

Para 67 RATIONALE AND SCOPE

Paragraph 67 of the World Conference offers an opportunity to address problems that Sikhs have faced in many European and North American countries and may face in developing countries as they begin to apply interpretations of the legal language more rigidly. The paragraph was introduced by Canada who are lumbered with recurrent legal cases involving the Sikhs and supported, as well as negotiated, by India who understand the issues as a country. At the core of this paragraph is the different perceptions of who Sikhs are by Sikhs themselves and the rest of the world.

Essentially our argument was that by constantly describing the Sikhs as a religious community, we find our rights subject to the rule of, 'except where such rights are restricted by law due to public safety, hygiene and human rights of others ... etc' as allowed by international law. The problem is that while many western countries see the Sikhs as a religious community, the Sikhs see themselves differently.

Different perspectives on religion

We argued that the conventional concept of religion emerged in relation to secularism in the last 2-3 centuries and very much as a reaction in Christian European history to the interpretation and activities of the Church on Christian dogma. This is not necessary the history of other peoples around the world. For instance, some of the fundamental concepts of what forms the focus of belief in Sikhi is different than the concept of God as known in the west. There are no inherent contradictions between Sikh teachings and the methodology and many discoveries of Science. The general accusation of 'exclusion' that is made against institutional religions does not apply to Sikhi because the Sikh philosophy starts with an emphasis on pluralism, equality and co-existence. The practices of Sikhs are not commandments from 'God' but commitments made by a Sikh to develop a holistic understanding of Sikhi in order to realise the teachings through a combination of intellectual contemplation, daily life, responsibilities and co-existence. Consequently a Sikh cannot consider a non-Sikh to be living less than a perfect life or disobeying 'God's' commandment. But a Sikh feels that the principles of Sikhi cannot be understood, defended and practised without adhering to the practices introduced by the Gurus. Many of the practices have contemporary relevance both in secular and spiritual life. They were rooted in enduring principles.

Hair

For instance, the keeping of unshorn hair is a reverence for the ecological evolution of nature which is usually little understood by man according to Sikh teachings. Consequently cutting hair is seen as an act of violating nature without a real need to do so. As a result, in a wider perspective, the Sikh should be environmental friendly and in current terminology a keen campaigner of sustainable development.

The Turban

The turban has a broader significance than simply keeping the hair tidy. It started as a symbol of diversity and a challenge to the conformity being imposed by rulers then. In contemporary world it continues to retain this symbolic significance as States, institutions, social trends and commerce directly or indirectly promote conformity on a grand scale. The Sikh stands out confronting the hegemony of conformity culture where diversity is reduced to a rhetoric and a bare minimum beyond which it cannot be eliminated. For some time in today's world the only diversity being addressed and made acceptable was that of colour since human kind cannot yet make naturally diverse colours of the human species disappear.

Challenging conformity

It is only in the last decade that cultural diversity is being looked at in western anti-discrimination discourse. The ability to accept diversity in its various forms is being tested now and will continue to be tested with the Sikhs posing an interesting and challenging lead in this development. The Sikh is still the most potent symbol of diversity, refusing to accept the right of politics, commerce and engineered social trends to impose conformity. Thus from a Sikh perspective the turban is not an orthodox, outdated article of faith but a principle of conscience rooted as much in contemporary discourse as it was when it first became a significant matter of commitment to the issue of freedom of conscience. If anything, the contemporary world mandates upon a Sikh even more than any time in history, to retain the turban in order to influence the discourse on diversity. The Sikhs have sadly seen the rest of the world race to join the trends of conformity, subtly although unintentionally, influenced by an atmosphere of western hegemony. The Sikh has stood out resisting this cultural hegemony. It has paid dividends as western policy and legislation has begun to accommodate the principle of diversity by making provisions for the Sikhs.

Thus for a Sikh, the cutting of hair and giving up the turban is not considered as a 'modernising' process as in the general understanding of a 'progressing trend' but as victim of twentieth century's period of 'modernity' defined by uniformity and conformity. After all, South Asians have been cutting their hair for 3000 years, it can hardly be considered as a 'new trend'. In the post modern period, the Sikh stands to lead the trend towards acceptable diversity.

World Conference

This was appreciated by many African and Asian delegates at the World Conference meetings who continued to come to Sikh Human Rights Group delegates and expressed their admiration in the resilient way the Sikhs have retained their cultural aspects in an otherwise conforming world.

This won the basic argument promoted by the Sikh Human Rights Group, that current perspectives on religion and religious legislation does not protect the reasons, the principles and the significance of the turban for the Sikhs. The Sikhs wear turbans and do not have to give a reason. They do not have to justify it on religious or other grounds. A Sikh who wears a turban may not be religious in the western sense of the word and should not be forced to be

'religious'. By classifying every Sikh, and in fact every turban wearing Sikh as a religious person, is infringing his or her right not to be religious in the strictest meaning of this word. A Sikh wears a turban, full stop. It is up to the world to deliver on its rhetoric of diversity and not for a Sikh to find the legal justification to continue to wear it. It is up to the states to develop legislation to accommodate the Sikhs as an expression of their commitment to diversity and not pigeon hole Sikhs into a category which does not do justice to the Sikhs nor protects this cultural aspect adequately.

The Francophile States

The argument was taken up with the Francophile governments. It was put to them, that while they want to be recognised as 'liberal' and 'tolerant', surely by imposing restrictions upon Sikhs, they are just as intolerant as the religions they condemn, by imposing a certain manifestation of liberty. SHRG accused them of having a rigid and almost 'religious' perspective on the concept of liberty. It was not flexible and did not have the ability to accommodate different perspectives on liberty. For a Sikh, intellectual liberty is more important than the French obsession with liberty from religion. This eventually persuaded the French and other Francophile governments, with a little help from the United Kingdom delegation, to look at the Sikh issue in a different light.

We further argued that while almost every other person in the world can conceal what is termed their religion, a Sikh cannot do this. Consequently it is difficult to apply the general rule of restriction in manifesting one's religion due to public safety, hygiene or human rights' upon the Sikhs.

Eventually we argued that our right to a distinct identity and culture needs to be protected under rights other than religion in the west so that they are not frequently subjected to test cases or be subject to the rigid interpretations of secular liberty.

For instance we were told by a Swiss rep that a Sikh would not be given a job as government teacher because his turban would be considered to be a tool of proselytising and subtly influencing pupils. It was pointed out to him that it was not only a ridiculous assumption but how could they make this in the case of a Sikh who rarely goes to a Gurdwara, likes his alcohol, goes clubbing and is any thing but religious in a Swiss sense of the word and yet wears a turban.

The paragraph

Consequently to strengthen the rights of a Sikh to maintain long hair, turban, beards etc, this paragraph was constructed and approved by all the 180 countries. It acknowledged that current legislation and policies do not adequately accommodate the Sikhs. They fail to understand that the identity of a Sikh is irrespective of his or her depth of religious commitment. They are the most visible aspect of the Sikh identity yet become invisible in the drafting of legislation. The various aspects of a Sikh identity, culture and practices are a combination of interplay of factors.

Canada introduced a paragraph, India then started to negotiate it and found the best wording to deal with the challenge that Sikhs pose to the anti-discrimination language.

WORLD CONFERENCE AGAINST RACISM, XENOPHOBIA AND RELATED INTOLERANCE PARA 67

“We recognise that members of certain groups with a distinct cultural identity face barriers arising from a complex interplay of ethnic, religious and other factors as well as their traditions and customs and call upon States to ensure that measures, policies and programmes aimed at eradicating racism, racial discrimination, xenophobia and related intolerance address the barriers that this interplay of factors creates.”

WORKING WITH PARAGRAPH 67

This paragraph introduces new concepts in western anti-discrimination discourse both in policy terms and in legislation.

Complex interplay of factors

The crucial issue to appreciate here is that the paragraph is not talking about ‘multiple identities or factors’ but an ‘interplay’ of factors. Thus there is a complex interplay of factors in forming a single identity of the community. These factors are not complete in themselves and cannot be prized apart to stand as single factors that can be addressed individually to give the community adequate protection. Thus a Sikh may achieve the right not to be discriminated on the basis of his or her colour but may still be discriminated on the grounds of beard and turban as it may be seen as religious. Religious rights can be limited.

On the other hand a Sikh may be able to keep his turban and beard by gaining this specific right under protection of religion but may feel uneasy as he or she may not be all that religious. He or she may resent that he or she will always be seen as some religious person. As far as a Sikh is concerned, he wears a turban because he is a Sikh. The State may wish to define him in different categories and give him reasons for his practice but that is not how he, the Sikh, sees his status.

THE CHALLENGE

There are many challenges that now follow from this paragraph.

- The Sikhs and the State need to review the barriers that face Sikhs and are responsible for denying equality of opportunity as well as acceptance.
- Whether current policies and legislation deals with these adequately
- Whether there is a need to develop new policies and legislation
- Whether the discrimination that exists as a result of these barriers can be monitored adequately within current monitoring policies.

THE ADVANTAGES OF PARA 67

Some of the main advantages of the paragraph are that it is

Apolitical.

The paragraph was negotiated by India, introduced by Canada (a western country) and supported by the Islamic block, China, the African block and in fact all the States at the world Conference. It therefore should not be opposed by any country if a common protective language, monitoring process and promoting of equality policies were developed.

Restricted number of communities:

The paragraph only concerns and addresses the issues of a few communities who usually fall outside legislation needing further interpretation or modifications. In fact it is the SHRG's perception that only two communities can adequately be addressed by this paragraph. Thus it does not pave the way for wide scale deviation and disruption of current legislation and policy in any State with respect to other communities as they are generally seen to be covered by many of the other paragraphs of the World Conference document.

Make the Sikhs visible in legislation

The paragraph if adequately interpreted and applied will end the many continuing disputes in courts in many western countries concerning the Sikhs and will help to consolidate as well as form a basis to guide accommodation within legislation in the future. It is generally felt by the Sikhs that western countries are not deliberately discriminating against Sikhs nor is there a reluctance to accommodate the Sikhs. However it is felt that the current limitations and restrictive concepts in legal language impose an atmosphere of unintended discrimination. This can be dealt by application of this paragraph.