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Inhuman Practice of Conversion Therapy in India and Abroad

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Although homosexuality has been decriminalised in India, “conversion therapies” continue to be performed causing excruciating pain and suffering, as well as long-lasting bodily and psychological harm to those subjected to such “therapies”. These so-called “therapies” clearly violate human rights, but the general public is often clueless about them, and the few media portrayals of them fail to adequately depict the diversity of conversion techniques. The process of criminalisation of this “therapy” has been set into motion by various court judgements and certain legislations but the absence of union legislation explicitly attaining that objective is continuously being felt. The problem is widespread cutting across nations even in those countries which are considered “most progressed”. This opens the possibility for India, which is the biggest democracy in the world, to lead the way by getting rid of such practice completely which threatens an estimated 8% of its population comprising the LGBTQIA+ community.

Keywords: *Conversion Therapy, SOGI, LGBTQIA+, Homosexuality, Criminalisation.*

INTRODUCTION

Due to the heterosexist mindset along with a dearth of appropriate legal protection against sex-based discrimination, many people whose sexuality and gender identity (SOGI) do not conform to heteronormativity and heterosexuality have to go through abuse of their human rights in various parts of the world. This attitude often stems from the belief that SOGI which does not

align with heterosexuality is due to a defect that needs to be corrected at any cost. Conversion therapies are often employed for such purposes.

The phrase "conversion therapy" refers to a variety of procedures that are based on the belief that a person's SOGI can and ought to be altered. These procedures aim to change the sexuality of, for example, a gay individual or a pansexual individual into that of a straight cisgender individual. Conversion therapies revolve around the belief that homosexuality and transsexuality are 'diseases' that need to be 'cured' through any means necessary. Given the limited media coverage of this issue in certain countries, one may think this problem is exclusive to the USA as a result of the dominance of the belief that homosexuality is a sin, especially among conservative Christians there. But this issue is widespread across cultures and countries which is not talked about often and hardly given appropriate coverage. From North America to Africa and Europe then to Asia, homophobia and transphobia are commonalities. With that "corrective measures" to "undo" the sexuality of the individual which doesn't conform to the heteronormativity that dominates the patriarchal society at large come naturally.

DIFFERENT APPROACHES TO CONVERSION THERAPY

Various approaches are put into play by medical as well as non-medical practitioners to alter the SOGI of individuals belonging to the LGBTQIA+ community.

Psychoanalysis: It attempts to expose a client's unconscious psyche to reduce psychological tension, which is an internal conflict in the mind caused by intense strain or emotional suffering as well as frequently occurs when a client is distressed. In regards to conversion therapy, it works to restore a person's relationship to their sexuality, i.e., align the sexuality of the individual with heterosexual norms. The "treatment" provided by psychoanalysis involves techniques for trying to unearth the revulsion and fear of the opposite sex that a queer person has "unknowingly" been repressing and using that to impose guilt upon them. Although the "treatment" required that these people must reject a part of themselves that could and likely did result in future mental and emotional breakdowns, psychoanalysts still believe it to be successful.

Aversion therapy: This therapy includes techniques where a person is exposed to a specific stimulus related to their sexual orientation while making them experience a painful or some upsetting sensation. This often includes giving electric shocks to LGBTQIA+ “patients” and medicating them with nausea-inducing or paralysis-inducing drugs. The techniques used to control “patients” include mind control games designed to convince them that their urges are rooted in unhealthy relationships with their families.

Medical: These practices are centred around the belief that differences in SOGI are a natural result of biological dysfunction. They rely on medical interventions such as drugs, hormones, or steroid therapy. High amounts of testosterone, for example, are subjected to transwomen “patients” to turn them into cisgender men. People who ultimately fail to “change” their sexual orientation in the Islamic Republic of Iran are frequently under pressure to have gender-affirming surgery in the hope that it will negate their orientation.¹

Faith-based: Interventions that are based on the idea that different SOGI is fundamentally sinful. Typically, victims are made to follow the teachings of a spiritual guide and put through programs designed to help them get over their “disease”. These programs might use anti-gay insults along with beatings, shackling, and restriction of food. Exorcism is occasionally mixed with them. As for the defectors, members read out obituaries during their mock funerals, detailing their steady descent into HIV then Aids, and ultimately to hell.²

EFFECTS OF CONVERSION THERAPY

The techniques and strategies frequently used to put "conversion therapy" doctrines into action cause both psychological and bodily anguish. Significant self-esteem loss, anxiety, depressive symptoms, social withdrawal, relationship issues, feelings of guilt and shame, sexual

¹ Ali Hamedani, ‘The gay people pushed to change their gender’ (*BBC News*, 5 November 2014)

<<https://www.bbc.com/news/magazine-29832690/>> accessed 16 December 2022

² Aaron Hicklin, ‘I was 19, gay and ready to be ‘cured’ by conversion therapy’ (*The Guardian*, 10 June 2018)

<<https://www.google.com/amp/s/amp.theguardian.com/lifeandstyle/2018/jun/10/i-was-19-gay-and-ready-to-be-cured-by-conversion-therapy/>> accessed 16 December 2022

dysfunction, suicidal thoughts and attempts, and signs of PTSD are just a few of the serious effects on people.

According to research at San Francisco State University³, eight times greater adolescents who have had conversion therapy than typical teenagers will attempt suicide. They are also six times more likely to report experiencing severe depression.

One such case is of Ryan Kendall who testified in 2014 before a committee of the California State Assembly, outlining how his involvement in conversion therapy negatively affected his life, in the long run, said, "To stop the therapy that misled my parents into believing that I could somehow be made straight, I was forced to run away from home... at the age of 16, I had lost everything. My family and my faith had rejected me, and the damaging messages of conversion therapy, coupled with this rejection, drove me to the brink of suicide." Another case is closer to home, the infamous case of Anjana Harish,⁴ a bisexual woman who committed suicide in 2020 in Kerala after being subjected to conversion therapy. "I was given some 40 injections ... I was mentally and physically broken," she said in her Facebook video. "My own family did this to me, that's what saddens me the most. The ones who were supposed to protect me tortured me." Conversion therapies break an individual mentally, fill them up with guilt and shame, take away a part of their life as well as try to erase a part of themselves.

CONVERSION THERAPIES IN VARIOUS COUNTRIES

SOUTH AFRICA

Exorcism, use of herbal medicines, rape, and other forms of sexual assault as well as beatings and compulsion into relationships, sex, or marriage, are all forms of conversion therapy used in South Africa and other African countries. Apart from that in South Africa, homosexual men and boys are known to be forced into "conversion camps" and compelled to do hard labour to

³ Caitlin Ryan, 'Generating a revolution in prevention, wellness & care for LGBT children & youth' (2014) 23 TPCRLR 331

⁴ Saradha Natarajan, 'What happened to Anjana Harish? An Indian Bisexual who lost her life in Goa' (*QPlus*, 20 May 2020) <<https://www.qplus.me/anjana-harish-gay-in-go-a-bisexual-woman-in-indiaht> /> accessed 16 December 2022

inculcate a sense of masculinity. According to reports,⁵ the conditions are so bad that a 15-year-old kid died as a result of such forced labour in 2011.

THE U.S.A.

The US has camps that are similar to the ones in South Africa. However, gay conversion is typically less harsh in the US, involving rehabilitation, intensive talk therapy, seminars, and weekend getaways. Both aversive and psychoanalytical approaches are put into play to achieve this. By connecting it to sins and being misled by demons, religion is also used to coercively persuade people to feel guilty about their SOGI. Around 27 states in the U.S.A. ban conversion therapy for minors fully or partially. However, no law bans conversion therapy nationwide.

MALAYSIA

In Malaysia, Christian or Islamic medical facilities offer "conversion therapy." The Islamic Development Department funds and oversees the government programme, "Mukhayyam" which was introduced in December 2018 and aims to put individuals back on the "straight path". Malaysia is very conservative regarding variations in SOGI so much so that in July 2020, Zulkifli Mohamad Al-Bakri, the minister of religious affairs for Malaysia, declared that he would give the police complete authority to suppress transsexual persons.

CHINA

Several institutions in China still provide "treatments" for homosexuality and trans identity even though the country decriminalised homosexuality way back in 1997 and dropped it from the list of mental ailments in 2001. They would inject drugs, conduct hypnosis sessions and administer electric shocks in response to any reaction to watching homosexual pornographic

⁵ Damian Barr, 'The murder of Raymond Buys: I think they knew they were going to kill my boy' (*The Guardian*, 30 March 2019) <<https://www.google.com/amp/s/amp.theguardian.com/world/2019/mar/30/raymond-buys-think-they-knew-going-to-kill-my-boy>> accessed 16 December 2022

material. The Chinese government frequently encourages and supports such "therapies" for members of the LGBTQIA+ community.⁶

There are very few nations that formally ban "conversion therapy." Currently, there are only five such countries that fully ban conversion therapy.

CONVERSION THERAPY IN INDIA

In India, conversion therapy involves various approaches. A 1983 paper in the "Indian Journal of Psychiatry" examined the use of aversion techniques to cure homosexuality. The Indian Psychiatry Association acknowledged only in 2014 that homosexuality is not a mental condition and there is no proof that one's SOGI can be altered. However, conversion therapy is still utilized by institutions and mental health experts. In 2015, a Mail Today investigation in Delhi discovered the usage of hormone treatment, medications that cause seizures, and even electric shocks to treat homosexuality.⁷

One infamous case⁸ of institutional conversion therapy was in AIIMS Delhi. The one whose finding was published in 1983 as mentioned earlier. In this case, behavioural therapy (a type of aversion therapy) was chosen by psychiatrists S.N. Deshpande and Dr. M. Mehta. They claimed to have "successfully" changed the sexual orientation of 4 out of 6 individuals through this study. To execute it, they administered 50V shock when sexually stimulating content of the same sex was shown to the individuals. Meanwhile, when pictures of the opposite sex were shown, the favourite music of the individuals was played. Manvendra Singh Gohil, the first openly gay prince in India was also subjected to a similar aversion procedure, "They (his parents)

⁶ 'Conversion therapies around the world: a still unknown torture' (*Growththinktank*, 28 October 2020) <<https://www.growththinktank.org/en/conversion-therapies-around-the-world-a-still-unknown-torture/>> accessed 17 December 2022

⁷ Sangeeth Sebastian & Astha Saxena, 'Gay cure racket: Delhi orders probe against doctors' (*India Today*, 28 May 2015) <<https://www.indiatoday.in/india/story/gay-cure-racket-delhi-orders-probe-against-doctors-291255-2015-05-27>> accessed 17 December 2022

⁸ 'When Doctors at AIIMS Tried to Change Sexual Orientation Through Controversial Gay Conversion Therapy' (*News18*, 11 July 2018) <<https://www.news18.com/news/ivideos/when-doctors-at-aiims-tried-to-change-sexual-orientation-through-controversial-gay-conversion-therapy-1807551.html>> accessed 17 December 2022

approached doctors to operate on my brain to make me straight and subjected me to electroshock treatments.”

Similarly, other approaches are put into play to conduct gay conversion therapies. The faith-based approach involves taking the individual to a priest who performs bizarre questioning rituals on them. Medical and psychoanalytical approaches often involve sessions, rehabilitation, intensive talk therapy, and seminars with psychiatrists, hypnotists, counsellors, or religious heads as seen in the case of the USA. The unfortunate suicide of Anjana Harish in 2020 was due to her being subjected to conversion therapy at a mental health facility.

LEGALITY OF CONVERSION THERAPY

Conversion therapy is illegal in India, attracting civil liability but not criminally punishable. It is not explicitly punished, and any punitive action would need to be requested in writing.⁹ Partial support has been provided to the LGBTQIA+ community through the “Mental Health care act, 2017”. Some of them are section 3(3) of the act which states that just because a person does not share the community's moral, social, cultural, professional, political, or religious ideals does not qualify them as mentally ill. Under sections 94 and 95 of the Act, electroconvulsive therapy has been restricted. Similarly, under section 86(5), no treatment to any independent patient can be given without their informed consent. There is a possibility to file criminal charges based on these sections, but these are not implemented because often the "patients" are emotionally blackmailed into attending such therapy sessions. Apart from that, the provisions don't cover other forms of conversion therapies exclusive to India like those given by religious practitioners.

The problem persists since there is no pan-India legislation that bans conversion therapy and criminalizes it in the country. Tamil Nadu is in the process to notify the rules under the Transgender Persons (Protection of Rights) Act, 2019, to ban Conversion therapy so far based on the guidelines given by the Madras High Court. However, no such provisions are being made

⁹ Vaibhav Sadhamta, 'Conversion Therapy: illegal and failed attempt to change sexual orientation' (*IJNM*, 21 May 2022) <<http://newsnet.ijnm.org/conversion-therapy-illegal-but-not-criminal/>> accessed 17 December 2022

for a pan-India ban. Conversion therapy can be held as medical misconduct or a form of hurt through inferences of their definitions based on certain judgments.¹⁰ For example, in the case of *Jashanmal Jhamatmal v Brahmanand Sarupananda*,¹¹ it was held that “infirmity of mind” comes under the umbrella of “hurt”. Given the ample evidence linking conversion treatment to mental diseases including depression, anxiety, trauma, etc., it may be deduced that it may fall under the category of “Hurt.” By Section 319 of the IPC, “producing infirmity will constitute the offence of Hurt,” and homosexual conversion treatment can be viewed as an example of this harm and subject to the corresponding charges. But judicial precedents do not support the applicability of such a provision in this particular context.

Just like the judgment of *Navtej Singh Johar v Union Of India*¹² that decriminalized homosexuality in 2018, certain judgments concerning conversion therapies have been game changers for the LGBTQIA+ community which has filled the lacuna to some extent left by the legislature. Such a judgment is in the case of *Legal Services Authority v Union of India, 2014*¹³ where the Apex court upheld the fundamental rights that are granted to transgender people and declared them as the “Third Gender”. The judges, in this case, upheld the “Yogyakarta Principles”¹⁴ on the application of International Human Rights Law concerning SOGI. One such principle in the Yogyakarta Principles was regarding “Protection from Medical Abuse” which states that “No person may be forced to undergo any form of medical or psychological treatment, procedure, testing, or be confined to a medical facility, based on sexual orientation or gender identity.”¹⁵

The judgment of the Madras High Court in the case of *S. Sushma v Commissioner of Police, Greater Chennai Police*¹⁶ case is another such judgment. The grievance was raised by a lesbian couple

¹⁰ Winy Daigavane & Anubhav Das, ‘An analysis of conversion therapy in India: The need to outlaw and the allied socio-cultural concerns’ (LSEPS, 15 June 2020) <<https://blogs.lse.ac.uk/gender/2020/06/15/an-analysis-of-conversion-therapy-in-india-the-need-to-outlaw-and-the-allied-socio-cultural-concerns/>> accessed 17 December 2022

¹¹ *Jashanmal Jhamatmal v Brahmanand Sarupananda* (1944) Sind 19

¹² *Navtej Singh Johar v Union of India* (2018) SC 4321

¹³ *Legal Services Authority v Union of India* (2014) SC 1863

¹⁴ ‘The Yogyakarta Principles – How International Human Rights Protect LGBTI People’ (TGEU, 31 January 2018) <<https://tgeu.org/yogyakarta-principles/>> accessed 17 December 2022

¹⁵ *Ibid*

¹⁶ *S Sushma v Commissioner of Police, Greater Chennai Police* (2021) SCC OnLine Mad 2096

who fled their homes because their parents disapproved of their relationship. Their parents then reported them missing, which led to the police tracking and harassing them under the guise of an interrogation. As a result, the couple reached out to the High Court for help to end the police harassment and safeguard them from any threats or harm to their security coming from their parents.

In its judgment, the Madras High Court paved the way for banning conversion therapy. In the judgment's concluding section, the court issued groundbreaking guidelines through mandamus orders to the State and its agencies to end the prejudice that still exists against LGBTQIA+ people. Justice Venkatesh said, "Till the legislature comes up with an enactment, the LGBTQIA+ community cannot be left in a vulnerable atmosphere where there is no guarantee for their protection and safety. This gap is now sought to be filled in by way of issuing guidelines till law takes over and guarantees safety and protection." These guidelines stress the need for parents to receive counselling, gender-neutral restrooms in schools and universities, training for police and government employees in LGBTQIA+ community awareness, and taking legal action against doctors who make claims that they can "cure" homosexuality. Further, by the "Indian Medical Council (Professional Conduct, Etiquettes and Ethics) Regulations, 2002", the National Medical Commission (NMC) declared conversion treatment to be unethical after receiving a directive from the Madras High Court and called for medical bodies to take disciplinary action against practitioners who provide such therapy in August 2022.¹⁷ The consequences of such misconduct will bring criminal liability, civil liability, and disciplinary action. This coupled with sections related to hurt and grievous hurt of IPC and certain provisions of the "Mental Healthcare Act, 2017" can be used to prove criminal liability on such practitioners.¹⁸ However, a set of guidelines cannot replace legislation that bans conversion therapy pan-India. Also, only the courts, that the Madras High Court oversees and falls under its purview are impacted by its judgment. To give voice to judgment and end prejudices against LGBTQIA+ people, it is

¹⁷ Bindu Shajan Perappadan, 'Conversion therapy is misconduct, declares National Medical Commission' (*The Hindu*, 5 September 2022) <<https://www.google.com/amp/s/www.thehindu.com/news/national/nmc-declares-conversion-therapy-to-be-professional-misconduct/article65842557.ece/amp/>> accessed 17 December 2022

¹⁸ *Ibid*

essential to pass anti-conversion therapy legislation, criminalise the practice, and preserve the privacy and dignity of the gay community.

WAY FORWARD

The widespread application of guidelines is still a long way off, especially in terms of disciplining healthcare professionals. Union legislation that bans and criminalises conversion therapy is the need of the hour. Such "therapy" given by other agents like religious practitioners and those that are not part of the formal medical system also needs to be addressed and criminalised. For students to have a greater awareness of the community, schools, and universities must make modifications to their curricula. Medical textbooks, especially need to get rid of derogatory and outdated terms like sodomite and unscientific concepts relating to SOGI. The textbooks must not put homosexuality in the same bracket as bestiality and incest. Medical textbooks classified homosexuality and lesbianism as "perversions" as late as 2018. There has been mention in some books of how lesbianism plays a role in determining the size of the clitoris.¹⁹

Science shows that a person's sexual orientation cannot be changed; it is something that they are born with. Everything in our society, except for heteronormative behaviour, is viewed as bringing dishonour to the family. Parents thus compel their kids to engage in such behaviours. They force their children to endure such cruel treatment because they are so overcome by shame. Hence, parents need to be made aware of SOGI and the effects of conversion therapy, because such abuse often starts at home.

CONCLUSION

The subject of conversion therapy is still not frequently known and addressed, even among young people, even though questions about SOGI are discussed. Western countries represent archaic ideas by keeping conversion therapy legal and not punishable even though they are

¹⁹ Mythreyee Ramesh, 'India's MBBS Is Riddled With Queerphobia: Dr Trinetra 'Dissects' the Problems' (*The Quint*, 16 November 2021) <<https://www.google.com/amp/s/www.thequint.com/amp/story/neon/gender/queer-phobia-and-transphobia-in-medical-textbooks-trinetra-gummaraju>> accessed 17 December 2022

considered the most progressive concerning LGBTQIA+ rights. The decriminalisation of homosexuality by the Supreme Court was essentially the first step in integrating the LGBTQIA+ community into Indian society, but enacting laws is a stretched-out process. Living a meaningful life requires the ability to make one's own decisions, individual autonomy, and the right to a dignified existence. Conversion therapy against persons violates the fundamental idea of informed consent because, as the Supreme Court of India found in the *Samira Kohli*²⁰ and *Common Cause case*,²¹ “such forced therapy is against the person's physical privacy and integrity and is unlawful.” The use of conversion therapy is against the right to privacy established under Article 21²² of the Indian Constitution as held in *S. Sushama v Commissioner of Police*.²³ Even though guidelines have been introduced and this practice has been declared professional misconduct when performed by medical practitioners, a need for a separate union law banning and criminalising this abhorrent practice is required.

²⁰ *Samira Kohli v Union of India* 2008 AIR SC 855

²¹ *Common Cause v Union of India* 2018 SCC OnLine SC 359

²² Constitution of India, art 21

²³ *S Sushma* (n 16)