

## **The Need for a Comprehensive Legislation to Outlaw Conversion Therapy in India: An Analysis**

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### **Introduction**

The LGBTQ movement in India has made significant progress since the Supreme Court decriminalized homosexuality through its landmark verdict in *Navtej Singh Johar & Ors. v. Union of India*<sup>1</sup>. This verdict declared Section 377 of the Indian Penal Code to be unconstitutional as it criminalized consensual sex between adults of the same gender. However, this doesn't mean that members of the LGBTQ community have been fully accepted by the Indian society. Even though homosexuality has been decriminalized, the road to attaining equality for people belonging to LGBTQ community remains fraught with several obstacles. The concept of homosexual relationships is still alien to a large section of Indian society and its law and policy makers.

One of the most prominent ways through which the LGBTQ people are prevented from expressing their sexual orientation is through the controversial practice of conversion therapy. In the absence of a comprehensive legislation outlawing conversion therapy, several medical professionals get away with using unethical medical practices such as electroconvulsive therapy in the name of curing those who identify as LGBTQ<sup>2</sup>. This article draws attention towards the plight of members of LGBTQ community who are subjected to conversion therapy against their will at the hands of their family and the society. Through the medium of this article, I shall argue a case for framing a comprehensive legislation that outlaws the practice of conversion therapy in India.

### **Background**

The problematic notion that members of the LGBTQ community suffer from an illness is responsible for the prevalence of the controversial practice of conversion therapy. It is pertinent to note here that both the World Health Organization<sup>3</sup> and the Indian Psychiatric Society have

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<sup>1</sup> *Navtej Singh Johar & Ors V. Union of India & Ors.*, (2018) 1 SCC 791 (India).

<sup>2</sup> Amrita Shah, *From Shock Treatment To Yoga, Conversion Therapy Is A Disturbing Reality Around The World*, Huffington Post India, ( July 15, 2016, 8: 27 AM), [https://www.huffingtonpost.in/youth-ki-awaaz/how-therapy-to-convert-qu\\_b\\_10201948.html](https://www.huffingtonpost.in/youth-ki-awaaz/how-therapy-to-convert-qu_b_10201948.html).

<sup>3</sup> Sheila Mysorekar, *Homosexuality is not a disease*, Development and Cooperation (August 1, 2019) <https://www.dandc.eu/en/article/world-health-organization-considers-homosexuality-normal-behaviour>.

declassified homosexuality as a psychiatric disorder<sup>4</sup>. However, due to widespread misinformation, the general masses continue to view homosexuality as an illness. In order to understand the reasoning behind using conversion therapy to cure homosexuality, it is imperative that we first look at the concept of homosexuality from a socio-cultural perspective. The Indian society is extremely conservative in nature and uses its cultural traditions to justify its distaste towards homosexuality. To an average Indian, the use of conversion therapy to cure homosexuality is morally correct.

The negative effects of conversion therapy are not considered by those who seek to eradicate homosexuality or are completely ignored. The utter disregard for an individual's right to express his/her sexual orientation reflects a culture of intolerance towards those who stray from the norm. However, the recent suicide of a bisexual student Anjana Harish has brought the issue to the forefront and prompted the people to question the legitimacy of conversion therapy<sup>5</sup>. According to reports, Anjana had been subjected to continuous medical and psychological torture by her parents. As part of her conversion therapy, she was put on several medications against her will. Anjana's death bears testimony to the fact that unequal treatment is being meted out to the members of LGBTQ community even though their rights have been recognized by the highest court of the land.

### **Lack of Comprehensive Legislation To Outlaw Conversion Therapy**

Initially, it was assumed that fundamentals rights such as right to Freedom of Expression under Article 19 (1) (a) of the constitution, right to equality under article 14 of the constitution along with the Mental health Care Act, 2017 would curb the practice of conversion therapy<sup>6</sup>. However, that hasn't been the case. In this context, it is pertinent to discuss the Supreme Court's judgment in Navtej Singh Johar v. Union of India. For the longest time, the criminalization of Homosexuality was justified because it was an illness. However, the court rejected this argument by referring to the Mental Healthcare Act, 2017. The court the fact that a reading of section 2(1) (s) of the act clarifies that homosexuality doesn't fall under the purview of mental illness.

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<sup>4</sup> Homosexuality not an illness: Indian Psychiatric Society, The Hindu (July 12, 2018, 9:52 PM), <https://www.thehindu.com/news/national/homosexuality-not-an-illness-indian-psychiatric-society/article24401307.ece>.

<sup>5</sup> Rinchen Norbu Wangchuck, Anjana Harish's Suicide Shows Why India Must End Practice of Conversion Therapy, The Better India, (May 27, 2020), <https://www.thebetterindia.com/227996/lgbtqia-mental-health-conversion-therapy-ban-anjana-harish-kerala-iacp-india-nor41/>.

<sup>6</sup> Arjun Kapoor & Soumitra Pathare, Section 377 and The Mental Healthcare Act, 2017: Breaking Barriers, 4 IND. JOUR. O. MEDIC. ETH. 1, November 26, 2018, <https://ijme.in/articles/section-377-and-the-mental-healthcare-act-2017-breaking-barriers/?galley=html>.

While referring to section 3(1) of the act, it stressed upon the need for India to keep up with international standards set for defining mental illness. According to section 3(1) of the Mental Healthcare Act, 2017, mental illness shall be defined under internationally recognized medical standards such as the latest edition of the International Classification of disease of the WHO that does not consider homosexuality as a mental illness. The court highlighted the legislature's intention of doing away with the notion of treating homosexuality as a mental illness through the Mental Healthcare Act of 2017.

The Supreme Court's reference to the Mental Health Care Act, 2017 implies that the use of conversion therapy against members of the LGBTQ community is as unlawful as treating homosexuality as a mental illness. Since therapy can only cure an illness, the use of conversion therapy to cure an illness that doesn't exist in the first place becomes redundant. However, due to the lack of a specific legislation outlawing or criminalizing the practice of conversion therapy, there has been none significant change in the society's approach towards conversion therapy. Therefore, in pursuance of preventing physical and mental torture of LGBTQ members through their forceful subjection to conversion therapy, it is imperative that a specific legislation dealing with conversion therapy is framed.

### **Conversion Therapy Across the World**

It is important to note here that it isn't just India that has struggled to safeguard the rights of members of the LGBTQ community against conversion therapy. Throughout the world, a need has been felt amongst LGBTQ friendly nations that there is a need to outlaw conversion therapy for protecting the LGBTQ community. In May 2020, Germany passed a law banning conversion therapy for minors<sup>7</sup>. Similarly, the abhorrent practice has been outlawed in several countries like Switzerland, South Africa etc. It is the common consensus amongst the nations that have outlawed conversion therapy that this controversial therapy is nothing but a convenient justification for inflicting harm upon those who dare to freely express their sexual orientation.

### **Conclusion**

International Organizations such as the UN have increased their efforts to address the problem of conversion therapy. Recently, the UN has released a report discussing the impact of conversion therapy across the globe<sup>8</sup>. This report has been compiled with the aim of highlighting the fact that

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<sup>7</sup> Germany passes law banning 'gay conversion therapy' for minors, BBC News, ( May 8, 2020), <https://www.bbc.com/news/world-europe-52585162>.

<sup>8</sup> Tim Fitzsimons, U.N calls for global end to conversion therapy, says it 'may amount to torture', NBC News ( June 13 2020, 11:34 AM) , <https://www.nbcnews.com/feature/nbc-out/u-n-calls-global-end-conversion-therapy-says-it-may-n1230851>.

conversion therapy is in no way a scientifically proven method that can be used to alter one's sexual orientation or gender identity. Apart from that, the report discusses the negative impact of conversion therapy on minors, who do not have legal right to control their health care and therefore, are completely at the mercy of their parents / guardians who force them to undergo such psychological torture and physically damaging procedures. It is important to note here that the UN has faced quite a lot criticism for putting forward the proposal of outlawing conversion therapy from several member nations. However, despite the resistance, the UN has finally taken a strong stance on conversion therapy thus indicating its resolute acceptance of the LGBTQ community. In light of the growing commitment of international organizations and other countries to ban conversion therapy, it is high time that India outlaw the practice as well.