

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.9013 of 2015

Date of Decision: March 16, 2016

Dilawar Singh ...Petitioner

versus

State of Haryana ...Respondent

CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: - Mr. Navkiran Singh, Advocate
Mr. Navrattan Singh, Advocate
Mr. Harjeet Singh, Advocate
Mr. Surajpreet Singh, Advocate
for the petitioner.

Mr. R.K.S. Brar, Addl. A.G., Haryana

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HARINDER SINGH SIDHU, J.

The petitioner is a prosecution witness in case FIR No.456 dated 17.12.2014, under Section 302 IPC, Police Station Ambala City. The trial of the case is being conducted before the learned Sessions Judge, Ambala. On 18.04.2015, the petitioner went to the Court to give his statement as prosecution witness. He being an *Amritdhari* Sikh was bearing a *Kripan* on his person. Ld. Sessions Judge, Ambala objected to the same and directed him to remove the Kirpan in case, he wanted to appear as a witness.

When the petitioner refused to do so on the plea of his religious freedom, Ld. Sessions Judge did not record his statement and directed him to appear in Court without wearing his *Kripan*. The order of the Ld. Sessions Judge is reproduced as under:

“Six prosecution witnesses are present. Statements of four of them namely Constable Parveen Kumar, Jaswinder Pal Singh, Darshan Singh and Constable Pardeep Kumar recorded.

Another present PW is Constable Jasbir Singh. Learned Public Prosecutor submits that after examination of PW HC Manoj Kumar, this witness is likely to be given up. As per request of Ld. Public Prosecutor, PW Constable Jasbir is discharged for today.

Another present PW is Dilawar Singh. Said witness had appeared along with a 'Kirpan' around his waist, which is quite evident to the open eye. When he was asked to come to the Court after removing the same, he refused to do so on the plea that it is his religious symbol. Ld. Public Prosecutor makes a request to adjourn the case for recording the statement of this witness submitting that he will make the witness understand that he has to appear in the court without the supporting the 'Kirpan'. As per request, PW Dilawar Singh is discharged for today and bound down for 14.05.2015.

Summons of PWs Dr. Deepika, Dr. Gaurav received unserved. Request of PWs HC Manoj Kumar, Constable Sunil Kumar ASI Naresh Kumar received.

It is informed by Ld. Public Prosecutor that PW Dr. Y.S. Bansal has made a request to examine him through video conferencing but his statement cannot be recorded today as the case property has not been received so far from the FSL.

PW Devinder Singh has been given up by prosecution as unnecessary. Statement of Ld. Public Prosecutor recorded to that effect.

Now summons to all remaining un-examined PWs except I.O. and PW Dr. Y.S. Bansal be issued for 14.05.2015.

Prosecution is directed to ensure the presence of case property alongwith FSL report on the date fixed.”

The petitioner has filed this writ petition for quashing the aforesaid order on the ground that it violates his fundamental rights to profess and practice his religion.

In the written statement filed on behalf of the State of Haryana, it has been stated that *Kirpan* should be considered as a religious symbol relating to the Sikh religion and there should be no restriction on wearing *Kirpan* by Sikhs while appearing in the Court. Reference has also been made to some cases in U.K. and U.S.A. where the carrying of kirpan, as a

manifestation of the Sikh faith has been recognized. It is also stated that in certain foreign provinces and States namely British Columbia, Toronto, Alberta etc. baptized Sikhs have been allowed to carry kirpan in the Courts.

I have heard Sh. Navkiran Singh for the petitioner and Sh. R.K.S. Brar, Additional, Advocate General, Haryana for the respondent.

The Five Kakars- Outwards symbols of Sikh faith

It is now universally accepted that the wearing of five Kakars. - Kesh (unshorn hair), strapped Kirpan (sword), Kachhehra (prescribed shorts), Kangha (Comb tucked in the tied up hair), Karha (Steel bracelet) is a mandatory requirement for every Amritdhari Sikh. However reference is being made to a few authoritative works on Sikh religion and history, solely with a view to understand the significance and importance to an Amritdhari Sikh of the five Kakars, of which kirpan is one, as only in such a backdrop would it be possible to understand the anguish and consternation that the impugned order has evoked in the petitioner as has been forcefully put across by Sh. Navkiran Singh, Ld. Counsel for the petitioner.

The Shiromani Gurdwara Prabandhak Committee, Sri Amritsar, the representative Sikh body constituted under the Sikh Gurdwara Act, 1925 to manage the Sikh Gurdwaras, had sanctioned a project to bring out a consistent and coherent account of Sikh history, which was to be presented in five volumes, each involving a distinct period of Sikh history. It was to be a cooperative effort of such leading historians as could make a solid contribution to the discipline of Sikh history.

Volume I of the work titled as History of the Sikhs and their Religion covering the Guru Period from 1469-1708, edited by Dr. Kirpal

Singh and Dr. Kharak Singh, both distinguished scholars of Sikhism was published in the year 2004. Chapter X of this Volume titled 'Emergence of the Khalsa' describes the emergence of the Khalsa as the logical outcome of Guru Nanak's blueprint. It gives a vivid account of the unique event of the founding of the Khalsa by Guru Gobind Singh, the essential code of conduct enjoined on those initiated, including the obligation to wear the five Kakars as under:

“The Guru, whether he was at Anandpur Sahib or at Paonta or any other place, was persistent in his efforts to create that ultimate instrument, which would help him achieve his objective. He followed the path shown by his predecessors, which was indeed a primary impulsion, epitomizing what Sikhism stood for in terms of doctrine, society, individual and corporate living, and ultimate destiny of the creation at universal level. The praxis was the Khalsa.

The Guru decided to put his plan into operation on the first of Vaisakh 1756 BK (March 29, 1699 CE). He sent hukamnamas to his followers inviting them to visit Anandpur Sahib in full strength on the Vaisakhi festival.

The Sikhs responded by gathering in very large numbers at Anandpur Sahib on the day of the festival, March 29, 1699 CE. Guru Gobind rose early and sat in meditation. He then appeared before the sangat who hailed him with shouts of greetings. Bhai Mani Singh gave exposition of a shabad from Adi Granth. Guru Gobind Singh then stood before the assembly with his sword unsheathed and spoke, “Is there anyone here who would lay down his life for his Guru and dharma.” It was an amazing call, and no wonder, his words struck confusion among the gathering. They did not know what the Guru meant and gazed in awed silence until he spoke again. Now confusion turned into fear. For the third time, Guru Gobind repeated his call. Daya Ram, a Sikh of Lahore, rose and said in utter humility, “My head is at thy disposal, my True Lord. There would be no greater gain than dying under the sword.” He walked with the Guru to a specially improvised enclosure close by. The Guru returned with his sword dripping blood, and waving it to the multitude asked for another head. This was more than anyone could endure. People started leaving the place. Some of them went to complain to the Guru’s mother. But a Sikh from Delhi, Dharam Das, came forward to offer himself for sacrifice for the Guru. He, too, was taken to the enclosure. In the same way the Guru made three more calls. Mokham Chand, a Sikh from Dwarika, Himmat, a Sikh from Jagannth, and Sahib Chand, a Sikh from Bidar cheerfully responded one after another and advanced to offer their heads.

A while after, the Guru led the five Sikhs back from the enclosure into which he had taken them one by one. In the enclosure confidentially guarded, he had kept sets of apparel especially designed for the occasion. Decked in saffron-coloured gorgeous outfits topped over with neatly tied turbans of the same colour, the glorious five walked deferentially behind the Master, overwhelmed with gratitude. The Guru was himself attired in the same manner as his chosen disciples.

The gathering considerably thinned and still in shocked muteness was

further puzzled to see those whom they had thought to have been sacrificed to the Guru's whim re-appear in flesh and blood.

The Guru took water in an iron bowl, stirred it with a khanda (double-edged sword) to the recitation of bani. Mata Jito brought a plate full of patasas and with the approval of the Guru put them into the water. Amrit, the nectar of Immortality, was now ready.

The nectar thus prepared was administered to the five beloved from the same bowl to signify their initiation into the casteless fraternity of the Khalsa. All five of them were given the steel bowl to quaff from it turn by turn the amrit in token of having become brothers. The most striking thing in the process of the amrit-initiation was that henceforth the Khalsa would follow the ideal of self-assertion and self-reliance alongwith the ideal of humility and self-surrender. The initiation symbolised a rebirth by which the initiated were considered as having renounced: their caste -dharam nash; their hereditary occupation- kirt nash; their lineage- kul nash; their superstitious beliefs - bharam nash; and their previous type of rituals - karam nash; to feel unencumbered to tread the path shown by the Guru. The moment marked their complete break with the past. The initiated males and females were enjoined to put Singh (lion) and Kaur (prince), respectively, as suffix along with their names.

The initiation of the double-edged sword, introduced on the day of the creation of the Khalsa, required the initiate to live a virtuous life of morally responsible action under the discipline and code especially prescribed for him. For outward symbols, the Guru asked them to always wear unshorn hair (kesh) a comb (kangha) in the hair knot, an iron bangle (kara) on the right wrist, a sword (kirpan) on his person and kachha (a pair of short breeches). These five Ks (kesh, kangha, kara, kirpan, kachh) are not mere external symbols. A single and pervasive leitmotif is discernible in these marks of investiture on the personality of an initiated Sikh (Khalsa), and this can be characterised as a sense of preparedness to uphold the ideals which the Guru had pin-pointed. These symbols, the decision for which was announced more through profound deliberations and mystically intuited wisdom, gave the Sikhs their form, and are symbolic of their conduct. The hair, which the Sikhs maintain as a command of their Guru, imprint on the wearer the investiture of spirituality. It is against this background that Professor Puran Singh calls hair "a dear remembrance, an heirloom, a trust, a pledge, a love, a vow, an inspiration." Guru Gobind Singh calls hair the seal of the Guru in one of his hukamnama. They also seem to symbolize countermanding of renunciatory practices -the material world and asceticism are symbolized against certain cults by trichodepilatory rituals.

The kara was necessarily made of iron and of no other metal. The Guru called the Supreme Reality Sarb-Loh,' "All steel". The kara, therefore, was a constant reminder to the initiated Sikhs never to lose sight of this attribute of God as well.

The kirpan is a synthesis of two words 'kirpa' (compassion or kindness) and 'aan' (honour), which signify and highlight the purpose for which it is to be used. In Sikh religious parlance the word conveys two dimensional meaning. First, Bhagauti (Sword) is an attributive name of the Almighty. Thus, the wearer feels that he/ she is ever under the protection of Bhagauti. Second, and which is in fact a derivative of the first, it symbolises manifestation of shakti or divine power, which is to be used in favour of the righteous against the unrighteous as a last resort when all other means fail.

The sword of the Khalsa was never a symbol of aggression, and it

was never used for self-aggrandisement. It stands for defence of righteousness, truth and virtue. The sword is considered synonymous with God, the Primal generative principle, the supreme power to sustain moral order and to annihilate negative forces. In this way the Guru conveyed to the Khalsa, as an individual as well as a corporate body, that they, as wielders of the sword, should cast themselves in the mould of God, with all these attributes. Unlike a dagger, which is associated with secret attack, the sword is associated with open combat, governed by certain ethical principles. Thus, the sword of the Khalsa is the assertion of this right to freedom. To quote Kapur Singh:

(The Sword) is by ancient tradition and association, a typical weapon of offence and defence, and hence a fundamental right to wear, of the free man and woman, a sovereign individual. All governments and rulers, whether ancient or modern, have and do insist to wear arms. Indeed in final analysis, a government or the state is sustained and supported by the organised might and exclusive right of possession of arms, a citizen's right to wear arms being conceded as only of a permissive and licensed character. It follows from this that the measure of freedom to possess and wear arms by an individual is the precise measure of his freedom and sovereignty. Since a member of the Khalsa brotherhood is pledged not to accept any alien restrictions on his/her civic freedom, he/she is enjoined upon to insist on and struggle for his or her unrestricted right to wear and possess arms of offence and defence.

The Sikh stress on physical cleanliness along with inner purity warrants that the hair should be kept clean and tidy, which makes the kangha or the comb indispensable. As a divestural symbol it appears to repudiate the practice of tantric yogis, the outward symbol of whose denomination is matted hair (Jata). The last of the five Ks, the kachhehra or kachha, is an integral part of bodily hygiene. It also symbolises a Sikh's commitment to use restraint in his/her sexual activities.

The five symbols taken together signify that the Khalsa, both as individual and a corporate body, should be strong in body, mind and soul, and develop an integrated personality. They not only give a splendid bearing to the Sikhs, but also a distinct identity. They also make it impossible for them to conceal their identity as some Sikhs at Delhi had done at the time of Guru Tegh Bahadur's execution in November 1675 CE. Further, they gave the Sikhs a distinctive appearance, different both from that of the Hindus and the Muslims- the fact which imparted a semblance of unity, close brotherhood, equality and group consciousness. To quote from a report of the proceedings:

Though several refused to accept the Guru's religion, about twenty thousand men stood up and promised to obey him as they had the fullest faith in the divine message.

The novitiates came forward in batches to be initiated. The first five among those who now volunteered were Ram Singh, Desa Singh, Tahal Singh, Ishar Singh and Fateh Singh. They were called by the Guru punj mukte, the five liberated ones. According to Guru kian Sakhian, in the next row stood Mani Ram, Bachittar Das, Ude Rai, Anik Das, Ajaib Das, Ajaib Chand, Chaupat Rai, Divan Dharam Chand, Alam Chand Nachna and Sahib Ram Koer followed by Rai Chand Multani, Gurbakhsh Rai. Pandit Kirpa Ram Dutt of Mattan, Subeg Chand, Gurmukh Das, Sanmukh Das, Amrik Chand, Purohit Daya Ram, Barna, Ghani Das, Lal Chand Peshuria, Rup Chand, Sodhi Dip Chand, Nand Chand, Nanu Rai of Dilwali and Hazari, Phandari and Darbari of Sirhind came next. Countless more batches came, each one more eager than the other. Anandpur Sahib was seized with an uncanny fervour of the spirit.

According to one estimate as many as 80,000 Sikhs were initiated in a few days. The Guru called them the Khalsa, the pure and his very own ideal- Isht Suhird. The Guru also sent instructions that those who called themselves Sikhs should get themselves initiated. The initiated Sikhs were termed as Khalsa.

In addition to the five emblems, t h e initiated were to observe a certain code of conduct, Rehat. They were not to i) cut their hair on any part of their body; ii) smoke, chew tobacco or take alcoholic drinks; iii) eat meat of an animal slaughtered by any 'purifying method', like halaal of Muslims and kosher of Jews; iv) violate the modesty of women of even the enemy.

The more remarkable aspect of this episode was that the Guru having administered amrit to the five Sikhs stood up in supplication, and with folded hands requested them to initiate him in the manner he had initiated them. They were amazed at such a strange request, but he silenced them by saying that he too wanted to be one of them. The Five Beloved initiated the Guru to the order of the Khalsa according to the new rite. After this, there remained no difference between the initiated Sikhs and the Guru. They were to be his Khalsa, the body of his body and the soul of his soul, nay his otherself, his beloved ideal. The Guru, thus, merged himself in the Khalsa, and the whole body of the Khalsa was invested with the dignity of guruship. Thenceforward the principle was established that five chosen Sikhs could represent the Khalsa. The Guru also sent instructions that those who called themselves Sikhs should receive the new initiation.

The initiated Sikhs, were termed as the Khalsa. The term was not without a precedent. In the pre-Khalsa period, the term Khalsa was restricted to such privileged Sikhs as were virtually directly connected with the Gurus and whose subordination to the masands was simply de jure. "The word Khalsa in the sense of the privileged Sikhs occurs in a hukamnama (fiat) issued by Hargobind and also in one issued by Guru Tegh Bahadur." But with Guru Gobind Singh any one who is initiated by the amrit ceremony, who abides by the instructions of the Guru, was the member of the Khalsa or Sikh Brotherhood.

Apart from wearing five emblems and observing calls of conduct, the Sikhs were expected not to pay homage to any external object except the Granth, not to recognize caste prejudices, superstitions, empty rituals, esoteric and ascetic practices. They were to have faith that the Guru was always present in the general body of the Khalsa, and that wherever even five Sikhs were assembled, the Guru would be with them. They were free to marry amongst themselves without any caste considerations.

However, they were to have no social or matrimonial relations with smokers, with persons who shaved, with persons who killed their daughters and with the descendants or followers of Pirthi Chand, Dhir Mal, Ram Rai, and such masands as had fallen from the tents and principles of Guru Nanak. They were not to worship idols, cemeteries or cremation grounds. They must have faith in the singularity and unicity of God."

Professor Hew McLeod , Professor Emeritus University of Otago Dunedin, New Zealand, has spent a life time researching on Sikhism. In his book '**Sikhism**' published by YODA Press, 2010 , he refers to the obligation of the Khalsa Sikh to wear the five Kakars. He states that

they must unfailingly be worn and neglect to do so represents a serious lapse of Khalsa discipline. He writes as under:

“.....For Sikhs of the Khalsa the dominant ethical duty is the quest for justice. This, as we have seen, was the paramount concern of Guru Gobind Singh. At the end of the seventeenth century the world was seen to be seriously awry, with the powerful assuming more than their share of authority and the weak compelled in consequence to suffer. For this reason Guru Gobind Singh created the Khalsa, and every Sikh was enlisted as a member was thereafter committed to the public struggle for justice. It was a very high profile which the committed Khalsa Sikh was required to adopt. By adopting the highly visible Five Ks, all Khalsa Sikhs (and particularly the men with turbans and beards) announced, to all who had eyes to see, that they were members of the Khalsa order and that as such they were pledged to fulfill its obligations.

These obligations were summarized for the Khalsa Sikh in the words of the Rahit, and for Sikhs of today they are found in the modern rahit-nama Sikh Rahit Maryada. As the Khalsa is viewed as an army the prime obligation required of all its members is discipline. In this respect the Five Ks, the most prominent of all features of the modern Khalsa, can be interpreted as a positive requirement, and at a Khalsa initiation ceremony the candidate is instructed always to observe these symbols of the faith. They must unfailingly be worn and to neglect to do so represents a serious lapse of Khalsa discipline. In the same way the four cardinal prohibitions (kurahit) are regarded as serious infringements and must always be avoided. Committing any of these similarly represents a gross breach of discipline.”

No discussion on the subject can be complete without a reference to the 'Sikh Rehat Maryada' formulated by the Shiromani Gurdwara Prabandhak Committee in 1945. This Rehat Maryada, is the outcome of years of labour and the widest consultations amongst the Sikhs. The exercise started with the appointment on 15 March 1927, of 28-member Rahu-rit (i.e. rahit maryada) sub-committee "to prepare a draft rahu-rit in the light of rahitnamas and other Sikh texts and in consultation with leading Sikh scholars." Later, the task was entrusted to Professor Teja Singh, of Khalsa College, Amritsar, who prepared a draft which was published in the April 1931 issue of the Gurdwara Gazette, the official organ of the Shiromani Gurdwara Parbandhak Committee, for eliciting public opinion. The Rahu-rit sub-committee considered the draft as well as the comments received from various quarters at its meetings held at Sri Akal Takht on 4-5 October 1931, 3 January 1932 and 31 January 1932.

The final version, after being referred to Sarb Hind (i.e. All-India) Sikh Mission Board and further amended by Dharmik Salahkar (i.e. Religious Advisory) Committee received final approval by the Shiromani Gurdwara Parbandhak Committee on 3 February 1945. It was then published under the title 'Sikh Rahit Maryada'.

In Article XXIV, the essentials of the ceremony of Baptism are described. It also lists the discipline to be followed by the baptised Sikhs which includes having on their person, all the time, the five K's.

“Article XXIV - Ceremony of Baptism or Initiation

a. Ambrosial baptism should be held at an exclusive place away from common human traffic.

b. At the place where ambrosial baptism is to be administered, the holy Guru Granth Sahib should be installed and ceremonially opened. Also present should be six committed baptized Sikhs, one of whom should sit in attendance of the Guru Granth Sahib and the other five should be there to administer the ambrosial baptism. These six may even include Sikh women. All of them must have taken bath and washed their hair.

c. The five beloved ones who administer ambrosial baptism should not include a disabled person, such as a person who is blind or blind in one eye, lame, one with a broken or disabled limb, or one suffering from some chronic disease. The number should not include anyone who has committed a breach of the Sikh discipline and principles. All of them should be committed baptized Sikhs with appealing personalities.

d. Any man or woman of any country, religion or cast who embraces Sikhism and solemnly undertakes to abide by its principles is entitled to ambrosial baptism. The person to be baptized should not be of very young age; he or she should have attained a plausible degree of discretion. The person to be baptized must have taken bath and washed the hair and must wear all five K's - Kesh (unshorn hair), strapped Kirpan (sword), Kachhehra (prescribed shorts), Kanga (Comb tucked in the tied up hair), Karha (Steel bracelet). He/she must not have on his/her person any token of any other faith. He/she must not have his/her head bare or be wearing a cap. He/she must not be wearing any ornaments piercing through any part of the body. The persons to be baptized must stand respectfully with hands folded facing the Guru Granth Sahib. Rehat Maryada Sikh Code of Conduct and Conventions

e. Anyone seeking to be re-baptized, having committed an aberration should be singled out and the five beloved ones should award chastisement to him/her in the presence of the congregation.

f. One from amongst the five beloved ones administering ambrosial baptism to persons seeking to be baptized should explain the principles of

the Sikh religion to them: The Sikh religion advocated the renunciation of the worship of any created thing, and rendering of worship and loving devotion to, and meditating on, the One Supreme Creator. For the fulfillment of such devotion and meditation, reflection on the contents of Gurbani and practicing of its tenets, participation in the congregational services, rendering service to the Panth, benevolent exertion (to promote the good of others), love of God's name (loving reflection on the experience of the Divine), living within the Sikh discipline after getting baptized etc. are the principal means. He should conclude his exposition of the principles of Sikh religion with the query: Do you accept these willingly?

g. On an affirmative response from the seekers of baptism, one from amongst the five beloved ones should perform the Ardas for the preparation of baptism and take the holy Hukam (command). The five beloved ones should come close to the bowl for preparing the amrit (ambrosial nectar).

h. The bowl should be of pure steel and it should be placed on a clean steel ring or other clean support.

i. Clean water and sugar puffs should be put in the bowl and the five beloved ones should sit around it in bir posture [Sitting in bir posture comprises sitting resting the body on the right leg, the right calf and foot gathered inward and the left leg up to the shin kept in a vertical position.] and recite the under mentioned scriptural compositions.

j. The scriptural compositions to be recited are: The Japuji, the Jaap, The Ten Sawayyas (commencing with sarawag sud), The Bainti Chaupai (from "hamri karo hath dai rachha" to "susht dokh te leho bachai"), the first five and the last one stanza of the Anand Sahib.

k. Each of the five beloved ones who recite the scripture should hold the edge of the bowl with his left hand and keep stirring the water with a double-edged sword held in his right hand. He should do that with full concentration. The rest of the beloved ones should keep gripping the edge of the bowl with both hands concentrating their full attention on the ambrosial nectar.

l. After the conclusion of the recitation, one from amongst the beloved ones should perform the Ardas.

m. Only that person seeking to be baptized who has participated in the entire ceremony of ambrosial baptism can be baptized. One who has turned up while the ceremony was in progress cannot be baptized.

n. After the Ardas as per clause (1) above, thinking of our Father, the tenth Master, the wearer of the aigrette, every person seeking to be baptized should sit in bir posture, putting his/her right hand cupped on the left cupped hand and be made to drink the ambrosial mix five times, as the beloved one who pours the mix into his cupped hand exclaims: say, Waheguru ji ka Khalsa, Waheguru ji ki Fateh! (The Khalsa is of the Wondrous Destroyer of darkness; victory too, is His!) The person being baptized should after imbibing the ambrosia, repeat: Waheguru ji ka Khalsa, Waheguru ji ki Fateh. Then five handfuls of the ambrosial mix should be sprinkled into the eyes of the person being baptized and another five into his hair. Each such sprinkling should be accompanied by the beloved one administering baptism saying, "Waheguru ji ka Khalsa,

Waheguru ji ki Fateh”, and the person being baptized repeating the chant. Whatever ambrosial mix is left over after the administration of the ambrosial baptism to all individual seekers, should be sipped by all (men and women) baptized, together.

o. After this the five beloved ones, all together in chorus, communicating the name of Waheguru to all who have been administered the ambrosial baptism, recite to them the mul mantar (basic creed, seminal chant) and make them repeat it aloud: ik aunkar satnam karta purakh nirbhau nirwair akal murat ajuni saibhang gur prasad.

p. After this, one from amongst the five beloved ones should explain to the initiates the discipline of the order: Today you are reborn in the true Guru’s household, ending the cycle of migration, and joined the Khalsa Panth (order). Your spiritual father is now Guru Gobind Singh and, spiritual mother, Mata Sahib Kaur. Your place of birth is Kesgarh Sahib and your native place is Anandpur Sahib. You, being the sons of one father, are, inter-se yourselves and other baptized Sikhs, spiritual brothers. You have become the pure Khalsa, having renounced your previous lineage, professional background, calling (occupation), beliefs, that is, having given up all connections with your caste, descent, birth, country, religion, etc.. You are to worship none except the One Timeless Being - no god, goddess, incarnation or prophet. You are not to think of anyone except the ten Gurus and anything except their gospel as your savior. You are supposed to know Gurmukhi (Punjabi alphabet). (If you do not, you must learn it). And recite, or listen in to the recitation of, the under mentioned scriptural compositions, the daily repetition of which is ordained, every day:

- 1. The Japuji Sahib*
- 2. The Jaap Sahib*
- 3. The Ten Sawayyas (Quartrains), beginning “sarawag sudh”*
- 4. The Sodar Rahiras and the Sohila.*

Besides, you should read from or listen in to the recitation from the Guru Granth. Have, on your person, all the time, the five K’s: The Keshas (unshorn hair), the Kirpan (sheathed sword) [The length of the sword to be worn is not prescribed.], the Kachhehra [The Kachhehra (drawers like garment) may be made from any cloth, but its legs should not reach down to below the shins.], the Kanga (comb), the Karha (steel bracelet) [The karha should be of pure steel.]. The under mentioned four transgressions (tabooed practices) must be avoided:

- 1. Dishonoring the hair;*
- 2. Eating the meat of an animal slaughtered the Muslim way;*
- 3. Cohabiting with a person other than one’s spouse;*
- 4. Using tobacco.*

In the event of the commission of any of these transgressions, the transgressor must get rebaptised. If a transgression is committed unintentionally and unknowingly, the transgressor shall not be

liable to punishment. You must not associate with a Sikh who had uncut hair earlier and has cut it or a Sikh who smokes. You must ever be ready for the service of the Panth and of the gurduwaras (Sikh places of worship). You must tender one tenth of your earnings to the Guru. In short, you must act the Guru's way in all spheres of activity. You must remain fully aligned to the Khalsa brotherhood in accordance with the principles of the Khalsa faith. If you commit transgression of the Khalsa discipline, you must present yourself before the congregation and beg pardon, accepting whatever punishment is awarded. You must also resolve to remain watchful against defaults in the future.

q. The following individuals shall be liable to chastisement involving automatic boycott:

1. Anyone maintaining relations or communion with elements antagonistic to the Panth including the minas (reprobates), the masands (agents once accredited to local Sikh communities as Guru's representatives, sine discredited for their faults and aberrations), followers of Dhirmal or Ram Rai, etc. users of tobacco or killers of female infants.

2. One who eats/drinks leftovers of the unbaptised or the fallen Sikhs

3. One who dyes his beard

4. One who gives off son or daughter in matrimony for a price or reward

5. Users of intoxicant (hemp, opium, liquor, narcotics, cocaine, etc.)

6. One holding, or being a party to, ceremonies or practices contrary to the Guru's way

7. One who defaults in the maintenance of Sikh discipline

r. After this sermon, one from among the five beloved ones should perform the Ardas.

s. Thereafter, the Sikh sitting in attendance of the Guru Granth Sahib should take the Hukam. If anyone from amongst those who have received the ambrosial baptism had not earlier been named in accordance with the Sikh naming ceremony, he should renounce his previous name and be given a new name beginning with the first letter of the Hukam now taken.

t. And finally, the karhah prashad should be distributed. All the newly launched Sikh men and women should eat the karhah prashad together off the same bowl."

In 1944, , a collection of essays of Prof. Teja Singh, Former Principal of Khalsa College Amritsar on various aspects of Sikhism was published under the title **'Essays in Sikhism'** by Sikh University Press,

Lahore. In the essay titled as 'FREEDOM OF THE KIRPAN' he explains the meaning and significance of the Kirpan as under:

"The Kirpan or sword is one of the five symbols of the Sikh faith, whose names begin with the same letter. The other four are: Kesh (long hair), Kangha (comb), Kara (iron bracelet) and Kachh (drawers). When a Sikh is baptized, it is enjoined on him not to part with any of these. The Kirpan is a symbol of Power and Dignity, both of which India had lost and which Guru Gobind Singh wanted to restore.*

None of these symbols was invented by Guru Gobind Singh. They were already in vogue and had been separately used with much the same significance. The word 'Kirpan' was used for a sword. Long before it became a religious symbol with the Sikhs, its name had been applied to different kinds of the sword. In the old Sanskrit dictionaries, like the Amarkosh and the Shabd-kalpadrum-kosh, it is used as a synonym for kharag, karwar, asi, chandarhas, and rishti. Guru Gobind Singh himself in his Book of Instruments, called Shastar-nam-mala, says:—

"Kari. Karantac (elephant-killer), Kashtrip (enemy-tormentor), Kalayuddh (war-instrument), Karwar (talwar), Kara and Chol are different names of the Kirpan." (11. 41).

In another book, called Pakhiano Charitra, he uses Bhagauti and Kharag indifferently for the Kirpan:

*"She took Bhagauti in her hand.
And with all her might she struck it at his head.
As the Raja cried out, hai ! hai !!,
She struck the Kirpan again and again." (302.9)
Here Kirpan and Bhagauti are used synonymously.
Again.*

"When the attack on the fort began, she took out her Kirpan and, coming to close quarters, plied the K h a r a g and with one stroke finished off the enemy." (199.26)

In these verses the Kirpan is synonymous with the Kharag. We have seen that in old Sanskrit dictionaries, too, it is described as the same thing as the Kharag.

Guru Gobind Singh did not fix the size of the Kirpan. It depended on the wielding power of individual Sikhs. But from the samples preserved at the Akal Takht and other Gurdwaras we can get an idea of what a Kharag or Kirpan was. According to old Hindu books the maximum size of a Kharag was 50 anguls or about 3.12 feet; and the minimum size was 25 anguls or about 1.56 ft.

"A Kharag of 50 anguls is excellent and of half that size is inferior. Shorter than that should not be worn at all." — Agni Purani.

"The best Kharag is 50 anguls long; and an inferior one is 25." — Varah Samhita.

The same size is given in the Devi Puran.

Why did the Guru call the sword Kirpan? Because it alliterates with the names of the other four symbols, is a classic and poetical name, and can be applied to all kinds of swords. The Kirpan is called a symbol from the view-point of religious art or aesthetics. In order that the symbols might serve their real purpose, as a help in the performance of religion and might not become a dead weight on religion, the Guru also emphasized the view-point of utility. The Kirpan is,

therefore, an active symbol, an instrument of offence and defence, and not a charm to be tied along with the turban-ends or stowed away in the back of the comb, as it came to be done in the British days. It is to be kept in a sheath and worn in a belt (Pakhiano Charitra, 52.18). It can cut through armour (Shastar-nam-mala,- 11.28), through men, horses, even elephants. It is superior to all other instruments (ibid, 11.34)."

The Five Kakars - as the symbols of religious consciousness of the Sikhs

In *Sikhs and Sikhism* by Dr. I .J. Singh (Manohar Publishers and Distributors, 1994), the author has reviewed various facets of Sikh life and culture. In the Chapter, titled The Symbols of a Heritage , while emphasizing the importance of the symbols of the Sikh faith, the author argues that symbols are found in most aspects of man's creative activity- art, music, mathematics, history, religion. He writes that these symbols get so embedded in the consciousness of the people that they may live and even die for them.

"..... Insofar as religions deal with people, places and events, they are amenable to historical analyses. But religions deal with a reality that transcends history – a reality that the senses cannot perceive and the intellect cannot fathom, yet with which the soul can commune. At that point in awareness, one is in the domain of faith. Faith is better than belief. In belief, someone else does the thinking for you; in faith, you accept the truth not at someone else's say-so, but because you have internalized it and endorsed it. Belief can mature into faith. From belief comes dependency; from faith, strength. The intangible realm of faith is a symbolic reality that is best expressed through symbols.

It is well to remember that the dimension of faith is not that of science. Of Man's many concerns, the deepest-faith-is symbolically expressed. By definition, symbols and signs signify something else beyond themselves, yet a symbol participates in defining the reality to which it points. A flag is not a nation but a symbol of it and attests to the shared history and dignity of a nation. That is why good people will fight and die for a flag but not let it be desecrated; it becomes significantly more in worth than the price of the cloth from which it is cut. A symbol, therefore, can't be easily replaced by another, or be subjected to scientific logic, nor can it be judged by the criteria of the marketplace.

Symbols are seen in every act of faith. They live and die but only after a historical catastrophe which greatly alters a people's perception of self and their destiny. The death of existing symbols constitutes devastating events no less important than the phenomena that give them birth and shape. Symbols cannot be invented at will or intentionally produced by committees like business logos. They grow out of the collective consciousness of a people and have to be accepted by the subconscious dimension of their being. Their majesty and power lies in their symbolic character, not in any utilitarian value they might possess.

Symbols are found in most aspects of man's creative activity- art, music, mathematics, history, religion. In fact, man's cultural history is often symbolically expressed. A cross is a symbol of Christ's suffering, not the reality of it. After 2,000 years of the Diaspora, the Jews seems to have recognized how symbols connect people to their roots; witness the growing popularity of the Lubavitchers.

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The Sikh with his external uniform and symbols is a Khalsa, a soldier in the army of God. This army created by Guru Gobind Singh was not made to rule over others or to shepherd a flock of sheep-like devotees. Unlike the army of Christ, where only clergy were to be in uniform, in this army of the Khalsa, all followers were to join, all were to wear the uniform, everyone was always on call.

Though symbols are not to be judged by their utilitarian value, some of the Sikh symbols seem to be more functional than others. If long hair is de rigueur, a comb is essential for grooming, particularly for a people who knew no peace and lived on horseback. For a people fighting for survival, a sword as a weapon ensured survival. Again, befitting their life-style and India's terrain and weather, knee-length drawers were appropriate. A steel bracelet spoke of the strength of steel; its circle of a life with no beginning and no end. This strong wide band of steel could also protect or be used as a weapon. In seventeenth century India, when there was a price on every Sikh's head, when a non-Muslim could not wear a turban, carry a weapon or ride a horse, when it was easier and more tempting to join the faceless anonymous hordes, the long-haired Khalsa boldly asserted their presence through their visible symbols. These symbols were a uniform of the Khalsa and still remain so. The philosophy of the Khalsa is eternal and the symbols represent it.

He sums up by saying :

“A person gets from a symbol what he puts in it. It can be one man's comfort and inspiration as easily as another's jest and scorn. In the final analysis, symbols are an embodiment of history, not sentiment.”

Prof. Teja Singh in his essay, FORMS AND CEREMONIES,

while making a reference to the Sikh religious symbols, argues that forms are the art of religion. He asserts that like Art in relation to Nature, these forms impose certain limitations on the ideal, but at the same time they make the ideal more real and workable for general use. He argues that these are the forms with which the Sikhs are invested at the time of their baptism, in order to look exactly like their master, and they are expected to behave accordingly.

“This institution of the Khalsa entails a certain additional disciplinary outfit in the shape of baptismal forms and vows, which are often misunderstood. It is true that if religion were only a matter of individual concern, there would be no need of forms and ceremonies. But religion, as taught by the Gurus, is a force that not only ennobles individuals but also binds them together to work for nobility in the world. Organization is a means of enlarging the possibility, scope and

effectiveness of this work. In order that an organization itself may work effectively, it 'is necessary that the individuals concerned in it should be able to keep up their attachment to the cause and a sufficient amount of enthusiasm for it. It is, however, a patent fact that men by their nature are so constituted that they cannot keep their feelings equally high-strung for a long time at a stretch. Reaction is inevitable, unless some means are devised to ensure the continuity of exertion. This is where discipline comes in, which keeps up the spirit of individuals against relaxation in times of trial and maintains their loyalty to the cause even in moments of ebb. This discipline, or what is called esprit de corps, is secured by such devices as flags and drills and uniforms in armies, and certain forms and ceremonies in religion. Uniformity is an essential part of them. They create the necessary enthusiasm by appealing to imagination and sentiment, and work for it in moments of depression. They are a real aid to religion, which is essentially a thing of sentiment. Man would not need them if he were only a bundle of intellectual and moral senses; but as he has also got sentiment and imagination, without which the former qualities would be inoperative, he cannot do without articulating his ideas and beliefs in some forms appropriate to sentiment. These forms must not be dead but a living index of his ideal, waking up in him vivid intimations of the personality that governs his religion. They should be related to his inner belief as words are to their meaning, tears to grief, smiles to happiness and a tune to a song. It is true that sometimes words become meaningless, when we no longer heed their sense, or the language to which they belong becomes dead. It is true that sometimes tears and smiles are only cloaks for hypocrisy, and a tune mere meaningless jingle. But there is no denying the fact that, when their inner meaning is real and we are sincere about it, they do serve as very helpful interpreters. Forms are the art of religion. Like Art in relation to Nature, these forms impose certain limitations on the ideal, but at the same time they make the ideal more real and workable for general use.

Sometimes, however, when the forms are determined, not by the necessity of uniformity which is so essential for discipline, but by local or racial causes, they narrow the applicability of the ideal and create division and exclusiveness where they should have helped men to unite. When the spirit in which they had been originally conceived dies out, they become mere handicaps to religion, and the people who use them would be well-advised to abandon them. It was such forms that Guru Nanak asked people to leave. "Destroy that custom," he said, "which makes you forget dear God." But the Sikh forms were not conceived in a spirit of exclusiveness, or as essential to the advancement of individual souls. They were simply appointed to serve as aids to the preservation of the corporate life of the community, and any man who likes to serve humanity through the Sikh Panth can wear them. It is possible for a man to love God and cultivate his individual soul without adopting these forms; but if he wants to work in a systematic manner, not only for his own advancement but for the good of others as well in the company of Sikhs, he must adopt these disciplinary forms of their organization. The Sikhs, who are the soldiers of Guru Gobind Singh and whose religion is surcharged with his personality, find the uniform worn and ordained by him as a real help in playing their part as units of the Panthic organization. This help comes from the appeal made to sentiment by the process of association and not through any inherent efficacy of the forms themselves. This association is not with places or things, but with an ever-living personality that is itself a symbol of the Highest Personality. As is God, so is the Guru; and as is the Guru, so must be the follower. Wearing a Knicker ensuring briskness of movement at times of action and serving as an easy underwear at times of rest, an

iron ring on his right arm as a sign of sternness and constraint and a sword by his side as an instrument of offence and defence and as an emblem of power and dignity, the Guru presented an impressive picture of a simple but disciplined soldier. He, however, combined in him the saintliness of the old Rishies with the sternness and strength of a knight. Therefore, like his predecessors, he kept long hair, which all the world over have always been associated with saintliness. A comb was a simple necessity for keeping the hair clean and tidy. These are the forms with which the Sikhs are invested at the time of their baptism, in order to look exactly like their master, as they are to behave exactly like him.

From the history of Sikhs in the past as well as in the present, it is quite evident how effectively these baptismal forms, with the accompanying vows of purity, love and service, have aided them in keeping themselves united and their ideals unsullied even in times of the greatest trial. While keeping the Sikhs associated with their Guru and maintaining his spirit amongst them, they have not produced any narrowing effect on their beliefs or modes of worship. All worship and ceremony, whether in temple or home, whether on birth, marriage or death, consists of nothing else but praying and chanting hymns. Could anything be simpler?"

The Sikh struggle for the right to carry Kirpan during British reign.

Being thus enjoined to have on their person the Five Kakars, it would be instructive to briefly note the struggle of the Sikhs, for the right to carry Kirpan to be legally recognized during the British Rule.

The keeping and carrying of kirpan was denied under the Indian Arms Act (XI) of 1878. Under this Act, no person could carry arms, except under special exemption or by virtue of a licence. Whatever could be used as an instrument of attack or defence fell under the definition of "Arms." Thus the term included firearms, bayonets, swords, dagger heads and bows and arrows. Under the Act, a kirpan could be bracketed with a sword.

The struggle was long and hard and assumed the shape of a non-violent Kirpan Morcha. Thousands of Sikhs were sent to jail for contravening the Indian Arms Act. At places, the kirpan factories were raided and their owners put under arrest. Excesses were committed by police upon nonviolent kirpan carrying Sikhs who bore these with stoic resignation and unfaltering faith. Such Sikhs were honoured with the title

of Kirpan Bahadur (Hero of the Kirpan). It was only in 1922, that a compromise was arrived at between the Punjab Governor and the Shiromani Gurdwara Parbandhak Committee. according to which an announcement was made on behalf of the Punjab government that the Sikhs would not be prosecuted for wearing, keeping and carrying the kirpan. (Ref :ENCYLOPAEDIA OF SIKHISM- published by Punjabi University Patiala).

Here once again, like in relation to many other aspects of Sikh history, one has to turn to the venerated Principal Teja Singh, who in his essay '**FREEDOM OF THE KIRPAN**', (supra) has painstakingly traced the important milestones in the struggle to have the right to carry the Kirpan, get legal recognition from the British. As in paraphrasing the contents thereof, the beauty and flow in the narration of that sensitive soul, would be lost, hence even at the cost of lengthening the judgment, I am reproducing it as under:

“As long as the Sikhs were free, they were able to keep their religious liberty intact and did not part with their Kirpan or sword. They kept it by their side in the day, and took it to their bed at night. When they lost their liberty with the destruction of their empire, the Kirpan was also taken away from them. What a scene, that, at the famous monument of Mankiala, when the day of the Khalsa was over, in 1849, and the old Sikh veterans were ordered to pile their arms at the feet of Sir Walter Guilbert. How reluctantly each soldier came forward and, embracing his sword, uttered a groan, deep and long, and placed it on the pile in tears. Thus was lost one of the five symbols of the Sikh faith. In jails even other symbols, like the comb and the bracelet, were not allowed. And the Sikhs had to struggle hard and long to get a concession even in regard to these symbols for their brethren in jail.*

We must admit that by the Army Regulations, which emphasize the initiation of a Sikh recruit in Guru Gobind Singh's baptism, the old tradition of the Khalsa was kept up to some extent. But in other ways, as we have seen, the liberty of the Sikhs was controlled. The Sikhs founded Sabhas and Diwans, purely religious bodies, whose object was to restore Sikhism to its pristine glory. They emphasized the carrying out of baptismal vows, and among other things laid stress on the wearing of the Kirpan. But the law of the country stood in their way.

In 1913, one Baba Nihal Singh Nihang was arrested for wearing a Kirpan. The different Sikh bodies passed resolutions of protest and there

began a strong agitation, in response to which the gentleman was released. The Ramgarhia Sabha sent deputation to Sir O'Moore Creagh, the Commander-in-Chief at Simla, who took a sympathetic view. The Chief Khalsa Diwan, whose Secretary was Sardar Sundar Singh Majithia, interviewed several officials in this connection. The Sikhs of Rawalpindi, through their Sabha, showed special activity in moving the Takhts and the general Sikh public; and on June 25, 1914, the possessing and wearing of the Kirpan was allowed by law in the Punjab. After a month it was allowed in Delhi. Then after some months' agitation, and after some Sikhs had suffered arrests, it was allowed in Burma. But whenever a Sikh was found with a Kirpan in the U.P. or Bengal he was arrested. It is true that law did not allow it in other provinces, but it was not the fault of Sikhs. It was an anomaly, which the Government unreasonably kept up. Why should a Sikh be required to part with his religious symbol when stepping out of Delhi and put it on when landing at Rangoon? In February, 1917, after Chaudhri Shamsher Singh, Secretary of the Singh Sabha of Sitapur, had been punished for wearing a Kirpan, it was allowed in the U.P., and then in the N.W. Frontier Province. In other provinces it was still forbidden. The Sikhs have got their sacred places in the U.P., Behar, Bengal, Deccan, etc., and are found travelling in batches to visit these places. One can imagine what trouble they must have undergone in prison and at the hands of the police, which is none too tender in India. On May 19, 1917, it was allowed throughout India. In 1918 the exemption was extended to British Baluchistan and the Residency Bazars and the Railway lands in Hyderabad State. But still cases were not rare when, in spite of this sanction, the police of different provinces was found arresting and troubling innocent Sikhs for wearing Kirpans.

The representative bodies of the Sikhs went on agitating, for the Kirpan was still not allowed in the Army. Look at the wonder of it! Those who used the sword, those whose profession it was to wear arms, were not allowed to wear the Kirpan. Three soldiers at Roorkee were punished and dismissed for wearing it. The whole Sikh community cried hoarse over the affair, but they were not taken back. Bhai Mangal Singh of the 34th Sikhs, who was afterwards martyred at Nankana Sahib, was dismissed and sentenced to one year's R.I. for the same fault. His sentence was later reduced. It was in September 1920, that in recognition of the loyal and distinguished services rendered by the Sikhs in the Great War, the Government "was pleased to sanction the wearing of the Kirpans by Sikh soldiers both in uniform and plain clothes while serving on the active list."

The law, while exempting the Kirpan from all restrictions, did not fix its size, for the Sikhs who had applied for it had stated that its size could be fixed only by Guru Gobind Singh. Nor was its manufacture forbidden. In Schedule II of the Arms Act, which provides for exemptions from the operation of the Act, the Kirpan is declared to be free from all prohibition! including its manufacture and sale. For some time the Sikhs freely enjoyed the right of manufacturing, selling and possessing the Kirpan. But when the repression of Sikhs in connection with the Gurdwara reform began, those who wore Kirpans also came in for it. In February, 1921, the Deputy Commissioner of Jullundur issued an order requiring the local manufacturers not to manufacture Kirpans of greater length than nine inches. A First Class Magistrate in Lahore passed an order on the application of a Kirpan manufacturer for licence that no licence was needed for manufacturing Kirpans. But when in March, 1921, S.B. Mehtab Singh referred to it in the Council, S. Sundar Singh Majithia replied on behalf of the Government that although the Sikhs had been permitted to wear the Kirpan, Section 5 of the Arms Act did not allow them to manufacture it without licence. He also declared that the Kirpans

were in no case to exceed nine inches in length. Consequent upon this Sikhs began to be arrested everywhere for wearing Kirpans which exceeded the length of nine inches, although there was no specific law or notification issued on the point. The Maharaja of Patiala was, however, more explicit. He ordered on 19th March, 1921, that Kirpans must be bought from the Arms Manufacturers of the State, who were instructed to prepare Kirpans of a fixed size and shape. All other Kirpans possessed or carried were liable to confiscation. This order created much heart-burning among the Sikhs and was withdrawn on October 5, 1921. The prosecution of Sikhs for wearing Kirpans went on in the British Districts. Nobody could understand on what principle the police or the courts proceeded. Some people were arrested for possessing Kirpans, while others were not arrested, even though they carried as long Kirpans as they could. In the case of one Hazara Singh, who was tried in April, 1921, the following great moderate leaders were cited as defence witnesses:— Sardar Bahadur Mehtab Singh, Bar-at-law; Sardar Trilochan Singh, M.A., L.L.B.; Sardar Sundar Singh Ramgarhia, President of the Shromani Committee and ex-Manager of the Golden Temple; Sardar Harbans Singh, Secretary of the Chief Khalsa Diwan and Vice-President of the Shromani Committee; Professor Jodh Singh, M.A., Principal, Guru Nanak College, Gujranwala; Bhai Takht Singh, Manager Sikh Girls' School, Ferozepore; and Sardar Shivdev Singh Uberoi, Honorary Magistrate of Sialkot. They declared that the instrument, for carrying which Bhai Hazara Singh was being prosecuted, was a Kirpan, and that Kirpan was another name for the sword. They themselves had with them similar Kirpans. And yet the man was convicted under Section 19 of the Act and sentenced to 6 month's R.I. Bhai Bachittar Singh, lathedar of the Akal Takht, who had been picked out of so many Kirpan carrying Sikhs, was sentenced to 2 years' imprisonment, which was, however, reduced to 6 months later on. He appealed to the High Court, which could not come to any decision as to what a Kirpan was, and his petition was rejected. After proceeding in this uncertain way for a few months, the Government in July relaxed its policy of prosecutions, declaring complacently that "the practice of wearing large weapons or ordinary swords appears to have now much diminished." The Sikhs in reality had never given up their practice of wearing the so-called long Kirpans.

In March, 1922, the Government and the Shromani Committee came to an understanding about the Kirpan. It was agreed that the Government would not interfere with the Sikhs for wearing "Kirpans or swords" as long as they ordinarily wore them by the side and did not unsheath them except for purely religious purposes. When listening to the terms of agreement the Sikh representatives had expressed a fear that the Government might take advantage of the words "by the side" and unnecessarily harass the Sikhs. The Government representative had laughed out the objection, saying that the Sikhs should trust the Government, which wanted to finish the Kirpan trouble once for all. It was, however, destined to be used, like so many other previous agreements, as a mere stalking horse.

The ink was not yet dry on the document when a fresh campaign was started for prosecuting Sikhs for wearing Kirpans. The Burma Government even in February had issued a notification fixing the size of the Kirpan at 9 inches. Sardar Kharak Singh and others were arrested and sentenced heavily in the Punjab. The ludicrous way in which advantage was taken of the words "by the side" will appear from the following cases. A Sikh boy in Hoshiarpur district was going running to his school to avoid being late. As his Kirpan was hanging down his body, he could not run freely. So he took the Kirpan in his hand, though the belt was on his body. The Commissioner of the Division who saw this ordered

the boy to be disarmed. On the boy's refusing to give up his Kirpan, he was arrested and, being put before a Magistrate, was tried and sentenced to pay Rs. 55 as fine, or to go to jail for one month and a half in default. The brave boy preferred the latter, and was sent to jail. In a diwan at Samundri the Superintendent of Police snatched away the Kirpan from a Sikh while he was leaning on it. In another place a Sikh was deprived of his Kirpan while he was cleaning it. Sardar Ram Singh of Mandi Dabwali (Hissar District), who was found sleeping with his Kirpan, was arrested and sent to jail. A blind musician was arrested at Mandhra, because his cross-belt having broken on the way he was obliged to put his Kirpan in his bed. In a communique, dated 19th September, 1922, the Government declared that one "Anup Singh was present at a meeting and was arrested there for carrying his Kirpan in contravention of the orders on the subject. He was not wearing a belt and stated that he would never wear one." Sometimes Sikhs were arrested for possessing two Kirpans. As a Sikh is bound to keep his Kirpan always with him, it becomes sometimes inevitable that he should have two Kirpans with him. As for example, when he buys a new Kirpan to replace an old one, which he already possesses, he will necessarily have two in his possession when he walks away from the Kirpan shop; or sometimes when he comes from his village to a city and buys a Kirpan for his wife or child. The prosecutions in connection with the Kirpan were so manifestly illegal that all disinterested newspapers and associations in India strongly disapproved of the policy of the Government, and the Punjab Provincial Congress Committee in a general meeting condemned "the action of the Punjab Government in prosecuting Sikhs for wearing Kirpans beyond certain length which is not provided in law." Even a Sessions Judge was found to hold that the manufacture of Kirpans was no offence.xxxxxxxxxx

In fact the Government did not know its own case about the Kirpan question. The Government was yet undecided as to whether the manufacture of Kirpans was an offence or not. In answer to a question in the Punjab Council the Hon'ble Sardar Sundar Singh Majithia said on 31st July, 1922 : "The manufacture of Kirpans has been treated as subject to the provisions of the law applicable to swords, but doubt has been raised as to the applicability of these provisions to Kirpan and the Government is taken steps to obtain a judicial decision on the point." In the meanwhile Sikhs, like Sardar Kharak Singh, had to rot in jail. The same member also stated that up the beginning of June, 1922, "there had been 68 persons arrested, 66 brought to trial and 40 convicted during the previous twelve months for keeping, selling or manufacturing kirpans or weapons passing as such. Eighteen persons were still under trial." Read with this the statement of Government made in the beginning of March, 1922, that "for about 8 months past no Sikh has been arrested for wearing a sword or Kirpan," and they say how many had been punished in this connection and in how many months.

From 1925, when the Gurdwara Act was passed and the direct clash between the Government and the Sikhs ceased, there has been peace over the Kirpan question. But the same trouble, as described above, can arise any moment, if the good relations existing between the two parties are suspended. In Bombay and other distant provinces Kirpan cases still crop up now and then which show that the liberty of the Kirpan is not completely won."

Proceedings in the Constituent Assembly.

B. Shiva Rao, in his Framing of India's Constitution- A

Study, writes that the inclusion of a set of fundamental rights in India's Constitution had its genesis in the forces that operated in the national struggle during British Rule.

Similarly, it may well be said, that Explanation I in Article 25, regarding the wearing and carrying of Kirpans as being included in the profession of the Sikh religion, was incorporated in the light of the past bitter experience and difficulties hitherto faced in assertion of that right and to place the matter beyond dispute.

It would thus be instructive to briefly look into the proceedings of the Constituent Assembly which led to the present Explanation I being incorporated in Article 25.

By the Objectives Resolution adopted on January 22, 1947, the Constituent Assembly solemnly pledged itself to draw up for India's future governance a Constitution wherein " shall be guaranteed and secured to all the people of India justice, social, economic and political, equality of status, of opportunity and before the law, freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality." and wherein adequate safeguards would be provided for minorities, backward and tribal areas and depressed and other classes. Two days after the adoption of the Resolution, the Constituent Assembly elected an Advisory Committee for reporting on minorities, fundamental rights and on the tribal and excluded areas. At its first meeting held on February 27, 1947, Vallabhbhai Patel was unanimously elected Chairman and five sub-committees-including one on fundamental rights- were appointed. The Fundamental Rights Sub-Committee held three sittings. At the first sitting which took place on February 27, Sh. J.B. Kripalani was

elected Chairman and the general procedure and order of business for the committee were settled. Various Notes, Memoranda and Drafts were submitted to the Sub-Committee amongst others by Alladi Krishnaswami Ayyar, K.M. Munshi, B. R. Ambedkar and Harnam Singh etc. In the meeting of Sub-Committee held on March 24, 1947, it was decided to take up Mr. Munshi's draft and examine it in conjunction with other drafts.

Article VI of Munshi's draft dealt with the right to religious and cultural freedom. The relevant extract thereof are as under:

(1) *All citizens are equally entitled to freedom of conscience and to the right freely to profess and practice religion in a manner compatible with public order, morality or health:*

Provided that the economic, financial or political activities associated with religious worship shall not be deemed to be included in the right to profess or practice religion.

(2) *All citizens are entitled to cultural freedom, to the use of their mother tongue and the script thereof, and to adopt, study or use any other language and script of their choice.*

(3) *Citizens belonging to national minorities in a State whether based on religion or language have equal rights with other citizens in forming, controlling and administering at their own expense, charitable, religious and social institutions, schools and other educational establishments with the free use of their language and practice of their religion.*

(4) *No person may be compelled to pay taxes the proceeds of which are specially appropriated in payment of religious requirements of any community of which he is not a member.*

(5) *Religious instruction shall not be compulsory for a member of a community which does not profess such religion.*

(6) *No person under the age of eighteen shall be free to change his religious persuasion without the permission of his parent or guardian.*

(7) *Conversion from one religion to another brought about by coercion, undue influence or the offering of material inducement is prohibited and is punishable by the law of the Union.*

(8) *It shall be the duty of every unit to provide, in the public educational system in towns and districts in which a considerable proportion of citizens of other than the language of the unit are residents, adequate facilities for ensuring that in the primary schools the instructions shall be given to the children of such citizens through the medium of their own language.*

Nothing in this clause shall be deemed to prevent the unit from making the teaching of the national language in the variant and script of the choice of the pupil obligatory in the schools.

(9) No legislation providing State-aid for schools shall discriminate against schools under the management of minorities whether based on religion or language.

(10) Every monument of artistic or historic interest or place of natural interest throughout the Union is guaranteed immunity from spoliation, destruction, removal, disposal or export except under a law of the Union, and shall be preserved and maintained according to the law of the Union.”

In this draft there was no mention of the right to wear and carry kirpan.

Harnam Singh's draft on fundamental rights dated 18th March, 1947 contained the provision regarding the rights of Sikhs to carry and wear Kirpans. The relevant paras of the draft read as under:

“1. to 2. xx xx xx

3. The freedom of the press and the right to meet peaceably and without arms and to form associations shall be guaranteed by Constitution : provided that this would not affect the rights of the Sikhs to the carrying and the wearing of kirpans.

4 to 8 xx xx xx

9. The preparation and use of Jhatka meat in public institutions shall be allowed and Jhatka meat shall be treated on par in all respects with Halal meat. (Sapru Conciliation Committee Report, p. 242)

10. No law shall be enacted and no executive order given to restrict in any manner or extent whatsoever the manufacture, the sale, the keeping and the wearing of kirpans by the Sikhs. (Sapru Conciliation Committee Report, p. 242)”

In its meeting held on March 26, 1947, the Fundamental Rights Sub-Committee discussed freedom of religion and adopted Munshi's clause relating to the right to profess and practice religion with the significant modification that instead of being confined to citizens, the right was extended to all persons. At the instance of Sardar Harnam Singh, the right to wear and carry *kirpans* was recognized as part of the practice of the Sikh religion. The relevant part of the proceedings of the

Sub-Committee on Fundamental Rights is extracted below:

“Sardar Harnam Singh raised the question of the right of Sikhs to wear and carry kirpans. It was decided to provide in sub-clause (1) of Article VI, an explanation to the effect that the practice of religion includes in the case of Sikhs the right to wear and carry kirpans. It was also decided that it would be provided in the clause dealing with the right to assemble peaceably and without arms that this does not prohibit the Sikhs from wearing and carrying kirpans.

Sardar Harnam Singh also raised the question of Jhatka meat and suggested that a provision should be made to the effect that Jhatka meat shall be provided for Sikhs in public institutions. It was decided that this was a matter to be dealt with by the Minorities Sub-Committee.

Clause (6) of Article VI was accepted in principle but it was considered that it required re-drafting.”

The Draft Report of the Sub-Committee dated April 03, 1947, in Clause 16 incorporated the provision regarding wearing and carrying of kirpans. Said Clause 16 is reproduced as under:-

“16. All persons are equally entitled to freedom of conscience and the right freely to profess and practise religion subject to public order, morality, or health and to the other provisions of this chapter.

Explanation I.- The wearing and carrying of kirpans shall be deemed to be including in the practice of the Sikh religion.

Explanation II.- The right to profess and practise religion shall not include any economic, financial, political or other secular activities that may be associated with religious worship.

Explanation III.- No person shall refuse the performance of civil obligation or duties on the ground that his religion so requires.”

Explanation I relating to wearing and carrying of kirpans was retained as it is by the Advisory Committee in its interim report of 23rd April, 1947 in Clause 13, Rights Relating to Religion, which is as under:

“13. All persons are equally entitled to freedom of conscience and the right, freely to profess, practice and propagate religion subject to public order, morality or health, and to the other provisions of this chapter.

Explanation 1.- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation 2.- The above rights shall not include any economic, financial political or other secular activity which may be associated with religious practice.

Explanation 3.- The freedom of religious practice guaranteed in this

clause shall not debar the State from enacting laws for the purpose of social welfare and reform.”

The same provision is now Explanation-I to Article 25 of the Constitution. (Ref: Framing of India's Constitution by B. Shiva Rao Select Documents Voll. II published by The Indian Institute of Public Administration,1967)

Rights under the Constitution :

Article 25 of the Constitution is reproduced below

“ Article 25. Freedom of conscience and free profession, practice and propagation of religion

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

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

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

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

Explanation I.—The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II.—In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly.”

Thus, as per Article 25, subject to public order, morality and health and to the other provisions of Part III of the Constitution dealing with fundamental rights, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. As per Explanation I, the wearing and carrying of Kirpans is deemed to be included in the profession of the Sikh religion.

The Supreme Court has interpreted the Article 25 as conferring rights on persons, not merely to entertain religious beliefs as per one's conscience but also to exhibit the belief and ideas in such overt acts as

are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. The only rider is that this would be subject to public order, morality and health and other provisions of the Constitution.

In Commr., Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, AIR 1954 SC 282, holding that the Constitution protects not only the freedom of religion but also protects acts done in pursuance of religion it was observed as under:

“18. The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression “practice of religion” in Article 25. Latham, C.J. of the High Court of Australia while dealing with the provision of Section 116 of the Australian Constitution which inter alia forbids the Commonwealth to prohibit the “free exercise of any religion” made the following weighty observations:

“It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil Government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of Section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion.”

19. These observations apply fully to the protection of religion as guaranteed by the Indian Constitution. Restrictions by the State upon free exercise of religion are permitted both under Articles 25 and 26 on grounds of public order, morality and health. Clause (2)(a) of Article 25 reserves the right of the State to regulate or restrict any economic, financial, political and other secular activities which may be associated with religious practice and there is a further right given to the State by sub-clause (b) under which the State can legislate for social welfare and reform even though by so doing it might interfere with religious practices. The learned Attorney-General lays stress upon clause (2)(a) of the article and his contention is that all secular activities, which may be associated with religion but do not really constitute an essential part of it, are amenable to State regulation.”

To similar effect is the decision in Ratilal Panachand Gandhi v. State of Bombay, AIR 1954 SC 388, where the Supreme Court observed as under:

“10. Article 25 of the Constitution guarantees to every person and not

merely to the citizens of India, the freedom of conscience and the right freely to profess, practise and propagate religion. This is subject, in every case, to public order, health and morality. Further exceptions are engrafted upon this right by clause (2) of the article. Sub-clause (a) of clause (2) saves the power of the State to make laws regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; and sub-clause (b) reserves the State's power to make laws providing for social reform and social welfare even though they might interfere with religious practices. Thus, subject to the restrictions which this article imposes, every person has a fundamental right under our Constitution not merely to entertain such religious belief as may be approved of by his judgment or conscience but to exhibit his belief and ideas in such overt acts as are enjoined or sanctioned by his religion and further to propagate his religious views for the edification of others. It is immaterial also whether the propagation is made by a person in his individual capacity or on behalf of any church or institution. The free exercise of religion by which is meant the performance of outward acts in pursuance of religious belief, is, as stated above, subject to State regulation imposed to secure order, public health and morals of the people. What sub-clause (a) of clause (2) of Article 25 contemplates is not State regulation of the religious practices as such which are protected unless they run counter to public health or morality but of activities which are really of an economic, commercial or political character though they are associated with religious practices.

xxx xxx xxx

*13. Religious practices or performances of acts in pursuance of religious belief are as much a part of religion as faith or belief in particular doctrines. Thus if the tenets of the Jain or the Parsi religion lay down that certain rites and ceremonies are to be performed at certain times and in a particular manner, it cannot be said that these are secular activities partaking of commercial or economic character simply because they involve expenditure of money or employment of priests or the use of marketable commodities. No outside authority has any right to say that these are not essential parts of religion and it is not open to the secular authority of the State to restrict or prohibit them in any manner they like under the guise of administering the trust estate. Of course, the scale of expenses to be incurred in connection with these religious observances may be and is a matter of administration of property belonging to religious institutions; and if the expenses on these heads are likely to deplete the endowed properties or affect the stability of the institution, proper control can certainly be exercised by State agencies as the law provides. We may refer in this connection to the observation of Davar, J. in the case of *Jamshed ji v. Soonabai* and although they were made in a case where the question was whether the bequest of property by a Parsi testator for the purpose of perpetual celebration of ceremonies like *Muktad baj*, *Vyezashni*, etc., which are sanctioned by the Zoroastrian religion were valid charitable gifts, the observations, we think, are quite appropriate for our present purpose. "If this is the belief of the community" thus observed the learned Judge, "and it is proved undoubtedly to be the belief of the Zoroastrian community,—a secular Judge is bound to accept that belief—it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind". These observations do, in our opinion, afford an indication of the measure of protection that is given by Article 26(b) of our Constitution."*

In **Bijoe Emmanuel v. State of Kerala, (1986) 3 SCC 615**, the

Supreme Court observed that Article 25 is an article of faith in the Constitution. It was emphasized that whenever there is any complaint in relation to an action as being violative of the Fundamental Right to freedom of conscience and to profess, practise and propagate religion, the duty of the Court is to examine whether the act complained of as offending the Fundamental Right, is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It was further held that the authorization must be by law having the force of a statute and not a mere executive or a departmental instruction.

“18.Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country’s Constitution. This has to be borne in mind in interpreting Article 25.

19. We see that the right to freedom of conscience and freely to profess, practise and propagate religion guaranteed by Article 25 is subject to (1) public order, morality and health; (2) other provisions of Part III of the Constitution; (3) any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; or (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Thus while on the one hand Article 25(1) itself expressly subjects the right guaranteed by it to public order, morality and health and to the other provisions of Part III, on the other hand, the State is also given the liberty to make a law to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practise and to provide for social welfare and reform, even if such regulation, restriction or provision affects the right guaranteed by Article 25(1). Therefore, whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the court so to do. Here again as mentioned in connection with Article 19(2) to (6), it must be a law having the force of a statute and not a mere executive or a departmental instruction. We may refer here to the observations of Latham, C.J. in Adelaide Company of Jehovah’s

Witnesses v. The Commonwealth a decision of the Australian High Court quoted by Mukherjea, J. in the *Shirur Mutt* case. Latham, C.J. had said :

“The Constitution protects religion within a community organized under a Constitution, so that the continuance of such protection necessarily assumes the continuance of the community so organized. This view makes it possible to reconcile religious freedom with ordered government. It does not mean that the mere fact that the Commonwealth Parliament passes a law in the belief that it will promote the peace, order and good government of Australia precludes any consideration by a court of the question whether or not such a law infringes religious freedom. The final determination of that question by Parliament would remove all reality from the constitutional guarantee. That guarantee is intended to limit the sphere of action of the legislature. The interpretation and application of the guarantee cannot, under our Constitution, be left to Parliament. If the guarantee is to have any real significance it must be left to the courts of justice to determine its meaning and to give effect to it by declaring the invalidity of laws which infringe it and by declining to enforce them. The courts will therefore have the responsibility of determining whether a particular law can fairly be regarded, as a law to protect the existence of the community, or whether, on the other hand, it is a law ‘for prohibiting the free exercise of any religion’. The word ‘for’ shows that the purpose of the legislation in question may properly be taken into account in determining whether or not it is a law of the prohibited character.”

What Latham, C.J. has said about the responsibility of the court accords with what we have said about the function of the court when a claim to the Fundamental Right guaranteed by Article 25 is put forward.”

In Commr. of Police v. Acharya Jagadishwarananda

Avadhuta, (2004) 12 SCC 770, the Supreme Court held that the freedom to act and practice in pursuance of religious beliefs is as important as the freedom of believing in a religion. It was emphasized that to persons believing in a religious faith there are some forms of practising the religion by outward actions which are as much a part of religion as the faith itself. Though the Article 25 rights were subject to public order, morality and health, but it was stressed that in every case the power of regulation must be exercised with the consciousness that the subject of regulation is the fundamental right of religion, and the regulation does not unduly infringe the protection given by the Constitution.

“57.The exercise of the freedom to act and practise in pursuance of religious beliefs is as much important as the freedom of believing in a religion. In fact to persons believing in religious faith, there are some

forms of practising the religion by outward actions which are as much part of religion as the faith itself. The freedom to act and practise can be subject to regulations. In our Constitution, subject to public order, health and morality and to other provisions in Part III of the Constitution. However, in every case the power of regulation must be so exercised with the consciousness that the subject of regulation is the fundamental right of religion, and as not to unduly infringe the protection given by the Constitution. Further, in the exercise of the power to regulate, the authorities cannot sit in judgment over the professed views of the adherents of the religion and to determine whether the practice is warranted by the religion or not. That is not their function. (See Jesse Cantwell v. State of Connecticut, L Ed at pp. 1213-1218, United States v. Ballard, L Ed at pp. 1153, 1154.)”

Kirpan possessed or carried by Sikhs exempt from provisions of the Arms Act, 1959

In recognition of the fundamental rights of the Sikhs to wear and carry *kirpans* as part of the profession of Sikh religion, the *Kirpans* carried or possessed by Sikhs are exempted from the provisions of Section 4 of the Arms Act, 1959 . This exemption applies to all parts of India where Section 4 applies. Thus, no licence is required for a Sikh to wear or carry a *kirpan*.

Conclusion :

It is in the aforesaid background that the legality of the impugned order has to be examined.

In the impugned order, no statutory provision has been referred to which prohibits a witness appearing before a Court from wearing or carrying a *kirpan*. No such provision has been pointed out on behalf of the respondent State, which on the other hand has argued that in view of the Constitutional provisions there should be no restriction on the wearing of *kirpan* by Sikhs while appearing in Court, subject however to certain restrictions of size and length.

In these circumstances, it would have to be seen as to whether the impugned order can be sustained on any valid basis.

It has to be recognized that, even in the absence of any law, rule or regulation, every Court would have an inherent power to ensure orderly conduct of its proceedings and the Presiding judge would have absolute control of the court domain.

This aspect of the inherent power of the Courts has been explained in the Corpus Juris Secundum Volume XXI , 1940 as under:

“Control of Courthouse and vicinity- A judge has inherent authority to control over the courthouse and courtrooms to the extent of preventing any interference with the discharge of public business and of securing a suitable, convenient and comfortable place for the transaction of such business. Indeed, according to some authorities, if, and so far as, necessary to prevent noise and disturbance in the courtroom, a court or judge may even barricade a street to stop traffic thereon.”

But like any other power, the exercise of such inherent power, even in its widest amplitude, would be subject to the provisions of the Constitution.

It is axiomatic that the Constitution is supreme and all organs of the State derive authority from it. This position has been repeatedly emphasized by the Courts.

In State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571, the Supreme Court declared:

“38. In a democratic country governed by a written constitution, it is the constitution which is supreme and sovereign. As observed in Raja Ram Pal v. Hon’ble Speaker, Lok Sabha, the Constitution is the suprema lex in this country.

All organs of the State, including this Court and the High Courts, derive their authority, jurisdiction and powers from the Constitution and owe allegiance to it.”

The petitioner being an *Amritdhari Sikh* is enjoined by his religion to, at all times, wear the five *kakars*, of which *kirpan* is one. The Constitution explicitly and in the plainest terms secures to the petitioner the right to wear and carry *kirpan* as being included in the profession of his religion. This right could only be subject to regulation in the interest of public order, morality or health, which regulation could be only by the mandate of a statute. Hence, in the absence of any law or valid regulation prohibiting the carrying of a *Kirpan* in a Court room, the petitioner could not be restrained from wearing and carrying a *kirpan* in the Courtroom.

The petitioner was to appear as a prosecution witness in a murder case. He was wearing a *kirpan* as enjoined by his religion. There is nothing in the impugned order to suggest that the petitioner was indulging in any disorderly behaviour, or that he had any past history of violent crime or that there was any other cause for even the remotest apprehension in the mind of the Presiding Judge of his behaving violently and causing harm or injury to any person. Assuming there was any such apprehension, in that event also, in the first place, any suitable protective measure, short of asking him to remove the *kirpan* could have been resorted to, like stationing security personnel around or close to him. But there is no need to traverse in the realm of conjecture and contemplate a situation that did not exist, because that is not the reason for the order. Therefore, I am left with no option but to conclude, that in the present case, I see no valid cause or justification for the impugned order, which

on the face of it is illegal and unconstitutional.

Accordingly, this petition is allowed. The impugned order directing the petitioner to appear in Court without supporting the Kirpan is quashed.

The trial Court may proceed with the trial in accordance with law.

March 16, 2016
Atul

(HARINDER SINGH SIDHU)
JUDGE