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Sikhs and the Indian Constitution

Mr. Chairman, Mr. Co-Chairman, colleagues on the dais, Janab Prof. Dr. Faizan Mustafa sahib, Vice Chancellor, NALSAR University of Law and friends.

1 - Preface

At the outset I would like to congratulate the authorities for conducting this National Workshop on "Secularism, Minority Rights & Constitution" and grateful for giving me an opportunity to present my views. Due to constraint of time, I will try to briefly confine about the theme of "Sikhs and the Indian Constitution".

Ever since the promulgation of the present Constitution of India, the [Sikh](#) view of it has been that it is an inadequate document. In assertion of this the Sikh representatives had plainly rejected the constitution and had refused to sign the original constitutional draft. Views of the Sikhs were not heeded to, because of the wrong conception of secularism and the erroneous appreciation of the concept of majority rule.

2 - Role of the Judiciary

No constitution can achieve its declared aims or cherished ideals, if it has no crisis management machinery or control mechanism, to exercise checks and balances in respect of those who would impose the culture of the majority on others through the use of the infinite power of the modern state. These are notoriously missing from the Indian Constitution which is necessary to "protect minorities from unrestricted and tyrannical use of the democratic principle, expressing itself solely through majority power".

In the absence of a formal arrangement, an independent judiciary has acted as a natural regulatory mechanism. However it, like all other important organs of the state, has been prevented from playing that role by the same communal considerations which have distorted the functioning of all other organs of the state. Under these circumstances the Sikhs firmly believe that they are as much slaves as they were before 1947. In many ways they are much more slaves than they have ever been in the five hundred years of their existence.

3 - The remedy

This is possible only if the Constitution of 1950 is thoroughly revised. The revised constitution must conform to the promises freely and solemnly made, generally to the minorities in the policy statements of the Indian National Congress and particularly made to the Sikhs from 1929 to August 8, 1947.

The basic principles on which the constitution was to be drafted were defined as federation, safeguards and reservations for minorities. It finally failed to take off because of lack of agreement on protection to minorities. Where as in United States of America, Ethnic Minorities are provided reservation of seats in admissions of all educational institutions.

Even in the Islamic Republic of Pakistan, election constituencies for Parliament, Legislative Assemblies and Municipalities, are reserved for Religious Minorities.

4 - The Slip between the Cup and the Lip

Eventually on August 8, 1947, the Advisory Committee on Minorities recommended certain statutory political safeguards. These were adopted by the Assembly and were later embodied in Part XIV of the Draft Constitution. These included reservation of seats in the State and Central Legislatures, reservation to services and posts. Appointment of special officers to look after the minorities was provided for. **The key to failure of the Constitution of 1950 has its roots in non-adherence to this proposal.**

On the 9th December, 1946, at the first meeting of the Constituent Assembly the first and the fundamental Resolution in which it was said: "Adequate safeguards would be provided for minorities... It was a declaration, a pledge and an undertaking before the world, a contract with millions of Indians, and, therefore, in the nature of an oath, which we must keep." But it was missing in the present Constitution Act of India when enacted in 1950. Upon this the representatives of the Sikhs said that, "The Sikhs do not accept this Constitution: the Sikhs reject this Constitution Act" And declined to append their signatures to the official copy of the Constituent Act.

There were two Sikh representatives in the Constituent Assembly of India which framed Constitution. Both the Sikh members refused to sign the Draft Constitution on the plea that Article 25 is anti-Sikh, unjust and communal. Despite this democratic protest this contentious article was adopted. As a democratic protest Sikh politicians publically burnt the anti-Sikh portion of the Constitution on several occasions. Rulers have not cared for logic and reason. Sikhs still continued protesting against this non-secular and unjust law.

The reason for this was First denying the assurances given to the minorities and Secondly Article 25 of the Indian constitution that states: " In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly. All along in the last six decades, Sikhs have protested this text and have sought that this article be removed because this means that for practical purposes Sikhs are Hindus. The only guarantee granted by the Constituent Assembly to the Sikhs was the right to wear and carry Kirpans, being the Essential Article of Faith. This right is conferred in Explanation 2 of Article 25 of the Indian Constitution. Through executive fiat, the Indian government has attempted to bar Sikhs carrying Kirpans from time to time.

Government of India constituted a Constitutional Review Committee headed by Justice Venkata Chaliah for recommending amendments in Constitution of India. Constitution Review Committee thoroughly studied the issue and accepted the just and logical demand of the Sikhs to amend Article 25. The Constitution Review Committee recommended deletion of explanation II of Article 25 which is controversial portion of Article 25. This recommendation for amending Article 25 has been lying with the Prime Minister's Office for more than a decade.

It is worth noting that all the ten Sikh Gurus (prophets), the present Guru the Sikh scripture that is [Sri Guru Granth Sahib](#) categorically declares that Sikhs are not Hindus. When there is a written declaration by the Gurus that Sikhs are not Hindus, the politicians have no right or jurisdiction to classify Sikhs as Hindus. Moreover, Sikhs is the only community which

possess a visible identity of appearance, distinct place of worship, a multilingual Scripture which is the only digest of multi-faith spiritual teachings advocating oneness of humankind. **This is a case of naked interference in the religious affairs of the Sikhs with the intention to annihilate Sikhism. This is a clear case of bankruptcy of Indian secularism.**

Thus, Sikhism and the Sikhs form a unique religion and a unique society, which and who can be clearly distinguished from the other religious and political societies of the world. At present in view of the Constitution of India for all legal purposes Sikhs are being treated as Hindus whereas Muslims, Parsis and Jews are taken as independent religions. All right thinking people are also requested to utilize their position, power and sources for early amendment of Article 25, for providing justice to the Sikhs.

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