

## CUSTOMS, LAWS, ACTS AND RULES AFFECTING LEPROSY PATIENTS OF INDIA

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### INTRODUCTION

The customs that result in ostracizing the leprosy patient in India are almost the same today as in the past. Leprosy is supposed to be due to some sin committed in this life or in a past one, and the victim is regarded as a sinful or an immoral person. Therefore the diagnosis of leprosy does not evoke any sympathy for him as it does in the case of other diseases. Even now the word "leper," which carries a sense of abhorrence, is widely used in literature; and to describe something horrible a person with leprosy is introduced. People use the words "leper" and "leprosy" to curse others. False rumors of leprosy infection are often circulated to do mischief.

Persons are often dismissed from service because they have leprosy even when they are noninfective and otherwise fit. Although leprosy is mildly infectious and curable, it is still considered highly infectious, virulent and incurable. Not all leprosy cases are infectious, but they are believed to be so. Leprosy is also regarded as a fatal disease. On these wrong ideas, which had their origin about 200 B.C., laws, acts and rules were made to deprive the victims of the disease in all possible ways.

In the past there were instances where such persons were disinherited according to the Hindu law on the grounds of incurability and virulence. Just before the passing of the Hindu Succession Act of 1956, there was a case in a high court of India in which the question of the right of inheritance of a person with leprosy was raised. This person was about to be disqualified on the grounds of virulence and incurability of the disease, and would have been disinherited but for medical evidence which strongly refuted the contention that leprosy was a virulent disease and that the patient was incurable. The case illustrates a problem which is not of uncommon occurrence. Luckily for the leprosy victims this Law of Succession has recently been changed. But other discriminatory laws should be changed also, as otherwise measures to ameliorate the sufferings of leprosy patients will not succeed. Therefore laws, acts and rules affecting persons with leprosy and the reasons for making them should be studied and a remedy sought.

### LAWS, ACTS AND RULES AFFECTING PERSONS WITH LEPROSY

1. *The Hindu law.*—The Hindu religious books, the Smritis, constitute the principal sources of the Hindu law. Before the passing of the Hindu

Succession Act of 1956, leprosy was a ground for exclusion from inheritance when it was of such a virulent form that it was incurable and rendered the individual unfit for social intercourse. Persons so disqualified could not have a share of the joint property on partition, and the disqualified heir transmitted no right to his son (Sections 98 and 106 of Mulla's Principles of Hindu Law, 10th edition).

2. *The Hindu Marriage Act, 1956 (Act No. XXV of 1956)*.—This recent Act affects persons with leprosy in the following ways:

(a) *Judicial Separation (Section 10)*. Either party to a marriage, whether solemnized before or after this Act came into force, may present a petition to the District Court praying for a decree of judicial separation on the ground that the other party has been, for a period of not less than one year immediately before the presentation of the petition, suffering from a virulent form of leprosy.

(b) *Divorce (Section 13)*. Any marriage, whether solemnized before or after this Act came into force, may, on petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party has, for a period of not less than three years immediately preceding the presentation of the petition, been suffering from a virulent and incurable form of leprosy.

3. *The Railway Act (1890)*.—Sections 47 and 71 of this Act debar persons suffering from certain infectious diseases, including leprosy, from traveling in the same compartment with other persons. There is no distinction between an infective and noninfective case of leprosy.

4. *The Motor Vehicles Act (Act IV of 1939)*.—According to the second schedule, Section 7(5), leprosy absolutely disqualifies a person from obtaining a license to drive a public service vehicle.

5. *Life Insurance rules*.—A person with leprosy is not accepted for life insurance, irrespective of the type of the disease.

6. *Military service rules*.—Leprosy is a bar to military service. A person already in service is discharged as soon as a diagnosis of leprosy is made, even if he be an early noninfective case.

#### DISCUSSION

In spite of considerable progress made in the field of leprosy, old ideas about this disease still occupy the minds of the people, particularly of the makers of the laws. This is evident from the language used in the statute books in connection with it. Words are copied from old books verbatim without giving any thought to the fact that they are unsuitable in the 20th Century, when the progress of knowledge has changed many of the wrong ideas about leprosy. A certain form of leprosy is still considered virulent and incurable. On the two words "virulent" and "incurable" hinge the fate of the victim. But these two words are obsolete and not used by the leprologists. The result is that in a court of

law a good deal of confusion is created by the lawyers on one hand and the doctors on the other hand.

#### A. THE HINDU LAW

The law of inheritance was based on the ground of spiritual benefit which the deceased ancestors would derive from the person who would inherit. According to Section 80 of Mulla, the foundation of the spiritual benefit was the Parvana Sradh ceremony, i.e., the offering of *pindas* or cakes to the deceased ancestors. A certain type of leprosy was considered virulent and incurable and a person having such leprosy was considered unfit to offer *pindas*. Therefore such a person was excluded from inheritance. But leprosy is not a virulent and incurable disease. On the other hand, extreme forms of deformity of the hand incapacitating a patient to offer *pindas* are rarely seen now. The deformity of the hand is preventable and, if present, it can be corrected by proper treatment. Therefore the whole foundation of the rule of Hindu law to disallow inheritance in leprosy, based as it was on sin, virulence, incurability and incapacity, was wrong and unscientific.

In the background of the Hindu law are the injunctions of Hindu religious books, Smritis, and the opinion of the Ayurveda. To the Ayurvedic physicians of old days leprosy was a baffling and mysterious disease, and the results of such treatment as was then available were unsatisfactory. Hence came the idea that the disease was incurable, virulent, and due to some sin. On these wrong assumptions the discriminatory laws of inheritance were made to deny the individual his normal rights and privileges. But these disabilities are not applicable to other infective diseases, because no other disease is considered sinful.

#### B. THE HINDU MARRIAGE ACT

On the other hand, judicial separation and divorce on the ground of leprosy, as provided in the Hindu Marriage Act of 1956, have made the position of the leprosy person worse. This Act indirectly supports the traditional misconception that there is a virulent and incurable form of leprosy. According to the dictionary the word "virulent" means malignant. But leprosy is not a malignant disease like cancer. If by virulent form is meant the infectious one, then other infectious diseases should come under this Act and leprosy should not be singled out.

If the provisions of this Act were designed for the safety of the healthy partner, then it is wholly misconceived. Leprosy is only mildly infective and adults usually have some immunity against infection. This is why we usually do not find a healthy wife to get the disease from her infective husband, or a healthy husband from his infective wife, although they live in close contact with each other for years and years. This is also the reason why doctors, nurses, and other assistants in leprosy hospitals and clinics usually do not contract the disease from their patients,

although they come in contact with infective cases daily. The general public also comes in contact with infective leprosy cases every now and then without their knowledge. Had it been so contagious, it would have spread like wild fire.

The idea of making leprosy a ground for divorce is based on the ignorance and superstition of ages. Its object is to give protection to the healthy partners who have a natural protection, and for them this Act is unnecessary. On the other hand, it does not provide any measure of safety for the children, who are more susceptible to infection. This matter was dealt with thoroughly in an editorial in *Leprosy in India* in October 1948 <sup>(1)</sup>. To the same issue of that journal there was contributed the opinion of the Calcutta Bar <sup>(2)</sup>. The Bar was of the opinion that leprosy should not be a ground for severing the marriage tie. It is to be noted that in the Indian Divorce Act (Act IV of 1869), which applies to marriage in Christian forms, leprosy itself is not a ground for divorce. But our legislators are so biased that, although divorce among Hindus is of recent origin, leprosy has been included as a ground for divorce without any scientific reason.

Another point is that duration of the virulent form of the disease for three years immediately preceding the presentation of the petition is considered sufficient as a ground for divorce. There is no mention of treatment and its effects. Our law makers labored under the misconception that three years' duration of the disease in a virulent form is sufficient to label the case as incurable. This is essentially wrong and untenable according to our present knowledge. If the lepromatous type (advanced infectious form) is considered the virulent form, we know that such cases usually improve under modern treatment, slowly but satisfactorily, and ultimately become noninfective. Therefore, they cannot be called incurable if they are not rendered noninfective (i.e., avirulent) within three years. The period of treatment necessary varies in individual cases, and it may be five or six years or more.

If we look at the other side, we find that the law is inhumane. A leprosy patient of the infective form is more in need of help and encouragement from the healthy partner when both physically and mentally he is in great distress than when he is hale and hearty. If at this stage the wife leaves the husband or the husband leaves the wife, who will look after the patient? After separation or divorce the patient's other relatives and friends will be equally afraid to live with him. The Marriage Act, leading to separation or divorce, will lead the patient to despair, and the possibility is that in the course of time he will swell the number of beggars—which is another problem difficult to solve.

#### C. THE RAILWAY ACT

The laws restricting travel in public conveyances as provided in the Railway Act of 1890 were made under similar misconceptions and bias

about leprosy. The first and foremost misconception was that all cases were considered infectious. Secondly, the railway authorities have recently made a distinction between leprosy and another infectious disease, tuberculosis, by allowing travel concessions to persons with tuberculosis but not to those with leprosy. This distinction came into effect in July 1957.

#### D. THE MOTOR VEHICLES ACT

There is no reason why persons with noninfectious leprosy should not be allowed to be licensed to drive public service vehicles if they are otherwise fit.

#### E. LIFE INSURANCE RULES

The rule relating to life insurance is another unfortunate thing in the life of a person with leprosy, because under no circumstances is he accepted for life insurance. This is again due to an old idea, that leprosy is a rapidly progressive disease leading to death. So the medical forms in insurance practice which came into use over a century ago have not been changed as far as leprosy is concerned, as if medical science had made no advance since then with respect to leprosy. Leprosy is not a fatal disease; usually those who have it die of other diseases. Therefore, this practice of nonacceptance of a leprosy patient for life insurance simply on the ground of his having the disease is an injustice.

#### F. SERVICE RULES

It is equally unjust not to allow entrance into the military service of even an early noninfectious leprosy patient when he is otherwise fit, or to dismiss such a person already in service just because he has that condition. In other services, also, there are unwritten laws which cause dismissal of a person afflicted with noninfectious leprosy, in spite of recommendations by competent persons to retain them in service. People readily accept our diagnosis but not our recommendations.

These laws, acts and rules should be changed. The stigma of leprosy will disappear when they are abolished.

In this connection the resolution passed by the International Congress for the Defence and Social Rehabilitation of Lepers in 1956 is relevant. It runs as follows: "That patients affected with the disease be treated as are those suffering from other infectious diseases, tuberculosis for example, without any other special regulations whatsoever, and that in consequence all discriminatory laws be abolished."

Not only persons with leprosy but also their healthy children find it difficult to prosecute their studies or to get jobs. Here I quote Mr. William Bailey, Secretary for India of the Mission to Lepers: "Problems with regard to the healthy children of patients with leprosy continue to arise, especially that of helping them to secure jobs whereby they can earn their own living. They are keen and eager enough to shake off their economic de-

pendence on those who have helped them so long, but time and again as they seek work they meet with rebuffs and disappointments."

In view of these prospects, it is quite natural that a person with leprosy will hide his condition as long as he can, although we want him to come forward for early diagnosis and treatment. This is also the reason why many a patient, although fit for discharge, refuses to leave the hospital. Therefore, unless the laws are changed in accordance with our present knowledge, and unless the misconceptions in the minds of the people are removed by proper education especially among the younger generation, and unless opinions of leprologists are respected in all matters concerning leprosy, the problem of leprosy control will remain unsolved and rehabilitation of the patients will never be successful.

#### CONCLUSION

In the background of the Hindu law are the injunctions of the Smritis and the opinion of the Ayurveda. The off-shoots of the Hindu law are the Hindu Marriage Act, other Acts, insurance rules, military service rules, and the present social customs which are based on unscientific grounds. Not only that, but the law has also made a difference between one infectious disease and another without any scientific reason. The laws concerning leprosy are based on a misconception that a certain form of leprosy is virulent and incurable, and thus the very foundation is wrong. It is high time that this should be remedied.

Leprosy should no longer be a ground for divorce and judicial separation, because it is no longer virulent and incurable. The government should enact a new law for the guidance of the public and medical men with regard to education, employment, leave and dismissal from service, insurance, marriage, etc., of leprosy patients so that they may not be unnecessarily harassed and considered untouchables. A person with leprosy should be allowed to travel by public conveyances in the same way as one with tuberculosis, and he should have similar travel concessions. All cases of leprosy should be considered curable unless the contrary is proved after prolonged and careful modern treatment under competent hands. In matters of giving a certificate of cure to a leprosy patient, doctors should follow the same principles as used in other infectious diseases. If this is done a reversal of public opinion will automatically follow, and social ostracism will gradually disappear. That will make leprosy control easier and rehabilitation of patients possible.

#### CONCLUSIÓN

En el fondo de la legislación indostánica figuran los mandatos de los Smritis y la opinión expresada en el Ayurveda. De la legislación indostánica han brotado la Ley sobre los Matrimonios, otras leyes, reglas sobre seguros de vida, reglas del servicio militar y las actuales costumbres sociales que no reconocen base científica. No para aquí la cosa, pues la ley, sin el menor fundamento científico, ha establecido una diferencia entre una enfermedad infecciosa y otra. Las leyes relativas a los leprosos

se asientan en el concepto erróneo de que cierta forma de lepra es virulenta e incurable, de modo que la misma base de la idea es falsa. No debe dejarse pasar más tiempo sin remediar la situación.

La lepra no debe ya constituir motivo para el divorcio y la separación legal, dado que ya no es virulenta e incurable. El Gobierno debe dictar una nueva ley que guíe al público y a los médicos con respecto a educación, empleo, licencias y separación del servicio, seguro, matrimonio, etc., de los enfermos, a fin de que no se les hostigue innecesariamente y se les considere intocables. Al sujeto que tiene lepra debe permitírsele que viaje en carruajes públicos del mismo modo que se hace con los tuberculosos, ofreciéndole los mismos privilegios. Todos los casos de lepra deben considerarse como curables a menos que se demuestre lo contrario después que manos competentes administren prolongado y cuidadoso tratamiento moderno. En lo tocante a suministrar un certificado de curación a un leproso, los médicos deben regirse por los mismos principios que se aplican a otras enfermedades infecciosas. Si se hace esto, vendrá automáticamente un cambio de la opinión pública y el ostracismo social desaparecerá gradualmente. Esto facilitará el dominio de la lepra y permitirá la rehabilitación de los enfermos.

#### REFERENCES

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