

Bill No. 47 of 2022

THE CONVERSION THERAPY (PROHIBITION) BILL, 2022

By

SHRIMATI APARUPA PODDAR, M.P.

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BILL

to prohibit conversion therapy and for matters connected therewith.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Conversion Therapy (Prohibition) Act, 2022.

5 (2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may by notification in the official Gazette, appoint.

Short title,
extent and
commencement.

Definitions.

2. In this Act, unless the context otherwise requires:—

- (a) “conversion therapy”, means any practice, sustained effort or treatment aiming to change a person’s sexual orientation from homosexual or bisexual to heterosexual or his gender identity or gender expression from transgender to cis-gender using psychological, physical, spiritual or other interventions; 5
- (b) “gender expression” means manifestation of gender identity of a person, that is to say, the manner in which a person expresses his gender identity through song, appearance, dress and behaviour;
- (c) “gender identity” refers to internal and individual experience of gender of a person, which may or may not correspond with the sex assigned at birth, including the personal sense of the body (which may involve, if freely chosen, modification of bodily appearance and, or functions by medical, surgical or other means) and other expressions of gender including name, dress, speech and mannerisms; 10
- (d) “professional” means a person who has an official qualification and a warrant to practice as a care worker, counsellor, educator, family therapist, medical practitioner, pathologist, psychologist, psychotherapist, psychiatrist, social worker or youth worker; 15
- (e) “sexual orientation” refers to each person’s capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, persons of a different gender or the same gender or more than one gender; 20
- (f) “mental illness” shall have the meaning assigned to it in the Mental Healthcare Act, 2017; 10 of 2017.
- (g) “person with disability” shall have the meaning assigned to it in the Rights of Persons with Disabilities Act, 2016; 25 49 of 2016.
- (h) “vulnerable person” means any person:
- (i) under the age of eighteen years; or
- (ii) with disability or mental illness; or
- (iii) considered by the court to be particularly at risk when taking into account the person’s age, maturity, health, disability, social or other conditions including any situation of dependence, as well as physical or psychological consequence of the offence on that person. 30

Prohibition of Conversion Therapy.

3. The conversion therapy is hereby prohibited.

Punishment for advertising Conversion Therapy.

4. Any person who advertises, directly or indirectly, about conversion therapy shall be punishable with imprisonment for a term which shall not be less than six months but which may extend upto two years and with fine which may extend upto two lakh rupees; 35

Provided that if a professional is found guilty of committing the offence of advertising conversion therapy, his license to practice that profession shall also be revoked. 40

Punishment for forcing Conversion Therapy.

5. A person forcing another person to undergo conversion therapy shall be deemed to have committed the offence of voluntarily causing hurt under section 321 of the Indian Penal Code (45 of 1860) and shall be punished accordingly.

Punishment for professional or person pretending to be a professional.

6. A professional or a person pretending to be a professional, administering conversion therapy shall be deemed to have committed the offence of voluntarily causing grievous hurt under section 322 of the Indian Penal Code (45 of 1860) and shall be punished accordingly. 45

7. Any person or a professional found instigating a vulnerable person to undergo conversion therapy shall be punishable with imprisonment for a term which shall not be less than two years, but which may extend upto five years and with fine which may extend upto ten lakh rupees.

Punishment for causing vulnerable person to undergo conversion therapy.

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2 of 1974. **8.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

Metropolitan Magistrate to try offences.

(a) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under this Act;

(b) no court shall take cognizance of an offence punishable under this Act except upon—

(i) its own knowledge or a police report of the facts which constitute such offence, or

(ii) a complaint by the person aggrieved by the offence or a parent or other relative of such person, or by any recognised welfare institution or organisation;

(c) it shall be lawful for a Metropolitan Magistrate or a Judicial Magistrate of the first class to pass any sentence authorised by this Act on any person convicted of an offence under this Act.

20 *Explanation.*—For the purposes of this sub-section, “recognised welfare institution or organisation” means a social welfare institution or organisation recognised in this behalf by the Central or State Government.

2 of 1974. (2) Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 relating to limitation for taking cognizance of certain offences shall apply to any offence punishable under this Act.

25 (3) Notwithstanding anything contained in any law for the time being in force, a statement made by the person aggrieved by the offence under this Act shall not subject such person to a prosecution under this Act.

2 of 1974. **9.** (1) The Code of Criminal Procedure, 1973 shall apply to offences under this Act as if they were cognizable offences—

Offences to be cognizable for certain purposes and to be non-bailable and non-compoundable.

30 (a) for the purposes of investigation of such offences; and

(b) for the purposes of matters other than—

(i) matters referred to in section 42 of that Code; and

(ii) the arrest of a person without a warrant or without an order of a Magistrate.

35 (2) Every offence under this Act shall be non-bailable and non-compoundable.

10. Where any person is prosecuted for administering or abetting conversion therapy, the burden of proving that he had not committed an offence under those sections shall be on him.

Burden of Proof.

40 **11.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for the better co-ordination of policy and action with respect to the administration of this Act.

45 (3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in

the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

STATEMENT OF OBJECTS AND REASONS

All human beings are born free and equal in dignity and rights. All human rights are universal, interdependent, indivisible and interrelated. Sexual orientation and gender identity are integral to every person's dignity and humanity and must not be the basis for discrimination or abuse.

The aforementioned principles are also attributed to sovereign States such as India under the *Yogyakarta* Principles. The Supreme Court of India in the landmark case of *Navtej Singh Johar vs. Union of India*, while recognizing the 'transformative nature' of the Indian Constitution, introduced the Doctrine of Progressive Realisation of Rights, in order to advocate the realization of new rights congruent with changing times. However, this an attempt is mere tokenism if the promise of constitutional safeguards to sexual minorities fails to address lacunae in the existing legal framework, thereby allowing these minorities to remain vulnerable.

Conversion therapy violates the aforementioned rights to its core. However, the rights granted under article 19(1)(a) of the Constitution only protect individuals against the actions of the State, that is, vertical application of fundamental rights and precludes liability of private entities. Whereas, the rights guaranteed under article 21 as fundamental rights in India can grant protection against private entities but such horizontal application has not been observed in the context of sexual orientation. Hence, the fundamental rights in the context of sexual orientation and gender identity provided under article 19(1)(a) and article 21 of the Constitution, can only be enforced against government facilities and not against private entities.

The objective of this Bill is to ensure that an individual is not persecuted and subjected to colonial narrative or victorian norms purporting heteronormative cis-gender narrative as justification for causing uncertified and unscientific medical harm.

Hence this Bill.

NEW DELHI;

February 16, 2022

APARUPA PODDAR

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 11 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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(Shrimati Aparupa Poddar, M.P.)