

## Gay Rights : Position in India

In India, homosexuality has traditionally been tolerated, even celebrated, although the Manu Smriti pronounces severe punishments for male as well as female homosexuality. The Kamasutra contains an entire chapter entitled "Auparishtaka" (oral congress) and Vatsyana, the author insists that the practice is permitted by the orders of the holy writ (Dharma Shashtra) with just a few exceptions. One of the forms in which Shiva is worshipped is Ardhanarishwara, containing both the female and male energies.

Alan Danielou in his book, "Shiva and Dionysius". examines the tantric rite of anal penetration and goes on to state "the hermaphrodite, the homosexual and the transvestite have a symbolic value and are considered privileged beings, images of Ardhanarishwara".

The British obviously found the practice unchristian and abhorrent and in 1860, enacted the Indian Penal Code which in Section 377 states:

"Unnatural offenses - Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall be liable to fine.

Explanation - Penetration is sufficient to constitute the carnal intercourse necessary to the offense described in this section".

The exact scope of this vague definition - "carnal intercourse against the order of nature" - has been a major subject of debate in the existing case law. It has generally been interpreted to include acts of anal sex (coitus per anum) as well as oral sex (coitus per os) between males. The possibility of this definition being extended to heterosexual acts of anal or oral sex also exists, but has not been tested. Consent of the other party is completely irrelevant for conviction, but it may be a relevant consideration while fixing the quantum of punishment.

It must be pointed out that homosexuality per se is not an offense and an "act" of unnatural intercourse has to be proved.