1997 Supreme Court 2560.

later in the United Provinces, Central Provinces, Bihar, Bombay, Madras and Sindh.

**Protection of Civil Rights Act 1955** prescribes punishment for preaching and practicing untouchability. Explanation appended to section 3 of this Act reads, “For the purposes of this section and section 4 persons professing the Buddhist, Sikh or Jain religion or persons professing the Hindu religion in any of its forms or developments.....shall be deemed to be Hindus.” Reference to Hindu or Hindu religion is not made at all in both the sections. Purpose of adding the explanation is not clear. Though notice of Sikhism is taken as a separate religion but it seems to be mischievously shown as a subsidiary one.

**National Commission for Minorities Act 1992** provided for the constitution of National Commission for Minorities to oversee the enforcement of constitutional and legal rights of the religious minorities in India. Section 2(c) of the Act defines ‘minority occurring in the provisions of the Act would mean the religious communities notified as such by the central government. The Government has issued a notification in 1993 listing Muslims, Christians, Sikhs, Buddhists and Parsis to be minorities for the purposes of the Act.

Some states in India have enacted laws to constitute Minorities Commission and all of these recognise adherents of Sikhism as religious minority.

Sikhism and its peculiar symbols like Kirpan, hair, turban have been recognized by the legislatures and Governments of different countries in the world. The British Parliament passed the **Motor-Cycle Crash-Helmets (Religious Exemption) Act 1976** exclusively for the Sikhs. It is “An Act to exempt turban-wearing followers of the Sikh religion from the requirement to wear a crash-helmet when riding a motor-cycle.”<sup>27</sup>

The provincial legislature of New South Wales of Australia amended the **Summary Offences Act 1988** a decade after its enactment to safeguard the right of the Sikhs to wear and carry Kirpan in public places.

## **Precedents**

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<sup>27</sup> Preamble of the Act

In common law countries, precedent is an important source of law. There are a number of decisions which confirm the independent and distinct identity of Sikhism. A few judgments may be referred to. The Lahore High Court observed in *Beant Singh v. Hem Singh*<sup>28</sup>, “Guru Gobind Singh renounced Hinduism and rejected everything that smacked of it.” Similarly Calcutta High Court said, “Guru Gobind Singh sought to establish a military and political community which in religious matters would be self-contained and independent of Hinduism.” Likewise the Supreme Court of India has commented, “We have no hesitation to hold that Guru Granth Sahib is a ‘Juristic Person’. It cannot be equated with an ‘idol’ as idol worship is contrary to Sikhism. As a concept or a visionary for obeisance, the two religions (Hinduism and Sikhism) are different.” Further, distinguishing Guru Granth Sahib from sacred books of other religions, it said, “Though it is true that Guru Granth Sahib is a sacred book but it cannot be equated with these other sacred books in that sense. Guru Granth Sahib is revered in Gurdwara like a Guru, which projects a different perception. The reverence of Guru Granth Sahib on the one hand and other religious books on the other is based on different conceptual faith, belief and application.”<sup>29</sup>.

### **NANAKSHAHI CALENDAR 2003**

It is relevant to mention that adoption of Nanakshahi Calendar by the community in 2003 was approved by different Sikh organizations throughout the world including SGPC and Sri Akal Takhat Sahib. Acceptance of this calendar and declaration of holidays by the Union and the State Governments in accordance with it also amounted to legal recognition of distinct identity of Sikhism.

**Conclusion:** The founders of Sikh religion established a new, unique and complete religion. The respective legal authorities recognized Sikhism as a distinct religion right from its inception. Various legal agencies including the Constitution of India, British and Indian Parliaments, State Legislatures, Union and State Governments, Supreme Court of India and different High Courts have acknowledged, accepted and recognized Sikhism as a separate, distinct and independent religion correctly apprehending and appreciating the intention of its preceptors. Further, the Sikhs

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<sup>28</sup> All India Reporter 1926 Lahore 100

<sup>29</sup> *Shiromani Gurdwara Parbandhak Committee v. S N Dass*, All India Reporter 2000 Supreme Court 1421, paras 29 & 34

need to focus on deletion of word ‘Sikh’ from Explanation II of Article 25 of the Constitution, deletion of word ‘Hindu’ from the titles of four Hindu Acts of 1955-56 and adoption of original Nanakshahi Calendar of 2003 to assert their independent and distinct identity.



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