**What is Sikh Jurisprudence?**

Word Count excluding bibliography and footnote: 3075

The purpose of this essay is to provide a good understanding of the foundation of Sikh jurisprudence while evidencing strong presence of social equality and in particular, women’s rights within the Sikh legal system.

1. Sikh religion and ethnic identity

The word Sikh means discipline or learner. [[1]](#footnote-1)The founder of the religion was Guru Nanak who was born in 1465 and died in 1539. Guru Nanak was a prophet with a divine revelation. It has been agreed by historians that Nanak was influenced by the bhakti (devotion) movement in North India. Sikhism emerged from Nanak’s teaching and the teachings of his successors. Nanak belied in a single God, equality of mankind, rejection of the caste system and rejection of worshipping idols. Throughout the succession of nine other religious teachers (gurus) over two centuries Sikhism established a religious script called Gurmukhi, a religious text called the Adi Granth or the Granth Sahib, while incorporating the teachings of the Sikh gurus and other saints and the emergence of separate religious and cultural rituals[[2]](#footnote-2)

A distinct form of Sikh ethnic identity was codified by Guru Gobind Singh, the 10th Sikh guru on the Baisakhi Day in April 1699. Gobind Singh initiated the order of the Khalsa. The guru requested all Sikhs to go under baptism through a new ceremony called khande ki pahul. After baptism, new members of the Khalsa order were required to keep five religious symbols on them at all times to maintain the Sikh physical identity, which are called the five ‘K’s’ These are the following:[[3]](#footnote-3)

* kesh or uncut hair, which is denoting the way of nature;
* kirpan, a sword symbolising self-defence and the fight against injustice;
* kara, a steel bracelet usually worn on the right arm. The steel represents spiritual courage and strength and the bracelet, as a circle, forms the unity of the Ultimate One, with no beginning or end;
* kacchara, short breeches worn by the soldiers at the time of the Tenth Guru, stand for chastity and moral restraint;
* and kanga, a wooden comb tucked onto the kasha to keep it tidy. [[4]](#footnote-4)

Also, this has granted the Khalsa Sikhs a distinct ethnic or religious identity.[[5]](#footnote-5)

It has been argued by distinguished scholars that out of all the ethnic groups and peoples of the North of India, Sikhs has come the closest to achieve a satisfactory definition of a nationality or nation. It was achievable due to the Panjabi-speaking Sikhs who have attained a high level of political and social representation. [[6]](#footnote-6)

Furthermore, it has been argued in Mandla and Another v Dowell Lee and Another[[7]](#footnote-7) that Sikhs are more than a religious sect. As a race, Sikh common features are skin colour and physique as such based on common ancestors from a particular part of Punjab, which is centred on Amritsar. Sikhs do not qualify as a separate race because in racial origin, before the inception of Sikhism they could not be distinguished from other inhabitants of Punjab. As a nation, they won against the Moghuls, and established a kingdom in Punjab. However, during the first and second Sikh wars, they lost the kingdom. They were not successful to qualify as a separate nation or have separate nationality because their kingdom lacked adequate degree of recognition and permanence. Nevertheless, Sikhs are considered to be an ethnic group because their members represent a separate and distinct community derived from racial characteristics. In the legal context, Sikh ethnic origin has been recognised within the meaning of the Indian Constitution (Forty-second Amendment) Act 1976.[[8]](#footnote-8)

Sikhism is both a religious group as well as an ethnic identity. The religion is based on the beliefs of a single God and the equality of mankind while rejecting the caste system approach. Sikh ethnic identity was codified in 1699 and members of this distinguished ethnic group are required to carry physical symbols to identify their ethnicity.

1. Sikh legal system

Sikh religion and religious traditions have a great significance within the Sikh legal system. The religion’s main feature is that it is a prophetic religion. Which entails that the will of the Supreme Being communicated to its followers with the assistance of messengers. The followers are required to display absolute submission to the Supreme Being. The messengers are known as Gurus, which means enlighteners. Provided that the founder of the Sikh religion has declared religious law as the divine law, followers are expected to display complete obedience. [[9]](#footnote-9)

Sikhism has implemented a straightforward ‘Theo-democratic’ legal system. Guru Gobind recognised that not all crimes are the same, therefore no one punishment shall be imposed on all. There should be a clear distinction between the thief, whose motivation to steal bread is hunger and the thief who steals due to greed. Therefore they are undeserving of the same punishment. [[10]](#footnote-10)

The Sikh legal system reflects on the religious belief that all human beings are equal. Equal treatment of human beings within Sikhism is protected by the legal system. Although the legal system offers different provisions of treatment for men and women, it has been declared by the funder of Sikhism that women should not be mistreated as they give birth to kings. [[11]](#footnote-11) This clearly demonstrates that signs of gender equality are present within the Sikh legal system that derives from the religion.

Sikh religious traditions and the Sikh legal system are strongly tight together and exist in cooperation as one derives from another.

* 1. Sikh Code of Conduct

Sikh Rehat Maryada is the Sikh Code of Conduct published by the Shiromani Gurdwara Prabandhak Committee (SGPC) in 1950. The booklet is 37 pages long, has been accepted as an authoritative statement of Sikh conduct and it is the result of several years of deliberation. This is the code that regulates individual and corporate life[[12]](#footnote-12)

Section one in chapter one of Rehat Maryada defines a Sikh person as the following:

‘Any Human being who faithfully believes in:

* One Immortal Being
* Ten Gurus, from Guru Nanak dev to Guru Gobind Singh
* The Guru Granth Sahib
* The utterance and teaching of the ten Gurus
* The baptism bequeathed by the tenth guru, and who does not owe allegiance to any other religion, is a Sikh. ‘[[13]](#footnote-13)

The Sikh Rehat Maryada specifically prohibits the following four acts:

1. It is prohibited for both men and women to cut or trim their hair.

2. It is prohibited to eat meat cut through the slow purification rite called halal; Sikhs may eat meat but only from an animal slaughtered in one stroke, which is called jhatka.

3. The code of conduct prohibits adultery.

4. It is prohibited to use narcotics; Sikhs should not take intoxicants and narcotics, such as hemp, opium, spirits, and tobacco, because they harm the mind.[[14]](#footnote-14)

In the case of breaching the code of conduct, the person may appear before any religious congregation of the Sikhs, seeks his or her punishment, performs it cheerfully, and be reinitiated into Khalsahood. Even if the people at fault be Granthis (official attendants to the Guru Granth), they must present themselves before a congregation of Sikhs and go through the same process.’[[15]](#footnote-15)

The Sikh code of conduct has great significance as it identifies a Sikh person and governs the both in the personal and corporate aspect of the lives of their followers.

* 1. Sikh Social Equality

All the Sikh Gurus have stressed that Dharam, the ordained duties, were the same for people of all races, classes and ages. The word ‘dharam’ in Sanskrit means what hold together. Sikh Gurus did not specify any duties in accordance with the traditional Hindu scriptures. In Sikh ethics there is a special emphasis on equality. Everyone is equally responsible to perform their ethical duties throughout their entire lifetime. Such duty does not only apply to the four casts but the Message is shared by people of all complexions. According to Guru Granth, Dharam is successful when the ‘entire earth becomes equal’. Furthermore, Guru Gobind Singh declared that its imperative that his people recognises a single cast of humanity. Within the community there is a saying that a Sikh should a Brahmin in piety, a Kshatriya in defence of truth and the oppressed, a Vaishya in business ventures and professional drive, and a Shundra in serving humanity. It is encouraged that Sikhs share the core values of each caste but do not belong to any of them. [[16]](#footnote-16)

It has been declared by Sikh Gurus that Sikh people have the ethical duty to act in accordance with the theory of equality that has been adapted into religious traditions and reflects on the legal system as well.

* 1. Sikh rules regarding women

The Sikh ideal of spiritual liberation is Moksba, which is an end to entry into any finite form. This spreads to an egalitarian and free mode of being here and now. It is believed that the free world is a life without political, sexual, racial and caste oppression on earth. Alongside the spiritual goal of moksha, the Sikh Gurus made an attempt to create new possibilities for the weak and degraded within their society. Trough their poetry they verbalised a need for a radical transformation with the intention to better the life of the oppressed, with particular attention to women and the low caste. [[17]](#footnote-17)

Therefore, the Sikh Gurus made attempts to grant women status and dignity. Guru Nanak and all his successors were aware of victimisation affecting women within their society. Customs degrading women were powerfully denounced. Such as sati, which is burning a widow alive or purdab, which is veiling as well as beliefs in menstrual pollution. [[18]](#footnote-18)

Sikhism promotes equality between men and women in their search for the Devine. There is no priesthood in Sikhism. Also, celibacy is rejected. In addition, wife is viewed as an essential partner for moral and spiritual development. The rules of conduct and the religious duties are the same for both men and women. In fact, men and women have the same status quo. As a matter of fact, as early as Guru Amar Das, women were also appointed as religious leaders. [[19]](#footnote-19)

In its attempt to formalize the message of the Gurus, the Sikh Rahit Maryada developed several rules that would tackle female oppression:

• Sikh women should not veil their faces.

• It prohibits infant homicide as well as association with people who would practice it.

• It enables widows to remarry. Such ceremony should be considered the same as the first marriage – which is different from the custom where the widow was shamefully wrapped in a sheet and carried away to a brother of the dead husband.

• Sikhs should be free of all superstitions and not refuse to eat at the home of their married daughter. The assumption underlying this injunction most likely is that a daughter should not be treated as an object or piece of property given away to her husband and his family.

• Dowry is prohibited. By all means, neither a girl nor a boy should be married for money. Child marriages are not permitted. A girl should marry only when she has attained physical and mental maturity.

•There is no specific prohibition against abortion.[[20]](#footnote-20)

Although, primarily this is not a comparative analysis, it is noteworthy that in other religions where religious rules are also incorporated into contemporary law, women are not equal to men.

By way of example, although Muslim is a religious not a separate ethnic group, in Islamic Sharia law women’s inequality is considered to be god’s commandment. Family law in Islamic states follow the prescription of Koran. As men are considered to be in charge of women, according to Islamic teachings the supremacy of the man is the will of Allah and women are destined to live as submissive, obedient wives. [[21]](#footnote-21)

Koran and Islam’s doctrines govern every aspect of women’s life. Women are required to wear the hijab and cover their faces. Divorce laws, a very young legal age for marriage, custody of children, matter of employment, travelling, place of residence, honour killing are all areas where women’s basic human rights are being violated. [[22]](#footnote-22)

Provided a brief summary above, it is important to acknowledge the great significance Sikhism bears not only in terms of social equality but also in terms of promoting women’s rights and women’s equality since the creation of the religion. The Sikh legal system provides significantly more freedom to women and treats women equal to men. Such freedom has been evidenced by the code of conduct that explicitly states no distinction between men and women in terms of equality. While other religious rules inflict restrictions on women’s rights, it appears that Sikhism recognises women as equal to men both in the legal and religious context.

Also, the genuine conclusion is that Sikh legal system that derives from the religious doctrines is a forward thinking, progressive legal system with particular attention to protecting the rights and entitlements of vulnerable groups such as women and low caste people.

2.4. Sikh Restorative Justice

In Sikh tradition, the key term used for justice is niau that literally means justice. Oftentimes dharam is also applied, which in its Punjabi meaning stands for righteousness in order to convey the meaning of justice in the sense of a moral order to provide a strong foundation for harmony and social stability. It is believed that ‘An attack on dharam is an attack on justice, on righteousness, and on the moral order generally’ [[23]](#footnote-23)

The basic source for understanding the Sikh approach related to the ideas of Restorative Justice is the Adi Granth, the sacred scripture of the Sikhs. It also refers to as the Guru Granth Sahib, which indicates a confession of faith in the scripture as Guru. Adi Granth carries the same status and power of authority as the ten Gurus, starting from Guru Nanak through Guru Gobind Singh. For this reason, mercy, reconciliation, forgiveness, healing and reintegration are the central principles of the Restorative Justice approach. [[24]](#footnote-24)

Guru Nanak proclaimed that ‘ Each must be judged for the deeds he/she performs by the faultiness judge in a perfect court. Those who are justified stand radiant in glory, bearing upon them the mark of grace. All who enter are recognised, Nanak, the false distinguished from those who are true.’ In addition, Guru Nanak maintains that ‘divine justice takes virtue and vice into account, and in accordance with people’s actions, some are brought near to the divine presence, while others are banished afar.’ These passages appear to imply that divine justice is based on the retributive model. This model follows the law of cause and effect in both the moral and physical world. [[25]](#footnote-25)

The Sikh doctrine radically changes the notion of karma, as for the Sikh Gurus, the law of karma is not inexorable. According to Guru Nanak, karma is subject to the higher principle of the ‘divine Order’, which can be defined as an ‘all-embracing principle, the sum total of all divinely inspired laws; and it is a revelation of the nature of God.’ In terms of the Restorative Justice approach, the core values are mercy, forgiveness, compassion and benevolence in the justice process. [[26]](#footnote-26)

It has been stated above that forgiveness, compassion, mercy, understanding and other related virtues facilitate the process of Restorative Justice in the Sikh legal system. However, it has been argued by professor Wesley Cragg that such virtues can frustrate justice. In order to restore the balance in the restorative approach, he stresses the need to consider a fine line in the application of the virtues of mercy, compassion, forgiveness and understanding in the judicial process so that they are not used inappropriately. [[27]](#footnote-27)

The Sikh criminal justice system is based on the principles of Restorative Justice. The central idea is forgiveness, which rehabilitates the person who violates the code of conduct. Although distinguished scholars might argue that such process frustrate the justice system, it appears that Restorative Justice is a reflection on the religious believes of Sikhism that people should be judged for the deeds they perform while punishment should be different as all crimes are different.

1. Conclusion

Sikh jurisprudence is the legal system based on Sikh religious conducts that govern the lives of Sikh people who are considered to be an ethnic group living in India.

Sikh legal system reflects on the core values of Sikhism which are including but not limited to the theories of social equality and ethical duties to fight for women and the oppressed while denouncing the caste system approach.

It has been evidenced that the Sikh legal system is mainly based on religious law. As religious rules have been incorporated into the legal system, the criminal justice system has adapted the view on restorative justice. Restorative justice is based on the principles of forgiveness and mercy. Furthermore, it has been recognised by Sikh Gurus that different punishments should apply to different people as motivation to commit a crime might differentiate from one another.

The Sikh legal system is a progressive, forward thinking legal system that rejects the caste system and supports the vulnerable members of the community.

Important characteristics of the legal system are the fight against injustice, restorative justice, strong emphasis on equality amongst all and in particular between men and women. Furthermore, in order to strengthen equality between men and women Sikhism has introduced a number of governing rules that grants women freedom and equal rights while preventing child marriages, forced marriages, marriage of propriety and there is no rule that explicitly prohibits abortion.

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