

Law On Protection of Rights of Lepers

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S.S. Upadhyay

Former District & Sessions Judge/

Former Legal Advisor to Governor

UP, Lucknow

Mobile : 9453048988

E-mail : ssupadhyay28@gmail.com

1. **Traditional societal prejudices against the lepers & leprosy** : Lepers and the disease of leprosy have always been looked upon by the society with hate and indignity. The traditional belief of the society across the world has been that the leprosy is the curse and impact of misdeeds or sins done by a person in his past life. Even the family members and other near and dear ones start avoiding the company of persons suffering from leprosy by believing that the disease is infectious one. With the advancement and new researches in the field of medical science, the disease of leprosy no more remains an incurable disease. Leprosy is fully curable if treated properly. Various laws for the protection of human rights of the persons suffering from leprosy are being discussed here.
- 2.1. **Various laws applicable to the lepers and leprosy** : The laws applicable to the lepers and leprosy are as under :
 - (i) Lepers Act, 1898
 - (ii) Persons With Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995
 - (iii) Article 51-A(h) of the Constitution of India
 - (iv) Protection of Human Rights Act, 1993
 - (v) G.Os. & Notifications etc. issued by the Central & the State Govts.
 - (vi) Judicial Pronouncements by Courts

2.2. **Definition of 'leper' and 'pauper leper'** : Section 2(1) of the Lepers Act, 1898 defines the word 'leper' as a person suffering from any variety of leprosy. Similarly, Section 2(2) of the said Act defines the word 'pauper leper' as a person who publicly solicits alms or exposes or exhibits any sores, wounds, bodily ailments or deformity with the object of exciting charity or of obtaining alms or who at large without any ostensible means of subsistence.

2.3. **Human Rights — what are?** : Human rights are not conferred by any ruler, constitution or statute. A human being is born with human rights. Giving new dimensions to Art. 21 of the Constitution, the Supreme Court, in the cases noted below, has declared that right to live as guaranteed under Art. 21 is not merely confined to physical existence but it includes within its ambit the right to live with human dignity. The right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to 'live' is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communicates with the outside world but it also includes "the right to live with human dignity", and all that goes along with it, namely, the bare necessities of life such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being. Any thing which impedes the right to lead life with dignity and decency is violative of human rights. See :

1. Francis Coralie Mullin Vs Union Territory of Delhi, 1981 SC 746
2. Maneka Gandhi Vs Union of India, AIR 1978 SC 597.
3. Sunil Batra Vs Delhi Administration, AIR 1978 SC 1675
4. Peoples Union for Democratic Rights Vs Union of India, AIR 1982 SC 1473

2.4. **Definition of Human Rights** : Section 2(1)(d) of the Protection of Human Rights Act, 1993 defines the words "Human Rights" as under :

"Human Rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

- 2.5. **Fundamental Rights as Human Rights** : The Constitution guarantees essential human rights in the form of fundamental rights under Part III and also directive principles of State policy in Part IV, which are fundamental to governance of the country. See :
- (i) National Legal Services Authority Vs. Union of India, (2014) 5 SCC 438.
- (ii) Peoples Union for Democratic Rights vs. Union of India, (2005)2 SCC 436.
- 2.6. **Human Rights can not be granted or taken away by people** : Human Rights are rights that belong to every person and they are not dependent on specifics of the individual. Human Rights are moral, pre-legal rights and cannot be granted by people or taken away by them. Human Rights have been recognized by the Universal Declaration of Human Rights and adopted as Fundamental Rights in Part III of our Constitution. See : National Legal Services Authority Vs. Union of India, (2014) 5 SCC 438.
- 2.7. **Even State cannot violate the human rights** : Right to life is one of the basic human rights and not even the State has the authority to violate that right. See : Siddharam Satlingappa Mhetre Vs. State of Maharashtra, JT 2010 (13) SC 247.
- 3.1. **Concept of human rights in olden times** : Ages old concept of respect for human rights of others can be found in the olden thoughts of the Indian sages, sociologists and thinkers as quoted below :
- 1- आत्मानं प्रतिकूलानि परेषां न समाचरेत् ।
(An act which you do not like others to do to you, don't do that to others)
- 2- मातृवत् परदारेषु परद्रव्येषु लोष्टवत् ।
आत्मवत् सर्वभूतानि यः पश्यति स पण्डितः ॥
(One who treats the women of others like his own mother, the wealth of others as discardable as a bit of soil, cares for other human beings and living creatures as for himself, is a true human being of perfect understanding)
- 3(अ) अष्टादशपुराणेषु व्यासस्य वचनद्वयं ।

परोपकारः पुण्याण पापाय परपीडनम् ॥

- (ब) परहित सरिस धरम नहिं भाई ।
परपीडा सम नहिं अधमाई ॥ (Goswami Tulsidas)
- (स) वही मनुष्य है कि जो मनुष्य के लिए मरे ।
यही तो पशु प्रवृत्ति है कि आप आप ही चरे ॥

(There are only two significant sayings in the eighteen Purans composed by Great sage Vedvyaas : (1) doing good to others for divine gains and (2) hurting others for divine curses).

3.2. **Kalidas, great sanskrit poet, had suffered from leprosy** : It is said that the great sanskrit poet Kalidas had to suffer from leprosy as he had indecently depicted goddess 'Parwati' in his great epic 'Kumarsambhavam' and even after much treatment when he could not recover from the said disease, he was advised by the priests to write another epic in the glory of god 'Surya' i.e. the Sun. Kalidas then wrote the epic 'Raghuvansham' by narrating therein the glory of god 'Sun' and his descendants lord Rama and his great ancestors and thereafter Kalidas got rid of the disease leprosy.

3.3. **Mayur Bhatt, sanskrit poet from Kashmir, had suffered from leprosy** : The story goes that Mayur Bhatt, a sanskrit poet from Kashmir, had to suffer from leprosy for his indecent depiction of certain gods and goddesses. Mayur Bhatt was then advised by people to compose a poetry book and dedicate to the god and goddesses to whom he had earlier depicted in his creation in indecent manner. Mayur Bhatt then composed 'Surya Shatakam', a poetry book of hundred couplets in sanskrit and got cured of the disease leprosy. Such was the belief and prejudices of the masses in the past when no effective medical treatment of the said disease was known and available.

4.1 Universal declaration of human rights : With the declaration of human rights on December 10, 1948, India became one of the signatory countries of the world having made commitment to respect and protect the human rights declared and accepted by the United Nations Organizations. The UNO had required the signatory countries to incorporate the universally acknowledged human rights in their Constitutions and domestic laws. India being signatory to these UNO Declarations of human rights, incorporated the human rights as fundamental rights in the Indian Constitution enforceable since January 26, 1950.

4.2. Thirty Rights as Human Rights as declared by the General Assembly of the United Nations : On December 10, 1948, the United Nations accepted a Universal Charter of Human Rights by declaring 30 rights as human rights of all human beings all over the world irrespective of their caste, colour, creed, race, region or religion. The list of such universally accepted human rights is as under :

Article 1 : All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2 : Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 3 : Everyone has the right to life, liberty and security of person.

Article 4 : No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

Article 5 : **No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.**

Article 6 : Everyone has the right to recognition everywhere as a person before the law.

Article 7 : All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 8 : Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

Article 9 : No one shall be subjected to arbitrary arrest, detention or exile.

Article 10 : Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

Article 11(1) : Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

Article 11(2) : No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

Article 12 : No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13(1) : Everyone has the right to freedom of movement and residence within the borders of each state.

Article 13(2) : Everyone has the right to leave any country, including his own, and to return to his country.

Article 14(1) : Everyone has the right to seek and to enjoy in other countries asylum from persecution.

Article 14(2) : This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

Article 15(1) : Everyone has the right to a nationality.

Article 15(2) : No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Article 16(1) : Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Article 16(2) : Marriage shall be entered into only with the free and full consent of the intending spouses.

Article 16(3) : The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

Article 17(1) : Everyone has the right to own property alone as well as in association with others.

Article 17(2) : No one shall be arbitrarily deprived of his property.

Article 18 : Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

Article 19 : Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20(1) : Everyone has the right to freedom of peaceful assembly and association.

Article 20(2) : No one may be compelled to belong to an association.

Article 21(1) : Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

Article 21(2) : Everyone has the right of equal access to public service in his country.

Article 21(3) : The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 22 : Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

Article 23(1) : Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.

Article 23(2) : Everyone, without any discrimination, has the right to equal pay for equal work.

Article 23(3) : Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.

Article 23(4) : Everyone has the right to form and to join trade unions for the protection of his interests.

Article 24 : Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

Article 25(1) : Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Article 25(2) : Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

Article 26(1) : Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.

Article 26(2) : Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Article 26(3) : Parents have a prior right to choose the kind of education that shall be given to their children.

Article 27(1) : Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.

Article 27(2) : Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

Article 28 : Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29(1) : Everyone has duties to the community in which alone the free and full development of his personality is possible.

Article 29(2) : In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

Article 29(3) : These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

Article 30 : Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

- 5.1. **Hijras & Eunuchs declared as 'Third Gender' and 'Transgender Persons'**: Hijras & Eunuchs have been declared by the Supreme Court as 'Third Gender' and 'Transgender Persons'. See : **National Legal Services Authority Vs. Union of India, (2014) 5 SCC 438.**
6. **Promoting scientific temper and humanism as fundamental duty of the citizens required by Article 51-A(h) of the Constitution of India :**
Article 51-A of our Constitution casts certain duties on the citizens to perform as their fundamental duties. One such fundamental duty of the citizens of our country is to promote scientific temper and humanism and reforms etc in the Society and the systems. As responsible citizens, our duty is not to hate and degrade the persons suffering from leprosy which is no more an incurable disease in modern times and many acknowledge and accepted methods of medical treatment of this disease are now known to the medical world.
7. **'Leprosy' recognized as a disability under the Persons With Disabilities Act, 1995 :** Section 2(i) of the Persons With Disabilities (Equal Opportunities, Protection of Rights & Full Participation) Act, 1995, recognizes the disease leprosy as one of the disabilities enumerated and recognized under the said Act. The said Act recognizes following disabilities of a person as statutory disability :
- (i) blindness
 - (ii) low vision
 - (iii) **leprosy-cured**
 - (iv) hearing impairment
 - (v) loco motor disability
 - (vi) mental retardation
 - (vii) mental illness
8. **Schemes for preferential allotment of land etc. to the lepers :** Section 43 of the 1995 Act provides for preferential allotment of land to lepers

and their organizations to set up houses, business, special schools, research centers and factories etc.

9. **Non-discrimination in transport** : Section 44 of the 1995 Act casts a duty on the govt. not to discriminate the persons with disabilities like leprosy etc. in public transports.
10. **Non-discrimination on the roads** : Section 45 of the 1995 Act enjoins a duty on the govts. not to discriminate on roads against the persons suffering from disabilities like leprosy.
11. **Non-discrimination in the built environment** : Section 46 of the 1995 Act requires the govt. to provide in the public buildings for ramps and toilets for wheel chair users etc. for persons with disabilities including the leprosy.
12. **Non-discrimination in govt. employment** : Section 47 of the 1995 Act provides that no discrimination can be made in govt. employment against a person suffering from a disability like leprosy etc.
13. **Lepers asylum etc. not to be established or maintained without certificate of registration from competent authority** : Section 51 of the 1995 Act provides that lepers asylum etc. cannot be established or maintained without certificate of registration from the competent authority.
14. **Commission for enquiring complaints regarding deprivation of rights of persons with disabilities** : Section 62 of the 1995 Act provides for setting up of a Commission to look into the complaints with respect to matters relating to deprivation of rights of person with disabilities.
15. **Officers of the Commission to have powers of civil court** : Section 63 of the 1995 Act confers powers of civil courts on chief commissioner,

commissioners and other officers of the Commission for purposes of enquiring the complaints of deprivation of rights of persons with disabilities.

16. **Penalty for fraudulently availing benefits meant for lepers etc. :**
Section 69 of the 1995 Act provides for imprisonment upto two years or fine upto 20,000/- awardable against the person guilty of fraudulently availing the benefits meant for persons with disability.
17. **Arrest of pauper lepers :** Section 6 of the Lepers Act, 1898 empowers the police to arrest a person without warrant engaged in doing an act as a pauper leper.
18. **Production of arrested pauper leper before the Inspector of lepers :**
Section 7 of the Lepers Act, 1898 provides that after arresting a pauper leper, the arresting officer shall without unnecessary delay produce him before the inspector of lepers appointed for the local area.
19. **Procedure with regard to the arrested pauper leper :** Section 8 of the Lepers Act, 1898 empowers the Magistrate to require a personal bond with one or more sureties from the proper leper for his release.
20. **Penalty for pauper leper :** Section 10 of the Lepers Act, 1898 empowers the Magistrate to take bond from a pauper leper who has been previously held guilty for breach of the provisions of Section 9 of the said Act.
21. **Penalty on person employing lepers in prohibited trade etc :** A person found guilty of employing a leper in a prohibited trade shall be punishable with fine upto 50/-.
22. **Denial of benefits under law amounts to violation of human rights :** If a person is entitled to benefit under a particular law and the benefit under that law has been denied to him, it will amount to a violation of human rights

under the provisions of Sec. 2(d) & 12(j) of the Protection of Human Rights Act, 1994. Broad vision of definition of Human Rights under the above provisions can not be straight jacketed within narrow confines. Nature and contents of Human Rights can be understood from rights enumerated in Universal Declaration of Human Rights. See : **Ram Deo Chauhan Vs Bani Kant Das, AIR 2011 SC 615.**

23. **Abolition of Leprosy Act by different States** : The States like Karnataka, have in 1988 repealed in their States the Leprosy Act, 1898.

24. **Recommendations dated 07.04.2015 of the Law Commission of India** : The Law Commission of India in its recommendations dated 07.04.2015 submitted to the Ministry of Law & Justice, Govt. of India, has suggested for repealing the Lepers Act, 1898. The suggestions of the Law Commission are as under :

- (i) repeal of the Lepers Act, 1898
- (ii) providing legal aid to the lepers under the Legal Services Authority Act, 1987
- (iii) measures against discrimination
- (iv) access to health care etc.
- (v) land right for leprosy colonies etc.
- (vi) right to employment
- (vii) educational and training opportunities
- (viii) **avoiding use of term 'lepers' and to use for the said term 'persons affected by leprosy'**
- (ix) right to freedom of movement in public transport etc.
- (x) concession during treatment
- (xi) social awareness
- (xii) accountability of authorities for non-enforcement of welfare schemes meant for lepers.
