

## **Should the Homosexuals Be Allowed To Serve In Armed Forces: A Critical Analysis**

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### **I. Introduction**

Allowing gay personnel in the armed forces continues to be a subject of great debate, having only been instituted in a handful of militaries around the world (that is, the vast majority of industrialized, Western countries, in addition to Brazil, Israel, South Korea, and South Africa). The latest global figures on acceptance of homosexuality suggest that tolerance of LGBT communities is only becoming more widespread in secular, affluent countries. However, the acceptance of homosexuality even in these few countries does not guarantee that LGBT citizens are immune to discrimination in that particular society. Even in countries where LGBT persons are free to serve in the military, activists lament that there remains room for improvement. The basic objective behind writing this research paper is to point out the various fallacies and loopholes in the basic constitutional system of the number of countries who have provided the homosexuals with an opportunity to actually serve in the armed forces of their respective countries but still somewhere the homosexuals are being discriminated against. Though the homosexuals have been allotted the equal status in the society by various countries now but to the great dismay this remains on papers only. The LGBT community is still being denied the basic essence of equality. They are not only facing discrimination at the societal level but also at the employment level. The recent and the most hotly debated example for this would be their dismissal from the armed forces on the basis of their sexual orientation. Today not more than 25 countries are in favour of recruiting homosexuals in the armed forces, rest of the world seems to be simply against it. Therefore, this is evidently a major issue in concern that despite being in a democratic setup, there is a group in a society who is actually being denied the opportunities and rights that most of us enjoy and have a general access to. The question that I will try to assess in the following pages will be that how can anyone be denied the right to serve his own country only on the basis of his sexual orientation and how does it justify his/her willingness and passion to die for his own country?

I have divided this research paper into 8 main sections. The first section deals with the historical background of sexual orientation in the military. The second section deals with the violence faced by the LGBT people in the military. The third section will focus upon the discrimination faced by the LGBT community in the military. The fourth and fifth section will be containing the arguments for as well as arguments against the recruitment of LGBT communities in the military openly. The sixth and the seventh section of the research paper will comprise of the countries who have as well as the countries who have not allowed the LGBT community to be the part of their military till date with special focus on Indian military and the last section of this paper will cater towards concluding this paper. Now with this, I would like to start my paper by giving a brief account of the historical background of sexual orientation in the military.

### **History Of Sexual Orientation In The Military:**

Throughout history, there have been several cultures which have favoured homosexual behaviour in the military. The most popular example for this is found in Ancient Greece and Rome. Homosexual behaviour was encouraged among soldiers because it was thought that it would increase unit cohesiveness, morale and bravery. The Sacred Band of Thebes was a military unit from 378 BCE which consisted of male lovers who were known for their effectiveness in battle. Same-sex love was also prevalent among the Samurai class in Japan and was practiced between an adult and a younger apprentice. However, homosexual behaviour has been considered a criminal offense according to civilian and military law in most countries throughout history. There are various accounts of trials and executions of members of the Knights Templar in the 14th Century and British sailors during the Napoleonic wars for homosexuality. Official bans on gays serving in the military first surfaced in the early 20th century. The U.S. introduced a ban in a revision of the Articles of War of 1916 and the UK first prohibited homosexuality in the Army and Air Force Acts in 1955. To regulate homosexuality in the U.S. military, physical exams and interviews were used to spot men with effeminate characteristics during recruitment. Many soldiers accused of homosexual behaviour were discharged for being "sexual psychopaths", although, the number of discharges greatly decreased during war-time efforts. The rationale behind excluding homosexuals from serving in the military is rooted in cultural and social norms. Originally, it was believed that homosexuals were not physically sound to serve effectively. Therefore, during the 20th century, the argument

for exclusion of homosexuals was based on military effectiveness. However, the more recent justifications regarding the exclusion include the potential for conflict between the heterosexual and the homosexual service members and the possibility of "heterosexual resentment and hostility".

However, since then many countries have revised their policies and allowed the homosexuals to openly serve in the military (e.g. Israel in 1993 and the UK in 2000). There are at present, 26 countries which allow gays and lesbians to serve in the armed forces and around 10 more countries that don't outwardly prohibit them from serving. The U.S. is one of the latest addition to overturn its ban on allowing gays and lesbians to openly serve in the military when it repealed the Don't Ask Don't Tell policy in 2010.

### **Violence Faced By The Lgbt Community In The Military**

Though on papers, some of the countries have shown a green card to the LGBT community to join the armed forces of their country but in reality, they are treated with hostility by the heterosexual members of the armed forces and are considered inferior to the other servicemen of the military. LGBT community, nearly faces all kinds of harassments ranging from physical, sexual to even psychological, in the tenure of their military service. To give an example, the Israeli Defence Force does not ask the sexual orientation of its soldiers, however half of the homosexual soldiers who serve in the IDF suffer from violence and homophobia. Even, SAPRO, the organization that is responsible for the oversight of Department of Defence (DoD - USA) sexual assault policy, produces the "Workplace and Gender Relations Survey of Active Duty Member (WGRA)": The 2012 report doesn't have any paragraph studying the specific situation of LGBT people. The study focuses on men and women. The specificity of the violence faced by LGBT people is not considered.

### **Discrimination Faced By The Lgbt Community In The Military**

Further continuing the above argument, this section will provide with some of the examples where the homosexuals have been discriminated against in the armed forces of their respective countries. This section will basically assess the question of legality vs. practice; i.e. how far, what is on papers is actually followed in the real practical life. To start with the first example, let's talk about U.S. In the U.S. army, six states (Texas, Georgia, Louisiana, Mississippi, Oklahoma and West Virginia) are refusing to comply with Defence Secretary Chuck Hagel's order that gay spouses of National Guard members be given the same federal marriage benefits as heterosexual spouses, forcing couples to travel hours round trip to the nearest federal installation. Furthermore, some benefits offered on bases, like support services for relatives of deployed service members, could still be blocked for homosexuals. Even, the policy introduced by U.S. in 2013, National Defence Authorization Act contains such a language that actually permits the individuals to continue discriminating against the LGBT community. Homosexuals are prohibited from serving in the U.S. army openly because of medical regulations that label them as mentally unstable. In some cases, like in Belgium, homosexual personnel have been transferred from their unit if they have been "too open with their sexuality." The Belgian military also continues to reserve the right to deny gay and lesbian personnel high-level security clearances, for fear they may be susceptible to blackmail. For homosexuals, serving openly may make their service less pleasant or impede their careers, even though there were no explicit limitations to serve.

### **Arguments In Favour Of Recruitment Of Lgbt Community Openly In The Military**

Until recently, the reasons given by the countries for imposing the ban on the entry of homosexuals in the military was founded on the ground that it negatively impacts the unity cohesion and privacy concerns, but the studies now reveal that it's not always true. In fact, in most of the cases allowing gays and lesbians to openly serve in the armed forces resulted in more positive work related outcomes. Further, discharging trained military personnel for their sexual orientation is often costly and results in loss of talent. According to the recent statistics, the total cost for such discharges in the U.S for violating the Don't Ask Don't Tell policy amounted to more than 290 million dollars. Now, if we talk about privacy concerns, the inclusive policies formulated by any individual country has increased privacy for the service members which has led to significant decrease in harassment cases. Allowing homosexuals to enter in the military can end decades of discrimination faced by the homosexuals at the hands of people in the society and it can also result in more highly-qualified pool of recruits. For example, the British military reduced its unfilled vacancy by more than half by allowing the homosexuals to openly serve.

### **Arguments That Disfavor The Recruitment Of Lgbt Community Openly In The Military**

Though there is a great hue and cry now amongst the people for the rights of homosexuals and the demand for the recruitment of LGBT communities openly in the military, but homosexuality is still perceived by most of the countries to be incompatible with the military in a great sense. This section will now deal with the arguments or perspectives kept forward by those countries who have still not allowed the homosexuals to make their entry in the armed forces and are also reluctant to do the same in future. The first argument put forward by

them is that due to the presence of homosexual members in the unit, the prospective recruits would shy away from joining the military. Another argument is that in the light of the work that the army officers do, it requires them to live in close living quarters. Now, If gay men are allowed to shower with their fellow male soldiers; then it would violate the "unique conditions" of military life by putting sexually compatible partners in close proximity, with potentially adverse effects on retention and morale of troops. Further, allowing the homosexual servicemen to serve openly in the military would somewhere distract the soldiers from their missions. There is also a fear that allowing homosexuals to serve in the military can prove to be detrimental to unit cohesion on the battlefield, as the concern for one's lover in a given unit would override any sense of loyalty to the unit as a whole, particularly in situations of life and death. Also, homosexuality in the military affects the relationships like friendship, comradeship and, brotherly love in a very bad sense. It is also believed that allowing the homosexual soldiers to serve openly in the military would threaten the religious liberty of servicemen who disapprove of homosexuality for religious reasons.

### **Some Countries Which Have Allowed The Lgbt Community To Be The Part Of Their Military**

Some of the countries that have permitted homosexuals to serve openly in the military include the 4 out of 5 members of the UN Security Council (US, UK, France and Russia), Taiwan, Australia, Israel, South Africa, Argentina, and all NATO members excluding Turkey. Aside from the right to serve openly in the military, ten countries across the world recognize same-sex marriage. Same-sex military members and their families are recognized in Canada, South Africa, Argentina, Spain, Norway, Sweden, the Netherlands, and Belgium. In 2002, the South African National Defence Force extended medical and pension benefits to military partners, regardless of gender. The Canadian Armed Forces recognizes same-sex marriage as legally equivalent to opposite-sex marriage. All spouses in the UK are entitled to spousal benefits, and civil partners have access to military housing, security clearance and allowances. Of all these countries, some examples of countries can be given as follows:-

- 1) **Albania:** Gays and lesbians have been allowed to serve in the Military of Albania since 2008.
- 2) **Argentina:** As of 2009, the Argentina government has officially ended the ban on homosexuals in the Argentine Armed Forces.
- 3) **Australia:** Australia has allowed homosexuals to serve openly since 1992.
- 4) **China:** China ended its ban on conscription of homosexuals in the military in 2002.
- 5) **South Africa:** LGBT people are allowed to serve openly in the South African National Defence Force (SANDF), and discrimination on the basis of sexual orientation is prohibited by the constitution, statute law and military policy.
- 6) **U.K:** U.K. lifted its ban on homosexuals from joining the armed forces in 1999.
- 7) **U.S:** U.S. has been one of the most recent addition to the list of countries who have allowed the LGBT community to join the armed forces after it repealed the policy of "Don't ask, Don't tell" in 2010.

However, since "Don't ask, Don't tell" policy has been repealed in 2010, LGBT military families have struggled to obtain equal status. Although military members are free to be openly gay and serve, same-sex marriages are not recognized within the military. Even if military personnel are from states that allow same-sex marriage, the federal government does not recognize their marriages. same-sex military spouses are not eligible for health benefits, family support and counselling programs, and surviving spouse benefits. Same-sex military spouses also do not have access to compensation allowances for housing, relocation and transportation, or family separation, and they are not identified as primary next of kin, a title that makes a spouse the first person to be notified if a soldier goes missing in action, is wounded, taken as a prisoner of war, or is killed in action.

### **Countries Which Have Not Allowed The Lgbt Community To Be The Part Of Their Military**

There are a lot of countries that come under this specific heading. As it won't be feasible to name all, some of the countries that come under this head are: Bangladesh, Belarus, Botswana, Egypt, Jamaica, Libya, Malaysia, Maldives, Pakistan, Singapore, Saudi Arabia, Zimbabwe, Sri Lanka, Turkey, Uganda etc.

India also doesn't accept the LGBT community in its military warmly. According to the Indian military, legalising homosexuality in the services is not feasible. According to many senior officials, legalising homosexuality in military can have many adverse consequences. Soldiers are very often get posted in the remotest areas and have to live in close proximity for a long period of time. This legalisation of homosexuality will impair the inter-personal relations of the soldiers. Moreover, a vast segment of soldiers comes from a rural background and doesn't consider homosexuality as a normal behaviour. During recruitment, though the Indian military establishment does not ask the sexual orientation of the applicant. But in the forces, homosexuality is deemed "indecent" and "unnatural" behaviour and can lead to court martial. Though the Armed Forces Act does not mention homosexuality, it is illegal under sections 45 and 46 (a) of the Army Act, 1950, and the Air Force Act, 1950, which deal with "unbecoming conduct" and "any disgraceful conduct of a cruel, indecent or unnatural kind". Offenders are liable to face court martial and may also be cashiered or suffer other punishment.

The Navy Act, 1957 also makes "indecent act" and "unbecoming conduct" illegal, which effectively includes homosexuality.

Further, recently over the filing of petitions in Naz Foundation case, asking for decriminalizing the consensual gay sex as against the verdict of SC of India over the section 377 which criminalizes the gay sex, the senior military officials argue that legalising homosexuality can lead to occurrence of cases where a senior will force a junior into such an act and would later prove it to be consensual. Thus, according to them, legalising homosexuality in the armed forces would certainly increase the sexual harassment cases.

## **II. Conclusion**

As we follow up the above discussion, it can be seen that every coin has two sides. The most controversial debate that we face today is whether the homosexuals should be treated in a similar way as the other members of the society or should their class be silently neglected for the sake of gardening the deep rooted stereotypes of the society. However, in my personal opinion as we are moreover living in a democratic world, where the principles like justice, equality and liberty have gained a key importance in the process of democratisation, the exclusion of homosexuals in some or other way would amount to their discrimination on the grounds of sexual orientation and would actually defeat the basic essence of democratic framework. No matter, what arguments are furnished by the critics of homosexuality, the basic question that still remains unanswered is by not allowing homosexuals to be the part of the military, are we not denying them the access to basic fundamental principles like equality and freedom that we so proudly preach about in our constitutions? and moreover, how is 'Justice' being assured to them by this discriminatory practice that we adopt against them just to keep them away from the rest of the society for the sake of protecting our so called 'morals' by taking the plea that close proximity between homosexuals and heterosexuals can actually lead to greater cases of sexual harassment. What about rapes then, that take place in defence forces against the female soldiers by the senior male military officers. Is it justified, just because it not against the 'order of nature'? Does it not come under the definition of sexual harassment just because it is not being committed by a homosexual? Thus, it is very easy to disapprove something or defend one's stereotypes and mental schemas against the rightful call for protecting the rights of homosexuals who are like us in each and every manner except for their sexual orientation but it is very difficult to work in a real democratic spirit and actually to practice what you preach.

## **Works Cited**

- [1]. Webley, Kale. "Brief History of Gays in the Military." Time. Brendan Ripp, 2 Feb 2010. Web. 14 March 2014.
- [2]. Kier, Elizabeth. "Homosexuals in the U.S. Military: Open Integration and Combat Effectiveness." International Security 23.0. 2 (1998): 5-39. Web. 14 March 2014.
- [3]. Sennott, Charles. "Countries Where Gays Do Serve Openly in the Military." The World Post [Boston] 25 May 2011. Huffington Post. Web. 14 March 2014.
- [4]. Opper, A. Richard. "Texas and Five Other States Resist Processing Benefits for Gay Couples". The New York Times 10 Nov. 2013. Nytimes. Web. 15 March 2014.
- [5]. Gates, J. Gary. "Lesbian, Gay, and Bisexual Men and Women in the U.S. Military: Updated Estimates." The Williams Institute. May 2010. Web. 14 March 2014.
- [6]. Shaughnessy, Larry. "U.S. Allies Say Integrating Gays in Military was Non Issue." CNN. 20 May 2010. Web. 15 March 2014.
- [7]. Owens, T. Mackubin. "The Case Against Gays in the Military." The Wall Street Journal 2 Feb. 2010. The Wall Street Journal. Web. 15 March 2014.
- [8]. Peek, Jenny. "Is 2013 the Year for Marriage Equality in the U.S. Military and Beyond?." The International 25 Jan. 2013. The International. Web. 16 March 2014.