Sikh Legal System

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**Background**

Sikhism is recognized as the fourth largest religion in India. Its founder was Guru Nanak in 1496 A.D and has been in existence for approximately over five hundred years. In India, the Sikhs majorly occupy the Punjab but others are also found in other parts of the continent. Sikhs have had a great influence in the country despite being recognized as a minority group. This has been possible through representation at various levels of governance. For instance, there was Gyani Zail Singh who was the seventh president of India and who also a representative of the Sikhism traditions in the council of ministers in India. The implication of the presence of these Sikhism leaders in the council is that they had some level of influence in the legal system of the country (McLeod, 2010).

The legal system of the Sikhs is largely influenced by its religion. Sikhism is described as a prophetic religion unlike many of other religions that are mystic. Prophetic religion means that the will of the Supreme Being is delivered to the followers of the religion through messengers. The followers should show total submission to the Supreme Being. In Sikhism, the messengers are referred to as the Gurus. The term Gurus means enlighteners in Sikhism religion. The legal system of this community is highly influenced by the religious traditions. Sikhism draws guidance in law formulation from the sacred texts which include Hukam Razai chalna Nanak Likyha nal. The founder of the religion emphasized that this is a divine law and therefore the people should show absolute obedience.

The Indian constitution has made an attempt to subdue or perceive Sikhism as a religion with a subordinate status because unlike other religions that arose from the East, it is the only prophetic religion. This has been accorded a well legal explanation in Explanation II of article 25 of the Indian constitution.

Sikhism jurisprudence is highly based on the religion. Through the concept of guruship, it is evident that the God’s commands were supposed to guide the followers of Sikhism. The commandments that the Supreme Being expected the followers to follow have been outlined in the Guru Granth Sahib. The religion is, therefore, a strong source of Sikh law and one of the most important aspects that are considered when it comes to the provision of sanctions in Sikh legal institutions (McLeod, 2010).

Besides, religion also plays an important role in the Sikh legal system. Research shows that the Sikhs pay close attention to the ways of life of the Gurus because they were God’s messengers and therefore they must have conducted themselves in ways that are acceptable to Him. The way of life of Gur Maryada is considered an ideal model of how a Sikh is supposed to conduct himself of herself. The code of conduct in any community is used as a way of making a judgment as to whether a community member is obeying the laws of the community which are depicted in the community’s legal system or not. The code of conduct is in a way depicted in the legal system because when people go against the code, there are usually legal ramifications.

The doctrine of Gurmatta is one of the religious related aspects of Sikh Jurisprudence. The doctrine is usually highly useful in circumstances in which Sikh legal law seems not to serve the purpose. The implication of this is that there are times when the jurists may find it impossible or have doubts when applying the legal law. In such occasions, the doctrine is relied upon by the jurists because it is believed to offer useful solutions to issues affecting the Sikhs. The jurists are normally knowledgeable in the tenets of the religion and also in law.

Equality among human beings is a religious aspect of the Sikh legal system. The legal system has various provisions for the treatment of men and women. The founder of Sikhism argued that women should not be mistreated because they are the people who gave birth to the kings. He also claimed that celibacy was not in order because it enslaves the women while marriage brings salvation to them. The Equal treatment of human beings in this religion is supported by the legal system.

Besides, code of conduct, the Sikh religion also provides a dietary code of conduct which provides the basis for the formulation of the community’s legal system. According to this legal code, the Sikhs should not indulge in drug and substance abuse and consumption of halal meat among others. According to the Sikhism religious beliefs eating of halal meat entails complete draining of blood from the animal because of the cutting of the jugular vein. This provision is considered to be part of the personal law because it is universally accepted by the community (McLeod, 2010).

From the above precepts, it is possible to conclude just like in Islam law; religion has played a critical role in shaping and in the formulation of the Sikhism legal system. Indeed, without the religion, the lawmakers will have faced a great challenge in the formulation process and also in the implementation of the law. The religious readings which were provided for by the various Gurus are being used by present leaders in the formulation of the human made laws.

**Legal system of the society**

Sikhs are known for truthfully abiding by the laws of the land in which they reside. However, in 1709 A.D, under the leadership of Banda Singh, the Sikhs got their own state which they had fought for many days. After the community became an independent nation, it could not continue operating on the Indian law and therefore it became necessary to establish its legal system. The independent state occupied Punjab. Upon his death, the Sikh’s independence was threatened by the Muslim government of Hindustan. After approximately fifty years of suffering and torture, the Sikhs regained their independence and now fully settled in their land.

The Sikh jurisprudence has its basis in a number of things. Some of these include Sikh customs most of which are dictated by the religion, customary laws, Bhai Gurdas writings, Bhai Nand Lal writings, Guru Granth Sahib and Dasam Granth among others. The legal system governs all aspects of Sikhs lives religion, marriage, inheritance as well as politics (Jagraj, 2009).

Before the establishment of the Sikh legal system, there was a common belief that all issues affecting their lives could be blanketed by a single law. This belief was challenged by Guru Gobind Singh Ji who argued that crimes are not equal and therefore the same punishment cannot be administered for different cases. Sarbat Khalsa was given the power to look at different cases and carry out a case analysis so as to determine the kind of punishment that can be given. This can be termed as the beginning of the sections under the legal system that addresses different issues. He also argued that there are edicts and codes of conduct that must be followed in each and every case. For instance, he recognized adultery as a cardinal sin which was punishable by excommunication. There were the appropriate measures of action that those who had been punished for this sin could follow and be accepted back into the community. This entailed re-initiation rituals and provision of various corrective measures.

The laws governing the Sikhs’ lives were made in a parliament known as Sarbat Khalsa. According to Guru Gobind Singh Ji, the parliament of Sri Akaal Takhat was given to the community by Guru Hargobind Sahib jee. The parliament was responsible for presentation and passing of motions. The motions are referred to as Gurmattas (Jagraj, 2009).

Legal system and politics

The politics of the Sikh are based on the religion. The political leaders are expected by the Sikhs to uphold the religious traditions for them to remain relevant in the community. There are many institutions governing politics in the Sikhs community. Some of these institutions include Akal Takhat as well as Gurdwara. The doctrines that are considered most important in Sikh politics and from which the legal system regarding politics draws from including the doctrines of Guru Granth and that of Guru Khalsa. Traditions heavily relied upon include Sarbat Khalsa and the Gurmatta.

The Sikhs uphold certain values in their political system. Democracy, secularism as well as egalitarianism are the common beliefs that are upheld in the political minds of the Sikhs. The laws regarding secularism are founded from the religious traditions and also the belief in granting equal rights to each and every person in the community.

According to the Sikh legal system, a legislature has been passed regarding the payment of taxes. The system opposes the Jaiziya system in which Sikhs and non-Sikhs are taxed differently. As opposed to the legal system of India where the nonSikhs pay to achieve protection, the Sikh legal system recognized that every citizen’s protection is fundamental and should be granted. The Sikhs legal system affords equality even in the taxation system (Jagraj, 2009).

Besides, when it comes to the provision of a testimony in a legal institution, parliament has enacted a law that requires the jurists to observe the truth. The eyewitnesses are also required to be truthful. Compared to the Indian system in which men are held in high esteem when it comes to testimonies, the Sikh legal system treats a testimony from a woman and also from men as of equal weight.

Marriage and Sikh legal system

There are many laws regarding the concept of marriage in Sikh community. A marriage ceremony is referred to as Anand Karaj in Punjabi. It is considered to be a sacred bond which facilitates mutual dependence between a man and a wife. Marriage also acts as a uniting factor to the relatives of the two families involved. The concept was introduced by Guru Amar Das and it means a blissful union. There are marriage hymns that are sung during the ceremony. These hymns were composed by Guru Ram Das who was Guru Amar Das’ successor. The concept of marriage was initially legalized under the India legal system under the Anand Marriage Act of 1909. However, this took a dramatic change after Shiromani Gurdwara Prabandhak Committee issued a policy for this issue to be governed by the Sikh Code of conduct (Kapoor, 1996).

Under the Sikh legal system, a baptized Sikh has the capacity to preside over a marriage ceremony. Besides, the law requires that the ceremony is conducted in the gurdwara. A gurdwara is recognized as the place of worship for Sikhs. The A Sikh Anand Marriage Act in 2007 was enacted by Pakistan and its greatest benefit was that it allowed Sikhs from all over the world to conduct their marriages without having to travel to Pakistan.

The Anand Marriage Act required the Sikh couple to observe some certain factors in their marriage and family units in general. According to this legislation, both the man and the women are equal and none of them is supposed to treat each other in a way that suggests that he or she is more powerful than the other. Besides, the law did not allow payment of dowry. The parliament also implemented the Dowry Prohibition Act in 1961 which governs the issue of dowry during marriages. The legislation defines dowry as any form of property that is given by either party to the other so as to consider the marriage. It can be presented either before the formal marriage ceremony as well as after the marriage union. The legislation affords exceptions on the presentation of gifts during this ceremony. The implication of this is that though Sikhs were found in an Indian subcontinent in which the women were supposed to pay some form of the bride price to the men’s family, the marriage law forbade it. The other provisions were of marriage under this law was that the couple and their families had to treat all days with the same level of holiness. The implication of this is that when trying to fix the wedding date, either party or their families were supposed to observe any astrological signs as well as follow any superstitious beliefs. In addition, the legislation requires the man, the woman and also their families to meet the wedding costs equally. The law also forbids polygamy (Kapoor, 1996).

In marriage relationships, situations are likely to arise that necessitate a divorce. However, in the marriage law and the Sikh traditions, divorce is totally unacceptable. The primary reason behind this reason is that marriage is considered to be a holy bond and which is conducted in the presence of an enlightener of the Supreme Being and therefore breaking it is perceived as a dishonor. The marriage Act of 2012 does not have any provision for termination of a marriage. In the case of any differences arising in the marital relationship, the community is allowed to intervene and try to find a resolution. However, there are not legal actions under the Sikh legal system that can be used. In cases where the community cannot settle the issue, then the parties are left alone to go their separate ways. In some occasions, the couple or either of the parties may seek the permission of the Panj Pyaray to re-marry.

Sikh legal system and inheritance

In most countries, the issue of Inheritance is discussed under the laws of succession. In the Sikh system, the concept of inheritance is discussed under the Sikh personal law. One of the reasons is because the personal law in this community largely touches on issues that directly affect the lives of the Sikhs. According to the Sikh succession Act, women have equal rights as men. This right is granted once a child is born all through to the point of inheritance of property. This law applies to both the acquired property and also the ancestral property. Upon the termination of a marriage, the women are also entitled to equal property as the men. However, there may be factors such as child support and custodial rights that affect the division of property.

A place of residence is also described as part of the property that is acquired by the couple. In the case of a divorce, the Residence Act prescribes that a woman shall not be thrown out of her husband’s house if the house was jointly acquired. She is therefore entitled to space in the same house or compensation so that she can look for an alternative place of residence at her will. However, there are situations where the wife especially if she was the complainant she will just forget about the house and move to a different location. According to the same law, the provisions also apply even when the home was owned by the husband.

Besides, there are cases in which the husband and wife lived in a rented house and the man was paying the rent. In other circumstances, the rent may have been the responsibility of the employer. Upon divorce, the man, in either case, is mandated by the Sikh Residence Act for find an alternative place of accommodation for his former wife or provide monetary compensation for her to find a new house.

When living under the same roof, the wife can obtain an order from the court barring the former husband and his relatives from interfering with her life as well as accessing her residence. The Sikh legal system did not interact with the Legal system of India because from early days the Sikhs were among the groups that had separate laws of succession and therefore not governed by the Indian Succession Act.

Child custody Guardianship in the Sikh legal system

Child custody and guardianship rights are some of the issues that most legal systems give first priority. This is because they have a direct impact on the rights of an individual. The Sikh legal system is not an exception as it also affords various provisions regarding child custody and guardianship. The Sikh minority and Guardianship Act is one of the laws in the legal system that governs child custody and guardianship rights. According to this law, joint guardianship rights are granted so that the minors can get the best out of the two parents. However, this law may be violated when either of the parents has had a bad parenting reputation. Some parents mistreat children and therefore custodian rights are not awarded to then regardless of what the law postulates. Once the Child attains fourteen years, he or she is left to decide which parent he or she prefers to live with. Careful consideration ought to be made to ensure that the child’s interest is met when granting guardianship (Jagraj, 2009).

Sikh Child maintenance Act

The parliament implemented some legislation to govern the maintenance of children after a divorce. The circumstances of affording maintenance benefits vary from one situation to another. The issue of salaried husbands and those holding private jobs is highly considered. The Father of a child is responsible for providing for a child until he or she is eighteen years old. The maintenance focuses on issues such as health expenses, education expenses as well as the child’s upkeep. The concept of education expenses is well applied especially if the child intends to pursue professional studies. Other expenses include food, clothing, and shelter. Recreational needs are also given attention if the father can afford. There are many debates challenging the age up to which the father should provide for the child. Most of those who argue oppose the are argue that at eighteen years, most children have not yet independent and therefore if the father stops supporting the child at this age, the mother will be left to struggle alone and if she is not in a position to offer the required support them the child will be exposed to unnecessary suffering. Besides, at this age, most children are usually commencing their professional studies. In cases of salaried husbands, the court deducts some amount from the salary to cater for the needs of the

children. When the mothers have salaries, the court system works out a plan so that she also contributes to the upkeep of children.

The above Sikh legislation interacted with the legal system of India in that initially the Sikhs relied on the Hindu established the law. Under the Indian legislation, the father was expected to make a fixed contribution of five hundred rupees towards the upkeep of the children. It was argued that since this amount was determined long time ago, it could not meet the needs of the children in the contemporary society and for this reason, the court decided to be calculating the maintenance expenses before determining what contribution the father can make (Dalmia, & Stietencron, 2009).

**How it interacted with the legal system of India**

There are various ways through which the Sikh legal system interacted with that of India. In relation to Marriage, though the Sikhs had their own laws governing this issue, there are some amendments to the marriage bill within the Indian legal system that affected Sikhs. For instance, despite the fact that the Sikhs had their marriages conducted according to the Sikh code of conduct, India amended the marriage bill in 2012 to enable the Sikhs to register their marriages under the provisions of the Anand Marriage Act and not through the Hindu Marriage Act through which they had been registering. This characteristic of the India legal system at least gave the Sikhs so form of recognition and independence because they did not have to go through Hindu jurists when registering their marriages. Instead, their own Sikh jurists over saw the process which made things a bit faster and less complicated.

Still, in the issue of marriage, divorce may occur. This may be considered to be another level of how the legal system of India interacted with the legal system of the Sikh, especially under the British rule. However, divorce was permissible by law under the British rule. According to the Hindu Marriage Act of 1955, the Sikhism could have a divorce just like any other groups which were governed by the codes of the Hindu law. The legislation provided various conditions under which a couple could consider a divorce. For example, adultery is considered to be the greatest reason that could warrant a divorce. The law required that lawfully wedded couples remain sexually faithful to one another. A partner is supposed to provide adequate evidence to the court for the divorce procedure to be initiated. Another significant condition that could warrant for the filing of divorce is the issue of cruelty. If one of the partners is suffering cruel acts from the other partner he or she is entitled to file for a divorce (Singh, 2006).

There are many other conditions under which divorce under the Hindu Marriage Act can be filed. Some of these include the desertion, mental disorder, one partner suffering from an incurable disease well as the disappearance of a spouse for more than seven years. Under this legislation, the presence of a spouse is crucial because it indicates the support for the marital relationship. However, one of the spouses could choose to neglect his marital duty and also responsibilities for some time and this is what is referred to as desertion. Besides, one of the partners could leave his or her partner and disappear without re-appearance for many years. In such a situation, then the partner who has been left behind has the legal right to file for a divorce because it is assumed that the spouse will not return.

The marriage could also be dissolved if the husband has another wife and also if the wife has not attained fifteen years of age before the union. It is assumed that the wife was a minor and therefore could not make a reliable decision regarding her life.

From the above discussion, the two legal systems interact in that while still under the British rule, the Sikh legal system has its own provisions relating to marriage but since they were not an independent state they had to operate within the regulations of the cover legal system which was the Hindu Law. This characteristic explains why the marriage institution after the Silk attained independence was different from what it used to be under the British rule. The Sikh legal system affords its own regulations regarding marriage different from the Hindu marriage law under the Indian legal system.

The Sikh legal system interacts with the provisions of guardianship in the Indian legal system in a number of ways. Before the Sikhs became independent, they depended on the Hindu Minority and Guardianship Act of 1956, the father of the child is considered to the natural guardian to a child and therefore mothers were deprived of the opportunity to take care of their children upon divorce. The only exception is that if the child is less than five years at the time of divorce, the law allowed for the mother to stay with the child until five years. After the collapse of this period, it is the father to choose whether to claim it back or just leave it with the mother. Fathers who decided to let the mothers take care of the children were considered irresponsible ad negligent of a God-given opportunity. The Hindu minority law was highly based on patriarchal tendencies which were highly practiced at Hinduism. The two laws, therefore, interact in that prior to independence and when the Sikhs had not adopted their separate laws on child custody, they relied on the Indian legal system for guidance (Singh, 2006).

**Conclusion**

The Sikh legal system may be described as one of its kind because though it does not entirely rely on a divine law like some system such as the Islam legal system, religion plays a critical role in the formulation of the legislations to govern the aspects of the Sikh community. The traditions of Sikhism and also the way of lives of the various Gurus are highly influential in the lives of the Sikhism in the contemporary world. Besides, it is important to note that this legal system highly interacted with the legal system of India due to a number of reasons. Firstly, the Sikhs were part of the occupants of India before they got a sovereign state and therefore during this time, their lives were governed by the laws in the Indian legal system. Secondly, even after this community gained its independence, it did not move out of India but instead acquired Punjab which is a part of India. The interpretation of this is that they were still part of the larger Indian community though with separate laws. Most profoundly, the Sikhs had a personal law besides the legal system which was under the parliament. The personal law governed issues pertaining to the personal lives of the community members. As a result, it heavily borrowed from the religion because it was already in existence long before Sikhs had their own state.

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