

# LEGALFOXES LAW TIMES

## Post Decriminalization of Homosexuality: Conversion Therapy a Reality

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### ABSTRACT

Conversion therapy is a health fraud, a pseudo-medical practice which claims to cure people of homosexual behaviour and reduce attraction towards same-sex. The apex court in **Navtej Singh Johar v. Union of India**, decriminalized homosexuality and embraced the natural variance in sexuality. However, the edict was apparently not apposite to denounce and discredit the quacks in India. The practice of conversion therapy is still rampant in India because of misplaced notion that homosexuality is a genetic flaw which is curable. Although, ample of research and study on the homosexual orientation is at public disposal, yet the practice of conversion therapy continues to traumatize the LGBT community.

In the article, the author has highlighted the medical research conducted worldwide which state the inefficacy of the therapy and prohibits its use in the medicinal domain. The author has called attention to the effects of discrimination faced by the community in the daily sphere of life, coupled with the repercussions of conversion therapy. Lastly, the author has discussed the constitutionality and legality of the quackery and the urgent need for laws to protect the LGBT community from unjustified discrimination meted-out.

Write Key words for the abstract.

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## **POST-DECRIMINALIZATION OF HOMOSEXUALITY:**

### **CONVERSION THERAPY A REALITY**

"What a sad era when it is easier to smash an atom than a prejudice"

- Albert Einstein

As we draw near to the 2nd year anniversary of the historic judgment of **Navtej Singh Johar vs. Union of India**<sup>1</sup> which decriminalized colonial-era law of homosexuality, LGBTQIA<sup>2</sup> community envisage protection from societal prejudice, bias, and continuing discrimination. Following the judgement, 3.8%<sup>3</sup> of India's marginalized population pinned their hopes on the Government of India to ensure their safety from centuries of discrimination meted out because of their variant sexuality and subjection to medical quackery at the hands of licensed medical practitioners. Although, the impact of the judgment does not go unnoticed as homosexuality is more widely discussed and many previously closeted homophiles have secured the courage to come out to their families and disclose their sexuality. One such person was, Anjana Hareesh<sup>4</sup>, a 21-year-old student of Brennen College in Thalassery, who came out to her parents as bisexual in December 2019 but in the aftermath, was put through physical and mental abuse by her family who could not accept her bisexuality. Anjana uploaded a video on her social media account in March 2020 and narrated incidents of mental torture administered in solitary confinement at a mental health centre to 'fix' her queerness. She died of suicide two months after uploading this video.

The pseudo-medical practice of counselling and psychotherapy which aims to change or cure homosexuality or gender identity is called conversion therapy or reparative therapy. It claims to reduce sexual attraction towards same-sex and attempts to change sexual orientation and gender expression. Desperate parents, unaware of natural variance in sexuality and in some cases individuals due to internalized prejudice which results in difficulty in self-acceptance, opt for such therapy to fit into the heteronormative society and to live a "normal" and "easier" life.

### **EFFICACY OF THE THERAPY**

Conversion therapy is based on the false assumption that homosexual or bisexual orientation is a mental disorder and that it can be cured by either of the following- institutionalization, aversive conditioning, hormonal therapy, hypnosis, castration, exorcism, electroconvulsive shock therapy, or by psychotherapy. Although, in the past few years, the extreme corrective measures like shock

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<sup>1</sup> (2018) 10 S.C.C. 1.

<sup>2</sup> Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex and Asexual/Agender.

<sup>3</sup> Warren Kealy-Bateman, *The Possible Role of the Psychiatrist: The lesbian, gay, bisexual and transgender population in India*, INDIAN J PSYCHIATRY, Oct.-Dec. 2018, 489-493.

<sup>4</sup> Shraddha Chatterjee, *Anjana Hareesh's Death Reveals a Crisis in Mental Healthcare in India*, LIVE WIRE (May 21, 2020), <https://livewire.thewire.in/gender-and-sexuality/anjana-hareeshs-death-reveals-a-crisis-in-mental-healthcare-in-india/>.

therapy are less in practice and instead counselling and talk-therapy which involve the administration of psychotropic medications are used. It, nonetheless, has its side effects.<sup>5</sup>

The American Academy of Child and Adolescent Psychiatry<sup>6</sup>, American Psychiatric Association<sup>7</sup>, and American Psychological Association<sup>8</sup>, have not found any evidence to validate the application of any therapy which is administered on the claim to alter the sexual orientation or gender identity. They have in their research time and again averted that homosexuality is not a pathological condition and based on scientific evidence asserted that the therapy lacks scientific credibility and clinical utility. Following the death of Anjana, Kerala branch of Indian Psychiatry Society issued their statement pronouncing that despite being asked by parents or relatives to cure a person of their homosexuality, doctors should refuse to indulge in sexuality reorientation therapy and instead enlighten them that it does not require treatment. Despite the decriminalization of homosexuality, the practice continues to traumatise the sexual minority in India.

### SCARCE DOCUMENTATION, AMPLE OF EVIDENCE

A month before the decriminalization of homosexuality Dr. P.K. Gupta, debarred from practicing medicine by Delhi Medical Council(DMC), was summoned by the Delhi High Court after a complaint was filed against him for continued use of hormonal and shock therapy to 'treat the gay' based on a specious report of 2015 which alleged to convert homosexuals into heterosexuals.<sup>9</sup> Albeit, few cases of conversion practice have come to public view yet, there is profuse evidence against the pervasiveness of practice in India taking place at the hands of medical quacks and religious leaders or god-man to 'fix the gay'. UN Human Rights Council in its report on Conversion Therapy issued on 1st May 2020<sup>10</sup>, stated that invalid use of medication is widely prevalent in numerous countries, including India. It further stated that in India use of Ayurvedic, homeopathic, and other traditional medical approaches are widely used. Apart from this, lesbians, bisexuals and transwomen<sup>11</sup> have been reported to be sexually assaulted and raped in order to change their orientation. Indian Association of Clinical Psychologists<sup>12</sup> in their statement on conversion therapy, stated that post decriminalization of consensual sex between same-sex adults, conversion practices are still rampant in India.

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<sup>5</sup> Gurvinder Kalra, *Breaking the Ice: IJP on Homosexuality*, INDIAN J PSYCHIATRY, 2012 July- Sept., 299-300.

<sup>6</sup> American Academy of Child and Adolescent Psychiatry (2018), Position Statement on Conversion Therapy.

<sup>7</sup> APA Reiterates Strong Opposition to Conversion Therapy, AMERICAN PSYCHIATRY ASSOCIATION (Nov. 15, 2018), <https://www.psychiatry.org/newsroom/news-releases/apa-reiterates-strong-opposition-to-conversion-therapy>.

<sup>8</sup> *Resolution on Appropriate Affirmative Responses to Sexual Orientation Distress and Change Efforts*, AMERICAN PSYCHOLOGICAL ASSOCIATION (2009), <https://www.apa.org/about/policy/sexual-orientation>.

<sup>9</sup> Press trust of India, *Delhi Doctor Charged Rs. 4,500 For "Treating", Gets Court Summon*.

<sup>10</sup> Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, *Practices of so-called "conversion therapy"*, UNITED NATIONS HUMAN RIGHTS (May 1, 2020).

<sup>11</sup> *Id.*

<sup>12</sup> Parth Sharma, *It's 2018, And There Are 'Doctors' Who Are Still Trying To 'Cure' Homosexuality*.

A 16-year-old Rishi Raj Vyas<sup>13</sup> sketched out his experience of coming out to his parents as homosexual at the age of 13. He was immediately taken to a psychiatrist in Delhi and after that to a baba (god-man) for changing his sexual orientation. Traumatized by the experience, Rishi resorted to self-harm. The fact that even sex is seen as a taboo in India, conversations about homosexuality, which until recently was considered a crime against nature, don't generally, and find their way out of the four walls of the Indian house.

### MENACE OF QUACKERY

Judith Glassgold, a clinical psychologist, illustrated through an example in her testimony, to help better understand the impact of the therapy on children and adolescents. She wrote, "Assume a child or adolescent who grows up in a world that stigmatizes and devalues their identity and being told by someone presenting as a trusted professional authority that who they are and what they are feeling is so shameful, flawed and wrong that it must be eradicated. It should not surprise you that this young person will suffer from a negative self-image and identity at crucial developmental phases of life."<sup>14</sup> Here, she added that after being told what is right and wrong, the child would suffer from enhanced desperation and hopelessness because he will not be able to change himself even after knowing his so-called follies.

Before concluding judgement<sup>15</sup>, Indu Malhotra, J., offered an apology on behalf of the majority to the LGBT community, for being ignorant of the natural variance in sexuality and because of which the community lived with the constant sense of fear. But the questions that now arise are whether the duty of our lawmakers ended there, has the judgement made the majority any sensitive to the issue, or the homophobia and transphobia ceased to exist? In 2018, nineteen-year-old Avinshu Patel<sup>16</sup>, tired of being ridiculed for his demeanour and gender expression, died of suicide expressing his hopelessness in the Indian society which failed to accept him. In another such example, Aniket Patil<sup>17</sup> a 25-year-old MBA graduate ended his life as he was unable to cope with constant homophobic taunts at his workplace.

It is no secret that sexual minorities are twice as likely to have suicidal thoughts and four times as likely to attempt suicide<sup>18</sup> due to the persisting stigma and discrimination faced by them in almost every sphere of life. CDC's 2015 Youth Risk Behaviour Survey deduced from their survey that 60% of LGBTQ youth reported being so sad or hopeless they stopped doing some of their usual

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<sup>13</sup> *Id.*

<sup>14</sup> Judith Glassgold, *Written Testimony of Judith Glassgold, Psy.D in Support of L.D. 1025, An Act To Prohibit the Provision of Conversion Therapy to Minors by Certain Licensed Professionals*, April 10, 2019, at 2.

<sup>15</sup> Navtej Singh Johar v. Union of India(2018) 10 S.C.C. 1.

<sup>16</sup> Jayanthi Pawar, 'Not my fault I am Gay': Youth commits suicide in Chennai alleging homophobia, THE NEW INDIAN EXPRESS(July09, 2019).

<sup>17</sup> Vallabh Ozarkar, 25-year-old MBA graduate ends his life over 'gay' jibes, suicide note alleges he was taunted at workplace, MUMBAI MIRROR (July 24, 2019).

<sup>18</sup> *Mental Health and The LGBTQ Community*, HUMAN RIGHTS CAMPAIGN FOUNDATION, (July, 2017).

activities.<sup>19</sup> A study on the mental health status of MSM<sup>20</sup> conducted in Ahmedabad City, indicates that the hardships faced by them on a daily basis lead to severe depression, anxiety, insomnia, and social dysfunction symptoms<sup>21</sup> and conversion therapy worsens the situation by increasing self-hatred, blame, intrusive imagery, anxiety, sexual dysfunction, and hopelessness.<sup>22</sup>

## UNCONSTITUTIONAL AND ILLEGAL PRACTICE

One thing that can be adverted with utmost certainty is that any attempt to change an individual's innate sexual orientation or their gender identity is implicit to denying their fundamental right to equality, freedom of expression and right to life, privacy and personal liberty. Dipak Mishra, J. emphasising on the significance of identity of a person stated that denial of self-expression is inviting death and identity should be treated absolutely essential to a person's being.<sup>23</sup>

Although, at present, there is no specific law which condemns conversion therapy and prohibits discrimination against LGBT community yet the practice of conversion therapy is contrary to the provisions of the Mental Health Act, 2017(hereinafter MHA). MHA, under Section 3(3)(b), states that mental illness should not be ascertained based on non-conformity with moral, social, cultural, work or political values or religious beliefs prevailing in a community. This implies that homosexuality not being the norm, cannot be termed as an illness under the act. MHA, under Section 106, further restricts medical professionals to not recommend or specify any medicine or treatment not authorized by their profession and obligates them to discharge only such functions which they are authorized to under the act. Not only does MHA prohibit fraudulent acts like conversion therapy, but it also imposes a duty on the Government to provide care, treatment, and rehabilitation to a person having severe stress, to reduce attempt to commit suicide.<sup>24</sup>

The historic NALSA judgement, which declared transgender to be the third gender, also condemned any "medical or psychological treatment, procedure, testing" on any individual based on sexual orientation or gender identity as it is not, in itself, a medical condition requiring treatment.<sup>25</sup>

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<sup>19</sup> Kann L, McManus T, Harris WA, et al. *Youth Risk Behavior Surveillance-United States, 2017*, MMWR Surveill Summ 2018;67(No. SS-8):1–114.

<sup>20</sup> Men who have sex with men.

<sup>21</sup> Arpita C. Prajapati, Sonal Parikh & D. V. Bala, *A Study of Mental Health Status of Men Who Have Sex With Men in Ahmedabad City*, INDIAN J PSYCHIATRY, 2014 Apr., 51(2), 289-301.

<sup>22</sup>Di Giacomo E, Krausz M, Colmegna F, Aspesi F, Clerici M., *Estimating the Risk of Attempted Suicide Among Sexual Minority Youths: A Systematic Review and Meta-analysis*, JAMA Pediatr. Dec. 2018, 172(12):1145–1152.

<sup>23</sup> Navtej Singh Johar v. Union of India (2018) 10 S.C.C. 1.

<sup>24</sup> Section 115 of Mental Health Act, 2017.

<sup>25</sup> National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438.

## A WAY FORWARD

In the absence of any existing law on torture faced by the LGBT community in India, the global ban on torture<sup>26,27</sup> should be read into the fundamental rights of the people by virtue of Vishaka & Ors. v.State of Rajasthan & Ors<sup>28</sup>, in which the Supreme Court held that international norms and conventions are to be read into the fundamental rights guaranteed in the Constitution of India in the absence of any enacted domestic law.

Psychotherapists and psychologists play a significant role in bettering the condition of persons suffering from varied mental illnesses, depression and anxiety. When it comes to LGBT youth, therapists can help by supporting them and help cope with discrimination, the process of self-acceptance and coming out to one's family. The progressive view that reflects the changed medical position should be adopted by the medical professionals.<sup>29</sup> In case of deviation from their assigned and authorized duty, they should be severely punished for treating something which does not require any treatment and misguiding gullible parents/relatives who are only trying to look out for their child.

UN experts have specifically called for a global ban on conversion therapy because of its severe and long-lasting impact on the victim's mental and psychological well-being. Hitherto, 20 US States and several countries have either adopted law to ban the destructive practice of conversion therapy or proposed such law to be passed, the latest being Germany and Albania. The Government of India should follow their lead and enact relevant laws to protect its marginalized section of the population which deals with minority stress for being born different. The LGBTQAI community bank on Navjet Singh Johar case to pave way for much-needed progress in protecting their rights in the near future.

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<sup>26</sup> Universal Declaration of Human Rights, Article 5- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

<sup>27</sup> International Covenant on Economic, Social and Cultural Rights, Article 12- The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

<sup>28</sup> AIR 1997 S.C. 3011.

<sup>29</sup> Navtej Singh Johar v. Union of India (2018) 10 S.C.C. 1.