

# Turban and the French Law

## A question of Freedom of Conscience

**M. S. RAHI\***

THE TURBAN OF THE SIKHS, A HOARY article of their faith, is once again caught in the controversy of definition of secularism as understood within the framework of French republicanism and political liberalism of the other countries of the world. The legal debate on this issue coursing through U.K., Canada, America, has finally reached the Courts of France, and European Human Rights Commission. It may also reach International Court of Justice. **The Sikhs have proved everywhere else that they have fundamental and inalienable right to wear their turban in all situations of life.**

Without proper consideration, the Parliament of France has passed the Law prohibiting all signs of outward manifestation of any religious faith. The reason given for passing such a Law is that any human being owing allegiance to particular groups, with collective or religious interest, cannot be a good citizen, since a good citizen does not belong to anyone. The definition of secularism, or state neutrality, as has been developed in France is totally opposed to the definition of secularism as understood in the Common Law countries. The purpose of such a law is to “Frenchify” the population of France and **to impose on it one single culture, one language, one way of thinking irrespective of various distinct identities** of the people.<sup>1</sup> From this point of view, it is clearly an instrument of internal and external colonization and imperialism which is against the principle of justice and rules all over the world. Article 18 of the Universal Declaration on Human Rights, 1948 clearly lays down:-

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief; and freedom, either alone or in community with others and in public or private, to **manifest** his religion or belief in teaching, practice, worship and observance”.<sup>2</sup> (Article 18)

In this context, reference can also be made to the International Convention on the Elimination of All Forms of Racial Discrimination (1966). Under the Convention the states parties undertook, *inter alia*, to prohibit racial discrimination in all its form, and to guarantee the rights of everyone ‘without distinction as to race, colour, or national or ethnic origin’ of equality before the law, notably in certain rights which were specified including education.<sup>3</sup>

Article 9 of the European Convention on Human Rights to which France is a party, is also to the similar effect. Obviously, the law passed by the parliament of France prohibiting the wearing of symbols displaying religious affiliation, is contrary to the universal declaration of Human Rights and conventions of UN and European Union.<sup>4</sup> It seems that France being signatory to the Universal Declaration of Human Rights, does not believe in the moral and cultural identity of the individual. It simply believes that dignity is acquired through citizenship and political participation in the affairs of the country. **It has no respect for cultural diversity, though offices of UNESCO are located in Paris**, which believes in the cultural diversity of the people and its protection all over the world. This is a major contradiction in the thinking of France at the national and international level. The definition of secularism as being

understood by France needs a change in the light of definition of **secularism** as understood by the UN and other countries of the world. It is also to be understood that the moral dignity and self-respect of a country's citizen is an essential primary good for the democracy in their country.

The turban, the reference to which is enshrined in Guru Granth Sahib, is considered an essential part of the complete personality of a Sikh.<sup>5</sup> **It is a symbol of dignity, freedom and moral courage to fight against injustice facing all the odds and difficulties.** It is much more than a head-dress, as it is an integral part of Sikh religion and inseparably connected with the Sikh baptism and the Sikh Code of Conduct.

The turban was made an inseparable tenet of Sikhism in 1699 A.D. at the time of the creation of the Khalsa. France is a great country, and French civilization with great literature and art is even greater than that. By accommodating the turban of the Sikhs, France should send message to the outside world that it is still great. When President of America asked General de Gaule to arrest Jean Paul Sartre, as he was opposing the American policy on Vietnam. General de Gaule gave a classical reply: that I can't arrest Sartre because Sartre is also France and France cannot arrest France.<sup>6</sup> That is the history of civilized and freedom-conscious France. The world famous slogan – **liberty, equality and fraternity**, which was given during the French Revolution started a new era of human freedom in the history of the world; was in fact given by Guru Gobind Singh at the time of creation of the Khalsa in 1699 A.D.

It is now part of history that Napoleon, the hero of France, once thought about invading India in order to weaken the British. He made a study of various Rulers in India and while reading the history of the Sikhs in Northern India, he was very much impressed by the history and the outlook of the Sikhs with turban on their heads. He expressed his desire of donning the turban like the Sikhs. Later on, when the French lost the war against the British at the field of Waterloo, many French Generals left France, went to Punjab and became valued employees of the turbaned Sikh monarch, Maharaja Ranjit Singh. The French Generals Ventura, Allard and Court were highly placed officers in Sikh Army of Maharaja Ranjit Singh. They were allowed to live with complete freedom and to profess their religion in the manner they liked. Maharaja Dalip Singh son of Maharaja Ranjit Singh, the last deposed King of Punjab, when maltreated by the British, came to Paris, again donned his turban, lived and died there. The French had close relations with the Sikhs going back to the beginning of 18<sup>th</sup> century during the life time of Guru Gobind Singh, the last and tenth Guru of the Sikhs.

The Sikh soldiers with the turban on their heads fought the most difficult battles in many parts of the world. One such battle was fought at Saragarhi (India), the episode of which is being taught in the schools of France as an example of bravery. This fact was recognized by Andre Malraux, one time Minister of Culture in the French Government and an extraordinary man in his extraordinary biography, 'Anti – Memoirs' records: Go and unearth at the foot of the lilac the balm of invincibility...' Why do they have to help Braza and not me? He brings in four or five hundred thousand men, I bring in more. The warriors of Makoko are nothing! I have ten thousand warriors as brave as Sikhs, and I shall have a hundred thousand in five years if they wish'.<sup>7</sup> The turban was a major source of inspiration for the Sikh

soldiers, as turban is considered a symbol of dignity and honour, inspiring the Sikhs to fight up to the end, not to leave the battle field under any circumstance.

During the first World War, the Sikh soldiers defended Paris against German forces. When ordered to replace their turban with steel helmet, they refused and even gave in writing to forego their family pension in case of their death with turban on their heads. They were allowed to fight and die with the turban on their heads in France. Even during the Second World War, the story was repeated by the Sikh soldiers in many parts of the world.

The Universal Declaration of Human Rights of the UN in 1948, to which France is signatory, determined the approach to human rights immediately after World War-II. It was provided to counter the philosophy of Nazism that everyone has the right to freedom, thought, conscience and religion, which Hitler tried to throttle with the help of brutal force. The Sikhs as a part of Allied Forces, fought for democracy and other human rights to advance the cause of civilization. The right to freedom of conscience in the matter of religion was made part of the Constitution of the United States of America, vide first amendment in December, 1791, possibly under the impact of French Revolution. It says – ‘Congress shall make no law respecting an establishment of religion the free exercise thereof, or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble. and to petition the Government for a redress of grievances’.<sup>8</sup>

Similar provisions were incorporated in the Constitution of India, Canada, Australia and unwritten Constitution of U.K. Article 25 of the Constitution of India, which is primarily based on Article 18 of the Universal Declaration of Human Rights was interpreted by the Supreme Court of India in a judgment reported in AIR, 1996 Supreme Court. ‘Article 25, as its language amplifies, assures to every person subject to public order, health and morality, freedom not only to entertain his religious beliefs, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outwardly act as he thinks proper and to propagate or disseminate his ideas for the edification of others’.<sup>9</sup> That was the measure of modern civilization. It is hoped that France would not reverse the trend which was started by their French Revolution.

Some two hundred years ago, Victor Hugo, the celebrated French author wrote on the cover page of his world famous novel, ‘*Les Miserables*’: ‘**So long as by the effect of laws and of customs, social degradation continues in the midst of civilization, making artificial hells, and subjecting to the complications of chance to divine destiny of man, the debasement of man would continue**’.<sup>10</sup> Is not France debasing the Sikhs and proving untrue to its great culture and great writers like Voltaire, Rousseau, Victor Hugo, Jean Paul Sartre, and many others, by passing such laws, restraining freedom of conscience?” “**I do not agree with a word of what you say – But will defend to the death your right to say it,**” said **Voltaire**. Law should play a positive role in enhancing the cause of civilization and human happiness. Roscoe Pound, a distinguished man of law, envisions such a role of law, when in the chapter on *The End of Law* in his celebrated book ‘*An Introduction to the Philosophy of Law*’ (page 46 & 47 ), he says: ‘Experience has shown abundantly how futile legal machinery may be in its attempts to secure certain kinds of interests. What I do say is, that if in any field of human conduct, or in any human relation, the law, with such machinery as it has, may satisfy a social want

without a disproportionate sacrifice of other claims, there is no eternal limitation inherent in the nature of things, there are no bounds imposed at creation to stand in the way of its doing so.

Let us apply some of the other theories which have been current recently. The Neo-Hegelians say: Try the claims in terms of civilization, in terms of the development of human powers to the most, of which they are capable – the most complete human mastery of nature, both human nature and external nature. The Neo-Kantians say: Try them in terms of a community of free-willing men **as the social** ideal. Duguit says: Try them in terms of social interdependence and social function'.<sup>11</sup>

The legal question regarding the turban of the Sikhs first arose in 1970s in the face of the law by which wearing Crash Helmets were made compulsory while riding a motor-cycle in England. The Sikhs protested against that, and the Bill to exempt the Sikhs was introduced in the House of Commons, and there was a long debate on this subject in the House of Lords. Lord Mowbray and Lord Stourton, defending the right of the Sikhs to wear turban, said, "The question of Sikhs and crash-helmets has aroused some interest and public discussion over the last few months, not only in the Sikh community, where, as we know, feelings run very high, but also the country at large."

"Some commentators have on occasions questioned the exact theological status of the turban and whether it is absolutely binding on a Sikh to wear one. However, I would suggest that this is not a fruitful line of discussion. The study of other religious systems is not one that can be mastered in a short time, and this is perhaps particularly true of the great Oriental religion. **However, as in all cases involving religious convictions of others, we must respect even when we do not necessarily understand.** Also we ought to be guided in matters concerning other faiths by the members of those faiths themselves. When in the case of the Sikhs you find a whole religious community united in its strength of feeling on a given issue, it would seem to be most foolish to question their judgment. I would submit that so far as concerns the Sikh religion we should accept what the Sikhs themselves say." After a long debate, the House of Lords passed the law to exempt the Sikhs from wearing crash helmets when driving motor cycles instead of their turbans. The bill was passed on 15<sup>th</sup> November, 1976.<sup>12</sup>

Almost an identical case to the present one in the schools of France arose in England in 1982. The headmaster of a private school refused to admit to the school a boy who was a traditional Sikh, (and who therefore wore long hair under a turban) unless he removed his turban and cut his hair, on the ground that the wearing of a turban would accentuate religious and social distinctions in the school which, being a multiracial school based on the Christian faith, the headmaster desired to minimise. The case went before the County Court, and the same was rejected on the ground that the Race Relations Act, 1976 does not apply to the Sikhs as they are not an ethnic group. On appeal to the Court of Appeal [1982]3 All ER page 1108 Lord Denning M.R.<sup>13</sup> formulated the issue, 'How far can Sikhs in England insist on wearing their turbans? A turban is their distinctive headgear. They do not cut their hair but plait it under their turbans. Some of them feel so strongly about it that, when they are motor cyclists, they do not wear crash helmets; and when they are barristers they do

not wear wigs'. But he ultimately, dismissed the appeal reiterating the ground that the Sikhs were not a racial group.

There were protests against Lord Denning's judgment and on appeal to the House of Lords, the judgments of the County Court as well as that of the Appeal Court were reversed. The House of Lords [1983-1-All.ER] found the Sikhs as a separate racial group, and held,<sup>14</sup> **"They are more than a religious, sect, they are almost a race and almost a nation. As a race, the Sikhs share a common colour, and a common physique based on common ancestors from the part of the Punjab which is centred on Amritsar.** They fail to qualify as a separate race because in racial origin prior to the inception of Sikhism they cannot be distinguished from other inhabitants of the Punjab. As a nation the Sikhs defeated the Moghuls, and established a kingdom in the Punjab which they lost as a result of the first and second Sikh wars; they fail to qualify as a separate nation or as a separate nationality because their kingdom never achieved a sufficient degree of recognition or permanence."

Lord Denning records the embarrassment caused to him after his judgment in his book **'The Closing Chapter'** under the title **'The Sikh boy's turban'**. He writes, 'So in the long run the House of Lords reversed both the judge and the Court of Appeal entirely. Their decision was welcomed by the Government because it relieved them from having to consider any legislation upon the point'.<sup>15</sup>

**It is unfortunate that, after such a landmark judge of the House of Lords, a controversy has been precipitated by the France Government 21years later. The Sikhs' search for justice seems to be unending.**

The basic principles of Sikhism, and the total perspectives of Sikh history, have not been understood in the context of world events. The crisis, which the ban on turban in the schools of France, has created cannot be properly understood without having a close look at the distinguished events of the history of the Sikhs. The unshorn hairs cannot be covered in a dignified manner, except by the turban. Even W. H. McLeod, a well known writer on Sikh's scripture writes in his article **'The Turban: Symbol of Sikh Identity'**, 'The turban is a neat and tidy means of covering the hair which must be left uncut. There is no other satisfactory form of covering the hair. One need only imagine uncovered hair to realize how superior the turban is as a means of containing and controlling hair which has to be tied on the head in a topknot'.<sup>16</sup>

The turban of the Sikhs deserve tolerance and understanding from another aspect, i.e. unity and diversity. A. N. Whitehead, a well-known philosopher, in his book, **'Science and the Modern World'**, says, 'A diversification among human communities is essential for the provision of the incentive and material for the Odyssey of the human spirit. Other nations of different habits are not enemies: they are Godsend. Men require of their neighbours something sufficiently akin to be understood, something sufficiently different to provoke attention, and something great enough to command admiration'.<sup>17</sup>

Similarly, Jean Paul Sartre's view of freedom as expressed in his essay 'freedom' included in the book of his basic writings may also explain the dilemma of the Sikhs regarding the removal of their turban by the force of law when he says: 'There is a dialectical dependency between freedom and truth. **There is no truth without**

**freedom and no freedom without truth.** A human being is free but at the same time in bondage; a chooser whose power is politically and historically constrained. It is only at the moment of death that a human being is complete. Before death a brave person could become a coward or a coward would become brave. Only death brings an end to freedom.<sup>18</sup> T. S. Eliot, the Noble Prize laureate, records similar views in his book '*Notes towards the Definition of Culture*', on the sense of culture, religion and value of diversity which may help to resolve the present controversy in a satisfactory manner.

**The International community should take note that the Sikhs are feeling hurt and humiliated by the French Law passed in 21<sup>st</sup> Century for the removal of their turban in the schools of France.** They have no other option except to give a call to all the freedom loving countries, political parties and sensitive individuals to come together under the banner of a party, whose name in Will Durant's words, is civilization,<sup>19</sup> for proving that the people who are gathering around the provocative thesis of Samuel Huntington,<sup>20</sup> '**The Clash of Civilizations and Remaking of World Order**', are not the friends of humanity. The world would be more friendly, more peaceful if all the great Frenchmen say in the Voltarian spirit, "**We do not wear the turban, we may not like it – but will defend to the death the right of the Sikhs to wear it on the land of the French Revolution.**"



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\*M.A., LL.M., Ph.D., (Law), Advocate, Supreme Court of India and Punjab & Haryana High Court, Chandigarh. E-mail: [msrahi@rediffmail.com](mailto:msrahi@rediffmail.com); Website: [gnubs.com](http://gnubs.com)

\* From Sikh Review January ,2005.