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RRT RESEARCH RESPONSE

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Questions

- 1. What are the prevailing attitudes towards and treatment of Sikh homosexuals in Punjab?**
- 2. Is the legal situation in India in relation to homosexuals the same as it was in July 2007?**
- 3. Please provide any other relevant background information.**

RESPONSE

- 1. What are the prevailing attitudes towards and treatment of Sikh homosexuals in Punjab?**

A review of source material relevant to the issue of the situation of Sikh homosexuals in Punjab is presented below under the following sub-headings: *Public Statements by Religious Leaders in Punjab*, *Arrests and Incidents in Punjab*, *Media Discourse on Homosexuality in Punjab and Neighboring Areas*, and *General Discussions on Homosexuality and Sikhism*.

Public Statements by Religious Leaders in Punjab

Information was located to indicate that in January 2005, the issue of same-sex marriage and homosexuality was the subject of commentary by Sikh religious leaders in Punjab, and of concomitant local media attention. This public discourse, in which same-sex marriage and homosexuality were generally characterized as being incompatible with Sikhism, occurred in response to a proposed bill to legalise same-sex marriage in Canada, for which several Canadian Sikh MPs had signaled their support. An article published in *The Tribune Online Edition* on 14 January 2005 reported various comments on same-sex marriage and

homosexuality, including statements made by the general secretary of the Shiromani Gurdwara Parbhandak Committee (SGPC), the body responsible for Sikh temples:

The SGPC is against same-sex marriage, which has become a hot issue in countries like Canada, where Sikhs are settled in a big number.

Taking a clear and firm stand on the issue, Mr Sukhdev Singh Bhaur, general secretary, SGPC, said today that such marriages were against the Gurmat and Sikh code of conduct. "Because of this reason, the SGPC was against such marriages," he added.

There are six Sikh MPs in Canadian Parliament. They are divided on the issue. Three of them have taken a stand against the Bill to be passed next month by the Canadian Government to legalise such marriages in that country. However, two MPs — Mr Ujjal Dosanj and Mr Navdeep Singh Bains — are supporting the Bill. Ms Ruby Dhalla, another MP, has not made her stand clear yet.

...Mr Sukhdev Singh is not alone to say so. Leading Sikh scholars, including Dr Kharak Singh, who has authored books on Sikh religion, and Dr Jodh Singh, Editor-in-Chief of the Sikh Encyclopaedia, are of the same view. Dr Jodh Singh said that the concept of same-sex marriages was against the spirit of Guru Granth Sahib. It was also against the law of nature.

"To go against the law of nature was not advisable for those who have been given the responsibility by people to shape the destiny of their respective countries," said Dr Jodh Singh. "Man has been paying a heavy price for violating the law of nature," he added, pointing out the devastation caused by tsunami.

Questioning those supporting the same-sex marriage, Dr Jodh Singh asked whether two men married to each other could give birth to a baby, and likewise could two women married in the same manner procreate? If the answer was no, then why to support such marriages, he said.

Dr Kharak Singh, who was a member the Sikh Dharam Parchar Committee of the SGPC that decides about such issues, says that same-sex marriages was an unnatural phenomenon and Sikhism does not approve of it (Dhaliwal, Sarbjit 2005, 'SGPC against same-sex marriage', *The Tribune Online Edition*, 14 January

<http://www.tribuneindia.com/2005/20050114/punjab1.htm> – Accessed 8 May 2008 – Attachment 1; for information on the role of the SGPC in Punjab see Question 5 of RRT Country Research 2002, *Research Response IND15065*, 10 April 2002 – Attachment 2).

An article published on 16 January 2005 reported similar comments made by Giani Joginder Singh Vedanti, the leader of the Akal Takht, who issued a directive that same-sex marriage should not be permitted in any Sikh gurdwara (temple):

Denouncing the practice of same-sex marriages, Giani Joginder Singh Vedanti, Jathedar of Akal Takht, has, in his directive, urged the Sikh sangat not to allow the holding of such ceremonies in any gurdwara of the world.

Taking serious view of the proposed move of the Government of Canada to introduce same-sex marriage bill in the House of Commons, he described it as 'anti-Gurmat' trend that had no place in Sikhism. The directive, the first of its kind, has been issued under the seal of Akal Takht.

The directive reads that the rising trend of same-sex marriages in western countries was a matter of concern. The move of certain countries to give legal accordance to such marriages

had already initiated a worldwide debate. He said Sikh code of conduct did not allow such marriages.

A same-sex marriage in Amritsar had already hit the newspapers headlines. Jathedar Vedanti said the idea of same-sex marriages originated from sick minds. The trend needed to be curbed, he said. He urged the Sikh sangat to seek guidance from Guru Granth Sahib and act as per the Sikh philosophy to stop such anti-human tendencies (Walia, Varinder 2005, 'Akal Takht diktat against same-sex marriages', *The Tribune Online Edition*, 16 January <http://www.tribuneindia.com/2005/20050117/punjab1.htm> – Accessed 7 May 2008 – Attachment 3; for a basic summary of the Akal Takht see 'Akal Takht' 2008, Encyclopædia Britannica Online website <http://www.britannica.com/eb/article-9005259/Akal-Takht> – Accessed 9 May 2008 – Attachment 4; for a recent report from Punjab regarding the religious authority of the Akal Takht see 'Sikh sammelan resolves Akal Takht's supermacy can't be challenged', *Punjab Newslite* <http://www.punjabnewslite.com/content/view/9135/38/> – Accessed 9 May 2008 – Attachment 5).

Previous RRT Research Response IND31979 also referred a subsequent article published in the Canadian media in March 2005, which quoted comments made by Giani Joginder Singh Vedanti addressing the specific issue of homosexuality and Sikhism:

Giani Joginder Singh Vedanti, the highest Sikh authority, said he personally reminded six visiting Sikh-Canadian MPs of their religious duties when they visited him in January. They were among a group of MPs travelling with Prime Minister Paul Martin.

“The basic duty of Sikh MPs in Canada should be to support laws that stop this kind of practice [homosexuality], because there are thousands of Sikhs living in Canada, to ensure that Sikhs do not fall prey to this practice,” he said in a report published Monday.

...“The Sikh religion would never accept such MPs,” said Vedanti. “Nobody would support such a person having such dirty thoughts in their mind because it is against the Sikh religion and the Sikh code of conduct and totally against the laws of nature” (‘World Sikh group against gay marriage bill’ 2005, *CBC News*, 29 March <http://www.cbc.ca/canada/story/2005/03/28/sikhguy-050328.html> – Accessed 4 July 2007 – Attachment 6; RRT Research & Information 2007, *RRT Research Response IND31979*, 16 July – Attachment 7).

It may be worth noting that an article published by the *Indian Express* on 28 January 2005 quoted comments made by the head of the SGPC which indicated that she was opposed to the institution of same-sex marriage, but not same-sex co-habitation:

Bibi Jagir Kaur, chief of the SGPC, is more direct in her attack on the legislation. “People of the same sex should be allowed to live together, but their relationship should not be termed as marriage. And why make a law on it?” (Grewal, Manraj 2005, ‘Canada’s same-sex bill is Punjab’s hot debate now’, *The Indian Express*, 28 January http://www.indianexpress.com/india-news/full_story.php?content_id=63551&headline=Takht~dire) – Accessed 7 May 2008 – Attachment 8).

The same source also referred to a controversial contemporaneous incident in which two Sikh girls from Punjab had been married in a temple in Delhi:

...the Takht may have been alarmed by the same-sex marriage of two Sikh girls in Ajnala, near Amritsar, in December last year.

The girls, one a Jat Sikh and the other a Balmiki, had tied the knot at a temple in Delhi, and had refused to annul the marriage despite opposition from their parents who even approached the court (Grewal, Manraj 2005, 'Canada's same-sex bill is Punjab's hot debate now', *The Indian Express*, 28 January http://www.indianexpress.com/india-news/full_story.php?content_id=63551&headline=Takht~dire) – Accessed 7 May 2008 – Attachment 8).

A local Punjab media report from January 2008 indicated that the issue of same-sex marriage remained topical in Punjab, speculating that the impending visit to Punjab of the Canadian Sikh MPs who supported the same-sex marriage bill may provoke controversy ('Same-sex marriage votaries' participation may kick up row' 2008, *The Tribune Online Edition*, 2 January <http://www.tribuneindia.com/2008/20080102/punjab1.htm>) – Accessed 7 May 2008 – Attachment 9).

Arrests and Incidents in Punjab

Limited media reports on the treatment of homosexuals by the Sikh community, and by state authorities in Punjab were located. An article published on the *IBNLive* website in July 2007 reported on an incident in which a Sikh woman attempted suicide after family members and state authorities acted to end her marriage to another woman:

A 'marriage' between two girls near this Punjab town went terribly wrong on Thursday with the 'boy' in the relationship slitting her wrists in an attempted suicide bid, but ending up being booked by the police.

The 'drama' of this lesbian marriage — the second one to be highlighted in Punjab — unfolded on Thursday in the court of the sub-divisional magistrate when Rajwinder Kaur — the 'girl' in the marriage — gave a statement that she no longer wanted to live with the 'boy', Baljit Kaur.

Rajwinder and Baljit, belonging to Hassanpur Khurd and Hassanpur Kalan villages respectively, had run away from their homes last month and had secretly married on June 3. They disclosed their marriage on June 13 and started living together in Patiala.

Pressure started to build on both the girls to separate, especially from the family of Rajwinder. Rajwinder's family brought her back from Patiala and produced her before the SDM after lodging a complaint against Baljit for cheating her.

After Rajwinder recorded her statement, Baljit got hysterical and ran outside the courtroom and slit her wrists to protest the separation. Alert policemen in the court complex caught hold of Baljit and gave her first aid ('Lesbian marriage falls apart in Punjab, one booked' 2007, *IBN Live* website, 5 July <http://www.ibnlive.com/news/punjab-girls-samesex-marriage-falls-apart-one-booked-for-suicide-bid/44151-3.html?xml>) – Accessed 7 May 2008 – Attachment 10).

An article from January 2004 which reported the bashing death of a man in Ludhiana, Punjab, focused on the sexuality of the alleged offenders:

A gang of pick-pockets-cum-homosexuals allegedly murdered a youth early this month in the city for not submitting to its demands. The youth, a new entrant to the gang was hit with iron rods on the intervening night of January 17 and 18 when he spurned the sexual overtures of four drunk gang members.

The body of Munish Kumar (22), alias Manni, was found in a dilapidated building in Karol Bagh Colony in the Salem Tabri police station area on January 18. The deceased was hit about 20 times with the rod.

Claiming to solve the gruesome murder, DSP (Rural) Manjit Singh Dhesi and the SHO of Salem Tabri, Sub-Inspector Buland Singh, told mediapersons here this afternoon that two members of the gang had been arrested. Police investigations revealed that all gang members were gay ('Pick-pockets killed youth, say cops' 2004, *Ludhiana Tribune Online Edition*, 28 January <http://www.tribuneindia.com/2004/20040128/ldh1.htm#5> – Accessed 7 May 2008 – Attachment 11).

An article published in the *Tribune Online Edition* in January 2001 reported on a secret gay club in Ludhiana, Punjab, and indicated that two men had been arrested and booked under Section 377 of the Indian Penal Code:

Those who believe that gay clubs exist only in western countries are wrong. Reports of activities of one such club have come to light in this city after the arrest of two persons by the police this evening.

Homosexuality is prohibited under the Indian law. The two persons were caught at the Old Jail here. They have been booked under Section 377 of the IPC which calls for action against persons dealing in such activity.

According to police sources, the two were caught in the act inside the dilapidated Old Jail. The police had recently started a round-the-clock vigil of the jail after having received reports that a nine-year-old boy was sodomised by a four-member gang in the jail premises.

The two youths told the police that 250 persons in the entire state had formed a secret club which organised 'night orgies'. Two such parties had taken place a few months ago in a marriage palace near Mullanpur Dhakha (Singh, Jupinderjit 2001, 'Gay club in Ludhiana', *Tribune Online Edition*, 6 January <http://www.tribuneindia.com/2001/20010106/punjab.htm#12> – Accessed 7 May 2008 – Attachment 12).

Media Discourse on Homosexuality in Punjab and Neighbouring Areas

Various local media reports were located which may provide some indication as to general attitudes regarding homosexuals and men who have sex with men (MSM) in Punjab, and in neighbouring Haryana state, and Chandigarh (the joint capital of Punjab and Haryana states). An article published in June 2006 provides information on a support group for gay men formed in Mauli Jagran, Chandigarh, and indicates that gay men in Chandigarh may have difficulty accessing police protection if they are assaulted:

An AIDS awareness campaign of the Family Planning Association of India has led to the formation of the region's first self-help group of gays in village Mauli Jagran. Probably, the country's first such alliance, several homosexual men from the village and its surrounding rehabilitation colonies have taken up jewellery designing to make themselves economically independent.

Coming out in the open for the first time, these men, majority of whom are "passive" gays, resent the attitude of normal people towards them. "From our own parents to almost everyone around us, we are objects of ridicule. We are forced to behave normally but we can't. That we are trapped in these bodies is not our fault. Over the years, we have accepted our fate," said Rakesh alias Bindiya.

...Being hunted and “raped” is also a real danger for these men. “Just a few days ago, three of us were surrounded by over 30 men while we were coming back from a jagrata. The men demanded us to oblige them but we refused and ran away. We even contacted the police but no one took us seriously,” said Sonu.

While most laugh at their state, they constitute one of the highest risk groups for AIDS. Ashwini, who works for the FPAI, said many of the 275 such men identified by the association in the area were HIV positive. “The situation is explosive as most of them have several sexual encounters a day and till our intervention, most of them were without any protection,” he added (Sethi, Chitleen 2006, ‘Where gays can live with gay abandon’, *Chandigarh Tribune Online Edition*, 28 June <http://www.tribuneindia.com/2006/20060628/cth1.htm> – Accessed 7 May 2008 – Attachment 13).

An article published in the *Chandigarh Tribune Online Edition* in January 2006 provided information on a workshop for gay men held in Panchkula, Haryana:

Hounded by the police and shunned by society, homosexuals from the city and nearby areas yesterday gathered at the local centre of Family Planning Association of India (FPAI) to discuss their problems.

FPAI had organised a workshop on AIDS awareness for homosexuals, where they discussed various problems faced by them.

As many as 53 homosexuals participated in the workshop, in which they were asked to avoid having many sexual partners and to use contraceptives in order to avoid getting HIV infection. One of the major problems faced by them, as was discussed in the meeting, was harassment by the police.

They also said because homosexuality was a taboo in Indian society, most of them had to get married and thus could not remain faithful to their partners (‘53 attend workshop for homosexuals’ 2006, *Chandigarh Tribune Online Edition*, 1 January <http://www.tribuneindia.com/2006/20060101/cth3.htm#3> – Accessed 7 May 2008 – Attachment 14).

An article published by the *Chandigarh Tribune Online* in July 2006 provides information on the case of two homosexual men in Chandigarh who were dismissed from their employment with an NGO promoting AIDS awareness among homosexual men (Tandon, Aditi 2006, ‘Sacked HIV+ seek legal aid’, *Chandigarh Tribune Online*, 14 July <http://www.tribuneindia.com/2006/20060714/cth1.htm#3> – Accessed 9 May 2008 – Attachment 15).

An article published by the *Ludhiana Tribune Online* in August 2002 provided an account of the problems faced by a gay man in Ludhiana, Punjab, and information on the gay community in Ludhiana:

Robin (not his real name) is a handsome man in his early twenties, who belongs to an affluent business family of Ludhiana. He is a fashion choreographer with the looks of a bachelor who has all the luxuries of life — kind of a son whose parents should have no reason to be ashamed of him. However, that’s not the case with him, for he does not want to marry a girl, but a boy, his partner for a year, now. Robin is a gay, a homosexual.

Recently, he attempted suicide after his parents resisted his plans to marry his partner, but he has no regrets and wears the gay badge with pride.

... Even the law does not deter him. When told that what he was doing was an unnatural offence and punishable, he said: "Laws can be changed, like these have been changed in the West." Robin is in touch with the other gays of the city and the country as well. He can tell you about all Indian gay websites.

According to Robin, there are 590 gays in Ludhiana, who have not formed any club, but been in constant touch with each other. Most of these gays come from well-to-do families, who have had maximum exposure and opportunities to travel abroad. Not unexpectedly, these men are well-educated and converse with each other in chaste English only. Robin says that, of them, 360 are active partners and the rest passive. Robin can tell all about his community and count the names of all gay clubs that have been formed in India. He says that there is such a club in Chandigarh as well.

... Psychologists say that Robin is not an exception and the number of gays and lesbians in Ludhiana is much more than what he says — at least ten times more (Sumbly, Vimal 2002, 'Adams turning to Adams for the apple', *Ludhiana Tribune Online Edition*, 19 August <http://www.tribuneindia.com/2002/20020819/ldh1.htm>— Accessed 7 May 2008 – Attachment 16).

An undated article located on the California-based *Amritsar Times* website reported that there is a perception in Punjab that it may be easier for men in same-sex relationships to migrate to Western countries:

With countries like Canada, Britain and Belgium recognising same-sex partnerships, there's now another way out. Having learnt that it's easier for men in same-sex relationships to seek a ticket to the West on the ground that they are being discriminated against in India, straight Jat boys from the feudal hinterland are busy practising the effeminate look. "I have been trying to go abroad for several years. I have wasted a lot of my parents' money in the process," says 34-year-old Vikas Dhir, a resident of Nakodar in Punjab. It was ultimately his father who told him that pretending to be gay would make his mission possible. Now, Dhir is determined to give it a shot. Balkar Singh (name changed), a 22-year-old from Punjab's Noormahal town, has tied up with another desperado who wants to go abroad. "We'll pretend that we have a relationship when we approach the consulate," he says. Jalandhar-based immigration consultant Kamal Bhumbra has received more than 20 queries this year from people wanting to know what it takes for gay partners to settle abroad ('Homosexuality: Out of the closet, on to plane' (undated) *Amritsar Times* website http://english.amritsartimes.com/index.php?mode=read_more&storyid=98 – Accessed 9 May 2008 – Attachment 17).

Discussions of MSM (men who have sex with men) also featured in local media sources in the context of articles relating to public health initiatives and surveys. A report published by *The Tribune Online Edition* in November 2006 reported on an "HIV epidemic" in Ludhiana, Punjab:

India's most innovative city, known throughout the world for its ingenuity — is making news for all the wrong reasons. The number of suspected and confirmed HIV positive cases here has puts the city into a category that can be classified as the one facing an "HIV epidemic".

... The seriousness of the problem can be gauged from the fact that the Punjab State AIDS Control Society had asked a local NGO to identify 40 IDUs, 250 CSWs and 20 MSM (men

having sex with men) over a period of three-months . In less than 2 months, the NGO had identified 256 CSWs, 54 IDUs and spotted many more who are willing to acknowledge their activities. Incidentally, contrary to belief, the number of MSMs in the city appears to be lower than the expected figures. It is now known that 16 out of 48 IDUs have tested HIV positive, for 7 out of 21 MSM and nearly 25 per cent of the 256 CSWs tested are likely to be HIV positive (Garewal, Naveen S. 2006 'HIV bomb ticking in Ludhiana', *The Tribune Online Edition*, 21 November <http://www.tribuneindia.com/2006/20061121/main6.htm> – Accessed 8 May 2008 – Attachment 18).

An article published by *The Times of India* in June 2006 reported on a survey conducted by the National AIDS Control Organization (NACO), which had indicated an increase in the number of men having sex with men (MSM) in Chandigarh, the joint capital of Punjab and Haryana states:

A survey conducted by the National AIDS Control Organization (NACO) has revealed the population of men having sex with men (MSM) in Chandigarh has increased to 11, 203 from a meagre 181 in the year-2002.

The survey, organised by the State AIDS Control Society, UT, involving nearly a dozen NGOs, covered residents living in the city slums, migrant colonies, villages and many sectors. It has revealed that 20 per cent of the sexually active MSMs, above the age of 15, were involved with more than five male partners (Walia, Rajan 2006, 'Homosexual population in city rises exponentially: NACO', *The Times of India*, 21 June <http://timesofindia.indiatimes.com/articleshow/1665234.cms> – Accessed 8 May 2008 – Attachment 19; see also 'Unusual Scrutiny' 2002, *Chandigarh Tribune Online Edition*, August 19 <http://www.tribuneindia.com/2002/20020819/cth1.htm> – Accessed 9 May 2008 – Attachment 20).

General discussions on Homosexuality and Sikhism

Various discussions regarding of the compatibility, or lack thereof, of Sikhism and homosexuality were located. It should be noted that some of this material may relate to discussions and developments within the Sikh diaspora in Canada, the U.K, and the United States, and the opinions expressed may have limited relevance regarding prevailing attitudes in Punjab. Previous RRT *Research Response IND31979* of 17 July 2007 referred to several sources which provided information on Sikhism and homosexuality, including the *Religion Fact* website, which provided the following summary of Sikhism and homosexuality:

The Sikh sacred text, the Guru Granth Sahib, is the highest authority in Sikhism. It is silent on the subject of homosexuality. However, there are parts of the Guru Granth Sahib that have been interpreted to mean that homosexuality is wrong.

There are five vices outlined in the Guru Granth Sahib that are to be avoided by Sikhs. These vices are called the Five Thieves. They are Pride (a'Hankar), Anger (Kr'odh), Greed (Lob'H), Attachment (Mo'H), and Lust (K'haam). Many Sikhs believe that homosexual thoughts and behaviour are just manifestations of lust, and that it is therefore forbidden.

However, other Sikhs believe that Guru Nanak's emphasis on universal equality and brotherhood is fundamentally in support of gay rights. This view is held by a minority of Sikhs, many of whom have been born/raised in countries that are more tolerant towards homosexuality. Some Sikhs have even gone so far as to describe homosexuals as "the new Untouchables" in reference to Sikhism's rejection of the Indian caste system

.... One of Sikhism underlying values is family living. Sikhs are expected to live in a family environment in order to conceive and nurture their children in order to perpetuate God's

creation. Any alternative manner of living is prohibited specifically a celibate lifestyle. Most Sikhs assume this means homosexuality, which cannot result in procreation, is unnatural and against God's will ('Homosexuality and Sikhism' (undated), *Religion Facts* <http://www.religionfacts.com/homosexuality/sikhism.htm> – Accessed 6 July 2007 – Attachment 21; RRT Research & Information 2007, *RRT Research Response IND31979*, 16 July – Attachment 7).

Previous RRT *Research Response IND30144* of 22 May 2006 also referred to various sources on Sikhism and homosexuality, including the following information published on *Ethnicity Online*, a UK website promoting cultural understanding in healthcare:

Sikhism is a very tolerant religion and seeks to find the truth rather than adhere rigidly to rules. Homosexuality is not specifically banned in any of the writings of the Gurus, but they do stress that God has intended people to live as man and wife, or to be celibate, with no deviation from this design. This ambivalence allows most Sikhs to be very tolerant of homosexuality and accept a homosexual individual while still regarding the practice as against God's design ('Sikhs: Sexual Health' (undated), *Ethnicity Online* website http://www.ethnicityonline.net/sikh_sexual_health.htm – Accessed 10 May 2006 – Attachment 22; RRT Country Research 2006, *Research Response IND30144*, 22 May – Attachment 23).

An article on Sikhism and homosexuality located on the Sikhism101 website contends that homosexuality, as an extramarital expression of lust, is incompatible with Sikh lifestyle:

Although Sikhism does not find homosexual behaviour acceptable, Sikhism does not "hate" or believe that homosexuals are damned to hell as propagated by some religions. As Sikhs we are taught to have principles (asools). A Sikh does not accept any lifestyle other than the Guru's Way but also prays everyday for "Sarbat da bhalla" (the prosperity of all humanity). Gurbani tells us that God is without hatred and animosity. We are all the children of God. The Gurdwara is open for all no matter who they are or what they've done. God loves us all regardless of our thoughts or actions.

...Having premarital relations with the opposite sex is same as having premarital relations with the same sex – they are both unacceptable in the Sikh faith. They both are the result of Kaam (lust) which a GurSikh must be able to control. Whether homosexual inclinations, tendencies and behaviour are natural or not does not hold any weight when discussing Gurmat (the Guru's teachings). It is possible that urges, inclinations and desires may be natural to some, but in Gurmat a Sikh is not supposed to act upon or follow on all urges of sexual desire/lust (or any other vice).

...According to the Sikh Rehit Maryada, the Anand Karaj (Sikh marriage) can only be between a Sikh man and woman only. Sexual relationship can only be between the couple married under the Anand Karaj maryada.

...A Sikh of the Guru treats all humanity with dignity and respect. We may not agree with homosexual's lifestyle, and occasional mannerisms, but we could also on a personal level not agree with the lifestyles of 95% of humanity who love to drink, and others smoke, etc. So we should not be hypocrites and judge some and not others. One should strive to appreciate every human as they are on a humanitarian basis and build upon their Jeevan (spiritually disciplined life). A Sikh should share common positive virtues. If someone sees God inside you then one should direct the other person towards Gurbani. The fact is the Amritdhari lifestyle does not allow of homosexuality, and this is not debatable ('What is the Sikh attitude to homosexuality?' 2007, *Sikhism101.com* website <http://www.sikhism101.com/node/137> – Accessed 9 May 2008 – Attachment 24).

Discussions of the relationship between Sikh theology and homosexuality were located on the Sarbat website (<http://www.sarbat.net/>), which is described as a website for Lesbian, Gay, Bisexual and Transgendered Sikhs. An article from October 2007 commented on the January 2005 edict against same-sex marriage made by the Jathedar of the Akal Takht, arguing that Sikh marriage hymns are not gender specific, and that the edicts of the Akal Takht are not necessarily binding:

The Akal Takht, or the 'Seat of the Immortal One', was established at the time of the 6th Sikh Guru (Guru Hargobind Ji) as the primary seat of temporal authority from where 'hukamnamas' or edicts were issued providing guidance to the Sikh community as a whole. The Jathedar of the Akal Takht is meant to be a spiritual leader without control or influence from any outside, politically motivated source, although since the 1920s the position has been one appointed by the Shiromani Gurdwara Prabhandak Committee (SGPC), the committee responsible for the management of Gurdwaras in Punjab and other north Indian states. The SGPC itself is an organisation elected by the Sikhs of northern India.

The Sikh marriage was institutionalised in 1909 by the Anand Marriage Act of India. Prior to that time, although the Sikh marriage hymns form part of the Sri Guru Granth Sahib (the Sikh Holy Scriptures), marriages of Sikh couples usually followed the Hindu model of marriage, namely the circumambulation of fire, as that was the only legally recognised form of marriage for Sikhism in India at that time. The Sikh marriage hymns, or Lavaan, were composed by the 4th Sikh Guru (Guru Ram Das Ji) and they are non-gender specific. The only references made to gender are those of God as the bridegroom and the human souls of those who are entering into the marriage as the bride. Marriage is deemed to be the blending of the human soul with God, and not specifically marriage between a man and a woman. In that respect, there is nothing that would prevent a same-sex marriage taking place within the context of Sikhism.

It appears that this fear was paramount on the minds of the Jathedar of the Akal Takht and the SGPC when the edict regarding same-sex marriages was given. If same-sex marriage were not possible within the Sikh religion, then it would not have been necessary to issue such an edict in the first place.

... The question as to the impact that the edict should have on the worldwide Sikh community is a complex one given the apparent authority vested within the Jathedar. The Jathedar of the Akal Takht has issued edicts in the past which have not been recognised or accepted by Sikh communities in other countries and sometimes even those within India itself (Singh, J. 2007, 'Sikhism and Same-Sex Marriages', Sarbat website, 3 October http://www.sarbat.net/_private/Sikhism%20and%20Same%20Sex%20Marriages.htm – Accessed 7 May 2008 – Attachment 25).

2. Is the legal situation in India in relation to homosexuals still the same as it was in July 2007?

A review of source material relevant to the legal situation for homosexuals in India is presented below under the following sub-headings: *Legal Situation since July 2007*, and *Background on Legal Situation*.

Legal Situation since July 2007

Information was located to indicate that there has been no significant alteration with regard to the legal situation for homosexuals in India since July 2007. Information was located to indicate that as at May 2008, the challenge to the constitutional validity of Article 377 of the

Indian Penal Code was still under consideration in the Delhi High Court, and that a hearing date for the case has been set for 19 May 2008.

The US Department of State *Country Reports on Human Rights Practices for 2007 – India*, published on 11 March 2008, provided the following summary on the legal situation in India with regard to homosexuals:

The law punishes acts of sodomy, buggery, and bestiality; however, the law was often used to target, harass, and punish lesbian, gay, bisexual, and transgender persons. Human rights groups argued that gay and lesbian rights were not addressed along with other human rights concerns in the country. Gays and lesbians faced discrimination in all areas of society, including family, work, and education. Activists reported that in most cases, homosexuals who did not hide their orientation were fired from their jobs. Homosexuals also faced physical attacks, rape, and blackmail. Police committed crimes against homosexuals and used the threat of arrest to coerce victims into not reporting the incidents.

Voices Against 377, a high-profile campaign to overturn Section 377, which outlaws homosexuality, led by writers Vikram Seth and Amartya Sen, continued at year's end. In February 2006 the Supreme Court ruled that the Delhi High Court should not have dismissed an earlier case brought by two NGOs on behalf of Seth and Sen and referred the case to the Delhi High Court. There were no further developments regarding this case during the year (US Department of State 2008, *Country Reports on Human Rights Practices for 2007 – India*, March 11 Section 5 Attachment 26; for another summary see UK Home Office 2008, *Country of Origin Information Report – India*, 31 January, Section 21 – Attachment 27).

An article published on the *Fridae* website on 7 May 2008 provided information to indicate that a hearing date had been set for 19 May 2008 in the case regarding Article 377:

In 2006 Voices Against 377 filed an intervention in the high court in support of the Naz Foundation's stand – to decriminalise private and consensual same-sex sexual activity. In the same year the coalition created an online open letter whose signatories include author Vikram Seth, and former UN Under-Secretary General Nitin Desai.

When the Delhi High Court announced on April 7 that the next hearing of the Naz Foundation International petition would be May 19 it had been more than a year since there was a response from the court, says Baudh. "The queer community was getting anxious and losing patience." The new hearing date has renewed momentum for the campaign (Ellis, Justin 2008, 377 petition hearing set by Delhi High Court, *Fridae* website, 7 May <http://www.fridae.com/newsfeatures/article.php?articleid=1850> – Accessed 8 May 2008 – Attachment 28).

An article published by *The Times of India* on 24 April 2008 reported that India had been questioned over the existence of Article 377 at a meeting of the UN Human Rights Council in Geneva, and that the Indian representative, G. E. Vahanvati, had indicated that the Delhi High Court is still considering the constitutionality of the law (Mahapatra, Dhananiay 2008, 'UN body slams India on rights of gays', *The Times of India*, 24 April http://timesofindia.indiatimes.com/India/UN_body_slams_India_on_rights_of_gays/articleshow/2977196.cms – Accessed 8 May 2008 – Attachment 29).

An article published by *The Times of India* in March 2008 indicated that the campaign against Article 377 was continuing, but finding little support amongst Indian politicians:

Generally, politicians would not miss an opportunity to enter any movement and, if possible, hijack it to gain political mileage. But not this one for sure. Politicians are scurrying for cover with gay activists seeking their support to the movement against 'outdated' Section 377 of the IPC, framed in 1860, which defines homosexuality as a crime.

In Pune, gay activists are mustering support at individual and mass level to scrap section 377. "Basically, there is need for a political will to scrap the outdated section. We need political support, but they are not responding to our appeal," says software professional Bindumadhav Khire, who is a homosexual and runs Sampathik, an organisation for men's sexual health.

Khire says gays are fighting legal battles against section 377. "What we need is the support of politicians and common people. We want to approach people and inform that gays are not someone out of the world. We are the same people as you are" says Khire.

Gays across the nation are joining hands to intensify the agitation against section 377, which says that whoever has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life or with a term that may extend to 10 years, and shall also be liable to a fine.

Pune is witnessing an increasing population of same-sex couples, says Khire, adding, "At a time when a large number of countries have legalised gay and lesbian rights, why homosexuality is a crime in India?" (Jadhav, Radeshyam 2008, 'Shying away from supporting gays', *The Times of India*, 27 March

http://timesofindia.indiatimes.com/Pune/Shying_away_from_supporting_gays/articleshow/2903128.cms – Accessed 8 May 2008 – Attachment 30).

Background on Legal Situation

Previous RRT Research Response IND30144 of 22 May 2006 referred to extensive source material which provides background information on the legal status of homosexual activity in India, indicating that Article 377 of the *Indian Penal Code*, which "prohibits intercourse against the order of nature", is interpreted as criminalising "all forms of sexual expression between men". Article 377 states that:

Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation – Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section (*Indian Penal Code* (Act No 45 of 1860), IndiaLawInfo website <http://www.indialawinfo.com/bareacts/ipc.html> – Accessed 17 May 2006 – Attachment 31; RRT Country Research 2006, *Research Response IND30144*, 22 May – Attachment 23).

Information provided by the Naz Foundation contains information on the interpretation of Article 377 in India:

... in India Section 377 of the Indian Penal Code criminalizes 'Unnatural Acts'. What exactly an unnatural act is, is not clearly defined, but it is not disputed by anyone that the purpose of the act as enacted by McCauley in 1860 was to criminalise the act of sodomy. Yet in India, judicial pronouncements have extended the act to cover oral sex, anal sex, thigh sex, and mutual masturbation. In other words all forms of sexual expressions between men are criminalized (Naz Foundation 2003, *Response to Questions on Treatment of Homosexual People in India*, January – Attachment 32).

A representative of the Naz Foundation argued elsewhere that while Article 377 cases are rarely prosecuted, the existence of the legislation serves to support a culture of impunity for crimes committed against homosexuals in India, and inhibits public health initiatives:

Very few cases on this law have actually reached the upper courts level in all this time, but the law continues to be a potent tool of oppression. It provides the impunity to a venal police to extort money, blackmail, indulge in violence, and extract other favors, including sexual favors, by dangling this law on homosexual males and hijras, a traditional social group of transvestites and transsexual persons. It impedes sexual health promotion activities like HIV/AIDS Interventions amongst same sex attracted males. It discourages reporting of male rape, and therefore encourages such rape, often by police. In sum, it disrupts the social existence of all same sex attracted persons, erodes their dignity and self respect, and reduces them to a sub-human level of existence (Bondyopadhyay, Aditya 2004, 'A perspective from India: Homosexuality stands criminalized because of a mid 19th century colonial law, speech at the UN International Panel Discussion: Breaking the "cultural" straitjacket: why sexual orientation and gender identity are issues on the global south's agenda', International Lesbian and Gay Association website, 13 April http://www.ilga.org/news_results.asp?LanguageID=1&FileCategory=44&ZoneID=3&FileID=64 – Accessed 23 June 2004 – Attachment 33).

Previous RRT Research Responses IND30144, and IND31979 of 16 July 2007, provided extensive information on recent challenges to the constitutionality of Article 377 in the Indian courts. A petition challenging the constitutional validity of Article 377 was submitted to the Delhi High Court by the Naz Foundation in December 2001. The Indian government presented an argument against the decriminalisation of homosexuality in late 2003. In September 2004, the Delhi High Court dismissed the petition, and the Naz Foundation appealed to the Indian Supreme Court, which referred the case back to the Delhi High Court for consideration in February 2006 (for information on the December 2001 constitutional challenge see 'Gay activists get court to examine Article 377' 2001, *Hindustan Times*, 8 December <http://www.hindustantimes.com/nonfram/081201/detCIT05.asp> – Accessed 14 January 2002 – Attachment 34; for information on the Indian Government's response see 'Life Sentences Necessary "To Control Homosexuality" India Says' 2003, 365 *Gay* website, 9 September <http://www.365gay.com/NewsContent/090903indiaSex.htm> – Accessed 1 July 2004 – Attachment 35; for information on the dismissal of the petition see Sen, Ayanjit 2004, 'India court rejects gay petition', *BBC News*, 2 September http://news.bbc.co.uk/2/hi/south_asia/3622418.stm – Accessed 3 September 2004 – Attachment 36; for information on NAZ's appeal to the Supreme Court see Bhatt, Sheela 2006, 'Gay rights is matter of public interest: SC', *rediff.com* website, 3 February (<http://in.rediff.com/news/2006/feb/03gay.htm> – Accessed 11 May 2006 – Attachment 37; for summaries of the case see US Department of State 2007, *Country Reports on Human Rights Practices – India*, 6 March, Section 5 – Attachment 38, and Narrain, Siddharth 2005, 'A battle for sexual rights', *Frontline*, vol 22, 7-20 May 2005 issue, May <http://www.flonnet.com/fl2210/stories/20050520002410400.htm> – Accessed 2 July 2007- Attachment 39; RRT Research & Information 2007, *RRT Research Response IND31979*, 16 July – Attachment 7; RRT Country Research 2006, *Research Response IND30144*, 22 May – Attachment 23).

Previous RRT Research Response IND31979 referred to 2005 advice on the treatment of sexual minorities in India from the Department of Foreign Affairs and Trade, as contained in *Country Information Report No. 05/46*, which stated that:

...as homosexuality is illegal throughout the country, attitudes towards homosexuals were fairly uniform. No state or states treated homosexuals in a worse fashion than was standard.

...due to the high level of harassment sexual minorities suffered at the hands of the police, individuals in general did not/not feel able to lodge a complaint the police. The fact that the complaint would require discussion of their sexual preference also created the possibility that the complainant would be charged under section 377 (DIMIA Country Information Service 2005, *Country Information Report No. 05/46 – India: Treatment of Sexual Minorities*, (sourced from DFAT advice of 29 July 2005), 29 July – Attachment 40; RRT Research & Information 2007, *RRT Research Response IND31979*, 16 July – Attachment 7).

Subsequent RRT Research Response IND32067 referred to DFAT advice of 26 July 2007, which indicated that at that time, *Country Information Report No. 05/46* remained current (Department of Foreign Affairs and Trade 2007, *DFAT Report No. 674 – India: RRT Information Request IND32067*, 26 July – Attachment 41; RRT Research & Information 2007, *RRT Research Response IND32067*, 26 July – Attachment 42).

3. Any other relevant background information

A document on the eSikh.com website provides basic information on the history and beliefs of the Sikh religion ('Welcome to eSikhs.com' (undated), eSikhs.com website http://www.esikhs.com/index_2.asp – Accessed 12 May 2008 Attachment 43).

Question 1 of previous RRT Research Response IND17527 of 6 September 2005 refers to various source material on Sikhs who cut their hair (RRT Country Research 2005, *RRT Research Response IND17527*, 6 September – Attachment 44).

Recent RRT Research Response IND33034 provides background information on the current political situation in Punjab (RRT Research and Information 2008, *RRT Research Response IND33034*, 13 March – Attachment 45).

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Sarbat website (<http://www.sarbat.net/>)

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