
ANALYSIS OF CONVERSION THERAPY IN INDIA THROUGH ARTICLE 21

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ABSTRACT

Right to Sexuality encompasses one's right to express their sexual orientation and be free from any discrimination based on their sexual orientation. Right to sexuality also falls under one's right to privacy as well as their right to live with dignity. In 2018, the Supreme Court held that the Constitution of India prohibits discrimination based on sexual orientation, for it falls under the category of "sex". But, even in the present times, the society is yet to accept homosexuality as an orientation and not as a disease. There exist practices where it is believed that they can cure a person's "homosexuality". Such practices are known as Conversion therapy. This paper aims to analyse what is Conversion Therapy, the laws regarding Conversion therapy in various countries, and Conversion therapy in light of Article 21 and Judicial pronouncements, if any.

Keywords: Sexual Orientation, Homosexuality, Article 21.

RESEARCH OBJECTIVE

To study what is Conversion therapy, and if Conversion therapy is violative of Article 21.

RESEARCH QUESTION

1. What is Conversion Therapy?
2. Is Conversion Therapy violative of Right to Life and Personal Liberty guaranteed under Article 21?

SCOPE OF THE STUDY

This paper is only limited to the issues of Conversion therapy amongst the adult cis-gendered members of the LGBTQIA+ community, and does not cover the Conversion therapy which is inflicted upon the people who belong to the trans-gendered community.

INTRODUCTION

“Injustice anywhere is a threat to justice everywhere”

- Martin Luther King Jr.

The *American Psychiatric Association* defines Conversion therapies (or “reparative therapies”) as interventions purported to alter same-sex attractions or an individual’s gender expression with the specific aim to promote heterosexuality as a preferable outcome.¹ *WebMD* defines conversion therapy as, “Conversion therapy is any emotional or physical therapy used to ‘cure’ or ‘repair’ a person’s attraction to the same sex, or their gender identity and expression”² *GLAAD* defines Conversion Therapy as, “Conversion therapy is any attempt to change a person’s sexual orientation, gender identity, or gender expression.”³

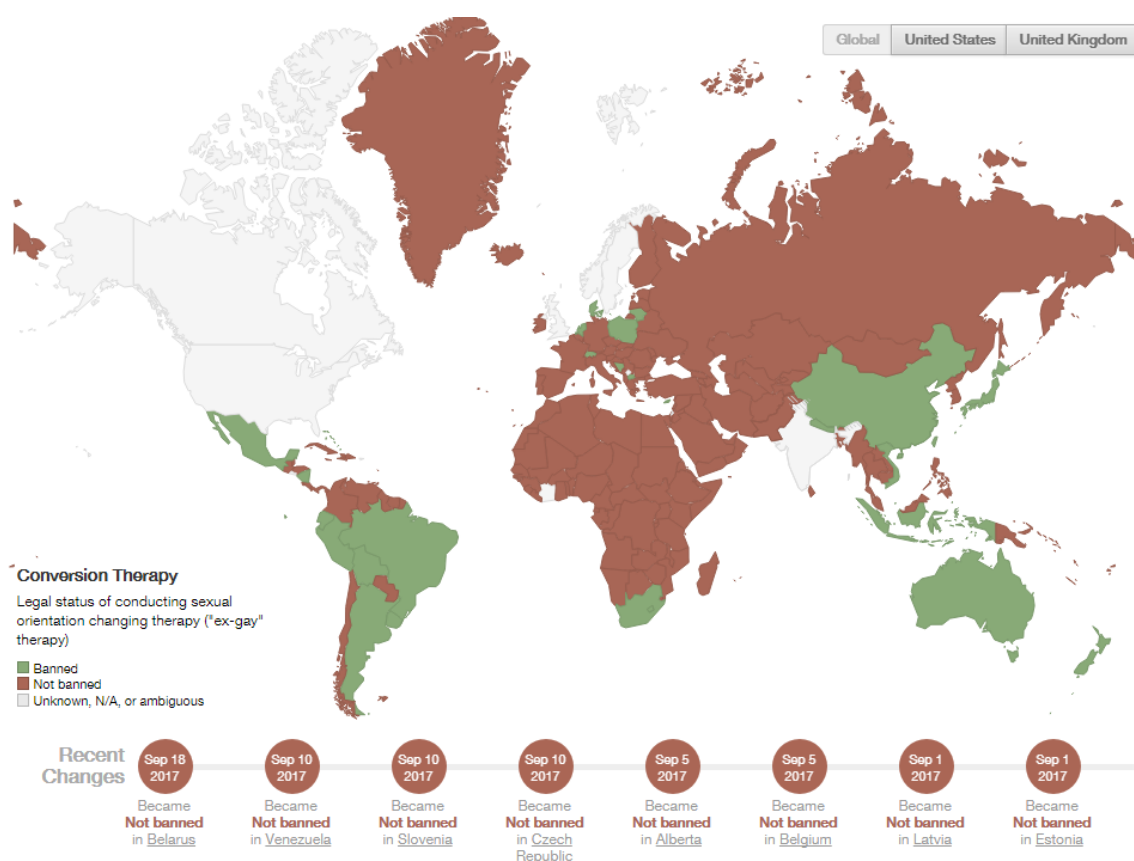
¹ American Psychiatric Association Commission on Psychotherapy by Psychiatrists. Position Statement on Therapies Focused on Attempts to Change Sexual Orientation (Reparative or Conversion Therapies). *Am J Psychiatry*. 2000; 157(10):1719-1721.

² Sreenivas. (2021, December 3). *What is Conversion Therapy?* Retrieved December 15, 2022, from <https://www.webmd.com/sex-relationships/what-is-conversion-therapy>

³ Conversion Therapy. (2018, August 27). GLAAD. Retrieved December 15, 2022, from <https://www.glaad.org/conversiontherapy>

While there is no evidence that supports the views of the providers of Conversion Therapy, it is generally believed amongst these people that these therapy practices can turn a “homosexual person” into a “heterosexual person”. In the present times, many organizations have come into existence with claims that they are helping their clients explore gender fluidity or are helping their clients fight against “unwanted same-sex attraction”. But if we were to look closely at the service that they provide, one can notice that they are providing Conversion therapy under the guise of helping a homosexual person navigate through their orientation.

The *Independent Forensic Expert Group*⁴, in their report found that Conversion therapy is being practiced or supported in around 30 countries, in either private institutions or private individuals who are/were acting in their official capacities. These includes healthcare professionals who have their own clinics, or even private schools that offer conversion therapy.⁵



(Source: The World Economic Forum, 2017)

⁴ A part of International Rehabilitation Council for Torture Victims meant to investigate and document torture.

⁵ (2020, June 11). Statement on Conversion Therapy. Journal on Rehabilitation of Torture Victims and Prevention of Torture, 30(1). <https://doi.org/10.7146/torture.v30i1.119654>

From the map above, we can see the number of countries where conversion therapy is banned and the number of countries where conversion therapy is not yet banned. We can notice that majority of the nations have not yet banned Conversion therapy. As the map is from 2017, we see that India is marked as NA, along with USA, Canada and few more nations. As of 2022, Medical professionals are prohibited from practicing Conversion therapy.⁶ Moreover, a nationwide ban has been imposed on Conversion therapy in Canada, and in the USA, Conversion therapy has been banned in case of minors, but in case of adults, only the District of Columbia has banned conversion therapy in case of adults.

The *International Rehabilitation Council for Torture Victims* released a statement in 2020 in which they considered Conversion Therapy as a form of torture⁷. In 2015, the *OHCHR*⁸ stressed that the “states have an obligation to protect all persons, including LGBT and intersex persons, from torture and other cruel, inhuman or degrading treatment or punishment” and found that conversion therapy breaches this duty⁹.

The *UN Independent Expert on Sexual Orientation and Gender Identity* have observed in their report, “violence reported against persons on the basis of their actual or perceived sexual orientation or gender identity also includes ... so-called ‘conversion therapy’. Considering the pain and suffering caused and the implicit discriminatory purpose and intent of these acts, they may constitute torture or other cruel, inhuman or degrading treatment or punishment in situation where a State official is involved, at least by acquiescence”¹⁰.

STATUS OF CONVERSION THERAPY IN OTHER COUNTRIES

The countries being referred to are USA, UK, Australia, and Canada.

⁶ ‘Conversion therapy’ is misconduct, declares National Medical Commission.
<https://www.thehindu.com/news/national/nmc-declares-conversion-therapy-to-be-professional-misconduct/article65842557.ece>

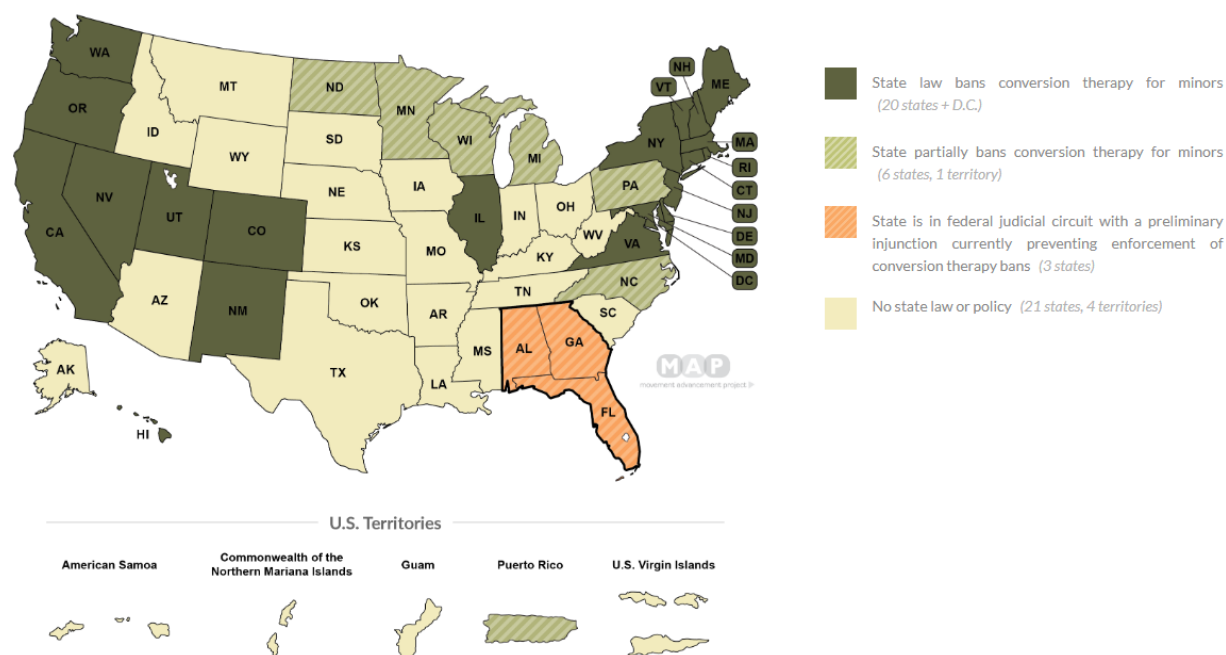
⁷ Bothe. (2020). *It's Torture Not Therapy*. International Rehabilitation Council for Torture Victims.
<https://irct.org/wp-content/uploads/2022/08/Its-Torture-Not-Therapy-2020.pdf>

⁸ Office of the High Commissioner for Human Rights. It is a division of the UN Secretariat that works to advance and defend the rights of individuals that are protected by international law and outlined in the 1948 Universal Declaration of Human Rights.

⁹ UNHRC, Report of the Office of the United Nations High Commissioner for Human Rights, Discrimination and violence against individuals based on their sexual orientation and gender identity. 4 May 2015. A/HRC/29/23.

¹⁰ UNHRC. Report of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity - Note by the Secretariat. 11 May 2018. A/HRC/38/43

USA



(Source: Conversion “Therapy” Laws¹¹)

Conversion therapy has been banned in 25 states, 2 territories, and 110 local counties/municipalities.¹² Conversion therapy in the USA has been banned in respect of minors. And in case of adults, only District of Columbia has recognized conversion therapy of adults. The State of New York has a law banning Conversion therapy amongst adults, but the ban was reversed in order to prevent a Supreme Court case.¹³ In 2014, the Council of District of Columbia voted in favour of *B20-0501* which prohibited conversion therapy in minors, and in 2018, *B22-0972*¹⁴ was brought into force, which extended the ambit of the previous law and hence, now covers adults under it as well.¹⁵

¹¹ Conversion therapy laws. https://www.lgbtmap.org/equality-maps/conversion_therapy

¹² Pennsylvania Protects LGBTQ Residents from Conversion Therapy. <https://www.governing.com/now/pennsylvania-protects-lgbtq-residents-from-conversion-therapy>

¹³ New York City to Repeal Ban on Gay Conversion Therapy. <https://www.wbur.org/hereandnow/2019/09/24/new-york-city-ban-gay-conversion-therapy>

¹⁴ prohibits a provider from engaging in sexual orientation change efforts for a consumer for whom a conservator or guardian has been appointed.

¹⁵ D.C. could be 2nd city in U.S. to ban conversion therapy for some adults. <https://www.wusa9.com/article/news/local/dc-could-be-2nd-city-in-us-to-ban-conversion-therapy-for-some-adults/65-621820192>

From the above points, we can see that the USA is yet to enact laws that would cover conversion therapy amongst adults.

In *Ferguson v. JONAH*¹⁶, the New Jersey Superior Court held, “offering conversion services on the basis of a description of homosexuality as abnormal or a mental illness is a violation of the New Jersey Consumer Fraud Act”.¹⁷

As of 2022, Conversion therapy of adult LGBTQIA+ members are yet to be recognized.

UK

In 2017, the Church of England demanded for a ban on Conversion therapy, for they considered the practice as “unethical” and “potentially harmful”.¹⁸ But this call for ban of conversion therapy went unheard to the British Parliament. It was not until the mid-2018, that the British Parliament finally considered the ban on Conversion therapy, after a news website named Liverpool ECHO conducted an investigation in a church located in Liverpool which was providing Conversion therapy by providing a “a three-day starvation programme”, which included “relentless prayer, with no food and water”.¹⁹ Once, this issue came to light, a MP called for a ban upon these Conversion therapies.²⁰ It was during this time that the British Parliament announced that it was working upon implementing a large-scale ban on all stretches of Conversion therapy, i.e., both medical and non-medical forms of conversion therapy. In 2021, a draft bill was proposed in the Parliament by the Government²¹ regarding banning of Conversion therapy, but in 2022, after going through certain back-and-forth regarding the decision of banning and un-banning of Conversion therapy, the Government announced that the ban on Conversion therapy would not cover the trans-gender people.²²

¹⁶ No. L-5473-12 (N.J. Super. Ct. Law Div. 2015)

¹⁷ Gay 'Conversion Therapy' Consumer Fraud Ruling First in U.S.

<https://www.law.com/njlawjournal/almID/1202717571907/>

¹⁸ Church of England demands ban on conversion therapy.

<https://www.theguardian.com/world/2017/jul/08/church-of-england-demands-ban-on-conversion-therapy#:~:text=Church%20of%20England%20demands%20ban%20on%20conversion%20therapy>

¹⁹ Parry, J. (2018). This is the reality of gay 'cure' conversion therapy taking place in Liverpool.

<https://www.liverpoolecho.co.uk/news/liverpool-news/echo-goes-undercover-gay-cure-13468107>

²⁰ Parry, J. (2018). Parliament hears calls for ban on gay 'cure' therapies after ECHO investigation.

<https://www.liverpoolecho.co.uk/news/liverpool-news/parliament-hears-calls-ban-gay-13771275>

²¹ Banning conversion therapy. <https://www.gov.uk/government/consultations/banning-conversion-therapy/banning-conversion-therapy>

²² Gallagher, S. & Parry, J. (2022). Conversion therapy: Ban to go ahead but not cover trans people. <https://www.bbc.com/news/uk-60947028>

As of 2022, the law regarding banning of Conversion therapy is yet to receive the status of a law.

Canada

Canada is one of the nations that has a nation-wide ban of Conversion therapy of both minors and adults.²³ And the same has been criminalized under the Criminal Code^{24, 25} The ban on conversion therapy came into effect on 2022, and prior to this, while this practice was not banned all over the nation, certain provinces of Canada had already brought into force laws banning conversion therapy. Conversion therapy was banned nation-wide through the introduction of *Bill C-6*^{26, 27}

Australia

In Australia, conversion therapy has been banned in two states as well as the Federal Territory. The two states are Queensland and Victoria. No nation-wide ban has been in Australia as of 2022. Western Australia has also proposed for a ban on conversion therapy. Conversion therapy has been criminalized in Queensland. But these bans are in related to medical professionals. Hence according to the laws of these states, any medical professional that is found to be conducting or offering Conversion therapy would be punished with an imprisonment upto 18 months.²⁸

Other Nations

Austria, Belgium, Cyprus and Netherlands have proposed a nation-wide ban on Conversion therapy, while most of other nations of implemented a ban on medical professionals conducting Conversion therapy. Countries like Poland have no law regarding ban on Conversion therapy.

²³ Other nations that have implemented a nation-wide ban on Conversion therapy of both minors and adults are Germany, France, Ecuador, Samoa and Vietnam. Greece has a nation-wide ban on conversion therapy of minors. In case of Germany, conversion therapy can be challenged on the grounds of it being forced.

²⁴ Long title: An Act respecting the Criminal Law.

²⁵ (2021). An Act to amend the Criminal Code (conversion therapy). https://laws-lois.justice.gc.ca/eng/AnnualStatutes/2021_24/FullText.html

²⁶ *Id.*

²⁷ Conversion therapy to be illegal in Canada in 30 days. <https://www.ctvnews.ca/politics/conversion-therapy-to-be-illegal-in-canada-in-30-days-1.5699251>

²⁸ Queensland Bans Conversion Therapy. <https://www.starobserver.com.au/news/queensland-bans-conversion-therapy/197161>

Instead, Polish Bishops have called for “creation of clinics to help people who want to regain their...natural sexual orientation”²⁹.

CONVERSION THERAPY in INDIA

Instance of Conversion therapy in India

In 2020, a 21-year-old woman committed suicide after she was subjected to Conversion therapy by her family at a “de-addicting centre” in Kerala, so that they can cure her “bisexuality”.³⁰

Prince Manvendra Singh Gohil, the 39th direct descendant of India's Gohil Rajput dynasty, came out publicly as gay in 2006. But, prior to coming out publicly, in 2002, he came out to his family, who then subjected him to Conversion therapy, where his parents took him to various medical professionals as well as religious gurus so that they can ‘cure’ his homosexuality. Not only this, but he was also subjected to electroshock treatments with a hope of curing his homosexuality.³¹

Article 21

Article 21 reads as, “21. **Protection of life and personal liberty.** No person shall be deprived of his life or personal liberty except according to procedure established by law”³². But upon close inspection, we that life and personal liberty, both contain within themselves a wide array of rights. Which means that, Article 21 also contains the right to one’s sexual orientation and their privacy. In 2017, the Supreme Court held that right to privacy is a part of Article 21.³³ Moreover, right to privacy has been recognized under Article 12 of the UDHR, which reads as, “No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attack upon his honour and reputation. Everyone has the right to the

²⁹ Polish bishops call for “clinics to help LGBT people regain natural sexual orientation”. <https://notesfrompoland.com/2020/08/30/polish-bishops-call-for-clinics-to-help-lgbt-people-regain-natural-sexual-orientation/>

³⁰ The pain and cruelty of ‘conversion therapy’. <https://lifestyle.livemint.com/health/wellness/the-pain-and-cruelty-of-conversion-therapy-111634459309525.html>

³¹ Das, P. (2022). India's first openly gay prince endured years of torturous conversion therapy. Now, he's fighting to make the practice illegal. <https://www.insider.com/indias-first-openly-gay-prince-conversion-therapy-lgbtq-community-2022-4>

³² Article 21, Constitution of India.

³³ AIR 2017 SC 4161

protection of the law against such interference or attacks”³⁴. The same has been recognized by the ICCPR³⁵ as well.

It is believed that the rationale behind having Conversion therapy is the belief that homosexuality is not a sexual orientation, but a medical disorder, i.e., a mental illness.³⁶ But, later on, the Indian Psychiatric Society issued a statement in which they declared that homosexuality is not a mental illness.³⁷ So, the question that arises here is, if the rationale behind the existence of such practice has been rejected, then why is the practice still applicable in the present time.

When we talk about Article 21, we also talk about how wide its ambit is. Article 21 is such an article that it can basically encompass every other right which is not covered under the Part III of the Constitution. From the earlier judgments, we can conclude that Privacy and leading a life with dignity is a part of Article 21, so is right to sexual orientation.

Conversion therapy is a practice which encompassed many non-traditional and draconian forms of treatments such as starvation, electroshocks³⁸, subjecting to useless brain surgeries or drilling holes in the brain such as lobotomies, and even using corrective rape as a method of curing one’s sexuality.³⁹ Such acts in no way are in consonance with the principles of Article 21. Using psychological and physical techniques to forcibly impose on people to change their gender identity and sexual orientation produces great pain. These therapies lack any scientific or medical support, and frequently, parents, relatives, or other members of society make youngsters endure them after they express or come out to them as LGBTQIA+ members. It has to be remembered that when we talk about right to live with dignity, it does not exclude the members of the LGBTQIA+ members of the society, and hence subjecting someone to such form of atrocities makes no sense, whatsoever. Conversion therapy is still used by some

³⁴ Article 12, Universal Declaration of Human Rights, 1948.

³⁵ Article 17 of International Covenant on Civil and Political Rights, 1966.

³⁶ L. M. Sakthivel, K. Rangaswami & T. N. Jayaraman. (1979). Treatment of Homosexuality by Anticipatory Avoidance Conditioning Technique. 21 Ind. J. Psychiatry 2.

³⁷ Homosexuality not an illness: Indian Psychiatric Society.

<https://www.thehindu.com/news/national/homosexuality-not-an-illness-indian-psychiatric-society/article61515009.ece>

³⁸ Mail Today Exclusive: Delhi doctors use electric shock to treat homosexuality.

<https://www.indiatoday.in/mail-today/story/homosexuality-cure-delhi-doctors-exposed-conversion-therapy-254849-2015-05-26>

³⁹ Horrifying: Parents in India are using 'corrective rape' to cure homosexual children.

<https://www.firstpost.com/india/horrifying-parents-india-using-corrective-rape-cure-homosexual-children-2273030.html>

professionals despite the fact that it has been condemned for years by all mainstream medical and mental health organisations. This is because LGBTQ individuals continue to face prejudice in society and discrimination. Conversion therapy can result in sadness, anxiety, drug usage, homelessness, and suicide.

Judicial Pronouncements

The Supreme Court in *R. Rajagopal v. State of Tamil Nadu*⁴⁰, held that, “The right to privacy is implicit in the right to life and liberty guaranteed to the citizens of this country by Article 21. It is a ‘right to be let alone’. A citizen has a right to safeguard the privacy of his own, his family, marriage, procreation, motherhood, child bearing and education among other matters.”⁴¹

In *Navtej Singh Johar and Ors. v. Union of India*⁴², struck down the part of Section 377 that criminalized “carnal inter-course against the order of nature”⁴³ on the grounds that it was discriminatory towards the LGBTQIA+ community and that the protection and privacy of one’s sexual orientation is one of the cores of Article 14, 15, and 21.

In *Common Cause (A Regd. Society) vs. Union of India and Anr.*⁴⁴, the Supreme Court states, “the right to exercise self-determination includes the right to choose and someone with a competent mental faculty can efficiently choose between different medical treatments”.⁴⁵

The Madras High Court in *S. Sushama and Ors. v. Commissioner of Police*⁴⁶, banned Conversion Therapy, hence Tamil Nadu became the first state in India that has banned Conversion Therapy.

The Supreme Court in *Laxman Balkrishna Joshi vs Trimbak Bapu Godbole and Anr*⁴⁷ held, “The use of conversion therapy by doctors can attract civil liability – a form of legal liability wherein compensation is to be paid in terms of money for damages done, under medical

⁴⁰ 1995 AIR 264

⁴¹ *R. Rajagopal v. State of Tamil Nadu*, 1995 AIR 264. <https://globalfreedomofexpression.columbia.edu/cases/r-rajagopal-v-state-of-t-n/>

⁴² AIR 2018 SC 4321

⁴³ Section 377, Indian Penal Code, 1860. 377 reads as *Unnatural offences*. —Whoever voluntarily has carnal inter-course against the order of nature with any man, woman or animal, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation. —Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

⁴⁴ AIR 2018 SC 1665

⁴⁵ *Id.*

⁴⁶ W. P. No. 7284 of 2021

⁴⁷ 1969 AIR 128

negligence, as doctors have a duty to decide whether they should or should not take up the case”.⁴⁸

Status

India is yet to impose a nation-wide ban upon conversion therapy, and only Conversion therapy by medical professionals as been banned as per the order given by the Madras High Court⁴⁹. Moreover, Tamil Nadu is the first state in India to legally ban conversion therapy⁵⁰. But how far this order by Madras High Court as well as the order of the National Medical Commission on Conversion therapy protect and safeguard the rights of the LGBTQIA+ people. Technically, they have only banned conversion therapy for professionals but, it is still practiced by the self-claimed “godmen” and religious gurus.

CONCLUSION

If a victim of Conversion therapy were to seek for some sort of remedy, then the two remedies that stand for them is to either file a writ petition, or they can approach the Court under section 319 of the IPC, where both mental and physical form of hurt qualifies as “hurt” as held by the as the High Court of Sind held in *Jashanmal Jhamatmal vs Brahmanand Swarupanand*.⁵¹ Conversion Therapy s violative of one’s right guaranteed under Article 21 of the Constitution. As the times are progressing, the laws need to develop as well. For ages, the LGTQ+ community have been victims various forms of medical negligence. One cannot be given the right without bringing forth proper mechanisms to protect these rights, for without the presence of a proper protective mechanism, rights would be violated. For example, while the court recognized the right to privacy and sexual orientation of the LGBTQIA+ community, we see that with the absence of stringent laws, their human rights are violated. In the present time, when we talk about conversion therapy and a ban on it, we see that Madras High Court had ordered the National Medical Commission to ban the said practice, which National Medical Commission has complied with. But this move is a first step towards banning Conversion

⁴⁸ *Id.*

⁴⁹ *Supra* at 40.

⁵⁰ Wavhal, J. (2022). Tamil Nadu: Govt To Include LGBTQIA+ Issues In School Curricula, Aims To Work Towards Inclusivity. <https://thelocalindian.com/lgbtq/tamil-nadu-govt-include-lgbtqia-issues-school-curricula-work-towards-inclusivity-39172>

⁵¹ AIR 1944 Sind 19

therapy, and until Conversion therapy isn't completely banned, India may see cases of this form of therapy and the consequences of it upon the minds of the LGBTQIA+ society.