

THE WORD 'HINDU' CASE

**SIKH CLAIM
TO AN INDEPENDENT STATUS
IN INDIAN LAWS DENIED**

**BY PUNJAB & HARYANA HIGH COURT
CWP 18634/2011**

IS IT JUSTIFIED?

**Advocate
Navkiran Singh**

**Petitioners
Birendra Kaur & Rohit Garg**

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A Maxim of Indian Law

Ubi Jus Ibi Remedium
Where There Is A Right, There Is A Remedy

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PREFACE

Every contemporary *Panthic* issue was of great concern to the *panthdardi* Dr Kharak Singh *ji*. I was fortunate enough to have worked with him, thus getting exposure to not only the issues that needed to be addressed at the *Panthic* level but also to the vision he had for resolving these.

To take up one of these issues, I decided to study the long-pending, pressing demand of the Sikhs regarding the legal status of the Sikhs as per the Constitution of India. The current burning issue of the Sikh *qaum*, the Anand Marriage Act, is one aspect of the same.

I undertook an in-depth study of those portions of the Constitution that deal with Religion in general, and Sikhs and Sikhism in particular, namely, Articles 15, 17, 25 to 30, the Acts of the Hindu Law [Hindu Marriage Act, Hindu Succession Act, Hindu Adoptions and Maintenance Act, and Hindu Minority and Guardianship Act], Special Marriage Act, Protection of Civil Rights Act, etc.

To my surprise, I observed some errors in the texts of these, which I could notice on account of having assisted my father in proofreading and editorial work of various books and journals. To find out that a document of the nature of a Constitution of a country was not edited, proofread professionally, was most unexpected.

Since the object of my study was to understand the relation of Sikhs vis-à-vis the Constitution, I concentrated on that. It was easy to notice that the word 'Hindu' was being used in two different senses, sometimes as a 'name of a religion' and sometimes as a 'collective reference to Hindus, Sikhs, Buddhists and Jains'. I further realized that this was the root cause of the feeling of discrimination, misrepresentation that the Sikhs experience, and, therefore, their

current agitations against the registration of marriages under the Hindu Marriage Act.

A documentation regarding one's marriage is indeed significant from not only legal point of view but also from the perspective of emotions. But it came clear that seeking registration of marriage under an Anand Marriage Act, or even seeking a whole new Anand Marriage Act was not the ultimate solution to the woes of Sikhs, as they shall still remain Hindu, as per the legal terminology of the Indian Constitution [Article 25], as well as according to the other Acts of the Hindu Law, as mentioned above. For matters related to all aspects of family life, such as, marriage and divorce; infants and minors; adoptions; wills, intestacy and succession; joint family and partition; etc., they would still remain Hindu.

Advocate Rohit Garg, a young lawyer, my sons' friend, is a frequent visitor at home. I thought of sharing the issue with him. Of course, I had no bias towards the word 'Hindu' itself, but only the manner in which it was being used. But still my family was apprehensive about it, lest Rohit should feel offended. Keeping this in mind, I proceeded cautiously, guardedly. I was amazed that Rohit not only listened to the issue with an open mind but also grasped the same in the right earnest and perspective. Here was an upright, mature soul in a young man. He said he understands exactly what those clubbed under the name of another religion must feel. He rather felt that such use of the word affects the Hindus too. In his own words: "Hinduism is a religion, and it belongs to only Hindus, and none others. No body is in a position to represent religion of others. And if it is a way of life of various people, then there is no need to call it a religion." His commitment to his religion can be appreciated from his wearing a *janeu* since the age of 23.

As responsible citizens of India, we felt duty-bound to address and highlight the issue in the interest of national unity, amity and integrity. Rohit also began to study the issue and procured a lot of related literature and Supreme Court rulings. After a year-long sweat, and grip of the subject, we felt convinced that by bringing the issue, as identified, to the notice of the Court, it would prove beneficial to all concerned.

We began our search for a lawyer who would further guide

and represent us in the High Court. Advocate Navkiran Singh was our first choice and hope, given the reputation he enjoys not only in the Sikh circles but also in the legal world. He is well known for his selfless services to the needy that knock at his door, irrespective of their faith or status. He is a Human Rights lawyer and activist.

Meeting Advocate Navkiran Singh was to discover that he was further humane than what we had gathered about him from others. His mission – national interest, by rising above religions, castes, etc., for *sarbat da bhala*. Living his ideology, he offered voluntary help, as he said that it was an issue in the interest of all.

Apart from delving deep into the issue and devoting his precious time to the Petition, Advocate Navkiran Singh put in further effort at his end, and tried to seek some Jain and Buddhist lawyers to join in, as it was of similar concern to them as well. The former did not prefer to associate with the case and, as for the latter, he could not locate any.

We filed a PIL (CWP 18634/2011) in the Punjab and Haryana High Court on the 3rd October, 2011. The same is reproduced on Page 7. Its Judgment appears on Page 33, and a Rejoinder to the Judgment appears on Page 37. This entire material is also placed on the website: www.drkharaksingh.org

The case was dismissed. It has been adjudged ‘myopic, fissiparous and uncalled for.’ We seek and would be highly grateful to you for your valuable comments and suggestions as to the Issue raised and the Judgment received. Kindly go through the matter and oblige.

Do you think that the Petition deserves the fate it met?

26th December, 2011

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PETITION

SYNOPSIS

1. The petitioner No.1 Birendra Kaur who is Ph.D. (Punjab University) in the subject of Zoology has worked as Sr Lecturer, Sri Guru Gobind Singh College, Sec 26, Chandigarh, from 1991 to 2008. Assisted in editorial work with Institute of Sikh Studies [1991 to 2009]. Associate Editor, *Abstracts of Sikh Studies*, its quarterly Journal [2008 to 2010]. Settler, Dr Kharak Singh Trust. Associated with International Sikh Confederation & Institute of Sikh Studies; Authored two Books - *Hail Hair !* and *On Sikh Identity*; Participated in Numerous Seminars; Published Numerous Research Papers; Exposed to Sikh issues of our times as daughter of Dr Kharak Singh, a world-renowned personality, who was dedicated and committed to concerns of Sikhism, in particular, and the nation, at large.

The petitioner No.2 Rohit Garg is a practicing lawyer at District Courts Mansa.

2. The petitioners are moving the present writ petition as a Public Interest Litigation before this Hon'ble Court for seeking remedy in the various legislations relating to Hindu Laws, i.e., Hindu Succession Act, 1956, Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956, so as to bring these in consonance with the letter and spirit of the Constitution of India.
3. That India/Bharat while framing its Constitution had, in its Preamble, envisioned the structure of the Nation. The

Preamble initially spelt out the Indian State to be a Sovereign Democratic Republic and vide 42nd Amendment Act of 1976 which came into effect on 3.1.1977, the words ‘Socialist’ and ‘Secular’ and ‘Unity and Integrity’ were added to it.

4. That in order to give effect to the true concept of Secularism, the Constitution of India ensures Equality before law through Article 14, Prohibition of discrimination on grounds of religion, race, castes, sex of place of birth through Article 15, Freedom of Conscience and Free profession, practice and propagation of religion through Article 25, Freedom to manage religious affairs through Article 26, and further through Article 29, Protection of interests of minorities, and through Article 30 Right of minorities to establish and administer educational institutions. These rights clearly show that India/Bharat, although having no State religion, gives due respect and recognition to each religion.
5. That all the Acts, i.e., **Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Hindu Adoptions and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956**, are named using the word “**Hindu**”, even as these Acts are applied to not only Hindus but also to Sikhs, Buddhists, Jains and some others as well. This is against the spirit of the Constitution, as the word “Hindu” even though used as an expression jointly for the members of the religions mentioned above, ultimately discriminates against the other religions vis-à-vis the Hindu religion.
6. Hence the present Public Interest Litigation petition for declaration of use of name of “**Hindu**” as a religion and as an expression in Hindu Succession Act 1956, Hindu Marriage Act 1955, Hindu Adoptions and Maintenance Act, 1956 and Hindu Minority and Guardianship Act, 1956, to be ultra vires to the constitution of India as the same infringes upon the fundamental rights of the members of other religious communities to whom those Acts apply and for declaring

such action to be ultra-vires to Equality before law through Article 14, Prohibition of discrimination on grounds of religion, race, castes, sex or place of birth through Article 15, Freedom of Conscience and Free profession, practice and propagation of religion through Article 25, Freedom to manage religious affairs through Article 26, and further through Article 29 Protection of interests of minorities.

(Navkiran Singh) / (Rubina N. Singh) / (Harpreet Kaur)

P/786/1986

P/71/1988

P/769/2008

CHANDIGARH

ADVOCATES

DATED: 30.09.2011

Counsel for Petitioners

~o~

CIVIL WRIT PETITION

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 18634/2011
(Public Interest Litigation)

1. Birendra Kaur (Dr.), wife of S. Jatinder Singh, C/o D-151, Industrial Area, Phase-8, Mohali.
2. Rohit Garg, son of Dr. Rajinder Kumar Garg, C/o Rajindra Diagnostic Centre, Near Civil Hospital, Mansa.

... Petitioners

Versus

Union of India through Ministry of Law & Justice, New Delhi.

...Respondent

Public Interest Litigation under Articles 226/227 of Constitution of India for issuance of a writ of mandamus direction or any other writ order or direction for declaration of use of name of "Hindu" as a religion and as an Expression in Hindu Succession Act 1956, Hindu Marriage Act 1955, Hindu Adoptions and Maintenance Act, 1956 and Hindu Minority and Guardianship Act, 1956 to be illegal as the same infringes upon the fundamental rights of the members of other religious communities to whom those Acts apply and also for declaration of the same to be ultra-vires to fundamental rights as enshrined under;

Equality before law through Article 14, Prohibition of discrimination on grounds of religion, race, castes, sex or place of birth through Article 15, Freedom of Conscience and Free profession, practice and propagation of religion through Article 25, Freedom to manage religious affairs through Article 26, and further through Article 29 Protection of interests of minorities.

~o~

Respectfully showeth:-

1. That the petitioner No.1 Birendra Kaur who is Ph.D. (Punjab University) in the subject of Zoology has worked as Sr Lecturer, Sri Guru Gobind Singh College, Sec 26, Chandigarh, from 1991 to 2008. Assisted in editorial work with Institute of Sikh Studies [1991 to 2009]. Associate Editor, *Abstracts of Sikh Studies*, its quarterly Journal [2008 to 2010]. Settler, Dr Kharak Singh Trust. Associated with International Sikh Confederation & Institute of Sikh Studies; Authored two Books - *Hail Hair !* and *On Sikh Identity*; Participated in Numerous Seminars; Published Numerous Research Papers; Exposed to Sikh issues of our times as daughter of Dr Kharak Singh, a world-renowned personality, who was dedicated and committed to concerns of Sikhism, in particular, and the nation, at large.

That the petitioner No. 2 Rohit Garg is a practicing lawyer at District Courts Mansa.

Both the petitioners are citizens of India and have a right to invoke the extra ordinary writ jurisdiction of the Hon'ble Court by way of filing the present writ petition under Article 226/227 of Constitution of India.

2. That the petitioners are moving the present writ petition as a Public Interest Litigation before this Hon'ble Court for seeking remedy in the various legislations relating to Hindu Laws, i.e., Hindu Succession Act, 1956, Hindu Marriage Act 1955, Hindu Adoption and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956, so as to bring these in consonance with the letter and spirit of

the Constitution of India.

3. That India/Bharat while framing its Constitution had, in its Preamble, envisioned the structure of the Nation. The Preamble initially spelt out the Indian State to be a Sovereign Democratic Republic and vide 42nd Amendment Act of 1976 which came into effect on 3.1.1977, the words ‘Socialist’ and ‘Secular’ and ‘Unity and Integrity’ were added to it. As of now, the Preamble reads as under:–

THE CONSTITUTION OF INDIA
PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens: JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and, to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

4. That in order to give effect to the true concept of Secularism, the Constitution of India ensures Equality before law through Article 14, prohibition of discrimination on grounds of religion, race, castes, sex of place of birth through Article 15 Freedom of Conscience and Free profession, practice and propagation of religion through Article 25, Freedom to manage religious affairs through Article 26, and further through Article 29 Protection of interests of minorities, and through Article 30 Right of minorities to establish and administer educational institutions. These rights clearly show that India / Bharat, having no State religion, endeavoured to give due respect and recognition to each religion.

5. That while giving separate laws to the Christians through Indian Christian Act, 1872, Indian Succession Act, 1925, and to the Muslims through the Muslim Personal Law (Shariat) Application Act, 1937, and even to the Parsis through the Parsi Marriage and Divorce Act, 1936, the people of the Hindu, Sikh, Jain and Buddhist religions were clubbed together to give common laws through Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Hindu Adoptions and Maintenance Act, 1956, and Hindu Minority and Guardianship Act, 1956.

6. That in the Acts which have been mentioned above, the word “Hindu” has been used as the ‘Name of a religion’, and also as ‘an Expression’ jointly for Hindus, Sikhs, Buddhists and Jains, including some others as well. The relevant portions of the Laws in which the word “Hindu” has been defined as ‘a religion’ and ‘a joint expression’ are reproduced as under:-

THE HINDU MARRIAGE ACT, 1955

SECTION 2. APPLICATION OF ACT

(1) This Act applies –

- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
- (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
- (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.-The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents

is Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged ; and

- (c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.
- (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.
- (3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

THE HINDU SUCCESSION ACT, 1956

SECTION 2. APPLICATION OF ACT

- (1) This Act applies –
- (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
 - (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
 - (c) to any other person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation.-The following persons are Hindus, Buddhists, Jains or Sikhs by religion, as the case may be:-

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jains or Sikhs by religion;
- (b) any child, legitimate or illegitimate, one of whose parents is Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group

- or family to which such parent belongs or belonged ; and
- (c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh religion.
- (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.
- (3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is, nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

SECTION 2. APPLICATION OF ACT

- (1) This Act applies –
- (a) to any person, who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj,
 - (b) to any person who is a Buddhist, Jaina or Sikh by religion, and
 - (c) to any other person who is not a Muslim, Christian, Parsi or Jew by religion unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation– The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:-

- (a) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;
- (b) any child, legitimate for illegitimate, one of whose parents is a Hindu, Buddhist, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged,
- (bb) any child, legitimate or illegitimate, who has been abandoned both by his father and mother or whose

parentage is not known and who in either case is brought up as a Hindu, Buddhist, Jaina or Sikh, and

- (c) any person who is a convert or reconvert to the Hindu, Buddhist, Jaina or Sikh, religion.
- (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any Scheduled Tribe within the meaning of clause (25) of Article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.
- (2-A) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the Renoncants of the Union Territory of Pondicherry.
- (3) The expression “Hindu” in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless, a person to whom this Act applies by virtue of the provisions contained in this section.

THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

SECTION 3. APPLICATION OF ACT

- (1) This Act applies–
 - (a) to any person who is a Hindu by religion in any of its forms or developments, including a Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj.
 - (b) to any person who is a Buddhist, Jaina or Sikh by religion and
 - (c) to any person domiciled in the territories to which this Act extends who is not a Muslim, Christian, Parsi, or Jew by religion, unless it is proved that any such person would not have been governed by the Hindu law or by any custom or usage as part of that law in respect of any of the matters dealt with herein if this Act had not been passed.

Explanation:– The following persons are Hindus, Buddhists, Jainas or Sikhs by religion, as the case may be:–

- (i) any child, legitimate or illegitimate, both of whose parents are Hindus, Buddhists, Jainas or Sikhs by religion;

- (ii) any child, legitimate or illegitimate, one of whose parents is a Hindu, Buddhists, Jaina or Sikh by religion and who is brought up as a member of the tribe, community, group or family to which such parent belongs or belonged; and
 - (iii) any person who is convert or re-convert to the Hindu, Buddhist, Jaina or Sikh religion.
- (2) Notwithstanding anything contained in sub-section (1), nothing contained in this Act shall apply to the members of any scheduled Tribe within the meaning of clause (25) of article 366 of the Constitution unless the Central Government, by notification in the Official Gazette, otherwise directs.
- (3) The expression ‘Hindu’ in any portion of this Act shall be construed as if it included a person who, though not a Hindu by religion, is nevertheless, a person to whom this Act, applies by virtue of the provisions contained in this section.

7. That the anomaly / misnomer of use of word Hindu as a religion and as a joint expression has also denied important rights to the members of various religions. Kindly observe the phrase in depth—“if he [or she] has ceased to be a Hindu by conversion to another religion”. And consider / reflect on the following:—

How can one cease to be a Hindu by conversion to Jainism/ Buddhism/Sikhism, as followers of these religions are also ‘Hindu’, since they all are collectively covered by the expression “Hindu”? For example, can a Sikh cease to be a Hindu, if he converts to Jainism or Buddhism, as per the Acts?

Further, it also means that a Sikh/ Jain/Buddhist shall cease to be a Hindu, even if he/she shall convert to Hinduism. In the given situation, Sikhs, Buddhists and Jains are even denied the equal rights conferred on them by the Constitution. As, for example, say, a Buddhist cannot avail the ground for divorce, if his/her spouse converts to Hinduism/Sikhism/Jainism, and so on and so forth, because the convert has not ceased to be a Hindu.

That the word “Hindu” has also been used in the texts of the Acts of the Hindu Law in the following manner and are being reproduced for ready reference of this Hon’ble Court:-

THE HINDU MARRIAGE ACT, 1955

Sec 13. Divorce –

(1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party–

(ii) has ceased to be a Hindu by conversion to another religion;
or

THE HINDU MINORITY AND GUARDIANSHIP ACT, 1956

Sec 6. Natural guardians of a Hindu minor –

Provided that no person shall be entitled to act as the natural guardian of a minor under the provisions of this section-

(a) if he has ceased to be a Hindu, or

THE HINDU ADOPTIONS AND MAINTENANCE ACT, 1956

Sec 18. Maintenance of wife –

(1) Subject to the provisions of this section, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her lifetime.

(2) A Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,–

(f) if he has ceased to be a Hindu by conversion to another religion;

(3) A Hindu wife shall not be entitled to separate residence and maintenance from her husband if she is unchaste or ceases to be a Hindu by conversion to another religion.

8. That all these Acts, i.e., Hindu Succession Act, 1956, Hindu Marriage Act, 1955, Hindu Adoptions and Maintenance Act, 1956, Hindu Minority and Guardianship Act, 1956, are named using the word “Hindu”, even as these Acts are applied to not only Hindus but also to Sikhs, Buddhists, Jains and some others as well. This is against the spirit of the Constitution, as the word “Hindu” even though used as an expression jointly for the members of the religions mentioned above, ultimately discriminates against these other

religions vis-à-vis the Hindu religion.

For example: the Hindu Marriage Act is titled by the name of only one of these religions. And so are the other Acts of the Hindu Law as well, which deal with succession, adoption, guardianship, etc. As such, for all practical purposes, and for every aspect of one's life [i.e., registration of marriages performed as per sacred religious rites; settlement of ancestral property, business management within family [HUF], adoption documentations, execution of will; etc.], the followers of the other religions are labeled as "Hindus", whereas, the Constitution says that nobody can be discriminated on the basis of religion and that there is equality for all before law. The above situation can be best understood if, in the given situation, the other religions also stake a claim that the Hindu Marriage Act, for example, should be termed the Sikh Marriage Act or a Buddhist Marriage Act or a Jain Marriage Act. Thus, the nomenclature of these Acts by using the name of only one religion gives that religion a preferential status and, at the same time, creates a sense of inequality, insecurity and discrimination in the minds of the remaining religious communities. All the religious communities besides the Hindus are forced to be labeled as Hindus, although their religions on their own have separate identities and this is also antithesis to the very provisions of Constitution of India.

9. That to the mind of the petitioners this anomaly of using the expression "Hindu" for collective reference of the Buddhists, Jains, Sikhs and others, has infringed upon the fundamental rights of these communities who have their own religious identities and, as per the Constitution of India, have a right to profess, practice and propagate their religion. Thus, when the members of these religions have been clubbed under the expression "Hindu", the members of these religions lose their identity as separate religions and, as such, their religious rights stand infringed and such an anomaly has become a road block in giving effect to the concept of secularism as envisaged by the framers of the Constitution and the leaders of the times. They also reiterated time and again that Jains, Sikhs and Buddhists are separate and independent religions, distinct from Hinduism:

Dr Radha Krishnan, former President of India in his book

Recovery of Faith on page 184 explained Secularism in this country in his own words as follows:-

“When India is said to be a Secular State, it does not mean that we reject the reality of an unseen spirit or the relevance of religion to life or that we exalt irreligion. It does not mean that secularism itself becomes a positive religion or that the State assumes divine prerogatives ... We hold that not one religion should be given preferential status ... This view of religious impartiality, or comprehension and forbearance, has a prophetic role to play within the National and International life.”

Prime Minister of India, Shri Jawahar Lal Nehru on 3rd Sept, 1949, while addressing a public meeting at Allahabad, said:-

No doubt India has a vast majority of Hindus, but they could not forget the fact that there were also minorities – Muslims, Parsis, Christians, Sikhs and Jains. If India was understood as a Hindu Rashtra, it meant that the minorities were not cent per cent citizens of this country. [English daily newspaper “*The Statesman*” dated 05.09.1949.]

Pt Jawahar Lal Nehru, in his celebrated book “*Discovery of India*”, mentioned as under:-

Buddhism and Jainism were certainly not Hinduism or even the Vedic Dharma. Yet they arose in India and were integral parts of Indian life, culture and philosophy. A Buddhist or Jain, in India, is a hundred per cent product of Indian thought and culture, yet neither is a Hindu by faith. It is, therefore, entirely misleading to refer to Indian culture as a Hindu culture.

Dr S Radhakrishnan, the former President of India, in his book “*Indian Philosophy*”, Vol. I, mentioned as under:-

The Bhagawat Purana endorses the view that Rishbhadeva was the founder of Jainism. There is evidence to show that so far back as the first century B.C. there were people who were worshipping Rishabhadeva, the first Tirthankara. There

is no doubt that Jainism prevailed even before Vardhamana Mahaveera or Parsvanatha. The Yajurveda mentions the names of three Tirthankaras - Rishab, Ajitnath & Aristanemi.

Jawaharlal Nehru clearly assured a delegation of the members of the Jain community....that the Jains are not Hindus and on 31-1-1950, his Principal Private Secretary, A.V. Pai wrote the following letter in reply to the petition:-

“This Article merely makes a definition. This definition by enforcing a specific constitutional arrangement circumscribes that rule. Likewise you will note that this mentions not only Jains but also Buddhists and Sikhs. It is clear that Buddhists are not Hindus and therefore there need be no apprehension that the Jains are designated as Hindus. There is no doubt that the Jains are a different religious community and this accepted position is in no way affected by the constitution.”
(Nehru Jawaharlal, Letter No.33/94/50-PMS, Prime Minister’s Secretariat, New Delhi, 31st January, 1950.)

In the “Freedom of Religion Bill” controversy in Gujarat, The National commission for minorities also criticised the Gujarat Assembly’s decision to club Jainism and Buddhism with Hinduism terming it to be in contravention of its October 23, 1993, notification classifying Buddhists as a “minority community.” Ultimately on 31 July 2007, finding it not in conformity with the concept of freedom of religion as embodied in Article 25 (1) of the Constitution, Governor Nawal Kishore Sharma returned back the Gujarat Freedom of Religion (Amendment) Bill, 2006. The Governor held that Jainism and Buddhism are recognised as religions rather than denominations of Hinduism, something that the Amendment Bill sought to wrongly convey.

10. That the rulings of the Supreme Court have also observed, from time to time, the independent status of these religions. Some are worth mentioning here:–

The State does not recognise any religion as a State religion and that it treats all religions equally, and with equal respect

without, in any manner, interfering with their individual rights of religion, faith or worship. (Bal Patil & Anr. v. Union of India & Ors. AIR 2005 SC).

As early as 1927 Madras High Court in Gateppa v. Eramma and others reported in AIR 1927 Madras 228 held that “Jainism as a distinct religion was flourishing several centuries before Christ”. Jainism rejects the authority of the Vedas which form the bedrock of Hinduism and denies the efficacy of the various ceremonies which Hindus consider essential.

1951 – A Division Bench of the Bombay High Court consisting of Chief Justice Chagla and Justice Gajendragadkar in respect of Bombay Harijan Temple Entry Act, 1947 (C.A. 91 of 1951) held that Jains have an independent religious entity and are different from Hindus.

11. That India, being a land of origin of many religions [Hinduism, Jainism, Buddhism, Sikhism], it confers freedom to profess, practice and propagate religion not only to all the native religions, but also to those that adopted this land [Islam, Christianity, Parsi, Judaism]. The Constitution of India is a progressive document, ensuring not only equal rights and opportunities irrespective of religion, race, gender, but also assures dignity to all its citizens. The Preamble mentions as follows: to promote among them all FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation. It is this very feature of the Constitution that gives hope to the citizens of India that all their grievances shall be addressed genuinely, considerately.

12. That India today holds promise and aims to be the world power in the near future. For realization of such a goal, it is of paramount importance that its diverse communities enjoy stability, and the confidence of each other.

13. That the Constitution of India in PART IV, i.e., Directive Principles under Article 44 envisages the progress of the nation

towards a Uniform Civil Code. This is reflected in the Supreme Court rulings from time to time:-

- In *Ms Jorden Diengdeh vs. SS Chopra*, AIR 1985 SC 935, The Hon'ble Supreme Court of India held... Although, it would be difficult to bring the persons of different faiths and persuasions on a common platform but, the court held that a beginning has to be made if the Constitution is to have any meaning.”
- In *Sarla Mudgal vs Union of India*, AIR 1995 SC 1531, The Hon'ble Supreme Court Of India held... The desirability of the Uniform Civil Code can hardly be doubted. But, it can concretize only if social climate is properly built and the masses awakened to accept the change.
- In *Panna Lal Bansi Lal Patil vs State of Andhra Pardesh*, AIR 1996 SCW 507, The Hon'ble Supreme Court Of India held... The first question is whether it is necessary that the legislature should make law uniformly applicable to all religious or charitable or public institution and endowments established or maintained by people professing all religions. In a pluralist society like India in which people have faith in their respective religion's beliefs or tenets propounded by different religions or their off-shoots, the founding fathers, while making the Constitution were confronted with problems to unify and integrate people of India professing different religious faiths, born in different castes, sex or sub-section in the society speaking different languages and dialects in different regions and provided secular Constitution to integrate all sections of the society as a united Bharat. The directive principles of the Constitution themselves visualize diversity and attempted to foster uniformity among people of different faiths. A uniform law, though is highly desirable, enactment thereof in one go perhaps may be counter productive to unity and integrity of the nation. In a democracy governed by rule of law gradual progressive change and order should be brought about. Making law or amendment to a law is a slow process and the legislature attempts to remedy where the need is felt most acute. It would therefore be inexpedient and incorrect to

think that all laws have to be made uniformly applicable to all people in one go. The mischief or defect which is most acute can be remedied by process of law at stages.

14. That, as such, the Constitution and the Parliament are duty-bound to promote harmony amongst the native religions of India which are covered by the same law [Hindu Laws], so that no portion of these Acts [nomenclature and/or text] generate any sense of inequality amongst the communities. It is this Law which has the potential of being adopted as the Uniform Family Law for all Indians; as such, removing the anomaly mentioned herein, as a first step, will go a long way in securing amity, unity, integration among the communities. Unless the current communities to whom these Acts apply are content with this Law, how can the other religions be expected to join in, as envisaged by the Constitution in its Article 44?

15. That as the word “Hindu” is being used as a ‘Name’ of a Religion in the Hindu Law, the petitioners through this Public Interest Litigation are seeking quashing the use of the same word [Hindu] as an ‘Expression’ in the Acts of the Hindu Law [wherein people of Buddhist, Sikh, Jain religions and some others as well, have been clubbed together for the Application of these Acts], as such a use of the ‘same word’ to denote ‘two different meanings,’ creates confusion amongst the masses and discontentment in the minds of the followers of religions.

In order to make our point more clear, the following instances are cited:–

- The name “Punjab High Court” of the old Punjab was changed to “Punjab and Haryana High Court” following creation of the state of Haryana. Why was the need felt for the same? Why did the Haryana state not continue to operate under the earlier name? Why was the word “Punjab” not used as an ‘Expression’ to cover the state of Haryana as well, as it had even been borne / carved out of Punjab? The name was changed to give due recognition and respect to the newly carved out state.
- Further, would it be acceptable today, to all concerned, to

club the current Punjab, Haryana and Himachal Pradesh under the word “Punjab” by calling it an ‘Expression’, since these collectively constituted the (old) Punjab?

16. That how issues of the above-mentioned nature impact the people / nations concerned, and how important it is for them to have these redressed, comes clear from the following:-

- Commenting on the nature of the British Commonwealth, Mr Henderson, the Under Secretary of India during second reading of the Indian Independence Bill, observed, “The British Commonwealth of Nations is not static, but constantly developing and it has throughout the years steadily changed from an empire in which power of control rested with British to a partnership of a free people inspired by common ideals and united by common interests.” These observations helped to remove doubts of the Indian people that the membership of Commonwealth meant subjugation and subordination to the British rule. They were convinced that the membership of Commonwealth was only a mutual relationship based on deep-root affinities in ideas and institutions of the two countries – India and United Kingdom. India, therefore, joined the Commonwealth in April 1949, which was ratified by the Constituent Assembly of India in May 17, 1949. Consequent to Indian’s joining the British Commonwealth, it no longer remained the “British Commonwealth”, but came to be known as the “Commonwealth of Nations”, with UK, Canada, Australia, New Zealand, South Africa, India, Pakistan and Ceylon united as free and equal members, co-operating in the “pursuit of peace, liberty and progress.” It was Pt Jawahar Lal Nehru, who made substantial contribution to this new nomenclature of the Commonwealth by suggesting that the word “British” should be dropped and it should be known only as the “Commonwealth of Nations. (*Indian Legal and Constitutional History*, by Dr NV Paranjape, Central Law Agency, Allahabad, 2005, Pg No. 379)

It was, thus, important for India to be a free and equal member of the Body, and that the same should also be reflected in the

nomenclature of that Body.

- Most Indian cities’ names have been changed from the names given to them by the British to their earlier names [from Bombay to Mumbai; Madras to Chennai; Bangalore to Bengaluru; Pondicherry to Puducherry; Calcutta to Kolkata; Orrisa to Oddissa and many others]. This shows how we, the people of India, are sensitive to such issues, and want these to be redressed. Even a new sign for the Indian currency has been created for the earlier “Rs” to assert an independent identity at an International level.

17. That an identity is very dear to every person / state / nation. And, it would not be an over-statement to say that the most sensitive issue for any individual is the issue of one’s faith. So, it should not be difficult to understand the hurt caused to religious sentiments of individuals, when, while belonging to one religion, he/she is referred to by the name of another religion – be one a Hindu or Sikh or a Buddhist or a Jain. It is tantamount to demolishing / annihilating religious identities of people.

18. That it is of foremost importance for a document of the nature of a Constitution to be precise, unambiguous, without mixing / mingling any words / expressions, so that there never arises any confusion / misunderstanding at any stage, between any people. We are well aware that a mere replacement / addition / deletion of even a single word, has the potential to alter the very nature of any Article / Act / Clause, etc., nay, even of the Constitution itself. The addition of the word “Secular” to the Preamble of the Constitution is an example in case [42nd Amendment].

19. That the issue which the petitioners are raising before this Hon’ble Court is very personal, sensitive and important for each community, as the same affects the identity of each religion, which is very much protected through various Articles of the Constitution of India as enumerated in the preceding paragraphs. It is a fact that India comprises of diverse faiths, cultures and languages. A

nation of 1.2 billion people can only be jelled together, in case each segment of the Indian Citizenry is given due respect to its religious, cultural and linguistic rights. The present petition is a sincere and genuine effort to achieve National Unity and Integration through respect for each other's values, religions and culture, so that the Indian State develops into the type of nation which our elders envisioned in the Constitution of India.

20. That the petitioners pray that this Hon'ble Court may kindly declare the use of the word "Hindu" as a joint expression for Buddhists, Jain and Sikhs as well as others to whom the Acts of the Hindu Law apply, to be unconstitutional, illegal and ultra vires to the Articles 14 and 25 of the Constitution of India, as the same is, in principle, inappropriate / misleading.

As a rectifying measure, the same could be replaced by any other suitable, neutral word, which is equally reflective of all the members of the Group to whom the current Hindu Acts apply. The word used for nomenclature could be of the like – National / Regional / Bharti / Indoi / Indic / Popular / Homeland / Denizen, or so on so forth. For example, the Acts of the Hindu Law could be titled, say, "National Marriage Act", and so on and so forth, and applied to the present Group without having to club the member religions by the name of any one religion. [While finalizing the new word / nomenclature, the ultimate applicability / appropriateness of the same to the futuristic Uniform Civil Code should also be kept in mind.]

21. That the petitioners are not seeking any alteration in any statute whatsoever, all of which are indeed progressive, modern, and confer equality and ensure fairness to one and all, and are in line with the most advanced nations of the day. What the petitioners seek is only Remedy for the Right guaranteed to every citizen of India, on the basis of the Maxim of the Constitution itself – *ubi jus ibi remedium* [i.e., where there is a Right, there is a Remedy].

22. That the important law points which arise in the writ petition are:–

- i) As to whether by terming various religious communities

which have their own recognized religious identities can be termed and clubbed by an expression, “Hindu” under the “Acts” in issue, violates the religious rights of the other communities.

- ii) As to whether by naming these acts by the name of one religion, has discriminated the other religions, which are party to these Acts.
- iii) As to whether by clubbing independent religions under the word ‘Hindu’, the “Secular” character of the Constitution of India has been jeopardized and as to whether such an action has jeopardized the religious rights of individual religious communities, as enshrined under Articles 14,15,25,26,29 of Constitution of India.

23. That there is no other remedy either by appeal or revision is available with the petitioners except to approach this Hon’ble Court by way of filing the present writ petition.

24. That no such or similar petition has earlier been filed by the petitioners in this Hon’ble Court or in the Hon’ble Supreme Court of India.

25. That the documents attached with the writ petition are true copies of the originals as required under Rule 22 of the Writ Jurisdiction Rules.

In the light of the above given circumstances of the case, it is, therefore, respectfully prayed that this Hon’ble Court may be pleased to issue a writ of Mandamus or any other writ order or directions:–

- i) for declaration of use of name of “Hindu” as a religion and as an Expression in Hindu Succession Act 1956, Hindu Marriage Act 1955, Hindu Adoptions and Maintenance Act, 1956 and Hindu Minority and Guardianship Act, 1956 to be illegal as the same infringes upon the fundamental rights of the members of other religious communities to whom those Acts apply and also for declaration of the same to be ultra-vires to fundamental rights as enshrined under; Equality before law through Article 14, Prohibition of discrimination

on grounds of religion, race, castes, sex or place of birth through Article 15, Freedom of Conscience and Free profession, practice and propagation of religion through Article 25, Freedom to manage religious affairs through Article 26, and further through Article 29 Protection of interests of minorities.

- ii) with a further prayer that this Hon'ble Court may kindly pass any other appropriate writ, order or direction which deem fit and proper in the facts and circumstances of the case;
- iii) advance notice of the writ petition to the respondent may kindly be dispensed with;
- iv) the writ petition be allowed as prayed for.

1.

2.

(PETITIONERS)

THROUGH

(Navkiran Singh) / (Rubina N. Singh) / (Harpreet Kaur)

P/786/1986

P/71/1988

P/769/2008

CHANDIGARH

ADVOCATES

DATED: 30.09.2011

Counsel for Petitioner

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AFFIDAVIT

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. _____/2011
(Public Interest Litigation)

Birendra Kaur & another

... Petitioners

Versus

Union of India.

... Respondent

Affidavit of Birendra Kaur (Dr), wife of S.
Jatinder Singh, r/o D-151, Industrial Area, Phase-
8, Mohali.

I, the above named deponent do hereby solemnly affirm and declare as under:-

1. That the contents of paras 1 to 21, and 23 to 25 of the writ petition are true and correct to my knowledge and that of para 22 is believed to be true as per advice of the counsel. No part of it is false and nothing has been kept concealed therein.

Chandigarh

Dated:30.09.2011

(DEPONENT)

VERIFICATION:-

Verified that the contents of above affidavit are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

Chandigarh

Dated:30.09.2011

(DEPONENT)

‘A’

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 18634/2011
(Public Interest Litigation)

Birendra Kaur & another ... Petitioners
Versus
Union of India. ... Respondent

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4.	Power of Attorney	30.09.2011	34	02.65

Total Court Fee: 102.65

The main law points are in mentioned in para No.22 at page 30 of the writ petition.

Relevant statutes/Rules:Articles 14,15,25,26,29 & 30 of Constitution of India.

Similar case: NIL

No caveat has been received.

(Navkiran Singh) / (Rubina N. Singh) / (Harpreet Kaur)

P/786/1986

P/71/1988

P/769/2008

CHANDIGARH:

ADVOCATES

DATED:30.09.2011

Counsel for Petitioner

THE JUDGMENT

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 18634/2011
(Public Interest Litigation)

1. Birendra Kaur (Dr), wife of S.Jatinder Singh, C/o D-151, Industrial Area, Phase-8, Mohali.
2. Rohit Garg son of Dr Rajinder Kumar Garg, C/o Rajindra Diagnostic Centre, Near Civil Hospital, Mansa.
... Petitioners

Versus

Union of India through Ministry of Law & Justice, New Delhi.
... Respondent

Date of decision: 3.10.2011

Coram: Hon'ble the Acting Chief Justice
Hon'ble Mr. Justice Rajiv Narain Raina
Present: Mr. Navkiran Singh, Advocate for the petitioners.

~o~

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

RAJIV NARAIN RAINA, J.

1. We are indeed peeved at the prayer made in this petition filed

as Public Interest Litigation under Articles 226 and 227 of the Constitution for a declaration that the use of the word “Hindu” in the Hindu Succession Act, 1956, Hindu Marriage Act, 1955, The Hindu Adoptions and Maintenance Act, 1956 and The Hindu Minority and Guardianship Act, 1956 is illegal and the same infringes upon the fundamental rights of members of other religious communities to whom those Acts apply. The further prayer is to declare the use of the word ‘Hindu’ in the above context as ultra vires the fundamental rights of the petitioners enshrined under Articles, 14, 15, 25, 26 and 29 of the Constitution of India.

2. It has been suggested in para 20 of the petition that the word, “Hindu” should be replaced in following manner:-

“As a rectifying measure, the same could be replaced by any other suitable, neutral word, which is equally reflective of all the members of the Group to whom the current Hindu Acts apply. The word used for nomenclature could be of the like – National/ Regional/ Bharti/ Indoi/ Indic/ Popular/ Homeland/ Denizen, or so on so forth. For example, the Acts of the Hindu Law could be titled, say, “National Marriage Act”, and so on and so forth, and applied to the present group without having to club the member religious by the name of any one religion. (While finalizing the new word/ nomenclature, the ultimate applicability/appropriateness of the same to the futuristic Uniform Civil Code should also be kept in mind.)”

3. Mr. Navkiran Singh, learned counsel for the petitioners contends that these Acts apply not only to Hindus, but also to Sikhs, Buddhists, Jains and some others as well. This clubbing of religious groups in the enactments, it is argued, is against the spirit of the Constitution as the word ‘Hindu’, even though it is applied jointly to a group but it ultimately discriminates against the other religions. It is further argued that India is a secular State and that it cannot propagate or promote any religion in violation of the fundamental freedoms guaranteed under Chapter III of the Constitution and that this Court should issue a mandamus to delete the word, “Hindu” from the four

enactments and replace it by some other secular word as suggested in the extracted portion of the writ petition supra.

4. We are at loss to understand as to how this court can, in any of the jurisdictions it exercises, issue a writ of mandamus to Parliament to cause a change in the title of an Act. Hinduism, as we have been made to understand by scholars and sages at different times and different ages is not a strait jacket religion; it is a way of life. It is a “Dharma”. Hindus are not one people but many. Therein lies the beauty of India.

5. We have no doubt that this matter lies exclusively in the domain of Parliament. We have no authority to change the title of an Act duly passed by the legislature in its wisdom, just as we have no business to ask an author to change the title of his book because we feel it may be more appropriate or attractive. In fact the life of law lies in substance and content and not the form in which it is clothed. The title is no more than a key to an Act; no more than a thumb nail indication of the subject matter to follow, aimed more for convenience of indexing, reference, and application. We would be mortified in issuing any direction of the kind prayed for. We can only remind ourselves and the learned counsel for the petitioners to revisit, *inter alia*, Explanation II to Article 25(2) of the Constitution, which reads thus:–

“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.”

6. The Constitution makers were therefore fully conscious of the broad and comprehensive character of Hindu religion and its legendary tolerance. The arms of the Constitution warmly embrace all the citizens of India irrespective of caste, creed, sex, religion, denomination or religious dogma and theological beliefs. It respects all. Things will not fall apart merely because of the use of the word Hindu in the Statutes. India would not become less secular with the

use of the word. Nothing depends on it. Sikhs, Jains and Buddhists live happily under the umbrella of the Acts subject to custom and usage. The clubbing of the groups results in no prejudice; no hostile or invidious discrimination and no identity crisis within the range of selection. It is constitutionally recognized and protected. We do not for a moment countenance any argument in the present case questioning the vires of the word Hindu as employed in any of the four enactments or that it violates any constitutional provision. We also fail to see what public interest is involved in this petition.

7. The view propounded in the petition is myopic, fissiparous and uncalled for. It tends to break a homogeneous class asunder.

8. We have no hesitation in dismissing the petition at the threshold. Accordingly, this petition is dismissed.

9. Before parting with the judgment, we feel constrained to say that we find petitions filed in this court casually invoking both Articles 226 and 227 of the Constitution simultaneously even in cases where this court is not called upon to exercise its power of superintendence over any order or decision of a Court or Tribunal just as in this case.

(M.M. KUMAR)
ACTING CHIEF JUSTICE

(RAJIV NARAIN RAINA)
JUDGE

October 3, 2011

REJOINDER TO THE JUDGMENT

IDENTITY MISJUDGED

THE CASE

A Sikh claim to independent identity in the Indian laws was filed (CWP 18634/2011) in Punjab and Haryana High Court, Chandigarh, on 3rd October, 2011. Below is a Rejoinder to the Judgment passed on the same. The words / sentences that appear as '*italics*' are excerpts from the Judgment.

THE GROUND

The Petition filed was based on the fact that the Constitution of India recognizes Hinduism, Sikhism, Buddhism, Jainism, Islam, Judaism and Christianity as equal and independent religions.

Out of these, the last three [Islam, Judaism and Christianity] have their Personal Laws to govern their social practices as per their religious beliefs. The family laws of the other four religions [Hinduism, Sikhism, Buddhism, Jainism] are governed by the Hindu Law. The Hindu Law is the most ancient system of law, but much legislation has been added thereafter and many a changes have been effected thereupon ever since. The contemporary statutes, as such, are in line with the universal value system, based on equality of all humanity. These are also in line with the Sikh ideology.

The Petition relates to the Acts of the Hindu Law, namely, Hindu Marriage Act, Hindu Succession Act, Hindu Adoptions and Maintenance Act, and Hindu Minority and Guardianship Act. It is brought out that in these Acts, the word 'Hindu' is being used in two different senses – (i) 'Hindu' to mean a religion [to which category do not belong the Sikhs, Buddhists, and Jains]; and (ii) 'Hindu' as an expression for collective reference of Sikhs, Buddhists, and Jains, along with the Hindus. As a result of this,

for all practical, legal purposes related to family life, such as, marriage and divorce; infants and minors; adoptions; wills, intestacy and succession; joint family and partition; etc., the status that the Hindus enjoy is different, from the one accorded to the Sikhs, Buddhists and Jains.

The Hindus are Hindus by religion as well as Hindus for all documentation / purposes related to family matters, as mentioned above. On the other hand, the Sikhs, Buddhists and Jains, although are respectively so by religion, but for all other family-related legal purposes, they are labeled as Hindus. As a case, a Sikh is a Sikh by religion, but a Hindu for all legal purposes.

Thus, the Petition simply sought that instead of using the same word ‘Hindu’ for two different groups of people, two different words should be used for these. As the word ‘Hindu’ is synonymous with the religion of the majority in India, another word, neutral and secular, should be selected for referring to Hindus, Sikhs, Buddhists and Jains collectively, so as to maintain the independent status of the religions, and yet denote that the same family laws are applicable to them. It is one thing to apply a Law to a people, but another to label them wrongly. It is imperative that legal language be precise.

THE JUSTIFICATION

As mentioned above, the Hindu Law, as of this day, is progressive, humanitarian. But in the text of the Acts hereunder, there is an anomaly which does give rise to a feeling of dissent, dissatisfaction, an ‘*identity crisis*’ like situation experienced by some sections of the Indian populace – most notably the Sikh masses. The long-pending, pressing demand of the Sikhs to refuse to get their marriages registered under the Act titled the Hindu Marriage Act, and the assurances of the current Law Minister Salman Khurshid to attend to this, is well known. How then can it be said that ‘*Sikhs, Jains and Buddhists live happily under the umbrella of the Acts subject to custom and usage. The clubbing of the groups results in no prejudice; no hostile or invidious discrimination and no identity crisis within the range of selection.*’? How can one ‘*fail to see what public interest is involved in this petition.*’?

THE EXPECTATION

Laws are not always introduced in response to chaotic situations created by citizens, so to say. Many a people, the old, the ailing, the minors, etc., know nothing about legal rights, yet the state takes care of their interests. There are even laws for the unborn.

As per a Maxim of the Indian Law – *Ubi jus ibi remedium*, it is provided that ‘Where there is a Right, There is a Remedy.’ Keeping in mind the Constitutional right of equality of all religions, and having identified the anomaly that interfered with the implementation of that equality on paper, a simple remedy was thought of for rectification of the same – a remedy which does not seek any amendment in the Constitution, nor in any provision of any statute. Thus, what was sought through this Public Interest Litigation is only a “Remedy to ensure the Right Guaranteed.”

THE RESPONSE

The Hon’ble Judges, in their Judgment, have compared the Petition to ‘*asking an author to change the title of his book because we feel it may be more appropriate or attractive.*’ They add: ‘*In fact the life of law lies in substance and content and not the form in which it is clothed.*’

First of all, the Constitution of India, the longest in the world with well over one lac words in the English version, comprises of nearly four hundred Articles and 12 Schedules, and on the basis of these, there are further thousands of Statutes. And, the word as discussed in the Petition appears in only four statutes. Moreover, even a sentence in a book or a dialogue in a film can be objectionable enough to warrant a deletion / replacement. Seeking a change in a ‘*title*’ may be demanding too much as implied in the Judgment, but this may, too, be justified and vital in a given situation, as can be understood from the following:

When India should join the ‘British Commonwealth’, it was Jawahar Lal Nehru who sought a change in the title of the Organization, and suggested that it now be called ‘Commonwealth of Nations’ instead. ‘*The form in which it is clothed*’ was all important for maintaining the identity / individuality of our country. If this can be realized by the leaders / founders of yore, then it

should not be difficult to understand similar situations today by those who are in a position to influence the path the Country treads.

The British did not ‘dismiss’ the suggestion at the ‘threshold’. They rather agreed and, respecting the sentiments of the member countries, effected the change sought. Herein ‘*lies the beauty*’ of a nation!

The ‘*cloth*’ was important to us when the names of cities were changed – from Bombay to Mumbai, Madras to Chennai, Calcutta to Kolkata, and many others. Even the Punjab High Court came to be called Punjab and Haryana High Court on the creation of Haryana. Did the ‘*substance and content*’ of any of these change to warrant a change ‘*in the form in which it is clothed*’? We designed a new ‘*cloth*’ for the Indian Rupee, even while its ‘*substance and content*’ remained unchanged.

Even the ‘*cloth / title*’ of an Act based on Article 17 of the Constitution was changed from Untouchability (Offences) Act, 1955, to Protection of Civil Rights Act, 1955, in 1976, twenty one years later, addressing and assuring the dignity of man.

THE UNRELATED

Hinduism is not an issue raised at all. But it finds frequent mention in the Judgment: ‘*Hinduism, as we have been made to understand by scholars and sages at different times and different ages is not a strait jacket religion; it is a way of life. It is a “Dharma”. Hindus are not one people but many. Therein lies the beauty of India.*’ To take up these views as understood by the Judges:

- Hinduism is ‘*a way of life*’. This phrase is advanced to put Hindus, Sikhs, Buddhists and Jains together. These religions do share a common culture, race, geographical area, etc. This is where the ‘*way of life*’ is brought in. But it is common knowledge that these religions are far separated ideologically, and are also recognized to be equal and independent religions by the Constitution. As such, these religions need to be referred to collectively at certain times and individually at others. And, this is exactly what the Petition seeks to bring

to the notice of the Hon'ble Court. Banana, mango, guava, papaya, have individual names, but are collectively referred to as Fruits. A group of these fruits mentioned above can not be named Banana, or Mango, or so on. The Petition seeks to bring out that the use of the word 'Banana' for these two different purposes is bound to confuse the customer as well as the vendor. The legal world can not afford such a blunder; both the words – 'Banana' and 'Fruit' should be used, as and where they belong. Even groups of closely related fruits have a word when these are to be referred to collectively. For example, Citrus fruits - all citrus fruits put together are not called Oranges.

Brahmins, Khatris, Vaishas and Sudras are collectively referred to as Hindus. If all these were to be together called, say, 'Brahmins' or 'Sudras', then it would be a Herculean task to explain the Caste System. Similarly, the Constitutional promise of an Independent and Equal status to all religions can not be made available on paper, when Hindus, Sikhs, Buddhists and Jains are collectively referred to as 'Hindus'. Apart from '*a way of life*' of a particular geographical region, every religion also prescribes '*a way of life*' for its followers, based on its Ideology. The way of life of the religions mentioned herein differs in many respects: one does not believe in God, one worships idols of gods and goddesses, another the founder of the faith, and yet another the One Almighty; eating habits vary from strict vegetarianism to meat-eating being a non-issue; righteousness is in extreme *ahimsa* for some, and the use of force as a last resort may be justified for others; depilation is performed by either pulling out, or shaving, or trimming, or hair are strictly to be left unshorn; initiation, wedding and cremation ceremonies of each religion are different; festivals and the modes of their celebrations vary greatly from religion to religion; and so on.

It is in recognition of the different '*way of life*' of the different religions that the Constitution has provided the religious minorities a right to establish, maintain, and administer institutions of their choice for religious, charitable and educational purposes [Article 26, Article 30].

- Hindus are ‘*not one people but many*’. Indeed, they are – Virashaiva, a Lingayat or a follower of the Brahmo, Prarthana or Arya Samaj as per the Constitution, and also – Brahmins, Khattris, Vaishas, Sudras, as per the religious Ideology. If ‘*the beauty of India*’ lies in clubbing Sikhs, Buddhists and Jains under the word ‘Hindu’, then why have the Christians, Muslims and Parsis been left out? Does it mean that ‘*the beauty of India*’ goes only that far, and no further? Hindus may be ‘*not one people but many*’, but they are in a definite number as per the censuses of India, and the Sikhs, Buddhists and Jains do not form a part of that number. In fact, the use of the word ‘Hindu’ as an ‘expression’ misrepresents also the followers of the ‘Hindu religion’, who are emotionally committed to the Ideology and ways of worship of their religion.
- Hinduism is ‘*not a strait jacket religion*’. This amounts to a Freudian slip, as the subconscious mind of the Judges acknowledges the fact that Sikhs, Buddhists and Jains have, indeed, been put into the ‘*strait jacket*.’
- *Hinduism is a “Dharma”*. How about naming the group comprising of Sikhs, Hindus, Buddhists and Jains as ‘Dharma’? If ‘*nothing depends on it [Hindu]*’, then why not replace it with ‘Dharma’ [or the like]? The Acts would then be titled ‘Dharma Marriage Act’, ‘Dharma Succession Act’, and so on. And the followers of these religions put together could be called ‘Dharmis’. It shall be perfectly acceptable to all, even at the time when the Uniform Civil Code, as envisaged by Article 44 of the Constitution becomes a reality.

As per the learned Judges, ‘*Things will not fall apart merely because of the use of the word Hindu in the Statutes. India would not become less secular with the use of the word. Nothing depends on it.*’ One may ask, would things fall apart merely because of the use of the word ‘Dharma’ in the Statutes, whenever

collective reference to Hindus, Sikhs, Jains and Buddhists is warranted? Or would India become less secular with the use of the word 'Dharma' for the expression 'Hindu', especially when '*nothing depends on it*'?

Alternatively, these statutes can also just be termed as Marriage Act, Succession Act, and so on. There are other simple solutions too, for the titles as well as the contents of these Acts. In other words, there are many 'Remedies' to ensure the 'Rights' given.

THE VISION

The Constitution in its Article 44 envisages that a Uniform Civil Code be made applicable to all citizens of India. It was suggested in the Petition, as also reproduced in the Judgment, that, while finalizing the new word / nomenclature for the statutes under study, the ultimate applicability / appropriateness of the same to the futuristic Uniform Civil Code should be kept in mind, as Muslims, Christians and Parsis would also fall in the same group at that time.

As per the Judgment, '*The view propounded in the petition is myopic, fissiparous and uncalled for. It tends to break a homogeneous class asunder.*' But, as is obvious, the suggestion offered in the PIL is futuristic, in keeping the envisioned course of the Constitution in mind. To label the view as '*myopic*', '*fissiparous*' is indeed '*uncalled for*'. The view does not seek to '*break a homogenous class asunder*' but rather to create an even larger homogenous class. Only therein shall '*lie the beauty of India*'!

THE TRUTH

If both the Petitioners were Sikhs, their view could have understandably been (mis)interpreted as '*myopic*', '*fissiparous*'. But one petitioner is a Sikh while the other is a Hindu by religion. The view is visionary, cohesive. Also, both are rather Hindu as per the legal terminology used in our Constitution.

It appears to be misconstrued that the Petitioners are averse to the word 'Hindu'. It is unfortunate, indeed, as the Petition is not about the word, but it simply seeks to bring out that on account of it being used differently at different places in the Constitution, it leads to misconceptions, which are in contradiction to the spirit of the

Constitution. Even if the word ‘Sikh’ was used in a similar manner, it would have caused a similar anomaly, and to seek its redress should have been justified, to the objection of none.

Jawahar Lal Nehru was not averse to the word ‘British’; nor did the British think so.

THE APPROACH

The Judgment further holds, *‘The title is no more than a key to an Act; no more than a thumb nail indication of the subject matter to follow, aimed more for convenience of indexing, reference, and application. So, the title Hindu Marriage Act, shall give the ‘thumb nail indication’ that the ‘subject matter to follow’ is Marriage of Hindus. Barring a few scores of Indian lawyers, no one knows about Explanation II of Article 25(2) of the Indian Constitution, which ‘construes’ Sikhs, Buddhists and Jains as Hindus. The term ‘Hindu’, as understood by every Indian and also by everyone else the world over, implies the people who follow the Hindu Religion, which is rated the third largest in the world. And this position is without counting the Sikhs, Buddhists and Jains in it. Buddhism is the fourth largest, and Sikhism is the fifth largest religion in the world. If Sikhs, Buddhists and Jains were counted under Hinduism, then the position of Hinduism might have been different, and Buddhism and Sikhism would not have even found mention.*

Citing Explanation II of Article 25(2), which ‘construes’ Sikhs, Buddhists and Jains as Hindus, the Judges infer that *‘The Constitution makers were therefore fully conscious of the broad and comprehensive character of Hindu religion and its legendary tolerance.’* It is being assumed that there is no scope of any anomaly / error creeping in on account of the fact that the Constitution makers were perfect in matters of religion, so to say. Were they not *‘fully conscious’* about other topics / issues so as to warrant almost a hundred amendments in the Constitution since its adoption in 1950, and some even in its Preamble? Many of these amendments have been to either add, delete, insert, or replace not only word(s), paragraphs but also sub-clauses, clauses, and even complete Articles.

What if the British had refused to effect the change in the title

of their Organization, British Commonwealth, and justified, nay rather attributed, such refusal to ‘*broad and comprehensive character*’ and ‘*legendary tolerance*’ of their nation? Would it not have been justified to label Britain as a ‘*strait jacket*’ nation in that case?

The Sikhs were always treated as a separate entity. The Cabinet Mission Plan, which led to the Independence of India Act, recognized the Sikhs as one of the three contending parties, the other two being the Muslims and others. In fact, the Hindus were not even mentioned as a party. They formed a part of ‘others’.¹

The Sikh representatives of the Constituent Assembly refused to sign the Constitution of India prior to its adoption in 1949. Sikhs also represented to the NCRWC² headed by Chief Justice M N Venkatachaliah. The Commission, having accepted the Sikh view, made a recommendation in its Report [Para 3.23.2], in relation to Article 25 of the Constitution of India on the following lines:

- Explanation II to Article 25 should be omitted,
[which currently reads: 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.]

1 Kharak Singh, Dr, *Turn of the Century – Sikh Concerns and Responses*, Singh Brothers, Amritsar, 2009, p 435

2 The National Commission to Review the Working of the Constitution (NCRWC) was set up vide Government Resolution dated 22 February, 2000. The terms of reference stated that the Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of Parliamentary democracy, and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features. The Commission was required to complete its work and make recommendations within one year. The tenure of the Commission was extended from time to time up to 31st March, 2002. The Commission submitted its report in two volumes to the Government on 31st March, 2002.

- And sub-clause (b) of clause (2) of that Article should be reworded as follows:–

“(b) providing for social welfare and reform or the throwing open of Hindu, Sikh, Jaina or Buddhist religious institutions of a public character to all classes and sections of these religions.”

[which currently reads: 2(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.]

The high powered Commission consisted of 11 eminent persons of the country, including Chief Justice Venkatchaliah, Justice R S Sarkaria, Justice Jeevan Reddy, Mr Soli Sorabjee, Parasaran, etc.

The Democracies of England and America, do not first ‘construe’ Hindus, Sikhs, Buddhists, Jains, Muslims, etc., as Christians, before giving them the Freedom of Religion. Just as the Articles of the Constitution of India are either for ‘all persons’ or ‘all citizens’, the Article 25 which gives Freedom of Religion should also address only persons / citizens, without referring to anyone on the basis of religion. Specific mention of Sikhs, Buddhists and Jains has, in fact, cost them their identity. The Muslims, Christians and Parsis do not find mention therein and, therefore, they enjoy equal freedom, without feeling discriminated in any manner.

Hopefully, a government, *in its wisdom*, will implement the recommendations of the NCRWC, sooner than later.

If ‘*The arms of the Constitution warmly embrace all the citizens of India irrespective of caste, creed, sex, religion, denomination or religious dogma and theological beliefs. It respects all.*’, then why should a demand, dear to a section of Indians, not be met, when it costs nothing to the Country? And specially, when the other citizens are enjoying the same?

THE REPERCUSSION

Even the Constitution makers failed to use the word ‘Hindu’ appropriately in the text of these four Acts – courtesy, again, the

use of the one word ‘Hindu’ for two different purposes. In para 7 of the Petition, this has been explained in detail. But this para seems to have missed the attention of the Judges, as it has not been addressed in their Judgment at all.

It was brought out that, as per the Hindu Marriage Act, one of the conditions for right to Divorce to one party is if the other party, as per Section 13(1)(ii) has ceased to be a Hindu by conversion to another religion. Now, if a Jain converts to Buddhism, or a Buddhist converts to Sikhism, he /she shall still remain a ‘Hindu’. So, all Hindus, Sikhs, Buddhists and Jains are denied the right to divorce if their spouse converts to one of these religions. The other Acts also use the same expression “has ceased to be a Hindu by conversion to another religion” in their respective texts. Should the ‘*legislature in its wisdom*’ not look into it and take necessary action, once pointed out in a PIL, a Public Interest Litigation, with no personal interest attached to it. Rather, it should be done *suo moto* by some ‘*fully conscious*’ law makers of the day.

THE IMPLICATION

With the meanings related to the word ‘Hindu’, one must have to deliver a speech and/or write an essay on it every time this word is to be used – by elucidating what the ‘*The Explanation II of the Article 25(2) of the Constitution*’ means, and how ‘*the Constitution makers were fully conscious of the broad and comprehensive character of Hindu religion and its legendary tolerance*’ and what the Judges ‘*have been made to understand by scholars and sages at different times and different ages*’.

THE AIM

There was no intent to make the Judges to feel ‘*peevied*’ at the nature of the Petition, and to be ‘*mortified*’ to issue a direction of the nature sought. The Petition was filed in the spirit of concern, with the aim of promoting communal harmony in the interest of national unity, amity and integrity, in commitment to the fundamental duties of citizens as enshrined in Article 51A of the Constitution of India.

THE JUDGMENT

As per the Judges, ‘*We are at loss to understand as to how this court can, in any of the jurisdictions it exercises, issue a writ of mandamus to Parliament to cause a change in the title of an Act.*’ But the Petition never sought a mandamus to the Parliament. It seeks:

- 25(i) for declaration of use of name of “Hindu” as a religion and as an Expression in Hindu Succession Act 1956, Hindu Marriage Act 1955, Hindu Adoptions and Maintenance Act, 1956 and Hindu Minority and Guardianship Act, 1956 to be illegal as the same infringes upon the fundamental rights of the members of other religious communities to whom those Acts apply and also for declaration of the same to be ultra-vires to fundamental rights as enshrined under: Equality before law through Article 14, Prohibition of discrimination on grounds of religion, race, castes, sex, place of birth through Article 15, Freedom of Conscience and Free profession, practice and propagation of religion through Article 25, Freedom to manage religious affairs through Article 26, and further through Article 29, Protection of interests of minorities.
- (ii) with a further prayer that this Hon’ble Court may kindly pass any other appropriate writ, order or direction which deem fit and proper in the facts and circumstances of the case;

The Judges further state, ‘*We have no doubt that this matter lies exclusively in the domain of Parliament.*’ The Parliament frames the laws, but these laws can always be put to judicial scrutiny of the Courts, and the Courts are fully empowered to set aside a law which is in contradiction to the spirit of the Constitution.

From this Rejoinder, it is evident that the Judgment issued contains a lot more matter than the Judgment itself.

It is one thing to pass a judgment, and another to sit in judgment.
