

## **Abstract**

# **Sikh Law of Marriage- An Overview**

Kashmir Singh\*

Guru Amardas Ji, a great social reformer, introduced Anand ceremony of marriage amongst the Sikhs by dispensing with the vedic rituals. The Sikhs were ordained to solemnize their marriages by reciting Laavan, a composition of Guru Ramdas in Rag Suhi, which was later included in Guru Granth Sahib. The first couple to solemnize their marriage by Anand ceremony was Bhai Kamalia and Bibi Matho Murai who was one (of the two women) among the twenty two Manjidars appointed by the third Guru. The ceremony became popular during the times of Sixth Guru. It fell into partial disuse during the reign of Maharaja Ranjit Singh who was not much conscious about the Sikh principles. Baba Dyal Ji, founder of Nirankari sect, revived it in the nineteenth century by performing his own marriage with Anand ceremony and asking his followers to do the same. In the latter half of the nineteenth century, Singh Sabha Movement which sought to establish separate identity of Sikhism, popularized this simple and non-expensive ceremony. Arya Samajis, Brahmin priestly class and other Sikh-baiters severely opposed this ceremony preaching that parties do not become husband and wife by undergoing anand ceremony, their cohabitation remains illegal and their children are illegitimate. Tikka Ripudaman Singh, member of Imperial Legislative Council, introduced Anand Marriage Bill in the Council in October 1908 after convincing the Governor General and the Law Minister. Anand Marriage Act was passed in October 1909. It was a tiny piece of legislation having only five sections and running into half a page. The Act achieved its sole object of getting Sikh marriages solemnized with Anand ceremony declared as good and valid in law. It did contribute to highlight the distinct and independent Sikh identity. Since it was applicable to the whole British India, the Anand Marriage Act remains

---

\* \* Formerly Professor, Head and Dean, Faculty of Law, Guru Nanak Dev University, Amritsar.

applicable to India, Pakistan and Bangla Desh continuously as against the confusion and ambiguity in the mind of some Sikhs.

The Parliament has made a comprehensive law relating to marriage namely the Hindu Marriage Act 1955. It is applicable to the Sikhs along with Hindus, Buddhists and Jains. The Sikhs have been objecting to its title which impliedly denotes followers of all the religions of Indian origin as Hindus. They also criticize the provision relating to registration of marriage in the Hindu marriage register. About 5 million NRI Sikhs felt more disturbed when their marriage certificate did not reflect their religion confusing their religious identity. After years of wrangling, the Indian Parliament amended the Anand Marriage Act a few months back by adding a provision for registration of Anand marriages. The promulgation of Sikh Marriage Ordinance in 2008 by President of Pakistan did influence Indian Government to amend the Anand Marriage Act. In the last weeks of October, the Supreme Court of India sought the response of Indian Government to a petition questioning the validity of some provisions of the Hindu Marriage Act which blur the separate and distinct identity of Sikhism and discriminate against the Sikhs. The petitioners have advanced plausible arguments and seem to be on sound footing.

This paper discusses the desirability of application of the Hindu Marriage Act to the Sikhs and critically examines other relevant provisions relating to Sikh marriages besides analyzing some court rulings.

# Sikh Law of Marriage- An Overview

Kashmir Singh\*

Marriage is a sine-qua-non of a civilised society. It is essential for healthy social life. There would have been utter chaos and confusion in the absence of the institution of marriage. In fact, marriage is a social necessity. Avoidance to lead married family life is a sign of abnormality. Deliberate abstinence from sex, except in cases of physical disability or non-availability of spouse, is quite unnatural.

**Marriage in Sikhism:** Sikhism favours, rather recommends, a married social life. Married family life is considered honorable, natural and ideal. Unlike Hinduism, no importance is attached to asceticism, renunciation and celibacy. Rather these ways of life are looked down upon. Yogis, Sadhus and ascetics are condemned as escapists as they run away from the hard realities of life. According to the Guru,<sup>1</sup> one need not forsake one's home and hearth and wander in woods and wilderness to seek the God who is omnipresent and pervades in each one of us. Thus in Sikhism, a superior and natural way of life is married life (*grihisth*).<sup>2</sup> The object of human life according to Sikh scripture is the union of the soul with the eternal soul while living and enjoying the life of a householder. Bhagat Kabir's words, "If God can be attained by abstinence from sex, why don't the eunuchs attain Him"<sup>3</sup> confirm the necessity of marriage. Sikhism teaches the mankind to lead a marriage-based family life. All the Sikh Gurus, with the exception of one who died at tender age, lived a married life. Thus marriage in Sikhism is considered as a religious obligation.

Sikhism prescribes marriage to be based on mutual love and marital faithfulness. It is to exemplify faith and fidelity on the part of both the partners. Sikhism condemns polygamy and approves conjugal relations of one man with one woman. Person seeking sexual pleasure with multiple women is condemned in *Guru Granth Sahib*.<sup>4</sup> Bhai Gurdas confirms prescription of monogamy and mutual fidelity of the spouses when he says, "A

---

\* Formerly Professor, Head and Dean, Faculty of Law, Guru Nanak Dev University, Amritsar.

<sup>1</sup> Kahe re ban khojn jaaee Sri Guru Granth Sahib (SGGS), 684. Kart phire ban bhekh moht reht nirar, SGGS 543

<sup>2</sup> Sagl Dharm meh grihst pardhan hai Bhai Gurdas

<sup>3</sup> Bind rakh jo triay bhai, Khusre kyon na parm gat paaee SGGS 324

<sup>4</sup> Mane rang bhoge bhu nari SGGS 176

*Gurmukh* is monogamous and faithful to the spouse and respects other women as sisters and daughters.”<sup>5</sup> Emphasis on monogamy is further evident from various references to ‘wife in *Guru Granth Sahib* in singular<sup>6</sup> and not in plural form. The polygamous marriages of the 6<sup>th</sup>, 7<sup>th</sup> and 10<sup>th</sup> Gurus is also said to be exaggeration and confusion is caused due to common tradition in Punjab to change the parental name of woman on marriage by her in-laws.<sup>7</sup>

Guru Granth Sahib also insists upon mutual fidelity of married couple. Persons driven by lust endeavoring to have sex with women other than his wife are condemned<sup>8</sup>. Human beings are advised to renounce coveting others’ wives, wealth and reputation<sup>9</sup>. The degenerated person wastes his life devouring other’s wealth and sexual indulgence with someone else’s wife.<sup>10</sup> Ignoring his own and coveting another’s wife brings about suffering.<sup>11</sup> The husband and wife must pull together in heart, mind, intellect and spirit so as to produce harmony, concord and happiness.

The marriage for a Sikh is not merely a physical union but also a holy, spiritual and mental union. The conjugal relations are not only to promote worldly comforts and to perpetuate the human race but also to achieve the complete union of the soul (*Atma*) with the master soul (*Parmatma*). Guru Amar Das, third Guru of the Sikhs, describes marriage as a spiritual bond between the couple. In his words-

Bride and groom are not they who pose as one whole

Bride and groom are they who are two bodies with one soul<sup>12</sup>

In other words, not merely the performance of worldly duties together by a couple but the spiritual union between the two makes them husband and wife. They are contemplated as one light in two bodies.

The Sikh (*Anand*) marriage is a sacrament since it is performed in the presence and with the blessings of the Guru, Guru Granth Sahib. It is a holy union. The Sikh marriage is not a mere contract to be repudiated at will; it is a life-long spiritual and

---

<sup>5</sup> Eka nari jati hoe par nari dheeh bhain vkhane Bhai Gurdas, Vaaran , Vaar 6

<sup>6</sup> Dhan, dara, banita, klatar, suhagan, sulkhani, nari, kamni, mundh etc.

<sup>7</sup> See Baldev Singh, Critical Analysis of Dr. Jacobsch’s Relocating Gender in Sikh History www.

Max A. Macauliffe was convinced that Maata Jito and Maata Sundri were the names of the same woman, The Sikh Religion, Vol. V, 4

<sup>8</sup> Kamvant kami bahu nari par greh joh na chuke SGGS 672

<sup>9</sup> Par dhan par dara par ninda en sion preet nivar SGGS 379

<sup>10</sup> Par dhan par dara sion rachio birtha janm bihave SGGS 633

<sup>11</sup> Banita chod bad nadr par nari ves na paeiy maha dukhiari SGGS 1348

<sup>12</sup> Dhan piru eh na aakhien behin ikathe hoe, ek jot due murti dhan piru kaheay soe SGGS 788

sacred commitment. As it is considered to be consecrated in accordance with the divine will; it is a sacrament, a holy and permanent union.

**Anand Marriage Ceremony:** Dictionary meaning of Panjabi word '*Anand*' is joyful or pleasure. Thus Punjabi word '*Anand*' signifies both joy and marriage just like Persian word '*shaadi*' which also means both joy and marriage. The ceremony of marriage in the presence of Guru Granth Sahib is called '*Anand* marriage'. The Anand ceremony is quite simple and inexpensive. It consists of recitation of four *laavaan* (verses) from Rag Suhi in Guru Granth Sahib, a composition of Guru Ram Dass Ji, the fourth Guru. The couple, bride following the bridegroom, circumambulates around Guru Granth Sahib during the recitations. It is followed by recitation of six stanzas of Anand Sahib, a composition of the third Guru, Guru Amar Dass Ji. At the end, the whole gathering prays to the Almighty for the happy married life of the couple.

The Punjab and Haryana High Court has held, "the Sikh ceremony of marriage is called '*Anand*' or '*Anand Karaj*' (the deed of *Anand*). It has essential ceremonies of four *laavaan* made by the groom followed by the bride around the holy Guru Granth Sahib amidst the chanting of recitations of the hymns composed by the 4<sup>th</sup> Guru, Guru Ram Dass"<sup>13</sup>

The four verses of *laavaan* represent four different stages in the ceremony. In the first verse, the Divine consent is beseeched. The second verse states that the union of the couple has been brought about by God Himself. The third describes the couple as most fortunate for being the beneficiaries of the God's benevolence. The last verse represents final stage of the perfect love and devotion whereafter no feeling of separation can be entertained. The Guru wants the married life to be moulded as per the ideal laid down for union with *Parmatma*.

The ceremony starts after seating of bride and bridegroom in front of Guru Granth Sahib. The person officiating at the ceremony recites the first stanza of *lavaan*, the couple in token of solemn pledge bows before Guru Granth Sahib, stands up, goes around Guru Granth Sahib (bride following the bridegroom) and takes their seats after completing the round. Then the second stanza is recited and the couple again takes the round. Similarly third and fourth round is taken after the recitation of third and fourth stanzas of Rag Suhi.

---

<sup>13</sup> Darshan Singh v. State of Punjab 1980 Punjab Law Reporter (PLR) 273; Resham Singh v. Kartar Singh 1984 PLR 78.

The completion of the fourth round signifies the completion of essential ceremony for the solemnization of marriage.

Some Sikhs do not take nuptial round of Guru Granth Sahib and simply recite four hymns (*lavaan*). The couple remains seated in front of Guru Granth Sahib and they bow before the Guru on the completion of recitation of each *laav*. They do so to distinguish Anand ceremony from Hindu ceremony of *sapadpati*. This mode is appropriate when one or both the parties are handicapped. Otherwise the marriage must be performed by taking four rounds of Guru Granth Sahib because it is so prescribed in Sikh Rahit Maryada (The Sikh Code of Conduct) adopted by the collective wisdom of Sikh Panth. After the recitation of *laavaan*, lyrics of Anand Sahib are sung. These lyrics are the expression of thanks with joy to the Almighty. It is followed by prayer wherein the benediction of the Almighty and the Guru is invoked for the success of a happy married life.

**Historical Retrospect:-** Before the Sikhs finally adopted the Anand ceremony of marriage, they used to marry in accordance with the *vedic* rites. In *vedic* marriage, the couple goes round the fire and/or *vedi* and *Vedmantras* are recited. The *vedic* marriage is usually conducted during night time by a priest. In comparison the Anand marriage is performed during the bright hours of the day and any person, not necessarily a priest, can officiate over the Anand marriage ceremony. The wedding couple circumambulates Guru Granth Sahib four times after recitation of each *laav* from Rag Suhi composed by Guru Ram Dass and compiled in Guru Granth Sahib.

Anand marriage is not a new idea; it dates back almost to the rise of Sikhism. Guru Nanak gave a clarion call for the upliftment of weaker sex and abolition of caste system and other social evils. His grand successor, Guru Amar Dass, a great social reformer, strengthened the movement. He severely deprecated the prevalent customs of *sati* (burning the widow alive on her husband's funeral pyre), child marriage and *pardah* system (veiling or concealing of face by women). The Guru pleaded for widow remarriage. But the priests refused to solemnize such marriages. They also started refusing to officiate upon normal Sikh marriages due to their refusal to believe and observe caste system. To meet the challenge, Guru Amar Dass simplified the marriage ceremony by dispensing with the rituals. He started conducting the marriage by reciting some verses from his composition called Anand Sahib. Later, the Guru prescribed

recitation of *lavaan* also for the wedding ceremony. Recitation of Anand Sahib has become customary at the performance of every Sikh ceremony, whether of gladness or grief.

Sri Guru Amar Dass Ji, 3<sup>rd</sup> Guru of the Sikhs, had initiated the Anand ceremony for solemnization of Sikh marriages.<sup>14</sup> A communication<sup>15</sup> from the Government of Punjab to the Government of India details the occasion and circumstances for the initiation of Anand ceremony as follows:-

“The Hindus excommunicated those Sikhs of the Guru who in obedience to His teachings had ceased to observe caste. Among those Sikhs was one named Randhawa. When he wanted to marry his daughter, the Brahmins refused to come and officiate at solemnization of the marriage, saying that having become a Sikh of Guru Amar Dass he had ceased to be a Hindu and thus have forfeited every right to have the marriage of his daughter performed according to Hindu rituals .....Realizing the fix in which the Sikh was, the Guru ordered his son in-law (afterwards Guru Ram Dass Ji) to go and officiate at the marriage of the Sikh’s daughter. It was on this occasion that the four *laawaan* were originally composed by the fourth Guru.”

The first couple whose marriage was solemnized through Anand ceremony was Bhai Kamlia and Matho Murari. The sixth Guru’s daughter, Bibi Veero, was also married in accordance with Anand rites at village Jhabal in Amritsar district and the event is commemorated every year till date by reciting four verses from Rag Suhi<sup>16</sup> But the popularity of Anand marriage during the times of sixth Guru is questioned. It is said that only two copies of Guru Granth Sahib were available at that time which was composed in 1604 by the fifth Guru, one of which was kept at Harmander Sahib. So the only another copy of Guru Granth Sahib could not be easily available for marriage purposes to the commoners at least. Besides, Guru Granth Sahib was also yet to be given the status of the Guru by the Tenth Master. It is submitted that though status of Guru was not conferred on Guru Granth Sahib during the Sixth Guru’s time, but it was being given full respect as a holy book. The marriages might not have been performed in the presence of the Holy Book; those might have been performed by reciting the relevant verses orally. As the

---

<sup>14</sup> Speech of S. Sundar Singh Majithia in the Imperial Legislative Council on August 27, 1909.

<sup>15</sup> Dated April 20, 1909, Home Deptt. Judicial B Proceedings, July 1909, 55-56, cited in K.S. Talwar, The Anand Marriage Act, The Punjab Past and Present 1968, 400 at 401.

<sup>16</sup> Supra 14.

sixth Guru was known as ‘Sacha Padshah’, a true sovereign, his words were law for the Sikhs. Had he ordained to perform the marriage not in a traditional manner but by reciting Gurbani, no Sikh would have defied him. Another occasion referring to the anand ceremony during the Guru period is that of Bhai Joga Singh leaving his marriage ceremony incomplete at the fourth *laav* to quickly respond to tenth Guru’s call. Bhai Daya Singh in his Rahitnama (Code of Conduct) recorded that a Sikh should marry only through Anand wedding rite.<sup>17</sup>

The Governor of Lahore while giving details about the Sikhs to invader Nadir Shah told that their marriage ceremony is neither *nikah* nor *vivah* but *anand*<sup>18</sup> Bhai Santokh Singh also confirms in Suraj Parkash that the new ceremony which came to be known as *anand* was introduced by the third Guru. The third Guru had composed Anand Sahib and the fourth Guru composed *lavaan* and both are recited at the solemnization of Sikh marriage. When the Sikhs were being exterminated and they had to flee to the jungles, the whole social fabric including the various rituals and ceremonies were adversely affected.

During the reign of Maharaja Ranjit Singh, this ceremony fell into partial disuse. The Maharaja is criticized for following non-Sikh practices and thus not being a devout Sikh. But it is to be noted that Maharaja was under the influence of his Brahmin and Dogra ministers and also sought and followed the advice of *granthis* of Sri Harmandir Sahib and Akal Takhat Sahib in all socio-religious matters. The *granthis* being of traditional thinking were opposed to every reformative measure. Thus the Maharaja could not prevent the degeneration of a good practice like anand-karaj. After the establishment of Sikh rule and for a long time thereafter *brahminical* rituals were quite prevalent among the Sikhs. Apprehending danger of absorption of Sikhism by Hinduism, Max Arthur Macauliffe, a well-known chronicler of Sikh history, wrote in the year 1881 “Notwithstanding the Sikh Gurus’ emphatic denunciation of Brahmins, secular Sikhs.....now rarely do anything without their assistance. Brahmins help them to be born, help them to wed, help them to die and help their souls after death and to obtain state of Bliss. And the Brahmins, with all the deftness... have partially succeeded in persuading the Sikhs to restore the images of Devi and of the Hindu sages in some corner

---

<sup>17</sup> Rahitnama Bhai Daya Singh in Piara Singh Padam, Rahitname (1974), 65.

<sup>18</sup> Rattan Singh Bhangu, Panth Parkash , vivah nikah na yeh kre hai, bhugat anand anand prhe hai.

of their houses.”<sup>19</sup> He cautioned that Sikhism would become extinct if religious and social traditions are not reformed.

However, the Anand ceremony survived for the purpose of solemnizing the widow remarriages because Brahmins refused to solemnize such marriages. Besides it, Nihangs, Bandies, Nirankaris, Namdharis and Sikh residents of far off places from Punjab like Nander and Patna continued the use of Anand ceremony during that period also.<sup>20</sup>

Thus the Anand marriage ceremony has been prevalent among the Sikhs from the times of the third Guru, i.e., from the second half of the sixteenth century. But it was popularized by the Nirankari Sikhs in the nineteenth century. The founder of Nirankari movement, Baba Dayal ji, got his own marriage performed by Anand ceremony in the year 1808 during the so-called inauspicious and ill-omened month of *Chaitr*. Many of his followers adopted the ceremony thereafter. His son and successor, Sahib Darbara Singh, propagated this ceremony by issuing a code of conduct for his followers entitled as ‘A Catalogue of Nirankari Conduct’ in 1856. He propagated the anand ceremony enthusiastically but faced stringent opposition from the traditional Hindus and Sikhs who dubbed him as a renegade and declared him an outcaste. He was successful to persuade Baba Ram Singh Namdhari who introduced the Anand ceremony amongst his followers in 1863.<sup>21</sup> It is relevant to mention that the Nirankaris perform the marriage by taking four rounds of Guru Granth Sahib, each after recitation of a *laav* from Rag Suhi, jointly by the bridegroom and the bride; the Namdharis in addition circumambulate around the fire also.

The next Nirankari chief, Baba Ratta Ji, impressed upon Prince Ripudaman Singh of Nabha, the necessity to obtain legal sanction for anand-karaj wedding ceremony through legislation when the latter visited his headquarters at Rawalpindi in 1905.

During the last quarter of the nineteenth century, the religious preaching in the Punjab by Arya Samaj, Christian Missionaries and Mirzais of Qadian was at its peak. Singh Sabha movement was also launched to safeguard the Sikhs against conversion and to restore Sikhism to pristine glory. The movement leaders sought to establish separate identity of Sikhism by discarding all Hindu customs and ceremonies. They did not like to be

---

<sup>19</sup> The Sikh Religion under Banda and its Present Condition, The Calcutta Review, 1881, vol. CXLV, 168; The Gurdwara Gazette, June 1969, 41.

<sup>20</sup> Speech of S. Sundar Singh Majithia, supra 14.

<sup>21</sup> Man Singh Nirankari, Revolutionary Step of Anand Karaj in *Sikhism-A Perspective*, (2008), Chandigarh, 62-66.

considered as an appendage of Hinduism and wanted to have legal sanction for the marriage ceremony prescribed by their Gurus in the religious scriptures. Thus they contributed a lot to popularize Anand marriage ceremony. By this time, the controversy regarding the ceremony had become quite vocal and bitter.

As most of the Sikhs had converted from Hinduism, the Hindu Law continued to be applicable and Hindu ceremonies including those relating to marriage continued to be performed. Punjab Customary Law having been sufficiently developed, the Sikhs were governed by it. Hindu Law was to be applied to them only in case no customary rule was available. Customary law overrides the (old) Hindu Law in Punjab.

The Privy Council decision in *Rani Bhagwan Koer v. Bose*<sup>22</sup>, generally known as 'Majithia Will Case' is also relevant to be mentioned. 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 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. The decision was considered as having adverse impact on the efforts of the reformers to distinguish Sikhs from Hindus. It encouraged Brahmins to propagate that Sikhs are bound to marry through Hindu ceremonies. It was not a correct interpretation because the Court had clarified that Hindu law was applicable to the Sikhs only in the absence of any customary rule; while the customary ceremony of Anand was already in vogue. In spite of this, the decision encouraged the Hindu priestly class (*brahmins*) to oppose the Anand ceremony. On the other hand, it did contribute to the passage of the Anand Marriage Act as the Sikhs accelerated their efforts to get the Act passed to remove the alleged impact of the decision.

In reality, the popularity of Anand marriage due to its non-expensive and simple nature had adversely affected the Brahmin priestly class in their profession of performing the marriage in *vedic* form. They lost a major chunk of their clientele. These *brahmins* in company with other Sikh-baiters started a campaign against Anand marriages. They contended that the marriages solemnized in accordance with this ceremony were illegal. According to them, such marriage did not confer the status of husband and wife upon the

---

<sup>22</sup> (1903) 30 Indian Appeals, 249

parties, their co-habitation continues to be illegal and the offspring of such marriages were not legitimate. Such assertions prompted the Sikh intelligentsia to get a marriage law passed so that no one could question the validity of Anand marriages and the legitimacy of children of such marriages.

**Anand Marriage Bill:** The campaign against the Anand marriage by the Brahmins and some others was the main reason which led to the demand of the Anand Marriage law by the Sikhs. Besides, the Sikhs also wanted to demonstrate the independent status of Sikhism by getting such a law passed. They asserted that Sikhism is a separate and independent religion with its own rites and ceremonies for marriage and other purposes. By doing so they wanted to push away the yoke of Brahmanism. They wanted full and uncontroverted recognition for the peculiar Sikh marriage ceremony with unquestioned legality.

In these circumstances, Tikka Ripudaman Singh, a member of the Viceroy's Legislative Council, discussed the matter with Mr. Erie Richards, Law Member of the Council, at Simla in 1907. Mr. Richards sympathized with the proposal and also inquired about the views of the leading members of the Sikh community. In their next meeting at Calcutta on March 1, 1908, Tikka Sahib handed over to him the draft bill and abstract of opinions of about 200 leading Sikhs nearly all of whom strongly felt the necessity of codification of their laws. Tikka Sahib told that the Sikhs "also think that the proposed 'Sikh Marriage Act' will be the first and the most appropriate step in that direction. To codify all the laws at one time would not only be impossible but also undesirable, therefore we should proceed step by step .....The proposed Act is purely a technical measure involving no new principles, but only validating the Sikh marriage ceremony called 'Anand'." <sup>23</sup>

The Government of India sought the opinion of the provincial Government of Punjab on the subject. The Punjab Government's negative attitude is evident from its response, "In the absence of any established necessity for legislation, the Lieutenant Governor would be adverse to the adoption of any such action." <sup>24</sup> In the meanwhile, Sir Louis Dane took over as the new Lt. Governor of the Punjab. After making necessary inquiries about the matter and meeting Tikka Sahib, Sir Dane differed with his

---

<sup>23</sup> Letter of Tikka Sahib to Mr. Richards dated March 1, 1908 reproduced in Bhai Nahar Singh, Anand Marriage, SGPC ASR, (1976), 11

<sup>24</sup> Letter of Chief Secretary of Punjab to Deputy Home Secretary of Government of India Dated April 10, 1908 quoted in K.S Talwar, The Anand Marriage Act, supra 15.

predecessor. He confirmed the leveling of allegation by Arya Samajis and agreed with Tikka Sahib that proposed legislation will avoid uncertainty and litigation expenses. Further he made a useful suggestion that the Bill should be introduced in the Imperial Legislative Council as it was to apply to the whole of British India.<sup>25</sup>

The Viceroy was also convinced by Tikka Ripudaman Singh and other Sikhs about the necessity of the Anand marriage law. With his permission, as per procedural requirement, Anand Marriage Bill was introduced in the Imperial Legislative Council at Simla on 30<sup>th</sup> October 1908. It was widely acclaimed by the Sikhs. To elicit the public opinion, the Bill was published in the Gazette of India and in the local official gazettes in English and in other languages. Various Sikh organizations, village panchayats and the Sikhs in India and abroad supported the Bill by sending resolutions in its favour. S. Sunder Singh Majithia, then Secretary of the Chief Khalsa Diwan, Amritsar sought the support for the Bill from various quarters inside India and abroad. He wrote to the Sikhs and the Sikh organizations in India, Burma, Malaya, Singapore, China and East Africa to send representation in support of the Bill direct to the Government of India<sup>26</sup>. The Sikhs responded to the call with great enthusiasm. Over three hundred public meetings were held and petitions carrying seven lakh signatures were sent to the Government in support of the Bill.<sup>27</sup> In contrast only five adverse communications were received by the Government. Bhagat Lakshman Singh greatly supported the cause through the press. The Namdhari sect of the Sikhs was quite vocal in support of the Bill.

**Opposition of the Bill:** The Arya Samajis and a few Sikhs also opposed the passage of the Bill. Maharaja Hira Singh of Nabha, father of the mover of the Bill was also a staunch opponent of the Bill. He opposed by publication of statements and pamphlets and also challenged the supporters of the Bill. Under Maharaja's influence, Khalsa Diwan Lahore and some others opposed the Bill. None dared to oppose the Maharaja. At this critical juncture Baba Partap Singh, head of Namdharis, came forward in support of the Bill. The well-knit organization of Kukas followed their spiritual head. Quite unexpectedly, Sunder Singh Majithia responded to the challenge of Maharaja Hira Singh keeping aside their family relations. It changed the wave in favour of the Bill. Tikka Sahib felt severely hurt

---

<sup>25</sup> Official Correspondence of January and March 1909, quoted in *ibid*.

<sup>26</sup> Bhai Nahar Singh, *Anand Marriage* (1976), SGPC ASR,

<sup>27</sup> Sangat Singh, *Sikhs in History* (1996), 153

by his father's conduct. Soon after he left for Europe and returned only after the Maharaja's death in 1911.<sup>28</sup>

The granthis and pujaris of the Golden Temple and Akal Takht Sahib were opposing *anand-karaj* wedding since long. They had not allowed the Nirankari chief to solemnize the anand ceremony of a couple in the open court facing Akal Takht in 1861.<sup>29</sup> They had declined the *parsad* and cash offering of S. Sundar Singh Majithia when he came to pay obeisance alongwith his newly married son Kirpal Singh and daughter-in-law because their marriage was solemnized by *anand-karaj*.<sup>30</sup> They also opposed the Bill under the influence of S. Hira Singh.

The opponents of the Bill contended that '*Anand*' was not Sikh marriage ceremony; it is the name of a collection of some sacred hymns in Guru Granth Sahib. They said that this ceremony was the creation of the Singh Sabha who wants to create new customs and ceremonies for Sikhs. Thus the support of the Bill is the outcome of their agitation and not of the genuine feelings of the Sikhs. They claimed that the Sikhs have same social customs as that of the Hindus and they want to continue with the Hindu social and customary laws. These arguments were appropriately replied to and were proved to be wrong in view of general Sikh support for the Bill and hundreds of their communications in its favour from all walks of life from all over the world.<sup>31</sup> The supporters told that *Anand* ceremony was introduced by Guru Amar Das and is no longer an innovation by the reformists. The Sikhs being monotheists and being neither idol-worshippers nor fire-worshippers, cannot lit fire to have it as god-witness of marriage. Further, the Sikh scriptures also advise not to pay any heed to the auspiciousness or otherwise of the month, day or time of marriage as the Hindus do. The officiating priest is also prohibited from receiving or accepting any reward or money for conducting marriage ceremony.<sup>32</sup>

The Bill was supported by various Singh Sabhas except the Amritsar Singh Sabha. Baba Khem Singh Bedi who cherished to be recognized and worshipped as Guru and called thirteenth Nanak, was the founder of Amritsar Singh Sabha. This wearer of *janeu*, vehemently condemned the Bill. He issued written instructions to his followers to

---

<sup>28</sup> Supra 26 at 5-6.

<sup>29</sup> Man Singh Nirankari, *Revolutionary Step of Anand Karaj in Sikhism-A Perspective*, (2008), 65.

<sup>30</sup> Bhai Narayan Singh, *Jathedar Bhai Kartar Singh Bhuchar-The Life and Times*, (2001), Amritsar, 47.

<sup>31</sup> K.S. Talwar, *The Anand Marriage Act*, supra 15.

<sup>32</sup> Ibid.

solemnize their marriages by performing vedic ceremonies with the help of Brahmins.<sup>33</sup> His son, hatredly called Kartaru *Be-deen*, was helper and adviser of Mahant Narain Das, butcher of 150 Sikhs at Nankana Sahib. Bedi's protege, Avtar Singh Vahiria published pamphlets saying *Anand Karaj* makes the parties brother and sister rather than husband and wife.<sup>34</sup>

**Discussion in the Council:** In August 1909, S. Sunder Singh Majithia replaced Tikka Ripudaman Singh in the Viceroy's Council. He pleaded for the Bill in a forceful and convincing manner. He emphasized on the necessity, objects and purpose of the Bill as follows-

“The doubts of those who cannot distinguish between an idolatrous custom which is not in consonance with the monotheistic teachings of the Gurus and a purely rational rite which is totally in consonance with the teachings of the Gurus should be forever set at rest.

The Bill before the Council is small and harmless measure. It is permissive in nature, it creates no new rights; it legalises no new ceremonies, nor does it disturb any established custom, rights or ceremonies.

It has received general support of officials, non-officials and Sikh public. In the words of Punjab Government ‘persons from the Raja of Jind to the village *chaukidar* have spoken in its favour.’ More than 120 Sikh public bodies have expressly written in its favour, and in addition to this very large number of petitions containing many thousands of signatures have been submitted to the Government in its support. The Chief Takhts and Gurdwaras of Sikhs have given their warm support to the Bill. The manager of Golden Temple has also expressed an opinion in its favour. On the whole there has never been such unanimity over a private Bill.

The Statement of Objects and Reasons defines clearly scope of the Bill. Its object is-

- a) to set doubts which may be raised as to the validity of the marriage rite of the Sikhs called *Anand*, which is an old form of marriage prevailing amongst them,
- b) to save the Sikhs performing marriage in this form from great difficulties and heavy expenses of litigation in Civil Courts to prove their custom, and

---

<sup>33</sup> Supra 21, at 61.

<sup>34</sup> Baldev Singh, op.cit. 156-57.

c) to avoid the uncertainty that some of the judicial officers may have as to the validity of this orthodox Sikh custom.

It is, therefore, desirable to set all doubts at rest by passing this enactment merely validating an existing rite involving no new principles.

The Bill is merely a permissive measure; it affects only those who wish to avail themselves of it and disturbs no custom, law or tradition.”<sup>35</sup>

Supporting the Bill, Sir Louis Dane, Lt. Governor of Punjab, said,<sup>36</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 to 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.”

During the discussions on the Bill, some useful suggestions were made for inclusion in the Bill such as prohibition of polygamy and child marriage, compulsory registration of marriage, providing for divorce and doing away of imprisonment to enforce restitution of conjugal rights.<sup>37</sup> Appreciating the suggestions, S. Majithia expressed inability to thrust such innovations on the community which is not sufficiently prepared and educated for the purpose.

Suggestions to incorporate definitions of ‘Sikh’ and ‘Anand Ceremony’ were also not acceded to as it would be difficult to add minute details of the same in this piece of legislation. Perhaps it was done to appease the Namdharis who had a different perception of both the terms. Finally the Bill was passed on October 22, 1909.

### **THE ANAND MARRIAGE ACT**

The Imperial Legislative Council passed the Anand Marriage Act (7 of 1909) making it applicable to the whole of (British) India. The Act is a tiny piece of legislation having five sections and running into half a page only. It was passed for achieving the limited object of setting at rest any doubt as to the validity of *Anand* marriage ceremony. The main operative part of the Act is section 2 which reads as under:

---

<sup>35</sup> Speech in the Imperial Legislative Council dated October 22, 1909

<sup>36</sup> Ibid.

<sup>37</sup> See the speech of S. Sunder Singh Majithia, *ibid*.

All marriages which may be or may have been duly solemnised according to the Sikh marriage ceremony called ‘Anand’ shall be, and shall be deemed to have with effect from the date of solemnization of each respectively, good and valid in law.

Thus all the marriages solemnised in accordance with *Anand* ceremony before or after the passage of the Act were declared to be valid marriages. Thereafter nobody could entertain or express any doubt as to the validity of such marriages and the legitimacy of the offspring of such marriages.

The Act does not prescribe *Anand* as the compulsory or essential ceremony for every Sikh marriage. Section 4 of the Act clarifies that the marriages solemnised in accordance with some other customary ceremonies prevalent amongst Sikhs and not with *Anand* ceremony will also remain valid without any adverse effect of this Act. Thus the Act did not lay down that ‘Anand’ is the only ceremony of marriage for the Sikhs. Rather it specifically declared that the Act will not invalidate any other prevalent customary ceremony. It is submitted that in such cases the burden of proof to prove the prevalence of such customary ceremony will be on the party who avers its existence.

The application of the Act is specifically excluded to any marriage between non-Sikhs. It means that non-Sikh parties cannot make a valid marriage by undergoing *Anand* ceremony. The Act will also not validate any marriage which has been judicially annulled.<sup>38</sup> Invalid marriage due to prohibited degree relationship as per the Sikh Customary law will also not be validated by this Act.<sup>39</sup>

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. It must be clear that the Act did not codify the whole of the Sikh Marriage Law. However, some deductions could be easily drawn by reading the provisions of the Act minutely. For example, Section 3(a) of the Act reads-

‘Nothing in this Act shall apply to any marriage between persons not professing the Sikh religion’.

---

<sup>38</sup> Section 3 of *Anand* Marriage Act, 1909

<sup>39</sup> Section 5 of the Act.

The word 'persons', as used in plural form, denotes that this Act will not be applicable if both the parties to marriage are non-Sikhs. But if one of them is a Sikh and another a non-Sikh the Act may be applicable. As the marriage of a Sikh male with a non-Sikh female was judicially recognized as valid by the Punjab Chief Court,<sup>40</sup> such marriage might be solemnised with Anand ceremony presuming that lady was converted to Sikhism before or at the time of marriage. It is unlikely that the courts will now presume conversion without clear-cut proof of the same. It may be mentioned that the Hindu Marriage Act partially follows the Anand Marriage Act in this regard. Section 7 of HMA provides solemnization of marriage in accordance with the customary ceremony of either party. So a Sikh's inter-religious marriage solemnized through Anand ceremony with a Hindu, Buddhist or Jain is valid but with a person of any other religion invalid.

Sikhism deprecates caste system. It requires the Sikhs to marry without any consideration of caste or sub-caste. But it was impossible if the Anand ceremony was not in vogue because Brahmin priestly class would refuse to officiate over the solemnization of such marriages. The official recognition of Anand marriage ceremony gave a fillip to inter-caste marriages amongst the Sikhs. Similarly widow remarriages, of which there has been no prohibition in Sikhism, became possible and easier. Though Hindu Widow Remarriage Act could have been applicable to Sikhs by implication, but it remained almost in the oblivion. Removal of doubts about Anand ceremony by this Act provided the easy way out to solemnise widow-remarriages. Same is true about the remarriages of divorcees. The widow re-marriages and inter-caste marriages, which remained anathema to the Hindus, became not only legal and possible but popular also amongst the Sikhs.

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 upto now and after the 2012 amendment will cover registration of Anand marriages as well. To have a complete view

---

<sup>40</sup> Dhalip Kanwar v. Fatti 1913 PR 99; Sodlic v. Sher Singh 1895 PR 50; Shibditta v. Bela 1900 PR 50; Lachman v. Partap 5 Lahore Law Journal 336.

of law pertaining to Sikh marriages, the Hindu Marriage Act 1955 will have to be read alongwith.

### **Judicial Interpretation**

It may be relevant to mention here a judgment of the Supreme Court of India which depicts total ignorance of the Apex Court as regards the Sikh marriage ceremony and terminology. In *Chand Singh v. Surjit Kaur*<sup>41</sup> where the appellant was prosecuted for performing the second marriage by *Anand Karaj*, the Supreme Court observed:

“in a charge of bigamy a charge is not proved unless the essential ceremonies required for its solemnization are proved. Here no ceremony was spoken to. All that was said was that ‘Anand Karaj’ was performed. The learned judges of the High Court said, “Anand Karaj is a universally accepted form of marriage between Sikhs.” We do not think that is enough to prove the marriage. It was not said in the judgment under appeal or at the bar that the words ‘Anand Karaj’ connote a particular ceremony. What we find from the record is that it is a form of marriage for which we take it that ceremonies are required.”

It is respectfully submitted that the Supreme Court judges being unfamiliar with Sikh way of life could not properly appreciate the meaning of ‘Anand Karaj’ while the High Court had fully realized its correct meaning and import.

The Supreme Court, without proper inquiry, took *Anand Karaj* as a form of marriage and not a ceremony of marriage. The casual remarks of the High Court ‘that Anand Karaj is a universally accepted form of marriage amongst the Sikhs’ was made the basis for allowing the appeal. The Supreme Court, as is clear from the above quoted lines, could not find either from judgment under appeal or from pleadings before it that ‘*Anand Karaj*’ is a marriage ceremony. And the Court did not endeavor to find out the real import and meaning of Anand Karaj which means nothing else than the Sikh marriage ceremony. It is submitted that the Sikhs never recognised the different forms of marriages such as Brahma, Gandharva and Asura which are said to be prevalent amongst Hindus till recently. Sikhs don’t have such forms of marriages. Anand Karaj may be called as the only form as well as the ceremony of marriage. In this regard it will be useful to purview section 2 and the preamble of the Anand Marriage Act. The preamble of the Act reads “An Act to remove doubts as to validity of marriage ceremony common amongst the

---

<sup>41</sup> 1966 CAR 299 (SC)

Sikhs called 'Anand'. Omission of word 'Karaj' in the Act does not make any difference at all. 'Anand' and 'Anand Karaj' mean both 'Sikh marriage' and 'Sikh marriage ceremony'. The Supreme Court did not have a look at the above mentioned preamble and section 2 of the Act which reads, "all marriages which may be or may have been solemnized according to the Sikh marriage ceremony called 'Anand' shall be .....good and valid in law." Had the attention of the Supreme Court been drawn to the preamble and section 2 of Act, the apex court must have taken a different view in this case.

The Sikh circles felt greatly dejected and dismayed on the pronouncement of this judgment. The judgment tantamounts to override and undo the achievements of the Anand Marriage Act. It was astounding to hear from the Supreme Court that 'Anand Karaj' is not a 'marriage ceremony'. In fact, it is nothing else than that.

However, the Punjab and Haryana High Court set the record straight in *Darshan Singh v. State of Punjab*.<sup>42</sup> It removed the confusion created by the Supreme Court judgment. In this case the accused, who had solemnized the bigamous marriage by Anand Karaj, claimed acquittal on the basis of above-mentioned authority of the Supreme Court. Justice M.M. Punchhi, then a judge of the Punjab of Haryana High Court, correctly appreciated the true meaning and import of *Anand Karaj* by referring to a booklet entitled *Rehat Maryada & Guide to Sikh Way of Life* – issued by the Academy of Sikh Religion and Culture, Patiala. In his words:

"The preamble of the Anand Marriage Act suggests that the marriage ceremony common among the Sikhs is called 'Anand' or if I may say so, *Anand Karaj* (the deed of Anand) ..... It appears that the essential four *lavaan* (circumambulations) made by the groom followed by the bride around the holy Guru Granth Sahib amidst the chanting of recitations of the hymns composed by the Fourth Guru, Guru Ram Dass are the only essential ceremonies of the *Anand Karaj*. In the instant case ..... such *laavan* had taken place and the ceremony had to be deemed to be valid in law under section 2 of the Anand Marriage Act. Bereft of the above referred to material, their Lordships of the Supreme Court took the view as they did, in Chand Singh's case and the same does not apply to the present case in hand."<sup>43</sup>

---

<sup>42</sup> (82) Punjab Law Reporter, 1980, 243.

<sup>43</sup> *Ibid*, at 247-48.

The High Court very convincingly set at rest all the doubts by holding that ‘Anand Karaj’ is nothing else but Sikh marriage ceremony.

In another judgment,<sup>44</sup> Justice Punchhi reiterated that marriage by *Anand Karaj* has essential ceremonies of four *laavan* made by the groom followed by the bride around the holy Guru Granth Sahib amidst the chanting of recitations of hymns composed by the Fourth Guru, Guru Ram Dass. Where the eye-witnesses had not stated about these essential ceremonies of *Anand Karaj* specifically and has simply said that *Anand Karaj* was performed, it is not enough to prove the solemnization of marriage.<sup>45</sup>

It is to be noted that though *Anand Karaj* as per Reht Maryada approved by the Shiromani Gurdwara Parbandhak Committee is complete when four circumambulations are made by groom and bride amidst the recitation of relevant hymn from Guru Granth Sahib. But at some places, only hymns are recited and the persons to be married just bow before Guru Granth Sahib in reverence on completion of recitation of each *laav* remaining seated in front of Guru Granth Sahib. Thus not taking four rounds of Guru Granth Sahib does not come in the way of completion of marriage if four prescribed *shabads (lavan)* are recited. The fact seems to have been approved by the Punjab and Haryana High Court in *Satnam Kaur v. Balwant Singh*.<sup>46</sup> It is held, “In a marriage to be performed in accordance with Sikh rites, recitation of four *laavan* is essential.”

**Registration of Sikh Marriage:** Section 8 of the Hindu Marriage Act has authorized the State Governments to frame rules for the purpose whereunder the particulars of marriage are to be entered in the Hindu Marriage Register. The major irritant for the Sikhs has been the marriage certificate showing their marriage as ‘Hindu marriage’, of which entry is made in the Hindu Marriage Register and which is governed by the Hindu Marriage Act. The Sikh migrants to other countries, who usually obtain the marriage certificate, feel much more offended because the certificate does not tally with their proclaimed religion. It gives an impression that they are Hindus by religion and Sikhism is not an independent and distinct religion. They feel disgruntled for being labeled as Hindus while they belong to an independent and distinct religion, i. e., Sikhism.

---

<sup>44</sup> *Resham Singh v. Kartar Singh* 1984 PLR 78.

<sup>45</sup> *Ibid*, at 80.

<sup>46</sup> 1979 Hindu Law Reporter 131.

It may be mentioned that the Sikhs can get their marriages registered under the Special Marriage Act 1954 also. But after this registration, such civil marriages are governed by the Special Marriage Act and not by the Hindu Marriage Act.<sup>47</sup> Besides it, registration under the 1954 Act is more time-consuming as compared with the Hindu Marriage Act.

The Supreme Court of India issued directions to the Central Government and all the State Governments to frame laws for making compulsory registration of marriages all over India irrespective of religion.<sup>48</sup> It reignited the Sikh demand for registration of their marriages under the Anand Marriage Act because they do not like to be branded as Hindus by registering their marriages under the Hindu Marriage Act.

Though the Sikh demand was not taken seriously in India but the Pakistan Government, agreed to frame suitable law for registration of Sikh marriages towards the end of the year 2007 at the instance of S. Pritpal Singh and S. Paramjit Singh Sarna, Presidents respectively of American and Delhi Sikh Gurdwara Committees. S. Gurtej Singh, former I.A.S, Advocate Harshinder Singh and this author hurriedly prepared the draft bill after discussion with retired High Court judges and advocates at Chandigarh. All the above-named persons alongwith Sh. K.T.S. Tulsi and S. Manjit Singh Khaira Advocates and some representatives of Pakistani Sikhs discussed the matter with Law Minister of Pakistan, Syed Afzal Haider, who happened to be a descendant of Baba Farid, in a specially convened meeting at Lahore on December 6, 2007. The Minister told that his Government is prepared to add marriage registration provision in the Anand Marriage Act for which he had already obtained the consent of the then President of Pakistan and Ordinance for the purpose would be issued the very next day. He was magnanimous enough to accept our alternate proposal of a full-fledged Sikh Marriage Act inclusive of registration provision. He kept his word by getting President's Ordinance promulgated within a fortnight. After the change of Government, it was heard that the new Government was having second thought over its implementation.

As per the guidelines of the Supreme Court of India, the Punjab Legislature unanimously passed Punjab Compulsory Registration of Marriages Bill in March 2008. The Bill made specific mention of registration of Sikh marriages solemnized through Anand ceremony under the Anand Marriage Act 1909, though technically these are deemed to be governed

---

<sup>47</sup> Section 18, Special Marriage Act, 1954.

<sup>48</sup> Seema v. Ashwani Kumar (2006) 2 Supreme Court Cases, 578

by the Hindu Marriage Act 1955. The Bill was sent for the assent of the President of India but it has not returned back.

The SGPC constituted a sub-committee in October 2010 to report on matters connected with Sikh marriages and their registration. The sub-committee, comprising of Professors B.S. Dhillon and Kashmir Singh, Advocates H.S Phoolka and T.S Khehr and S. Dalmegh Singh SGPC Secretary, recommended that the provision for registration of Sikh marriages should be made at the all-India level by incorporating a new provision in the Anand Marriage Act and not at the Punjab level by any enactment of the Panjab Legislature.

S. Tarlochan Singh, then M.P., introduced a private member's Bill in Rajya Sabha to incorporate a provision for registration in the Anand Marriage Act. The Parliamentary Standing Committee, to which the Bill was referred to, unanimously recommended the proposed amendment. Subsequently the successive Union Law Ministers, H.R Bhardwaj and Verrappa Moily assured the Sikhs about the passage of the amendment Bill.<sup>49</sup> It was told that neither the Government had any problem to amend the Anand Marriage Act nor had it received any objection from any other community in this respect.<sup>50</sup> But the Law Minister, Mr. Salman Khurshid, stated on August 30, 2011 that amendment in Anand Marriage Act is no longer on the agenda of the Central Government because its acceptance would lead to similar demands from other communities. It took the Sikhs by surprise. All the Sikhs led by Jathader Akal Takht, SGPC President and Sikh politicians irrespective of their party affiliations objected to the Law Minister's statement. All the Sikh members of Parliament and other politicians belonging to the ruling and opposition parties pleaded for acceptance of unanimous and genuine demand of the Sikhs. Under the pressure, the Central Government agreed to reconsider the matter reverting its stand within a fortnight.

**Anand Marriage (Amendment) Act 2012:** The Law Minister introduced the Anand Marriage (Amendment) Bill in the Rajya Sabha on May 7, 2012 which passed it unanimously on May 21. Likewise the Lok Sabha also passed it the next day. After obtaining the assent of the President of India on June 7, it has become an Act. It shall come into force from the date appointed in the notification in the Official Gazette by the

---

<sup>49</sup> The Tribune, Chandigarh, Sept. 14, 2011.

<sup>50</sup> Statement of Mr. K.N. Chaturvedi, then Union Law Secretary, in *ibid*.

Central Government.<sup>51</sup> The Sikhs obtained the right to get their marriages registered under the Anand Marriage Act after years of wrangling. The Amendment Act has amended section 2 of the Anand Marriage Act 1909 and inserted a new section, section 6, providing for registration of Anand marriages.

In section 2 of the Anand Marriage Act, 1909, after the words “the Sikh marriage ceremony called Anand”, the words “(commonly known as Anand Karaj)” are inserted. Mrs. Ambika Soni, Cabinet Minister, had rightly suggested inserting this clarification in the Act on the day Amendment Bill was introduced in the Rajya Sabha. The addition of these words in section 2 will remove the misconception of some non-Sikhs who considered ‘Anand Karaj’ as something different from Anand ceremony of marriage. It will be relevant to mention that a Division Bench Of the Supreme Court of India in Chand Singh v. Surjit Kaur<sup>52</sup> acquitted an accused of bigamy who had remarried performing Anand Karaj holding that words ‘Anand Karaj’ do not connote essential ceremony for solemnisation of marriage. Finally, the Parliament has set the record straight by adding the words “commonly known as Anand Karaj” after the words “the Sikh marriage ceremony called Anand” in section 2 of the 1909 Act.

Section 6 has been inserted in the 1909 Act by this Amendment Act of 2012. It provides for registration of marriages solemnized through Anand ceremony. Various sub-sections of newly added section 6 can be analyzed as follows-

- 1) (a) Registration of marriages solemnised by *Anand Karaj* is meant to facilitate the proof of this ceremony or in other words to ensure its evidentiary value.
- (b) All the marriages solemnised by *Anand* ceremony before or after the commencement of Anand Marriage (Amendment) Act 2012, are allowed to be registered under the Anand marriage Act.
- (c) It is mandatory for the State Government(s) to frame registration rules by notification in the Official Gazette.
- (d) These rules shall be without prejudice to anything contained in the Hindu Marriage Act, 1955 or any other law for the time being in force. It means that the Hindu Marriage Act and other existing laws shall continue to be applicable to the Sikh marriages.

---

<sup>51</sup> Section 1 (2) of the Anand Marriage (Amendment) Act, 2012

<sup>52</sup> Supra 41

(e) The rules shall provide the manner and conditions subject to which the parties to the marriage may get the particulars of their marriage entered in the Marriage Register. The rules are likely to provide proforma to be filled by the parties interested to get their marriage registered. Use of word 'may' shows that sub-section does not make the registration of Anand marriages compulsory. It is up to the parties to get it registered or not. It is further clarified in sub-section (3) which says that non-registration will not affect the validity of marriage. It is submitted that word 'compulsory' is inadvertently included in point number 3 of the Statement of Objects and Reasons of the Amendment Act.

(f) The State Government can appoint the officer or authorise any official of a local authority to act as Registrar of Anand Marriages who will keep up the Marriage Register.

(2) a) The Marriage Register shall be open for inspection at all reasonable times.

b) The Register shall be admissible as evidence of the statements contained therein.

c) The Registrar shall give certified extracts from the Register on an application of the parties to the marriage on payment of fee prescribed in the rules.

(3) \*\*\*\*\*

(4) The rules made by the State Government under this section shall be laid before the State Legislature, as soon as may be, after these are made. The rules will come into force immediately after they are published by notification. But the State Legislature can reject or amend the rules when these are laid before it.

(5) The marriages registered under the Anand Marriage Act shall not be required to be again registered under the Registration of Births, Marriages and Deaths Act, 1969 or any other law in force. It means that the Sikhs marrying through Anand ceremony need not get their marriages registered under the Hindu Marriage Act.

The passage of the Anand Marriage (Amendment) Act has relieved the Sikhs from the agony of being dubbed as Hindus in the Marriage Certificate issued under the Hindu Marriage Act. They will no longer be embarrassed by such queries that how they claim to be Sikhs while their Marriage Certificate extracted from Hindu Marriage Register maintained under the Hindu Marriage Act depicts them to be Hindus. It has fulfilled the long cherished desire of the community members to get their marriages registered under the Anand Marriage Act meant exclusively for them. The Amendment has certainly

contributed to consolidate the independent and separate identity of Sikhism. Not only both the Houses of Parliament have passed it unanimously no opposition was seen to it from any quarter.<sup>53</sup> It is heartening that no one has signalled the false alarm of danger to national unity while finding solution to a Sikh problem.

Now the two important aspects, solemnization and registration, of Sikh marriages will be dealt with by the Anand Marriage Act 1909 as amended in 2012.

The Law Minister described the passage of the Amendment Bill by the two Houses of Parliament in a record time of two days as a significant step to meet the aspirations of the Sikhs. The passage of the Bill has been applauded by the Sikhs and Sikh organizations all around. It will greatly satisfy the NRI Sikhs who faced identity problems in the absence of such a legal provision. Referring to Mr. P. S. Bajwa's speech on the Bill in the Lok Sabha, it was commented that it is just the beginning of a long struggle for separate Sikh Personal Law. Such an eventuality can be easily avoided if the Government sagaciously amends only the titles of the four Hindu Acts of 1955-56 either by deletion of word 'Hindu' or by insertion of words 'Buddhist, Jain and Sikh' along with.

It may be relevant to add that the Amendment Act has not become operative even after nearly a year of its Parliamentary approval. The Central Government is yet to issue the required notification to bring it into force. Personal inquiry from the Union law ministry reveals that it had prepared a model of draft rules and dispatched the same a couple of months back to all the State Governments for their approval or comments/suggestions. Unfortunately none of the State Governments including that of Panjab has responded to that till mid-April 2013. Hence the delay in issuance of notification to activate the Amendment Act.

**A Misconception:** The Anand Marriage Act was passed in 1909 for the removal of doubts about the validity of marriages solemnised by *Anand* ceremony. The Anand Marriage Act continues to be applicable since then. Some Sikhs misconstrue that the Anand Marriage Act ceased to be applicable to the Sikhs when the Hindu Marriage Act came into force in 1955. It may be clarified that while the Anand Marriage Act provided only about the ceremonial aspect of the marriage, the Hindu Marriage Act is comprehensive one to govern all the aspects of marriage such as validity, nullity,

---

<sup>53</sup> "Neither the Government had any problem to amend the Anand Marriage Act nor had it received any objection from any other community in this respect." Statement of Union Law Secretary in The Tribune, Chandigarh, September 14, 2011.

dissolution etc. Both these enactments continue to be applicable to the Sikhs from the dates of their respective inception.

**The Sikhs and the Hindu Marriage Act:** Hindu Law before codification in 1955-56 was an orthodox personal law. For being followers of such an antiquated and orthodox law the Britishers considered Hindus to be unfit for self-governance. In the words of an expert of Hindu Law “The aspersion that Hindus were polygamous, married without their personal consent and for money and did not allow divorce was used to demonstrate how unfit they were for modern world and hence for independence.”<sup>54</sup>

The Hindu Law Committee under the chairmanship of Sir B.N. Rau recommended the codification of Hindu Law and submitted its final report in the form of Hindu Code Bill. Under the shadow of severe criticism and stiff opposition the Nehru Government split up the Bill into four parts. The first part was passed as Hindu Marriage Act in 1955 and the remaining three Acts in 1956. More than 85% of the Indian population including the Sikhs is governed by these enactments.

The Hindu Marriage Act 1955 has been described as momentous experiment which for width of scope and boldness of innovation can be compared only with Code Napoleon.<sup>55</sup> 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>56</sup> that Hindu law of marriage has died is no exaggeration. It is said<sup>57</sup> that if Hindu *rishis* like Manu, Yajnavalkya, Brihaspati and Narad now take birth in India under the process of *avagaman*, they are bound to mistake their homeland for a foreign country practising strange law of marriage.

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.

---

<sup>54</sup> J.D.M. Derrett, *Death of A Marriage Law-Epithaph for Rishis* (1978), 17

<sup>55</sup> J.D.M. Derrett, *Religion, Law and the State in India* (1968), 325

<sup>56</sup> See generally his book *supra* 54.

<sup>57</sup> Tahir Mahmood, *Personal Law in Crisis* (1986), 125

Thus the Act is Hindu in name only but not in substance.<sup>58</sup> As the law contained in this Act is in no way Hindu in nature and the Hindus are not the only religious community governed by it, so the word 'Hindu' in the title of this marriage legislation is inappropriate.

The Hindu Marriage Act was passed "to amend and codify the law relating to marriage among Hindus."<sup>59</sup> It applies not only to the Hindus in the territory of India but also to Hindus domiciled in India even though they live abroad.<sup>60</sup> It does not apply to those who neither reside in India nor have Indian domicile<sup>61</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, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation. - The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:-

(a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;

(b) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and

---

<sup>58</sup> See Kashmir Singh, Is the Hindu Marriage Act Really Hindu, Amritsar Law Journal (1992), 17

<sup>59</sup> Preamble to the Hindu Marriage Act.

<sup>60</sup> Sub-section (2) of Section 1 of the Act

<sup>61</sup> Gour Gopal v. Sipra Roy All India Reporter 1978 Calcutta 163

(c) any person who is a convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.

(2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.

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

Sub-section (1) of Section 2 includes three categories of persons to whom this Act applies. The first category mentioned in clause (a) is of Hindus by religion inclusive of its various forms and developments. All the followers of Hindu religion including those of its various branches, sects and sub-sects are included into it. It is evident that Sikhism is not included in this category of persons who are Hindus by religion. The Parliament has correctly kept Sikhism outside this Hindu religion category perceiving that Sikhism is not a branch of Hinduism.

The next two clauses (b) and (c) of sub-section (1) extend application of the Act to non-Hindus. Clause (b) extends it to persons belonging to religions other than Hinduism, i.e., followers of Buddhism, Jainism and Sikhism. Had there been no specific mention of these religions in this clause, the Act would not have applied to them. It implies that Buddhists, Jains and Sikhs are not dissenters from Hinduism but belong to distinct religions.<sup>62</sup> Thus the Act recognises Sikhism as an independent religion distinct from Hinduism. A combined reading of clauses (a) and (b) shows that these four religions of Indian origin are treated at par and Hindu Marriage Act applies to the followers of these four independent religions. The Punjab and Haryana High Court has clarified that Sikhism and Hinduism are two distinct religions. In its words,

“A bare perusal of clauses (a) and (b) of sub-section (1) of Section 2 makes it clear that the Sikh religion which permits the *Anand Karaj* form of marriage is treated by the Act as distinct from the Hindu religion which does not recognise as valid any marriage ceremony wherein *datta homam* and *sapatpadi* are not

---

<sup>62</sup> S.V Gupte, *Hindu Law of Marriage* (1976), 98

performed.”<sup>63</sup>

Thus Hindu Marriage Act specifically recognises Sikhism as an independent religion and not merely an appendage or off-shoot of Hinduism.

Clause (c) extends the Act to a miscellaneous category of persons who are domiciled in India but they are not Muslims, Christians, Parsis or Jews and it is not proved that they were not governed by Hindu Law prior to the passing of the Act.

Sub-section (3) of Section 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 which are 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. The legislature usually follows such a device. For example the Indian Penal Code provides that the word ‘man’ wherever used in this Code shall include ‘woman’ also. It is for the sake of brevity or convenience that such a provision is made. Therefore, simply because the Hindus, Sikhs, Jains and Buddhists are governed by the same legislation which is enacted under the title of ‘Hindu’ does not mean that all of them belong to a single religion or all of them are Hindus.

Only reason of naming four family law enactments of 1955-56 as ‘Hindu Acts’ is that Hinduism is a dominant of the four religious communities to whom these Acts apply. Neither the nature and substance of these enactments is Hindu nor are all those governed by them Hindus. Therefore, the prefix ‘Hindu’ in the titles of enactments is not justified at all. The Sikhs being non-Hindus object their subjection to Hindu Law and their objection is perfectly valid. Sir Lepel Griffin had correctly observed in 1870, “The Sikhs had 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....by another code altogether and it was as reasonable for them to refer to *Manu* and the *Shastra* as the source of legal authority, as it would have been for Mohammedans who had embraced Sikhism to appeal to the *shariat*.”<sup>64</sup>

The Punjab and Haryana High Court dismissed a writ petition<sup>65</sup> questioning the use of the

---

<sup>63</sup> Ravindra Kumar v. Kamal Kantha (1976) 78 PLR 580

<sup>64</sup> *Rajas of the Punjab, Lahore*, (1879), 338

<sup>65</sup> Birendra Kaur and another v. Union of India, Civil Writ Petition No.18634/2011, decided on 3.10. 2011.

word 'Hindu' in the Hindu enactments in two different senses- (i) 'Hindu' to mean religion, not inclusive of Sikhs, Buddhists and Jains; and (ii) 'Hindu' as an expression for collective reference to Sikhs, Buddhists and Jains along with the Hindus. The Court rejected the plea of petitioners that use of the word in second sense should be declared unconstitutional for violating fundamental rights in Articles 14, 15, 25, 26 and 29 of the Indian Constitution and also for being inappropriate, confusing and misleading. The Court held, "the life of law lies in substance and content and not the form in which it is clothed.....The clubbing of the groups results in no prejudice, no hostile or invidious discrimination and no identity crisis...It is constitutionally recognized and protected."

The Division Bench has not appreciated the Sikh viewpoint

The Supreme Court of India<sup>66</sup> has granted special leave to appeal against this decision and the appeal is pending. The appellants have rightly pleaded that- (i) while Section 2(1)(b) of these Acts clearly denotes the independent status of Sikhs, Buddhists and Jains and at par with Hinduism, the sub-section (3) of the same Section negates the same by 'construing' even persons who are not Hindus by religion to be included under the 'Expression' Hindu for the purpose of these Acts. A contradiction in terms, thus, exists even in the same Section of the Acts. (ii) The nomenclature of these Acts by using the name of only one religion gave preferential status to that religion and created a sense of inequality, insecurity and discrimination in the minds of the remaining religious communities as they are forcibly labeled as 'Hindus' by demolishing/annihilating/tarnishing their separate religious identities. (iii) The application of a law to a people is one thing, but labeling those people wrongly for the application of that law quite another. Herein lies the discrimination which needs to be addressed so as to bring the Acts in line with the secular spirit of the Constitution. (iv) The personal law matters are placed in the concurrent list of the Constitution, and one of the objectives of this list is to provide safeguards for the interests of the minorities. Yet the statutes for the personal laws of the minorities are titled by the name of the majority community. (v) The Sikhs, Buddhists and Jains have been counted as independent religious denominations right from the first census in India in 1873 under the Indian Census Act, to date. These are universally recognised as well established and independent religions. These must not be misrepresented or misconstrued in any manner which may

---

<sup>66</sup> Birendra Kaur and another v. Union of India, Petition for Special Leave to Appeal (Civil) 18189/2012

even remotely imply an erroneous connotation. Relief on the basis of these weighty arguments/grounds is sought from the Supreme Court. Without waiting for the positive judicial verdict, the Sikhs should endeavor to get the necessary amendment made in the Acts.

It is, therefore, strongly recommended that the titles of the four Acts should be amended either by deletion of word 'Hindu' or by addition of words 'Buddhist, Jain and Sikh' along with. The latter option of adding the name of three religions is in accordance with the recommendation of the Constitution Review Commission to amend article 25(2)(b) of the Constitution against which similar grouse is being expressed by the Sikhs and others. Delay or resistance to incorporate this innocuous suggestion will lead to Sikh struggle for an independent and separate Sikh Personal Law. A Sikh Member of Parliament had rightly cautioned that the Sikh community is being unnecessarily pushed to reject the Hindu Marriage Act as a whole and clamor for a separate law of marriage.<sup>67</sup>

---

<sup>67</sup> See speech of S. Simranjeet Singh Mann M.P., Lok Sabha Debates dated December 9, 2003.