*“What is Sikh jurisprudence?”*

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**Introduction**

The term “jurisprudence” refers to two separate concepts in law. In the first instance, the term alludes to the corpus of judicial authority in a field of law which serves as a precedent or reference point for the determination of future cases. In the second broader sense, the term is a reference to the study of the theory of law, or as the philosophical enquiry into the nature of law.

Sikh jurisprudence, it shall be argued, can be broadly seen to correspond to both of the two meanings described above. First, whilst the Sikh faith does not prescribe an exhaustive “quasi-legal” code to be followed at all times by its adherents, or a corpus of previous “authority” which serves as constraining precedent on future action, the *gurmat* (the Guru’s view or doctrine) offers a highly sophisticated set of principles which serve to guide ethical and truthful action in the world.

Secondly, however, Sikh jurisprudence may be seen as referring to the underlying spiritual philosophy and axiology which forms the normative basis for ethical and truthful action. Whilst the term “jurisprudence” has distinctively “legal” connotations in Anglophone countries, it shall be argued that all laws in large measure, whether created by statute or by the courts, are the reflection of political, social and moral choices. Sikh jurisprudence, therefore, offers more than a theory about the nature of law *per se*, but constitutes an ethical value system which gives centrality to the notions of justice and truth.

This essay shall explore the idea of Sikh jurisprudence as constituting a scheme of virtues and moral principles, as well as the spiritual and axiological underpinning for that scheme. Specifically, the Sikh jurisprudential notion of justice will provide the focus for this essay, with consideration given to the practical implications that the teachings of Sikh jurisprudence has for societal rules, structures and institutions.

**The Scheme of Moral Virtues**

Guru Nanak, the first Guru, focused upon the cultivation of virtues including wisdom, contentment, courage, justice, humility, truthfulness, temperance, love, forgiveness, charity and purity.[[1]](#footnote-1) *Seva* (service) is also a particularly important ethical virtue, which must be given without hope of “self-glorification”,[[2]](#footnote-2) and can be seen reflected in Sikhi’s third Golden Rule (*vand chakko*, or selflessly serving and sharing with others). Such virtues are of fundamental importance for two reasons: the pursuit of such virtues enriches the life of the individual and enables socially responsible living.[[3]](#footnote-3)

Moderate living in the service of others is to be pursued over discipline, austerity and outward expressions of ritualism (as opposed to inward meditative reflection) promoted by asceticism.[[4]](#footnote-4) Guru Nanak’s teachings clearly sever the connection between the attainment of these high virtues and pure ritualistic tradition. Rather, the “life of activism” is inextricably bound up with the *naam japna* (inward spiritual and meditative discipline, the first of the Golden Rules).[[5]](#footnote-5) We can derive further scriptural authority for this proposition in Guru Arjan’s reflection upon the *dharma* (duty or virtue):

“*The highest religion among all faiths is:*

*Meditate on the Divine Name*

*And stick to purity of action.*”[[6]](#footnote-6)

In this way, Guru Nanak’s teachings place a unique responsibility upon the individual and her capacity to bring about changes to her own life: “With your own hands carve out your destiny”.[[7]](#footnote-7) This highly flexible, pragmatic but principled approach to dealing with ethical questions, which locates responsibility for the determination and resolution of such questions with the individual herself, simultaneously demonstrates an inherent and profound respect for the freedom of each individual to choose. Accordingly, Sikh jurisprudence decentralises authority and affords autonomy to each of us to judge what is ethical in respect of potentially conflicting choices, and to act accordingly. We can find jurisprudential authority for this idea in Guru Nanak’s utterance:

“*Realisation of truth is higher than all else. Higher still is truthful living*.”[[8]](#footnote-8)

As disciples, students or seekers of truth, every Sikh’s personal responsibility to determine how to act ethically and truthfully requires them to act as a judge, drawing on the teachings of the Sikh Gurus, including the Guru Granth Sahib. This may be seen as akin to the role of the legal judge as she interprets and applies pre-existing rules, principles and often a set of moral values to determine hard cases, and in so doing generates further rules, principles and values which form the basis for future decision-making. Guiding the judge’s application of those principles, rules and set of moral values is the concern to do justice with regard to the facts of every individual case.

**The View of Justice (*Tapāvas*) in Sikhi**

*1. Justice as social equality*

Sikhi’s exposition of the virtue of justice demonstrates a clear connection to the concept of social equality.[[9]](#footnote-9) The necessary implication of the Gurus’ teachings is that laws which fail to protect social equality must therefore be unjust laws. By the same reasoning, a society which prioritises or fails to address socio-economic inequality must be considered at root an unjust society. The wide-ranging societal critique which Sikh jurisprudence is capable of offering demonstrates why it must be viewed more broadly than mere legal philosophy.

The centrality of social equality to the virtue of justice forms the basis for the rejection of the caste system as the supreme instantiation of inequality.[[10]](#footnote-10) With the rejection of the caste system comes the rejection of the *dharmic* conception of other Indian traditions which distinguish between the pursuit of “specialised virtues” of particular castes as part of their moral obligations.[[11]](#footnote-11)

Just as the Gurus rejected the caste system as offending against the notion of social equality, and therefore justice, we may reflect upon the implications of this jurisprudential view for the various hierarchal structures which dominate contemporary Western society. In particular, it is argued that the Sikh view of justice would problematise the English class-system which designates groups of people as “working class”, “middle class” and “upper class”, and the consequential hindrances to social mobility that such division engenders.

The entrenched and unjust consequences brought about by this system can be seen in the woeful under-representation of “working-class” and ethnic minority groups at elite institutions such as the Universities of Oxford and Cambridge, in professional politics, the law, business, the media, and even in the rarefied celebrity worlds of the arts and sports.[[12]](#footnote-12) For instance, it is instructive to note that of the last ten British prime ministers, seven attended Oxford University,[[13]](#footnote-13) whilst nearly two-thirds of the current cabinet were privately educated.[[14]](#footnote-14)

Analysis of social mobility at the Bar and of the composition of the senior ranks of the judiciary produces another set of skewed statistics. Data collected by the Bar Standards Board for 2018 shows a disproportionate number of barristers having attended a UK independent school between the ages of 11 and 18 (of the 47 per cent that answered), with statistical disparities existing across the other principal characteristics also.[[15]](#footnote-15) In relation to the judiciary, the figures appear even more exaggerated, with nearly three-quarters of the senior judiciary having attended independent schools.[[16]](#footnote-16) A class-based system of social relations, which is the ultimate expression of inequality, ensures future inequality.

In general, however, the UK is one of the most unequal Western societies, with one of the highest Gini coefficients in Europe.[[17]](#footnote-17) So rapidly has economic inequality grown since the ushering in of neoliberal capitalism that the UK risks following the US with its extreme inequality levels in “pay, wealth and health”.[[18]](#footnote-18) The endless indictments of socio-economic inequality in the UK, in the form of reports of UN rapporteurs, thinktanks, non-governmental organisations and others,[[19]](#footnote-19) must be as concerning as violations of civil and political rights for human rights practitioners and legal theorists who posit the indivisibility of human rights. Indeed, without adequate protection of socio-economic rights, it is often impossible to exercise civil and political rights in any meaningful sense.

Since 1945, social, economic and cultural rights have found expression in UN and regional human rights conventions, as well as in states’ constitutional frameworks.[[20]](#footnote-20) However, the lack of justiciability and consequent judicial protection of such rights has lagged far behind the lofty ambitions of their framers. The “progressive realisation” caveat built into the framework for the protection of social, economic and cultural rights,[[21]](#footnote-21) at best, makes political excuse for inaction possible, and at worst, enables social vandalism of the institutions designed to protect the weakest and most vulnerable in society. In this context, Sikh jurisprudence, and more particularly the virtue of justice, allows a searching light to be cast upon our social structures and institutions, and reveals their defects and inadequacies.

The UK’s non-compliance with its international obligations under the UN Convention on the Rights of Persons with Disabilities across a range of areas, including education, work, housing, health, transport, and social security perhaps epitomises the nature and degree of structural inequality in the UK.[[22]](#footnote-22) With the imposition of austerity in the UK since 2010, the most vulnerable have suffered the worst deprivations. As the rate of street homelessness, as well as the number of households in temporary accommodation, has massively increased over that same period,[[23]](#footnote-23) the law extends substantive protection only to those lucky enough to be categorised as having a “priority need” for housing, requiring the demonstration of not merely poverty, but vulnerability as compared against the ordinary person if made homeless.[[24]](#footnote-24) The failure to provide suitable alternative homes to many of those rendered homeless as a result of the Grenfell Tower fire in two and a half years underlines the scale of the challenge to structure our rules and institutions around the ideal of justice and social equality.[[25]](#footnote-25)

By contrast, the Sikh conception of justice as social equality exposes inequality and demands justification for existence. More generally, it is argued that a consequence of viewing justice as social equality requires the justification of hierarchy. Those hierarchies which cannot be justified on the grounds of promoting the wellbeing of those at the bottom cannot be justified. In this way, it is suggested that Sikh jurisprudence exhibits parallels with the Rawlsian view of justice as fairness (and particularly Rawls’ principle of equality which consists of the principles of difference and of fair equality of opportunity).[[26]](#footnote-26)

*2. Justice as respect for the rights of others and non-exploitation*

The Sikh view of justice places an equally important emphasis upon the rights of others, and may be seen in Guruk Nanak’s ethical injunction:

“*to deprive others of their rights ought to be avoided as scrupulously as the Muslims avoid the pork and the Hindus consider beef as a taboo.*”[[27]](#footnote-27)

In extending this moral consideration, Guru Nanak states:

“*the Guru stands by thee if thou usurpest not one another’s due*.”[[28]](#footnote-28)

We may similarly question, as above, what conclusions can be drawn from the application of this second facet of the Sikh jurisprudential notion of justice to the present situation of social inequality in the UK. No doubt the inadequacy of substantive socio-economic protections, and the way in which they have been further undermined during the years of austerity, would offend against the second ethical requirement inherent in the notion of justice to have respect for the rights of others.

However, this second facet of justice affords us a further tool to critique the removal of pre-existing rights, not simply the failure to treat people as social equals. For instance, as “judges” of ethical and truthful action, we can apply the view of justice as respect for the rights of others to assess not only deprivation caused by failing to treat others in society as social equals, but also the simultaneous assaults on legal aid by which the vulnerable may seek to vindicate their already beleaguered rights and entitlements. The hollowing out of legal aid may be seen as particularly significant as its lack of availability renders hollow the fundamental concept of access to justice.

It is argued that the deprivation of the very means by which the vulnerable may assert their substantive rights would represent a particularly egregious form of moral transgression from the Sikh jurisprudential view of justice. This is because attacks on the procedural right of access to justice make any and all substantive rights illusory, leaving the vulnerable all but defenceless. The Sikh notion of justice would therefore be directly opposed to suggestions that the state’s funding of criminal legal aid was essential, but “discretionary” or “optional” for civil matters.[[29]](#footnote-29)

We may see the importance which Sikhi places upon the defence of the defenceless in Guru Tegh Bahadur’s agreement to do whatever necessary to defend the religious freedom of a group of Hindu scholars against Emperor Aurangzeb’s tyrannical rule.[[30]](#footnote-30) The Sikh commitment to freedom, justice, truth, and human rights can be further observed in the doctrine of *Miri Piri*, introduced by the Sixth Guru, Guru Hargobind, following the execution of Guru Arjan in 1606 on the orders of Emperor Jahangir.[[31]](#footnote-31) Guru Hargobind’s wearing of two kirpans was the symbolic demonstration of the *miri* (spiritual) as well as *piri* (temporal) authority.[[32]](#footnote-32) Nowadays, in accordance with the *hukam* of Guru Gobind Singh and the *panj pyaare*, Sikhs wear the *kirpan* as an article of faith to evidence their commitment to the protection of the vulnerable. This Sikh tradition of defending the defenceless found prominent expression very recently in Parliament when Tanmanjeet Singh Dhesi, the country’s first turbaned Sikh MP, challenged the Prime Minister in relation to his use of racist language to describe Muslim women, and also to demand an inquiry into islamophobia.[[33]](#footnote-33)

In this respect, the Sikh notion of justice displays a close affinity with fundamental politico-legal concepts such as “the rule of law”. Indeed, Guru Nanak promotes justice as involving the impartial administration of law by the ruler when he condemns the Muslim jurist (*qazi*)who has been corrupted by selling justice.[[34]](#footnote-34) Yet Sikh justice should not simply be associated with the neutrality often evoked by principles such as “the rule of law” or other mere formal notions of justice. Sikh justice offers a positive way of assessing human action. For instance, the third ethical requirement at the core of Sikh justice is the non-exploitation of others. Guru Nanak expresses exploitation as:

“*devouring the whole man in the night or darkness.*”[[35]](#footnote-35)

The implication of Guru Nanak’s utterance is that the unjust man or woman is one who exploits another when the opportunity arises (*in the night or darkness*). It follows that the just man or woman will refrain from exploitation, even where such is possible. This third ethical requirement may be seen as Sikhi’s ethical counterpart to the second formulation of the Kantian categorical imperative,[[36]](#footnote-36) or even as overlapping with the maxim contained in the Golden Rule of other ethical and religious traditions.[[37]](#footnote-37) This third facet of justice may also be seen as in part reflected in the *kirat karo*, Sikhi’s second Golden Rule, requiring the earning of a livelihood by means of honest endeavour. We may therefore consider Sikh jurisprudence as moving far beyond the more limited notions of the impartial administration of justice. Rather there is a well-developed moral core at the heart of Sikh notions of justice.

**Conclusion**

This essay has offered an interpretation of Sikh jurisprudence as being intimately bound to the notion of justice. However, the threefold conception of justice – as social equality, respect for the rights of others, and non-exploitation – does not simply incorporate formal notions of justice, but offers explicitly moral principles and ethical injunctions for all Sikhs to follow. Sikh jurisprudence also recognises the free will of the individual at the same time as the will of *Akal Purakh* (the Divine One), thus eliminating any conception of pre-determination: we all have the power to choose ethical and truthful action. For the Sikh, the recognition of free will is emancipatory whilst offering responsibility. In determining what is the ethical and truthful action to pursue, we should be guided by the virtue of justice as expounded in the Guru Granth Sahib.

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2. P. Singh, *supra* n.1. [↑](#footnote-ref-2)
3. P. Singh, *supra* n.1. See also K. Singh, *A History of the Sikhs, Volume 1: 1469-1839* (2nd edn, OUP 2004). [↑](#footnote-ref-3)
4. P. Singh, *supra* n.1. See also W. Singh, ‘The Splendour of Guru Granth Sahib’ (2003) XXII(1) *Studies in Sikhism and Comparative Religion* 14; and D.S. Dhillon, *Sikhism, Origin and Development* (1st edn, Atlantic Publishers 1988), p. 257. [↑](#footnote-ref-4)
5. R. S. Bhamra, *Sikhism and Spirituality* (1st edn, Xlibris 2015). See also D. R. Jakobsh, *Sikhism* (1st edn, University of Hawai’I Press 2012), p. 76. [↑](#footnote-ref-5)
6. Adi Granth 226. See also S. S. Kohli, *The Sikh and Sikhism* (Atlantic Publishers 1992), p. 51. [↑](#footnote-ref-6)
7. Adi Granth 474. [↑](#footnote-ref-7)
8. Adi Granth 62. [↑](#footnote-ref-8)
9. P. Dhavan, ‘Sikhism in the Eighteenth Century’, in P. Singh and L.E. Fenech, *The Oxford Handbook of Sikh Studies* (1st edn, OUP 2014), p. 7. [↑](#footnote-ref-9)
10. N.S. Mandair, ‘Colonial Formations of Sikhism’, in P. Singh and L.E. Fenech, *The Oxford Handbook of Sikh Studies* (1st edn, OUP 2014), p.2. [↑](#footnote-ref-10)
11. P. Singh, *supra* n.1. [↑](#footnote-ref-11)
12. Sutton Trust and the Social Mobility Commission, ‘Elitist Britain 2019: The educational background of Britain’s leading people’ (June 2019) <<https://www.suttontrust.com/wp-content/uploads/2019/06/Elitist-Britain-2019.pdf>> accessed 7 September 2019. [↑](#footnote-ref-12)
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14. A. Walker, ‘Two-thirds of Boris Johnson’s cabinet went to private schools’, *The Guardian* (25 July 2019) <<https://www.theguardian.com/education/2019/jul/25/two-thirds-of-boris-johnsons-cabinet-went-to-private-schools>> accessed 7 September 2019. [↑](#footnote-ref-14)
15. Bar Standards Board, ‘Diversity at the Bar 2018’ (February 2019) <<https://www.barstandardsboard.org.uk/media/1975681/diversity_at_the_bar_2018.pdf>> accessed 7 September 2019. [↑](#footnote-ref-15)
16. O. Bowcott, ‘Most senior judges and top QCs still privately educated, figures show’, *The Guardian* (23 November 2015) <<https://www.theguardian.com/law/2015/nov/23/most-senior-judges-top-qcs-still-privately-educated-figures-show>> accessed 7 September 2019. See also J. A. G. Griffith, *The Politics of the Judiciary* (5th edn, Fontana Press 2010). [↑](#footnote-ref-16)
17. R. Partington, ‘Britain risks heading to US levels of inequality, warns top economist’, *The Guardian* (14 May 2019) <<https://www.theguardian.com/inequality/2019/may/14/britain-risks-heading-to-us-levels-of-inequality-warns-top-economist>> accessed 7 September 2019. See also R. Partington, ‘UK income inequality increasing as benefits cuts hit poorest’, *The Guardian* (26 February 2019) <<https://www.theguardian.com/inequality/2019/feb/26/uk-income-inequality-benefits-income-ons>> accessed 7 September 2019. [↑](#footnote-ref-17)
18. R. Partington, *supra* n.17. See also S. Armstrong, *The New Poverty* (1st edn, Verso 2017). [↑](#footnote-ref-18)
19. See, e.g., Institute for Fiscal Studies, ‘Living standards, poverty and inequality in the UK in 2019’ (June 2019) <<https://www.ifs.org.uk/uploads/R157-Living-Standards-Poverty-and-Inequality-2019.pdf>> accessed 7 September 2019. See also R. Richmond-Bishop, ‘Tackling Socio-Economic Inequality in the UK is an Urgent Human Rights Issue’, *RightsInfo* (23 January 2019) <<https://rightsinfo.org/tackling-socio-economic-inequality-in-the-uk-is-an-urgent-human-rights-issue/>> accessed 7 September 2019. [↑](#footnote-ref-19)
20. See, e.g., the International Covenant on Economic, Social and Cultural Rights, art. 11 (right to an adequate standard of living) and art. 12 (right to health); African Charter on Human and Peoples’ Rights, art. 16 (right to health) and art. 17 (right to education); and European Social Charter, art. 11 (right to health) and art. 31 (right to housing). See also the Constitution of the Republic of South Africa, art. 26 (right to housing), art. 27 (right to health care, food, water and social security), and art. 29 (right to education). [↑](#footnote-ref-20)
21. See, e.g., the International Covenant on Economic, Social and Cultural Rights, art. 2. [↑](#footnote-ref-21)
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25. K. Proctor, ‘Still no homes for 151 Grenfell fire families stuck in emergency or temporary housing 16 months on’, *The Evening Standard* (29 October 2018) <<https://www.standard.co.uk/news/london/still-no-homes-for-151-grenfell-fire-families-stuck-in-emergency-or-temporary-housing-16-months-on-a3974526.html>> accessed 8 September 2019. [↑](#footnote-ref-25)
26. J. Rawls, *Justice as Fairness: A Restatement* (2nd edn, Harvard University Press 2001). [↑](#footnote-ref-26)
27. Adi Granth 141. [↑](#footnote-ref-27)
28. For quotation, see Red Zambala, ‘Virtues in Sikhi’, *Red Zambala* (2013) <http://sikhi.redzambala.com/sikh-teachings/virtues-in-sikhi-3-justice.html> accessed 8 September 2019. [↑](#footnote-ref-28)
29. Lord Sumption, ‘Keynote Speech: Annual Bar and Young Bar Conference 2018’ (24 November 2018) <<https://www.supremecourt.uk/docs/speech-181124.pdf>> accessed 8 September 2019. [↑](#footnote-ref-29)
30. Dasam Granth 70. [↑](#footnote-ref-30)
31. P. Singh, *supra* n.1, p. 14. [↑](#footnote-ref-31)
32. Ibid. [↑](#footnote-ref-32)
33. K. Proctor, ‘Boris Johnson urged to apologise for “derogatory and racist” letterboxes article’, *The Guardian* (4 September 2019) <<https://www.theguardian.com/politics/2019/sep/04/boris-johnson-urged-to-apologise-for-muslim-women-letterboxes-article>> accessed 8 September 2019. [↑](#footnote-ref-33)
34. AG 1240. [↑](#footnote-ref-34)
35. For quotation, see Red Zambala, *supra* n. 28. [↑](#footnote-ref-35)
36. The second formulation of Kant’s categorical imperative requires that others are always treated as ends, and never as means. See I. Kant, *Groundwork for the Metaphysics of Morals* (2nd edn, Yale University Press 2018). [↑](#footnote-ref-36)
37. Commonly expressed as the biblical rule “do unto others as you would have them do unto you” (Matthew 7:12). See R. M. Kidder, *How Good People Make Tough Choices: Resolving the Dilemmas of Ethical Living* (1st edn, Harper Perennial 2004), p. 159. [↑](#footnote-ref-37)