

THE SIKH GURDWARAS ACT 1925- A CRITIQUE

When the Sikhs had to flee to the jungles, hills and deserts due to their large scale persecution by the Mughal rulers after the execution of Baba Banda Singh Bahadur in the year 1716, the Sikh shrines passed into the hands of Mahants. They professed Sikhism but did not conform to its outward signs and symbols. Most of them were Udasis (a monastic order founded by Baba Sri Chand, elder son of Guru Nanak) and some of them were Nirmalas (a missionary order of those who were educated at Banaras; Nirmalas is a Sanskrit synonym of Khalsa) also. In the last quarter of 18th century, the Gurdwaras were liberally endowed by the Sikh rulers. The mahants, who had rendered valuable service during the difficult times, started ignoring Sangat, misusing and misappropriating Gurdwara income and property, claiming themselves to be the sole masters of the shrines and introducing idol worship and other Hindu religious practices in the Gurdwaras. With the patronage of British rulers in the latter half of 19th century, some of them got the Gurdwara (trust) properties registered in their names and refused even religious worship and ceremonies. Legal attempts by Sikh reformers to mend or remove them also failed. It compelled the Sikhs to resort to direct action and Gurdwara Reform Movement came into being towards the end of the second decade of twentieth century.

The reformers took over the control of Golden Temple and Akal Takht on October 12, 1920. In pursuance of a Hukamnama from Akal Takht, Sarbat Khalsa met on November 15, 1920 to make arrangements for the management of Harmandir Sahib and other Gurdwaras. It resolved to constitute Shiromani Gurdwara Parbandhak Committee of 175 members to manage all the Gurdwaras inside as well as outside the Punjab. Representation in the Committee was district-wise from Punjab and province-wise from other provinces of India. Sikh princely states and Sikh bodies from America, Burma, China and Malaya were also given representation. First meeting of the SGPC was held at Akal Takht on December 12 after close scrutiny of each member and imposition of appropriate punishment upon the defaulters by the Panj Piaras.

Shiromani Akali Dal, a political organization of the Sikhs which contributed considerably in the struggle for reform of Sikh shrines, was constituted on December 14, 1920. It sent Jathas to liberate different Gurdwaras from the mahants on the directions of the SGPC. A good number of mahants surrendered the Gurdwaras but some of them resisted. The Mahant of Tarn Taran Gurdwara killed two members of the Akali Jatha on January 26, 1921. A few days later, about 150 Sikhs were butchered by the wretched mahant of Nankana Sahib on February 20. Thereafter a force of 2200 Akalis marched into the Gurdwara and took over its control.

On advice of Mahatma Gandhi, the Gurdwara Committee and other Sikh leaders passed a resolution by majority for non-co-operation with the Government on March 6, 1921. S. Harbans Singh Attari, Prof. Jodh Singh and S. Kartar Singh Jhabbar opposed it. The Punjab Government convened a meeting of Sikhs of all shades of opinion at Lahore on March 8th in which the Home Member told the Sikhs not to take forcible possession of Gurdwaras as they were doing in the recent past. S. Jhabbar replied that the Government should enact a law with which to take possession of Gurdwaras which were the property of the entire Sikh Panth and the Sikhs would not resort to use of force.¹ The Home Member promised to consider the suggestion. This seems to be the first articulation of Sikh demand for Sikh Gurdwara legislation. A few days later on March 20, 1921, the SGPC, in its meeting, asked the Government to pass a suitable legislation to secure redemption of all the Gurdwaras.

¹ Narayan Singh, Jathedar Kartar Singh Jhabbar-the Life and Times, SGPC Amritsar, 2001, 89.

After Nankana tragedy, Chabian da Morcha (1921-22), Guru-ka-Bagh Morcha (1922) and Jaito Morcha (1924-25) were other landmarks of the Gurdwara Reform Movement wherein hundreds of Sikhs were killed and thousands of them were put behind the bars. The Movement was successful to get the Sikh Gurdwaras Act passed which provided management of hundreds of Gurdwaras to the Sikhs by evicting the wicked hereditary mahants.

Gurdwara Bill in Legislative Council: S. Tara Singh of Moga, Member Legislative Council (MLC), introduced Sikh Gurdwaras Bill, as a private member's bill, in the specially convened session of the Punjab Legislative Council (PLC) at Simla on May 7, 1925. The PLC passed it unanimously on 7th of July. Unanimity could be achieved because Pandit Madan Mohan Malviya had advised the Hindu members to support the Bill and the Muslim members did so in consonance with the Government's wishes.² The Bill became an Act on 29th of July after obtaining the assent of Governor General of India. The Act was enforced by a Gazette Notification of Punjab Government on November 1, 1925.

While passing the Bill in the Punjab Legislative Council, the members paid rich tributes to the Sikh community on their achievement of obtaining the Act. It was termed as "a piece of legislation for which there is no precedent;"³ "an extremely important measure of legislation which even Maharaja Ranjit Singh did not and could not give to the Sikhs."⁴ Dr. G.C. Narang described it as the "most extra-ordinary measure"⁵ and observed, "I am not aware that in any country any religious community felt so keenly about its holy places and made such sacrifices for their preservation and protection..... Those who object to the Bill for its sweeping character must find solace in the fact that those who got it have paid and paid very heavily for it."⁶ Mir Maqbool Mahmood⁷ congratulated the Sikhs in their "supreme hour of victory." The members advised the Sikhs to apply tact, good sense and patience to make the Bill a success.

S. Narain Singh, an MLC, gave following details in the Legislative Council about the extra-ordinary heavy price paid by the Sikhs to obtain the Act. "After the tragedy of Nankana Sahib, about 30,000 Sikhs have been sent to jail and more than 2,000 have been sentenced under Criminal Law (Amendment) Act, 431 have been martyred, about 54 editors of various papers punished and lakhs of rupees realized as fine."⁸ While introducing the Bill, S. Tara Singh, had told the Council on May 7th that 2,000 Sikhs were wounded and rupees 15 lakhs were paid as fine during the movement. The working committee of the (outlawed) SGPC accepted the Act on the

² Statement of S. Jodh Singh in PLC, Punjab Legislative Council Debates (PLCD), July 6, 1925, p. 1255.

³ Shaikh Mohd. Sadiq, PLCD, July 7, 1925

⁴ Mian Mohammad Shah Nawaz Khan, *ibid.*, 1284

⁵ Dr. Narang, PLCD July 7, 1925, p. 1294

⁶ *Ibid.*, July 6, 1925, 1212

⁷ *Ibid.*, at 1222

⁸ PLCD, July 7, 1925

advice of 36 important Sikh leaders detained in Lahore jail who had appealed to the Panth to work it out honestly and whole-heartedly.⁹

Most of the Sikhs welcomed the legislative measure. S. B. Mehtab Singh, an important Akali leader, reacted by saying, "The new law is as fair a measure as could be expected under the circumstances. It can fully fulfil the aspirations of the reformers."¹⁰ Prof. Teja Singh, a Sikh intellectual, who was closely associated with the Gurdwara Reform Movement, commented on its outcome: "In spite of a few losses, the Sikh nation has over all been benefitted by this movement. We have got not only the Gurdwaras but also the full freedom to manage them in the way we like. We have got the rights in the management of the Gurdwaras which are not available even to the English people in the management of their churches in their country."¹¹

Over-enthusiastic reaction of another Akali leader, Bawa Harkishan Singh, may be noted, "Sir Malcolm Hailey gave us more than what was demanded or what we ever dreamed of demanding. He gave us solutions for future problems of any type that might arise.....It does not make any difference if he did it in the interests of his Government."¹² This obsequious overstatement does not present a true picture. Hailey acceded to the pressure built by the movement after prolonged negotiations. It is obvious from the letter of a Sikh leader to another saying, "I think the Government is also as anxious, perhaps more anxious than ourselves, to have the matter settled."¹³ Governor's strategy understanding the Sikh psyche is evident from his remarks, "Why delay the bill and let the Government get the blame. Give it to them and also their Gurdwaras. They will then quarrel among themselves and the Government shall be free to do something else."¹⁴ As a part of this policy, he refused to grant general amnesty to the Akali prisoners. He offered conditional release on their signing an undertaking to work out the Act and refrain from using force to occupy the Gurdwaras. He wanted to negate the victory of the Akalis and also to humiliate them. When all the Akali prisoners rejected the offer, he diluted the condition from written undertaking to oral one. This move remained successful as 20 out of 37 Akali leaders in Lahore jail made such a declaration on January 25, 1926. The remaining prisoners had to be released unconditionally eight months later. It caused great rift between the two groups of Akalis as contemplated by the Governor. The Akalis succeeded to obtain the Act but failed in keeping themselves united by falling prey to Hailey's trap.¹⁵

⁹ Ganda Singh (ed.), *Some Confidential Papers of the Akali Movement*, 168, 171

¹⁰ Extracts from his diary reproduced in *ibid.* at 162

¹¹ Gurdwara Sudhar Lehar de Labh te Haan, *Updeshak* (Gurdwara Parbandh Number), Amritsar, Nov.-December 1934, reproduced in *Singh Sabha Patrika*, Dec. 1977.

¹² Recorded statement by Oral History Cell, Panjabi University Patiala published in *Ajit English Weekly*, Jalandhar

¹³ Sir Jogendra Singh to S. Narain Singh MLC in Ganda Singh (ed.), *supra* 9 at 131

¹⁴ Quoted in *ibid.*, at xxii.

¹⁵ See generally Kashmir Singh, *Law of Religious Institutions: Sikh Gurdwaras*, Amritsar, Chap. VII

While moving the Bill in the Legislative Council, S. Tara Singh MLC had observed, "From a Sikh point of view, it is not an ideal Bill. I will rather call it a compromising measure necessarily accompanied by shortcomings."¹⁶ An Akali group had opposed the acceptance of the Act till the withdrawal of orders declaring SGPC and Akali Dal as 'unlawful associations' and unconditional release of all the Akali prisoners. They criticized the naming of the central managing body as 'Board' and not the 'Shiromani Gurdwara Parbandhak Committee' by the Act itself. S. Sardul Singh Kaveeshar, one of the founders of the Gurdwara Reform Movement, criticized the Act for retaining Governmental interference in Gurdwara affairs and limited powers of the central body.¹⁷ S. Mangal Singh (then) President of the (outlawed) SGPC and some others criticized it for not bringing within its compass all the Gurdwaras in the different provinces and princely states of India.¹⁸

As a compromise between the Sikh legislators and the Government the Act used the word 'Board' for the central body and provided that the Board could choose its new name by a majority of 3/5 of its members in its first meeting and approval by the provincial Government. The Board unanimously named itself as Shiromani Gurdwara Parbandhak Committee in its first meeting and the Government approved the name.

Though the objections of unwarranted Governmental interference and non-application of the Act beyond pre-1966 Punjab are still valid but the remaining ones have been rectified. Thus contemporary reactions ranged from extreme appreciation to critical acceptance and even to the rejection of the Act. Despite its various flaws, the Act was a triumph of the long drawn Akali struggle but it also marked success of Government's manoeuvres to scuttle the Sikh unity. Split in the Akali leadership even before the enforcement of the Act was entirely to the satisfaction of the Government. The cleavage between the different Akali factions and groups continued for decades.

Salient Features of the Act: The aims and objects of the Sikh Gurdwaras Act were to provide a legal procedure by which Gurdwaras may be brought effectively and permanently under the Sikh control and their administration reformed so as to make it consistent with the religious views of that community.¹⁹ The Act achieved the avowed purpose. It enshrines the fundamental principle that the Sikh Gurdwaras are the heritage of Sikh Panth and would be managed and controlled by it. The Act lawfully handed over the management of the Sikh shrines to the representative of the Sikhs. Consequently, it recognised that mahants were not the proprietors but the custodians of Gurdwaras and the properties thereof.

The Act provided in-built cheap and speedy judicial system by constituting two adjudicative bodies, viz, Gurdwara Tribunal and Gurdwara Judicial Commission. The former was to determine the nature of the place of worship in question, as a Sikh

¹⁶ PLCD May 7, 1925

¹⁷ Akali te Pardesi, August 31, 1925

¹⁸ Ibid. August 20, 1925

¹⁹ Dharam Dass v. State of Punjab All India Reporter 1975 Supreme Court 1069 at 1074.

Gurdwara or not, and the properties relating thereto. The latter decides the internal controversies relating to the management of Gurdwaras. Thus the Act provided immunity from unwarranted civil litigation by granting primacy to the Tribunal and the Commission in Gurdwara related controversies.

Provision for adult suffrage is the most remarkable feature of the Act. It enfranchised all the adult Sikhs to elect their central religious organisation (SGPC) and the local committees to look after and supervise the management of Gurdwaras. Women were made equally entitled to become electors and candidates in elections to the SGPC and the committees. It was certainly unusual at a time when women even in Britain were yet to be enfranchised.

The Act provides for two-tier management of Gurdwaras. The committees of management actually manage and administer the Gurdwaras and the SGPC directs controls and superintends all the committees. Section 85 of the Act contains a list of Gurdwaras for which the SGPC acts as the committee of management also. Originally in 1925 this list included only the Akal Takht and Takht Keshgarh Sahib and that too at the insistence of the non-statutory SGPC. Subsequent amendments made in between 1944 and 2010 have added around one hundred important Gurdwaras to the list giving their direct management and control to the SGPC. The SGPC exercises all the powers and performs all the duties of a committee of management in respect of these Gurdwaras. The SGPC has appointed 78 managers to manage the Gurdwaras in this category.

Procedural flexibility is another feature of the Act. It attaches the presumption of validity to the acts of SGPC, its executive and the committees. Section 145 of the Act says that these shall not be held invalid on the ground of any defect in their constitution or any irregularity in their procedure unless it resulted in failure of justice.

The Act imparts limited role to the Government relating to the management of Gurdwaras, Section 144 prohibits the Government and its officials from interfering in any way in the management of Gurdwaras and their properties unless otherwise provided by this or any other Act.

Appraisal of the Act

Since the important religious shrines of the Sikhs are governed by this Act, it needs to be scrutinized to find out the scope for its improvement. A humble attempt in this regard is made in the following pages.

Union Legislation Required: Legislation to manage the religious institutions and provisions for Governmental involvement therein obviously seems to be antithetical. But the Sikhs had obtained the Act by compelling the unwilling Government to

legislate. The Act brought the management of Gurdwaras under the control of Sikh community by abolishing the irresponsible occupation of hereditary priests.

The Act is essential to manage the Gurdwaras even now because the community does not seem to be sufficiently mature and disciplined to administer the shrines independently without such legislation. In case the Government keeps its hands totally off, feuds and fist-fighting for unauthorized control and encroachment of Gurdwaras and their properties will be the order of the day. Otherwise also the Sikhs cherish the continuation of the Act as they have developed emotional affinity with it due to numerous sacrifices made for its attainment. Further, the Sikhs are entitled to make use of the Governmental organisation when and where it is required for better administration of their shrines.

The Sikh Gurdwaras Act was passed by the Punjab Legislative Council, legislature of the province of Punjab. It was, therefore, a provincial law. After partition of India in 1947, the Act remained applicable only to the Indian portion of Punjab. Due to change in the nomenclature of units of the federation from provinces to states by the Indian Constitution, it came to be known as a State Act from 1950 onwards. The Punjab Re-Organisation Act 1966 passed by the Indian Parliament has made the SGPC an inter-State body corporate to operate in the successor States of Punjab, Haryana, Himachal and Union Territory of Chandigarh. Thus the SGPC incidentally acquired national character and the Sikh Gurdwaras Act became an inter-State Act. The Punjab and Haryana High Court²⁰ has interpreted that the 1966 Act allows the legislatures of four successor units to adapt, modify or repeal the Act of 1925 and consequently the SGPC shall no more remain an inter-State body. If legislatures of Haryana and/or Himachal Pradesh repeal the 1925 Act or enact a law providing for some alternate arrangement to manage the Sikh shrines in their states, the SGPC will lose the national character and will be reduced to a regional body. This author has commented earlier, "The High Court's opinion is a fatal blow to the status of the SGPC and consolidation of the Gurdwara management. If the Sikhs are interested to retain and further consolidate the position of SGPC, a central legislation will be the only solution,"²¹ So that the SGPC retains its national character, either the Punjab Re-organisation Act be amended or the Sikh Gurdwara Act be passed de novo by the Union Parliament.

Recently the SGPC has made a claim that the Sikh shrines in Leh (Jammu and Kashmir), Sikkim and Nicobar Islands should be handed over to it. It can be possible only if a Union law is there. It will be much better if All India Gurdwara Act is enacted and Gurdwaras all over India are put under its purview. It will also be useful to ensure the enforcement of Uniform Reht Maryada and to resolve the doctrinal issues as well. In fact, a central body is required to knit the Sikhs all over the globe.

²⁰ Kashmir Singh v. Union Of India, 2003 (2) Recent Civil Reports 503

²¹ Commentary on the Sikh Gurdwaras Act 1925, Amritsar (2004), 260

Definition of 'Patit': Section 2 of the Sikh Gurdwaras Act defines certain terms used in the Act. Sub-section 11 of Section 2 defines 'Patit' as "a person who being a Keshadhari Sikh trims or shaves his beard or keshas or who after taking amrit commits any one or more of the four kurahits." Kurahits are not defined in the Act. These four tabooed practices as listed in the Sikh Reht Maryada, approved by the Akal Takht and the SGPC, are- i) dishonouring of hair from any part of body; ii) use of Kutha (halal meat), i.e., eating meat of an animal which had been slaughtered (in the Muslim way) by being bled to death; iii) co-habiting with a person other than his/her spouse; and iv) use of tobacco in any form.

The definition of 'Patit' in the Act applies all the four prohibitions to the Amritdhari Sikhs, only one prohibition of dishonoring the keshas to the (non-amritdhari) keshadharis and none to the Sikhs falling outside both these categories. Does it imply that a) non-keshadharis do not become 'Patit' at all or b) the persons with shorn hair are already 'Patit'? The later meaning seems to be adopted by the Punjab and Haryana High Court in Gurleen Kaur case²² when it observed that a collective reading of sub-sections (9) to (11) of section 2 of the Act shows that "To be termed as a Sikh, one must adhere to the tenet of keeping one's hair uncut. In the absence of adherence of instant tenet, the individual would fall within the term defined as 'Patit' as he/she does not maintain his/her hair unshorn."

It is submitted that all the prohibitions should be uniformly applicable to all the Sikhs. 'Patit' should be defined as a Sikh who commits any one or more of the four kurahits.

Gurdwara: Unlike other terms used in the Act, section 2 does not define 'Gurdwara', though Section 16 prescribes criteria for the tribunal to decide whether a Gurdwara is Sikh Gurdwara or not. On the other hand, the Supreme Court of India has held that the sine qua non for an institution to be treated as Sikh Gurdwara is that there should be established Guru Granth Sahib and the worship of the same by congregation, and a Nishan Sahib.²³ Nishan Sahib, a yellow flag as symbol of the Sikh presence, is also held to be essential to treat an institution as Gurdwara. To avoid the place to be labelled as a Gurdwara and the application of Sikh Gurdwara Act to it, the unscrupulous people in possession of shrines continue to have parkash of Guru Granth Sahib and either remove or do not hoist Nishan Sahib there. It is submitted that though Nishan Sahib is important in Gurdwaras but the judiciary should not insist upon it to avoid the misuse of Sikh religious institutions.

Composition of SGPC: The SGPC consists of 170 elected, 6 ex-officio (the Head Granthi of Sri Darbar Sahib and the Jathedars of five Sikh Takhts) and 15 co-opted members of whom not more than 5 shall be from Punjab. The elected and ex-officio members co-opt 15 members from amongst residents of India of whom at least 10

²² Gurleen Kaur v. State of Punjab, Recent Civil Reports (Civil) 2009 (3) 324, para 45.

²³ Shiromani Gurdwara Parbandhak Committee v. Bagga Singh 2003 (1) RCR (Civil) 264 SC; Shiromani Gurdwara Parbandhak Committee v. Mahant Harnam Singh 2003(7) SCALE 565; Pritam Das Mahant v. Shiromani Gurdwara Parbandhak Committee AIR 1984 SC 858.

must be from outside Punjab. After the co-options, the Central Government notifies that the SGPC has been duly constituted. The co-option of not less than 10 members from outside Punjab lends the SGPC at least the semblance of all India character. Only residents of India can be co-opted and not the non-resident Indians. To make the SGPC an institution representing the Sikhs throughout the world, it would be ideal if a provision is made to co-opt some members from outside India. It may be noted that the non-statutory SGPC constituted originally by the Sikhs in 1920 provided for representation of Sikhs from Sikh princely States and some countries having Sikh population.

Oversized SGPC: The membership of the SGPC is unwieldy resulting in unwarranted interference in Gurdwara management and inconvenience to the general public. Though termed as 'Parliament of the Sikhs' the SGPC usually meets twice in a year to pass the budget and elect the new executive committee, and that too for a very short period. Thus the members hardly contribute anything by their discussion or presence in the meetings. Their number is unnecessary nuisance as they command VIP treatment and five-star facilities at religious shrines; seek share in Gurdwara employment for their relatives and voters, demand priority in admissions for their wards in SGPC-run institutions, boss over the Gurdwara employees etc. So it will be better if the number is reduced to 51 or maximum to 100 and the house meets frequently and holds fruitful discussions. Sections 43-A and 55 of the Act dealing with the constitution and the meetings of the central body should be appropriately amended.

Plural Constituencies: One hundred and seventy elected members of the SGPC include 20 Scheduled Castes Sikhs and 30 Sikh women of whom 5 shall be Scheduled Caste women. Thus 120 election seats are open or unreserved and the remaining 50 are reserved for Scheduled Castes and women. Reservation for Scheduled Castes is a protective discrimination, a tool to achieve equality. It does not violate the Sikh principle of equality of denouncing the caste system. The Government of India in consultation with the SGPC demarcates the whole area into 120 constituencies. Fifty constituencies out of these are selected as plural or double member constituencies each of which returns two members, one general and one reserve. Each voter of these constituencies casts two votes, one for general candidate and another for reserve candidate. Thus 100 members are elected from these double member constituencies and remaining 70 from the single member constituencies. It is submitted that every constituency should return single member and every voter should be equally entitled to one vote. The electors should not be discriminated for residing in different kinds of constituencies. And the candidate should be elected on his own merit and not on that of the fellow party candidate which is likely to happen in double member constituencies. So the double member constituencies should be abolished by amending section 44 of the Act.

Co-options: The Act does not lay down any special qualification for the fifteen co-opted members of the SGPC unlike the Constitution of India which prescribes

special qualifications for the nomination of twelve members of the Rajya Sabha though the object and reason behind both the provisions is the same. Object is to seek the services of the experts who do not want to involve themselves in electoral process. Neither any convention is developed to co-opt only highly qualified and deserving personalities as members. Factually the favourites of the politicians are co-opted as per their directions. Sections 43-A (1) (iii) and 46 of the Act should be amended to provide for co-option only of Sikh intellectuals having some special qualification, contribution, excellence or distinction.

Electors' Qualifications: Sections 49 and 92 dealing with qualifications of voters for SGPC and local Gurdwara Committees elections respectively prescribe 21 years as the voter's age. While one becomes major at attaining the age of 18 years for all other purposes including being a voter for Parliament and State Legislative Assemblies, there is no good reason to deny the Sikh youth the right to vote in Gurdwara elections for three years more. There is world-wide trend to confer voting right at eighteen as children acquire maturity at younger age. Besides, some contesting candidates and parties get their supporters registered as voters much before the completion of the prescribed age through false declarations. The proposed amendment will also foreclose such fraudulent attempts. It is, therefore, recommended that voting age in Gurdwara elections should be reduced to eighteen years by amending the above-mentioned provisions of the Act.

It may be noted that due to bad drafting, word 'and' is added just before proviso (c) to sections 49 and 92, It conveys as if hair shaving/trimming, smoking and taking alcoholic drinks taken together, make one ineligible for registration as a voter and individually these lapses do not constitute disqualifications. In reality, each of these prohibitions disqualify a person from getting registered as voter and word 'and' is inadvertently used instead of 'or'. To attribute the correct sense to the sentence, word 'or' should replace the word 'and'.

Before amendment of the above-mentioned sections by the Central Government notification in 2003, these read, ".....no person shall be registered as an elector who (a) trims or shaves his beard or keshas except in case of sehjdhari Sikhs;" The amendment deleted words 'except in case of sehjdharis Sikhs'. It denied voting right to the persons not maintaining unshorn hair. But the amendment has been struck down by the High Court for following wrong amending procedure. Appeal is pending in the Supreme Court. Without waiting for the decision of the highest court in appeal, it will be better to approach, convince and compel the Parliament of India to rectify the procedural wrong pointed out by the High Court by replacing the notification with an amending Act. Deletion of words 'except in case of sehjdharis Sikhs' from both the sections will make definition of 'sehajdhari' in clause 10-A of section 2 obsolete deserving deletion alongwith. All this is necessary to uphold the importance of 'hair' in Sikhism.

Registration of Voters: The procedure pertaining to registration of voters for Gurdwara elections under the Act requires amendment. Rule 3 of the Sikh Gurdwara Board Election Rules 1959 framed as required by section 48 of the Act provides that every eligible Sikh may get his name registered as voter with the concerned Patwari or other designated official by making the declaration set out in the prescribed Form. Thus a mere declaration entitles a person to be a voter and also a candidate in Gurdwara elections and if elected then member of SGPC or local Committee, office-bearer or executive member. Thus infiltration of non-Sikhs in the Gurdwara management is facilitated by this provision. Severe punishment need be prescribed for the person making the false declaration and also for the official who negligently enlists the ineligible person as voter. This is the only remedy to check the entry of imposters.

Being used to registration as voter for Panchayat, Assembly and Parliamentary elections by the officials approaching them in their houses, many Sikhs do not take the trouble of getting themselves registered as voters for Gurdwara elections. Preparation of electoral rolls by registering the eligible voters should be the obligation of the Government and not of the voters themselves. On the pattern of registration of voters for the legislative and local bodies, the concerned patwari or enumerator should approach every Sikh house on weekends after advance public notice to register the eligible voters. It will obviate the past practice of repeated appeals to the voters to get themselves registered and extension of time by the Gurdwara Election Commission. It will require the amendment of the Sikh Gurdwara Board Election Rules and also of the Sikh Gurudwaras Committee Election Rules 1959. Further, clause (i) of section 49 of the Act which was deleted by an amendment in 1950 should be restored enabling all registered Sikh voters for election of Punjab Legislature to participate in Gurdwara elections.

Role of Central Government: After 1966, the dates for election of SGPC members are fixed by the Central Government (section 47); prior to that it was the privilege of the Punjab Government. After the election, the Central Government calls the meeting of the elected and designated (ex-officio) members to co-opt 15 members. After co-options, the Central Government notifies the fact of SGPC having been duly constituted [Section 43-A (2)]. The date of notification is considered as the date of constitution of the new SGPC. Section 54 provides that within one month of its constitution, the Central Government convenes the first general meeting of the SGPC in which the office-bearers and members of the Executive Committee are elected.

Latest SGPC general election was held in September 2011. The Central Government reluctantly called the meeting for co-options and notified the fact of SGPC having been duly constituted on December 17, 2011. But the notification was subjected to the decision of the High Court in a pending case relating to withdrawal of sehajdharis' voting right. On December 20, 2011, the High Court upheld the right of sehajdharis who were not allowed to participate in the September election but did

not utter a word as regard the validity of that election. Being well aware of the pace of dispensation of justice by the Indian courts, the Central Government has made unnecessary and unprecedented delay in convening the first general meeting of the SGPC which remains to be convened as yet though the Act requires it to be called within one month of the constitution of the SGPC. The Supreme Court has allowed the former Executive Committee of the SGPC to carry on the day to day functioning and also to approve the budget of the last and the current year in its interim orders though budget approval is the exclusive privilege of the general house of the SGPC. Had the statute not authorised the Central Government to convene the meetings, the situation would not have confounded like this. Now the fate of the elected and co-opted members of the SGPC depends upon the outcome of the Supreme Court verdict in appeal.

It is, therefore, submitted that the Central Government should be divested of power to convene the meetings of the elected members for co-options and also the first general meeting of the SGPC to elect office-bearers and executive members. Power of notifying the fact of SGPC having been duly constituted should be conferred on the Chief Commissioner Gurdwara Elections on the pattern of Election Commission of India relieving the Central Government of this obligation. So the above-mentioned sections should be substituted accordingly. Implementation of this suggestion will also help to minimize the allegation of governmental interference in Gurdwara affairs.

Gurdwara Election Commission: It is recommended that the Gurdwara Election Commission should be made a permanent body. Its existence should not depend on year to year approval as at present. It should be specifically declared as an autonomous body with sufficient powers, funds and staff to perform its duties independently and fairly. The Punjab and Haryana High Court has rightly held, “the language of section 47-A of the Act is quite para materia to the language of Article 324 of the Constitution of India. The obvious object of this section of the Act is to vest powers of wide magnitude and scope on the Chief Commissioner Gurdwara Elections. It is indeed to give comprehensive complete control, superintendence and powers to issue directions over the entire election process..... The Commission will be within its jurisdiction to exercise the powers vested in it right from the preparation of the electoral roll to the declaration of result under the provisions of this Act”²⁴

The Chief Commissioner, Gurdwara Elections should be appointed for a term of three years. It is necessary for the performance of his duties in an independent manner.

Qualifications of Members: Qualifications of the elected and nominated members prescribed in sections 45 and 46 of the Act tally with each other except that registration on the electoral roll is also necessary for elected members. It would be

²⁴ Alwinderpal Singh Pakhoke v. Union of India, PLR 2009 (3) 651, 661-62.

better if unnecessary duplication is avoided by combining both the provisions and making a specific mention of extra qualification of the elected members.

Sub-section (3) of section 45 is a nasty provision. It allows a person to contest election even if he/she is a 'patit', but if elected his election shall be held void. It encourages unnecessary litigation. So sub-section (3) does not deserve to be retained in the Act and the disqualified person should not be allowed to contest at all.

Further, it is recommended that academic qualification should also be essential besides the religious competency. Reading and writing Gurmukhi is not sufficient in the present day set up. Intermediate (+2) or its equivalent should be prescribed as necessary qualification for members. Some special qualification for the co-opted members has been recommended above. Consideration should be given to the inclusion of regular contribution of Daswandh as a necessary qualification for membership.

Term of Membership: Sections 51 and 94 of the Sikh Gurdwaras Act provide that the members of the SGPC and of the local Gurdwara Committees shall hold office for five years from the date of its constitution or until the constitution of a new body whichever is later. Thus the Act specifies five years as the minimum term but no upper limit is prescribed. The Chief Commissioner, Gurdwara Elections is legally authorised by Rule 13 of the Sikh Gurdwara Board Election Rules 1959 to fix the dates of various stages of election. But he has been doing it with the permission of the Central Government. The elections have always been delayed after the Central Government came on the scene on the passing of the Punjab Re-organisation Act 1966. After 1965, the SGPC elections were held in 1979, 1996, 2004 and 2011 after a gap of 14, 17, 8 and 7 years respectively, that too after directions of the High Court to conduct the elections.

Both the sections mentioned above should make it mandatory to conduct of election on schedule on the pattern of Lok Sabha elections. The Chief Commissioner, Gurdwara Elections should perform his primary duty consciously by conducting the timely elections.

Executive Committee of the SGPC: Section 63 of the Act provides for annual election of the executive committee. It also lays down that the office-bearers and other members of the executive committee shall hold office until the election of a new executive committee. Until 2010 elections were regularly held every year in the month of November. But it could not be held thereafter due to legal complications. One year tenure being too short, it is recommended to be extended to two and a half years by an amendment in the Act. The Delhi Sikh Gurdwaras Act 1971 has recently been amended only a year ago for the same purpose.

As per section 64 of the Act, SGPC's executive committee shall exercise on behalf of the SGPC all powers conferred on the SGPC by the Act which are not expressly reserved to be exercised by the SGPC in general meeting. Second part of the

section authorises the executive committee to delegate any of its powers by a decision of majority of three-fourth of its present members to a sub-committee consisting of one or more of its members. Thus virtually all the powers of the SGPC except the election of the executive committee and passing of budget can be sub-delegated to a single individual. It is submitted that all the major decisions should be taken by the SGPC in its general meeting and the executive committee should implement the same. In emergent situations the executive committee may be allowed to exercise powers subject to subsequent approval by the general body. Thus the first sentence of section 64 should be accordingly amended. The second sentence which was inserted by an amendment in 1959 requires deletion because any influential office-bearer, usually the President, or member of the executive committee may acquire such powers and exercise the same in arbitrary and dictatorial manner.

Adjudication by Tribunal and Judicial Commission: The Act constitutes two judicial bodies namely, the Tribunal and the Judicial Commission. The Tribunal is to decide- i) whether a particular religious shrine is a Sikh Gurdwara within the meaning of this Act, ii) whether the impugned property belongs to the Sikh Gurdwara and iii) whether a past or present office-holder is entitled to compensation? The Judicial Commission has wide powers to hear complaints of malfeasance, misfeasance, breach of trust, abuse of power, neglect of duty etc. against the SGPC or any Gurdwara local committee or their present or past members or employees.

The Tribunal and the Commission- consist of three legally-qualified members each, follow the court procedure and their decisions are subject to appeal to the High Court. Both the bodies take decisions by majority. In both, when only two members other than the President are present and they have different opinions, the matter is kept pending for decision by the President. And when the President and another member are present and they differ, the opinion of the President prevails (sections 13 and 81). It is submitted that attributing weightage to the opinion of the President to break the tie is not in accordance with the judicial principles. Opinion of the Chief Justice of the Supreme Court and of the High Court in the Division Bench is not given primacy and it is just equal to that of another puisne judge. So the matter need be resolved in accordance with the opinion of the third member in the subsequent sitting. Appropriate amendment in both these sections is accordingly recommended.

Elections: Elections are the bane of Gurdwara management as these inevitably introduce corruption, factionalism and other vices into the system thus polluting the pious atmosphere of Gurdwaras. All the evils and maladies of legislative and local bodies' election have become a part of Gurdwara elections as well. Recent election under the Delhi Sikh Gurdwaras Act has shown the frequent misuse of money and liquor to lure the voters.

The SGPC has been over-politicised as elections are contested on party basis. Party dictatorship has entered the Gurdwaras in a big way. The candidates are selected keeping an eye over their purse and also on their loyalty and proximity to the party bosses. Sometimes politicians are adjusted in the SGPC and it is also used as a

stepping stone for budding politicians. The SGPC members and office-bearers owe their offices to the party and not to the community or their electorate. The electors also keep party affiliations in view while voting, paying scant attention to the merits and capability of the candidates. Allegations of registration of bogus voters, rigging of election and misuse of government and Gurdwara funds and machinery are commonly heard. Insults, abuses and mudslinging of opponents have become disgraceful features of electioneering. Sikh tenets giving primacy to service, sacrifice and humility are violated with impunity. Election system being antithetical to Sikh principles has led some Sikh scholars²⁵ to recommend the scrapping of the Sikh Gurdwaras Act. In the absence of availability of a better and generally acceptable alternative, election has become a necessary evil.

To select honest and dedicated persons of high calibre by improving the election system, some suggestions are put forward as follows-

- a) Participation of political parties and groups should be debarred in Gurdwara elections. Party symbols should not be allotted to the candidates. They should contest the election on basis of their personal merit, excellence and reputation.
- b) On the pattern of Parliamentary and Assembly elections, it should be made compulsory for the candidates to declare their educational qualification, details of their property and pendency of court cases against them. It will facilitate the voters to make appropriate selection.
- c) 'One man one office' principle should be incorporated in the Act. Legislators should not be allowed to contest Gurdwara elections and SGPC members should be debarred from contesting Parliamentary and Assembly elections. Membership of legislature should be added as a disqualification for contestants of Gurdwara elections.
- d) Regular contribution of daswandh should be prescribed as a qualification to become the SGPC member.
- e) The Takht Jathedars should be empowered to examine and scrutinise the candidates and allow to contest only those who have religious bent of mind and high moral character and conduct.
- f) Chief Commissioner, Gurdwara Elections should be over-strict and extra vigilant to check the use of unfair means like distribution of money and intoxicants to the voters, use of official machinery and over-spending in election.

Tenancy and Rent Laws: To save the commercial, residential and agricultural property belonging to the Gurdwaras from the clutches of unscrupulous tenants, ordinary tenancy and rent laws should not be applicable to the Gurdwara property.

²⁵ Kapur Singh, Sikh Gurdwaras Act, Singh Sabha Patrika (New Delhi), January 1983; Sangat Singh, Gurdwara Act ate Votan Rahin Chonan, Akal Sewak (Delhi), Sept.1983;

Deletion of Obsolete Provisions: Section 148-A and Chapter XIIA entitled 'Temporary and Transitional Provisions' were inserted to extend the Act to the Pespua area in 1959. It facilitated the amalgamation of Interim Gurdwara Board Patiala into the SGPC. As the temporary object for which this section was inserted has been achieved more than a half century ago, retention of the provisions in the Act hardly serves any purpose.

While **Section 43** of the Act provided for the Composition and Constitution of the Board (SGPC), a new section numbered as Section 43-A with marginal heading 'Constitution of New Board' was inserted by an amendment of the Act in 1959. Subject-matter of both the sections being the same, the new section increased the number of elected members and reduced the number of co-opted members of the SGPC. Instead of inserting a new section, section 43 should have been amended to incorporate the changes. Two sections providing differently about the composition of SGPC cause unnecessary confusion. To set the matter straight section 43 should be deleted and section 43-A should be renumbered as section 43.

Chapter III of the Act provides for composition, procedure and jurisdiction of the Tribunal which determined the character of the disputed institution as Sikh Gurdwara or otherwise, claims to the property belonging to the Gurdwara and claims for compensation of hereditary office-holders. To cope with the work, two Tribunals functioned during the thirties of the last century. The Tribunal became busy again on extension of the Act to the Pepsu Gurdwaras. But presently there is hardly any work left for the Tribunal because the statutory period for filing petitions to be determined by it as per Chapter II of the Act has expired long back. Thus Chapters II and III both have become obsolete and need deletion unless the Act is extended to some new areas or is transformed into an All India Gurdwara Act.

Concluding Remarks: The Chief Commissioner, Gurdwara Elections is appointed to superintend, direct and control the elections of the SGPC and of the Gurdwara Committees. But traditionally the holder of this office has also been playing the role of suggesting/initiating amendments in the Act. Keeping this in view, this author has shared the above-said views/suggestions with Justice H.S. Brar, the present occupant of this office. Detailed discussions were held in meetings at Chandigarh and Amritsar during the last couple of months. He was broadly in agreement with almost all the suggestions. He is getting the format of draft amendments prepared to forward and recommend to the Union Home Ministry for amending the Act. It was likely to be sent within the month of April.

The suggestions for the improvement of the Sikh Gurdwaras Act will be further refined on the basis of discussions in this Seminar and the crux of the same transmitted to the concerned authorities for incorporating the necessary amendments.