

Right to Equality an Illusion for Leprosy affected Persons : A Study

Ashish Chaudhary

BA.LLB(H), Utttaranchal University (India)

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ABSTRACT

Leprosy has been known to the people since ages and from that period till now medicinal science has grown broadly however the evil convictions identified with this infection are as yet pervasive in the general public. Such wrong convictions are most unmistakably found in South-Asian nations and India is on the top among them with regards to separation of people affected by leprosy. Decades have gone since the treatment and technique for averting its coherence of sickness was found yet at the same time this ailment is accepted to be hopeless and transmittable by a huge area of the general public. In spite of the fact that The Constitution of India gurantees right to equality to the residents of the nation however on account of sickness influenced individual this crucial right appears to stand disregarded an extraordinary dimension. Aside from the evil attitude of the general population of the general public there are various laws which cause separation with the people affected by leprosy and damages their essential ideal to equity and appropriate to individual life and freedom as well.

In this regard this paper tries to study the condition of the leprosy affected persons in India and the discriminatory provisions of different statues which violate the rights of the leprosy affected persons.

1. Introduction

Leprosy is a chronic infectious disease caused by mycobacterium leprae. It usually affects skin and peripheral nerves, but there is a wide range of diagnostic manifestations. The disease is characterized by a long incubation period usually 5-7 years and it has been classified as paucibacillary or multibacillary on the basis of bourgeois weight. Leprosy is a major cause of permanent physical disability. Prior to nerve damage, diagnosis and treatment of cases is the most effective way of preventing disability due to leprosy.

According to the WHO, leprosy affected 2,12,000 people worldwide in 2015. Only India reported 1,27,326 new cases, representing 60% of new cases worldwide. Of the new cases, 8.9% were children and 6.7% had visible deformities. 92 countries reported the remaining 10,286 cases (5%). Thirty countries reported zero new cases. India is among the 22 countries considered to have a "high burden for leprosy" along with high transmission from WHO. Lack of awareness, myths, socio-cultural beliefs and the stigma associated with leprosy are perhaps the most pressing problems faced by public health activists today.

Symptoms:

In this disease people may experience:

- Pain areas: the eyes or foot;
- Skin: Loss of colour, lumps, small lumps, ulcers and redness;
- Sensory: reducing the sensation of touch, decreasing temperature sensitivity;
- Extra problem: nerve injury, physical deformity, raising the problem of foot.

Communicability of Leprosy :

It spreads through exposure to the infected person's sputum. This usually occurs when the infected person sneezes or coughs. This disease is not highly contagious. But continuous contact with the untreated person may lead to leprosy. The bacteria responsible for leprosy disease grow very slowly. The time period of the disease (the time between transition and the look of primary symptoms) is up to 5 years. Symptoms can not be visible for twenty years.

Despite initial discovering *mycobacterium leprae* (the microorganism that causes leprosy) in 1873, leprosy analysis scientists still don't completely perceive how leprosy is unfolded. Most scientists believe that leprosy is spread from person to person in infected metabolism droplets. Whereas this might be a technique during which leprosy is spread, more than fifty percent of the those that develop leprosy have not confirmed contact with an infected person. Factors that will influence how leprosy is spread include:

- Environmental conditions
- The degree of susceptibility of the person
- The extent of exposure.
- Leprosy can't be spread from a mother to her unborn baby, and other people cannot get leprosy through sexual contact.

Treatment :

Although leprosy is a cause of inevitable deformities, with advancement in the field of science and technology for the treatment of leprosy during the last few decades, now it is a completely curable disease that can be turned non-infectious at the initial stage of the treatment. The Multi-Drug Therapy is the treatment to cure leprosy, it was first recommended by the WHO in early 1980s .

2. Leprosy As A Social Stigma In Indian Society

Leprosy disease is among the oldest known diseases to human beings. Despite the progress in all areas of medical science, leprosy remains a public health challenge in countries like India. In India, people affected by leprosy have been historically stigmatized due to the belief that this disease is incurable and highly contagious. The ancient Indian text, Manusmriti denied not only the people affected by leprosy, or *kushtha*, the right to marry, but also encouraged the separation of such persons. Sushruta Samhita, an ancient Hindu text on medicine and surgery, has also described leprosy in the form of an infectious disease which can easily be transmitted to the healthy persons by touch or breath of affected people. Sushruta Samhita has also described leprosy as a hereditary disease, a myth which was later rejected by the World Health Organization and Ministry of Health and Family Welfare, Government of India.

The customs that cast out leprosy patients in India are almost the same as before today. Leprosy is considered due to some sins committed in this life or in the past, and the victim is considered to be sinner or immoral. Therefore, diagnosis of leprosy does not create any sympathy for him as it is in case of other diseases. Even now the word "leper," which keeps the sense of hatred, is widely used in literature; And initially to describe some terrible person with leprosy. People use the word "leprosy" and "leprosy" to curse others. Not all leprosy diseases are infectious, but they are considered as such. Leprosy is also considered as a fatal disease. These wrong ideas, which had occurred since about 200 BC, were all possible ways in which laws, regulations and rules were made to deprive the victims of the disease. Regardless of the progress made in the field of leprosy, old ideas about this disease still remain. People, especially the people of laws, capture the mind. It is clear from the language used in statutory books in this regard. The words are copied from the verbatim of old books, without the fact that they are inappropriate in the 21st century, when the progress of knowledge has changed many wrong thoughts about leprosy.

3. Socio-Legal Challenges Before The Persons Affected By Leprosy

There is a serious violation of fundamental rights of persons affected by leprosy under Article 14, 19 and 21 of the Constitution of India due to the continuous existence of archaic, discriminatory provisions under 119 Central and State laws. These laws, by denying equal treatment under individual laws and by applying for appointment or election in the public office, along with the people affected by malnutrition in the case of free movement in the public place, wrongly discriminate with them. This unequal treatment irrationally treats the people affected by leprosy as a different class on the basis of medically incorrect and chronic concept of the infectious nature of the disease and the effectiveness of standard treatment for the disease. The existence of such provisions in statutory books violates the right of life with dignity of those affected by leprosy, which is an integral aspect of Article 21. As such, the contradictory provisions stigmatize and isolate the persons affected by leprosy, event after the latest advancements in the medical technology leprosy is rendered non-infectious after the very first dose of the Multi-Drug Therapy (MDT), The World Health Organisation recommended treatment regime for leprosy. Some of the

discriminatory provisions additionally violate the right to move freely throughout the territory of India and the right to practice any profession, or to carry on any occupation, trade or business guaranteed under Article 19(1)(d) and Article 19(1)(g) of the Constitution of India respectively.

4. Judicial Trend On Persons Affected By Leprosy

In the case of Karali Charan Pal v. Ashutosh Nandi¹, The Hon'ble Calcutta High Court referred to and relied on the following Hindu laws and texts on leprosy:

Under the Hindu law, the grounds of rejection from legacy fall under the accompanying six heads: (I) physical and mental imperfections, (ii) hopeless or anguishing infections, (iii) corruption from standing by reason of wrongdoing or something else, (iv) awful, criminal or skeptical lead, (v) getting to be naisthikabrahmachari (never-ending understudy), vanaprasthasrami (loner) or sanyasi (austere). Manu has a further dubious ground of prohibition nirindriyatwa, i.e., nonattendance of appendage or sense which incorporates as indicated by Saraswati Vilasa females as a class. Other sicknesses explicitly referenced are leprosy (Vishnu) and elephantiasis (Devala). Sir Thomas Strange recognizes ailments, for example, visual impairment, deafness, imbecility and so forth., which to preclude must be contemporary with birth, and excluding illnesses, for example, disease, and so on., which the Hindu religion views as appearances not just for sins carried out in a former state, yet additionally for sins perpetrated in this life; and thusly such appearances are not really intrinsic so as to exclude. Of the smriti journalists, the special case who explicitly bars an untouchable is Devala, whose content keeps running as pursues:—"When the dad is dead, a feeble man, a pariah, a psycho, a dolt, a visually impaired man, an outcaste, the posterity of an outcaste, and an individual wearing the token (of religious mendicity) are not able to share the legacy." So far as leprosy is concerned, the later Hindu law books for the most part set out that to be a ground of avoidance it must be of the sanious or ulcerous and not of the analgesic sort.

In the case of Swarajya Lakshmi v. G.G. Padma Rao (Dr)², The Hon'ble High Court while granting the decree of divorce to the respondent because his wife was affected by leprosy, made the following observations :

In this perspective on the issue as we would see it the illness from which the appealing party endures can be depicted as a serious type of Leprosy. All things considered, with the future advances in the treatment of Leprosy one day even this type of Leprosy will be manageable to fix. We may, in this association notice that even after the sulphone treatment a medication known as CIBA — 1906 was discovered which in primer stages seems, by all accounts, to be equivalent in adequacy to the sulphones yet far less lethal. Indeed, even so specialists don't yet think about that with every one of the advances in physiotherapy, medical procedure or orthopedic medical procedure it is conceivable either to fix the illness totally or to address the distortions and mutilations that are frequently created by the malady. All that the course books

¹ <https://indiankanoon.org/doc/739713/>

² <https://indiankanoon.org/doc/1925440/>

appear to propose is this that "annihilation of the malady can, and in the long run will, happen through powerful treatment of the individual patient and isolation to forestall dispersal of the ailment.

In the case of Bajal Basappa v. Keshava³, The Hon'ble High Court of Karnataka struck down Section 47 of the Madras District Municipalities Act, 1920, which excluded people affected by leprosy from casting a ballot in a decision to a Municipal Council. It was held that there was no sensible reason for excluding an individual affected by leprosy from practicing his establishment, that the arrangement among 'leper' and 'non-leper' did not depend on a coherent rule, and that it had no sensible connection to the article looked to be accomplished by the standard of grown-up suffrage.

"As of now demonstrated, the Civil Judge has maintained the preclusion forced on an outcast on the ground that "social supposition looks with extreme aversion on leprosy and that the prohibition would not be an irrational exclusion". This view, as we would see it, isn't right. Social conclusion is regularly founded on obliviousness, absence of education, superstition or other like grounds; it might even be conceived of sheer partiality. On the off chance that the social severe dislike lays on the supposition that leprosy is an irresistible ailment, it has no sane or logical premise."

In the case of Maharashtra State Road Transport Corporation v. Uttam Shatrughan Raserao⁴, The Bombay High Court rejected the contentions progressed by the foundation experts, and held that since Leprosy is currently reparable, people experiencing the ailment should be dealt with and restored as opposed to being avoided. The work of the complainant was ended as he was viewed as unfit to work. The complainant experienced Leprosy and was viewed as in a poor condition to work in any post offered by the foundation specialists. In any case, The Court at long last expanded the allow of advantages for the complainant in light of the elucidations issued by the foundation, wherein representatives whose administrations were ended because of their perpetual handicap were qualified for a beneficial tip.

In the case of Pankaj Sinha vs Union Of India And Ors⁵, The Hon'ble Supreme Court passed the following order-

"In view of the aforesaid, there has to be social awakening. Due to the advancement of science in the last four decades, the disease has become curable. Members of society must acknowledge and accept that people suffering from leprosy must be treated with equality. Therefore, we proceed to issue the following directions:

- (i) The Union of India and the Department of Health and other concerned Departments will complete mindfulness crusades at different dimensions so individuals come to think about the treatability of the malady and of its not being infectious.
- (ii) Some dependable experts, no less than two, will be only designated for the said obligation.

(iii) There ought to be explicit projects on All India Radio and Doordarshan, both at the Central and the State level, as additionally on the provincial stations, for teaching individuals about the way that leprosy is definitely not a transmittable illness and not to treat any individual experiencing that sickness with any sort of disgrace or segregation.

(iv) The projects will be appeared on Doordarshan, both on the national and the territorial channels, to the degree attainable on prime time with the goal that the general population can see them.

(v) Hospitals ought not decay to treat such patients experiencing sickness for managing the main measurement and from there on give treatment on the off chance that they experience the ill effects of some other illness. It must be recalled that an individual has an option to benefit the treatment in the administration clinics.

(vi) The mindfulness battle must cover all regions from urban territories to the panchayat level so that there will be a solid and all encompassing methodology as to mindfulness.

(vii) The Union of India and the States will find a way to restore people experiencing disease to get them the standard. It ought to be the essential obligation of the State to see that this class of people does not experience the ill effects of any sort of disgrace.

(viii) We would laud to the Union of India and the State Governments to notify us about the means taken with respect to the cancelation of the arrangements where leprosy has been treated as a stigmatic handicap. A report of consistence will be recorded by the Union of India just as every one of the States."

5. Discriminatory Provisions Related To Persons Affected By Leprosy

There are around 119 provisions in different statutes of the state and the central government which discriminates with the persons affected by leprosy, some of the provisions of such statutes are discussed below:

The Karnataka Rajya Dr. Gangubai Hangal Sangeetha Mattu Pradarshaka Kalegala Vishwavidyalaya Act, 2009⁶ provides power to the Syndicate of the University to remove those persons from membership of any authority of the University who are of unsound mind, deaf, mute or suffer from leprosy or have applied to be adjudicated or have been adjudicated to be insolvent. One of the objects and purposes of this provision is to prevent persons affected by leprosy from coming into contact with other members of any authority of the University and to prevent the transmission of the disease. This provision is in direct contradiction with the Right to Equality as guaranteed by the Constitution of India.

Shri Venkateswara Vaidik University Act, 2006⁷, provides that any person suffering from leprosy is not eligible for standing for election or nomination as a member of any of

³ <https://indiankanoon.org/doc/209754/>

⁴ <https://indiankanoon.org/doc/563073/>

⁵ <https://indiankanoon.org/doc/123734925/>

⁶ <https://www.latestlaws.com/bare-acts/state-acts-rules/karnataka-state-laws/karnataka-rajya-dr-gangubai-hangal-sangeetha-mattu-pradarshaka-kalegala-vishwavidyalaya-act-2009/>

⁷ www.svvedicuniversity.ac.in/VedicUniversityAct.pdf

the authorities of the University, If, on, the date of such election or nomination, he is suffering from leprosy. The main purpose of this provision is to prevent people affected by leprosy from getting contact with other members of any university authority and to prevent the transmission of the disease. This provision clearly violates Article 14 of the Constitution.

The Orissa Municipal Corporation Act, 2003⁸, disqualifies a person affected by leprosy from contesting elections for the post of the Corporator of the Municipal Corporation, on account of his or her affliction by leprosy. One of the objects and purposes of this provision is to prevent persons affected by leprosy from coming into contact with other members of the Corporation and to prevent the transmission of the disease onto such other members. This discriminatory provision violated Article 14 of the Constitution⁹.

The Rajasthan Panchayati Raj Act, 1994¹⁰, disqualifies a person affected by leprosy from contesting elections for the post of a Panch or as any other member of the Panchayati Raj Institution, on account of his or her affliction by leprosy. One of the objects and purposes of this provision is to prevent persons affected by leprosy from coming into contact with other members of the Panchayati Raj Institution and to prevent the transmission of the disease to such other members. It is clear violation of The Right to Equality.

The Hindu Religious Institutions and Charitable Endowments Act, 1997¹¹, disqualifies a person affected by leprosy from being appointed to or continuing as a member of the committee of management of any notified institution, on account of his or her affliction by leprosy.

The Rajasthan Rehabilitation of Beggars or Indigents Act, 2012¹², empowers the Superintendent of a Rehabilitation Home or a Rehabilitation Officer to confine persons who may be mentally unsound or who may be "lepers" to a Psychiatric Hospital or Lepers Asylum as per the provisions of the Mental Health Act, 1987¹³ or the Lepers Act, 1898¹⁴ on the basis of a prima facie or cursory medical examination conducted by a Government Medical Officer. The text of Section 35 of the Act allows for the confinement of beggars affected by leprosy, solely due to their affliction by the disease. It also uses the derogatory term "leper" to refer to persons affected by leprosy, thereby perpetuating and promoting the historical stigma associated with the disease. Although both the Lepers Act, 1898 and the Mental Health Act, 1987 have been repealed, the Rajasthan Rehabilitation of Beggars or Indigents Act continues to refer to their provisions to confine persons affected by leprosy and isolate them from society. Although these Acts have been repealed, this does not affect the operation of Section 35 of the Rajasthan Act.

⁸ www.bareactslive.com/Ori/OR588.HTM

⁹ However, The State Cabinet in 2012 gave assent to the Housing and Urban Development Department proposal for amendment of the Orissa Municipal Act, 1950, and Orissa Municipal Corporation Act, 2003, to enable people suffering from leprosy to contest election.

¹⁰ www.rajpanchayat.rajasthan.gov.in/en-us/actsrules/act.aspx

¹¹ dpal.kar.nic.in/33%20of%202001%20%28E%29.pdf

¹² www.bareactslive.com/Raj/rj1115.htm

¹³ Central Act No. 14 of 1987

¹⁴ Central Act No. 3 of 1898

6. International Obligations

The Government of India's obligation to protect the right to life of persons affected by leprosy is derived partly from the Government's international obligations to ensure equality of opportunity and non-discrimination for all persons affected by leprosy. Being a State party to the United Nations Convention on the Rights of Persons with Disabilities, 2007, the Government of India is mandated to comply with the provisions of the convention¹⁵, which require all State parties to eliminate discrimination against persons with disabilities, including persons affected by leprosy, and to promote their equal treatment in the society. The Government of India also needs to respect and uphold the resolutions and declarations passed by international bodies that strongly condemn discrimination against persons affected by leprosy and call upon Governments to take action against such discrimination.

The International bodies like the General Assembly of the United Nations¹⁶ and the United Nations Human Rights Council¹⁷ have also issued calls to Governments around the world, including India to fight all forms of discrimination against persons affected by leprosy and family members. The WHO has also launched its Global Strategy to Eliminate Leprosy by 2020. The Global Strategy calls upon governments and policy-makers in all countries, including India, where the incidence of leprosy continues to be one of the highest in the world, to review their laws and endeavor to ensure that the provisions of such laws do not perpetuate stigma and discrimination against persons affected by leprosy.

Many countries around the world have taken steps through legislation to prohibit discrimination against persons affected by leprosy, and to adopt a more humane approach towards the treatment of such persons. Examples include Cuba, Greece, Japan and Ukraine. More details of these measures are provided in the Annual Report of the United Nations High Commissioner for Human Rights and the Reports of the Office of the High Commissioner and the Secretary-General on the Elimination of Discrimination against Persons affected by Leprosy and their Family Members, UN Doc. No.A/HRC/10/62, 23 February, 2009.

7. Law Commission Report On Persons Affected By Leprosy

The Law Commission of India has presented its report on "Eliminating Discrimination Against Persons influenced by Leprosy" to the Union Minister of Law and Justice on 07.04.2015. The report furthermore gives a model draft law to dispense with separation looked by Persons affected by leprosy.

The key aspects of the draft law are as follows:

1. Repeal and alteration of specific laws: Besides the annulment of the Lepers Act, 1898, the Law Commission prescribes the cancelation of unfair arrangements in different individual laws. It additionally prescribes including people affected by Leprosy among the rundown of people

¹⁵ Clauses (b) and (e) of Articles 4(1) and Article 5 of the UNCRPD

¹⁶ (Res. 65/215 of 2011)

¹⁷ (Res. 29/5 of 2015)

qualified for legitimate guide under the Legal Services Act, 1987.

2. Measures against separation: The Law Commission prescribes that people affected by leprosy and their relatives must not be victimized in any organization. It additionally assures to such people the privilege to get to social insurance, sufficient lodging, instruction, work and other such fundamental comforts.

3. Land Rights: Persons affected by leprosy are normally made to move to "Leprosy Colonies" in India, however they don't have land rights, and are always under dread of removal. The Law Commission suggests that title and responsibility for in Leprosy Colonies ought to be legitimized, and if land rights can't be given, elective settlement choices must be investigated.

4. Right to Employment: Many businesses abuse existing work laws to fire administrations of people who are determined to have Leprosy. The draft law forbids the end of work of such people exclusively because of their relationship with Leprosy.

5. Educational and preparing openings: The Law Commission suggests that the draft law ought to guarantee the confirmation of Persons affected by Leprosy and their relatives in schools, universities and different foundations, as instructive capabilities are important to permit them access to business openings.

6. Appropriate use of Language: The use of the term 'leper' and comparative terms conveys antagonistic implication, hampers endeavors for the consideration of Persons affected by Leprosy into society, and influences their feeling of respect as individuals. The Law Commission suggests that the term 'leper' and other such terms in all legislature and private reports ought to be supplanted with 'people affected by Leprosy' or a comparative term.

7. Right to Freedom of Movement: The draft law guarantees that people affected by Leprosy are ensured the privilege of movement in open transport and the privilege to acquire a driving permit.

8. Concessions amid treatment: The draft law looks to give applicable concessions and money related advantages to people affected by Leprosy who are experiencing treatment, for their movement, lodging amid treatment and medications.

9. Social Awareness: Creating mindfulness with respect to the fix and transmission of Leprosy is the most ideal approach to address the separation and disgrace against people affected by Leprosy and their family. The Law Commission prescribes that mindfulness about the

sickness, its treatment and treatability ought to be directed through crusades and projects in schools, emergency clinics, government organizations and private foundations.

10. Welfare Measures: The draft law forces explicit obligations upon foundations to execute certain welfare measures to encourage a situation for money related and social development of people affected by Leprosy and their families. It additionally makes Central and State Commissions to carefully authorize such measures, and accommodates responsibility measures if there should be an occurrence of non-authorization.

Actions taken on the recommendations in the 256th Report of The Law Commission of India:

In 2016, the Parliament canceled the Lepers Act 1898 under the Repealing and Amending Act, 2016 (No. 23 of 2016). It has not, nonetheless, revoked or Amended any of different arrangements under Central laws that were suggested for cancelation and change by the Law Commission. Furthermore, neither the Central Government nor the State Governments have sanctioned the EDPAL Bill proposed by the Law Commission. The Rights of Persons with Disabilities Act 2016 likewise does not address the issue of oppression people affected by leprosy under the censured arrangements. Without any authoritative purpose to expel these biased arrangements from the rule books.

8. Conclusion And Suggestions

Leprosy is a standout amongst the most misjudged disease of the world, it presents numerous particular difficulties in its treatment and disposal. A cautious examination of the hypothetical and reasonable methodologies of the past will give vital bits of knowledge for the future to decrease the weight, it's critical to build up an all encompassing and multi-pronged methodology that has key approach changes, a state funded training effort, practical job programs, expertise instructing workshops and getting elective restorative partners to produce business, decide mediations to scatter disgrace and standard the affected individuals. Policymakers, wellbeing experts, common society and general wellbeing activists, all of them needs to go about as a change specialist through their mimetic, administrative and activists jobs to win the war against sickness. In addition, it is the obligation of the focal and state governments to take measures to guarantee the welfare of people affected by leprosy and furthermore there is a commitment to nullify certain laws which are oppressing such people.