

# Views on Adultery and Homosexuality not Applicable on Army

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## ABSTRACT:

In this comprehensive article, we will look into several aspects of homosexuality oppression across the world and we will take deeper look into the homosexuality oppression in India, particularly. This article explains the background and the present scenario of acceptance of adultery and homosexuality in military and society, as well. First, we will see how the laws in India have changed and how adultery and Homosexuality have been decriminalised by the Supreme Court of India. Then we will look at the countries that have anti-homosexuality laws and how the things have changed in the last decade. Lastly, we will see how military is affected by the New laws in India on homosexuality and adultery. Kindly note that it is based on the recent changes made by the Supreme Court of India.

**Keywords:** Homosexuality, Adultery, Indian Penal Court, Homosexuality Oppression, LGBTQ, Military, Army, Spartans, Indian Army, Bipin Rawat, Supreme Court, Decriminalization, world-view.

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## I. INTRODUCTION

Homosexuality is still a taboo in several parts of the world, actually it is a criminal offense in some orthodox countries and it is extremely saddening to see that love is seen from the shades of preconceived notions and it is judged through the fear of seeing something different than usual. Across the world, homosexuality was a private affair even a few decades ago, however, our society has started to accept it and welcome it as more awareness is spread through campaigns and programs. Today, even the Supreme Court is in the favour of homosexuality and we can say that people are becoming more liberal in some societies by allowing the homosexual oppression to be reduced and eventually removed from our lives. A new mind-set can be seen in the people across the globe in terms of adultery and homosexuality and people are rejoicing it. Now, whether it has entered the field of military or not is still a question. In this article, we will look at the recent developments in terms of LGBTQ laws and social acceptance, specially in the context of military.

## II. DECRIMINALIZATION OF HOMOSEXUALITY IN INDIA

Celebrations erupted across India on 6<sup>th</sup> September 2018, after the honourable Supreme court unanimously ruled in favour of decriminalisation of homosexual sex in a landmark judgment for gay and LGBTQ rights. A five-judge bench at the Supreme court ruled that a 160-year-old law that bans sex “against the order of nature” lead to discrimination on the basis of sexual preference or orientation and thus, it was unconstitutional. The judgment came after almost 24 years of legal challenges, triggered elation amongst LBGT Indians and their allies around the country. Criminalising carnal and consensual intercourse under section 377 Indian penal code

(IPC) is irrational, indefensible and manifestly arbitrary and this was acknowledged by the Chief Justice of India Dipak Misra.

Social exclusion, isolation, and identify seclusion from the social mainstream are still the stark realities faced by several individuals today, and it is only when each and every person is liberated from the shackles of such bondage that India can call itself a truly free society. This decision legalises behaviour that many Indians say that it was accepted in their culture before the imposition of conservative Victorian mores and laws during the British imperial era. The anti-sodomy law was imposed on the Indian colony as part of a raft of laws that were against public vice and immorality instituted across the British empire. However, the struggle isn't over yet for the LGBTQ community. The future battles for India's LGBT community includes marriage rights, surrogacy and basic acceptance in the conservative regions of the country.

### **III. ANCIENT HINDU LAWS ON HOMOSEXUALITY**

Many people might think that the ancient Hindu ideas were entirely compatible with the views of modern American or European notions, however, this is not the case. Scholars like Ruth Vanita and some others have looked at a lot of ancient stories and she deduced from them a full approval of the modern Euro-American notions on this subject. The Hare Krishna followers also held a similar view. Therefore it is imperative to really see the classical texts and collect evidence and texts on the status and life of homoerotic individuals in ancient India. One hears this all the time that the usual sentiment is that the Hinduism is a very tolerant culture and it was totally open to homosexuality in the ancient India. The laws by which people lived in the Ancient India were enshrined in the texts of laws known as the Dharmashastras, and other shastras of social and medical disciplines.

### **IV. DECRIMINALIZATION OF ADULTERY IN INDIA**

On September 27, 2018, a five-judge bench of the Honourable Supreme Court struck down the Section 497 of the Indian Penal Code (IPC), and decriminalised adultery in India, however, it remains a civil offence, that can be a ground for divorce but it is not a criminal offence now. This judgment was extremely important simply because it got rid of an archaic and patriarchal law and also because of its consequences for the future generations. Section 497 of the Indian Penal Code is a part of the British-enacted penal code, 1860 and it had criminalised adultery but it did so "asymmetrically", it means that it was only the man and not the woman who could file an adultery case and only one section of the society could be punished based on their gender. This set of bizarre laws and social conditions together constituted a near-perfect storm of patriarchy in our society. The husband was authorised to bring a prosecution against the "other man" however the woman could not do the same. It smacked the belief that in marriage, the ownership over a woman's body passes from her father to her

lawfully wedded husband. It declared that the woman had no independent personality but she is, instead, subsumed into the personality of her father and husband, for the purposes of law and for society. And exempting the adulterous wife from criminal proceedings although may seem as a benefit to her, however, it was nonetheless based on the idea that only man are the seducer, and the woman is sexually submissive, and she lacks agency in a relationship and hence, it shows the asymmetry in the law as it states that you cannot punish someone for something they are not responsible for. Both of these presumptions were staple features and characters of Victorian law and morality, which was the basis of the Indian Penal Code (IPC), 1860.

## V. VIEW OF THE WORLD ON HOMOSEXUALITY

Gay sex and homosexuality is no longer as widely criminalized as it used to be in the past, but still, a total of around 70 nations still have laws against it. The number of nations with homosexuality laws and anti-gay laws dropped to 73 on Jan. 23, 2019. Overall, we can see a strong trend that is moving the world away from homophobic repression although it's happening slowly. In 2017, the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA ) published an annual report based on State-Sponsored Homophobia, the number came down to 22 percent from ILGA's list of 92 countries in the year 2006. That year the global rights group began documenting the laws that are used to persecute LGBTQ community. Another recent step away from homophobic repression was the defeat of several terrorist regimes known as the Islamic State, ISIL and ISIS, which operated in Syria and Iraq as a harshly anti-LGBTQ organisation. Other countries that recently made progress in their LGBTQ laws are Belize, Seychelles, Mozambique, Nauru, Northern Cyprus, etc. Now, we will look at the countries that have anti-homosexual laws. Here is the list:

### **Africa**

1. Algeria
2. Botswana
3. Burundi
4. Cameroon
5. Chad
6. Comoros
7. Egypt
8. Eritrea
9. Ethiopia

10. Gambia
11. Ghana
12. Guinea
13. Kenya
14. Liberia
15. Libya
16. Malawi
17. Mauritania
18. Mauritius
19. Morocco
20. Namibia
21. Nigeria
22. Senegal
23. Sierra Leone
24. Somalia
25. South Sudan
26. Sudan
27. Swaziland
28. Tanzania
29. Togo
30. Tunisia
31. Uganda
32. Zambia
33. Zimbabwe

**Asia and Middle East**

34. Afghanistan
35. Bangladesh

36. Bhutan
37. Brunei
38. Indonesia
39. Iran
40. Iraq
41. Kuwait
42. Lebanon
43. Malaysia
44. Maldives
45. Myanmar
46. Oman
47. Pakistan
48. Palestine/Gaza Strip
49. Qatar
50. Saudi Arabia
51. Singapore
52. Sri Lanka
53. Syria
54. Turkmenistan
55. United Arab Emirates
56. Uzbekistan
57. Yemen
- America**
58. Antigua& Barbuda
59. Barbados
60. Dominica
61. Grenada

62. Guyana
63. Jamaica
64. St Kitts & Nevis
65. St Lucia
66. St Vincent & the Grenadines

### **Oceania**

67. Cook Islands
68. Kiribati
69. Papua New Guinea
70. Samoa
71. Solomon Islands
72. Tonga
73. Tuvalu

No country in Europe has anti-homosexual laws now and it is a progressive part of the world that has fought against such laws from the start.

## **VI. VIEW OF THE WORLD ON ADULTERY**

### **USA**

Adultery is still considered a crime in almost 20 states of the United States of America. However, adultery is rarely prosecuted as a criminal offence. It's mostly seen as a ground for divorce.

### **Philippines**

The Philippines is one such country among other Asian countries where the practice of adultery is a crime. It is deemed as "crimes against chastity" under the Penal Code of the Philippines and it is treated as sexual infidelity in the Family Penal Code. A wife and her infidel partner can be sentenced to up to six years of jail, if the husband proves that she had a sexual intercourse with another man outside the marriage. However, husband, on the other hand, can only be charged, if the wife is able to prove that he had sexual intercourse under "scandalous circumstances" with his mistress. The husband may be imprisoned for a term between four years and 1 day, while his female partner can be banished but she will not face jail time.

### **South Korea**

In 2015, South Korea was the latest country that decriminalised adultery. By a 7-2 majority, the nine-member court bench revoked the 1953 law in which cheating spouses could be jailed for up to 3 years. Even if adultery should be condemned by the society as immoral, the state power should not intervene in individuals' private lives and Presiding judge Park Han-Chul stressed on this fact while giving a verdict on the homosexuality law.

### **China**

In China, adultery is not a crime but it can be a ground for divorce as civil law. According to the Article 46 of China's marriage law, an aggrieved party can only have the right to claim compensation when the divorce is filed on the grounds of wrong-doings such as domestic violence or an extramarital affair or infidelity.

### **Middle East**

Several countries governed by Islamic law, that includes Saudi Arabia, UAE, Oman, and Somalia, all strictly prohibits "zina", which is "fornication outside marriage". The punishments may include fines, arbitrary detention, flogging, imprisonment, and in extreme cases, the death penalty.

### **Pakistan**

In Pakistan, adultery is considered a crime under the Ordinance of Hudood, promulgated in 1979. This controversial law mandates that a woman making an accusation of rape has to provide four adult male eyewitnesses of good standing (tazkiyah-al-shuhood) to "the act of penetration" as an evidence to avoid being charged for adultery herself.

### **Europe and Australia**

Having an affair outside the marriage is not illegal in any European country and Australia

## **VII. ADULTERY AND HOMOSEXUALITY IN THE CONTEXT OF ARMY OR MILITARY IN THE ANCIENT WORLD**

The military across the globe is afraid of how integration will affect discipline and morale of the soldiers. Homosexuality is perceived very differently by soldiers at different times and places. If we could interview a Spartan general or soldier and tell him that in the distant future a time will come when several great nations will ban homosexual acts between soldiers in order to maintain ethic and discipline in military, he would be incredulous, astonished, and outraged. Very few people have ever been as well informed on the topic of military discipline as the Spartans and it shows in their incredible successes in fighting much larger rivals, such as Athens and many others. But, how did they do it? According to Bertrand Russell, the key to their military organization was a mentor relationship between skilled warriors and their apprentices which was basically

homosexual love, male if not female and it was a recognized custom in Sparta and it had an acknowledged part in the education of Sparta's adolescent boys. A boy's lover suffered credit, or discredit, by the boy's actions. The Spartans were not alone in institutionalizing homosexuality in the military. The same phenomenon took place among the Japanese samurai. According to R. C. Kirkpatrick, "Same sex sexual partners in the Japanese samurai group gained both martial training and land." Moreover, central role of homosexual ties in the military discipline of the Sambia tribe from Melanesia is explained by Kirkpatrick.

In societies where homosexual is encouraged among the military, there is a boost in morale and fighting readiness rather than degrading it. Some of the world's finest fighting units have been openly and enthusiastically gay like the Spartans, the samurai, and the Sambia headhunters.

### **VIII. LATEST UPDATE ON HOMOSEXUALITY ACCEPTANCE IN INDIA**

The Honourable Supreme Court's judgment on decriminalising homosexuality has got the military brass worried over what it exactly means for the Indian soldiers. As there is confusion, or maybe a lack of consensus, among the military law experts whether the judgment applies or doesn't apply to the Indian defence personnel, and if it does how it would impact the forces. Laws governing the three arms of the military in India bar homosexuality although through euphemisms and not explicitly and it is ruled as a punishable offence.

In January, 2019, the Army Chief General Bipin Rawat summoned all Colonels and their spouses to Manekshaw Centre in Delhi and he said that "moral turpitude" was unpardonable and punishable. Section 45 the Army Act, 1950, says that the "unbecoming conduct" of officers without detailing it is not permissible. Section 46 (a) tells that any person guilty of any disgraceful conduct that is "cruel, indecent or unnatural kind" will, on conviction by court-martial, may face up to seven years in prison. Sections 45 and 46(a) of the Air Force Act, 1950, states the same. The Navy Act, 1957, says that a personnel found guilty of any "indecent act" can be imprisoned for up to two years. Army sources responded that they will have to read the judgment before seeing how it will impact the three laws, but few lawyers expressed hope that the Supreme Court verdict will decriminalise homosexuality for the Indian military too. In the matter of extramarital relationships, they were considered an offence within the forces, and now it must be seen as per how the Supreme Court judgment has decriminalised it. The main concerns among the military brass is about the possible impact on operational abilities of the soldiers. Homosexuality in the military is still highly frowned upon in most parts of the world. However, the US and Britain have led the way in changing the status quo by welcoming and accepting gay personnel in their military forces. A study conducted by Hague Centre for Strategic Studies found out that Indian army and its soldiers are amongst the least friendly military brass towards gays.

## IX. CONCLUSION

In conclusion, we can say that Indian society and Indian Military needs law reforms and amendments to include homosexuals in the forces as it has been a contributing factor in different parts of the world in terms of the capabilities of the military, both in the past and present scenario. Currently, the society had taken a liberal step towards acceptance of homosexuals, however, a lot needs to be done. In this context, USA and Britain is far ahead of us in giving equal rights to the LGBTQ community. With persistent efforts even India can open its arms for homosexuals in all the spectrums of life. As we discussed about the view of the world on homosexuality and adultery, we also saw Indian view on homosexuality and adultery. With changing laws, we must take a better look into the past, present and future of anti-homosexuality laws and how it is seen in the military. In this article, you must have understood the phenomenon of homosexuality oppression around the world, specially in the military across the globe.

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