

IS A BAN ON CONVERSION THERAPY ALL THAT NEEDS TO BE DONE?



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Discussion Paper

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CONTEXT

The ban on conversion therapy needs a more comprehensive study to understand both its effect and efficacy. The provisions laid down by the court in *S. Sushama v. Commissioner of Police, 2021 (HC 7284, 2021)* only banned the medical practice of conversion therapy without criminalising the act of professing or practising the same. There are no punitive measures, and the practitioners of conversion therapy are only heard as professional misconduct cases, which culminate in a maximum punishment of being removed from the list of the National Health Commission. Even today, only roughly 600 courses are recognised by the same.

While the judge did try to get a better understanding of the threat that looms over the homosexual body by appointing amicus curiae and recording these detailed ordeals and conversations within state documents, the knowledge of conversion therapy and the ordeal on the homosexual body by the structure fell short. Conversion Therapy must be understood as an umbrella term for all interventions that claim to be able to 'pray the gay away'. This would mean a policy structure which recognises the various manifestations of conversion therapy, including de-addiction centres, Ayurveda, religious practices and other unregulated practices and their practitioners.

CONVERSION THERAPY

Conversion Therapy, during its formulation, was constructed as a curative therapy standing on the two pillars of 'being born as' implying that the other body is a deviant and an abnormal body or socialisation 'something made someone' have deviant sexual preferences (Meyer & Lewin, 2002). Conversion therapy gradually became recognised as reparative therapy, a term still in use by the language of the Judgment in *S. Sushama v. Commissioner of Police, 2021* (FirstPost, 2021). Conversion therapy is defined as "any emotional or physical therapy used to 'cure' a person's attraction to the same sex, or their gender identity and expression. Providers claim these therapies can make someone heterosexual or 'straight'." (Sreenivas, S., 2021)

Straight Sex by M Canady eloquently explains that seeing sex as a binary of the male and female by the State is a tactical control to regulate, classify, recognise and punish deviant behaviour more easily. Family gives more accessible access to the individual's body while keeping the rhetoric of freedom and autonomy alive. Skylar Coggsell-Shears has popularly pointed out that the LGBTQ body becomes the location to reset the gender binary and hence makes the task of disciplining more complex for the state.

There has been a discomfort with the body of the homosexual¹ (Canaday, 2009). So, what happens to the homosexual body in the family can be understood with great depth in the case study of Anjana Harish. After coming out to her family, the act of agency and recognition (Ward, 2005) turned against the physical and mental health of the 21-year-old. The family then decided to take matters into their own hands to 'save their daughter and force into a heterosexual relationship' (Indian Express, 2020). The case of Anjana Harish captured the social imagination (Taylor, 2003) of the young public in India because of her video, where she narrated the entire ordeal of her experience of conversion therapy. The video narrated the details on a platform which exceeded the immediate public space of Anjana Harish. The conversation that Anjana Harish raised becomes even more grounded with the case *S. Sushama v. Commissioner of Police, 2021* (Firstpost, 2021).

Judgement on Section 377² held within it the capability to continue to invisibilise the LGBTQ body because the judgement relegated sexual orientation to the private. The debate around

¹ For the ease of the argument the word here can be understood to mean any sexual deviance which lies outside the heteronormative idea of sex. The idea of sexual identity which did not locate the locus of the partner in the opposite sex.

² *Navtej Singh Johar V Union of India, 2018* declared Section 377 unconstitutional which criminalized consensual sexual activity between adults.

modesty and morality in public effectively makes the recognition of the LGBTQ body in the public still an anomaly, which changes with the ban on conversion therapy. This could be located as the first step to recognise the body of the LGBTQ citizens (making them members of the State, which until lately saw it to its benefit to expunge this body from the public entirely). Banning conversion therapy is an attempt to end physical and mental assault but also recognises that there has been a wrong that has been selectively operational on the body of a particular category of the citizen.

JUDGEMENT OF S. SUSHAMA V. COMMISSIONER OF POLICE, 2021:

The case *S. Sushama v. Commissioner of Police of 2021* set the goal within the Indian political system, the dream of actual lived freedom³. On 8 June 2021, the Madras High Court gave a judgement to ban conversion therapy. The judgement defined Conversion Therapy as a chemical, psychological, and physical therapy aimed towards altering the sexuality of the individual subjected to it.

S Sushama and her partner ran away from their village after the families discovered that they were queer and identified as lesbian. The families' initial outrage was met with extreme verbal and physical violence faced by the two women. Failed attempts to hurt the partner in each family led the women to leave their native villages and shift to Chennai.

In Chennai, the physical assault did not stop, with the families constantly forcing either one to move to a de-addiction centre for conversion therapy. The family created public resistance and made their sexual private knowledge public in the local community; the housing association and the locals then attempted to oust them from their houses. Faced with these concerns, they approached the state for safety and security. The judgement, for the first time, recognised and guaranteed state protection to the LGBTQ citizen. It recognised their status as citizens and further went on to announce a blanket ban on conversion therapy.

But the effectiveness of the present ban has to be contested. As mentioned, the current ban only bans the medical practice of conversion therapy and fails to recognise the more prevalent manifestations of conversion therapy within the country itself. Globally, too, the policy frame-

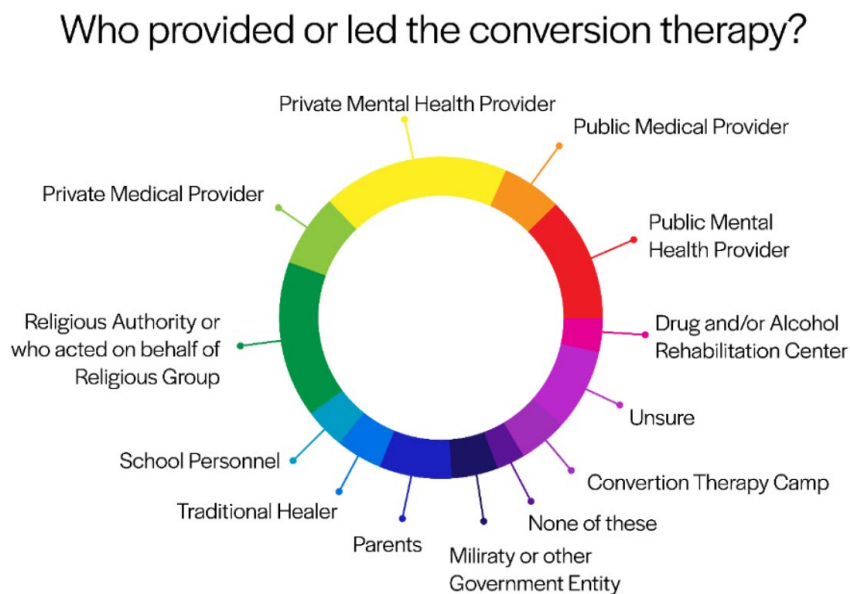
³ "There are many branches on the tree of life. There is no one way to be, and there is room for everyone to be who they are"- HC Judgement, *S. Sushama v. Commissioner of Police, 2021*

work is still battling for an adequate understanding of conversion therapy itself. As late as 2012, the Pan American Health Organization (PAHO) noted that “conversion therapies” had no medical justification, and it was only in 2016 that the World Psychiatric Association found that “there is no sound scientific evidence that innate sexual orientation can be changed”.

Yet conversion therapy continues to be subscribed as a cure, professed as a necessity and practised through

1. State actors
2. Private entities
3. Medical professionals
4. Religious Organisations
5. Traditional Healers

FIGURE 1.2: Global Survey Indicating Global Practitioners of Conversion Therapy



Source: LGBT Foundation Evidence Brief, 2019

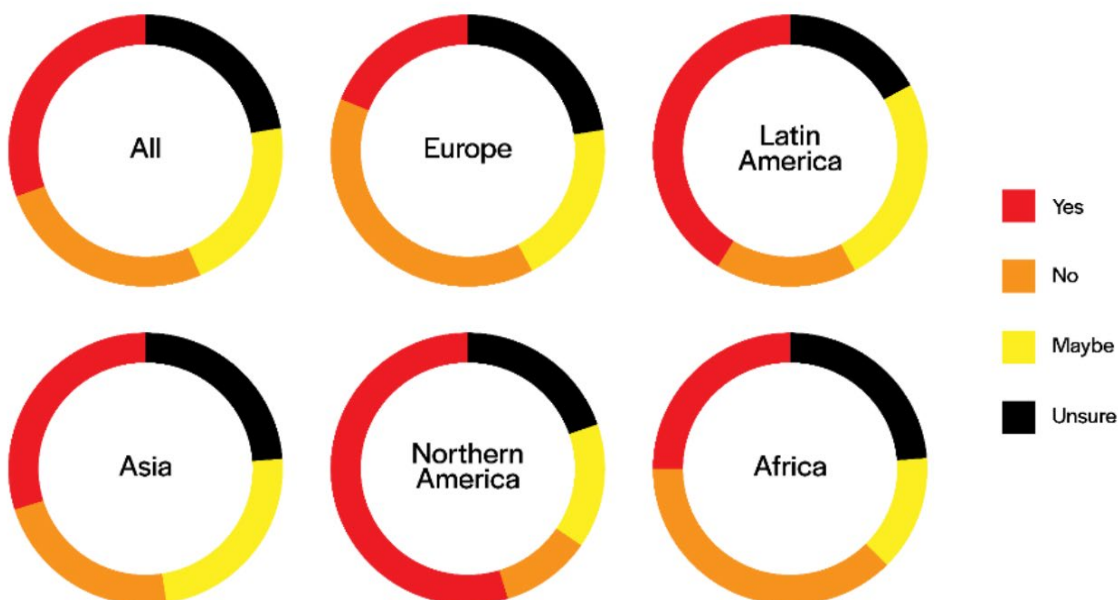
The practice of the therapy is rampant. A UNHRC-endorsed survey recognised that 4 out of 5 persons subjected to them were 24 years of age or younger at the time they were subjected to conversion therapy, and, of those, roughly half were under 18 years of age.

Global Prevalence

While within India, the lack of engagement within the policy framework is abysmal, and no records of prevalence could be located. However, a telephonic interview survey was conducted by the LGBT Foundation with 8092 individuals from over 100 countries, ranging in age from under 18 to 85+. The results indicate that globally, people are not entirely unaware of conversion therapy; their awareness of its existence. This awareness suggests a latent acceptance of conversion therapy amongst the more prominent global population. This prevalent acceptance needs the state to create awareness about the grotesque and violent nature of conversion therapy itself. Furthermore, the State's recognition must also translate into a socio-political acceptance of the homosexual body.

FIGURE 1.2: Awareness of Conversion Therapy and its Practice Globally

Is conversion therapy practiced in this region?

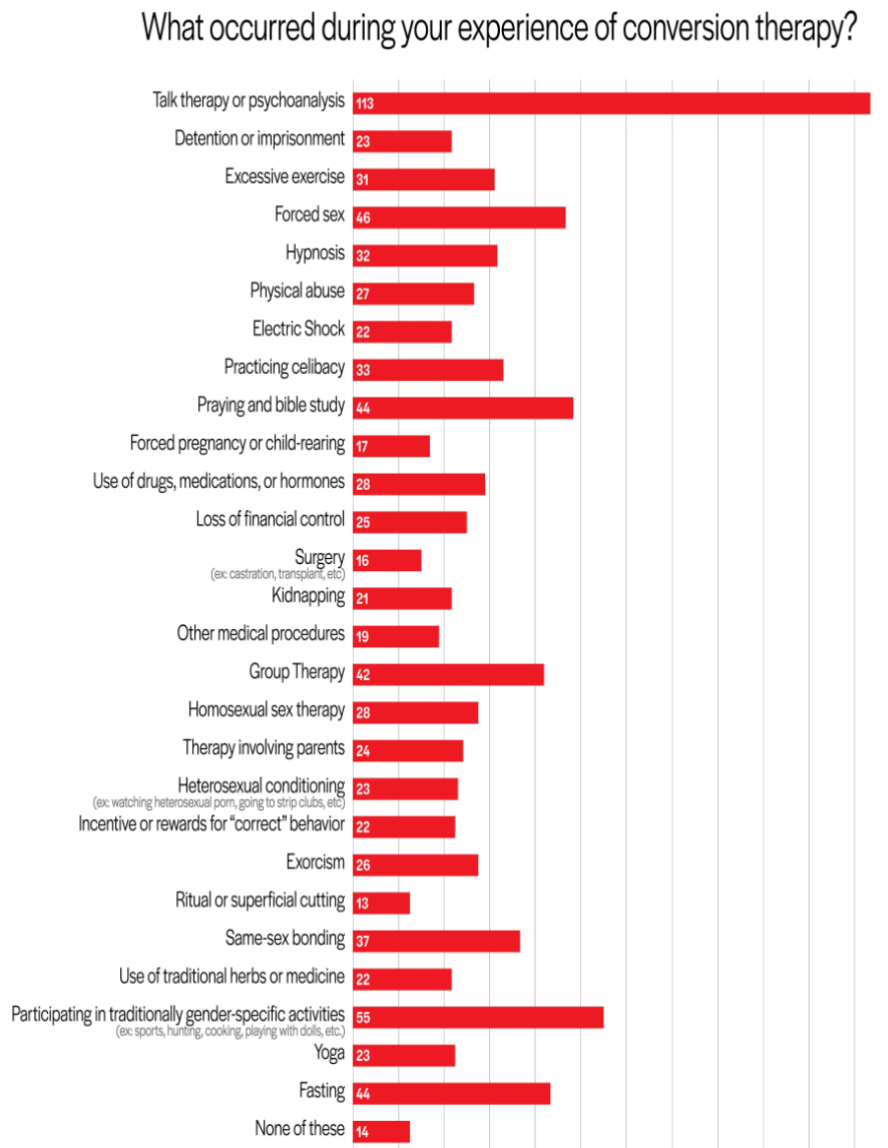


Source: LGBT Foundation Evidence Brief, 2019

Participants in the survey further reported being exposed to a wide array of practices related to conversion therapy. The breadth of these practices aligns with the previously mentioned

classifications: psychotherapeutic, medical, faith-based, and punitive. Many respondents who were subjected to conversion therapy reported violence to the nature of forced sex. The dehumanising of the homosexual body is so profound within practices of conversion therapy there is no recognition of the violence unleashed and the trauma that such curative therapy results in for the individual subjected to the same.

FIGURE 1.3: Various Tools Used During Conversion Therapy



Source: LGBT Foundation Evidence Brief,

Survivor Experience

While within India, no statistics are available on the prevalence of conversion therapy, the research in this piece has tried to recognise the experience by interviews with survivors. All interviews were taken after due consideration, informed consent and debriefing; it is not the intent of the writers to exploit the personal trauma of the survivors who chose to speak. Their identities have been changed to respect their privacy and ensure as much safety as possible. These experiences are intended to recognise the most critical stakeholder in the conversation on conversion therapy. The interviews shed light on their experience of both covert and overt conversion therapy and the key roles families play in both propagating and professing conversion therapy.

A is a transman from Delhi who works in the queer rights space. He explains conversion therapy in terms of the cisnormative heteropatriarchy, which is the norm in society, and all individuals are expected to follow the same. Anyone who transgresses from this idea of their gender identity and expression, sexual orientation, and family is met with force and violence. This force and violence can be physical, emotional, mental, and sexual in nature. He further explains that conversion therapy is an umbrella term that covers a vast way of bringing deviant behaviour into check; this includes verbal abuse by the family, forceful marriages, religious ceremonies, consultations with Tantriks and other spiritual leaders, mental health treatment in terms of excessive medication and shock therapy. He notes that while medication and hospitals are not fully accessible to all, Tantriks and babas are easily available in every corner of the cities and towns in India and go completely unregulated and unchecked when it comes to their “treatment” and “solutions” for queer folks. The effects of these methods, regardless of the approach, are often anxiety, depression, trauma, alienation from the natal family, and a general mistrust of the institution of the family itself.

A further discusses that families often resort to house arrests, physical violence, ceremonies like havans or shell out money to smaller clinics and de-addiction centres in order to “fix” their children. Along with the trauma that comes with the violence of being made to change their behaviour and identity, survivors often develop scepticism and mistrust, believing that the very family that was supposed to protect them has failed to do so and has caused immense stress to them.

Outside of their homes, there isn't much to help these survivors when it comes to the legal aspect of these sufferings. While the ban on conversion therapy is a great first step, A states that the very idea and the awareness of conversion therapy and its ban are very urban ideas. Smaller cities and towns, while engaging in the methods of conversion therapy, do not fully

have the awareness that it is ethically wrong and has very little legal consequence. Lack of awareness and training for the police play into the gap between the implementation of the ban on conversion therapy; when the survivors themselves and the authorities do not consider conversion therapy to be problematic and something that requires redressal, the problem is unsolved. In fact, A tells the researchers that most queer people who have survived conversion therapy and come to bigger cities like Delhi in hopes of safety are not interested in taking a legal route at all, and wish to just live their lives in peace, only realising when in contact with queer rights organisations that what they experience was violence.

Safety and community are integral parts of queer rights for queer and trans folks, especially if they are alienated due to familial violence. Joshua, a non-binary mental health professional, talked to the researchers about the cultural and religious aspects of conversion therapy. They discussed that while there is no doubt that overt ways of conversion therapy are harmful, the process starts rather subtly and slowly in religious programs, workshops, and seminars. The constant socialisation is that being a part of the LGBTQAI+ community is a sin. These subtle but consistent ways of conditioning make the people in question likely to internalise the homophobia and transphobia they are subjected to, creating a dissonance between their feelings, which are considered deviant and the messaging they receive about the importance of morality, purity, marriage, and progeny. Joshua shares their experience as a queer person who came out of their family and with a parent who was subject to conversion therapy previously and was modelled as the ideal to them, an example to follow. If not subject to outright violence, often families invisibilise queer identities while trying to accelerate the process where their family member grows out of the “phase” Joshua recalls the indoctrination and surveillance with their family, religious leaders and communities, reminding them that God is watching all their actions, and much like others before them, they can aspire to be “normal” by being cisgender and heterosexual. Even if the family accepts the queer identity, many discourage their queer family members to not be an open queer, and keep their gender expression and romantic relationships hidden.

M, a transwoman working in the diversity and inclusion space, shares that it is the deep-rooted fear of being isolated, from family, from community, and not being to “fit in” is a major part of the subtle conversion therapy by families. Queer people hence are made to feel that they aren’t experiencing the same acceptance and safety from their biological families as cisgender and straight folks do. The general discrimination in terms of homophobia and transphobia does not favour queer people in terms of the violence they face, and the lack of support, access, and acceptance they have in terms of community, housing, career, and healthcare.

The conditioning and conversion therapy being within the family, especially in the religious

domains, makes it difficult for the survivors to access the help available to them legally. S, an SRHR activist, emphasised the role of sensitisation of the police, who are the first to connect with the survivors. They also shed light on the importance of focusing on the comfort, happiness and pleasure of the queer community rather than just focusing on the discrimination and fundamental rights. The Participants in the interviews suggest that while education is essential in bringing about change and encouraging more awareness and acceptance of the LGBTQ+ community, policies that ban discrimination and give legitimacy to LGBTQ+ identities and relationships. National-level policy, mass learning, and media representations should be prioritised, according to the participants; the specific policy recommendations in specific are shared in the next section.

POLICY RECOMMENDATIONS

Some concrete policy recommendations need to be recognised. These recommendations come from a comprehensive understanding of global pledges by the UNO, the Global Citizenship Projects, and intensive interviews with stakeholders:

1. There must be a complete and comprehensive ban on conversion therapy, which recognises that the stop must come at both the levels of subscribing, professing and practising conversion therapy in all its manifestations.
2. Take urgent measures to protect children and young adults from conversion therapy. This is generational trauma where the inactivity by the State indicates State complacency with practitioners of conversion therapy.
3. Carry out campaigns to raise awareness among parents, families and communities about the invalidity and ineffectiveness of and the damage caused by practices of “conversion therapy”.
4. Adopt and facilitate health care and other services related to the exploration, free development and/or affirmation of sexual orientation and/or gender identity.
5. Foster dialogue with key stakeholders, including medical and health professional organisations, faith-based organisations, educational institutions and community-based organisations, to raise awareness about the human rights violations connected to practices of “conversion therapy”.
6. A decentralised approach to tackling conversion therapy and comprehensively addressing queer rights in general. A queer rights activist suggests District and State wise Welfare Boards with intersectional representation should be set up to ideally comprise queer and trans folks from different caste and class locations to make the board intersectional and accessible. These boards should be the point of contact for queer folks and help in strengthening a sense of safety and community.
7. There should be provisions for civil partnership petitions in court which focus more on the rights of chosen families rather than giving the power to biological families who often met out violence to their queer family members.

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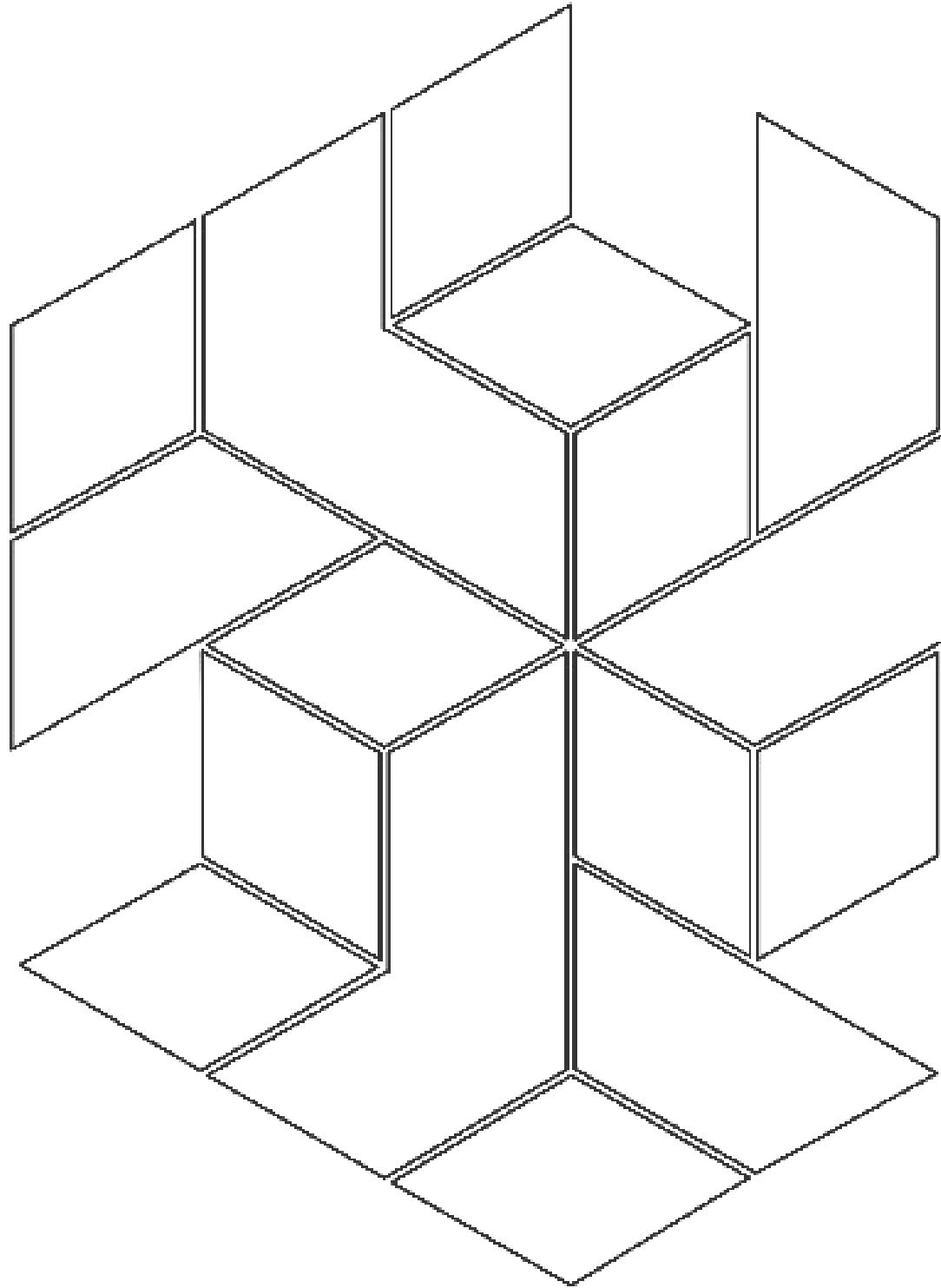
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