

(2009) 05 P&H CK 0235
In the Punjab And Haryana At Chandigarh

Gurleen Kaur and Others	Vs	APPELLANT
State of Punjab and Others		RESPONDENT

Date of Decision : 30-05-2009

Acts Referred:

Citation : (2009) 05 P&H CK 0235

Hon'ble Judges : Ajay Kumar Mittal, J.;Jasbir Singh, J.;J.S. Khehar, J.

Bench : Full Bench

Final Decision : Dismissed

Judgement

J.S. Khehar, J.—Hearing this petition, has been an experience of sorts. Sentiments and emotions were on a high. We were under an international scanner. Letters were addressed to the members of the bench individually, as well as, collectively. A lot of these letters came from overseas. Some of the communications were addressed to the Chief Justice of this Court, and were forwarded to us for our consideration. The media covered the hearings from day to day, and in doing so, reported the issues canvassed, as it perceived them. The issue under the scanner was an aspect of a religious belief i.e. whether maintaining hair unshorn is an essential/important tenet of the Sikh religion. Based on media projections, individual sentimentalities were aroused. Depending on what was reported, reaction of readers, who thronged the court, varied from day to day. Intellectuals, Sikh scholars, and preachers of the Sikh religion, attended court proceeding, to have a first hand account of what was going on. While not agreeing with what one or the other side was canvassing, repeated requests were made by those attending the proceedings, that they too should be given an opportunity of hearing.

2. Religion is an issue which moderates or non-believers do not understand fully. Although, I am proud to be born in a Sikh family, I must confess my ignorance to the finer ramifications of the Sikh religion. For one of us, it was a first-time experience into the customs and usages of the Sikh religion. In order to ensure that we had been sufficiently informed about the issue being canvassed, we

breached the unwritten norms. We read all the mail received by us, hoping to know and learn more about the controversy. We also heard those who regularly attended hearings of the case, and were emphatic that they had a point of view which should be taken into consideration. The analysis of the controversy at our hands may not be an amalgam of the thoughts projected, but all that was read and heard, must most necessarily have influenced our thoughts. We have, therefore, recorded all the submissions made during the course of hearing. We have recorded our reasons for not taking into consideration some of the submissions made during the course of hearing. We have not incorporated in our order/judgement the names of individuals whom we allowed a hearing, except those who moved express applications and were allowed to intervene. Some of those heard by us entertained diagonally opposite views, from what others had to say. We have tried to reproduce the views of those who appeared before us exactly as we understood them. But then religion is a sensitive issue, a word here and there, may make all the difference. We hope that those whose views have been extracted herein, will find them to their satisfaction. We also wish to place on record our appreciation of the assistance rendered to us, by all the learned Counsel, as also, the participation and interest shown by the interveners and others. Our gratitude for the effort put in by Mr. Anupam Gupta, Senior Standing Counsel for the U.T., Chandigarh, however, needs a special mention. He must have had to first understand the tenets of the Sikh religion, and then, to painstakingly convey them to us; despite the fact that he did not represent either of the contesting parties, and has nothing to do with the Sikh religion. He undoubtedly made our enormous task easier, than what it otherwise would have been.

3. The petitioners in the instant writ petition claim admission to the MBBS course at the Sri Guru Ram Das Institute of Medical Sciences and Research, Amritsar (hereinafter referred to as the Medical College). The petitioners had applied for admission to the said course for the academic session 2008-09. It would be pertinent to mention, that a prospectus-cum-application form was issued by the Association of Unaided Sikh Minority Medical and Dental Institutions, Amritsar, for filling up, inter-alia, 100 seats of the MBBS course, at the Medical College. Out of the aforesaid 100 seats, 50% i.e. 50 seats were reserved for candidates belonging to the Sikh minority community. The prospectus also contained a "notice" relevant for admissions to the seats reserved for the Sikh minority community. Candidates were informed through the "notice", that the process of admission for the reserved seats would be in terms of the orders passed by the Supreme Court in TMA Pai's case. And also that, directions issued by the Supreme Court in Islamic Academy's case, as well as, P.A. Inamdar's case (dated 31.10.2002 and 12.8.2005), would be followed. It was also sought to be clarified, that future orders issued by the Supreme Court, in respect of admissions to the course under reference, would also be binding on all the parties.

4. In so far as, eligibility for the seats reserved for the Sikh minority community

is concerned, the same was delineated in Part-B of the prospectus. Since the eligibility of the petitioners, under the Sikh minority community quota is the primary issue, arising for adjudication in the instant writ petition, the eligibility criterion depicted in the prospectus is being extracted hereunder:

Eligibility and qualification to appear in the entrance test.

The test will be open to a candidate who-

- (i) is resident of India and belongs to Sikh Community;
- (ii) has completed, or shall be completing, by 31.12.2008 the age of 17 years;
- (iii) has passed in the subjects of Physics, Chemistry, Biology and English individually and has obtained a minimum of 50% marks taken together in Physics, Chemistry and Biology at Senior Secondary Part II Examination(class 12 of 10+2 stream), or an equivalent examination from the recognized statutory Board/ University. (The candidate should have passed this examination in the annual examination held in March/April 2008 or earlier. Those who are placed in compartment in the annual examination 2008 or who are already in compartment and fail to clear the same in the annual examination 2008 shall not be eligible).

Notes:

(1) A candidate will be considered Sikh/belonging to Sikh Community if he practices the Sikh faith, and maintains Sikh appearance, i.e. he/she does not cut or trim hair and wears turban(in case of male candidates) and has the word "Singh/Kaur" with his/her name, has faith in the Ten Sikh Gurus and Sri Guru Granth Sahib only, and does not owe allegiance to any other sect or religion.

(2) A male Sikh candidate who does not presently bear the suffix "Singh" and a female Sikh candidate the word "Kaur" with his/her name, may get it added legally(that is through an affidavit plus notice in a newspaper regarding change of name) before submission of his/her application by the last date.

(3) Such a candidate can also appear in the Entrance Examination who has appeared in the qualifying examination in the annual examination held in March/April 2008, but his result is awaited. However, his candidature will be considered only if he passes the qualifying examination in the subjects of Physics, Chemistry, Biology and English individually and obtains a minimum of 50% marks taken together in Physics, Chemistry and Biology as mentioned in clause(iii) above, before the date of first counselling.

Note (1) extracted hereinabove, is pointedly the subject matter of consideration in the present case.

5. It would be pertinent to mention, that all the petitioners while applying for admission to the MBBS course, under the Sikh minority community quota, submitted their photographs and filed affidavits in the prescribed format. The

prescribed format of the affidavit for male and female candidates (enclosed with the prospectus as Appendix D1 and D2, respectively) are being extracted hereunder:

AFFIDAVIT (For male candidates).

I _____, son of _____ resident of _____, do hereby solemnly affirm and state as under:

- (1) That I am Sikh and belong to the Sikh Community.
- (2) That I practice the Sikh Faith;
- (3) That I maintain Sikh appearance and do not cut or trim my hair;
- (4) That I have the word "Singh" affixed to my name;
- (5) That I have faith only in the Ten Sikh Gurus and Sri Guru Granth Sahib;
- (6) That I do not owe allegiance to any other sect or religion.

DEPONENT

VERIFICATION

I, the above named deponent, further affirm and declare that the above averment by me is true and correct and that nothing has been concealed by me.

DEPONENT

AFFIDAVIT (For female candidates)

I _____, daughter of _____ resident of _____, do hereby solemnly affirm and state as under:

- (1) That I am Sikh and belong to the Sikh Community;
- (2) That I practice the Sikh Faith;
- (3) That I maintain Sikh appearance and do not cut or trim my hair, including hair on my eyebrows;
- (4) That I have the word "Kaur" affixed to my name;
- (5) That I have faith only in the Ten Sikh Gurus and Sri Guru Granth Sahib;
- (6) That I do not owe allegiance to any other sect or religion.

DEPONENT

VERIFICATION

I, the above named deponent, further affirm and declare that the above averment by me is true and correct and that nothing has been concealed by me.

DEPONENT

The pleadings of the instant writ petition also reveal, that all the petitioners were born in Sikh families. All the petitioners claim that they satisfy all the norms stipulated in the affidavit, and accordingly assert, that they fulfil the conditions of eligibility prescribed for the Sikh minority community.

6. Having passed the 10+2 examination with Physics, Chemistry and Biology, the petitioners asserted their eligibility to participate in the entrance test conducted by the Medical College. They were permitted to take the entrance test. Having taken the test conducted on 18.7.2008, the result whereof was declared on the same day (i.e. 18.7.2008 itself), the petitioners claim their absolute right for admission, to the seats under the Sikh minority community quota, on the basis of their position in the merit list. The inter-se merit of the petitioners viz. those who have been allowed admission, has been placed on the record of this case as Annexure P-3. The Medical College has granted admission to a candidate placed at merit rank No. 67 in the entrance test, whereas the position of the petitioners in the merit list is at serial Nos. 7, 9, 40, 40 (petitioners No. 3 and 4 were clubbed at merit rank No. 40) and 49, respectively.

7. The petitioners have impleaded as respondents, all those who have been admitted to the MBBS course under the Sikh minority community quota, but were below the merit position of one or the other of the petitioners, as they would be adversely affected, in case of success of the present writ petition. The claim of the petitioners superiority, within the Sikh minority quota, over the private respondents, is based on the decision rendered by the Supreme Court in *Islamic Academy of Education v. State of Karnataka* JT 2003(7) SC 1, wherein the Apex Court declared the legal position on the subject under reference in the following words:

It must be clarified that a minority professional college can admit, in their management quota, a student of their own community/language in preference to a student of another community even though that other student is more meritorious. However, whilst selecting/admitting students of their community/language the inter-se merit of those students cannot be ignored. In other words whilst selecting/admitting students of their own community/language they cannot ignore the inter-se merit amongst students of their community/language. Admission, even of members of their community/language, must strictly be on the basis of merit except that in case of their own students it has to be merit interse those students only. Further if the seats cannot be filled up from members of their community/language, then the other students can be admitted only on the basis of merit based on a common entrance test conducted by government agencies. 8. The claim of the petitioners is vehemently opposed by the Medical College. In the written statement filed on behalf of the Medical College, it is asserted, that while applying for admission to the MBBS course the petitioners had submitted affidavits, that they do not cut or trim their hair. In addition to the aforesaid, it is alleged that in the affidavit filed by female

candidates, it was asserted that they do not pluck hair from their eyebrows. The veracity of the aforesaid affidavits, was considered at the time of counseling on 25.7.2008. The affidavits filed by the petitioners were found to be false. The counseling committee which arrived at the conclusion that the affidavits filed by the petitioners were false, was comprised of senior and responsible members. It was headed by Shri Avtar Singh Makkar, President of the SGPC and Chairman of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. The counseling committee, amongst others, also comprised of the Principal of the Sri Guru Ram Das Institute of Medical Science and Research, Amritsar, as well as, the Principal of the Sri Guru Ram Das Institute of Dental Sciences and Research, Amritsar. The counseling committee was assisted by male and female doctors. The responsibility assigned to the doctors associated with the counseling committee was, to determine whether students seeking admission under the Sikh minority community quota, were eligible for the same. We were informed that the responsibility of the doctors associated with the counseling committee was to determine whether the candidates in the merit list had maintained "Sikhi swarup" (Sikh appearance). Only such candidates, who had maintained their hair unshorn, were to be accepted as having maintained "Sikhi swarup".

9. The doctors who examined the petitioners at the time of counseling, arrived at the conclusion that they were indulging in trimming their hair in case of male students, and plucking hair of their eyebrows in case of female students. They were, therefore, declared ineligible. It is expressly asserted in the written statement filed by the Medical College, that the entire process of counseling and checking was videographed (for the sake of transparency). During the course of hearing, learned Counsel representing the Medical College, offered to make the said videographs available to this Court, in case of any ambiguity/doubt, about the factual assertions (on the issue of trimming of hair/plucking hair of eyebrows). It would, however, be pertinent to mention, that learned Counsel representing the petitioners did not contest the veracity of the factual position noticed in the written statement filed on behalf of the Medical College. As such, there was no occasion for us to doubt the correctness of the factual position relating to trimming of hair/plucking hair of eyebrows, by the petitioners. We therefore, did not require the Medical College to present the videoclippings.

10. It is the contention of the Medical College, that the petitioners were not eligible to be considered under the Sikh minority community quota as they had not maintained "Sikhi swarup", and were accordingly denied admission under the said quota. It is also asserted on behalf of the Medical College, that the affidavits filed by the petitioners in the prescribed format (extracted hereinabove), were false, and as such, could not be accepted as a valid/genuine basis for their admission to the MBBS course.

11. When the instant writ petition came up for hearing for the first time on 29.7.2008, a Division Bench of this Court passed the following order:

The petitioners applied for admission to the MBBS course in the State of Punjab

for the Session 2008-09. The petitioners applied in the Sikh Minority quota. They have been denied admission on the ground that they have trimmed their beard or plucked their eye-brows. Learned Counsel submits that the quota fixed is for the members of Sikh community and it does not make any distinction whether a student belongs to Amritdhari, Sahajdhari, Keshadhari or any other category of Sikhs. It is contended that all the petitioners are from Sikh community, therefore, they had to be considered in the 50% quota in the order of merit as laid down by the Hon'ble Supreme Court in *Islamic Academy of Education v. State of Karnataka and Ors.* reported as JT 2003 (7) SC 1, wherein it has been held that even in the minority quota, admissions have to be made strictly in accordance with the merit.

Notice of motion for 11.8.2008.

Process dasti.

The questions regarding the grant of any interim order shall be considered on the next date of hearing.

12. During the course of motion hearing, by an order dated 4.9.2008, this Court permitted the petitioners to implead the State of Haryana, the State of Himachal Pradesh, the Union of India and the Union Territory of Chandigarh, as party respondents. On 10.9.2008, while admitting the writ petition for regular hearing, this Court at the suggestion of the learned Counsel representing the petitioners, formulated seven questions of law, which according to the petitioners, required determination at the hands of this Court. This Court also permitted the learned Counsel representing the respondents to suggest additional questions, which may require determination during the course of the adjudication of the instant writ petition. The seven questions of law framed at the behest of the learned Counsel for the petitioners (in the order passed by the Division Bench on 10.9.2008) are being extracted hereunder:

- i) Whether the S.G.P.C. is a statutory Board in terms of Section 40 of the Sikh Gurudwara Act, 1925?
- ii) Whether a person who trims, shaves, plucks etc. or otherwise removes or reduces/shortens his/her bodily hair is not a Sikh?
- iii) Whether a person who does not include a word "Singh" (in case of male) and "Kaur" (in case of female) in his/her name is not a Sikh?
- iv) Whether all Amritdhari Sikhs, Sehajdhari Sikhs, Keshadhari Sikhs and Patits are within the larger definition of Sikh as contained in Section 2 (9) of Sikh Gurudwara Act, 1925, if not, whether the division of Sikhs into Amritdhari Sikhs, Sehajdhari Sikhs, Keshadhari Sikhs and Patits in Section 2(10), 2(10A) 2(11) respectively of the Sikh Gurudwara Act, 1925 is ultra vires the provisions of Section 2(9) of the said Act? and whether the classification of Sikhs in 4 categories is a valid classification?

v) Whether reservation of 50 percent seats of Sikh minority quota is available for institutions run by S.G.P.C. only in terms of Government Notification (Annexure P-5)?

vi) Whether the petitioners who are higher in merit than the private respondents can be denied admission on the ground that they cut their hair, trim their beard and remove facial and/or other hair and whether Clause 3 note (1), Clause 9 and Appendix D-1 and D-2 of the prospectus are illegal and ultra vires the provisions of the The Sikh Gurudwara Act, 1925?

vii) Can a minor student be refused admission if he/she trims, shaves, plucks etc. or otherwise removes or reduces/shortens his/her bodily hair ?

13. The first submission raised on behalf of the petitioners, can be summarised as follows. Firstly, according to the petitioners, the Shiromani Gurdwara Parbandhak Committee (hereinafter referred to as the SGPC) is a Board created under the Sikh Gurdwaras Act, 1925 (hereinafter referred to as the Gurdwara Act of 1925). The SGPC, in terms of the mandate of Section 42 of the Gurdwara Act of 1925, is a body corporate, having perpetual succession and a common seal. The aforesaid provision also mandates, that the SGPC can be sued in its name, and likewise, it can sue others. Under Section 106 of the Gurdwara Act of 1925, the funds collected from "Sikh gurdwaras" can be used by the SGPC, inter-alia, for educational purposes. Secondly, it has been urged by the learned Counsel for the petitioners, that the SGPC has set up, and is running the respondent - Medical College, out of the aforesaid funds. It is also pointed out, that the management and control of the respondent - Medical College is also in the hands of the SGPC. On the basis of the cumulative effect of the first and the second submissions noticed hereinabove, it is sought to be asserted, that the provisions of the Gurdwara Act of 1925 are binding on the respondent - Medical College. According to the learned Counsel for the petitioners, the fact whether or not the petitioners are Sikhs, will have to be determined on the basis of the provisions of the Gurdwara Act of 1925. Accordingly it is submitted, that the petitioners cannot be declared ineligible for admission against the seats reserved for the Sikh minority community, either by the SGPC or by the respondent - Medical College, in violation of the provisions of the Gurdwara Act of 1925. In this behalf, it would also be pertinent to mention, that it is the case of the petitioners, that Note I under the conditions of eligibility and qualifications laid down in the prospectus, for candidates belonging to the Sikh minority community, is in clear violation of the mandate of the definition of the term "Sikh", under Section 2 (9) of the Gurdwara Act of 1925. In this behalf, it is pointed out that, all the petitioners must be deemed to profess the Sikh religion in the light of the provisions of the Gurdwara Act of 1925. It is also pointed out, that all the petitioners had filed affidavits alongwith their application forms, in the format extracted hereinabove, affirming that they were Sikhs. It is asserted that all the petitioners believed only in the ten "Sikh gurus" and in the Guru Granth Sahib. It is also asserted by the petitioners, that none of them owe allegiance to any other faith, sect or religion.

As such, all the petitioners must be deemed to be Sikhs. All the petitioners also assert that they maintain the "Sikhi swarup". It is, therefore, the case of the petitioners that the action of the respondent - Medical College in not allowing the petitioners admission to the MBBS course, under the Sikh minority community quota, despite their higher merit, is unsustainable in law.

14. It is also the case of the petitioners, that the Gurdwara Act of 1925 was amended by the British government in 1944, whereby Sections 2 (10), 2(10-A) and 2(11) were added. In this behalf, it is pointed out that from historical facts, it can be established that the British during the course of their rule in India, followed the principle of divide and rule. It is pointed out that the provisions introduced in the Gurdwara Act of 1925 in the year 1944, were aimed at creating a division between the Hindus and Sikhs. The said political philosophy was again brought into play by the British, according to the learned Counsel for the petitioners, to divide Sikhs, by classifying them as "amritdhari Sikhs", "sehijdhari Sikhs" and "patits". It is pointed out that "amritdhari Sikhs", "sehijdhari Sikhs" and "patits" are different strains of Sikhs. According to the learned Counsel for the petitioners, all the aforesaid strains of Sikhs, fall within the definition of the term "Sikh" under Section 2(9) of the Gurdwara Act of 1925. It is reiterated, that it is not open to the authorities to limit admissions to an educational institution, to one or more categories of Sikhs, defined under the Gurdwara Act of 1925. It is submitted that the petitioners are Sikhs within the meaning of Section 2(9) of the Gurdwara Act of 1925, and as such, are liable to be considered for admission to the MBBS course at the Medical College under the Sikh minority community quota. It has also been asserted at the hands of the learned Counsel for the petitioners, that subsection (10-A) of Section 2 of the Gurdwara Act of 1925 cannot be harmoniously read with Sub-section (9) of Section 2 of the Gurdwara Act of 1925. According to the learned Counsel for the petitioners, a harmonious construction of the aforesaid two Sub-sections of Section 2 aforesaid, is only possible, if Clause (iii) of Sub-section (10-A) of Section 2 aforesaid ("(iii) who is not a patit"), is deleted therefrom. It is pointed out, that even if the petitioners are considered to be "patits" under Section 2(11) of the Gurdwara Act of 1925, they should still be treated as Sikhs, and as such, their eligibility under the Sikh minority community quota should not be questioned.

15. It is also claimed by the petitioners, that the respondent - Medical College was declared as a Sikh minority institute, by a notification dated 3.4.2001. The aforesaid notification is being extracted hereunder:

No. 18/33/2001-GC(6)/4513 dated Chandigarh the 3rd April, 2001.

Whereas in terms of the provisions of the Constitution of India, the Sikhs are a minority community in the country.

And whereas the Governor of Punjab is of the opinion that the Sikhs Educational Institutions ought to be treated as Minority Educational Institutions.

Now, therefore, the Governor of Punjab is pleased to declare that the Sikhs

Educational Institutions run by the Sikhs Gurudwara Parbandhak Committee, Amritsar can reserve upto fifty percent seats exclusively for the members of the Sikhs community and for furtherance of the interest of the Sikhs community, the aforesaid committee may make reservation within the seats, so reserved.

Relying on the notification extracted hereinabove, it is submitted on behalf of the petitioners, that while declaring the respondent - Medical College as a minority educational institute, the notification provided for reservation upto 50% of the seats exclusively for the members of the Sikh minority community. As such, it is submitted at the behest of the petitioners, that it is not open to the respondents to curtail the meaning of the term "Sikh" beyond the one envisaged under the notification dated 3.4.2001, so as to exclude some categories of Sikhs, and to allow admission to a minuscule section of the Sikh community i.e. to "keshadhari Sikhs" (i.e. Sikhs who retain their hair unshorn) alone.

16. It is also the submission of the learned Counsel for the petitioners, that the petitioners are minors. Accordingly, even if they cut their hair, trim their beard or pluck the hair of their eyebrows, their acts of alleged indiscretion cannot be held against them, so as to deny them admission, for one or more of the aforesaid faults. In this behalf, it is pointed out that all the petitioners were born in Sikh families, follow the Sikh faith and tradition, and do not owe allegiance to any other faith or religion, and as such, cannot be deprived of the benefit of admission under the Sikh minority community quota. On the same reasoning, learned Counsel for the petitioners contended, that the purpose of reservation for a religious minority community is to take the specific minority community progressively forward, so that persons following the religious faith find a better place for themselves in society. According to the petitioners, the instant action at the hands of the Medical College limiting seats reserved under the Sikh minority community quota, only for those who maintain their hair unshorn (i.e. who do not trim their hair or do not pluck hair of their eyebrows) would be a retrograde step, and as such, would be against the interest of the minority community itself. Norms which are derogatory to the interest of the majority community, cannot be permitted to be implemented, and therefore, according to the learned Counsel for the petitioners, this Court should direct the Medical College to overlook norms of the nature referred to hereinabove. It is submitted that while regulating admissions, to the Medical College under the Sikh minority community quota, those who are more meritorious, rather than those who are less meritorious, should be preferred.

17. Before dealing with the issues pointedly raised at the behest of the learned Counsel for the petitioners, it is imperative for us to answer certain objections in respect of the maintainability of the claim raised at the hands of the petitioners. We will, accordingly, deal with the aforesaid issues in the first instance before embarking upon the determination of the claim of the petitioners, on merits. Preliminary Objections raised on the issue of maintainability of the present petition.

18. In the letters we received, we were emphatically warned, that courts had no business to pronounce on beliefs and tenets of the Sikh religion. We were told, that the issue in hand, namely, whether wearing hair unshorn was an essential component of the Sikh religion, was not for us to decide. We were informed that the issue had been decided at the hands of those vested with the said responsibility under the faith, and thereafter, incorporated in the prospectus issued by the Sri Guru Ram Das Institute of Medical Sciences and Research. We were informed that the Medical College was a Sikh minority institute, and as such, enjoyed a special status under the Constitution of India. In a letter received by us, the tone and tenor was almost bordering on a threat. We were advised that no human institution can define the Sikh religion, and as such, even an attempt should not be ventured in that direction. The letter went on to assert that committees and boards constituted to administer "Sikh gurdwaras" also had no right to define "Sikhism". According to the wisdom of the author of the letter, legislative bodies and courts of law, also cannot be permitted to define the Sikh religion. We were informed that the Medical College was an un-aided educational institute, and as such, its decisions on the issue of admission, including regulation of admissions to students belonging to the Sikh minority community, could not be interfered with. In the first instance, therefore, we shall endeavour to consider whether or not, it is open for a Court to examine aspects of religion. If the answer to the aforesaid question is in the affirmative, we shall then consider, whether or not, a Court can decide what aspects of a particular religion, constitute essentials of that religion, and what do not. We shall then deal with the issue, whether or not, a Court can examine the validity of the parameters laid down by a minority un-aided institute for regulating admissions to the minority community itself. These and others allied issues are necessarily of prime consideration, before we venture to adjudicate upon the merits of the issues raised on behalf of the petitioners.

19. We will first embark on the issue whether it is open to a Court to enter into the arena of "religion" and to decipher the essentials thereof. The word "religion" was attempted to be defined by the Supreme Court in *The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt.*, wherein the Supreme Court observed as under:

What then are matters of religion? The word "religion " has not been defined in the Constitution and it is a term which is hardly susceptible of any rigid definition. In an American case "*Vide Davis v. Beason* (1888) US 333 at p.342(G), it has been said:

that the term religion has reference to one's views of his relation to his Creator and to the obligations they impose of reverence for His Being and character and of obedience to His will. It is often confounded with cultus of form or worship of a particular sect, but is distinguishable from the latter. We do not think that the above definition can be regarded as either precise or adequate. Articles 25 and 26 of our Constitution are based for the most part upon Article 44(2) of the

Constitution of India and we have great doubt whether a definition of "religion" as given above could have been in the minds of our Constitution-makers when they framed the Constitution.

Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well being, but it would not be correct to say that religion is nothing else, but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.

Another attempt by the Supreme Court to define the word "religion" was made in *S.P. Mittal v. Raghubir and Ors.* : [1983]1SCR729 , wherein it was observed as under:

Quite a considerable part of the hearing of the petitions was devoted to a debate on the question, what is Religion? Religion: Everyone has a religion, or at least, a view or a window on religion, be he a bigot or simple believer, philosopher or pedestrian, atheist or agnostic. Religion, like "democracy" and "equality" is an elusive expression, which everyone understands according to his pre-conceptions. What is religion to some is pure dogma to others and what is religion to others is pure superstition to some others. Karl Marx in his contribution to the Critique of Hegel's Philosophy of Law described religion as the "Opium of the people". He said further "Basically religion is a very convenient sanctuary for bourgeois thought to flee to in times of stress. Bertrand Russell, in his essay "Why I am not Christian", said, "Religion is based, I think, primarily and mainly upon fear." It is partly the terror of the unknown and partly, as I have said, the wish to feel that you have a kind of elder brother, who will stand by you in all your troubles and disputes. Fear is the basis of the whole thing-fear of the mysterious, fear of defeat, fear of death. Fear is the parent of cruelty, and, therefore, it is no wonder if cruelty and religion have gone hand in hand. As a worshipper at the altar of peace, I find it difficult to reconcile myself to religion, which throughout the ages, has justified war calling it a Dharma Uddha, a Jihad or a Crusade. I believe that by getting mixed up with religion, ethics has lost "much of its point, much of its purpose and a major portion of its spontaneity". I apprehend I share the views of those who have neither faith nor belief in religion and who consider religion as entirely unscientific and irrational. Chanting of prayer appears to me to be mere jingoism and observance of ritual, plain superstition. But my views about religion. my prejudices and my predilections, if they be such, are entirely irrelevant. So are the views of the credulous, the fanatic, the bigot and the zealot. So also the views of the faithful, the devout, the Acharya, the Moulvi, the Padre and the Bhikshu each of whom may claim his as

the only true or revealed religion....

Etymology is of no avail. Religion is derived from "religare" which means "to bind". Etymologically, therefore, every bond between two people is a religion, but that is not true. To say so is only to indulge in etymological deception. Quite obviously, religion is much more than a mere bond uniting people.

Quite obviously, again, religion is not to be confined to the traditional, established, well-known or popular religions like Hinduism, Mahomedanism, Buddhism and Christianity. There may be and, indeed, there are, in this vast country, several religions, less known or even unknown except in the remote corners or in the small pockets of the land where they may be practiced. A religion may not be wide-spread. It may have little following. It may not have even a name, as indeed most tribal religions do not have. We may only describe them by adding the suffix "ism" to the name of the founder-teacher, the tribe, the area or the deity. The nomenclature is not of the essence. Again, a band of persons, large or small, may not be said to be adherents of a religion merely because they share some common beliefs and common interests and practice common rites and ceremonies; nor can pietistic recitation and solemn ritual combine to produce religion, on that account only. Secret societies dedicated to secular tasks and indulging in queer oaths and observances, guilds and groups of persons who meet but to dine and wine but who subject their members to extravagant initiation ceremonies, village and tribal sorcerers and coven of witches who chant rant and dance in the most weird way possible are all far removed from religion. They appear to lack the "spiritual connection". But, all this is unsatisfactory. We are not arriving at any definition of religion. We are only making peripheral journeys and not getting any nearer to the core of the problem presented to us." "It is obvious that religion, undefined by the Constitution, is incapable of precise judicial definition either. In the background of the provisions of the Constitution and the light shed by judicial precedent, we may say religion is a matter of faith. It is a matter of belief and doctrine. It concerns the conscience i.e. the spirit of man. It must be capable of overt expression in word and deed, such as, worship or ritual. So, religion is a matter of belief and doctrine, concerning the human spirit, expressed overtly in the form of ritual and worship. Some religions are easily identifiable as religions, some are easily identifiable as not religions. There are many in the penumbral region which instinctively appear to some as religion and to others as not religions. There is no formula of general application. There is no knife-edge test. Primarily, it is a question of the consciousness of the community, how does the fraternity or sodality (if it is permissible to use the word without confining it to Roman Catholic groups) regard itself, how do others regard the fraternity or sodality. A host of other circumstances may have to be considered, such as, the origin and the history of the community, the beliefs and the doctrines professed by the community, the rituals observed by the community, what the founder, if any, taught, what the founder was understood by his followers to have taught, etc. In origin, the founder may not have intended to found any religion at all. He may

have merely protested against some rituals and observances; he may have disagreed with the interpretation of some earlier religious tenets. What he said, what he preached and what he taught, his protest, his dissent, his disagreement might have developed into a religion in the course of time, even during his life-time. He may be against religion itself, yet, history and the perception of the community may make a religion out of what was not intended to be a religion and he may be hailed as the founder of a new religion. There are the obvious examples of Buddhism and Jainism and for that matter Christianity itself. Neither Buddha nor Mahavira, nor Christ ever thought of founding a new religion, yet three great religions bear their names.

With the aforesaid outline of the meaning of the word "religion", Justice O. Chinnappa Reddy, while recording the minority view, concluded that Shri Aurobindo had founded a new religious denomination, and that, religious leaders all over the world, and of all faiths, also accepted the said position. The majority view in the aforesaid case was recorded by Justice R.B. Misra. The majority defined the word "religion" as under:

The word "religion" has not been defined in the Constitution and indeed it is a term which is hardly susceptible of any rigid definition. In reply to a question on Dharma by Yaksha, Dharmaraja Yudhisthira said thus:

tarko pratisth,srutyo vibhinna neko risiyasya matan pramanam dharmaya tatwan
nihitan guhayan mahajano jein gatah sa pantha

Mahabhartar-Aranyakaparvan 313.117.

(Formal logic is vacillating. Srutis are contradictory. There is no single rishi whose opinion is final. The principle of Dharma is hidden in a cave. The path of the virtuous persons is the only proper course.).

The expression "Religion" has, however, been sought to be defined in the "Words and Phrases", Permanent Edn., 36 A, p. 461 onwards, as given below:

Religion is morality, with a sanction drawn from a future state of rewards and punishments. The term "religion" and "religious" in ordinary usage are not rigid concepts.

"Religion" has reference to one's views of his relations to his Creator and to the obligations they impose of reverence for his being and character, and of obedience to his will.

The word "religion" in the primary sense (from "religare, to rebind-bind back), imports, as applied to moral questions, only a recognition of a conscious duty to obey restraining principles of conduct. To such sense we suppose there is no one who will admit that he is without religion.

"Religion" is bond uniting man to God, and virtue whose purpose is to render God worship due him as source of all being and principle of all government of things.

"Religion" has reference to man's relation to divinity; to the moral obligation of reverence and worship, obedience and submission, It is the recognition of God as as object of worship, love and obedience; right feeling toward God, as highly apprehended.

"Religion" means the services and adoration of God or a god as expressed in forms of worship; an apprehension, awareness, or conviction of the existence of a Supreme Being; any system of faith, doctrine and worship, as the Christian religion, the religions of the orient; a particular system of faith or worship.

The term "religion" as used in tax exemption law, simply includes: (1) a belief, not necessarily referring to supernatural powers; (2) a cult, involving a gregarious association openly expressing the belief; (3) a system of moral practice directly resulting from an adherence to the belief; and (4) an organization within the cult designed to observe the tenets or belief, the content of such belief being of no moment.

While "religion" in its broadest sense includes all forms of belief in the existence of superior beings capable of exercising power over the human race, as commonly accepted it means the formal recognition of God, as members of societies and associations, and the term, "a religious purpose", as used in the constitutional provision exempting from taxation property used for religious purposes, means the use of property by a religious society or body of persons as a place for public worship.

"Religion" is squaring human life with superhuman life. Belief in a superhuman power and such an adjustment of human activities to the requirements of that power as may enable the individual believer to exist more happily is common to all "religions". The term "religion" has reference to one's views on his relations to his creator, and to the obligations they impose of reverence for his being and character and obedience to his will.

The term "religion" has reference to one's views of his relations to his Creator, and to the obligations they impose of reverence for his being and character, and of obedience to his will. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with."

These terms have also been judicially considered in The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., where in the following proposition of law have been laid down:

(1) Religion means "a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being".

(2) A religion is not merely an opinion, doctrine or belief. It has its outward expression in acts as well.

(3) Religion need not be theistic.

(4) "Religious denomination" means a religious sect or body having a common faith and organisation and designated by a distinctive name.

(5) A law which takes away the rights of administration from the hands of a religious denomination altogether and vests in another authority would amount to violation of the right guaranteed under Clause (d) of Article 26.

On the basis of the detailed examination of the philosophical preachings of Shri Aurobindo, and the definition of the word "religion", the majority concluded that Shri Aurobindo had not founded a new religion.

20. A detailed analysis of the practices followed by Aurobindoites was a prerequisite for the Apex Court in S.P. Mittal's case (supra) to arrive at a conclusion, one way or the other, whether Shri Aurobindo had founded a "religion" wherein the practice under consideration were an essential component. A similar detailed examination is required to determine the mandatory or directory nature of a practice, in every such case, where a controversy as the one under consideration in the present case, arises for consideration. Stated simply, in case of a conflict, a Court must enter the religious thicket to determine the do's and the don'ts of a religion. Views of spokespersons of the religion involved would have to be examined to determine the matter, in case the tenets thereof are not codified. And in case, the religion in question has a writing text, then text thereof is the best resource, for such a determination. But then "religion" cannot be perceived on parameters, like science and logic. The choice of something which is forward-looking or non-fundamentalist, may certainly not be right, but in so far as norms of a religion are concerned, the issue is not of logic but of faith. The acceptance of an egalitarian approach, would spell disaster to the "religion" in question. Looking for an approach which would make a religion more acceptable to the present social order, or the presently acceptable humanistic approach, is what those professing a religion would like to resist. Religion has to be perceived, not as liberals and as others think of it, but as it is, without any change or modifications.

21. Having heard learned Counsel for the rival parties over a few days, we have been led to believe that every "religion" is based on myths, ethos, legend and traditions supported by beliefs and fables. A religion is the characteristic spirit of a community of people with a common goal. Every religion without exception has beliefs and practices, which its followers accept without any challenge, even though they may seem to be outrageous to those belonging to another religion (whether on the touchstone of a scientific study, or on that of logic). All these aspects (myths, ethos, legends, beliefs, fables etc.) of religion when clubbed together constitute a religious consciousness. Irrespective of the logical acceptability of some of these characteristics, no religion allows its consciousness to be invaded or questioned. Undoubtedly, religious consciousness is a cherished philosophy binding the believers into a defined religion. This religious

consciousness wraps up the followers of a faith into a separate social entity. An entity, which does not accept interference or tinkering. The followers of the faith do not allow their beliefs to be questioned. Religion must, therefore, be perceived as it is, and not as another would like it to be. It is this spirit of religious consciousness that is sought to be protected by various provisions of the Constitution of India.

22. The significance of protection extended to religious consciousness under the provisions of the Constitution of India, is apparent from the fact that the provisions relating thereto are contained in Part III of the Constitution of India, which delineates the fundamental rights extended to all persons (in some cases, limited to citizens alone) in their relationship with the State. Reference may be made to Articles 25 to 28 under the heading "Right to Freedom of Religion", and Articles 29 and 30 under the heading "Cultural and Educational Rights".

23. Insofar as, the present controversy is concerned, it will be necessary only to refer to Articles 25, 26 and 30 of the Constitution of India. Article 25 of the Constitution of India, as its language suggests, secures to every person the right to freely profess, practice and propagate "religion". In, the Commissioner, Hindu Religious Endowments" case (supra), the scope of Article 25 was explained as under in paragraph 14:

14. We now come to Article 25 which, as its language indicates, secures to every person, subject to public order, health and morality, a freedom not only to entertain such religious belief, as may be approved of by his judgment and conscience, but also to exhibit his belief in such outward acts as he thinks proper and to propagate or disseminate his ideas for the edification of others.... In paragraph 18 of the same judgement, the Court further noticed 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....

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....

Article 26 of the Constitution of India allows every religious denomination to establish and maintain institutions for religious and charitable purposes. The provision also allows a religious denomination to manage its own affairs in "matters of religion". Liberty is also extended to religious denominations to own and acquire immovable property, as also, to administer such property. In, the Commissioner, Hindu Religious Endowments" case (supra), the Supreme Court distinguished the scope and effect of the right guaranteed for administering

property of a religious denomination, from the right to manage "matters of religion" in the following manner:

The other thing that remains to be considered in regard to Article 26 is, what is the scope of Clause (b) of the Article which speaks of management "of its own affairs in matters of religion?" The language undoubtedly suggests that there could be other affairs of a religious denomination or a section thereof which are not matters of religion and to which the guarantee given by this clause would not apply. The question is, whereas the line to be drawn between what are matters of religion and what are not?

It will be seen that besides the right to manage its own affairs in matters of religion, which is given by Clause (b), the next two clauses of Article 26 guarantee to a religious denomination the right to acquire and own property and to administer such property in accordance with law. The administration of its property by a religious denomination has thus been placed on a different footing from the right to manage its own affairs in matters of religion. The latter is a fundamental right which no legislature can take away, whereas the former can be regulated by laws which the legislature can validly impose. It is clear, therefore, that questions merely relating to administration of properties belonging to a religious group or institution are not matters of religion to which Clause (b) of the Article applies....

24. What constitutes "matters of religion" can also be determined from the following observations recorded in the aforesaid pronouncement: -

...In the first place, what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or ablutions to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b). Having travelled the aforesaid terrain, the Apex Court concluded by recording:

...freedom of religion in our Constitution is not confined to religious beliefs only; it extends to religious practices as well subject to the restrictions which the Constitution itself has laid down. Under Article 26(b), therefore, a religious denomination or organization enjoys complete autonomy in the matter of deciding as to what rites and ceremonies are essential according to the tenets of the religion they hold and no outside authority has any jurisdiction to interfere with their decision in such matters. The words "of their own choice" classifying the right vested in a religious minority to establish and administer educational

institutions, must be visualized in a manner so as to determine how the religious consciousness views itself. In determining the right conferred under Article 30 of the Constitution of India, it is essential to determine the salient features of the religious consciousness, not from the touchstone of a general perception of the faith in question, but on the clearly prescribed, and the consciously and persistently followed traits thereof. Therefore, it would be a matter of defeating the right conferred upon a religious minority institution not to determine the tenets of a religious consciousness. We, therefore, hereby conclude that it is within the jurisdiction of courts to adjudicate upon issues of religion.

25. We must not falter so as to overlook, an objection raised by the respondents, that it is not within our domain to determine, whether or not, the Sikh religion prescribes (for its followers) the tenet of keeping bodily hair unshorn. In our view, nothing could be more preposterous. It would be impossible to determine the rights flowing under Article 30 of the Constitution of India, till a Court first determines, whether or not, the concerned educational institution is being administered by a "religious minority" or a "linguistic minority". The Supreme Court examined, to the minutest detail, different aspects of Aurobindoism, to record a finding (by majority) that Shri Aurobindo did not propound a religion, in Commissioner, Hindu Religious Endowments" case (supra), relevant extracts whereof have already been reproduced above. In *St. Stephen's College v. University of Delhi* (1992) SCC 558, the Apex Court delineated the questions proposed to be answered, in paragraph 17 of the judgement in the following words:

17. A great many questions were debated before us in the course of hearing. The important issues can be grouped under three main heads:

First : Whether St. Stephen's College is a minority-run institution?

Second : Whether St. Stephen's College as minority institution is bound by the University circulars dated June 5, 1980 and June 9, 1980 directing that the College shall admit students on the basis of merit of the percentage of marks secured by the students in the qualifying examinations?

Third : Whether St. Stephen's College and the Allahabad Agricultural Institute are entitled to accord preference to or reserve seats for students of their own community and whether such preference or reservation would be invalid under Article 29(2) of the Constitution?

While debating on the first question raised in the excerpt reproduced above, the Supreme Court, referring to the origin, and the object for which the petitioner - College was set up, examined even the nature of the buildings where the college was housed from time to time, it also examined the constitution and the rules of management of the college, so as to conclude in paragraph 46, that the St. Stephen's College was established and administered by a minority community, viz., the Christian community, which indisputably is a religious minority in India, as well as, in the territory of Delhi, where the college is located.

26. While deciding the second question, the Supreme Court after examining a number of its earlier judgements, noticed as under in paragraph 61:

61. In the instant case also the impugned directives of the University to select students on the uniform basis of marks secured in the qualifying examinations would deny the right of St. Stephen's College to admit students belonging to Christian community. It has been the experience of the College as seen from the chart of selection produced in the case that unless some concession is provided to Christian students they will have no chance of getting into the college. If they are thrown into the competition with the generality of students belonging to other communities, they cannot even be brought within the zone of consideration for the interview. Even after giving concession to a certain extent, only a tiny number of minority applicants would gain admission. This is beyond the pale of controversy. The second question, came to be then answered in paragraph 66, wherein it was concluded, that St. Stephen's College had the right to determine the manner of making admissions by adopting a legally legitimate procedure, and that, it was not bound to regulate admission of students on the basis of the University circulars.

27. The answer to the third question relating to "minority rights" required a substantive examination of the history of minority rights. Whereupon, the Apex Court recorded its conclusion in paragraph 102 as under:

102. In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent. of the annual admission. The minority institutions shall make available at least fifty per cent. of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit. As a matter of fact, the Supreme Court in *Acharya Jagdishwaranand Avadhuta and Others Vs. Commissioner of Police, Calcutta and Another*, , expressly held that courts have the power to determine whether a particular rite or observance is regarded as essential by the tenets of that religion. The Apex Court in *Jagdishwaranand's case* (supra) examined whether the "tandava dance" performed by the Anand Margis was a part of their religious rites. The conclusion on the matter was recorded in paragraph 12 of the judgement, which is being extracted hereunder:

The question for consideration now, therefore, is whether performance of Tandava dance is a religious rite or practice essential to the tenets of the religious faith of the Ananda Margis. We have already indicated that tandava dance was not accepted as an essential religious rite of Ananda Margis when in

1955 the Ananda Marga order was first established. It is the specific case of the petitioner that Shri Ananda Murti introduced tandava as a part of religious rites of Ananda Margis later in 1966. Ananda Marga as a religious order is of recent origin and tandava dance as a part of religious rites of that order is still more recent. It is doubtful as to whether in such circumstances tandava dance can be taken as an essential religious rite of the Ananda Margis. Even conceding that it is so, it is difficult to accept Mr. Tarkunde's argument that taking out religious processions with tandava dance is an essential religious rite of Ananda Margis. In paragraph 17 of the writ petition the petitioner pleaded that "Tandava Dance lasts for a few minutes where two or three persons dance by lifting one leg to the level of the chest, bringing it down and lifting the other." In paragraph 18 it has been pleaded that "when the Ananda Margis greet their spiritual preceptor at the airport, etc., they arrange for a brief welcome dance of tandava wherein one or two persons use the skull and symbolic knife and dance for two or three minutes." In paragraph 26 it has been pleaded that "Tandava is a custom among the sect members and it is a customary performance and its origin is over four thousand years old, hence it is not a new invention of Ananda Margis." On the basis of the literature of the Ananda Marga denomination it has been contended that there is prescription of the performance of tandava dance by every follower of Ananda Marga. Even conceding that tandava dance has been prescribed as a religious rite for every follower of the Ananda Marga it does not follow as a necessary corollary that tandava dance to be performed in the public is a matter of religious rite. In fact, there is no justification in any of the writings of Shri Ananda Murti that tandava dance must be performed in public. At least none could be shown to us by Mr. Tarkunde despite an enquiry by us in that behalf. We are, therefore, not in a position to accept the contention of Mr. Tarkunde that performance of tandava dance in a procession or at public places is an essential religious rite to be performed by every Ananda Margi. It is, therefore, apparent that before the adjudication of the rights flowing out of Articles 29 and 30, if it is necessary to settle any other intervening issues, and that, it is open to a court to consider and decide the same. We, accordingly, hereby conclude that it is within the jurisdiction of this Court to decide, whether or not, keeping one's hair unshorn is an essential tenet of the Sikh religion.

28. The entire objective of the framers of the Constitution of India, in so far as minority rights are concerned, was to afford them adequate protection. A measure adopted to preserve the respective "religious minority" or "linguistic minority" as it existed. Equality is the cherished touchstone of an egalitarian society. The preservation of the right to equality for the different shades of minorities, was sought to be attempted in the different provisions of Chapter III of the Constitution of India. Expression was given to the aforesaid provisions by the Supreme Court in *The Ahmedabad St. Xavier's College Society and Another Vs. State of Gujarat and Another*, . Justice Mathew, while supporting the majority view, expressed the basis of the protection afforded to minorities in the following words:

It is necessary in the interest of clarity of thought to begin with an understanding of the real reason for protection of minorities in a democratic polity.

Protection of minorities is the protection of non-document groups, which, while wishing in general for equality of treatment with the majority, wish for a measure of differential treatment in order to preserve basic characteristics which they possess and which distinguish them from the majority of the population. The protection applies equally to individuals belonging to such groups and wishing the same protection. It follows that differential treatment of such groups or of individuals belonging to such groups is justified when it is exercised in the interest of their contentment and the welfare of the community as a whole". The recommendation by the Sub-Commission in its report to the Commission on Human Rights-quoted at p.27 of "Minority Protection and International Bill of Human Rights" By Urmila Haksar. The problem of the minorities is not really a problem of the establishment of equality because if taken literally, such equality would mean absolute identical treatment of both the minorities and the majorities. This would result only in equality in law but inequality in fact. The distinction need not be elaborate for it is obvious that

equality in law precludes discrimination of any kind; whereas equality in fact may involve the necessity of differential treatment in order to attain a result which establishes an equilibrium between different situations. It may sound paradoxical but it is nevertheless true that minorities can be protected not only if they have equality but also, in certain circumstances, differential treatment.

Over one and a half decades ago, Chief Justice Das led this Court in holding that without recognition, the educational institutions established or to be established by the minority communities cannot fulfil the real objects of their choice and that the right under Article 30 (1) cannot be effectively exercised. He said that the right to establish educational institutions of their choice means the right to establish real institutions which will effectively serve the needs of their community and the scholars who resort to their educational institutions and that though there is no such thing as a fundamental right to recognition by the State, yet to deny recognition to the educational institutions except upon terms tantamount to the surrender of their constitutional right of administration of the educational institutions of their choice is in truth and in effect to deprive them of their rights under Article 30 (1) (see *In Re: The Kerala Education Bill, 1957*. Reference Under Article 143(1) of The Constitution of India, .

The reason why the Constitution-makers were at pains to grant religious minorities the fundamental right to establish and administer educational institutions of their choice is to give the parents in those communities an opportunity to educate their children in institutions having an atmosphere which is congenial to their religion. Whatever be one's own predilections those who think that man does not live by bread alone 1434 but also by the word that comes from God cannot remain indifferent to the problem of religion in relation to and as part of education.

As a matter of fact, according to several religious minorities, the State maintains a system of schools and colleges which is not completely satisfactory to them, inasmuch as no place is given to religion and morality. The sheer omission of religion from curriculum is itself a pressure against religion. Since they realize that the teaching of religion and instruction in the secular branches cannot rightfully or successfully be separated one from the other, they are compelled to maintain their own system of schools and colleges for general education as well as for religious instruction.

It is important to examine the *raison d'être* of educational institutions administered by religious groups. Clearly, their establishment does not come about because of a deep conviction that such institutions will be able to teach the facts of literature, geography or mathematics better than State schools. Rather, such schools are started with a primarily religious objective - to secure the opportunity for direct religious instruction and to develop a religious atmosphere and view point even for the study of literature, geography and mathematics. In other words, a religious body establishes and maintains schools in order to create a total environment which will be favourable to the promotion of its particular religious "values". See *India as a Secular State* by Donald Eugene Smith, p. 361. It is perhaps, possible to secularize subjects such as Mathematics, Physics or Chemistry, but as Justice Jackson said:

Music without sacred music, architecture minus the cathedral or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forthright sermon. Even such a "science" as biology raises the issue between evolution and creation as an explanation of our presence on this planet.... But how one can teach, with satisfaction or even with justice to all faiths, such subjects as the story of the Reformation, the Inquisition is more than one can understand. It is too much to expect that mortals will teach subjects about which their contemporaries have passionate controversies with the detachment they summon to teaching about remote subjects such as Confucious or Mohamet". See the opinion of Justice Jackson in *McCullum v. Board of Education* (1947) 333 US 203. The State cannot insist that the children belonging to the religious minority community should be educated in State maintained educational institutions or in educational institutions conducted by the majority. The State's interest in education, so far as religious minorities are concerned, would be served sufficiently by reliance on secular education accompanied by optional religious training in minority schools and colleges, if the secular education is conducted their according to the prescribed curriculum and standard. Article 28 (3) implies that a religious minority administering an educational institution imparting general secular education has the liberty to provide for religious education in the institution. The continued willingness to rely on colleges conducted by religious or linguistic minorities for imparting secular education strongly suggests that a wide segment of informed opinion has found that these colleges do an acceptable job of providing secular education. The

State, concededly, has power to regulate and control the education of its children, but it cannot, by a general law compelling attendance at public school or college, preclude attendance at the school or college established by the religious minority when the parents seek to secure the benefit of religious instruction not provided in public schools. The parents have the right to determine to which school or college their children should be sent for education.

In this behalf, it is pertinent to mention, that exactly the instant contention, as has been projected by the learned Counsel for the petitioners, was accepted by the Allahabad High Court in favour of candidates who claimed a superior right on the basis of their higher position in the merit list. The matter was carried to the Supreme Court and came to be disposed of in *St. Stephen's College etc., etc. Vs. The University of Delhi Etc., Etc.,*. The Apex Court while rejecting the view expressed by the High Court, observed:

Before grappling with the issue, we may turn to the decision of the High Court of Allahabad which is under appeal before us. The students were denied admission though they had secured a high percentage of marks in the competitive test held by the Institute. The denial was in view of the fact that a large number of seats had been reserved for Church sponsored candidates and tribals. The contention of the petitioners was that the reservation was violative of Article 29(2) since it was based on religion. The High Court accepted the contention and inter alia, held that the denial of admission to more merited candidates on the ground of religion was impermissible. The institution also could not reserve seats for members of its community. The constitutional concept of religious autonomy in education in Article 30(1) has to be balanced with the constitutional guarantee under Article 29(2). Both the Articles operate in the same field namely; educational institutions. The right guaranteed to minorities under Article 30(1) to establish and administer educational institutions of their choice cannot be read in isolation, and it has to be interpreted in a manner that it does not destroy the right in Article 29(2). The High Court has finally observed that the right of admission which vests in an institution by virtue of the power of administration under Article 30(1) cannot be in violation of Article 29(2).

It seems to us that the High Court has followed the liberal individualist theory. The liberal individualist theory is generally the Western political theory since the period of the American and French revolutions. The High Court gave little or no attention to the positive minority rights with respect to language, religion, education and cultural rights guaranteed under the Constitution. It has failed to consider the predominating emphasis expressed in Article 30(1). It has overlooked the difference in perspective underlying in Articles 29(2) and 30(1).

The importance of the right envisaged under Article 30 of the Constitution of India was highlighted by the Supreme Court by comparing the same with Article 29 of the Constitution of India. In this behalf, the Supreme Court in *St. Stephen's College's case* (supra) noticed in paragraph 78 as under:

78. Having set the scene, we can deal with the provisions of Articles 29(1) and 30(1) relatively quickly. Under Article 29(1) every section of the citizens having a distinct language, script or culture of its own has the right to conserve the same. Under Article 29(1), the minorities - religious or linguistic - are entitled to establish and administer educational institutions to conserve their distinct language, script or culture. However, it has been consistently held by the Courts that the right to establish an educational institution is not confined to purposes of conservation of language, script or culture. The rights in Article 30(1) are of wider amplitude. The width of article 30(1) can not be cut down by the considerations on which Article 29 (1) is based. The words "of their choice" in Article 30(1) leave vast options to the minorities in selecting the type of educational institutions which they wish to establish. They can establish institutions to conserve their distinct language, script or culture or for imparting general secular education or for both the purposes. Illustrating the matter of preservation of minority rights in paragraph 85, the Supreme Court observed:

85. The fact that Article 29(2) applies to minorities as well as non-minorities does not mean that it was intended to nullify the special right guaranteed to minorities in Article 30 (1). Article 29 (2) deals with non-discrimination and it is available only to individuals. The general equality by non-discrimination is not the only goal of minorities. The minorities rights under the majority rule implies more than non-discrimination and indeed, it begins with non-discrimination. Protection of interests and institutions and advancement of opportunity are just as important. Differential treatment that distinguishes them from the majority is a must to preserve their basic characteristics. To be blunt, black men do not, wish to be white. Jews do not wish to be Protestants. Serbs do not want to be Croats. French Canadians do not want to lose their French heritage. There are many other instances, including the Corsicans in France, the Irish Catholics in Ulster, the French Canadians in Quebec, the Albanians in Kosovo Yugoslavia, the Tamils in Sri Lanka, the Islamic separatists in the Phillipines, and the Animist and Christian minorities in southern Sudan. The problem in India is not quite different. India is a multi-cultural and multi-religious society. It is an extraordinary pluralistic and complex society with different religious minorities. Besides there are linguistic aspirations and caste considerations. There may be individuals in the 1660 minority group who want to assimilate into the majority, but the group itself has a collective interest for nonassimilation. It is interested in the preservation and promotion as a community. This appears to be the chief reason for which Article 30 (1) was incorporated as a fundamental right. Article 27 of the International Covenant on Civil and Political Rights (1966) also lays a foundation in this regard. It states:

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language. The question whether Article 30 gives the right to minorities to prefer candidates belonging to the "religious

minority" which had established the institution and was administering the same, was posed in paragraph 90 of the judgement in St. Stephen's College's case (supra) and concluded in paragraph 102. The conclusion recorded by the Supreme Court is being reproduced hereunder:

In the light of all these principles and factors, and in view of the importance which the Constitution attaches to protective measures to minorities under Article 30(1), the minority aided educational institutions are entitled to prefer their community candidates to maintain the minority character of the institutions subject of course in conformity with the University standard. The State may regulate the intake in this category with due regard to the need of the community in the area which the institution is intended to serve. But in no case such intake shall exceed fifty per cent. of the annual admission. The minority institutions shall make available at least fifty per cent. of the annual admission to members of communities other than the minority community. The admission of other community candidates shall be done purely on the basis of merit. The declared legal position is, therefore, clear i.e. a religious minority institution can reserve seats to be filled up by the candidates belonging to the said minority community alone. The conclusion in respect of reservation of seats for a minority, in a minority institution, recorded in St. Xavier's College's case (supra) was affirmed by the Supreme Court in T.M.A. Pai Foundation and Others Vs. State of Karnataka and Others, with some modifications. The majority view on this aspect of the matter held as under:

The right of the aided minority institution to preferably admit students of its community, when Article 29(2) was applicable, has been clarified by this Court over a decade ago in the St. Stephen's College case. While upholding the procedure for admitting students, this Court also held that aided minority educational institutions were entitled to preferably admit their community candidates so as to maintain the minority character of the institution, and that the State may regulate the intake in this category with due regard to the area that the institution was intended to serve, but that this intake should not be more than 50% in any case. Thus St. Stephen's endeavoured to strike a balance between the two articles. Though we accept the ratio of St. Stephen's, which has held the field for over a decade, we have compelling reservations in accepting the rigid percentage stipulated therein. As Article 29 and Article 30 apply not only to institutions of higher education but also to schools, a ceiling of 50% would not be proper. It will be more appropriate that, depending upon the level of the institution, whether it be a primary or secondary or high school or a college, professional or otherwise, and on the population and educational needs of the area in which the institution is to be located, the State properly balances the interests of all by providing for such a percentage of students of the minority community to be admitted, so as to adequately serve the interest of the community for which the institution was established. 29. In our quest to search for the significance of the "kesh/keshas" (hair) for the Sikh religion, we would be examining the issue under reference under a series of heads, including the

historical background of the Sikh religion, legislative enactments involving the Sikh religion, the "Sikh rehat-maryada (i.e. code of Sikh conduct and conventions) the "Sikh ardas", the Guru Granth Sahib, as also, the views expressed by experts on the subject of Sikhism, besides the opinion of interveners.

Historical background, and Legislative enactments involving the Sikh religion: The Gurdwaras Act, 1922.

30. The historical background relating to the administration of "Sikh gurdwaras" (Sikh temples) which lead to the enactment/promulgation of the Gurdwara Act of 1925, we were told, would go a long way in our pursuit to determine the right answer, to the present controversy. In order to trace historical facts, reference must be made to the views expressed by Professor Ruchi Ram Sahni, in his book captioned "Struggle for Reform in Sikh Shrines" (published in 1960 by Sikh Itihas Research Board) which notices as under:

During the time of the Sikh Gurus themselves, the "gurdwaras" were either under their direct supervision and control or under their Masands (missionary agents). After the tenth Guru, when the Panth (community) was recognized, as a matter of doctrine, as the corporate representative of the Guru on earth, the conduct of the Gurdwaras naturally passed into the hands of the Panth and was exercised through Granthis and other Sewadars (incumbents) who were under the direct supervision of the Local Sangats (congregations).

In Maharaja Ranjit Singh's time Sikhism became the State religion. Large estates were attached to the more important Gurdwaras though some Jagirs had also been granted the more liberal among other Mughall Emperors - Throughout the pre- British times the Sangats (congregation) were supposed to be in charge of the Gurdwaras. They exercised the right to punish anyone who happened to transgress the social and religious injunctions of the faith.

The same author describes the condition of "Sikh gurdwaras" on the advent of British Rules in the following words:

After the establishment of the British rule (1849), a radical change came about in the legal position of the Mahants in respect of the "gurdwaras". The new law in its practical working converted the Mahants, who were mere servants of the Panth, in no virtual proprietors of the temples. Being no longer responsible to the community, the Mahants began to misappropriate the income of the "gurdwaras" to their private use and alienate or sell the trust property at will. Irresponsibility and wealth inevitably resulted in immorality and the places of worship became the haunts of evil men. In these circumstances, the first thought of the Sikhs was to recover control of their Gurdwaras through the law courts, but it was not very long before they came to realize the difficulties of the new situation in which they found themselves. To the dilatory procedure of the courts and the heavy expenses involved in litigation, was added, as they now realized, the

unsympathetic attitude of the government. The officials were reluctant, they came to believe, to see the Gurdwaras pass into the hands of the Panth because nothing was likely to Consolidated them so much and make them into a compact and powerful body as the control and supervision of their holy places. Round the Holy Granth and the Gurdwaras revolved the social and religious life of the whole community. For the years preceding 1922, most important of the Sikh shrines, such as the Golden Temple, Shri Akal Takht Sahib at Amritsar and the Baba Attal were entirely in the hands of the government. The remaining sacred places of pilgrimages and the "Sikh gurdwaras" with their astounding income, were in the possession of "mahants" (incharge of Sikh gurdwaras). As a consequence of a dispute between the Sikhs fighting for the cause of lower castes (who were then described as untouchables) on the one hand, and the "pujaris" (priests) managing the Golden Temple, Amritsar, on the other, the Golden Temple, as well as, the Akal Takht came into the hands of the Sikhs, whereafter the "pujaris" left the same. At that time, it was decided to constitute a committee for the management of the "Sikh gurdwaras". The government, accordingly constituted (through the Maharaja of Patiala), a committee of 36 members to devise plans for the better management of the "Sikh gurdwaras". The Sikh community considered this an undue interference. A congregation was, accordingly, summoned by the Sikhs at Amritsar, which resulted in the formation of the SGPC. The SGPC so constituted, commenced to take steps for improving and reforming the management of the "Sikh gurdwaras". This step was, however, strongly opposed by "mahants" who were then incharge of "Sikh gurdwaras". The stage was, accordingly, set for the government of the time to intervene yet again. As per historical records, the control of the Golden Temple moved from the hands of the SGPC to the government. It is not necessary for us for the purposes of the present controversy, to delve into the niceties of the dispute between the rival parties, so far as the issue of taking control of the "Sikh gurdwaras" is concerned.

31. The first Gurdwara Bill was introduced in the Punjab Legislative Council on 7.11.1922 by the British government, against the wishes of the Sikh community. On this aspect of the matter, the views expressed by Professor Ruchi Ram Sahni in his book "Struggle for Reforms in Sikh Shrines" may be noticed as under:

It is a noteworthy fact that the Gurdwaras Bill introduced in the legislative Council by Sir Fazil-i-Hussain was framed in defiance of the desires and opinion of even the moderate sections of the Sikhs who were then on the legislative Council. They, therefore, refused to serve on the Selection Committee, four of them who were actually named did not attend a single meeting and the fifth Bawa Hardit Singh Bedi. 32. The Sikh Gurdwaras and Shrines Act, 1922 (hereinafter referred to as the Gurdwara Act of 1922) was enacted on 8.12.1922. Its preamble declared its objectives, namely, the administration and management of "Sikh gurdwaras" and the mechanism of settlement of disputes connected therewith. The Gurdwara Act of 1922, distinguished places of Sikh worship in commemoration of any incident in the life of any of the ten Sikh

"gurus" from the places of worship erected in the memory of Sikh martyrs or Sikh saints. Professor Ruchi Ram Sahni records that the management of most of the "Sikh gurdwaras" before 1925 came into the hands of the SGPC. On this aspect of the matter, his observations in his book "Struggle for Reforms in Sikh shrines" are as under:

In the prevailing condition of uncertainty and general uneasiness, the newly formed society for the management of the Gurdwaras, which had by this time provided itself with a Constitution and a somewhat pompous name, had now begun to take into its own possessions and control such of the Gurdwaras as they could without much difficulty. In the circumstances of the time it is not surprising that while the Shiromani Gurdwara Parbandhak Committee (written briefly SGPC) or the more religious minded or the more prudent Mahants realizing that their personal interest or the interest of the shrines in their charge lay in their seeking the protection of the committee that has been formed specially for the purpose of managing and maintaining the Gurdwaras on lines consistent with the teachings of the gurus and the wishes of the community, had voluntarily placed the Gurdwaras under the control of SGPC, some other Mahants, on the other hand, believed that their own interests could be better served by continuing to manage the Gurdwaras on the lines on which they had hitherto been doing, namely, with the support and guidance of the local officials. It is not improbable that in some cases, at least, some Akalis may have actually taken forcible possession of the Gurdwaras. 33. The aforesaid narration depicts the initiation of control over the management and affairs of "Sikh gurdwaras". The Sikh Gurdwaras Act, 1925.

34. The Sikh Gurdwara Act of 1925 (hereinafter referred to as the Gurdwara Act of 1925) came into force with effect from 1.11.1925. With this, the Gurdwara Act of 1922 was repealed. The Gurdwara Act of 1925 had territorial jurisdiction over the erstwhile State of Punjab and the Patiala East Punjab States Union (PEPSU i.e. the territories which merged into the composite State of Punjab on 1.11.1956). Before embarking upon the examination of the provisions of the Gurdwara Act of 1925, pertaining to the subject under reference, it would be pertinent to record, that the instant enactment was aimed at regulating the places of Sikh worship i.e. "Sikhs gurdwaras". It, accordingly, provided for the constitution of an apex Sikh body i.e. the SGPC. This brought the "Sikh gurdwaras" effectively and permanently under the control of the Sikh community, so as to make them consistent with the religious views of the Sikhs. According to the objects and reasons of the Gurdwara Act of 1925, the Gurdwara Act of 1922 had failed to satisfy the aspirations of Sikhs for various reasons. The enactment provided purely for a "Sikh management" of "Sikh interests" secured by statutory and legal sanction. The scheme of management provided under the Gurdwara Act of 1925, introduced elected members and formation of committees of management. Under the Gurdwara Act of 1925, the functions and powers of the elected members and of the committees of management were expressly defined.

35. Having examined the historical background of the facts which resulted in the promulgation of the Gurdwara Act of 1925, we would limit our examination of the provisions of the Act to the definition of the term "Sikh", as also, to the variants thereof. We would also bring out the particular variant of the Sikh community, which was vested with responsibility of carrying out the objectives enshrined under the Gurdwara Act of 1925.

36. The term "Sikh" is defined in Section 2(9) of the Gurdwara Act of 1925, which reads as under:

2(9). "Sikh" means a person who professes the Sikh religion or, in the case of a deceased person, who professed the Sikh religion or was known to be a Sikh during his life time.

If any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in such manner as the State Government, may prescribe the following declaration:

I solemnly affirm that I am a Sikh, that I believe in the Guru Granth Sahib, that I believe in the Ten Gurus and that I have no other religion.

37. Under the Gurdwara Act of 1925, the term "amritdhari Sikh" has been defined in Section 2(10) and the term "sehajdhari Sikh" in Section 2(10-A). It is the contention of the learned Counsel for the respondents, that for a complete and effective understanding of the term "Sikh", besides making reference to the other two definitions of the terms "amritdhari Sikh" and "sehajdhari Sikh", it will also be essential to make a reference to the term "patit" defined in Section 2(11) of the Gurdwara Act of 1925. Subsections (10), (10-A) and (11) of Section 2 of the Gurdwara Act of 1925, are accordingly, being extracted hereunder: -

2(10) "Amritdhari Sikh" means and includes every person who has taken khande-ka-amrit or khanda pahul prepared and administered according to the tenets of Sikh religion and rites, at the hands of five pyaras or `beloved ones"

(10-A) "Sehjdhari" means a person-

- (i) who performs ceremonies according to Sikh rites;
- (ii) who does not use tobacco or Kutha (Halal meat) in any form;
- (iii) who is not a Patit; and
- (iv) who can recite Mul Manter.

2(11) "Patit" means a person who being a keshadhari Sikh trims or shaves his beard or keshas or who after taking amrit commits any one or more of the kurahits including disrespect to the hair.

38. According to the learned Counsel for the petitioners, the term "Sikh" as defined in Section 2(9) of the Gurdwara Act of 1925, cannot be subjected to any

alteration, whatsoever. In fact, it is the vehement contention of the learned Counsel for the petitioners, that Sub-sections (10), (10-A) and (11) of Section 2 of the Gurdwara Act of 1925, are not only contrary, but also repulsive, to the definition of the term "Sikh" in Section 2(9) of the Gurdwara Act of 1925. According to the learned Counsel for the petitioners, for the definition of the term Sikh, Section 2(9) of the Gurdwara Act of 1925 should be considered as the lead provision, and all other provisions, including Sub-sections (10), (10-A) and (11) of Section 2 of the Gurdwara Act of 1925, would have to be read down so as to make the same harmonious with the former. In view of their contrary nature, it is the submission of the learned Counsel for the petitioners, that Sub-sections (10), (10-A) and (11) of Section 2 of the Gurdwara Act of 1925 are ultra vires the provisions of Section 2(9) of the Gurdwara Act of 1925 (i.e. the lead provision defining the term Sikh).

39. According to the learned Counsel for respondent No. 2 i.e. the SGPC, there is no conflict, whatsoever, between the provisions referred to hereinabove, and that, it is a harmonious construction of the aforesaid provisions that will lead to an eventual determination of the definition of the term Sikh.

40. Learned Counsel for respondent No. 2 acknowledges, that Section 2(9) of the Gurdwara Act of 1925 is the lead provision for defining the term Sikh. It is, however, submitted that the ingredients of the term Sikh become apparent from a close and collective perusal of Sections 2(10), 2(10-A) and 2(11) alongwith Section 2(9) of the Gurdwara Act of 1925. It is the contention of the learned Counsel for respondent No. 2 that even a cursory perusal of Section 2(9) of the Gurdwara Act of 1925 shows, that a Sikh is one who professes the Sikh religion. Referring to the declaration contained in Section 2(9) of the Gurdwara Act of 1925, it is the contention of learned Counsel for respondent No. 2, that a declaration at the hands of an individual by itself would not make him a Sikh. It is only a "truthful" declaration that an individual professes the Sikh religion, believes in the ten "Sikh gurus", as also, in the Guru Granth Sahib, and that he is not a follower of any other religion, that would lead to the conclusion that he professes the Sikh religion.

41. In so far as professing of the Sikh religion is concerned, learned Counsel for respondent No. 2 has invited our attention to the "Sikh rehatmaryada" (copy whereof is available on the record of the case as Annexure R-2). According to the learned Counsel for respondent No. 2, the "Sikh rehat-maryada" constitutes the code of Sikh conduct and conventions, and only such an individual who follows the code of Sikh conduct and conventions, can be described as a person who "professes" the Sikh religion.

42. An individual who enters the fold of the Sikh religion, according to the learned Counsel for the SGPC, is described as a "sehajdhari Sikh" defined in Section 2(10-A) of the Gurdwara Act of 1925. Simply stated for the present purpose, according to him, a "sehajdhari Sikh" is one who is not a "patit". Again, limited to the present controversy, a "patit" is a person who being a

"keshadhari", trims or shaves his beard or "kesh". This, according to the learned Counsel for respondent No. 2, necessarily leads to the further inference that a "sehajdhari Sikh" is a "keshadhari" but not a "patit". It is the submission of the learned Counsel, that anyone with shorn hair, would be a "patit". According to learned Counsel, having come into the fold of the Sikh religion as a "sehajdhari Sikh" i.e. a person who maintains unshorn hair, it is open to an individual to proceed to acquire a higher form under the "Sikh rehat-maryada" as an "amritdhari Sikh" by taking "khande ka amrit" or "khande-di-pahul" (which can be simply described as rituals of Sikh baptism).

43. In view of the submissions advanced at the hands of the learned Counsel for respondent No. 2, though the term Sikh is defined in Section 2(9) of the Gurdwara Act of 1925, it is further explained by Sections 2(10), 2 (10-A) and 2(11) of the Gurdwara Act of 1925. According to the learned Counsel, the aforesaid Sub-sections categorise Sikhs as either "sehajdhari Sikhs" (who must essentially be "keshadharis) or as "amritdhari Sikh" (i.e. when a "sehajdhari Sikh" has undergone the ritual of Sikh baptism).

44. By our order dated 29.9.2008, we had directed the SGPC to file an affidavit based on a resolution passed by the SGPC so as to clarify "whether or not a person who cuts his hair and/or shaves his beard, is a "sehajdhari Sikh", even if he performs all the prescribed ceremonies according to the Sikh rites, does not use tobacco or "katha" in any form and can recite "mool mantra" (with reference to Section 2(10-A) of the Gurdwara Act of 1925). In furtherance of the aforesaid direction issued by us, in the first instance, Shri Harbeant Singh, Secretary, SGPC, filed an affidavit dated 5.12.2008, inter-alia, stating as under:

...the stand of the Shiromani Gurdwara Prabhandhak Committee in response to the query raised by this Hon'ble court in its order dated 29.9.2008, is as under:

(i) The definitions of various words and phrases, used in the Sikh Gurdwara Act , 1925 are provided in Section 2 of the said Act. These definitions are relevant for the purpose of the interpretation of the substantive provisions of the said Act.

(ii) As per Section 2(10-A) a Sehajdhari Sikh is a person (i) who performs ceremonies according to Sikh rites; (ii) who does not use tobacco, kutha, Halal meat in any form; (iii) who is not a Patit (Apostate), and (iv) who can recite Mulmantra (Proem to Sri Guru Granth Sahib). The word sehajdhari consists of two words; Sahaj= slowly; dhari= to adopt. Hence Sehajdhar Sikhs are those novices who were born in non-Sikh families, and who expressed their desire to adopt Sikhism slowly and gradually, adopt its doctrines, ethics and tenets with belief in Shri Guru Granth Sahib and ten Gurus. A Sahajdhari, therefore, is a novice who has entered the path of Sikhism, and he will continue to be so till he fully accepts the moral and spiritual vows of Sikhism, to be called a practicing Sikh professing Sikhism. Once a Sahajdhari becomes a Keshadhari Sikh, he under no circumstances by cutting/trimming his/her hair, beard, eye-brows in any manner can claim to be a Sehajdhar Sikh. Similarly, a Sikh born into a Sikh family cannot

claim to be a Sahajdhari Sikh by trimming/cutting his/her hair, beard or eye-brows in any manner.

Subsequently, Shri Dalmegh Singh, Secretary, SGPC, filed a clarificatory affidavit dated 16.1.2009 on the basis of another decision taken by the SGPC, wherein representatives of Sikh bodies and Sikh intellectuals were invited to discuss the issue on 2.1.2009. Thereafter, the draft prepared by the aforesaid representatives, was unanimously approved by the Executive Committee of the SGPC on 15.1.2009. According to the affidavit, the final stand of the SGPC in respect of its interpretation of the term "sehajdhari Sikh" is as under:

As per Section 2(10-A) and 2(11) of the Sikh Gurdwara Act, 1925, Sahajdhari Sikh is that person:

- (i) Who performs ceremonies according to Sikh rites;
- (ii) Who does not use tobacco or Kutha in any form;
- (iii) Who is not a "patit"; and
- (iv) Who can recite mul mantar;

2(11) "Patit" means a person, who being a Keshadhari Sikh, trims or shaves his beard or Keshas or who after taking amrit commits any one or more of the four kurahits. It becomes clear from a perusal of both these Sub-sections that "Sehijdhar Sikh" and "Patit" are two separate entities. Subsection says that any keshadhari Sikh, who cuts/trims his hair and beard, is a patit. So, it is clear that a person " who cuts/trims his beard/hair, although he might be performing his ceremonies like Sikhs, he might not be using tobacco, kutha meat in any form and could recite "Mul Mantar", he cannot be a Sahajdhari, because he cuts/trims his hair and beard and as per the sections mentioned above of this Act, he cannot be a "Sehijdhar Sikh.

45. Having given our thoughtful consideration to the contentions advanced by the learned Counsel for the rival parties, we express our satisfaction, and accordingly affirm, the interpretation of the provisions noticed hereinabove at the hands of the learned Counsel for respondent No. 2. In our considered view, a Sikh, essentially is a person who professes the Sikh religion. To determine, whether or not, a person professes the Sikh religion, it would have to be determined, whether or not, he abides by the "Sikh rehat-maryada". We are also of the view, that for defining the term Sikh, Sub-sections (9), (10), (10-A) and (11) of 2 of the Gurdwara Act of 1925 will have to be interpreted harmoniously, so as to give true effect to the intent of the legislation. From a collective reading of the aforesaid subsections of Section 2 of the Gurdwara Act of 1925, we are of the view, that the aforesaid legislative enactment postulates different levels/grades of Sikhs. The lowest grade/level envisaged under the Gurdwara Act of 1925 is a "sehajdhari Sikh". A "sehajdhari Sikh" as noticed above, is essentially a "keshadhari Sikh" (i.e., one who maintains his hair unshorn). The uppermost level/grade of a Sikh under the Gurdwara Act of 1925 is an "amritdhari Sikh".

The Gurdwara Act of 1925 refers to the term "patit" as a Sikh who has fallen from grace. A "patit" is one who inter-alia "shaves his beard or keshas". A "patit" is not entitled to any benefit of office or authority under the Gurdwara Act of 1925. In other words, a "patit" is one who is excluded from the benefits which a Sikh can claim under the Gurdwara Act of 1925. Thus read, besides understanding the minimum requirements so as to be termed as a Sikh, one must adhere to the tenet of keeping ones hair uncut. In the absence of adherence with the instant tenet, the individual would fall within the term defined as "patit" as he/she does not maintain his/her hair unshorn. Essentially, it is imperative for us to conclude, that the lowest form of attainment to enter the fold of the Sikh religion under the Gurdwara Act of 1925, is a "sehajdhari Sikh", and that, to be a "sehajdhari" Sikh, a Sikh who has to be a "keshadhari" (one who maintains his hair unshorn).

46. Our observations, as have been recorded hereinabove, are limited to the definition of the term Sikh under the Gurdwara Act of 1925, and not for any other purpose, whatsoever. Even the various categories of Sikhs described by us hereinabove, are in reference to specific provisions of the Gurdwara Act of 1925 alone. Reference may also be made to Section 45 and 46 of the Gurdwara Act of 1925, which lay down the qualifications of elected members and nominated members and to Sections 49 of the Gurdwara Act of 1925, which lays down the qualifications of electors. The aforesaid provisions are being extracted hereunder:

45. Qualifications of elected members.- (1) A person shall not be eligible for election as a member of the Board if such person-

(i) is of unsound mind;

(ii) is an undischarged insolvent,

(iii) is a patit;

(iv) is a minister of a Notified Sikh Gurdwara, other than the head minister of the Darbar Sahib, Amritsar, or of one of the four Sikh Takhts specified in Clause (ii) of Sub-section (1) of Section 43.

(v) is a paid servant of any Notified Sikh Gurdwara, or of the Board other than a member of the executive committee of the Board. (vi) being a keshadhari Sikh is not a amritdhari;

(vii) takes alcoholic drinks;

(viii) not being a blind person cannot read and write Gurmukhi.

(2) No person shall be eligible for election as a member of the Board if he is not registered on the electoral roll of any constituency specified in Schedule IV.

2(A) No person shall be eligible for election to the Board if he is less than twenty-five years of age.

(3) Notwithstanding anything contained in Sub-section (1) no person shall be

prevented from standing as a candidate for election as a member of the Board on the ground that he is a patit, but if a person elected is thereafter found under the provisions of Section 84 to be a patit his election shall be void.

46. Qualifications of nominated members.- A person shall not be nominated or co-opted to be a member of the Board if he-

- (i) is less than twenty-one years old;
- (ii) is not a Sikh;
- (iii) is of unsound mind;
- (iv) is an undischarged insolvent;
- (v) is a patit;
- (vi) is minister of a Notified Sikh Gurdwara other than the head minister of the Darbar Sahib, Amritsar, or of any of the four Sikh Takhts specified in Clause (ii) of Sub-section (1) of Section 43;
- (vii) is a paid servant of any Notified Sikh Gurdwara or of the Board, other than a member of the executive committee of the Board.
- (viii) being a keshadhari Sikh is not amritdhari;
- (ix) takes alcoholic drinks;
- (x) not being a blind person cannot read and write Gurmukhi.

49. Qualifications of electors.- Every person shall be entitled to have his name registered on the electoral roll of a constituency constituted for the election of a member or members of the Board who is a resident in that constituency and either-

- (i) xx xx xx xx
- (ii) is a Sikh more than twenty-one years of age, who has had his name registered as a voter in such manner as may be prescribed:

Provided that no person shall be registered as an elector who-

- (a) trims or shaves his beard or keshas except in case of sehjdhari;
- (b) smokes;
- (c) takes alcoholic drinks.

A collective perusal of the aforesaid provisions reveals, that a Sikh who is not a "patit" i.e. a "keshadhari", has the right to be on the electoral rolls. As such, the right to vote, is only vested in a "keshadhari Sikh". Despite being a "keshadhari", and as such, a "sehajdhari Sikh", a person cannot be elected to the Board of the SGPC unless he has proceeded to acquire the higher form as an "amritdhari Sikh". A person cannot be nominated as a member of the Board, if he is a

"patit". He must, therefore, be a "keshadhari Sikh", and as such, must be satisfying the requirements of a "sehajdhari Sikh" even for being nominated to the Board of the SGPC.

47. At this stage, it would also be fruitful to make a reference to Section 132 of the Gurdwara Act of 1925. The same is, accordingly, being extracted hereunder:

132. Power of Board to make bye-laws.- (1) The Board may in general meeting make bye-laws, not inconsistent with this Act, regulating its procedure, and the fees to be levied under the provisions of Sub-section (8) of Section 137, provided that the Board shall not, without the previous sanction of the State Government, make any bye-law-

(a) prescribing the form in which the budgets of the Board and of committee shall be presented;

(b) providing for the custody and investment of the funds of the Board and prescribing the procedure by which sanction of the Board may be accorded to the deposits of surplus funds in specified banks;

(c) prescribing the qualification of candidates for membership of the Board and committees; and provided further that no bye-law falling within the purview of Clause (c) shall impose any disqualification upon a Sikh only because he is a Sahjdhari Sikh.

(2) All bye-laws requiring the previous sanction of the State Government under the provisions of Sub-section (1) shall when made be published in the Official Gazette.

(3) Bye-laws framed under this section shall have force of law.

The proviso under Clause (c) of Sub-section (1) restrains the Board from disqualifying an individual who is a "sehajdhari Sikh" for membership of the Board itself or the committees constituted by the Board.

48. From a collective perusal of the provisions of the Gurdwara Act of 1925, it can safely be concluded, that retaining hair unshorn is an essential requirement for a Sikh to be entitled to claim the least of the rights referred to under the Act. A "patit" i.e., one who does not maintain his hair unshorn, has no status or right therein. This clearly brings out the importance of unshorn hair for the Sikh religion. The Delhi Sikh Gurdwara Act, 1971.

49. The Delhi Sikh Gurdwara Act, 1971 and the various provisions thereof having a bearing on the present controversy were brought to our notice by Mr. KTS Tulsi, Senior Advocate, Mr. H.S. Phoolka, Senior Advocate and Mr. D.S. Patwalia, Advocate.

50. Just like the Gurdwara Act of 1925, so also, the Gurdwara Act of 1971, provides for the proper management of the "Sikh gurdwaras", as also, for the proper management of the properties of such "gurdwaras". The primary

difference being the territorial jurisdiction of the two enactments. Insofar as, the Gurdwara Act of 1925 is concerned, the same has jurisdiction over territories comprising the erstwhile State of Punjab and PEPSU (prior to 1.11.1956). The territorial jurisdiction of the Gurdwara Act of 1971, is limited to Delhi, as is apparent from the title of the Act itself.

51. The limited examination of the instant statutory enactment at our hands, is to determine the sanctity of "kesh/keshas" for the purpose of the Sikh religion. In so far as, the Gurdwara Act of 1971 is concerned, the same also defines the term Sikh. The definition of the term Sikh herein, is different from the one expressed under the Gurdwara Act of 1925. The term Sikh is defined by Section 2(n) of the Gurdwara Act of 1971 as under:

2(n) "Sikh" means a person who professes the Sikh religion, believes and follows the teachings of Sri Guru Granth Sahib and the ten gurus only and keeps unshorn hair (Keshas). For the purposes of this Act, if any question arises as to whether any living person is or is not a Sikh, he shall be deemed respectively to be or not to be a Sikh according as he makes or refuses to make in the manner prescribed by rules the following declaration:

I solemnly affirm that I am a Keshadhari Sikh, that I believe in and follow the teachings of Sri Guru Granth Sahib and the ten gurus only, and that I have no other religion. Unlike the Gurdwara Act of 1925, herein the term Sikh is defined expressly to include a person who "keeps unshorn hair "keshas". Just like the Gurdwara Act of 1925, the terms "amritdhari Sikh" and "patit" are also sought to be defined by the Gurdwara Act of 1971 through Sections 2(o) and 2(j) respectively. The aforesaid provisions are also being extracted hereunder:

2(o) "Amritdhari Sikh" means and includes every Sikh who has taken khande ka amrit or khanda pahul, prepared and administered according to the tenets of Sikh religion and rites at the hands of five Pyaras or "beloved ones".

2(j) "patit" means a Sikh who trims or shaves his beard or hair (keshas) or who after taking Amrit commits any one or more of the four Kurahitis.

The conclusion on the basis of the provisions extracted hereinabove is inevitably the same as the one that was drawn by us after examining the provisions of the Gurdwara Act of 1925. Irrespective of the difference in the definitions, the minimum requirement of an individual to come within the fold of the Sikh religion in terms of the provisions of the Gurdwara Act of 1971, may be summarised as to include, firstly, the profession of the Sikh religion, secondly, the acceptance of the belief in the teachings of the ten "Sikh gurus", as also, the Guru Granth Sahib (the embodiment of the ten "Sikh gurus"), thirdly, to wear unshorn hair, and fourthly, to have faith/belief in no religion except Sikhism.

52. The Gurdwara Act of 1971 also refers to the elevated stature of a Sikh as an "amritdhari Sikh" who has taken "khande ka amrit" or "khande-di-pahul", in terms of the rituals of Sikh baptism. The term "patit" is similarly defined herein

as in the Gurdwara Act of 1925 i.e. a person who trims or shaves his beard or hair. Just like the Gurdwara Act of 1925, so under the Gurdwara Act of 1971, different rights are vested in Sikhs depending on their level of adherence to the Sikh religion and the rituals thereof.

53. The qualifications of an elector and of a member of the committee have been prescribed in Sections 8 and 10 of the Gurdwara Act of 1971. The same are also being extracted under:

8. Qualifications of elector. Every person who- (a) has been ordinarily resident in a ward for not less than one hundred and eighty days during the qualifying period, (b) is a Sikh of not less than twenty-one years of age on qualifying date, shall, be entitled to be registered in the electoral roll for that ward: Provided that no person shall be registered as an elector who- (a) trims or shaves his beard or keshas; (b) smokes; (c) takes alcoholic drinks. Explanation.-For the purpose of this section, the "qualifying date" and the "qualifying period"- (i) in the case of electoral rolls first prepared under this Act, shall be the 1st day of January, 1972, and the period beginning on the 1st day of January, 1971 and ending on the 31st day of December, 1971, respectively; and (ii) in the case of every electoral roll subsequently prepared under this Act, shall be the 1st day of January of the year in which it is prepared and the year immediately preceding that year respectively.

10. Qualifications of member. (1) A person shall not be qualified to be chosen or co-opted as a member of the Committee if such person- (a) has not attained the age of twenty-five years; (b) is not a citizen of India; (c) in the case of an elected member, if he is not registered as an elector in the electoral roll for any ward; (d) is not an Amritdhari Sikh; (e) being an Amritdhari Sikh, trims or shaves his beard or keshas; (f) takes alcoholic drinks; (g) smokes; (h) is a patit; (i) is of unsound mind and stands so declared by a competent court; (j) is an undischarged insolvent; (k) has been convicted of an offence involving moral turpitude or has been dismissed from service by Government, Board, Committee or any local authority, on account of moral turpitude; (l) is a paid servant of any Gurdwara or a local Gurdwara; (m) not being a blind person cannot read and write Gurmukhi. Explanation.-A person shall be deemed to- (i) be able to read Gurmukhi if he is able to recite Sri Guru Granth Sahib, in Gurmukhi, and (ii) write Gurmukhi if he fills his nomination paper for election to the Committee in Gurmukhi in his own handwriting. If any question arises whether a candidate is or is not able to read and write Gurmukhi, the question shall be decided in such manner as may be prescribed by rules.

(2) If a person sits or votes as a member of the Committee when he knows that he is not qualified for such membership, he shall be liable in respect of each day on which he so sits or votes to a penalty of three hundred rupees which shall be recoverable as an arrear of land revenue.

A perusal of the aforesaid provision reveals that a lesser qualification is stipulated for an elector i.e. a person who falls within the definition of the term

Sikh, under the Gurdwara Act of 1971, with a further qualification that he does not trim or shave his beard or hair. A higher qualification has been laid down for being eligible to be elected as a member of the Delhi Sikh Gurdwara Management Committee. For eligibility to contest an election for membership of the said Managing Committee, the person concerned must be an "amritdhari Sikh" i.e. the highest level of attainment for a Sikh in the religious hierarchy depicted under the Gurdwara Act of 1971.

54. Our final conclusion and analysis of the provisions of the Gurdwara Act of 1971, are similar to those that have been expressed by us while interpreting the provisions of the Gurdwara Act of 1925, namely, that the term Sikh as defined under the Gurdwara Act of 1971, is limited to the object and purpose of the Gurdwara Act of 1971, namely, for vesting the responsibility for the proper management of "Sikh gurdwaras" and "gurdwara property" in territories of Delhi. Under the instant legislative enactment also, a Sikh is one who essentially wears his hair unshorn. The Sikh rehat-maryada.

55. Professor W.H. McLeod is emeritus Professor in the University of Otago Dunedin, New Zealand. He is known to have spent a life time conducting research into religious studies specially on Sikhism, Indian history and sociology. His publications includes Historical Dictionary of Sikhism (published in 1995, by the Scarecrow Press), Exploring Sikhism - Aspect of Sikh Identity, Culture and Thought (published in 2000, by Oxford University Press), Sikhs of the Khalsa - a history of the Khalsa "rahit" (published in 2003 by Oxford University Press). The word "rahit", according to Professor W.H. McLeod means the code of belief and conduct which are required to be obeyed. And the term "Rahitnama" means the manual of the "rahit" principles. According to Professor W.H. McLeod, for more than three centuries, most Sikhs have regarded the "rahit" as absolutely the centre of their faith. Guru Gobind Singh had imparted the "rahit" when he inaugurated the Khalsa order. According to the author, Sikhs have remained largely unaware of the existence of the "rahit" despite the fact that the author duly recognises that Guru Gobind Singh had directed his followers to observe the prescribed code of conduct described in the "rehat-maryada". Generally, according to the author, Sikhs are aware of the "rahitnama" as the five ordained "kakkars" (articles of faith) or "Ks".

56. According to the "Encyclopaedia of Sikhism" by Dr. H.S. Singha (second edition published in 2005 by Hemkunt Publishers (P) Ltd.), Guru Gobind Singh, the last of the ten "gurus" of the Sikhs had laid down a strict code of conduct for the Sikhs in 1699, at the time of setting up of the Khalsa Panth. The precise form of the "Sikh rehat-maryada" as ordained by the "Guru" has remained a matter of debate. Various codes of conduct dating from the 18th century are in existence with somewhat different interpretations. The "Sikh rehat-maryada" from the "rahitnamas" is stated to have been dictated by Guru Gobind Singh himself. Kahan Singh, another prominently recognized author of the Sikh religion, has referred to the existence of three "rehat-maryadas", namely, Tankhanama,

Prashan Uttar of Bhai Nand Lal and Rahitnama of Bhai Desa Singh based on their dialogue with the "Guru". Among the other important Rahitnamas are those by Chaupa Singh and Perhlad Singh. All these codes reflect the general spirit of the consolidation of Sikhism, in the post Guru Gobind Singh era. The SGPC worked on the "Sikh rehat-maryada" and eventually in 1945, the SGPC was able to produce an acceptable code of conduct called "rahitmaryada". It lays down the norms of Sikh behaviour and conduct.

57. The code of conduct and conventions for Sikhs formulated by the SGPC as the "Sikh rehat-maryada" defines the term Sikh as under:

Any human being who faithfully believes in

- (i) One immortal Being.
- (ii) Ten Gurus, from Guru Nanak Dev to Guru Gobind Singh.
- (iii) The Guru Granth Sahib.
- (iv) The utterance and teachings of the ten Gurus and
- (v) The baptism bequeathed by the tenth Guru and who does not owe allegiance to any other religion, is a Sikh.

The "rehat-maryada" has been described as the code of a "Sikh's personal life" (in Chapter III of the Sikh rehat-maryada, published by the SGPC), and as the "Code of Corporate" or "Panthic Code of Conduct" of a Sikh (in Chapter XIII of the Sikh rehat-maryada published by the SGPC). Certain important references to the subject matter, namely, the significance of "kasha/keshas" are also recorded in Chapter X of the Sikh rehat-maryada, published by the SGPC. A collective perusal of the Sikh rehat-maryada reveals, that a Sikh should have on his person at all the time five "kakkars" (articles of faith) or Ks; the "keshas" (unshorn hair), the "kirpan" (sword), the "kachhera" (knicker bockers), the "kangha" (comb) and the "karha" (steel bracelet). The "Sikh rehat-maryada" also lists the tabooed practices in Chapter XIII of the "Sikh rehat-maryada". The same are extracted hereunder:

The undermentioned four transgressions (tabooed practices) must be avoided:

- (1) Dishonouring 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.

While referring to the "tabooed practices", the first in the list depicted in the "Sikh rehat-maryada" is "dishonouring hair". The code of Sikh conduct and conventions mandates, that in the event of commission of any "tabooed practice", the transgressor must get "rebaptised". In case of the commission of a

transgression of any specified discipline, the concerned person must present himself before the Sikh congregation, and seek forgiveness, and accept whatever punishment is awarded. In Chapter XIII of the "Sikh rehatmaryada", an act of dyeing hair is also considered as a transgression, accordingly a severe action is prescribed for the same, which is extracted hereunder:

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

xx xx xx xx (3) One who dyes his beard;

Therefore, a person who dyes his beard is also considered to have committed a "tabooed practice" of dishonouring hair. Not only that a Sikh is not permitted to harbor any antipathy to hair of the head with which his child is born, he is also under a command not to tamper with hair with which his child is born. To substantiate the aforesaid, relevant extracts of Article XVI under Chapter X are extracted hereunder:

Chapter X

Living in consonance with Guru's tenets.

Article XVI.

A Sikh's living, earning livelihood, thinking and conduct should accord with the Guru's tenets. The Guru's tenets are:

(d) Not believing in cast or descent, untouchability, magic, spells, incantation, omens, auspicious times, days and occasions, influence of stars, horoscopic dispositions, shradh (ritual serving of food to priests for the salvation of ancestors on appointed days as per the lunar calendar), ancestor worship, khiah (ritual serving of food to priests-Brahmins - on the luna anniversaries of the death of an ancestor), pind (offering of funeral barley cakes to the deceased's relatives), patal (ritual donating of food in the belief that that would satisfy the hunger of a departed soul), diva (the ceremony of keeping an oil lamp lit for 360 days after the death, in the belief that that lights the path of the deceased), ritual funeral acts, hom (lighting of ritual fire and pouring intermittently clarified butter, foodgrains etc. into it for propitiating gods for the fulfillment of purpose), jag (religious ceremony involving presentation of oblations), tarpan (libation), sikha-sut (keeping a tuft of hair on the head and wearing thread), bhadan (shaving of head on the death of a parent), fasting on new or full moon or other days, wearing of frontal marks on the forehead, wearing of thread, wearing of necklace of the pieces of tulsī stalk, veneration of any graves, of monuments erected to honour the memory of a deceased person or of cremation sites, idolatory and such like superstitions observances.

Not owning up or regarding as hallowed any place other than the Guru's place - such, for instance, as sacred spots or places of pilgrimage of other faiths.

Not believing in or according any authority to Muslim seers, Brahmins' holiness,

soothsayers, clairvoyants, oracles, promise of an offering on the fulfillment of a wish, offering of sweet loaves or rice pudding at graves on fulfillment of wishes, the Vedas, the Shastras, the Gayatri (Hindu scriptural prayer unto the sun), the Gita, the Quran, to the Bible etc. However, the study of the books of other faiths for general self education is admissible.

(i) A Sikh should, in no way, harbour any antipathy to the hair of the head with which his child is born. He should not tamper with the hair with which the child is born. He should add the suffix "Singh" to the name of his son. A Sikh should keep the hair of his sons and daughters intact.

In case of transgression of any of the "tabooed practice" including that pertaining to "kesh/keshas", the method of imposing chastisement stipulated in the "Sikh rehat-maryada" (published by the SGPC) is as under:

Method of imposing Chastisement.

(a) Any Sikh who has committed any default in the observance of the Sikh discipline should approach the nearby Sikh congregation and make a confession of his lapse standing before the Congregation.

(b) The congregation should then, in the holy presence of Guru Grant Sahib, elect from among themselves five beloved ones who should ponder over the suppliant's fault and propose the chastisement (punishment) for it.

(c) The congregation should not take an obdurate stand in granting pardon. Nor should the defaulter argue about the chastisement. The punishment that is imposed should be some kind of service, especially some service that can be performed with hands.

(d) And finally an Ardas for correction should be performed.

It is quite apparent from the "Sikh rehat-maryada" also, that unshorn hair not only is a mandate to a person who professes Sikhism, it is also a command to him to adopt the same practice for his child as well. The Sikh Ardas.

58. The "Sikh ardas" is the ritual prayer, which Sikhs individually or in congregation recite, morning and evening, and in fact, whenever they perform a religious service, and even at the beginning of all family, public or religious functions. The word "ardas" in Persian means, a petition/memorial/address to a superior authority. The "Sikh ardas" is made to God. It is an evolute of the community's heart in prayer over the centuries. Broadly, the "Sikh ardas" consists of three parts. When early in the 18th century, Sikhs were outlawed by a royal edict, they faced violent death wherever sighted. In their places of refuge in jungles and deserts, they prayed collectively or severally, seeking God's protection for the entire Khalsa, whosoever and wheresoever. The "Sikh ardas" enshrines in its text the community's aspirations at various periods of its history, and enables the devotees to unite in a brotherhood of the faith, over the centuries, transcending time. The "Sikh ardas" seeks protection against evils like

lust, wrath, greed, attachment and pride. It incorporates words of thanks giving, and also seeks God's blessings.

59. It will be expedient to reproduce here the "Sikh ardas". In the left hand column, we have extracted the "ardas" in "Gurmukhi" script (written in the English script), in the right hand column, we have extracted the English translation thereof:

Gurmukhi Version of ?ardas? in English

English translation of ?ardas?.

- Ek ong kaar waheguru ji ki fateh

1, O formless-form to waheguru, the abiding victory!

- Siri Bhagauti ji sahai, Var Siri Bhagauti ji ki paatshahi dasveen

May divine spirit help ballad (Var) Shri bhagauti composition of tenth king!

Piratham Bhagauti simmar kai Gur Nanak laleen dhiae!

To begin with, invoke the divine spirit of waheguru and remember Guru Nanak!

- Phir Angad Gur te Amardas Ramdasai hoieen sahai!

(This spirit) which then inspired Guru Angad (Dev) Amar Dass and Ram Dass.

- Arjan Hargobind noon simrau Siri Har Rai!

Call upon, Arjan, Hargobind and revered Har Rai

- Siri Harkrishan dhiaeeai jis dithe sabh dukh Jaie!

Invoke the blessed Sri Harkrishan whose vision heals all pains!

- Teg Bahadur simriye ghar nau nidh awai dhaai. sab thaaeen hoi sahai!

Call upon Teg Bahadur so that the kingdom of heaven may come to earth (nine treasures of life). May waheguru and the gurus assist us everywhere!

- Daswan patshan Siri Guru Gobind Singh Sahib ji, sabh thaaeen hoai sahai!

Tenth king revered Guru Gobind Singh. May he help us everywhere!

- Dasan patshanian di jot Siri Guru Grant Sahib ji de path didar da dheyan dhar ke bolo waheguru!

The spirit of all the ten Kings enshrined in the visible body and the word of the Guru Granth, concentrate on that and say, sires, the congregation: waheguru!

- Panj piarian, chohan sahibzadian, chahlian muktian, hathian, jappian, tapian, jinhan nam jappia wand chhakia deg chalai teg wahi dekh ke undith keetaa tinnha piarian sachiaran di kamaaee da dhiaan dhar ke khalsa ji bolo ji waheguru!

Five beloved ones, four princes, forty redeemed ones, those who have remained steadfast in suffering, those who kept constant remembrance of waheguru! Those who renounced the sensuous pleasures, those who have constantly live in the divine presence, shared earnings expressed magnanimity, have preserved in their fight in the cause of justice, turned a blind eye to the faults and failings of others and did not falter. Concentrate your minds on the struggles and achievements of those, O, revered members of the order of the khalsa, and say, waheguru!

- Jinhan singhan singhanian dharam hait saees ditte, band band katae, khoprian luhaian, charkhian te charhe, aarian nal chiraae gae, gurdwarian de seva laee kurbanian kithian, dharam naheen hariaa, sikhi kesan suasan naal nibhahee, tinnhaan dee kamaaee da dhiaan dhar ke khalsa ji bolo ji waheguru!

The Singhs of both the sexes who courted martyrdom in the cause of region and underwent unspeakable sufferings of being dismembered alive, scalped alive, broken on the wheels, sawed alive and boiled alive and those who made sacrifices in the service of the centres of the Sikh religion the gurdwaras, but never wavered in their faith and to remain steadfast in the cause of Sikhism with the hair of their body and to their last breath. O, revered members of the khalsa order, concentrate your minds on the glorious deeds of those, and utter, glory to waheguru.

- Panjan takhtan sarbatt gurdwarian da dhian dhar ke khalsa ji bolo ji waheguru!

Think of the five seats of authority, the thrones of the religion and all gurdwaras and say waheguru!! waheguru!

Prithman sarbatt khalsa ji ki ardass hai ji, sarbatt khalsa ji ko waheguru waheguru waheguru chitt aawai. chitt aawan kaa sadkaa sarab sukh howai, jahaan jahaan khalsa ji sahib tahaan tahaan rachhiaa riaayat, deg teg fateh, bird kee paij, panth ki jeet, siri saheb ji sahhae, khalsa ji ke bol baale, bolo ji waheguru!

First the prayer of the whole khalsa is, may the presence of waheguru be progressively felt in the hearts of all the khalsa and may the whole creation become happy and prosperous thereby. May the supplies of the khalsa ever remained replenished , may the sword of the khalsa be ever victorious, may the royal title of the khalsa be universally recognised and honoured. May victory attend upon all just endeavours of the panth, the khalsa commonwealth, may waheguru's might (sri sahib) be our constantly May the order of the khalsa achieve ever expanding progress and supremacy. Say waheguru! !waheguru!

-Sikhan noon sikhi daan, kes daan, rehit daan, bibaik daan, visah daan, bharosa daan, daaan sir daan nam daan, siri Amritsar ji de ishnaan, chowkian, jhande, bunge, jugo jug attal dharam ka jaikaar bolo ji waheguru!

Grants to Sikhs: the gift of faith, the gift of uncut hair, the gift of discipline, the gift of knowledge, the gift of mutual trust, the gift of self-confidence and the

supreme gift of all gifts, the gift of communion with waheguru. May Sikhs freely centre around and dip in the holy lake of Amritsar. Sikh concerts, the banners, dwellinghouses ever remain inviolate. May the cause of truth and justice prevail everywhere and at all times. Sires, utter waheguru!

- Sikha daa man neevan, matt uchee, matt daa rakha aap waheguru!

May the passions in the minds of the Sikhs remain calm and the reason flow clear and may the reason always be guided by the light of waheguru!

-- Hae akal purkh aapne panth de sadaa sahaaee dataar jeeo, siri Nankana Sahib te hor gurdwarian gurdhaman de jinhan ton panth noon vichhoria giaa hai, khulhe dharshan deedar te sewa sambhaal daa daan khalsa ji noon baksho!

O, Almighty, protector and helper ever of the panth, restore to us the right and privilege of unhindered management and the service of an access to Nanakana Sahib and other centres of the Sikh religion, the gurdwaras, out of which we have been forcibly evicted.

He nimanian de maan, nitaniaann de taan, niotiaan di ot, sachhe pitta waheguru, aap de hazoor ardass hai jee!

O, true father of all Lord, waheguru here is a prayer prayer.

Akhar wadhaa ghaata bhul chukk maaf karnee. sarbatt de kaaraj raas karne, saiee piaare mail jinhan miliaan tera naam chitt aawe!

Grant us the company of those who may help keep thy name fresh in our hearts. For give us our remissions, extend thy helping hand to all and everyone.

Nanak naam charhdi kalaa, tere bhane sarbatt daa bhalaa!

May the name, the religion preached by Nanak prevail and prosper, for ever and for ever, may thy will be done wherein lies the good of all.

Waheguru ji ka khalsa, waheguru ji ki fateh.

The khalsa is of waheguru and to waheguru the victory.

60. Insofar as the issue of "kesha/keshas" is concerned, the "Sikh ardas" makes a reference to the same at two places. Firstly, the "Sikh ardas" ordains that a Sikh should "never waver in his faith, and that he should remain steadfast in the cause of Sikhism with his bodily hair intact to his last breath". The instant stanza signifies the stature of bodily hair in Sikh mythology. Likewise, reference may be made to another stanza in the "Sikh ardas" wherein various grants are sought from the Almighty. In its translation, this aspect reads thus, "grant to Sikhs; the gift of faith, the gift of uncut hair, the gift of discipline, the gift of knowledge, the gift of mutual trust, the gift of self-confidence and the supreme gift of all gifts, the gift of communion with the Waheguru". The prayer, therefore, seeks from God the gift of unshorn hair. A perusal of the two parts of the "Sikh ardas" referred to hereinabove reveal, that keeping of unshorn hair is a part of the

sacred prayer made by a Sikh to the God morning and evening, and in fact, whenever he performs a religious service, and even at the beginning of all family, public and religious functions. It is a diktat to all Sikhs to retain their hair unshorn to their last breath. In the aforesaid view of the matter, it is imperative for us on the basis of the "Sikh ardas" to conclude, that keeping unshorn hair is an essential component of the Sikh religion. Views expressed by scholars of Sikhism:

61. The Punjabi University, Patiala, has an independent Department of Religion devoted to the study of six world religions - Hinduism, Buddhism, Christianity, Islam, Sikhism and Jainism. It was set up on the lines of the centre for the study of world religions at the Howard University. One of the studies undertaken was a comprehensive reference work about Sikhism. The eventual compilation is in four volumes described as the Encyclopaedia of Sikhism (published by the Punjabi University, Patiala) Interestingly it acknowledges that on the subject of Sikhism, there were no concisely written works, and even historical facts were not well sifted, and further, there was even a paucity of reliable and firm documentation. These assertions recorded in the preface itself, are on account of contradictions on the same subject by different authors. The work of compilation of the aforesaid encyclopedia, which commenced in the sixties, was eventually concluded in the nineties i.e. after a period of three decades. In the "Encyclopedia of Sikhism" (the editorial committee whereof comprised of individuals belonging to the Sikh faith) have dealt with the aspect of "kesh/keshas" extensively. On the word "keshadhari" (a person who wears his/her hair unshorn), the encyclopedia records as under:

Keshadhari a term defining a Sikh as one who carries on his head the full growth of his kes (hair) which he never trims or cuts for any reason. Anyone, Sikh or non-Sikh, may keep their hair unshorn, but for a Sikh kes, unshorn hair is an article of faith and an inviolable vow. The Sikh Rahit Maryada published by the Shiromani Gurdwara Parbandhak Committee, statutory body for the control and management of Sikh shrines and by extension for laying down rules about Sikh beliefs and practices, issued in 1945, after long and minute deliberations among Sikh scholars and theologians, defines a Sikh thus:

Every Sikh who has been admitted to the rites of amrit, i.e. who has been initiated as a Sikh, must allow his hair to grow its full-length. This also applies to those born of Sikh families but who have not yet received the rites of amrit of the 10th master, Guru Gobind Singh. All codes and manuals defining Sikh conduct are unanimous in saying that uncut hair is obligatory for every Sikh. One of them Bhai Chaupa Singh's records, "the guru's Sikh must protect the hair, Comb it morning and evening and wash it with the curd. And he must not touch it with unclean hands." Bhai Nand Lal quotes guru Gobind Singh:

My Sikh shall not use the razor. For him the use of razor or shaving the chin shall be as sinful as incest.... For the Khalsa such a symbol is prescribed so that a Sikh cannot remain undistinguishable from among a hundred thousand Hindus or

Muslims; because how can he hide himself with hair and turban on his head and with a flowing beard? Bhai Desa Singh in his *Rahitnama* imparts a theological edge to his statement:

God created the whole universe and then he fashioned the human body. He gave men beard, moustaches and hair on the head. He who submits to His Will steadfastly adheres to them. They who deny His Will how will they find God in this world? Trimming or shaving is forbidden the Sikh and constitutes for them the direst apostasy. The truest wish of a true Sikh is to be able "to preserve the hair on his head to his last breath." This was the earnest prayer arising out of Sikh hearts in the days of cruel persecution in the 18th century when to be a Sikh meant to be under the penalty of death. The example is cited from those dark days of Bhai Taru Singh, the martyr, who disdainfully spurned all tempting offers of the Mughal persecutor if only he would convert to Islam:

How do I fear for my life? Why must I become a Musalman? Don't Musalmans die? Why should I abandon my faith? May my faith endure until my last hair - until my last breath," said Taru Singh. The Nawab tried to tempt him with offers of lands and wealth. When he found Taru Singh inflexible, he decided to have his scalp scrapped from his head. The barbers came with sharp lancets and slowly ripped Bhai Taru Singh's skull. He rejoiced that the hair of his head was still intact.

The importance of kes (Sikh's unshorn hair) has been repeatedly demonstrated to them during their history. The hair has been their guarantee for self preservation. Even more importantly, the prescription has a meaning for them far transcending the mundane frame of history.

A term which has had parallel usage in the Sikh system is *Sehjdhari*. A *Sehjdhari* is not a full Sikh, but one on his way to becoming one. He is in the guru's path, but has not yet adopted the full regalia of the faith. He fully subscribes to the philosophy of the gurus; he does not own and believe in any other guru or deity. His worship is the Sikh worship; only he has not yet adopted the full style of a Singh. Since he subscribed to no other form of worship or belief than the one prescribed for Sikhs, a concession was extended to him to call himself a Sikh - a *Sehjdhari* Sikh, a gradualist holds gradually tread the path and eventually become a full-grown Khalsa....

The aforesaid pronouncements of the meaning of the word "keshadhari" in reference to Sikhs, leaves no ambiguity in the matter. It holds that a Sikh is one who maintains a full growth of hair and wears his hair unshorn. This tenet is applicable even to those born in Sikh families though not formally baptized. Cutting hair by a Sikh is taken to be a sin. Hair on the human body are considered as a gift given to man by God, and therefore, to be preserved.

62. In the *Encyclopaedia of Sikhism* by Dr. H.S. Singha (second edition published in 2005 by Hemkunt Publishers (P) Ltd.), under the heading "kesh", the description and significance of the same for Sikhs, has been recorded in the

following words:

Kesh which means hair is one of the five "kakaars" of the Khalsa brotherhood. One of the injunctions imposed by Guru Gobind Singh at the time of setting up of Khalsa brotherhood in 1699 AD was to forbid shaving or trimming of hair on any part of the body. As such, the long uncut hair and a natural unspoilt beard in case of men are the most visible features of Sikh. The practice is one of the most distinctive and cherished symbols of Sikhism. According to the Sikh tradition, the first hukamnama that Guru Gobind Singh issued to his followers, carried into alia, the stipulation: "In future the Sikhs should come into my presence wearing long hair. Once a Sikh is baptized, he should never trim his hair or shave them, "disregarding the guru's injunction is a kurahit which results in automatic suspension from the Khalsa brotherhood.

Kapur Singh derives the symbolism of kesh from the beauty of the cosmic man who is an embodiment of the beautiful and the holy. According to the Adi Granth, the cosmic man has "beautiful nose and longer uncut hair"

Sohane nak jin lammare wala.

At another point this First Man is said to have "unshaved untrimmed body with a turban on head"...sabat soorat dastar sira. This injunction of not shaving or trimming the hair is also a reaction to Hindu observance of tonsure.

Sikh aesthetics even disapprove of the dying of hair which makes a person look different from what he or she is.

The narration by Dr. H.S. Singha reveals, that the prescription of unshorn hair was the diktat of Guru Gobind Singh even at the time of baptism of the "panj pyaras" (the five beloved ones) at Anandpur Sahib in 1699. The disobedience of the diktat would result in the automatic suspension of a Sikh from the faith. The importance of a Sikh to retain hair unshorn, according to the author, cannot be undermined.

63. Professor Pritam Singh, formerly Head of the Department of Guru Nanak Studies, Guru Nanak Dev University, Amritsar, was invited to deliver a lecture at the South Asia Institute of Heidelberg University, West Germany, in 1985. One of the lectures was on "Consciousness of Sikh Identity" (contained in his book titled as "Exploring Some Sikh Themes" - first edition published in November, 2006 by Singh Brothers, Amritsar). The aforesaid lecture contains a historical fact. It is difficult to assert with any kind of authenticity, whether or not, the same is a matter of myth or belief of the Sikhs. All the same, according to the author Professor Pritam Singh, the introduction of unshorn hair as a mandate for Sikhs emerges from the capture, and thereafter, killing of Guru Gobind Singh's father Guru Teg Bahadur - the ninth "Sikh guru". The same reads as under:

...members of the Sikh community carry their badge of identity so naturally and so permanently on their persons that it is not difficult to identify them even in a crowd. Apostates apart, it is never very easy for a Sikh to conceal the fact of his

being a Sikh even when there is danger to his life. The Sikh has been carrying his hirsute and turbaned identity on his person since 1699 when Guru Gobind Singh, the 10th Guru, introduced in his new baptismal ceremony in which the „nectar“ stirred with a double edged sword is served provided the novice promises to abide strictly by certain conditions. One obligatory condition is that the natural growth of body hair is not to be interfered with. This is no provision to recount all the interpretations of the hair symbol, adumbrated by Sikh and non-Sikhs scholars, but I certainly feel like the rating a popular explanation available in almost all books on the subject. It tries to unfold the rationale underlying the guru's command.

When Guru Tegh Bahadur, Guru Gobind Singh's father and ninth guru of the Sikhs, was made a captive and was being pressurized to embrace Islam, three of his companions were tortured to death to break his will - Bhai Mati Das was sawn alive, Bhai Dila was boiled alive, and Bhai Sati Das was put to the sword. When the guru did not relent, he was beheaded in the main marketplace of Delhi and his severed head and body were left there, like the bodies of his Sikhs, to be defiled by dogs and vultures. Stunned with fear, no Delhi Sikh came forward to claim the guru's body, although their number in Delhi at that time was not negligible. A sudden storm, which is said to have enveloped Delhi with darkness, provided excellent opportunity to a Sikh pedlar who took away the body under cover of darkness to his own residence, only a few miles from the bloody scene. He sat in his house ablaze, as he did not regard it expedient to arrange a formal cremation for the body. The guru's head was similarly picked up by a Sikh sweeper who carried it posthaste to Anandpur where the guru's son and successor was then residing. The Sikh, while presenting the head of the nine-year old guru, gave a graphic account of the paralyzing terror that had struck everyone, including the Sikhs, who had disappeared from the public view for fear of implication. It was there and then that the young guru pledged to see that no Sikh in future would be able to hide his identity, howsoever fearsome the circumstances. And this promise he fulfilled when deciding to create from the old "Sikh" human material, the new "Singh" (Lion) category of men; he made kes, uncut hair, the faster mark of identification of his followers.

From statements ascribed to Guru Gobind Singh and from his actions and the statements of others available in the contemporary or near contemporary literature, it is evident that the guru was trying to make the separate existence of the Sikh community and its faith more distinct than before. His purpose was to highlight the independent nature of Sikhism in the context of other contemporary religions. By doing this, he wanted to insure the desired quality of the individual and collective conduct of his "Khalsa", the new name for his Sikhs. His insistence on a distinct and unadulterated Khalsa can be understood as the wish of a creator who desires to guard his creation against all vulgarization. I quote from a recent publication:

Guru Gobind Singh had actually warned the Sikh people not to let the purity of

the Sikh faith and the distinctiveness of the Khalsa Panth be confused, particularly in view of the closeness of Sikhism to Hinduism, thus: "as long as the Khalsa Panth retained the distinctiveness of its ideals, I will bless it with power and glory. But when it follows the way of the Brahmins (castes, etc.), I will not trust it. Circumstantial evidence provides the key to the guru's extreme mistrust of Brahmins, so evident in the quotation cited just now. When Guru Gobind Singh took charge of the community, the boundary line between Sikhs and Hindus seemed to have become a little blurred. The following incident occurs in Sri Gur Sobha by Sainapati, a devout Sikh, close to the guru. His book was completed only two years after the demise of the guru. The children of the deceased Delhi Sikh did not shave off their hair as they had accepted the new deal of Guru Gobind Singh. The Hindu custom required close cropping of the head at such occasions. The non-cropper were subjected to severe social boycott and a general strike was observed by Delhi shopkeepers to protest against the violation of tradition and customs. Such segregation of the newly baptized Khalsa by non baptized Sikhs shows that prior to the new Deal, some Sikhs were also observing traditional Hindu religious customs probably because they were allowed to graduate to Sikhism at a steady pace. Whatever the reason, the prevalence of such a situation is confirmed by an equally reliable authority of earlier date....

Reference needs to be made also to the following observations recorded by Professor Pritam Singh, wherein according to the author, the primary distinguishing feature between an individual following the Sikh religion and another following the Hindu religion is, that the former wears his hair unshorn, and in case, his hair are shorn, he is considered to fall in the latter category i.e. Hindu religion:

The interesting fact that has to be noted is that whenever there has been a spurt of resurgence during the post Guru Gobind Singh period of Sikh history, it has turned out to be a renewed effort on the part of Sikhs to purge the community of Brahminical influences, whose infiltrating capacity is wellknown, especially in the cases of religions of Indian origin, because some of their theological vocables and concepts happen to overlap. Generally speaking, the social psychological difference among Muslims and Sikhs were so marked during the mediaeval period that the Sikhs had no fear of wholesale absorption from that side, but there was so much social kinship between Hindus and Sikhs that the Sikh minority often felt the threat of submersion in the religious majority. Even today, anyone who cuts off his hair is automatically considered to have relapsed into the Hindu mass. It is in this context that repeated attempts of the Sikh community at selfpreservation or self-assertion, whatever one may call these, have to be understood. I am referring to such protestant movements among the Sikhs as the Nirankari Movement of Baba Dayal (1783-1855), the Namdhari Movement of Baba Ram Singh (1815-1885), the Singh Sabha Movement (1873), and the Gurdwara Reform or Akali Movement (1920-25). 64. Whilst the authors from whose works references have been made hereinabove were all Sikh scholars, it

would also be interesting to examine the views of a non-Sikh scholar of Indian origin. It is, therefore, that reference is being made to the book titled "The Sikh World - An Encyclopedic Survey of Sikh Religion and Culture" by Ramesh Chander Dogra and Urmil Dogra (first published in 2003, by UBS Publishers' Distributors Pvt. Ltd.). Ramesh Chander Dogra (one of the authors of the book) is a scholar on the subject of Sikhism. He received his M.Phil degree at the University of London and has written 11 books and 25 articles, particularly in the fields of Indology and Sikhism etc.. He retired as Librarian (South Asian Studies) at the School of Oriental and African Studies, University of London in 2002. In January 2003, the new year's honour list included his name for the award of MBE (Member of the Order of the British Empire). In his aforesaid book "The Sikh World - An Encyclopaedia - Survey of Sikh Religion and Culture, he has made references to the term "kesh/kesha". He has recorded the following significance thereof in reference to the Sikh faith:

Kes/Kesh (hair) is an important part of the human body. The Khalsa must keep to the hair intact and clean. It has been regarded as a symbol of saintliness or holiness. All the gurus kept hair and Guru Gobind Singh laid down an injunction against the removal or cutting of hair. According to scientific research, hair produces Vitamin D which is necessary for physical being. Secondly, by preserving the hair, the energy used in cutting and natural growing again is thus saved.

Hair protects the head from heat in summer and cold in winter. The main reason for maintaining hair is the need to look like Guru Gobind Singh, to be blessed with his appearance and outlook. Guru Gobind Singh said: "Khalsa is my special form; I live in the Khalsa". So if someone wants to be like the guru, he must adopt his uniform of the five Ks of which kesh (unshorn hair) is an essential part.

Incidentally, Keshgarh Sahib presently the abode of a revered "Sikh gurdwara" also finds mention in his work. For Keshgarh Sahib, the author's description is as under:

Kesgarh Sahib: Literally, Kesgarh means "the fort of hair". This is the shrine where Guru Gobind Rai created the Khalsa. On 30 March, 1699, Guru Gobind Rai gave a call to Sikhs in a huge congregation, asking them to come forward to sacrifice their lives for fighting against tyranny and injustice. Five Sikhs responded to his call, and were given the new baptism - Khande-di-pahul. They were called the Panj-Piyara (Beloved Five) and received amrit from the hands of the 10th Master. Thereafter, the guru himself begged of them to administer amrit to him in the same manner as he had done. After taking amrit, his name was changed from Govind Rai to Govind Singh.

There is a magnificent Gurdwara built on raised ground at this spot called Kesgarh Sahib; there is also a tank nearby. The shrine contains several weapons of Guru Gobind Singh. The guru built four forts - Anandgarh, Lohgarh, Kesgarh and Fatehgarh for the protection of the city of Anandpur. An annual fair is held at

Takht Kesgarh Sahib on Baisakhi day.

In 1978, the Khalsa Panth assembled at Anandpur Sahib and passed the famous resolution which demands a greater measure of autonomy for the Punjab, and they truly federal constitution for the whole of India, in place of the present centralization of power.

Keshgarh Sahib was the Gurdwara where "khande ka amrit" or "khande-dipahul" was administered to five Sikhs by Guru Gobind Singh for the first time. It is at that juncture that the term Khalsa originated. The significance of the term "kesh/kesha" can be measured from the fact that the place of birth of the Khalsa was named as Keshgarh Sahib - "Fort of hair".

65. In his "History of the Sikhs" authored by Hari Ram Gupta (published in 1994, by Munshiram Manoharlal Publishers Pvt. Ltd.) in five volumes, deals with all aspects - religious, philosophical, political, military, social, economic and cultural. Professor Hari Ram Gupta had his education at Lahore. He was a lecturer at Forman Christian College, Lahore, Founder Principal of Vaish College, Bhiwani and Head of the Department of History of Aitchison College, Lahore. He served as Professor and Head of Department of History and Dean University Instruction at the Punjab University, Chandigarh. Later he worked as honorary Professor in the Department of History, University of Delhi. As a historian and a scholar not belonging to the Sikh religion, one would expect an unbiased expression in his narration. Volume I of his work refers to the formula of five into five, which is as under:

The formula of five into five.

For the guidance of his Singhs, Guru Gobind Singh described a formula consisting of five principles each governed by five rules. The five principles were: five beliefs, five symbols, five vows, five deliverances and five rules of conduct.

1. Five beliefs: The Khalsa were enjoined to have five fold belief in God (Akalpurkh), Guru, Granth, Greeting - Wah Guru Ki ka Khalsa, Wah Guru ji ki Fatah, and Guru Nanak's Japji.

2. Five symbols: In those days Hindus of respectable families wore five ornaments: gold earrings, a necklace, gold or silver bangles, fingering and a waist belt of gold or silver or a tagri. The wearer felt proud of displaying his social position. At the same time he ran the risk of losing these articles as well as his life into the bargain.

Guru Gobind Singh provided to his followers five jewels which were within reach of everybody down to the poorest peasant and the lowest labourer. Instead of creating fear in the mind of the wearer, his five jewels made his Singh bold, brave and aweinspiring. These jewels were kesh or long hair, kangha or comb, kirpan or dagger, kara or steel bracelet and kachha or a pair of knickerbockers. These symbols gave the Khalsa a semblance of unity, closed brotherhood and equality. They developed group consciousness. Guru Gobind Singh gave the

Khalsa a new uniform. This was the spiritual uniform which at once lifted one to the realm divine. Besides the Guru wanted his followers not to be able to hide their identity and face danger boldly, and to remain united in close affinity. Bhai Nand Lal wrote:

Nishan-e-Sikh in Panj harf kuf Hargiz na bashad azin panj muaf; Kara, karad kachha, kangha bi dan, Bina kes hech ast jumla nishan. These five letters of K are emblems of Sikhism. These five are most incumbent,

Steel bangle, big knife, shorts and a comb; Without unshorn hair the other four are of no significance.

The Bhai further recorded:

Hoe Sikh sar topi dhare Sat janam kushti hoe mare

(A Sikh who wears a cap will be a leper in seven births). Several arguments are advanced in favour of unshorn hair, beards and moustaches:

1. That it was a general practice with the Hindu sages and ascetics and Kshatriya Princess to keep long hair tied in a knot on top and flowing beard, and that Guru Gobind Singh wanted his disciples, in spite of their being householders, to be karam yogis or practical saints like Rama, Krishna and Bharata all the five Pandavas.
2. That the warlike tribesmen of the Northwest Frontier Long hair though trimmed and that the Guru waged his followers to have a similarly impressive and alarming appearance.
3. That the Guru adopted the practice of Goddess Durga of preserving long locks unshorn.
4. That the previous Gurus also Long hair and Guru Gobind Singh wanted his Singhs to develop like Gurus.
5. The most reasonable explanation is that Guru Gobind Singh desired to provide his Khalsa a natural military uniform, the least expensive and most impressive permanent costume. Besides he deemed it necessary that their heads should be properly guarded from sword cuts and lathis blows by means of long hair and turbans very few people at the time would comprehend fully the meaning and importance of this measure. It had taken real brain to invent it.

Comb indicated cleanliness and purity. Steel bracelet developed an iron will and grit, and destroyed the effects of misfortune. It was a permanent substitute of rakhri, a thread tied by sisters on the wrists of brothers, reminding them of their duty to help and protect them. Similarly the kara served as a reminder to the Sikhs that they had promised to be true to the Guru and the Panth and that promise must be kept at all costs.

Dagger depicted power and prestige. Wearing arms was the privilege and pride of only Kshatriyas and Rajputs. The Khalsa was lifted to the status of Kshatriya,

Rajputs and princes. The pair of knicker-bockers aimed at agility and frugality. It was more convenient for fighting than the long dhoti of Hindus and loose trousers of Muslims. Thus the five symbols of Guru Gobind Singh gave strength to the body, mind and soul and developed an integrated personality of the wearer.

3. Five Vows:- The Khalsa were required not to do five things: (a) to shave or cut hair, (b) to smoke, (c) to eat halal meat of the animal killed in the Muslim style, (d) to wear a cap and, (e) to worship tombs, Graves and relics of cremation and cherish superstitions.

4. Five deliverances: Guru Gobind Singh declared the following five deliverances for his disciples.

(i) Dharam Nash or freedom from previous religious practices and customs.

(ii) Karam Nash or the obliteration of the past bad deeds.

(iii) Janam Nash or the giving up the family influences and caste effects. The Guru explained that all the four into castes had been blended into the Khalsa like the betel leaf. When mixed with supari (betel nut), katha (catechu) and chuna (lime), the leaf reddened lips, strengthened teeth, gave flavour to mouth and added heat to the body. Individually none of these things could produce this effect. Similarly the four Hindu castes when United would change them into a flower possessing beauty, bloom, fragrance and freshness. All the castes were blended on a democratic basis in which all were equal and nobody was higher or lower.

(iv) Sharam Nash or the disappearance of hereditary professional distinctions, as all the callings like those of priests, soldiers, traders, weavers, tailors, barbers, cobblers and sweepers were given equal respect and status.

(v) Bharam Nash or discarding the rituals prescribed by previous castes.

5. Five rules of conduct:- Five rules were laid down for the general observations of the Sikhs:

(i) Before beginning every work or enterprise prayer should be offered.

(ii) The Sikhs should help one another and serve the Panth.

(iii) They should practice riding and using arms.

(iv) A Sikh coveting another's property would go to hell.

(v) Regarding sexual matters the Guru said that his father Guru Tegh Bahadur had given him these instructions which should serve as a guide to the Sikhs:

O son, as long as there is life in thy body, make this thy sacred duty ever to love thine own life more and more. Approach not another woman's couch either by mistake or even in a dream. Know, that the love of another's wife is a sharp dagger. Believe me death entereth the body by making love to another's wife.

They who think it great cleverness to enjoying another's wife, shall in the end, die the death of dogs. The Guru declared:

Par nari ke sej, Bhul sapne hun na jaiyo. Go not ye, even in dream, to the bed of a woman other than your own wife.

The formula of five into five repeatedly makes reference to the preservation of unshorn hair. The restraint from shaving or cutting hair and even concealment of hair with a cap, was considered as a sin, which would lead to the life of a leper in the next seven births.

66. We shall now examine the same issue based on the views expressed by foreign authors/historians, who do not follow the Sikh religion. Max Arthur Macauliffe in his book "The Sikh Religion - its Gurus, Sacred Writings and Authors" (first published in 1909 by Low Prince Publications, Delhi), published in six volumes, is an extensive work on the Sikh religion. Max Arthur Macauliffe is recognized as an individual who has carried out extensive research on the Sikh religion. The documentation at the hands of Max Arthur Macauliffe to state the least, cannot be considered as biased in any manner. While dealing with the life of Guru Gobind Singh, Max Arthur Macauliffe made reference to the significance of hair in terms of the teachings of the tenth "Sikh guru". It is appropriate to extract hereunder the views expressed by the author:

The guru always held the belief that it would be proper and advantageous to his Sikhs to wear long hair and otherwise not alter man's God-given body and the often broached the subject to them. On one occasion they replied that, if they wore long hair, they would be subjected to the banter and annoyance of both Hindus and Muhammadans. The guru then suggested that they should wear arms, and be at all times ready to defend themselves. This advice was adopted.

In ancient times the guru said it was the universal custom to wear one's natural hair, and he instanced the cases of Ram Chandar, Krishan, Christ, and Muhammad. "Why should hair grow if God had meant it to be cut off? A child's hair growth in the womb". The guru therefore hoped that his followers would never be guilty of the sin of shaving or cutting off their hair, and those who obeyed his injunctions he promised to consider true members of his faith.

Referring to the preservation of hair by Sikhs, Max Arthur Macauliffe noticed the views of Guru Gobind Singh, that Sikhs were ordained to wear hair unshorn, as the same were the gift of God to man, as he was born. Interestingly, it suggests that wearing hair unshorn at the hands of Sikhs would distinguish them from Hindus and Muslims. After the episode relating to the baptism of five Sikhs at Anandpur Sahib, in 1699, a supplementary ordinance was issued by Guru Gobind Singh. The same has been described by Max Arthur Macauliffe in the following words:

...A supplementary ordinance was now issued that if anyone cut his hair, smoked tobacco, associated with a Muhammadan woman, or ate the flesh of an animal

whose throat had been jagged with a knife, he must be rebaptised, pay a fine, and promised not to offend any more: otherwise he must be held to be excommunicated from the Khalsa. 67. Having examined works of Sikh authors of Indian Origin, non-Sikh authors of Indian Origin, as also, of non-Sikh authors of foreign origin, we are of the view, that it has been unanimously concluded by them, that wearing hair unshorn is an essential tenet of the Sikh religion. This view also emerges from the Encyclopedia of Sikhism compiled by the Department of Religion of the Punjabi University, Patiala. It is also essential to notice, that no such or similar works were placed before us, on behalf of the petitioners to show otherwise.

The Guru Granth Sahib.

68. Insofar as, Guru Granth Sahib is concerned, substantial assistance was rendered to us by Dr. M.S. Rahi, Advocate. His Submissions were the same as are contained in his publication titled as "The Granth as the Eternal Guru" (first edition published in October 2008, by Singh Legal Foundation).

69. Guru Nanak Dev, the first "guru" of the Sikhs, was born in 1469. When Guru Nanak Dev appeared on the spiritual scene in India, the role of a "guru" (teacher/preacher) was fairly well-defined. In Hinduism, a "guru" was a person who had himself attained spiritual insight, and was in a position to lead his disciples to discover the same potentialities, within themselves. The ancient epic of the Ramayana and the Mahabharata exemplify the position of a "guru". Similar views are also expressed in Buddhism and Jainism.

70. Guru Nanak Dev, the first "Sikh guru" gave a new dimension to the concept of "guru". He did not believe in a human "guru". He also did not have any personal "guru" of his own. The Sikhs believe that it was his direct communion with God which resulted in God entrusting him (Guru Nanak Dev) with his own mission of teaching people, the prayer of God. Guru Nanak Dev, Sikhs believe, was the medium for spreading the divine name of God. The nine successors of Guru Nanak Dev reiterated the same doctrine. In fact, all the ten "Sikh gurus" crystallised the concept of "guruship" as an institution. Besides having recorded the "moolmantar", 947 hymns of Guru Nanak Dev are contained in the Guru Granth Sahib. Guru Nanak Dev projected the thought, that an individual could realise God only through a "guru". According to the hymns attributed to Guru Nanak Dev, God fills the "guru" with himself. And God having manifested himself in the "guru", the vision of God is transferable to others only through a "guru". Guru Angad Dev, the second of the ten "Sikh gurus", was born in 1504. Guru Angad Dev furthered the preachings of Guru Nanak Dev by emphasising, that the role of a "guru" was to light the path of humanity in the realisation of God. 63 hymns of Guru Angad Dev are contained in the Guru Granth Sahib. The third "Sikh guru", Guru Amar Das was born in 1479. He was bestowed with "guruship" at the age of 73. 869 hymns composed by Guru Amar Das are a part of the Guru Granth Sahib. Guru Ram Das, the fourth "Sikh guru", was born in 1534. Guru Ram Das wrote 638 hymns which are included in the Guru Granth Sahib. Guru

Arjun Dev succeeded Guru Amar Das as the fifth "Sikh guru". He was born in 1563. Guru Arjun Dev planned to compile the teachings of all the "gurus" and of some Sufi saints and "bhagats", whose views were in consonance with the preachings of Guru Nanak Dev. This compilation was described as the Adi Granth. Sikhs accepted it as the physical manifestation and the core principle of Sikhism. Guru Arjun Dev contributed 2312 hymns of his own, to the Adi Granth. Guru Arjun Dev selected 883 hymns of various Sufi saints and "bhagats" for inclusion in the Adi Granth. It is believed that after the compilation of the Adi Granth, it was installed as the "bani-guru", at a little higher pedestal, along with the fifth "Sikh guru", Guru Arjun Dev. This compilation can be treated as the embodiment of first five "Sikh gurus" resulting in the creation of the Sikh identity. The successive "Sikh guru", Guru Hargobind was born in 1595, to be followed by the seventh "Sikh guru", Guru Har Rai, who was born in 1630. They were followed by Guru Har Krishan, born in 1656 and Guru Teg Bahadur, born in 1621. At the time of the death of Guru Arjun Dev in 1708, the last of the ten "Sikh gurus", Guru Gobind Singh was only nine years old. In 1705, Guru Gobind Singh added 115 hymns of the ninth "Sikh guru", Guru Teg Bahadur to the Adi Granth, but did not add any of his own, even though, he had composed a very considerable body of literature (which was later on described as a Dasam Granth). Guru Gobind Singh, the last of the ten "Sikh gurus", declared that the Guru Granth Sahib would henceforth be the "guru" of the Sikhs. It contains teachings of the "gurus", as were preached by them, in their 239 years history.

71. CM No. 23938 of 2008 was filed in Civil Writ Petition No. 14859 of 2008. Reference is being made to the written arguments recorded therein for making reference to certain excerpts from the Guru Granth Sahib. According to Sikh legend, after coming out of the "bein" (river) on the third day, Guru Nanak observed, that there is neither any Hindu nor any Muslim. These words of Guru Nanak worried, both Hindus and Muslims. They started questioning Guru Nanak's faith. In their desperation, they started repeating the word that Guru Nanak was a "bhutna" (ghost). It is, therefore, that in the Guru Granth Sahib, Guru Nanak observed "koi akhe bhutna, koi kahe betala, mein diwana shah ka Nanak bhorana", which means, some call me ghost, and some say that I am a demon, but I am insane, madly in love with the Lord. It needs emphasise that Sikhism is considered to be a revealed religion. Guru Nanak's verses contained in the Guru Granth Sahib, accordingly read "jaisi ave khasam ki bani, taisra kareen gyan bailalo" (as revealed by the Lord, so the knowledge has been narrated). At page 1136 of the Guru Granth Sahib, Guru Arjan narrates as under:

I do not keep Hindu fasts nor the Muslim Ramdan.

I serve Him alone who is my refuge.

I serve the one Master, who is also Allah.

I have broken with the Hindus and the Muslims.

I do not make pilgrimages to Mecca, nor do I worship in Hindu sacred shrines;

I shall serve Him and no other.

I will not pray to idols, nor heed the Muslim's namaj;

I have put the Lord in my heart, and I humbly worship him;

For I am neither a Hindu nor a Muslim.

At page 885 of the Guru Granth Sahib, one can trace the following "shabad" of Bhai Gurdas:

Some call him Rama, others Khuda, Some worship him as Gosain, others as Allah. He is the cause of causes, the kind Lord He shows his benevolence on us Some bathe at the Hindu sacred places, others visit Mecca. Some perform the Hindu worship, others bow their heads in the Mohammedan fashion. Some read the Vedas, others the Muslim Koran Some wear white, others blue. Some call themselves Hindus, others Muslims. Some aspire for heaven (Hindus) others for paradise (Muslims) But he who recognises God's Will, says Nanak, knows the secrets of the Lord. Our attention was also invited to the narration at the hands of third "Sikh guru" Guru Amar Das at page 601 of the Guru Granth Sahib, which reads as under:

He alone is a Sikh, a friend, a relative and a sibling, who walks on the path of the "Guru's will." The narration of Guru Ram Dass, the fourth "Sikh guru", at pages 305-306 of the Guru Granth Sahib is to the same effect as above, and is to the following effect:

He who calls himself a Sikh of the Guru:

He shall rise early in the morning and contemplate the name of Lord.

He shall then bathe in the pool of nectar in the early hours of the day.

He shall dwell upon the Lord through Guru's word and reflect on God's name all the time.

At page 1412 of the Guru Granth Sahib, the direction is to the following effect:

Should the head be filled with the passion of love for God.

Then only join me on my path with the head placed on your palm;

He who treads this path:

Be prepared to give up your life without demur.

Reference has also been made to hymns of Bhagat Kabir Ji at page 1105 of the Guru Granth Sahib, which reads as under:

He alone is known to be a spiritual warrior who fights for the sake of his religion. He prefers to die cut pieces, but does not desert the battle-field i.e. the principles of his religion. 72. It is on the basis of the aforesaid extracts from the Guru Granth Sahib, that a large number of learned Counsel representing the

respondents referred to "rehat-maryada", as also, the "ardas" in order to submit that the path for the Sikhs, as also, their prayer at all times, inter-alia, mandates the requirement for all Sikhs during the subsistence of their lives to retain their hair unshorn. It is in this manner, that respondents desired us to conclude, that even from the Guru Granth Sahib, it can be inferred that a Sikh is ordained to retain his hair unshorn, and that, the path of spiritual elevation depicted in the Guru Granth Sahib mandates, that an individual should follow the aforesaid path.

73. As against the aforesaid contention, it is the submission of Shri Rajiv Atma Ram, Senior Advocate, based on his research on the internet that the words "sehijdhari" and "keshadhari" do not appear in the Guru Granth Sahib at all. He further states, that there is no direct command in the entire Guru Granth Sahib requiring the Sikhs to retain their hair unshorn. It is, therefore, submitted on behalf of the petitioners, that it would be a misnomer to conclude, that the Sikh religion mandates the retention of unshorn hair, as a sine-qua-non, for those professing the Sikh faith.

74. We have considered the submissions advanced by the learned Counsel for the parties. Our attention was also invited to some verses from the Guru Granth Sahib where reference was made to "kesh/keshas". We have intentionally not extracted any of them herein. Some such hymns have been referred to in the submissions recorded hereinafter as were advanced by interveners who were allowed to address the Court. In all such verses cited before us, we came to realise that reference to hair ("kesh/keshas") was contextually different from the issue which we have been called upon to adjudicate. In our view, the Guru Granth Sahib is a treatise limited to the expression of the moral and spiritual code of conduct for Sikhs. The Guru Granth Sahib is also a guide/teacher/prayer for Sikhs to lead them to salvation i.e. merger with God. The physical aspects of the Sikh faith, in our view, can be rightfully traced only from the "Sikh rehat-maryada" and from other preachings of the "Sikh gurus" connected to the code of conduct in their day to day life. It would be wrong, therefore, to look for an answer to the controversy, whether or not, Sikhs are ordained to maintain their bodily hair unshorn from the Guru Granth Sahib. Views expressed by interveners: Shri Gurtej Singh.

75. CM No. 2941 of 2009, was filed by the Shiromani Akali Dal Panch Pardhani through its General Secretary with a prayer, that Shri Gurtej Singh, formerly a member of the Indian Administrative Service, and also a Professor of Sikhism, be allowed to address this Court. With the aforesaid application, the bio-data of Shri Gurtej Singh, running into ten pages, was appended as an annexure. The aforestated annexure reveals, that Shri Gurtej Singh, is a Post-graduate in history, having taught the subject of history at the Punjab University, Chandigarh, Loyalpur Khalsa College, Jalandhar and Gurmat College, Patiala. He was selected to the Indian Police Service and commenced training thereof in 1970. In the meantime, he was selected to the Indian Administrative Service and came to be appointed as such in 1971. His interests range from politics to

writing. It is asserted that he has been working for human rights for more than one and a half decades. His bio-data reveals, that he has written extensively on the Sikh religion. During the course of hearing, he informed us that he was designated as Professor of Sikhism, by the SGPC, and that, he had been lecturing on the subject of Sikhism in colleges run by the SGPC.

76. According to Shri Gurtej Singh, the Sikh religion is based on the prophetic vision of Guru Nanak and his nine successors "Sikh gurus". All the ten "Sikh gurus" are deemed Nanaks in ten historical forms. The 10th "Sikh guru" is allegedly referred to as "Guru Gobind Nanak" in official records of the contemporary Mughal Administration. The Sikh religion is based on the description of the will of God by the "Sikh gurus". It is the submission of Shri Gurtej Singh, that based on divine revelation, Guru Nanak Dev disclosed the factum of the ultimate reality ("Akal purakh"). According to the revelation, "Akal purakh" created the universe out of himself ("saachai te pavana bhaiya, pavanai te jal hoe, jal te tribhavan saja..."). Shri Gurtej Singh submitted that Guru Nanak Dev propounded the theory of transmigration of the soul, whereby a soul transmigrates into various forms of life until another human birth becomes possible. According to Sikh philosophy, it is only possible to achieve salvation and merge with "Akal purakh" during the course of a human birth. A human birth is, therefore, a rare opportunity to achieve salvation. Shri Gurtej Singh pointed out that humans can be divided into two categories, firstly, those who pursue their own will (called "manmukh"), and secondly, those who pursue the directions of "Akal purakh" (called "gurmukh"). Shri Gurtej Singh emphasised that for merger into "Akal purakh", it is necessary to follow the path of a "gurmukh". For the aforesaid merger, during the course of a human life, the individual must totally accept and adopt the revealed attributes of "Akal purakh", until no qualitative difference remains, between the existence of the human and the divine exists. Insofar as, physical discipline is concerned, the suggested discipline is calculated to keep the body healthy so as to be in a battle-fit condition. This can be done by scrupulously maintaining the body in the form in which "Akal purakh" had created it. This, therefore, necessarily involves maintaining the bodily hair in the original form. Shri Gurtej Singh stressed that the temptation to appear better groomed, is an aesthetic falsity. The Sikh tradition, according to him, perceives the act of removing hair, to be a denial of the principles of growth, procreation and regeneration. The importance of unshorn hair under the Sikh religion can be gauged by the fact, that it is also one determinating fact, whether an individual on the completion of his life span, will transmigrate in another form of life or would become fully "Akal purakh" oriented, and therefore, would merge in the "Akal purakh". According to Shri Gurtej Singh, the Guru Granth Sahib lays down a whole range of mental attitudes, cultural mores and moral values. The Guru Granth Sahib also precisely defines mental and physical discipline, which a seeker must adopt, to establish his enduring relationship with the "Akal purakh". This, according to Shri Gurtej Singh, results in making an individual fit to serve humanity, and thereby, to serve the "Akal purakh", who inheres in all his

creations. Insofar as, the physical form is concerned, it is submitted, that when ascribing to the human form and its elevation to the ultimate reality, the "Sikh gurus" describe the "Akal purakh" invariably as one with full-length hair. Referring to verses expressed in the "additional submissions" presented to this Court, he points to the English translation thereof, which reads as under:

You have shaped the beautiful mould out of yourself. You have created women and men whose eyes, teeth, nose are well formed- very beautiful. Sitting within them Master, you are lighting the life's lamp. My Master your eyes are handsome, your teeth are beautiful, your nose is becoming and your full length hairs are wonderful. God! Your body is poised and healthy as if it were moulded in gold. Another verse in his "additional submission" reads as under:

All that is valuable in the world, the eight miraculous powers of the Jogis are present in the wonderful taste of Your Name.

He with whom the one with beautiful long hair is pleased, they live singing God's praises.

And thereafter, as under:

God, Sustainer, Master of Creation, Compassionate, One with full length hair help me cross over the ocean of existence by keeping me safe in Your protection. Yet another verse cited by Shri Gurtej Singh reads thus:

All pervasive destroyer of discomfort who is far removed from the influence of the mundane! Bless me that I remaining steadfast along with the congregation, I may ever live in Your remembrance.

One with beautiful long {full length} hair! rid me of sins, Nanak says, I live hoping to catch glimpse of You.

The last verse referred to by Shri Gurtej Singh, which we desire to extract herein reads as under:

God's name is the support of those who have none. It is the wealth of paupers, Master, sustainer of the abandoned. The long haired Master is the strength of the helpless. According to Shri Gurtej Singh, a person who takes refuge in the "Guru" and obeys his command, becomes eligible for the final merger with "Akal purakh". The "Guru" through his divine ordain requires that the form of the "Akal purakh" should be precisely imitated. The "Akal purakh" must be imitated in the physical form, as well as, in his abstract attributes. According to Shri Gurtej Singh, it is for this purpose that all the ten "Sikh gurus" retained the physical form comprising of full-length hair, and made it mandatory for those who wished to attain spiritual salvation.

77. According to Shri Gurtej Singh, the evidence to substantiate that the "Guru" in all his ten human forms, was "keshadhari" can be drawn from Bhai Gurdas, who was the nephew of the third "Sikh guru" Guru Amar Das and a companion of the fourth, fifth and sixth "Sikh gurus". He had actually seen four of the "Sikh

gurus" in their physical form. Bhai Gurdas wrote a severe condemnation of the Minas (the followers of Prithi Chand, the son of Guru Nanak Dev), who did not keep their hair unshorn. In their physical form, therefore, according to Shri Gurtej Singh, Sikhs are required to retain their hair unshorn.

78. According to Shri Gurtej Singh, the prescribed inner discipline for an individual under the Sikh religion, obliges an individual to believe in one "Akal purakh, who is the lone creator, sustainer and destroyer of the universe. His divine law ("hukam") prescribes precisely how God created life, be it human, non-human, material or subtle. Under the Sikh faith, total acceptance of "hukam" according to Shri Gurtej Singh, facilitates union with God. Shri Gurtej Singh also referred to certain necessary steps postulated in the Guru Granth Sahib, as for instance, the five major impediments that leaves no room for spiritual elevation in a person, namely, "kam, krodh, moh, lobh, ahankar" (desire, passion, greed, attachment and arrogance). According to Shri Gurtej Singh, under the Sikh religion, the importance of abstinence from the aforesaid five major impediments, is not distinguishable in the matter of importance. The "hukam" includes the mandate to sustain the human form as provided by the "Akal purakh", which includes amongst others, maintaining bodily hair in the form and to the extent they are naturally available.

79. According to Shri Gurtej Singh, in spiritual terms, the state of equipoise is called "sehij". In this state, a person remains calm and balanced under all circumstances, in normal day-to-day life, be it in the field of battle, and be it on the seat of authority, or be it in a torture chamber or on the gallows. It is the "sehij" existence which leads one to ascending the limitations of matter, and ensures to a large extent, merger into the precreation poise of "Akal purakh". According to Shri Gurtej Singh, preachings of the Sikh religion for about 239 years (from 1469 - 1708) culminated into two events that took place during the period of 10th Nanak i.e. Guru Gobind Singh. On the Baisakhi day of 1699, the 10th Nanak formally initiated the complete person of the "Guru"s" conception: as a "Singh". This was sought to be done by administering "amrit" and by precisely describing the religious vows to be observed by a Singh. According to Shri Gurtej Singh, these vows include an injunction to maintain bodily hair in the natural state. Four taboos were also prescribed. Adoption of any of those taboos, were considered a matter of grave indiscipline, meriting immediate suspension from the faith. Cutting or trimming of hair, was also one of those taboos.

80. According to Shri Gurtej Singh, the spot at which the Baisakhi of 1699 was celebrated, has ever since been called Keshgarh Sahib. One of the foremost philosophers, Sirdar Kapur Singh, has translated the term "keshgarh" to mean "the blessed fort of uncut hair". It is now accepted as one of the sovereign seats of the Sikhs as it has been assigned the status of a "takht" (throne) by the Sikhs. This also depicts the importance given to physical appearance of unshorn hair by the "Sikh gurus" who required the followers of the Sikh religion to keep their hair unshorn. This aspect of the matter is also conclusively ascertainable, according

to Shri Gurtej Singh, from the "rehatnamas" (codes of conduct) prescribed for Sikhs.

81. According to Shri Gurtej Singh, the tenth Nanak ceremonially nominated the Guru Granth Sahib, as the eternal successor to the throne of perpetual "guruship". Thereafter, the Sikh faith has accepted the concept of Guru Granth Sahib as the state and mystic body of the "Sikh guru". The ordained path, according to Shri Gurtej Singh, can be called "guru khalsa panth" the path to be followed by the "khalsa" of the "guru" only as long as the Sikh disciple continues to accept the supremacy of the "guru's" will, spelt out in the Guru Granth Sahib.

82. Shri Gurtej Singh also pointed out, that with the help of the SGPC, the "Guru Khalsa Panth" formulated a code of conduct for the guru's followers. It is known as the "Sikh rehat-maryada". The "Sikh rehatmaryada" is in conformity with the teachings of the Guru Granth Sahib. According to Shri Gurtej Singh, it includes the keeping of bodily hair uncut, as a measure of religious and spiritual discipline. Shri Gurtej Singh also referred to the congregational prayer i.e. the "Sikh ardas", which every Sikh is required to repeat twice a day and during the course of Sikh congregations. This prayer embodies Sikh aspirations and lays down Sikh obligations. Through this prayer, every Sikh prays for the divine gift of uncut hair, to last as long as life remains in the body.

83. According to Shri Gurtej Singh, it is universally believed that almost upto his very last breath, the tenth Nanak summed up his entire mission in a pithy statement: "pooja Akal ki, parcha sabad ka, didaar khalse de ate Sikh bhala sarbat da lochai". This has been used to express the core philosophy of the faith since then. Its nearest English translation would read: "a Sikh must worship Akal alone, must take the Word to be the measure of personal conduct, must consider the Khalsa physical form to be ideal and must ever strive for the welfare of the entire humanity". According to Shri Gurtej Singh, those who now call themselves "sehijdhari" (believers and followers of the Sikh religion who cut their hair and shave their beard) appeared on the scene much later. The formal nomenclature appears to have come only after 1911, much after the Sikh rule (formally designated as "sarkar khalsa jio" translatable as "People's Republic lead by the Khalsa) was extinguished. In this period, they occupied the "gurdwaras". With the firm establishment of the British power in the Punjab they became their most trusted allies in an attempt at shaping the Sikh faith to suit the imperial design. They occupied the Sikh shrines and had to be thrown out at a huge cost. Hundreds of Sikhs courted martyrdom, bore indignities, paid heavy fines and suffered long incarcerations to rid the "gurdwaras" of the so-called "sehijdhari" control.

84. As a matter of conclusion, it is submitted by Shri Gurtej Singh, that the form in which the "Sikh gurus" expect Sikhs to look, has been defined clearly by the 10th "Sikh guru", Guru Gobind Singh. It is his submission that it would be safe to conclude, that the only external form in which a Sikh is acceptable to the "Sikh gurus", is that of a duly initiated "amritdhari" Sikh with his bodily hair fully intact.

Shri Pavit Singh Mattewal, Advocate.

85. Shri Pavit Singh Mattewal is a budding advocate of this Court. He has shown keen interest in the proceedings of the present writ petition. Insofar as, his submissions before this Court are concerned, besides advancing oral submissions, he also handed over to us a synopsis of his views. In his submissions, Shri Pavit Singh Mattewal also incorporated the historical impact of events on the Sikh religion. He has described the virtues of the concept of "khalsa" and the significance of "sehaj" for the Sikh religion. He has also advanced views on the significance of unshorn hair for the disciples of the Sikh faith, drawn from the five "kakkars". We are narrating hereunder the views expressed by him.

86. According to Shri Pavit Singh Mattewal, the Sikh religion was founded by Guru Nanak Dev. Guru Nanak Dev, as also, the successor "Sikh gurus", instructed followers of the Sikh faith, about the evolutionary process of spiritual achievement. A "guru", according to Shri Pavit Singh Mattewal, is essential for any level of spiritual achievement. After the ten human "Sikh gurus", the Guru Granth Sahib is considered by the followers of the Sikh religion, as the perpetual embodiment of the "Sikh gurus". The word "guru" is stated to be derived from the word "gu-" meaning darkness, and the word "ru-" meaning light. Therefore, according to Shri Pavit Singh Mattewal, a "guru" is one who leads a disciple from darkness to light. In other words, a "guru" leads a man from mere animal existence to salvation. According to Shri Pavit Singh Mattewal, as per the Sikh faith, a person who follows the "Sikh rehat-maryada", travels from darkness to light.

87. The original Sikh religion followed by the disciples of the ten "Sikh gurus", came to be crystallized, according to Shri Pavit Singh Mattewal, with the creation of the "khalsa". According to him, creation of the "khalsa" was the result of historical facts of the time. Summarily, it is pointed out that at the time of the last of the ten "Sikh gurus", State sponsored terrorism against indefils (non-Muslims) was at its peak. The primary objective, of the rulers of the time, was to wipe out the Hindu "dharma" (religion). The efforts of the "Sikh gurus" to seek the support of the hill "rajas" against this onslaught at the hands of the rulers of the time, did not achieve any results. In fact, the hill "rajas" were not supportive of strenuous efforts made in this direction by Guru Gobind Singh. It is in these circumstances, that Guru Gobind Singh created the "khalsa", to sow the seeds of hope in the minds of the Hindus so as to relieve them from their fear of the Muslims, as also, as a matter of repulsing the oppression of the then rulers. It is in these circumstances, according to Shri Pavit Singh Mattewal, that Guru Gobind Singh declared, that when all modes of redress against a strong wrong-doer have failed, recourse to the sword is pious and just.

88. The definition of the "khalsa Sikh", according to Shri Pavit Singh Mattewal, is the same as "guru khalsa roop" (appearance of the "gurus" "khalsa"). The definition of "sehajdhari Sikh", "keshadhari Sikh" and "patit" flow, according to

Shri Mattewal, from the definition of "khalsa". The "khalsa" has been referred to as the very image of the "Guru". The five "kakkars", following the teachings of the "Masters", incorporate adherence to "rehatnamas" and baptism collectively and mandatorily, these are the sine qua non for entering the realm of a "khalsa Sikh". The definition of "khalsa", according to Shri Pavit Singh Mattewal, could not be that of convenience. A Sikh can either be a "khalsa Sikh" or not a Sikh at all. Following sincerely, the teachings of the "guru" and following the "maryada", according to Shri Mattewal is a means to the end, for entering the realm of "khalsa". The goal and aim of every Sikh is to achieve "brahma gyan" (the ultimate knowledge) leading to realisation of God. According to Shri Pavit Singh Mattewal, the means to achieve the ultimate knowledge is to follow the teachings of the "guru" with complete surrender. "Panj kakkari amrit" (blessing of the five "kakkars") according to Shri Pavit Singh Mattewal, was a condition specifically prescribed for the "khalsa".

89. According to Shri Pavit Singh Mattewal, there is a clear yet subtle distinction between a "keshadhari Sikh" and a "sehajdhari Sikh". It is suggested that there is no difference between a "keshadhari" who has not taken his/her "khalsa amrit" and a "sehajdhari". The "khalsa" is the very image of the "guru" The highest state of evolution in spiritual and temporal terms. The stage at which a Sikh is one with the "guru". The "khalsa" is the ideal, pure and perfect disciple who after following the teachings of the "guru" has become the very image of the "guru". The highest status amongst Sikhs, was given to the "khalsa" who has been referred to as the "guru" himself. The evolution of a Sikh is dependent upon his following sincerely; the "guru's" instructions and the "guru's" grace.

90. According to Shri Pavit Singh Mattewal, the word "sehaj" (in Sanskrit, "sahaja") implies grace, poise, unhurriedness and the word "dhari" stands for adopting or accepting. All Sikhs who are "gurmukh" are "sehajdhari". Till the achievement of the state of oneness with the "guru", a Sikh is a "sehajdhari". The Guru Granth Sahib has been called the Granth of the "kali yuga", where learning is comparatively difficult since the world is engulfed in darkness. "Sehaj" refers to spiritual evolution and the steps taken by a Sikh while following the "guru's" teaching towards attainment of God i.e. the ultimate goal. A "sehajdhari" is expected to be subject to human weaknesses of five varieties - "kam", "krodh", "lobh", "moh" "abhiman". The gradual inching or gradual understanding as the popular Punjabi saying "sehaj pake so miththa hoe" (that which ripens gradually is sweet) is also referred to as "sehaj". Whereas a "khalsa" is a perfected individual, and is free from the five "dosh". According to Shri Pavit Singh Mattewal, a "sehajdhari Sikh" is one who is gradually inching towards the spiritual path, but who has not yet achieved perfection. Teachings of the "guru" propel, urge and push the disciple to achieve higher spiritual evolution by following the teaching of "naam daan and isnaan", which according to Shri Pavit Singh Mattewal, flow from the Guru Granth Sahib in the following translated verse:

The one who calls oneself as the Sikh of the guru, gets up early in the morning and contemplates on the Name (the Almighty)...(that Sikh) when ponders upon the teachings (jap) of the guru and contemplates on the Almighty, can get rid of his sins and evil deeds. 91. According to Shri Pavit Singh Mattewal, in "gurbani" and in "gurmukhi", "sehaj" means pure grace or in the grace of God. Countless times in the Guru Granth Sahib, "Sikhi" (the Sikh religion) itself is referred to as "sehaj dharam" (the dharma of pure grace). "Sehaj" in Sikhism, according to him, refers to a state of mental and spiritual equipoise without the least intrusion of ego; unshaken natural and effortless serenity attained through spiritual discipline. "Aham" or "haumai" (ego) develops out of the undifferentiated primordial being as a result of the socio-cultural conditioning and factors that are generated as a result of a process of individuation. When this ego is quelled, and one resides once again in the innate, undisturbed, effortless state of the soul "sehaj" is said to have been attained. Although, described as an "avastha" (state) in fact, according to Shri Pavit Singh Mattewal, it transcends all states, for it is a return to the soul as it was before any "states" differentiated or derived from it. The word "sehaj" is derived from Sanskrit twin roots: "saha, together and "ja" born. Thus, it means born together (with oneself), hence innate. It signifies innate nature, or one's natural spontaneous self shorn of all external conditioning influences that cramp the soul.

92. According to Shri Pavit Singh Mattewal, to appreciate fully the meaning of the Sikh concept of "sehaj", it may be looked at from various aspects. It can be seen as a state of illumination, one of heightened consciousness "sehaj rahas" (mystical awareness or intuitive knowledge). In this state the duality of subject and object (which results from a process of individuation and ego-formation) vanishes. Since all feelings of duality, basically develop around the subject-object dichotomy, with the dissolution of the latter, these disappear, distances vanish and reality comes to be perceived with the impact of immediacy. In its cognitive aspect "sehaj" is a state of freedom wherein everything happens with natural ease "sehaj subhai". On the emotive or aesthetic planes, it signifies the discovery of the great harmony within as well as without. In "sehaj", as it were, an inner door "dasam dvar" of aesthetic perception opens up, and one directly perceives the rhythmicity of one's being a wave in an "anhat nad" (unstruck melody), which is accompanied by a pervading feeling of "sehaj anand" (unconditioned bliss). A deeper significance of existence seems to emerge in "sehaj". When one becomes oriented to it, emotional turbulence ceases. Pleasures and pains pass like ripples over the surface while the mighty deep underneath remains unruffled. This is how, according to Shri Pavit Singh Mattewal, "sehaj" epitomises mental equipoise, in which all turbulence of emotions is calmed. While the egocentrics abide in doubt and carry anxieties in their heart which permit them to sleep, the wise wake and sleep in "sehaj". Accordingly, he referred to a verse from the Guru Granth Sahib "manmukhi bharamai sahase hovai antari chinta nid na sovai giani jagahi savahi subhai nanak nami ratia bali jau" which means, peace being the hallmark of this state,

all running about and all feverish pursuits cease, wandering itself is worn out, for now a new dignity in life is found.

93. "Sehaj", according to Shri Pavit Singh Mattewal, has been called a state of freedom. It betokens freedom from "trishna" (desire) and from "dvandva" (conflict) and from "maya" (illusion). One is liberated from the camping influence of social compulsions, yet one does not become a fugitive from social responsibility. On the contrary, since one is also cured simultaneously of the equally tempting compulsion of egoism, one no longer lives for oneself. One lives more for others. In "sehaj" one is also liberated from the servility of carnal needs. In this state neither drowsiness nor hunger remains; and one ever abides in the divine bliss of "Hari nam" (God's name).

94. Although illumination, spontaneity, freedom, equipoise and harmony may be described as the chief characteristics of "sehaj", according to Shri Pavit Singh Mattewal, there are several other subtle characteristics of this state alluded to at several places in the Guru Granth Sahib as, for example, according to Shri Pavit Singh Mattewal, in the following translated passage:

One who abideth in sehaḯ Looketh alike on friend and foe. What he heareth is essence true; And in his seeing is meditation. He sleepeth in calm, he riseth in peace From "being" to "becoming" with natural ease. Sad or glad, he abideth in sehaḯ; Effortless his silence; spontaneous his utterance In poise he eateth, in poise he loveth. In sehaḯ he findeth distances bridged. According to Shri Pavit Singh Mattewal, the ultimate objective of the preaching of Sikhism, is to achieve a "sehaj" state of mind. A state which is in complete balance, is natural and spontaneous.

95. According to Shri Pavit Singh Mattewal, five "kakkars" (articles of faith) were laid down as essentials. These "kakkars" included "kesh" (hair), "kara" (steel ring), "kachhera" (knicker-bocker), "kangha" (comb) and "kirpan" (sword). According to him, keeping uncut hair is a matter of great importance to the followers of the Sikh faith. Keeping hair unshorn has historical significance as well. It is submitted by him, that the importance of hair is traceable to the Bible. The Bible refers to a man named Samson, who allegedly obtained supernatural powers through his unshorn hair. His opponents later cut his hair and consequently, overpowered him as he lost his powers. According to Shri Pavit Singh Mattewal, it is also a fact that most of the world prophets, saints including Jesus, the "Sikh gurus" and Hindu preachers retained their hair uncut. According to him, Sikhs believe that God is a perfect creator. It, therefore, follows that whatever God creates, is perfect. Since hair are given to man by God, keeping hair unshorn is the recognition of God's perfection, and for the Sikhs, keeping unshorn hair amounts to the submission to the will of God.

96 In the synopsis furnished by Shri Pavit Singh Mattewal, with reference to "kesh" (hair) as one of the "kakkars", it is noticed that uncut hair is a mark of the Sikh identity. The tenth "Sikh guru" instructed all the Sikhs to come before

him, with long hair and weapons. Long hair, according to Shri Pavit Singh Mattewal, is a depiction of sacrifice for the Sikhs, in as much as, a large number of Sikhs preferred to die rather than allow their hair to be cut. Illustratively, he has referred to the sacrifice made by Bhai Taru Singh, who preferred to have his scalp removed instead of his hair cut. It is, therefore, the submission of Shri Pavit Singh Mattewal, that unshorn hair are essential ingredients of the Sikh religion.

97. Shri Pavit Singh Mattewal made reference to extracts from the Guru Granth Sahib, the preachings of various "bhagats" of significance, the "rehitnama" of Bhai Nand Lal, the Sikh "rehat-maryada" published by the SGPC, the "hukamnama" of Akal Takht extracted from the book titled "The Sikh's Image of a Heritage" by T.S. Randhawa, IAS, to conclude that unshorn hair are an essential component of the Sikh faith.

98. The conclusions of Sikhism have been summarised by Shri Pavit Singh Mattewal to the following effect:- The teachings of all eleven "gurus" have to be seen cumulatively. Every Sikh knows in his heart whether he is a "patit" or is a "khalsa". When the disciple becomes one with the "guru", that is the point of achievement of the "khalsa avastha" as the highest goal. "All keshadharis" cannot be treated as having achieved the state of "khalsa". A "keshadhari" also falls within the ambit of "sehaj". Only "kesh" will not suffice to inch towards perfection. Following the "guru's" teaching in their spiritual journey will have the desired result. It is submitted that following the "guru's" teachings are a means to an end. The "khalsa" being the perfected Sikh, and the very image of the "guru", the "khalsa" has all the attributes or "gunas" (virtues) of the "guru" himself. The standard, therefore, is of the highest of the "guru's" attributes or qualities. Sikhs as disciples would not be able to evolve in a day or in a fixed time period. Since it is not a question of days, it may as well be a question of a lifetime! The spiritual evolution depends upon the Sikh's previous "karmas", his "kshamta (capacity) and the "guru's" grace. The following of the "guru's" profound word or its understanding may not be grasped outside time or space. The entire teachings make the gamut of the code of religious conduct. The entire teaching of the "Sikh guru" is "rehitnama". The "gurus" have instructed lead by example as well.

Shri Atinder Pal Singh.

99. Shri Atinder Pal Singh regularly attended the hearing of this case. He was Senior Deputy President of the All India Sikh Students Federation in the year 1983. He remained underground in connection with the Punjab agitation, and was also imprisoned. He was elected as a Member of Parliament in 1989 (i.e. to the 9th Lok Sabha) representing the Patiala constituency. He claims to have worked as a journalist, an agriculturist and a religious missionary and also as a political and social worker. "Saman Sakhi" (a collection of poems in Punjabi), "Brief History of Sikhs", "Hai Bhi Sach", "Kya Ham Samprabhu Hain" (a booklet) are some of his publications. He was the Sub-editor of the Punjabi magazine

"Zabaan". He organises and holds camps on "gurmat" for social, political, educational, intellectual and religious development of youth, especially for the Sikh youth. Shri Atinder Pal Singh has placed on record written submissions, supplemented with various extracts and photographs. He has also made oral submissions. Having gone through his written arguments and having heard his oral submissions, we are summarizing hereafter, the viewpoint expressed by him.

100. In the first part of his submission, he has emphasized that the true meaning of the words "sikh", "singh", "khalsa", "gurmat", "manmat", "sirgum", "tankhaiya", patit", "bajjar", "kurehit" etc. cannot be understood in any language other than in "Gurmukhi" or "Gurbani" (the holy edict). In fact, it is a matter of emphasis at his hands, that the aforesaid terminology cannot be understood with reference to any other language. This is the first part of his submission and has, accordingly, been recorded by us as a matter of preface before adverting to the text of his submissions.

101. According to Shri Atinder Pal Singh, it is essential to refer to the "Sikh rehat-maryada" written by authors like Dr. Ganda Singh, Bhai Desa Singh, Bhai Gurdasji and others to understand who is a true Sikh. He has extracted in his written submissions views expressed by the aforesaid authors to record the conclusion, that the meaning of the word "Sikh" as is commonly understood, namely, "shish" (a person in the process of learning) is wholly fallacious and not acceptable. According to Shri Atinder Pal Singh, if the aforesaid meaning of the term "Sikh" is accepted, it would lead to the inference, that a Sikh is either a yes-man, or is a person with a mentally weak capacity, and as such, incapable of taking any independent decision. According to him, if the aforesaid superficial meaning of the term "Sikh" is accepted, a Sikh will be considered to be one, who always obeys and follows his "guru", and as such, is subservient to his "guru". This would be contrary to the Sikh religion, wherein a Sikh having achieved spiritual elevation under the guidance of a "guru", merges with the entity of God. The aforesaid superficial meaning of the word "Sikh", therefore, according to Shri Atinder Pal Singh, cannot be accepted, so as to render any valid determination in respect of the Sikh religion. Explaining the matter further, it is the submission of Shri Atinder Pal Singh, that translation of the word "Singh" is commonly accepted as "lion". This literal translation, according to him, cannot also be a valid basis for determining the true and deep meaning of the word "Singh". According to him, if a "Singh" is accepted to be a "lion", it would amount to changing a human into an animal form. It is, therefore, the contention of Shri Atinder Pal Singh, that the common meanings of the words "Sikh" or "Singh" should not be accepted, while recording any conclusion in the instant case.

102. According to Shri Atinder Pal Singh, preserving hair uncut is a fundamental discipline of every Sikh. In order to establish the aforesaid assertion, he has made reference to extracts from the Guru Granth Sahib. According to him, a Sikh cannot be imagined with cut hair. To strengthen his aforesaid submission, he has made a reference to a dialogue between Guru Nanak Dev and Shah Bhau Deen

Peer at Mecca (Saudi Arabia), wherein Guru Nanak Dev had compared a man who had cut his hair with "sirgum" (i.e. a man who does not have a head). To impress upon this Court, the importance of unshorn hair for the Sikh religion, Shri Atinder Pal Singh, has made reference to edicts issued by Bhai Nand Lal, extracts from Janam Sakhi, as well as, old photographs/paintings, wherein all the "Sikh gurus" have been depicted with unshorn hair. He has also made a reference to the "hukamnama" stated to have been written by Guru Gobind Singh on 26th Jeth, 1576 Samvat (16th May, 1699) wherein he addressed his followers at Kabul (in Afghanistan). In the aforesaid "hukamnama", Guru Gobind Singh had equated a Sikh with unshorn hair, as one bearing the seal of the "guru". He has argued that without unshorn hair, and a turban, the existence of a Sikh cannot be imagined. According to him, in every prayer of the Sikhs, they pray for unshorn hair. In this behalf, reference has been made by Shri Atinder Pal Singh to the "Sikh ardas". According to him, a Sikh who has cut his hair, cannot be treated as a Sikh. In fact, he has compared a Sikh with his hair cut, to a student who has voluntarily got his name struck off from the rolls of his school or college. According to him, a person whose name has been struck off from the rolls, cannot be considered for any benefits from his school or college. It is, accordingly, his submission that all such children, who do not wear their hair unshorn, are not entitled to admission as Sikhs, in minority institutions administered and managed by the Sikhs.

103. According to Shri Atinder Pal Singh, there is no mention of the word "sehijdhari" in the entire text of Guru Granth Sahib, running into 1430 pages. It is his submission that the word "sehijdhari" is an ante-thesis to the word "Sikh". According to him, the word "sehijdhari" has been coined with a view to insult and breach the Sikh religion. He has further submitted that a "sehijdhari" cannot be considered to be a person inching towards becoming a full-fledged Sikh, slowly and gradually by adopting the "Sikh rehat-maryada", as has been submitted by Shri Pavit Singh Mattewal, Advocate. It is the contention of Shri Atinder Pal Singh, that the term "sehijdhari Sikh" has been used in the Sikh Gurdwaras Acts of 1925 and 1971, as a matter of political consideration, without the aforesaid term having any nexus or reference to the Guru Granth Sahib.

104. To answer the question whether unshorn hair are essential for a Sikh, according to Shri Atinder Pal Singh, one must first find out why it is necessary to have hair. According to him, this is a baseless issue, because this will amount to denying a truth which is universal. The existence of the mankind depicted by Guru Nanak, and in the Guru Granth Sahib, according to Shri Atinder Pal Singh, is that a man gets the format of a human existence only once, for this he has made a reference to the verse "jo kicch paia so eka vaar", which means, whatever you have, is for once. With the will of God, according to him, man came into being, and for this, reference has been made to the verse "hukam hukam hoa aakar". The existence of the human body is a composition of blood, flesh, life and fire, for this he has referred to the verse "rakt-bind ka eh tano, agni pass puran" In the control of breath (air) body contains truth in its mind, for

this he has referred to the verse, "pawane ke vas dehuri mastak sach nisan". He emphasised that a drop of water and a drop of blood made up the human body "jal ki bhit, pawan ka thamba, rakt bund ka gara". According to him, "haad maas narhi ko pinjar pankhi base bichara" is the principle of the "gurus" as is also clear from the "shabad" (verse) "maat pita sanjog upai rakt bind mil pind kare, anter garbh urad liv lagi so prabh sare daat kara. Te gun visr gae apradhi mein baroa kia karao hare. Tu data dayal sahwa sir ahnis daat samaar kare. Ma ki rakt pita bid dhara. Must surat kar aapara. Jot dat jeti sabh teri tu karta sabh thai hai. Bind rakt mil pind saria. Paun pani agni mil jiya. Ape choj kare rank mahali hor maya moh pasara hai. Garb kundal meh urd dhiani. Ape jane antarjami. Sas sas sach nam smale antar udar majhara he. Rakt kirm meh pahi sangharia. Apna simran de pritpalia oh sagal ghata ka malka." It is evident from the Guru Granth Sahib, according to Shri Atinder Pal Singh that "apan aap aapeh upaio", which means God has created man from himself, and for man to attain the stature of God and to merge with him, he must retain the form of God i.e. the form in which he is created. Therefore, it is submitted that "jin eh jagat upaya tribhavan kar akaar", which specifies its meaning as "safal janam har jan ka up jiya jin kino saot (with son, with child) bidhata". That with creation of man, God has made himself father of children i.e. mankind. The order of God is "nirbari kesav nirvera. kot jana ja ke pujab pera. Gurmukh hirde ja ke har har soi bhagat kati jio", which means that beautiful hair is Godly, and is to ensure that man is devoted only to God.

105. According to Shri Atinder Pal Singh, man is made out of an embryo which emerges from the zygote. According to him, the tradition of a man-woman relationship cannot be seen with naked eyes or even under a powerful microscope. The breathing power of a body, from origin to development, fully depicts a life and its dependable bodies bearing hair. All this is created by God in a manner so as to replicate his own image. As one is dead without life, and the human body is dead without breath, in the same way, according to Shri Atinder Pal Singh, our body is full of holes without hair. The first law of the "Sikh dharam", according to Shri Atinder Pal Singh, is that every Sikh should obey the tradition of "hukam rajai chalna nanak likhiya naal", which means, a Sikh obeys the rules specified by the God, and follows them. Everything else, according to him, is agonistic. It is, therefore, his submission that a "Sikh" without hair cannot be imagined in the "gurmat terminology".

106. Referring to a verse from the Guru Granth Sahib, it is submitted "manmukh soe rahe se eute gurmukh sabat bhai hei", which means, that a man who always sleeps is looted whereas a "gurmukh" (man who always obeys and follows the order of God), is fully accomplished and total. It is, therefore, sought to be concluded that a true Sikh is one who wears his hair unshorn.

107. As a matter of drawing a conclusion from the submissions advanced by Shri Atinder Pal Singh, it would be natural to record, that hair kept unshorn is an inescapable tenet of the Sikh religion. And further that, those who do not follow

the important tenets of the Sikh religion should neither claim, nor be allowed any benefit merely on account of being born in a Sikh family. Accordingly, for the present controversy, in the view of Shri Atinder Pal Singh, those candidates who do not maintain their hair unshorn, should not be entitled to admission against seats reserved for the Sikh minority community.

Prof. Lal Singh.

108. Originally Civil Writ Petition No. 17771 of 2003 was tagged to be heard along with the instant writ petition, which was to be collectively disposed of by the present order. Civil writ petition No. 17771 of 2003 has been filed by the Sehijdhari Sikh Federation, through its National President Dr. Paramjit Singh Ranu. In the aforesaid writ petition, the petitioner has sought a writ in the nature of certiorari for quashing the notification dated 8.10.2003, whereby Sections 49 and 92 of the Gurdwara Act of 1925, were sought to be amended by omitting the term "sehijdhari". The effect of the aforesaid omission was, that lakhs of Sikhs referred to as "sehijdhari Sikhs" were disfranchised. Their voting rights in the election to the SGPC and other related Boards and Committees were brought to an end.

109. An application for intervention in the instant writ petition was filed by Prof. Lal Singh, through CM No. 24174 of 2008, seeking to express the view point of the Sehijdhari Sikh Federation. This representative capacity was affirmed by Dr. Paramjit Singh Ranu, who remained present during the course of hearing of the present controversy. After we had heard Prof. Lal Singh, Dr. Paramjit Singh Ranu also expressed the desire to make a presentation to us. Since we had already heard Prof. Lal Singh on behalf of the Sehijdhari Sikh Federation, we declined the aforesaid request of Dr. Paramjit Singh Ranu.

110. The primary contention of Prof. Lal Singh on behalf of the Sehijdhari Sikh Federation was, that the provisions of the Gurdwara Act of 1925 or the amendments thereof from time to time, ought not to be taken as a basis for determining the present controversy. In nutshell, the submission of Prof. Lal Singh was, that the Gurdwara Act of 1925 and the subsequent enactments, referred to hereinabove, were political enactments to serve the purpose of the SGPC. These enactments, according to Prof. Lal Singh, were not in consonance with the provisions of the Guru Granth Sahib, and as such, cannot be the basis of the determination of the present controversy.

111. Commencing his submissions, Prof. Lal Singh asserted, that the philosophy of the Guru Granth Sahib is based on humanity, universal love and peace, as also on, equal rights and status of each and every individual. In this behalf, reference was made, by Prof. Lal Singh, to Article 14 of the Constitution of India, which, according to him, is based on similar principles. Based on the aforesaid fundamental tenet of the Sikh religion, it is submitted that the definition of the term "Sikh" under the Gurdwara Act of 1925, is unconstitutional. The first submission advanced by Prof. Lal Singh in this behalf, is based on the definition

of the term "Sikh" under Section 2(9) of the Gurdwara Act of 1925. It is pointed out that the declaration incorporated under Section 2(9) of the Gurdwara Act of 1925, envisages three fundamental characteristics of a Sikh:

- (i) A Sikh is a believer in the Guru Granth Sahib;
- (ii) A Sikh believes in the ten "gurus"; and
- (iii) A Sikh does not believe in any other religion or faith.

112. In so far as the second ingredient is concerned, it is the submission of Prof. Lal Singh, that the same is totally contrary to the Sikh tradition, because the lineage of the ten "gurus" is not the lineage of the Guru Granth Sahib. According to Prof. Lal Singh, the lineage of the known "Sikh gurus" is a regional lineage limited to the boundaries of Punjab, commencing with Guru Nanak Dev and ending with the Guru Granth Sahib. It is pointed out, that the Guru Granth Sahib incorporates and recognizes a large number of "gurus" beyond the State of Punjab. In this behalf, reference has also been made to the "Aad Granth", wherein Guru Arjan Dev himself did not incorporate the lineage of the gurus" limited to the State of Punjab, but referred to them as "mohallas", first, second, third and fifth and not as "gurus" first, second, third and fifth. The aforesaid assertion at the hands of Guru Arjan Dev, according to Prof. Lal Singh, was endorsed by Guru Gobind Singh. With this declaration, every "braham gyani" (one who has the wisdom of the entire universe), and whose "bani" (sermons) is a part of the Guru Granth Sahib, has to be accepted as having been granted the status of a "Sikh Guru". Accordingly, it is the submission of Prof. Lal Singh, that it is wrong to assert, that under Sikh tenets, there are only ten "Gurus". Actually, there are 35 "Sikh Gurus", as all those whose "bani" has been extracted in the Guru Granth Sahib, have to be counted as "Sikh Gurus". Prof. Lal Singh, accordingly, desires us to conclude, that the declaration referred to in Section 2(9) of the Gurdwara Act of 1925, that a Sikh is one who believes in ten "Gurus" is clearly contrary to the tenets of Sikh religion. Therefore, it is submitted that the Gurdwara Act of 1925 cannot be the basis of any determination at our hands.

113. Referring to the third fundamental characteristics in the declaration under Section 2(9) of the Gurdwara Act of 1925, namely, that a Sikh is one who follows no other religion or faith, it is submitted by Prof. Lal Singh, that the same is also contrary to the tenets of the Sikh religion. According to Prof. Lal Singh, the Guru Granth Sahib incorporates the "bani" (sermons) of Muslims, Hindus, Brahmins, Khatri and Untouchables. Those other than Sikhs whose "bani" has been incorporated in the Guru Granth Sahib, according to Prof. Lal Singh, never renounced their religion, though they may have been leading their lives strictly in accordance with the ideology of the Guru Granth Sahib. Be that as it may, since none of them renounced their previous religion, and yet had the status of "Sikh gurus" under the Sikh religion, the definition of the term "Sikh" under Section 2(9) of the Gurdwara Act of 1925, that a Sikh is one who does not believe in any

other religion, cannot be deemed to be in consonance with the Guru Granth Sahib.

114. It is also the contention of Prof. Lal Singh, that the SGPC politically maneuvered and manipulated the introduction of Sub-sections (10), (10-A) and (11) of Section 2 of the Gurdwara Act of 1925, defining the terms "amritdhari Sikh", "sehijdhari Sikh" and "patit" in the Gurdwara Act of 1925. It is the pointed contention of Prof. Lal Singh, that these terms are not traceable to the Guru Granth Sahib. As such, it is asserted by Prof. Lal Singh, that reference to the terms "amritdhari Sikh", "sehijdhari Sikh" and "patit" for ascertaining the definition of the word Sikh, must also be considered to be contrary to the tenets of the Sikh religion.

115. Insofar as, "amritdhari Sikh" is concerned, it is the contention of Prof. Lal Singh, that "khalsa" was created from amongst Sikhs of the "Guru" by the ceremony of "amritpan". According to Prof. Lal Singh, the concept of "khalsa" was first conceived of by Guru Ravi Dass. The concept of "khalsa", according to him, was never incorporated in the Guru Granth Sahib, nor has the ceremony of "amritpan" been referred to therein. It is, therefore, sought to be concluded by Prof. Lal Singh, that the concept of "amritdhari Sikh" is alien to the Sikh religion, and does not flow from it, nor has it any relevance to the Sikh faith. It is pointed out that an "amritdhari Sikh" is an outer face of a Sikh. According to Prof. Lal Singh, the creation of "amritdhari Sikh" is from amongst the Sikhs. Accordingly, it is submitted that no one can be an "amritdhari Sikh" unless he is first a Sikh. It is also the contention of Prof. Lal Singh, that to be a Sikh, it is not necessary to be an "amritdhari" i.e. to have taken "amrit". In this behalf, it is submitted that there were prominent Sikhs at the time of the Guru Gobind Singh, who had not taken "amrit", reference in this behalf is made to Bhai Nand Lal, Bhai Ghanaiya, Nirmale Sikhs and others. According to Prof. Lal Singh, only such Sikhs were required to take "amrit" ("khande ka amrit" or "khande-de-pahul") who were to be taken into the battlefield.

116. Our pointed attention was also invited to the term "sehijdhari" and "patit". It is pointed out that neither of the aforesaid terms can be derived from the Guru Granth Sahib. For the same reasons, as have been expressed by Prof. Lal Singh in respect of the term "amritdhari", it is submitted that the terms "sehijdhari" and "patit" are alien to the Sikh religion. Collectively, on the basis of the aforesaid submissions, it is sought to be concluded that the definition of the term "Sikh" under the Gurdwara Act of 1925, cannot be a basis of rendering a conclusion on the controversy raised in the present writ petition.

117. According to Prof. Lal Singh, the definition of the term "Sikh" as per the Guru Granth Sahib, is clear and simple. In his view, a Sikh is one who accepts the Guru Granth Sahib as his "guru" and is leading a practical life in accordance with the directions contained in the Guru Granth Sahib. It is also pointed out that any traditions, rituals, rites or ceremonies beyond the Guru Granth Sahib, are forbidden. Accordingly, it is sought to be concluded, that under the Guru Granth

Sahib, either a person is a Sikh or a non-sikh. There is nothing like a "patit Sikh" or a "sehijdhari Sikh".

118. In his written submissions, Prof. Lal Singh has made a reference to Guru Baba Farid and Guru Kabir, and has pointed out that both of them did not abide by the tenet of unshorn hair, yet their "bani" has been incorporated in the Guru Granth Sahib. Reference has also been made to a magazine "Gurmat Parkash" published by the SGPC, on the occasion of 300th birth centenary of the "Shri Guru Granth Sahib Gurta Gaddi Divas" in which there are photographs of Guru Pipa, Guru Soordas, Guru Sain, Guru Bhikhan and others, depicting that they were clean-shaved. It is, therefore, submitted that none of them could be considered to be "patit" as all of them had the status of "Sikh Guru" as their "bani" stood incorporated in the Guru Granth Sahib.

119. In order to demonstrate that hair are not an essential characteristics of the Sikh religion, reference has been made to the "bani" of Guru Ravi Dass at page 659 of the Guru Granth Sahib, wherein it is recorded, "Banke bal pag sir deri. Ih tan hoigo bhasam ki dheri". Which when literally interpreted means, that one makes his hair beautiful and wears a stylish turban on his head, but in the end, the human body shall be reduced to a pile of ashes. Reference has also been made to the "bani" of Guru Kabir at page 1365 of the Guru Granth Sahib, wherein it is recorded, "Kabira preet ik seo kee-ay aan dubhada jaa-ey, bhavai laanbay kaysh kar bhavai gharar mudhaa-ey". Literally interpreted the aforestated extract means, that when one is in love with the Lord, duality and alienation depart. It is immaterial whether one has long hair or a bald head. Referring to the "bani" (sermons) of Guru Nanak Dev at page 476 of the Guru Granth Sahib, Prof. Lal Singh brought to our notice the following stanza, "Ik jataa bikat bikrall khul ghar khovhee". Literally interpreted the aforesaid extract means, that some look hideous with their hair uncut, matted and disheveled. They bring dishonour to their family and ancestry. It is, therefore, sought to be concluded that hair cannot be considered to be an essential characteristics of the Sikh religion.

120. From the submissions made on behalf of the Sehajdhari Sikh Federation by Professor Lal Singh, it is clear that as per the perception of the Federation, the provisions of the Gurdwara Act of 1925, and even more so, those of the Gurdwara Act of 1971, are contrary to the mandate of the Guru Granth Sahib. It is also the submission of the Federation, that maintaining unshorn hair cannot be treated as one of the fundamental requirements of the Sikh religion, as the same does not flow from the Guru Granth Sahib. As such, according to the Federation, children from Sikh families who follow the Sikh religion, cannot be denied admission against seats reserved for the Sikh minority community, merely because they trim their hair, or pluck the hair of their eyebrows. Giani Harinder Pal Singh.

121. Giani Harinder Pal Singh is a preacher of the Sikh religion. He is described as an expert on "Gurbani" and Sikhism. He addressed us for a short time during

the course of hearing of this case. He had made his submissions in the Punjabi language. For our convenience, we requested him to present his view point in English. And for his convenience, we afforded him the assistance of Shri Pavit Singh Mattewal, Advocate, so as to enable him to make a presentation in English. Accordingly, Shri Pavit Singh Mattewal filed CM No. 23 of 2009, placing before us a synopsis on behalf of Giani Harinder Pal Singh. Giani Harinder Pal Singh, after his return from a foreign trip appeared before us in person and informed us, that he had come across some newspaper reports during his foreign trip which showed that the submissions made in the synopsis, on his behalf, were not in conformity with his views. He, accordingly, filed a civil miscellaneous application acknowledging the correctness of most of the submissions, but simultaneously denying the veracity of some of them. We have extracted from the two applications (one filed by Shri Pavit Singh Mattewal and the other filed by Giani Harinder Pal Singh) the uncontroverted projection of Giani Harinder Pal Singh, which is being narrated hereunder.

122. The primary emphasis in the submissions made by Giani Harinder Pal Singh is on verses of Guru Amar Dass, Guru Ram Dass and Guru Arjun Dev, taken from the Guru Granth Sahib. The verses, as also, the literal meaning thereof projected by Giani Harinder Pal Singh, are being summarised hereinafter. Reference was, in the first instance, made to the following verse at page 567 of the Guru Granth Sahib:

Terei banke loin dant risala, sohne nak jin lamre wal The literal translation of the aforesaid verse, according to Giani Harinder Singh, is to the following effect, "Your eyes are beautiful, and your teeth are delightful. Your nose is graceful, and your hair is so long.

123. Reference was then made by him, to the following verse at page 1419 of the Guru Granth Sahib:

Se darhia sachian ji gur charni langne!! andin swan gur apna andin anad rehen!! Nanak ke mooh shone sache dar dasne Mukh sache sach darhia sach boleh sach kamah!! Sacha sabda man vasia satguru mah samaha!! Its literal meaning is sought to be explained by Giani Harinder Pal Singh, in the following words, "Those beards are true, which brush the feet of the true guru. Those who serve their guru night and day, live in bliss, night and day. O Nanak, their faces appear beautiful in the court of the true Lord. True are the faces and true are the beards, of those who speak the truth and live the truth. The true word of the shabad abides in their minds; they are absorbed in the true guru."

124. The most controversial of the verses of the Guru Granth Sahib, appearing at page 1365 on the issue of hair, was also brought to our notice by Giani Harinder Pal Singh. The aforesaid verse is being extracted hereunder:-

Kabir preet ek seonke aanu dubba jaye bhawen lambe kes kar bhawen gharad munaye Its true translation as per the view of Giani Harinder Pal Singh is, "Kabeer, be in love with only that one, whose master is the Lord. The pundits,

the religious scholars, kings and landlords - what good is love for them ? Kabeer, when you are in love with the one Lord, duality and alienation depart. You may have long hair, or you may shave your head bald". According to Giani Harinder Pal Singh, it is improper to accept the literal meaning of the aforesaid verse for drawing any inferences for the present case. He pointed out that reference to long hair was made on account of the ancient practice where seekers of the Lord, would tie their hair with a branch of the banyan tree. The milk oozing out of the tree would fall on their scalp, resulting in long hair with extraordinary strength. Likewise, reference was made to the practice adopted by preachers of the Jain faith, whose hair were plucked out of their scalp. Both these practices in the words of Kabir, were irrelevant for purposes of spiritual attainment. As such, it is the submission of Giani Harinder Pal Singh, that it would be incorrect to conclude that in the verse referred to hereinabove, the intended projection of the verse was in terms of the literal translation thereof.

125. Reference was also made to the following verse at page 500 of the Guru Granth Sahib:

Kar kirpa apna daras deeje jas gavo nis ar bhor Kes sang dass Pag jharo eh manorath mor. Its true translation, according to Giani Harinder Pal Singh is, "O Nanak, my support is the creator Lord; I have renounced all other hopes. Show mercy to me, and grant me the blessed vision of your "darshan". I sing your praises night and day. With my hair, I wash the feet of your slave; this is my life's purpose." And a further reference has been made to a verse from page 810 of the Guru Granth Sahib, as under:

Tehal karo tere das ki pag jharo baal. The literal translation whereof is, "I perform service for your slave, O Lord, and wipe his feet with my hair". In all these verses, reference has been made to "kesh" (hair) in the Guru Granth Sahib. According to Giani Harinder Pal Singh, right from the time of Guru Nanak, the Sikh parameters on the issue of unshorn hair have been clear. In this behalf, reference has been made to "puratan Janam Sakhi" of Guru Nanak, wherein Guru Nanak in his discourse to Bhai Mardana at the beginning of the association, ordained him not to cut his hair, but ordained him to let them grow to their natural length, besides requiring him to abstain from the use of tobacco. Guru Nanak also repeatedly wrote in the praise of lovely long hair. According to Giani Harinder Pal Singh, in the discourse by Guru Ram Dass to Baba Sri Chand, wherein Baba Sri Chand had asked the "Guru" why he had grown his beard to such a length. In answer thereof, he was told by Guru Ram Dass, that it was to clean the feet of elderly people like you. It was pointed out on behalf of the intervener, that Guru Gobind Singh only formalized, what was already prevalent in Sikh scriptures and Sikh traditions, at the time of pronouncement of the "khalsa", as also, while issuing his "hukamnama" to the followers of the Sikh faith.

126. It is sought to be concluded by Giani Harinder Pal Singh, that wearing hair unshorn is an essential ingredient of the Sikh faith. He has expressed the view,

that only such of the followers of the Sikh faith, who have adopted the traditions of the Sikh religion, and who follow the teachings of the "Sikh gurus", are entitled to claim benefits available to Sikhs. No benefits reserved for Sikhs should go to those who break the Sikh traditions, and the preachings of the "Sikh gurus". In this behalf, reference has been made to the following verse, wherein according to Giani Harinder Pal Singh, the third "Sikh guru" Guru Amar Das explained the matter through the following "shabad" (verse) appearing at page 303 of the Guru Granth Sahib:

Aavoh sikh satgur ke pyaro gaavhu sachhe banee" (page 920 of the Guru Granth Sahib). Meaning that, Sikhs of the true "Guru" should gather together and sing the words of his preachings. The fourth "Sikh guru" Guru Ram Das says:

Poorae gur kaa hukam n ma(n)nai ouhu manamukh agiaan mut(h)aa bikh maaeiaa !!

Ous a(n)dhar koorr koorro kar bujhai anehodhae jhagarrae daye ous dai gal paaeiaa !!

Ouhu gal farosee karae bahuthaeree ous daa boliaa kisai n bhaaeiaa !!

Ouhu ghar ha(n)dtaei jio ra(n)n duohaagan ous naal muhu jorrae ous bhee lachhan laaeiaa!!

Guramukh hoe so alipato varatai ous daa paas chhadd gur pass behi jaaeiaa !!

Meaning that one who does not obey the hukam, the command of the perfect guru - that self-willed manmukh is plundered by his ignorance and poisoned by Maya. Within him is falsehood, and he sees everyone else as false; the Lord has tied these useless conflicts around his neck. He babbles on and on, but the words he speaks please no one. He wanders from house to house like an abandoned woman; whoever associates with him is stained by the mark of evil as well. Those who become Gurmukh avoid him; they forsake his company and sit near the Guru...". With the aforesaid verse, it is sought to be reiterated, that children born to Sikh parents, who do not follow Sikh norms, like wearing their hair unshorn, should not be entitled to any benefit flowing to a Sikh. Conclusion.

127. Having dealt with the historical background of the Sikh religion, legislative enactments involving the Sikh religion, the "Sikh rehatmaryada", the "Sikh ardas" and views expressed by scholars of Sikhism, we are satisfied that they all lead to one unambiguous answer, namely, that maintaining hair unshorn is an essential component of the Sikh religion. In fact, maintaining hair unshorn can be treated to be a part of the religious consciousness of the Sikh faith. It may be a matter of surprise, that in our aforesaid conclusion, we have not referred to the Guru Granth Sahib as the basis of our determination. Having heard learned Counsel for the rival parties, we arrived at the conclusion that Guru Granth Sahib is a treatise, limited to the teaching of, the moral and spiritual code of conduct to the Sikhs. The Guru Granth Sahib is for the guidance of Sikhs in their pursuit towards spiritual salvation. It does not deal with the code of conduct prescribed

for Sikhs. The code of conduct is strictly contained in the "Sikh rehat-maryada", which should be the primary basis for drawing conclusions in respect of the instant issue. However, important inferences on the subject also emerged from the other aspects referred to hereinabove. Furthermore, reference to the terms "kesh/keshas" (hair) in the Guru Granth Sahib was found to be contextually different from the issue which we are venturing to determine. This aspect of the matter has also been discussed above while recording the views of Giani Harinder Pal Singh. Undoubtedly, the Guru Granth Sahib does not make any reference to the terms "sehajdhari", "amritdhari" and "patit". The clear inference, therefore is, that the Guru Granth Sahib does not deal with the issue which is subject matter of our consideration. There may be some justification in the inferences drawn by Shri Gurtej Singh (one of the interveners) from various verses of the Guru Granth Sahib, yet it would not be incorrect to state, that the issue whether Sikhs are ordained to maintain their bodily hair unshorn, has not been expressly dealt with in the Guru Granth Sahib. We are, therefore, of the view that it would not be well founded to base our conclusions, in so far as the instant issue is concerned, on the Guru Granth Sahib. We have also intentionally not taken into consideration the views expressed by the various interveners. Their views appear to us to be based on their personal beliefs, convictions and understanding of the Sikh religion. In spite of their individual achievements in the field of Sikh religion, we were of the view that an attempt at our hands to determine the correctness or otherwise of their views, would be an exercise in futility, as we may have led ourselves into controversies which are strictly not relevant for the task in hand. In any case, there was sufficient unambiguous material available with us to render a conclusion on the issue (whether or not, keeping unshorn hair is an important aspect of the Sikh religion?). In our view, the Gurdwara Acts of 1925 and 1971 are legislative enactments, which have withstood the test of time, wherein "keshadhari" (a Sikh who maintains hair unshorn) has been incorporated as the fundamental precondition for being vested with the right to be included even in the electoral rolls. The "Sikh rehat-maryada" not only requires Sikhs to keep their hair unshorn, even an act of dishonouring hair, is taken as a tabooed practice. An act of dyeing one's hair is treated as an act of dishonouring hair. The fundamental of retaining hair unshorn is not only for adults, but is also for minors, as adults are required to maintain the hair of the children unshorn. The "Sikh ardas" also establishes the same tenet, from the fact that the keeping hair unshorn is mentioned twice in the "Sikh ardas". Scholars of the Sikh religion, be it Sikhs or non-Sikhs of Indian heritage, or foreigners believing in a religion other than Sikhism, each one of them has described the requirement to keep hair unshorn as fundamental to the Sikh religion. It would, therefore, not be incorrect for us to conclude, that maintaining hair unshorn is a part of the religious consciousness of the Sikh faith. The same view was expressed in an academic exercise carried out by the Punjabi University, Patiala.

128. During the course of recording our views, we have not deliberated on the

importance of wearing and carrying a "kirpan" because that was not the issue being examined in the present controversy. All the same, on the issue in hand reference can also be made to explanation I under Article 25 of the Constitution of India. Article 25 of the Constitution of India including the explanations thereunder, are being extracted hereunder:

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, practice 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.

A perusal of explanation I under Article 25 of the Constitution of India reveals, that wearing and carrying a "kirpan" by Sikhs is deemed to be included in the profession of the Sikh religion. During the course of examining historical facts, legislation on the Sikh religion, the "Sikh rehatmaryada", the "Sikh ardas" and the views of authors and scholars of the Sikh religion, we arrived at the conclusion that wearing and carrying of "kirpans" though an important and significant aspect of the Sikh religion, is nowhere close to the importance and significance of maintaining hair unshorn. If the Constitution of India itself recognizes wearing and carrying of "kirpans" as a part of the profession of the Sikh religion, we have no hesitation, whatsoever, to conclude that wearing hair unshorn must essentially be accepted as a fundamental requirement in the profession of the Sikh religion. For the present controversy, we hereby, accordingly, hold that retaining hair unshorn is one of the most important and fundamental tenets of the Sikh religion. In fact, it is undoubtedly a part of the religious consciousness of the Sikh faith.

129. Whether the provisions of the Gurdwara Act of 1925 are binding on the management and administration of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, is one of the important questions, which has arisen for determination in the present case. According to the learned Counsel for the petitioners, the SGPC has floated the aforesaid trust. And since, the functions,

powers and obligations of the SGPC are regulated under the aforesaid Act, it is natural to conclude, that the activities of the SGPC must conform with the provisions of the Gurdwara Act of 1925. Therefore, it is sought to be submitted, that the provisions of the Gurdwara Act of 1925 must be deemed to be binding on the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. And as such, according to the counsel for the petitioners, the definition of the term "Sikh" under Section 2(9) of the Gurdwara Act of 1925, would also be binding on the Medical College. In other words, the Medical College is obliged to admit students under the Sikh minority community quota, out of such candidates who favourably answer the definition of the term "Sikh", as has been defined in the Gurdwara Act of 1925. The process of reasoning, according to the petitioners, is sought to be illustrated thus: B is subservient to A, but C is subservient to B, therefore, C must be deemed to be subservient to A. Detailed submissions on behalf of the petitioners in respect of the instant issue have been noticed in paragraph 13 of the instant judgement. The same are not being recorded here again for reasons of brevity. The same may, however, be read here in continuation of the submissions noticed above, to fully appreciate the instant contention advanced by the learned Counsel for the petitioners.

130. In order to determine an effective answer to the question, whether or not, the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, is subservient to the SGPC, it will first have to be ascertained whether its management, administration and financial control vests with the SGPC. If the determination to the aforesaid query leads to the conclusion that it is so, according to the learned Counsel for the petitioners, the provisions of the Gurdwara Act of 1925 will be binding on the Medical College. Whilst advancing the instant submission, learned Counsel for the petitioners, has placed reliance on Sections 109 to 112 of the Gurdwara Act of 1925. The aforesaid provisions are being extracted hereunder:

109. Funds transferred to Board by Shiromani Gurdwara Parbandhak Committee.- If any sum is transferred to the Board by the Shiromani Gurdwara Parbandhak Committee, then:

(i) any portion thereof held on behalf of a Notified Sikh Gurdwara shall be paid, as soon as may be, to the committee of such gurdwara, and any portion held on behalf of any other place of worship shall be paid to such person acting on behalf of the place of worship, as the State Government may approve.

(ii) Any portion not required to be paid under the provisions of Clause (i) shall, in the first place, be used to discharge such debts of the Shiromani Gurdwara Parbandhak Committee as may be legally recoverable;

(iii) any portion remaining after the debts of the Shiromani Gurdwara Parbandhak Committee have been discharged as required by Clause (ii) shall be set apart for such religious, charitable or educational purposes as the Board in general meeting may determine, provided that any portion not so set apart within one year from the constitution of the first Board shall be handed over to

the Committee described in Sub-section (2) of Section 85 and shall form part of the funds of that Committee.

110. Funds held in Trust by the Board for specified purposes. - Every sum made over to the Board under the provisions of this Act by a committee of a Notified Sikh Gurdwara or otherwise received by the Board of a specified religious charitable, industrial or educational purpose shall be held by the Board as a trust and shall be devoted to the purpose specified.

111. General Trust Fund.- Every sum other than a sum specified in Sections 107, 109, or 110 or Sub-section (2) of Section 114 or Sub-section (8) of Section 137 shall be placed to the credit of a fund to be called the General Trust Fund out of which the Board in general meeting may from time to time make allotments for the discharge of any obligation legally incurred in connection therewith or for such religious, charitable, industrial or educational purposes as the Board may consider proper or for grants in-aid for the maintenance or service of Notified Sikh Gurdwaras.

112. Separate funds to be maintained for each Trust.- The Board shall establish and maintain a separate fund in respect of each Trust held in accordance with the provisions of Clause (iii) of Section 109 or of Section 110, and may discharge out of each such fund any obligation legally incurred in connection therewith.

A proper and effective understanding of the provisions extracted hereinabove is not possible without reference to Sections 85, 86 and 87 of the Gurdwara Act of 1925. The aforesaid provisions are, accordingly, also being extracted hereunder:

85. (1) The Board shall be the Committee of Management for the Gurdwaras known as-

(i) The Sri Akal Takhat Sahib at Amritsar and Sri Takhat Keshgarh Sahib, Anandpur;

(ii) The Darbar Sahb, Baba Atal Sahib and all other Notified Sikh Gurdwaras other than Sri Akal Takhat Sahib situated within the Municipal boundaries of Amritsar.

(iii) Sri Darbar Sahib and all other Notified Sikh Gurdwaras within the limits of Municipal area of Tarn Taran;

(iv) All the Notified Sikh Gurdwaras at Anandpur and the Gurdwaras connected therewith other than the Sri Takhat Keshgarh Sahib;

(v) The Notified Sikh Gurdwaras at Muktsar;

(vi) Gurdwara Dukhniwaran Sahib Padshahi Naumi along with Gurdwara Moti Bagh (including Gurdwara Sudha Sar) Khel Sahib, Patiala;

(vii) Gurdwara Fatehgarh Sahib (Shahidi Asthan Baba Fateh Singh ji and Baba Jorawar Singh Ji) along with Gurdwara Jotisarup, Burj Mata Gujri and Shahid Ganj situated in Harnam Nagar;

(viii) Gurdwara Padshahi Naumi at Dhamtan along with Bunga Dhamtanian near Railway Station, Patiala;

(ix) Gurdwara Guru Teg Bahadur Sahib in Jind with Gurdwaras Kharak Bhura Padshahi Naumi and Khatkar Padshahi Naumi in Tehsil Nawana;

(x) Gurdwara Ber Sahib (Padshahi Pehli) at Sultanpur Lodhi along with Gurdwaras Hat Sahib, Kothri Sahib, Sehra Sahib, Sant Ghat and Guru Ka Bagh;

(xi) Gurdwara (Padshahi Naumi and Dasmi) Damdama Sahib at Talwandi Sabo along with Gurdwaras Takhat sri Damdama Sahib, Jandsar and Bunga Kattuwalla at Sabo Ki Talwandi, Gurdwara Sri Damdama Sahib Bunga Mata Sahib Dewan Ji at Talwandi Sabo, Gurdwara Sahib Padshahi Dasmi Takhat Damdama Sahib, Bhai Bir Singh Dhir Singh, Mazhabi Singh Wala at Talwandi Sabo, Gurdwara Sahib Takhat Sri Damdama Sahib Malwai Bunga Padshahi Dasmi at Talwandi Sabo, Sri Damdama Sahib Malwai Bunga Padshahi Dasmi at Talwandi Sabo, Sri Damdama Sahib Bunga Likhansar Padshahi Dasmi, Sri Damdama Sahib Gurdwara Sri Holsar Padshahi Dasmi, at Talwandi Sabo Ki;

(xii) Gurdwara Nanakiana Sahib, Sangrur.

(2) The Board shall prepare a scheme for administration and management of the Gurdwaras described in Sub-section (1), their property, endowments, funds and income. Thereafter, this scheme may be modified or amended from time to time by a resolution of the Board passed by a majority of two-thirds of the members present in the meeting.

86. Committees of gurdwaras other than those specified in Section 85.- For every Notified Sikh Gurdwara other than a gurdwara specified in Section 85 a committee shall be constituted after it has been declared to be a Sikh Gurdwara under the provisions of this Act, or after the provisions of Part III have been applied to it under the provisions of Section 38, provided that the State Government may by notification direct that there shall be one committee for any two or more such gurdwaras specified in the notification, and may in like manner cancel or modify such notification, provided further that the State Government shall not issue, cancel or modify any such notification after the constitution of the first Board, except upon recommendation being made to it in this behalf by the Board.

(2) Notwithstanding anything contained in subsection (1), the Gurdwaras at Narnaul and Mahendragarh shall be managed by the Board.

87. Constitution of committees not specially provided for.-

(1) Every Committee shall consist of five members out of which one at least shall be a person belonging to the scheduled castes and shall be constituted as follows:

(a) The Board shall nominate the members, with their written consent of the committee of the Gurdwara or Gurdwaras, whose gross annual income does not exceed three thousands rupees who shall be residents of the district in which the

Gurdwara or one of the Gurdwaras to be managed by the Committee is situated:

Provided that the Board may, if it so decides, instead of nominating the members manage the affairs of any such Gurdwara itself in accordance with the provisions of the Act.

(b) The Committee of Gurdwara or Gurdwaras, whose annual monetary income exceeds three thousand rupees, shall consist of four elected members and one member nominated by the Board who shall be resident of the district in which the Gurdwara or one of the Gurdwaras to be managed by the Committee is situated.

If in the election, the required number of members is not elected, the Board may nominate such number of persons as have not been, elected so as to complete the Committee for such a Gurdwara or Gurdwaras; provided that the person or persons so nominated shall be the resident or residents of the district in which the said Gurdwara or Gurdwaras are situated.

(2) If the Board fails to nominate a member or members of the Committee in accordance with the provisions of Clause (a) or (b) the manager and if there is no manager, then Granthi or Granthis of Gurdwara or Gurdwaras shall either by himself or themselves or along with the nominated or elected member or members, if any, as the case may be, perform the duties of the Committee till such time as the Board nominates the required number of members of the Committee.

A perusal of Clause (iii) of Section 109 of the Gurdwara Act of 1925, extracted hereinabove, reveals that the Board shall set apart funds for religious, charitable or educational purposes "as the Board in its general meeting may determine", provided that, any portion of the said funds, not set apart within one year from the constitution of the first Board, shall be handed over to the Committee referred to in Sub-section (2) of Section 85 of the Gurdwara Act of 1925, and shall, form a part of the funds of that Committee. It is apparent from the provisions extracted hereinabove, that the funds referred to in clauses (i) and (ii) of Section 109 of the Gurdwara Act of 1925, relate to funds pertaining to the management of "gurdwaras", and for the discharge of debts of the SGPC, and for no other purpose. On the issue of funds which can be utilized by the Board for specified religious, charitable, industrial or educational purposes, referred to in Section 110 of the Gurdwara Act of 1925, it emerges from the instant provision itself, that it is mandatory that a decision in that behalf must be taken by the Board in its general meeting. It is not the case of the petitioners before this Court, that any funds have been made available by the SGPC to the Board for purposes of management, administration or for other financial affairs of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. In any case, the mandate of Section 110 of the Gurdwara Act of 1925 reveals, that the amount referred to in Section 110 of the Gurdwara Act of 1925, has to be held in trust by the Board for either of the purposes referred to therein, including educational purposes. In the

written statement filed by the respondent - Medical College, the categorical stance adopted in this behalf is, that the respondent - Medical College is not being run by the SGPC. It is also sought to be explained in the written statement, that the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, has its own members and is governed by its own trust deed. Any kind of subservience to the SGPC or the provisions of the Gurdwara Act of 1925, is vehemently denied. In the absence of any material on the record of this case, to suggest that any funds have been made available to the SGPC under Section 110 of the Gurdwara Act of 1925, for the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, it will be difficult to establish the instant issue one way or another. Therefore, in our view, from the record made available to us, no nexus between the SGPC and the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, can be stated to have been established merely from the provisions of the Gurdwara Act of 1925, referred to hereinabove.

131. The only provision that may be applicable to the facts and circumstances of the present case is Section 111 of the Gurdwara Act of 1925, wherein finances can be made available, so as to be retained by the SGPC, under the head "General Trust Fund", out of which the Board may make any allotment for discharging its obligation for running a religious, charitable or educational institution. Section 112 of the Gurdwara Act of 1925, refers to Sections 109 and 110. It is expressly delineated therein, that the Board of the SGPC is to maintain separate funds in respect of each trust. There is no material on the record of this case, that any such funds have been maintained by the Board of the SGPC, separately for the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. Therefore, no direct nexus of the SGPC or the Board is ascertainable with the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, even on the basis of Section 111 of the Gurdwara Act of 1925.

132. Another question which still arises for consideration on the issue in hand is, whether or not, an indirect nexus between the SGPC and the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, can be deemed to be established from the fact that a sum of Rs. 60 lakhs was assured as payable annually by the SGPC to the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, in the trust deed. On our asking, learned Counsel representing the respondent - Medical College produced before us the trust deed of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. The aforesaid trust deed was executed on 15.12.1992 between the founder of the respondent - Medical College and Shri Manjeet Singh Calcutta, a trustee of the said society. The recital in the aforesaid trust deed reveals, that a charitable hospital in the name and style of the Sri Guru Ram Das Hospital, Research and Medical Institute, Amritsar, was being run with effect from 17.10.1977, under the control of the SGPC. In a meeting of the Executive Board of the SGPC held on 26.1.1992 at Anandpur Sahib, it was resolved to pass on to a charitable trust to be created under the supervision of Shri Gurcharan Singh Tohra, the then President of the SGPC, the control and management of the said hospital. Accordingly, on 15.12.1992, Shri Gurcharan Singh Tohra contributed a sum of Rs. 1001/- to the said charitable trust, and gave it the name of Sri Guru

Ram Das Charitable Hospital Trust, Amritsar. Five more trustees, in addition to Shri Gurcharan Singh Tohra (the founder trustee) and Shri Manjeet Singh Calcutta (trustee, and member secretary of the trust) were named to run the trust in the manner delineated in the trust deed. Paragraph 4 of the trust deed reveals, that the term of the board of trustees would be six years. However it mandates that Shri Gurcharan Singh Tohra, i.e., the founder trustee, would be a permanent trustee for life. The trust deed nominated Shri Gurcharan Singh Tohra as the President of the trust. Thereafter, the President of the SGPC would be the ex-officio President of the trust. The trust deed also authorised the Executive Committee of the SGPC to appoint nine trustees for the next term for six years, and so on, for the future. The trust deed also allowed the founder trustee Shri Gurcharan Singh Tohra to nominate one trustee for each term during his life time. After his death, according to the provisions of the trust deed, all trustees would be nominated by the Executive Committee of the SGPC. Paragraph 21 of the trust deed reveals, that the SGPC had agreed to contribute a sum of Rs. 60 lacs annually to the trust after its registration. The aforesaid amount was required to be utilised for running and maintaining the hospital and its assets.

133. Learned Counsel for the respondent - Medical College also handed over to us, during the course of hearing, rules and regulations of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. The same was executed by the Executive Committee of the SGPC. Based on the trust deed, as well as, the rules and regulations of the trust, it is the vehement contention of the learned Counsel for the respondent - Medical College, that the SGPC does not control the administration and management of the respondent - Medical College. It is pointed out that the administration and management of the Medical College is being carried out in terms of the trust deed, read with the rules and regulations of the society. It is also pointed out that the mere fact, that the Executive Committee of the SGPC nominates all the trustees, as also, the fact that the SGPC makes a substantial annual financial contribution to the respondent - Medical College, cannot be taken as sufficient to demonstrate that the aforesaid trust is subservient to the SGPC, nor does it have the effect of rendering any limitation to the activities of the respondent - Medical College, on the basis of the provisions of the Gurdwara Act ,1925.

134. Can the annual payment of Rs. 60 lacs, by the SGPC to the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, be considered to be an expenditure incurred by the SGPC within the terms of the provisions of Sections 109 to 112 of the Gurdwara Act of 1925 ? We have considered the instant aspect of the matter, on the basis of the contentions advanced by the learned Counsel for the rival parties. Undoubtedly, annual funds for the management and administration of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, are contributed by the SGPC. Whether or not, the hospital under reference is being run exclusively on the basis of the aforesaid funds, or substantially on the basis thereof, is not ascertainable from the pleadings of this case. In fact, it may well be, that the funds annually contributed by the SGPC, are only a minuscule part of its annual

recurring expenses. All the same, it cannot be overlooked, that the SGPC makes an annual financial contribution to the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. It is also clear that the SGPC has a pervasive control in the management and administration of the affairs of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, inasmuch as the President of the SGPC is the ex-officio President of the said trust, and all the trustees are nominees of the Executive Committee of the SGPC. It can, therefore, not be a matter of debate that the SGPC is in effective and pervasive control of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. The mere fact that the trust deed notices that the control and management of the hospital was being passed on to the trust is, to our mind, inconsequential. It is also apparent from the narration of the factual position noticed above, that the SGPC came into existence prior to the promulgation of the Gurdwara Act of 1925, yet it cannot be overlooked, that after the promulgation of the Gurdwara Act of 1925, the activities, functions, duties and responsibilities of the SGPC came to be fully regulated by the said Act, even the members of the SGPC are to be elected, selected or nominated according to the provisions of the Gurdwara Act of 1925. Since the trust deed constituting the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, was executed on 15.12.1992 i.e. when the functioning of the SGPC had been subjected to the mandate of the Gurdwara Act of 1925, it will be justified to conclude, that the sum of Rs. 60 lakhs, which is being made available annually by the SGPC to the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, must be deemed to flow from the SGPC under Section 111 of the Gurdwara Act of 1925. In fact, we have no alternative, but to record the aforesaid conclusion, as the financial activities of the SGPC are fully regulated by the provisions of the Gurdwara Act of 1925. Added to this is the pervasive control of the SGPC over the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. We, therefore, find ourselves persuaded to uphold the instant submission of the learned Counsel for the petitioners to the aforesaid extent.

135. Based on the conclusion, that the SGPC has effective and pervasive control over the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, we shall proceed to determine, whether or not, the provisions of the Gurdwara Act of 1925 are binding for running the affairs of the Sri Guru Ram Das Charitable Hospital Trust, Amritsar. The statement of objects and reasons of the Gurdwara Act of 1925, reveals that the Gurdwara Act of 1922, failed to satisfy the aspirations of Sikhs for various reasons. One of the significant failures of the Gurdwara Act of 1922 was that it did not establish any permanent committee(s) for the management of "Sikh gurdwaras" and shrines. Additionally, it did not provide for speedy confirmation of changes already introduced by the reforming party, in the management of the places of worship, over which Sikhs had obtained effective control. The Gurdwara Act of 1925, was therefore, aimed at providing a scheme of Sikh management, secured by statutory and legal sanction for places of Sikh worship. In other words, the Gurdwara Act of 1925, entrusted the administration and management of "Sikh gurdwaras" in the hands of Sikhs. The scheme of

management provided in the Gurdwara Act of 1925, contemplates the constitution of a Central (Sikh) Board of Control, consisting principally all elected members, and the formation of committees of management whose functions have been explicitly described. With the instant introduction, we shall proceed to deal with the submission advanced by the learned Counsel for the petitioners.

136. The provisions of the Gurdwara Act of 1925, in our view, were aimed solely at regulating the management and administration of "Sikh gurdwaras". The boards and committees constituted thereunder, were also for the same objective, namely, for the management and administration of "Sikh gurdwaras". Although, as noticed hereinabove, reference has been made in certain provisions of the Gurdwara Act of 1925, whereby funds can be allocated for "religious, charitable or educational purposes" to bodies and organisations like the Sri Guru Ram Das Charitable Hospital Trust, Amritsar, yet the provisions of the Gurdwara Act of 1925 do not lay down any parameters or regulations in connection with the activities or affairs of such bodies or organisations. Activities which are "religious" in nature are quite different from those which are "educational". The Gurdwara Act of 1925 was enacted purely for "religious" activities i.e., principally for regulating the administration and management of "Sikh gurdwaras". The provisions of the Gurdwara Act of 1925 cannot, in our view, unnecessarily be extended to "educational" activities. The definition of the term "Sikh" contained in Section 2 of the Gurdwara Act of 1925, must be deemed to have been drawn with the clear objective of interpreting the various provisions of the Gurdwara Act of 1925 and for no other purpose. Therefore, the term "Sikh" as defined under the Gurdwara Act of 1925, must be limited to the issue of management and administration of the "Sikh gurdwaras" only. We, are, therefore, of the prima-facie view, that the provisions of the Gurdwara Act of 1925 cannot be extended to determine the controversy being adjudicated upon.

137. Despite the conclusion recorded by us hereinabove, we would still like to examine the veracity of the submission advanced by the learned Counsel for the petitioners, that for purposes of admission to the respondent - Medical College, the management of the respondent - Medical College could not incorporate any further condition for determining, whether or not the petitioners are Sikhs, besides the ingredients contained in the definition of the term "Sikh" in Section 2(9) of the Gurdwara Act of 1925. Detailed submissions on the instant issue, as have been advanced on behalf of the petitioners, have been noticed in paragraph 14 of the instant judgement. The same be read here as well, so as to fully appreciate the issue canvassed on behalf of the petitioners. As noticed earlier, the instant submission made on behalf of the petitioners, is with the rider that Sub-sections (10), (10-A) and (11) of Section 2 of the said Act, should not be read along with Section 2 (9), to determine the true meaning of the term "Sikh" under the provisions of the Gurdwara Act of 1925.

138. We shall now examine the aforesaid submission advanced by the learned Counsel for the petitioners, so as to determine whether the petitioners satisfy the

requirements of Section 2(9) of the Gurdwara Act of 1925, wherein a Sikh is one, who professes the Sikh faith, and in case of any doubt whether or not such person professes the Sikh religion, he/she shall be deemed to be a Sikh, if he files an affidavit declaring that he is a Sikh; that he believes in the ten "Sikh gurus", and in the Guru Granth Sahib; and he does not believe in any other faith or religion. The submission advanced by the learned Counsel for the petitioners, is simple and straight forward. It is the contention of the learned Counsel for the petitioners, that all the petitioners are born in Sikh families. Their parents, as well as, their grandparents were followers of the Sikh faith. They have filed individual affidavits affirming, that they are Sikhs, that they believe in the ten "Sikh gurus", as also, in the Guru Granth Sahib, and that they do not have any allegiance to any other religion or faith. As such, it is the contention of the learned Counsel for the petitioners, that the petitioners should be treated as "Sikhs" under the provisions of the Gurdwara Act of 1925. It is also the contention of the learned Counsel for the petitioners, that it is not open to the SGPC or the respondent - Medical College to define the term "Sikh" in any manner other than the manner in which the aforesaid term has been defined under Section 2(9) of the Gurdwara Act of 1925.

139. The term "Sikh" has been defined in Section 2(9) of the Gurdwara Act of 1925. The petitioners desire us to limit our examination to Section 2(9) aforesaid so as to arrive at the conclusion, one way or the other, whether the petitioners should be treated as Sikhs for purposes of the present controversy. On the basis of Section 2(9) aforesaid, it is contended, that the petitioners are Sikhs, and that, no contrary view is possible. Even if the instant submission made by the learned Counsel for the petitioners, namely, that a person who fulfils the ingredients contained in Section 2(9) of the Gurdwara Act of 1925, should be deemed to be Sikh, for the present controversy as well, for arguments sake, is accepted, we are of the view that the inference drawn on behalf of the petitioners would not lead to the conclusion, that the petitioners are Sikhs. Section 2(9) of the Gurdwara Act of 1925 mandates, that if a question arises whether a person is or is not a Sikh, he will be deemed to be a Sikh, if he files an affidavit in the format stipulated in the aforesaid provision itself. The prescribed format requires the concerned person to affirm that he is a Sikh ("I solemnly affirm that I am a Sikh..."). Would a person who falsely files such an affidavit, have the right to be treated as a Sikh ? Undoubtedly, only a true affirmation can lead to such an inference. To be a Sikh, one will have to follow the prescribed tenets of the Sikh religion. Having dealt with the historical background of the Sikh religion, legislative enactments involving the Sikh religion, the tenets of the Sikh religion which have been prescribed in the "Sikh rehatmaryada" (the Sikh code of conduct and conventions), the "Sikh ardas" and the views expressed by scholars of Sikhism, we have already recorded our conclusion above, that retaining hair unshorn is an important and essential tenet of the Sikh religion. We must, however, notice here another aspect of the matter projected before us during the course of hearing. Efforts were made to persuade us to arrive at the

conclusion, that a true Sikh must have on his person at all times the five prescribed "kakkars" (articles of faith) or Ks. The five "kakkars" include "kesh/keshas" (unshorn hair), "kirpan" (sword), "kachhera" (knicker bocker), "kara" (steel ring) and "kangha" (comb). Can a person who does not even follow the most basic and elementary requirement of having on his person at all times the five "kakkars", be accepted as a Sikh? The "Sikh rehat-maryada" considers an act of dishonouring hair as the gravest of the tabooed practices, as it is mentioned as the first of such tabooed practices. Can a person who dishonours bodily hair, by trimming them or by plucking them, be accepted as a Sikh? Through the "Sikh ardas", a Sikh every morning and evening, and at all important occasions, addresses a prayer to God, seeking besides others, the blessing of retaining bodily hair unshorn to his last breath. Can a person who does not maintain his hair unshorn be accepted to be truthfully a Sikh? In our considered view, only a truthful affirmation in the format depicted under Section 2(9) of the Gurdwara Act of 1925, can alone confer the claim of being a Sikh. And that, if the affirmation is untrue, no such inference can be drawn. Needless to mention that an affidavit is a written statement on oath, and as such, an affidavit is acceptable only if it is true. It is not within the scope of the present consideration to determine, who is, or is not, a Sikh. We have, therefore, intentionally posed the aforesaid questions. These questions were repeatedly posed in the mail received by us, and also during the course of hearing. We wish to expressly record that none of these issues arise for our consideration. Our present determination should, therefore, not be treated as an answer to the questions posed.

140. The sole consideration at our hands, in so far as the present case is concerned is, whether or not, keeping hair unshorn is an important fundamental tenet of the Sikh religion. We have repeatedly concluded hereinabove, and shall also be recording the same conclusion hereinafter, while dealing with the other submissions advanced on behalf of the petitioners, that retaining bodily hair unshorn, is one of the most essential tenets of the Sikh religion. And as such, if a Sikh organisation or body, decides not to extend any benefit which is otherwise available to a Sikh, to a person who does not maintain his hair unshorn, its determination would be perfectly legitimate. In view of the above, we are of the considered view that an affidavit sworn at the hands of an individual, under Section 2(9) of the Gurdwara Act of 1925, who does not keep his hair unshorn, may legitimately be considered to have filed a false affidavit. Thus viewed, on the basis of the undisputed factual position, that all the petitioners indulge in trimming their hair or plucking hair of their eyebrows, they can legitimately be denied of a benefit otherwise available to Sikhs. The instant conclusion of ours is based on an exclusive examination of the claim of the petitioners under Section 2(9) of the Gurdwara Act of 1925.

141. We have dealt hereinabove with Section 2(9) of the Gurdwara Act of 1925. In our view, however, for a wholesome definition of the term "Sikh" for the purposes of the Gurdwara Act of 1925, Sub-sections (9), (10), (10-A) and (11)

of Section 2 of the Gurdwara Act of 1925, must be read collectively. This aspect of the matter has been examined extensively while dealing with the legislative enactments involving the Sikh religion. The submissions made by the rival parties, as also, the affidavits filed on behalf of the SGPC, were also taken into consideration. The solitary additional submission, which has not been taken into consideration, was the allegation made at the behest of the petitioners, that the addition of Sub-sections (9), (10), (10-A) and 11 of Section 2 of the Gurdwara Act of 1925, was politically motivated, and was based on the policy of divide and rule adopted by the British. Detailed submissions made on behalf of the petitioners have also been recorded in paragraph 12 hereinabove. While dealing with the aforesaid contention, all that needs to be stated is, that the bold submission made at the hands of the petitioners is not based on any authentication, whatsoever. In the absence of any supportive material, it would not be proper for us to accept the bold statement referred to above, or record any finding on the submission made by the learned Counsel for the petitioners. For reasons of concision, we do not wish to record the same reasons herein once again, except to reiterate, that all the provisions of a legislative enactment have to be examined harmoniously to give legislative effect to each of the provisions. It is, therefore, not possible for us to accept the contention of the learned Counsel for the petitioners, that Section 2(9) of the Gurdwara Act of 1925, should be the sole basis for interpreting the true connotation of the term "Sikh".

142. Another contention advanced by the learned Counsel for the petitioners, was based on the notification dated 3.4.2001 (relevant extract whereof has been reproduced in paragraph 15 above). Relying on the aforesaid notification, it is the contention of the petitioners, that the notification itself should be considered as the magna-carta for determining the eligibility of the candidates under the Sikh minority community quota, without any additions thereto. It is the submission of the learned Counsel for the petitioners, that if the notification issuing authority desired to restrict admissions to only such candidates, who wore their hair unshorn (who did not trim their hair or pluck hair of their eyebrows), the same would have been expressly so depicted in the notification. It is, therefore, the submission of the learned Counsel for the petitioners, that admissions should be based on the perception of the term "Sikh" as it is commonly understood. In this behalf, it is submitted that presently Sikhs can be classified into three categories, firstly, Sikhs who wear their hair unshorn, secondly, Sikhs who trim their beard or pluck hair of their eyebrows, but otherwise followed the Sikh religion, and thirdly, Sikhs who are clean shaved or pluck hair of their eyebrows, but otherwise followed the Sikh religion. In the absence of any distinction under the notification dated 3.4.2001, it was not permissible for the Medical College to restrict the term "Sikh" to only such candidates, who did not trim their hair, or who did not pluck hair of their eyebrows. In fact, according to the learned Counsel for the petitioners, Sikhs falling in all the three categories, referred to hereinabove, must be treated as eligible for admission under the Sikh minority community quota. Reference to the instant submission has also been made in paragraph 14

of the instant judgement.

143. Having considered the submission advanced by the learned Counsel for the petitioners, we are of the view that the contention noticed in the foregoing paragraph, deserves to be rejected on two counts. Firstly, the prospectus issued by the respondents expressly highlighted the fact, that only such candidate would be considered eligible, who "...practices the Sikh faith and maintains Sikh appearance i.e. he/she does not cut or trim their hair...". Stated in other words, the prospectus clearly defined the essential pre-requisites for admission under the Sikh minority community quota. Since the aforesaid precondition for eligibility was depicted in the prospectus itself, and since all the petitioners applied for admission under the Sikh minority community quota, without raising any contest or protest against the aforesaid precondition, they cannot now be allowed to contest the validity of the same when the entire process of selection is over, after their claim has been rejected on the ground, that they do not fulfil the aforesaid precondition. This contention was advanced during the course of hearing, by Shri Chetan Mittal, Additional Advocate General, Punjab, who inter-alia relied on the judgement rendered by the Supreme Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, wherein the Apex Court held as under:

Before dealing with this contention, we must keep in view the salient fact that the petitioners as well as the contesting successful candidates being concerned respondents herein, were all found eligible in the light of marks obtained in the written test, to be eligible to be called for oral interview. Upto this stage there is no dispute between the parties. The petitioners also appeared at the oral interview conducted by the concerned Members of the Commission who interviewed the petitioners as well as the concerned contesting respondents. Thus the petitioners took a chance to get themselves selected at the said oral interview. Only because they did not find themselves to have emerged successful as a result of their combined performance both at written test and oral interview, that they have filed this petition. It is now well settled that if a candidate takes a calculated chance and appears at the interview then, only because the result of the interview is not palatable to him he cannot turn round and subsequently contend that the process of interview was unfair or Selection Committee was not properly constituted. In the case of *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, it has been clearly laid down by a Bench of three learned Judges of this Court that when the petitioner appeared at the examination without protest and when he found that he would not succeed in examination he filed a petition challenging the said examination, the High Court should not have granted any relief to such a petitioner. Reliance was also placed on the judgement rendered by a Full Bench of the Madras High Court in *Dr. R. Murali v. Dr. R. Kamalakkannan and Ors.* 2000(2) SCT 371 Mad, wherein the question posed in paragraph 36, was to the following effect:

36. Learned Counsel Mr. C. Selvaraj submitted that fixation of quota is in the

nature of concession and writ petitioners have with open eyes applied for admission on the basis of prospectus and also have written examination are incompetent to challenge that policy, once they were not selected. Counsel submitted that principle of estoppel bars writ petitioners from challenging the same. After referring to various judgements of the Apex Court, including *Kumari Chitra Ghosh and Another Vs. Union of India (UOI) and Others*, *State of Uttar Pradesh and Others Vs. Pradip Tandon and Others*, *Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others*, *Dinesh Kumar v. Moti Lal Nehru Medical College, Allahabad AIR 1986 SC 1877*, *Mohan Kumar Singhania v. Union of India : AIR1992SC1*, *Dr. Preeti Srivastava v. State of Madhya 1994(4) SCT 133*, *Ritesh R. Sah Vs. Dr. Y.L. Yamul and others*, *Union of India and Another Vs. N. Chandrasekharan and Another*, the Full Bench in paragraph 55 answered the question by holding that the "writ petitioners are not entitled to challenge the selection process after having participated in the written examination on the principle of estoppel." Reliance was also placed on a judgement rendered by a Division Bench of this Court in *Yoginder Singh Yadav v. State of Haryana 2002 (2) SCT 281*, wherein it was, inter-alia, held as under:

In the circumstances, the petitioners appear to have raised grievance to assail the result of the entrance test only when they did not find the result favourable to them. It is well settled that a candidate who has submitted to the selection process and has participated and was considered cannot challenge the same if subsequently the result of the selection is not favourable to him. It has been so held in the decision of the Supreme Court in *Madan Lal and Others Vs. State of Jammu and Kashmir and Others*, and *Mohan Lal Aggarwal and Others Vs. Bhubaneswari Prasad Mishra and Others*. We are in agreement with the view expressed by Shri Chetan Mittal, Advocate. We are satisfied that it is not open to the petitioners to raise the instant issue at this stage, as they acquiesced to the precondition for eligibility under the Sikh minority community quota. It does not lie now in their mouth to raise a challenge thereto, having been found unsuccessful.

144. Besides the aforesaid technical basis for not accepting the aforesaid contention of the learned Counsel for the petitioners, we are satisfied, that the instant plea is even otherwise not acceptable even on merit. In the deliberations conducted by us, we have arrived at the conclusion, that retaining hair unshorn is a fundamental tenet of the Sikh religion, and as such, the prescription of the aforesaid requirement as a precondition for eligibility under the Sikh minority community quota, is fully justified. The instant conclusion has repeatedly been drawn, while dealing with the other issues canvassed on behalf of the petitioners, and need not be repeated here all over again. Therefore, even in terms of the notification, we are satisfied that it was open to the authorities to restrict admission under the Sikh minority community quota, only to such candidates, who maintained "Sikhi swarup" i.e., for those who kept their hair unshorn.

145. The next issue arising for consideration, is based on the submission of the

learned Counsel for the petitioners, that the requirement of not trimming hair, as also, not plucking hair from eyebrows, can not be permitted to adversely affect the vital rights of the petitioners, as all the petitioners are minors. According to the learned Counsel for the petitioners, since the petitioners are minors, they cannot be held to be blameworthy for their actions. Submissions on the instant issue, advanced on behalf of the petitioners have also been noticed at the beginning of paragraph 16 of the instant judgement. Learned Counsel for the petitioners posed himself a number of questions to emphasise the triviality of the issue. What have the petitioners done ? What crime have the petitioners committed ? Why is the Medical College hell bent on destroying the petitioners career? Is it legitimate to deny the expectations of the petitioners merely because they have been violating minor/trivial norms connected with the profession of the Sikh religion? These and similar other allied questions have been posed to provoke our conscience, for a determination favourable to the petitioners. It is the vehement contention of the learned Counsel for the petitioners that the parents, as well as, the grandparents of the petitioners are Sikhs. The petitioners are undisputedly born in families pursuing the Sikh religion for generations. All the petitioners believe in the Guru Granth Sahib, as also, the ten "Sikh gurus". None of them is a follower of any religion/faith other than the Sikh religion. As such, according to the learned Counsel for the petitioners, the petitioners cannot be denied any benefit available to a Sikh. Learned Counsel, in order to support his contention, has placed reliance on the Juvenile Justice (Care and Protection of Children) Act, 2000, so as to contend that the liability of a minor who commits even a criminal offence, irrespective of the heinous nature thereof, is entitled to leniency under the Indian system of law. Likewise, it is submitted that the petitioners should be shown leniency for their lapse in trimming their hair or plucking hair from their eyebrows (as the case may be) and be allowed admission under the Sikh minority community quota, on account of their superior claim based on their higher position in the merit list. According to the learned Counsel, the petitioners are ready and willing to make an unqualified commitment of good conduct in future, so as to regulate their lives according to the "Sikh rehat-maryada".

146. Although, the instant submission advanced by the learned Counsel for the petitioners seems to be attractive on first blush, it is not possible to accede to the aforesaid proposition canvassed on behalf of the learned Counsel for the petitioners. In our view, it is an absolutely out of context and a misnomer to canvass, that minors are in any manner exonerated or treated with leniency, in respect of their criminal liability in this country. The legislation in respect of minors committing questionable criminal acts under the Juvenile Justice (Care and Protection of Children) Act, 2000, are not exonerated or treated with leniency for their acts. Under the aforesaid legislative enactment, certain provisions have been made for juveniles (i.e. a boy or a girl who has not completed 18 years of age). A juvenile proved to have acted in conflict with law, is convicted and appropriately punished. Penalties including imprisonment, have

been prescribed, depending on the gravity of the act. The penalty to be suffered by a juvenile is not the one prescribed for an adult. The penalty for a juvenile is toned down on account of his age. A juvenile's minority status is not a basis for escaping the consequential penal action prescribed. In our considered view, the illustrative reference made by the learned Counsel for the petitioners, is inapplicable to the present controversy. We shall now deal with the submission from another prospective. Undoubtedly, the petitioners have not committed any crime, or any act which can be treated to be in conflict with law. Their only lapse is that they have not maintained "Sikhi swarup". In other words, boys amongst the petitioners have indulged in trimming their hair, and girls amongst the petitioners have been plucking hair from their eyebrows. These aberrations, according to the petitioners, cannot be included in the same bracket as an act in conflict with law. The petitioners are out of families, which have for generations followed the Sikh religion, and as such, are entitled to be treated as Sikhs. We are of the view that the aberrations at the hands of the petitioners cannot be ignored. The acceptance of the plea advanced by the learned Counsel for the petitioners, can lead to consequences which could frustrate the cause sought to be pursued. A minority community can lay down standards of acceptance, so as to persuade followers of the said community (religious or linguistic) to adhere to norms treated as fundamental/essential therefor. The instant controversy is of a like nature wherein a religious minority community desires to limit the benefit of reservation, for such of the members of its community only, who adhere to norms treated as fundamental and integral by it. As already concluded above, retaining hair unshorn is an essential component of the Sikh religion. Maintaining hair unshorn is a part of the religious consciousness of the Sikh faith. If the said religious community wishes to enforce the aforesaid norm as a precondition for admission, there is nothing wrong about it. We, therefore, find no merit in the contention of the learned Counsel for the petitioners, in so far as the instant submission is concerned.

147. The submission examined above, can be viewed from another angle also. The action attributed to the petitioners, is certainly not in conflict with law. But then the question to be determined is, whether their actions are in conflict with the tenets of the religion, on the basis whereof they are claiming their right. For an issue of religion, an action cannot be bestowed with legitimacy, merely because the action is forward-looking and non-fundamentalist. Religion is a package of beliefs or doctrines which all those who adopt the particular religion, are expected to follow. The issue is not of logic, but of faith. The triviality of the aberration, pleaded on behalf of the petitioners would depend on the importance of the tenet violated. If the tenet concerned is of fundamental importance, it is legitimate for the followers of the faith, to treat the same as unpardonable. The legitimate expectation of the followers of a religion, has to be in consonance with the prescribed norms of the code of conduct, which should be strictly adhered to. In view of the respective submissions advanced on behalf of the rival parties, it is apparent that the legitimate expectations of the two sides are directly in conflict.

But then, the basis of the claim for admission by the petitioners under the Sikh minority community quota seats, is on the foundation of their religious faith. The legitimate expectations of the religious faith must, therefore, have primacy. Since we have already concluded hereinabove, that maintaining hair unshorn is a fundamentally important tenet of the Sikh religion. Maintaining hair unshorn is a part of the religious consciousness of the Sikh faith. It is clear, that the legitimate expectations of those who follow the Sikh faith would be, that others in the fold, adhere to the said fundamental tenet. As already noticed hereinabove, the historical background of the Sikh religion, legislative enactments involving the Sikh religion, the "Sikh rehat-maryada", the "Sikh ardas" and the views expressed by scholars of Sikhism, it is a mandate to all Sikhs that they should maintain their hair unshorn. Not only that, under the "Sikh rehat-maryada" a Sikh is not permitted to dishonour hair, or even to harbour any antipathy to hair of the head with which a child is born. Dyeing one's hair is considered as an act of dishonouring hair. Transgression of these norms, is treated as "tabooed practice", which is condonable only after suffering a chastisement prescribed. In the aforesaid view of the matter, the precondition under reference prescribed for admission to seats reserved for the Sikh minority community quota can neither be considered trivial, nor the insistence thereof as a precondition for eligibility, as unreasonable.

148. Another contextually similar submission, as the one dealt with by us hereinabove, advanced on behalf of the petitioners was, that this Court should strike down the action of the Medical College in allowing admissions under the Sikh minority community quota, only to such candidates who maintain "Sikhi swarup" i.e. candidates who retain their hair unshorn i.e., candidates who do not trim their hair or pluck hair of their eyebrows. Learned Counsel for the petitioners contended, that the purpose of reservation for a religious minority community is to take the specific minority community progressively forward, so that persons following the religious faith find a better place for themselves in society. Norms which are derogatory to the interest of the minority community, cannot be permitted to be implemented, and therefore, according to the learned Counsel for the petitioners, this Court should direct the Medical College to overlook the norms of the nature referred to hereinabove, while regulating admissions in favour of those who are more meritorious, rather than in favour of those who are less meritorious. Firstly, it is the contention of the learned Counsel for the petitioners, that more meritorious candidates deserve a preference over less meritorious candidates, and as such, the petitioners who follow the Sikh religion just like other selected candidates, must be given preference over them on account of their higher merit. Otherwise, the action of the Medical College will not be considered to be progressive. Denial of the aforesaid would be considered to be retrograde or regressive even for those following the Sikh religion. And as such, it will have the effect of taking the community backward rather than forward. Secondly, it is the submission of the learned Counsel for the petitioners that the delinquency, if any, committed by the petitioners is trivial. In fact,

majority of the children belonging to the Sikh minority community are known to be indulging in actions similar to those attributed to the petitioners, on the basis whereof the petitioners are being denied admission. It is the submission of the learned Counsel for the petitioners, that the tenets of a religion should be construed while keeping in mind the actions of the majority, rather than a minuscule minority of the said community. Submissions on the instant issue, advanced on behalf of the petitioners, have also been noticed in the latter part of paragraph 16 of the instant judgement.

149. In spite of impressive submission advanced at the hands of the petitioners, it is not possible for us to accept the same. Whilst dealing with the issue of religion, for determining whether or not, it is permissible for this Court to enter into the arena of religion, as also, to determine whether maintaining hair unshorn is a fundamental aspect of the Sikh religion, we deliberated on the issue now being canvassed at the hands of the petitioners, on the basis of the legal position declared by the Supreme Court. In the process of analysis, we were persuaded to conclude that a Court, in case of a conflict, even on an aspect relating to religion, can enter into the religious thicket to determine its do's and don'ts (of the religion), by relying upon the views expressed by the spokespersons of the said religion. It is not for a Court to make a choice of something which it considers as forward-looking or non-fundamentalist. It is not for the Court to determine whether the issue being examined would lead to the inference, that the aspect is prudent or progressive or regressive. Religion must be perceived as it is, and not as another would like it to be. The followers of a faith do not allow their beliefs to be questioned. Once a Court arrives at the conclusion that a particular aspect of a religion, is fundamental and integral, as per the followers of the faith, it must be given effect to, irrespective of the views expressed on the said issue, based either on science or logic. It is not for the Court to determine whether it is forward looking or retrograde. Looking for an approach which would make the religion more acceptable to the present social though of a forward looking section, shall certainly not be right. While dealing with the submission advanced on behalf of the petitioners, as has been noticed in the foregoing paragraph, we are of the view that the instant submission advanced on behalf of the petitioners is unacceptable for the same reasons as have been recorded by us while answering the immediately preceding contention advanced on behalf of the petitioners. Since we have arrived at the conclusion that retaining hair unshorn is a fundamental tenet of the Sikh religion, we are liable to hold, that the prescription of the precondition of maintaining "Sikhi swarup" is a permissible precondition for admitting students under the Sikh minority community quota.

150. Having dealt with the submissions deliberated upon hereinabove, we will now deal with the last of the submissions advanced on behalf of the petitioners. In fact, the instant submission was the first to be canvassed on behalf of the petitioners. We have chosen to deal with it last of all for the reasons which shall presently emerge. Relying upon the judgement rendered by the Supreme Court

in *Islamic Academy of Education v. State of Karnataka* JT 2003(7) SC 1, learned Counsel for the petitioners vehemently contended, that minority educational institutions while granting concessional admissions to the minority community, could not do so arbitrarily. Even under the minority community quota, admissions have to be regulated on the basis of merit. The instant issue canvassed on behalf of the learned Counsel for the petitioners, has been noticed in paragraph 7 above. The relevant part of the judgement in *Islamic Academy of Education*'s case (*supra*) has also been extracted in paragraph 7. The submission advanced on behalf of the petitioners, as has been noticed in paragraph 7, may be read here as well.

151. We have considered the claim of the petitioners for admission, to the seats reserved for the Sikh minority community on the basis of their claim of superiority, on account of their higher position in the merit list. The objection to the claim of the petitioners for admission, in so far as the respondents are concerned, is based on the fact, that the petitioners were considered ineligible under the Sikh minority community quota, and as such, their claim could not be considered for admission by way of reservation. In the deliberations recorded in furtherance of the various submissions advanced by the learned Counsel for the petitioners, we have already concluded hereinabove, that the Medical College was fully justified in not considering the candidature of the petitioners under the Sikh minority community quota, as they did not fulfil the prescribed preconditions for eligibility under the said quota. Stated simply, the petitioners are claiming admission under a quota for which they are not even eligible. This obviously cannot be allowed. Thus viewed, no benefit can flow to the petitioners on the basis of the decision rendered by the Supreme Court in *Islamic Academy Education*'s case (*supra*). Accordingly, in our view, the claim of the petitioners for admission under the Sikh minority community quota is devoid of any merit.

152. During the course of motion hearing, seven questions of law were framed at the behest of the learned Counsel for the petitioners. They were extracted in the motion Bench order dated 10.9.2008. The said seven questions, which the petitioners desired to press, have been extracted in paragraph 12 above. At that juncture, learned Counsel for the petitioners had possibly desired to press the same, in the manner and tenor recorded in the order dated 10.9.2008. We have recorded hereinabove, our conclusions on the issues actually canvassed before us. Although, the issues pressed during the course of hearing, may appear to be different, yet a closer examination of the determination reveals, that even the questions framed have principally been adjudicated upon, although there is apparently a difference in the manner of their projection. Needless to mention that all the issues raised during the course of regular hearing have been dealt with in the manner they were canvassed.

153. In a judgement like the one in hand, it would have been necessary for us to record a compilation of our conclusions, so as to summarise our findings in respect of the different issues dealt with. We are, however, of the view that in

view of the index provided at the beginning of the instant judgement, our analysis and conclusions on the different aspects dealt with, are easily accessible. For reasons of brevity, therefore, we refrain from recording our conclusions all over again.

154. For the reasons recorded hereinabove, the instant writ petition is dismissed.