

POLICE AND KIRPANS - THE RELIGIOUS KNIFE

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About the Author

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Introduction

The *Crimes Legislation Amendment (Police and Public Safety) Act 1998* provided police with additional powers to search for knives and created new offences for possessing knives offences under the *Summary Offences Act 1988*. With the commencement of the *Act*, the *Summary Offences Act 1998* was amended accordingly. *Section 11C(2)(a)(vii) of the Summary Offences Act 1988*, states:

- (2) Without limitation it is a reasonable excuse for the purposes of this section for a person to have custody of a knife if:
- (a) the custody is reasonably necessary in all the circumstances for any of the following:
- (vii) genuine religious purpose.

The *Mandatory Continuing Police Education Package "Crimes Legislation Amendment (Police and Public Safety) Act MO13* in July 1998 was endorsed by the Commissioners Executive team as a compulsory component to educate police about the legislative requirements of the *Act* and where police were also informed of the reasonable excuse clause pursuant to *section 11C(2)(a) vii*. Delivery of which took place during the 1998/1999 training year.

Occurrences of searching Sikhs for knives and the issuing of fines makes it apparent that it is prudent to revisit the procedures regarding religious exemptions. The incident below highlighted the need for education of NSW Police regarding the Sikh religion and the requirement to carry a 'kirpan' the religious knife/sword.

In December 2002 while on a routine operation a Constable from the Highway Patrol flagged a Legion taxi driven by Mr Singh in the Sydney City Central area at around 11.30am. The taxi papers were in order and when Mr Singh returned to the taxi, the officer noticed the knife (Kirpan) in a sheath hanging under his shirt from a shoulder strap. He asked Mr Singh to hand over the weapon. Mr Singh explained that it was his religious symbol and he could carry it under the *Summary Offences Act*. The officer felt the size of the knife seemed intimidating and he was concerned about the fact that a person driving a passenger vehicle in a uniform was carrying a knife. Mr Singh was searched by the officer, issued a fine of \$550 for "custody of a knife in a public place" and had his kirpan confiscated. Mr Singh was informed that he would need to explain his point of view in court and he would have to fill in a form to get the Kirpan back.

This incident raises some significant dilemmas for operational police.

1. "The religious knife seems like a dangerous instrument and has the potential to be used for unlawful purpose."

There have been no reported cases involving harmful, threatening or violent use of the *Kirpan*. Police who work in areas with a significant number of Sikh population did not report any law and order problems related to or arising from the *kirpan*. The Sikhs have been given infringement notices on numerous occasions by the police for lawfully carrying the Kirpan but in all cases the courts have dismissed and have not proceeded to trial.

2. "As police I need to establish a person carrying a religious knife is a genuine Sikh and it is on his person as a genuine religious article".

A person can be established as a Sikh if he is wearing a turban. All Sikh names end with Singh. The baptised Sikhs must follow the five K's which are:

- Kesh or hair- Sikhs do not cut their hair. The hair is tied on top of the head and covered by a turban.
- Kangha or comb- a comb which is hidden under the turban
- Kara or bangle- steele bracelet/bangle
- Kachera or boxer shorts- underwear like boxer shorts
- Kirpan or religious knife- the religious knife worn on a strap in a sheath

Police can be reasonably satisfied that a person carrying these elements is of baptised Sikh religion and has a "genuine religious purpose" for carrying the knife. It might be difficult for police to identify the hair, the comb which are hidden under the turban and the underwear for obvious reasons. Removal of a turban in public for Sikhs is considered an equivalent to a strip search. Baptised Sikhs do not smoke or consume alcohol.

Not all Sikhs follow the five K's or carry a Kirpan. So they may wear the turban but not carry the Kirpan.

3. "I do not believe people should carry a knife for religious purpose. The legislation needs to be changed."

The law grants the Sikhs the right to carry a Kirpan for religious purpose. As a democratic nation the law in Australia grants the Sikhs the right to carry the *Kirpan- the religious knife* as an article of their faith. The exemption for *Kirpan* is an example of the states responsiveness to the emerging multicultural needs of its population and an additional tool for community policing..

The primary role of the police is to uphold the law. It needs to be respected in spirit and followed in action. The ramifications of not doing so for the police are significant. It leads to an increase in court costs awarded against the police for the matters that end up in court and cases where financial compensation is being sought by the person given the infringement notice and the long term impact on police- community relations.

The Incident

The previously mentioned incident led to a letter of concern from the General Secretary, Sikh Mission Centre Sydney Inc. to the Police Commissioner. It also led to an article in the Fiji Times.

Mr Singh lodged a complaint with the Anti Discrimination Board of New South Wales alleging that he has been discriminated against by the NSW Police, on the ground of race. A letter received by the Police Commissioner in May from the board states that in order to resolve the complaint, Mr Singh had put forward the following settlement proposal:

- a written apology by the constable to Mr. Singh;
- a revocation of the infringement notice and fine for "custody of a knife in public place";
- a certificate or official letter from NSW Police attesting to the lawfulness of carrying a *kirpan*; and
- financial compensation.

Mr Singh handed the Kirpan to the officer even though the kirpan was exempted under the *Summary Offences Act* and that he could legally be in possession of it. After taking possession of the Kirpan the officer asked him to remove his shirt and handover the strap on which the knife was hung. Mr Singh had to take his shirt off in public and he felt like a common criminal even though he was not breaking any law.

The story does not end with the issuing of the fine and confiscation of the Kirpan. Mr Singh called up the Sikh community leaders and related the incident to them. He went with them to the police station where he explained the whole story at reception. The police officer at the reception inquired if Mr Singh was still wearing a Kirpan and requested to see it. When Mr Singh showed the Kirpan to the police officer it was confiscated and the officer threatened to issue another fine. The other four Sikhs accompanying Mr Singh then showed their Kirpans, citing exemption and demanded that they be issued fines as well.

The supervising sergeant intervened and asked the Sikhs to take a seat while he made inquiries. After about fifteen minutes he came to the reception and apologised for the whole incident. The Kirpan was returned to Mr Singh. He advised him to contact the police station to retrieve the first Kirpan that was originally confiscated, in the morning.

At the time of writing this article Mr. Singh's *kirpan* had been returned and he was in correspondence with the infringement bureau to review his fine. Commander of Education Services and Corporate Spokesperson for Cultural Diversity wrote a letter to Baba Jagdev Singh The General Secretary, Sikh Mission Centre Sydney Inc. validating the exemption for religious articles and a baptised Sikh's right to carry it under law. The letter also assured the community about the actions that police have put in place to educate the officers about the religious requirement of the Sikhs.

Mr Singh feels the incident could have been avoided if the officer had consulted his supervisor, the legal section of the department or a religious leader at the Sikh temple. He feels the best way to avoid further incidents is to educate the police about the Sikh religion.

Why is the Kirpan so essential for the Sikh identity?

What we don't grow up with looks strange and sometimes fascinating. What we don't understand seems threatening and meaningless. Our present is defined by our past and it is essential to know the past to accept the present without bias. All religious beliefs and practices begin as an effort by communities to address the social and political conditions of the times that they live in.

Therefore to understand any religious belief and practise it is important to understand its historical origin. In 17th Century India the Moghul rulers were persecuting Sikhs for religious and political reasons. The leader of the Sikhs Guru Gobind Singh believed that to fight oppression and discrimination the Sikhs needed to believe in their identity and have faith in the ability to withstand discrimination. Therefore he created the new order of the Sikhs called the "Khalsa" (pure ones). The Khalsa had to adhere to the Five K's. The five K's with the turban distinguished a Sikh from any other person in the world and were essential for preserving the life of the community and fostering the feeling of brotherhood. As you can see the historical reasons may have altered but the five K's including the Kirpan are an integral part of the Sikh identity.

The practise may seem unnecessary and strange to those who are not aware of the religion and the continuous struggle of autonomy and non-discrimination for the Sikhs through history. The Sikhs have been known to face torture and death rather than cut their hair or remove any of the sacred symbols from their body. To be baptised Sikh is to carry a Kirpan.

Religious beliefs and practices have evolved and adapted to the needs of the changing society and that is why today the Kirpan is a shorter version with blunt edges, compared to the original sword with sharp edges, carried 100 years ago. The Sikh community has been constantly making adjustments in response to the security needs of different agencies. For example the Kirpan is carried in booked baggage while flying now and not in hand baggage or on their person any more.

At courts which do not require secure entry, the Sikhs carry the Kirpan, at others a briefs bag is provided by the Sheriff if it is available. The kirpan remains with the Sheriff where no brief bags are available and handed back after completion of their business.

Where should the Kirpan be worn on person and what does it look like?

The religious knife or Kirpan was traditionally a sword, and hung from a sling in a sheath. Now, it is usually a ceremonial replica of a knife. Most often it is six inches long and will usually have blunt edges. It would always be worn in a sheath and should be hung on a strap which is worn over the shoulder (see photograph).

It would not have sharp edges and would not be worn without a sheath. It is mostly worn under clothes and carried by men and in some cases by women. Sikhs wear the normal attire or clothes of the country they live in except for religious ceremonies. Religious teachers wear the kirpan over their clothes in a sheath and would be dressed in traditional white trousers and long shirt. **The Kirpan is to be worn at all times by Sikhs.**



Where can the Kirpan be bought in Australia and when is it worn?

According to the information available, the Kirpans are brought by individual Sikhs from India and are not sold in Australia. The size of the Kirpan could vary. A Sikh gets the right to wear a Kirpan after the baptism ceremony. The ceremony may vary for individual male members of the family depending upon the family traditions. It can be as young as early adolescents to mid twenties or even later. The young Sikhs can carry the Kirpan under the same exemptions provided in the *Summary Offences Act*.

The Sikhs must have the *Kirpan* on their person at all times irrespective of the ceremonies. A Sikh who does not follow all five K's has already broken the vows of baptism and as such is not required to carry a *Kirpan*.

Can police confiscate the knife and then return it to the owner?

Unless the confiscation of the knife is dealt with under other legislation such as its use in the commission of an offence, the *Kirpan* can lawfully be in a Sikh's custody in a public place or school and therefore it should not be confiscated by the police. Most Sikhs are advised to carry a copy of the letter from the temple along with a copy of the *Act*.

If under exceptional circumstances the *Kirpan* has been confiscated, the person from whom it is confiscated or its owner may within the initial confiscation period of 28 days, apply to the local area commander for its return. An application for its return can be made within 28 days of the confiscation to the local area commander.

Sikhs and Vilification

When there is any major conflict in the world, minority groups like the Sikhs become vulnerable to prejudice. In the aftermath of the September 11, Sikhs in Australia and other parts of the world became victims of vilification. Due to the beard and the turban they were confused as followers of Osama Bin Laden. They received hate mail in Australia, UK, USA and Canada. Many Sikhs were wounded whereas two were killed in the USA.

There is an inherent tendency to be influenced by events like September 11 and the Bali bombings, a challenge that all law enforcement agencies including the NSW Police must come to terms with while interpreting the law. It is important that the policing of minority groups does not lead to marginalisation of the groups through acts of omission or commission by the police.

Sikhs in Australia

Today Sikhism is the world's 5th largest religion with a following of over 20 million. Most Sikhs live in the state of Punjab and other neighbouring Indian states but there are about 400,000 in the UK, 350,000 in the United States, 300,000 in Canada and smaller communities in Europe, Africa, South-east Asia and Australia.

The word 'Sikh' is derived from 'shishya' in Sanskrit language. The word 'shishya', means a disciple, a learner and seeker of truth. The religion was founded by Guru Nanak Dev at the beginning of the sixteenth century in the northern province of Punjab in India. His teachings are compiled in Guru Granth Sahib, which is the scripture and holy book of the Sikhs. Sikhs speak Punjabi and the script is called Gurumukhi. The place of worship or temple is called a Gurudwara.

It appears the first Sikhs to Australia came as early as 1830s to work as shepherds and farm labourers. In the 1860s cameleers commonly called 'Ghans' (short for Afghans) were brought to Australia. Amongst them were many Sikhs. They worked as camel-drivers taking part in exploration of the interior or set up camel-breeding stations or caravanserais. Other Sikhs arrived as free settlers and worked as hawkers. In the 1890s nearly 250 Sikhs worked on the sugar cane fields in Queensland. Others worked clearing bushland and establishing pastures for sheep and cattle. Later some Sikhs moved south to the New South Wales north coast, continued farming, established communities and built Australia's first purpose-built *gurdwara* in Woolgoolga.

They have been pioneers in banana plantation and cultivation in the area. Since the abolition of the White Australia policy in the 70's Sikh settlers mainly from India and Sri Lanka but also from other countries including Malaysia, Singapore, Fiji, Kenya, Uganda and the United Kingdom have come to Australia. There are now over 12,000 Sikhs in Australia.

Conclusion

New challenges provide new opportunities. Police enforce the law that the state creates and amends, to meet the changing needs of its evolving population. The application of the reasonable excuse clause pursuant to *section 11C(2)(a) vii* for law enforcement should be conducted in the spirit it is meant to be.

The Sikhs in this country have shown respect for the law of the land. There are no known incidents by the author suggesting the Kirpan has been used for unlawful purpose. The application of the law has significant ramifications for operational police, they need to accept and respect the Sikh religious beliefs and the right of the baptised Sikhs to carry a Kirpan for religious purpose.

List of Sikh Temples in NSW
Gurdwara Sahib
81 Kissing Point Rd
Turramurra, Sydney NSW 2074
Ph- 94498 253

Sri Guru Singh Sabha Gurdwara
14 River Rd
Revesby
NSW 2212
9792 3501

Sikh Sangat Gurdwara
PO Box 1313
Paramatta
NSW 2156

Sikh Centre Gurdwara Sahib
Parklea
Sydney NSW

Sri Guru Singh Sabha
Yoogali
Griffith NSW

Guru Nanak Singh Temple
PO Box 322
Hastings St
Woolgoolga
NSW 2456

Gurdwara Sahib Parklea
Sikh Centre
8 Meaurants Lane
Glenwood NSW 2148
9622 6994

for further information please contact
www.sikhnet.com.

References

www.sikhnet.com.

MO13 Crimes Legislation Amendment (Police and Public Safety) Act Mandatory Continuing Police Education Package.