

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO. _____ OF 2017

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

VIDHI CENTRE FOR LEGAL POLICY

... Petitioner

Versus

UNION OF INDIA & ORS

... Respondents

ADVOCATE FOR THE PETITIONER:

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IN THE SUPREME COURT OF INDIA

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WRIT PETITION (CIVIL) NO. _____ OF 2017

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

IN THE MATTER OF:

VIDHI CENTRE FOR LEGAL POLICY

Through its Senior Resident Fellow

Dr. Dhvani Mehta

D-359, Lower Ground Floor,

Defence Colony,

New Delhi

Delhi 110024

... Petitioner

Versus

UNION OF INDIA & ORS

... Respondents

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING DIRECTIONS
AGAINST THE RESPONDENTS

TO:

THE HON'BLE THE CHIEF JUSTICE AND
HIS OTHER COMPANION JUSTICES OF THE
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE PETITIONER MOST RESPECTFULLY SHOWETH THAT:

1. This writ petition is being filed in the public interest to highlight the gross violation of the fundamental rights of persons affected by leprosy under Articles 14, 19 and 21 of the Constitution of India by the continued existence of archaic, discriminatory provisions under 119 Central and State laws. A table of the impugned provisions in these Central and State Laws is attached hereto and marked as **ANNEXURE P-1 (Page Nos. __ to ____)**.
2. It is submitted that provisions in these laws unfairly discriminate against persons affected by leprosy by denying them equal treatment under personal laws, in matters of employment and appointment or election to public office, as well as access to and free movement in public places. This unequal treatment irrationally treats persons affected by leprosy as a separate class on the basis of a medically inaccurate and outdated conception of the infectious nature of the disease and without taking into account the effectiveness of the prevailing standard treatment for the disease.
3. It is submitted that the very existence of such provisions in the statute books violates the right to a life with dignity of persons affected by leprosy, which is an integral facet of Article 21. As such, the impugned provisions stigmatize and isolate persons affected by leprosy, even though with the latest medical advancements, leprosy is rendered non-infectious after the very first dose of Multi-Drug Therapy (MDT), the World Health Organisation-recommended treatment regime for leprosy. The classification in the provisions is also not founded in any intelligible differentia and bears no rational nexus to the objects sought to be achieved by the impugned provisions, thereby violating the right to equality before the law under Article 14 of the Constitution of India. Some of the impugned provisions additionally violate the right to move freely throughout the territory of India and the right to practise 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. The restrictions that the impugned provisions impose on these rights are not reasonable restrictions in the interests of the general public, in light of medical advancements in the

treatment of leprosy that render the disease non-infectious after the administration of the first dose of MDT.

4. The Petitioner is an independent think tank doing legal research and assisting government in making better laws. It is a not-for-profit company limited by guarantee, registered under Section 25 of the Companies Act, 1956, having its registered office in A-313, First Floor, Defence Colony, New Delhi 110024. By a Resolution dated 27.06.2017, the Board of Directors of the Petitioner granted its approval to the filing of this writ petition by authorizing Dr. Dhvani Mehta, Senior Resident Fellow to act on its behalf for these purposes. A copy of the board resolution passed by the Board of Directors of the Petitioner is attached hereto and marked as **ANNEXURE P-2 (Page Nos. __ to ____)**.
5. The Petitioner has assisted the Law Commission of India in the preparation of the 256th Report of the Law Commission of India on Eliminating Discrimination against Persons Affected by Leprosy. On the basis of its research and findings for the Law Commission Report, the Petitioner is praying that this Hon'ble Court may issue directions for the repeal of provisions that discriminate against persons affected by leprosy.

HISTORICAL BACKGROUND

6. Persons affected by leprosy have been historically stigmatised in India because of the belief that the disease is incurable and highly infectious. The ancient Indian text, *Manusmriti* not only denied persons affected by leprosy, or *Kushtha*, the right to marry, but also promoted the segregation of such persons. The *Sushruta Samhita*, the ancient Hindu text on medicine and surgery, also inaccurately characterised leprosy as a highly infectious disease that could be *very easily* transmitted to healthy persons by the touch or breath of affected persons. The *Sushruta Samhita* also erroneously described leprosy as a hereditary disease, a myth that has subsequently been disproved by the World Health Organization and the Ministry of Health and Family Welfare, Government of India.

7. Ancient Hindu laws and texts treated persons affected with leprosy as sinners and unfairly discriminated against them by excluding them from rights of inheritance and imposing disqualifications regarding marriage. Decisions of the High Courts in the early 20th century refer to these laws and texts in cases dealing with persons affected by leprosy. For instance, in *Karali Charan Pal v. Ashutosh Nandi*, ILR (1923) 50 Cal 604, the Calcutta High Court referred to and relied on the following Hindu laws and texts on leprosy (pgs 607-608):

Now, under the Hindu law, the grounds of exclusion from inheritance fall under the following six heads: (i) physical and mental defects, (ii) incurable or agonizing diseases, (iii) degradation from caste by reason of crime or otherwise, (iv) vicious, criminal or irreligious conduct, (v) becoming naisthika brahmachari (perpetual student), vanaprasthasrami (hermit) or sanyasi (ascetic)....Manu has a further vague ground of exclusion nirindriyatwa, i.e., absence of limb or sense which includes according to Saraswati Vilasa females as a class.....Other diseases expressly mentioned are leprosy (Vishnu) and elephantiasis (Devala)...Sir Thomas Strange distinguishes between infirmities, such as blindness, deafness, dumbness etc., which to disqualify must be coeval with birth, and disqualifying diseases such as leprosy, etc., which the Hindu religion regards as visitations not only for sins committed in a preceding state, but also for sins committed in this life; and therefore such visitations are not necessarily congenital in order to disqualify....Of the smriti writers, the only one who expressly excludes a leper is Devala, whose text runs as follows:—"When the father is dead, an impotent man, a leper, a madman, an idiot, a blind man, an outcaste, the offspring of an outcaste, and a person wearing the token (of religious mendicity) are not competent to share the heritage."..... So far as leprosy is concerned, the later Hindu law books generally lay down that to be a ground of exclusion it must be of the sanious or ulcerous and not of the anaesthetic type....

8. Similar reference to and reliance on such laws and texts was made in another decision of the Calcutta High Court in *Surendra Nath De v. Ashutosh Nandi*, 1923 SCC OnLine Cal 28. It is submitted that the existence of such laws and their enforcement by the courts has contributed to the historical stigma and discrimination faced by persons affected by leprosy, making it all the more important to declare them unconstitutional and strike them off the statute books.
9. Later judicial pronouncements, while acknowledging this historical discrimination to which persons affected by leprosy have been subjected, have continued to enforce legal provisions that discriminate against them because of the limited advances made by medical science at the time at which the cases in

question were decided. For instance, in *Swarajya Lakshmi v. G.G. Padma Rao (Dr)*, (1974) 1 SCC 58, while granting the decree of divorce to the respondent because his wife was affected by leprosy, this Hon'ble Court made the following observations (pg 66-67):

12. In this view of the matter in our opinion the disease from which the appellant suffers can be described as an incurable form of Leprosy. It is likely that with the future advances in the treatment of Leprosy one day even this form of Leprosy will be amenable to cure. We may, in this connection mention that even after the sulphone therapy a drug known as CIBA – 1906 was found out which in preliminary stages appears to be equal in efficacy to the sulphones but far less toxic. Even so experts do not yet consider that with all the advances in physiotherapy, surgery or orthopaedic surgery it is possible either to cure the disease completely or to correct the deformities and mutilations that are often produced by the disease. All that the text books seem to suggest is this that “eradication of the disease can, and eventually will, occur through effective treatment of the individual patient and segregation to prevent dissemination of the disease”.

10. It is submitted that medical advancements made in the 43 years since the above decision was handed down by this Hon'ble Court have entirely altered the manner in which leprosy is treated. The observations made by this Hon'ble Court in the above decision that the eradication of the disease requires, *inter alia*, segregation to prevent the dissemination of the disease, no longer hold true. It is submitted that leprosy is now fully curable with the administration of Multi-Drug Therapy (MDT), the first dose of which renders the disease non-infectious. There is no medical reason to segregate persons who have been administered this first dose. Expert information from the World Health Organisation (WHO) explains that:

a) the transmission of leprosy requires close and frequent prolonged contact with untreated, infected person;

b) leprosy patients do not need to be treated in special clinics or hospitals and can be treated in health care centres together with people suffering from other diseases;

c) persons affected by leprosy should not be isolated or segregated from their family or community;

d) MDT kills germs and stops the spread of leprosy after the first dose, and patients on MDT do not spread leprosy.

This information, in the form of a document published by WHO and titled 'Frequently Answered Questions on Leprosy' (2013) is attached hereto and marked as **ANNEXURE P-3 (Page Nos. ___ to ___)**. Similar information about leprosy is contained in the Eighth Report of the WHO Expert Committee on Leprosy published in 2012. A copy of this report is attached hereto and marked as **ANNEXURE P-4 (Page Nos. ___ to ___)**.

11. It is submitted that this Hon'ble Court, as recently as 2008, has relied on incorrect medical information regarding the eradication of leprosy while upholding a provision in the Orissa Gram Panchayat Act 1964 that disqualified a person affected by leprosy from occupying a civic post. *In Dhirendra Pandua v. State of Orissa, (2008) 17 SCC 311*, this Hon'ble Court observed that (pg. 320):

29. It is true that now with aggressive medication a patient may be fully cured of the disease, yet the legislature in its wisdom has thought it fit to retain such provisions in the statute in order to eliminate the danger of its being transmitted to other people from the person affected by the disease....

12. It is submitted that provisions like the one upheld in the above decision, which seek to prohibit contact between the general public and persons affected by leprosy in order to prevent the transmission of the disease are based on an outdated and irrational conception of the manner in which leprosy is transmitted. There is no scientific rationale for segregating such persons in order to prevent the transmission of the disease. Consequently, there is no rationale for the impugned provisions that seek to segregate such persons with the objective of preventing the spread of the disease.
13. However, given the historical stigma, false concerns regarding the infectiousness of leprosy and its impact on the human body persist. They have been perpetuated by the continued existence on the statute books of the impugned provisions that incorrectly treat leprosy as incurable and highly infectious. Hence, it is submitted that leprosy continues to be viewed with the same revulsion and

disgust as it was during the middle ages, and that the impugned provisions contribute to this discriminatory mindset.

TREATMENT OF PATIENTS AFFECTED BY LEPROSY WITH MULTI DRUG THERAPY

14. The following paragraphs provide a detailed explanation of the most up-to-date treatment for leprosy, which clearly demonstrates that persons affected by leprosy, who are administered the first dose of MDT, are rendered non-infectious.
- (i) For a long time, the only treatment available for leprosy was through chaulmoogra oil, which is derived from the nut of the chaulmoogra tree. The oil was used as an ointment, but was largely ineffective in curing leprosy.
 - (ii) In 1941, Guy Faget, an officer in charge of the U.S. National Leprosarium in Carville, Louisiana, administered *promin*, a drug which belonged to the *sulphone* group, to volunteers at the Leprosarium. Upon observing dramatic improvement in patients, *promin* was considered to be the earliest known effective treatment for leprosy.
 - (iii) In 1947, the parent compound of *promin*, namely *dapsone*, was found to be even more effective in treating persons affected by leprosy. In fact, treatment through *dapsone* was given to leprosy patients worldwide and was instrumental in reducing the burden of leprosy across the world. However, the treatment acted slowly and took several years to take effect in patients, which discouraged patients from completing the treatment regimen. Furthermore, some patients developed resistance to *dapsone*, thereby reducing their chances of getting cured of leprosy. To combat this problem, the WHO conducted a study which found that resistance to *dapsone* could be reduced by administering it in combination with other drugs, such as *rifampicin* and *clofazimine*.
 - (iv) In 1982, this multi-drug therapy or MDT, involving the administration of a combination of *dapsone*, *rifampicin* and *clofazimine*, was recommended by the WHO for the effective treatment of leprosy. In a few years after

its introduction, between 1982 and 1985, MDT was found to be one of the most effective methods for treating leprosy.

- (v) After being introduced in India in 1985, MDT has been instrumental in eradicating leprosy as a public health problem since 2005. The National Leprosy Eradication Program (NLEP), a centrally sponsored scheme of the Ministry of Health and Family Welfare, Government of India, provides free-of-cost MDT treatment to persons affected by leprosy through primary healthcare centres under the National Health Mission. A document released by the then Department of Health and Family Welfare in 2000 confirms the availability of this treatment and also states that laboratory evidence indicates that a single dose of leprosy kills 99.9% of leprosy germs. A copy of the document is attached hereto and marked as **ANNEXURE P-5 (Page Nos. __ to ____)**.
- (vi) Under MDT, a combination of powerful drugs such as *Rifampicin*, *Clofazimine* and *Dapsone* are administered to the person diagnosed with the disease. As already mentioned earlier, the WHO states that the first dose of MDT kills germs and stops the spread of leprosy. The World Health Organization (WHO) states that the first dose of MDT stops the spread of leprosy. The Ministry of Health and Family Welfare, Government of India confirms this information in its documents on major schemes and programmes. A copy of the said document is attached hereto and marked as **ANNEXURE P-5 (Page Nos. __ to ____)**.

RECOGNITION OF ADVANCEMENTS IN THE TREATMENT OF LEPROSY BY COURTS

17. The Hon'ble High Courts of Bombay and Karnataka have recognised that measures or provisions that exclude persons affected by leprosy from society have no scientific or rational basis. In *Maharashtra State Road Transport Corporation v. Uttam Shatrughan Raserao*, (2002) 4 Bom CR 68, the Bombay High Court, while hearing a case regarding the eligibility of a person for supplementary gratuity, rejected the argument that leprosy was incurable or that it rendered persons medically unfit for work. It observed that (pg 70):

10. It is not possible to understand on what basis the petitioners have come to the conclusion that because person suffers from leprosy apart from the social stigma, that disease is incurable. Modern science has developed techniques and persons suffering from leprosy are treated and furthermore are rehabilitated.

18. In the case of *Bajal Basappa v. Keshava*, 1967 SCC OnLine Kar 46, the Hon'ble High Court of Karnataka struck down Section 47 of the Madras District Municipalities Act, 1920, which disqualified persons affected by leprosy from voting in an election to a Municipal Council. It was held that there was no reasonable basis for disqualifying a person affected by leprosy from exercising his franchise, that the classification between 'leper' and 'non-leper' was not based on an intelligible criterion, and that it had no reasonable relation to the object sought to be achieved by the rule of adult suffrage. It was observed that (pg 1053):

11. As already indicated, the Civil Judge has upheld the disqualification imposed on a leper on the ground that 'social opinion looks with abhorrence on leprosy and that the exclusion would not be an unreasonable exclusion'. This view, in our opinion, is not correct. Social opinion is often times based on ignorance, illiteracy, superstition or other like grounds; it may even be born of sheer prejudice. If the social abhorrence rests on the assumption that leprosy is an infectious disease, it has no rational or scientific basis.....

RECOMMENDATIONS OF THE LAW COMMISSION OF INDIA

19. The 256th Report of the Law Commission of India on 'Eliminating Discrimination Against Persons Affected by Leprosy' (2015) recognized the effectiveness of MDT and recommended the repeal and amendment of provisions under eight Central laws that allowed public authorities to isolate persons affected by leprosy from the general population and precluded persons affected by leprosy from accessing public services as well as benefits under personal laws. In its report, the Law Commission stated that such provisions were based on an incorrect understanding of leprosy and lacked any rational basis. Therefore, the Law Commission also recommended the adoption of a model law titled 'ELIMINATING DISCRIMINATION AGAINST PERSONS AFFECTED BY LEPROSY (EDPAL) BILL, 2015' (hereinafter referred to as the "EDPAL Bill"), which recommended the repeal

and amendment of discriminatory provisions under eight Central laws, besides proposing several affirmative action measures for persons affected by leprosy. A copy of the 256th Report of the Law Commission of India on 'Eliminating Discrimination Against Persons Affected by Leprosy' (2015) is attached hereto and marked as **ANNEXURE P-6 (Page Nos. ___ to ____)**.

20. The Petitioner contributed to the Report of the Law Commission and undertook an independent analysis of Central and State laws that continue to discriminate against persons affected by leprosy in one form or another. The Petitioner submits that there are 119 laws that discriminate against persons affected by leprosy in broadly the following five ways:
- (i) cause stigmatization and indignity to persons affected by leprosy,
 - (ii) isolate/segregate persons affected by leprosy,
 - (iii) deny them access to public services,
 - (iv) impose disqualifications on them under personal laws, or
 - (v) bar them from occupying or standing for public posts or office.

ACTION TAKEN ON THE RECOMMENDATIONS IN THE 256th REPORT OF THE LAW COMMISSION OF INDIA

21. In 2016, the Parliament repealed the Lepers Act 1898 under the Repealing and Amending Act, 2016 (No. 23 of 2016). It has not, however, repealed or amended any of the other provisions under Central laws that were recommended for repeal and amendment by the Law Commission. Furthermore, neither the Central Government nor the State Governments have enacted the EDPAL Bill proposed by the Law Commission. The Rights of Persons with Disabilities Act 2016 also does not address the problem of discrimination against persons affected by leprosy under the impugned provisions. In the absence of any legislative intent to remove these discriminatory provisions from the statute books, the Petitioner has approached this Hon'ble Court to declare unconstitutional the impugned provisions that violate the fundamental rights of persons affected by leprosy under Articles 14, 19 and 21 of the Constitution.

22. The challenge by the Petitioner in the present petition, is premised on the following four grounds:
- (a) The impugned provisions stigmatize and isolate persons affected by leprosy violating their right to live with dignity enshrined in Article 21 of the Constitution of India.
 - (b) The impugned provisions prescribe a differential treatment of persons affected by leprosy under the impugned provisions which is an unreasonable classification not based on intelligible differentia. Since the classification does not bear a rational nexus to the objects sought to be achieved by the laws containing the impugned provisions, there is a violation of Article 14 of the Constitution of India.
 - (c) The impugned provisions deny all persons affected by leprosy the freedom to move freely within India and violate sub-clause (d) of clause (1) of Article 19 of the Constitution of India. The restrictions imposed by these provisions on the freedom of movement are not reasonable within the meaning of clause (5) of Article 19 of the Constitution of India.
 - (d) The impugned provisions deny all persons affected by leprosy the freedom to practise any profession or carry or any occupation, trade or business and violate sub-clause (g) of clause (1) of Article 19 of the Constitution of India. The restrictions imposed by these provisions on the freedom of profession are not reasonable within the meaning of clause (6) of Article 19 of the Constitution of India.

GROUND

IMPUGNED PROVISIONS IN CENTRAL AND STATE LAWS DENY PERSONS AFFECTED BY LEPROSY THE RIGHT TO A LIFE WITH DIGNITY VIOLATING ARTICLE 21 OF THE CONSTITUTION

23. It is humbly submitted that the differential treatment of persons affected by leprosy under the impugned provisions denies such persons their right to a life of dignity and self-worth that is free from stigma and bias. The impugned provisions substantively restrict persons affected by leprosy from exercising their

fundamental freedom of obtaining employment, accessing public spaces or moving freely within the territory of India. Such restrictions degrade the dignity of persons affected by leprosy and make them feel unwanted and ostracised. There is also no medical basis for such restrictions, which are based on wrongful assumptions regarding leprosy and do not take note of medical advancements that have been made in the treatment of the disease.

24. The right to life, as embodied under Article 21, includes within its fold the right to live with dignity and self-worth, which also includes the ability to exercise fundamental freedoms and rights guaranteed to every citizen under Part III of the Constitution. This was noted in *M. Nagaraj v. Union of India*, (2006) 8 SCC 212, where it was observed that (pg 241):

“20. Individuals possess basic human rights independently of any Constitution by reason of the basic fact that they are members of the human race. These fundamental rights are important as they possess intrinsic value. Part III of the Constitution does not confer fundamental rights. It confirms their existence and gives them protection. ... Every right has a content. Every foundational value is put in Part III as a fundamental right as it has intrinsic value.....A Constitution, and in particular that of it which protects and which entrenches fundamental rights and freedoms to which all persons in the State are to be entitled is to be given a generous and purposive construction. The expression “life” in Article 21 does not connote merely physical or animal existence. The right to life includes right to live with human dignity.....”

25. Similar observations were also made by this Hon’ble Court in *Bandhua Mukti Morcha v. Union of India (UOI) and Ors.*, (1984) 3 SCC 161 (paragraph 10, page 183) and *People’s Union for Civil Liberties v. Union of India*, (2013) 2 SCC 688 (paragraph 7, page 690).
26. In the case of *Jeeja Ghosh and Anr. v. Union of India and Ors.*, (2016) 7 SCC 761, the right of persons with disabilities to a life of dignity was discussed. A.K. Sikri, J. made several pertinent observations, which were:

“37. The rights that are guaranteed to differently-abled persons under the 1995 Act, are founded on the sound principle of human dignity which is the core value of human right and is treated as a significant facet of right to life and liberty. Such a right, now treated as human right of the persons who are disabled, has its roots in Article 21 of the Constitution.One such right enshrined in Article 21 is right to life and liberty. Right to life is given a purposeful meaning by this Court to include right to live with dignity. It is the purposive interpretation which has been adopted by this Court to give a content of the right to human dignity as the

fulfilment of the constitutional value enshrined in Article 21. Thus, human dignity is a constitutional value and a constitutional goal.....

39. We should, therefore, keep in mind that CAR instructions have also been issued keeping in view the spirit of human dignity enshrined in Article 21 and the rights that are to be ensured to such persons. Respect for human rights is the root for human development and realisation of full potential of each individual, which in turn leads to the augmentation of human resources with progress of the nation.....

40. In international human rights law, equality is founded upon two complementary principles: non-discrimination and reasonable differentiation. The principle of non-discrimination seeks to ensure that all persons can equally enjoy and exercise all their rights and freedoms. Discrimination occurs due to arbitrary denial of opportunities for equal participation.....The move from the patronising and paternalistic approach to persons with disabilities represented by the medical model to viewing them as members of the community with equal rights has also been reflected in the evolution of international standards relating specifically to disabilities, as well as in moves to place the rights of persons with disabilities within the category of universal human rights....”

27. These observations were also made in the context of persons affected by leprosy in *O. Samuel Armstrong v. Government of Tamil Nadu*, (2008) 1 LW 197 (Mad).

In light of these observations, it is submitted that the impugned provisions not only deny persons affected by leprosy their right to be treated equally as other, similarly situated persons, but also restrict such persons from exercising their fundamental freedoms and rights which are guaranteed to them under Part III of the Indian Constitution. Due to the denial of basic freedoms and rights, to which every citizen is entitled, it becomes very difficult for persons affected by leprosy to sustain themselves and contribute to their own well-being and that of society's.

28. Section 13 of the Hindu Marriage Act, 1955 allows a marriage to be dissolved by a decree of divorce on the ground that the other party has been suffering from a virulent and incurable form of leprosy. It is submitted that this a case of a provision which does not take into account the recent medical advancements by which persons affected by leprosy are rendered non-infectious with the administration of the first dose of MDT. Such a provision does not take into account the sheer indignity and mental trauma that a person affected by leprosy will suffer on account of being brutally separated from his family. As submitted above, leprosy is a curable disease which is rendered non-infectious with the very first dose of MDT. In such a case, presence of provisions such as Section 13

of the Hindu Marriage Act deprives persons affected by leprosy their fundamental right to a life with dignity. There are similar provisions to Section 13 of the Hindu Marriage Act, such as Section 2 of the Dissolution Of Muslim Marriage Act 1939; Section 27 of the Special Marriage Act 1954; Section 18 of the Hindu Adoption and Maintenance Act 1956; Section 18 of the Jammu And Kashmir Hindu Adoptions And Maintenance Act 1960; Section 13 of the Jammu And Kashmir Hindu Marriage Act 1980; Section 2 of the Jammu And Kashmir Dissolution Of Muslim Marriages Act 1999; Rule 7 of the Family Courts (Patna High Court) Rules, 2000 and Rule 7(vii)(f) Hindu Marriage (High Court of Meghalaya) Rules 2013 which perpetuate the stigmatization of persons affected by leprosy.

29. The impugned provisions also perpetuate the stigmatization and ostracism of persons affected by leprosy, by singling them out and making them feel unwanted and without any social support. Such treatment is degrading and denies persons affected by leprosy their right to live a life of dignity and respect, where other persons in society can treat them as equal citizens. Despite the fact that leprosy is curable and can be rendered non-infectious very easily, persons affected by leprosy are banned from exercising their fundamental rights and freedoms solely due to their affliction by leprosy. Such treatment is unfair, degrading and denies such persons their right to live a life of dignity and respect, where other persons in society can treat them as equal citizens. As a result, it is respectfully submitted that the impugned provisions institutionalize and perpetuate the humiliation and undignified treatment of persons affected by leprosy, and resultantly, violate their right to life and dignity under Article 21 of the Constitution.

DIFFERENTIAL TREATMENT OF PERSONS AFFECTED BY LEPROSY UNDER THE IMPUGNED PROVISIONS VIOLATES ARTICLE 14 OF THE INDIAN CONSTITUTION

30. It is humbly submitted that the differential treatment meted out to persons affected by leprosy under the impugned provisions offends the right to equality of such persons, guaranteed to them under Article 14 of the Constitution of India. The principle of equality embodied within Article 14 does not mean the equal

application of laws to all persons. As noted in *K.C. Vasanth Kumar v. State of Karnataka, 1985 Supp SCC 714* (para 130, page 800), equality before law connotes absence of any discrimination in law, while equal protection requires the State to mete out differential treatment to persons in different situations in order to establish an equilibrium amongst all of them. Hence, Article 14 permits classification, so long as it fulfils the criteria laid down by this Hon'ble Court in a long line of cases from *State of W.B. v. Anwar Ali Sarkar, 1952 SCR 284* to *Natural Resources Allocation, In re, Special Reference No. 1 of 2012, (2012) 10 SCC 1*.

31. In *Budhan Choudhry v State of Bihar, AIR 1955 SC 191*, which was also one of the early decisions of this Hon'ble Court on Article 14, it was observed that (*para 5*):

It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

32. In *S. Seshachalam v. Bar Council of T.N., (2014) 16 SCC 72*, it was noted that the two criteria for establishing the permissibility of a classification—i) the intelligible differentia and ii) the rational nexus must be satisfied separately. If a provision or a legislation does not satisfy even one of the two criteria, then it is said to be in violation of Article 14.
33. It is submitted that the classification under the impugned provisions do not meet *both* these criteria. The reasons for this are set out in detail below:

THE IMPUGNED PROVISIONS DO NOT COMPLY WITH THE STANDARD OF “INTELLIGIBLE DIFFERENTIA” UNDER ARTICLE 14 AND MUST THEREFORE BE STRUCK DOWN

34. It is submitted that differential classification of persons affected by leprosy under the impugned provisions does not fulfil the standard of intelligible differentia under Article 14.
35. The standard of reasonable classification or *intelligible differentia* has been explained by this Hon'ble Court in a catena of decisions. In **Subramanian Swamy v. CBI, (2014) 8 SCC 682**, this Hon'ble Court stated that (para 70, pg 730):

Undoubtedly, every differentiation is not a discrimination but at the same time, differentiation must be founded on pertinent and real differences as distinguished from irrelevant and artificial ones. A simple physical grouping which separates one category from the other without any rational basis is not a sound or intelligible differentia. The separation or segregation must have a systematic relation and rational basis and the object of such segregation must not be discriminatory.....

36. In **R.K. Garg v. Union of India, (1981) 4 SCC 675**, it was held that a classification could only be said to be intelligible, if and only if it was also reasonable and fair.

This Hon'ble Court observed at para 27, pg 711:

..... The presence of some characteristics in one class which are not found in another is the difference between the two classes, but a further requirement is that this differentia must be intelligible. If the basis of classification is on the face of it arbitrary in the sense that it is palpably unreasonable, I do not think it is possible to call the differentia intelligible..... The decisions of this Court insist that the differentia must be intelligible and the nexus rational, and the observations quoted above would seem to be appropriate only if we attach some significance to the words "intelligible" and "rational"

37. It is submitted that the classification of persons, under the impugned provisions, into persons affected by leprosy and persons not affected by leprosy, is not based on intelligible differentia, nor is it fair and reasonable. Persons who have been cured of leprosy as well as those who have been administered the first dose of MDT are non-infectious and do not pose a risk of transmission of the disease. There is no scientific rationale for differentiating between such persons and those who have never been affected by leprosy. Even in the case of persons affected by leprosy who have not been administered the first dose of MDT, there is no immediate or high risk of transmission of the disease. Therefore, there is no scientific rationale for differentiating against this category of persons either. Additionally, as the information in **ANNEXURE P-3** specifies, the transmission of

leprosy requires close and frequent prolonged contact with untreated, infected persons, while about 95% of people have natural immunity against leprosy of the world population has adequate immunity against leprosy.

38. This Hon'ble Court has held that when the object of classification is discriminatory, *per se* this violates Article 14 of the Constitution of India (*Subramanian Swamy v. CBI, (2014) 8 SCC 682, page 725, paragraph 58; Deepak Sibal v. Punjab University, (1989) 2 SCC 145, page 156, paragraph 20; Nagpur Improvement Trust v. Vithal Rao, (1973) 1 SCC 500, page 506, paragraph 26*). Given that medical science has advanced so far as to find a cure for leprosy and render it non-infectious, it is submitted that the continued existence of the impugned provisions on the statute books targeting persons affected by leprosy for differential treatment cannot be attributed to the need to control the transmission of the disease. Instead, such provisions represent historical stigma and discrimination that do not take into account recent medical advancements and are therefore not founded in intelligible differentia. This violates Article 14 of the Constitution of India.

THE IMPUGNED PROVISIONS DO NOT BEAR A RATIONAL NEXUS WITH THE OBJECT AND PURPOSE OF THEIR STATUTES

39. It is submitted that the impugned provisions listed in ANNEXURE P-1 do not meet the second criterion of reasonable classification. They do not bear a rational nexus with the object and purpose of their statutes.
40. This Hon'ble Court has explained what it means for a classification to have a rational nexus to the object and purpose of the statute in multiple decisions. For instance, in *Murthy Match Works v. CCE, (1974) 4 SCC 428*, this Hon'ble Court held that the classification must bear a 'fair and just relation to the object for which it is proposed' and that the 'means must have nexus with the ends.'
41. Similarly, in *Common Cause, A Registered Society (Petrol pumps matter) v. Union of India, (1996) 6 SCC 530*, this Hon'ble Court clarified that (para 24, page 554):

... While Article 14 permits a reasonable classification having a rational nexus to the objective sought to be achieved, it does not permit the power to pick and choose arbitrarily out of several persons falling in the same category. A transparent and objective criteria/procedure has to be evolved so that the choice among the members belonging to the same class or category is based on reason, fair play and non-arbitrariness.

42. In **ANNEXURE P-1**, the Petitioner has identified the object and purpose of the impugned provisions as well as of the laws under which they have been enacted. On a bare reading of the impugned provisions under the 119 laws, it seems that the object and purpose of each of these was to prevent the transmission of leprosy by segregating persons affected by leprosy and restricting their movement in and contact with society. It has already been argued that such segregation bears no rational nexus with the objective of preventing the transmission of the disease. This is because such provisions are founded on inaccurate conceptions of the nature of leprosy and outdated medical evidence regarding the effectiveness of treatment. Given the advancements that have been made in medical science, by which persons affected by leprosy are rendered non-infectious with the administration of the first dose of MDT, there is no rational nexus between the differential treatment of persons affected by leprosy that is imposed by the impugned provisions and their object and purpose of preventing the transmission of leprosy. Therefore, it is submitted that the impugned provisions violate Article 14 of the Constitution of India.
43. The laws under which each of the impugned provisions have been enacted have varying objects and purposes, as set out in **ANNEXURE P-1**. It is submitted that there is no rational nexus between the discriminatory restrictions that are imposed by the impugned provisions and the objects and purposes of each of the laws under which they have been enacted. The absence of this rational nexus for each of the laws listed in **ANNEXURE P-1** is demonstrated below:
44. Section 35(2) of the Karnataka Rajya Dr. Gangubai Hangal Sangeetha Mattu Pradarshaka Kalegala Vishwavidyalaya Act, 2009, empowers 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. It has already been argued that there is no rational nexus between such removal and containing the spread of the disease. Another object and purpose of the impugned provision and the Act is to ensure the competent administration of the University. One of the ways of ensuring this is by removing persons who are unfit on account of their mental, physical or financial disabilities from actively participating in the activities of the University. While this object and purpose may be reasonable, the automatic removal of persons affected by leprosy from the membership of any authority of the University is unreasonable. This is because there is no medical evidence to suggest that persons affected by leprosy will be rendered physically or mentally incapable of carrying out functions associated with the administration of a University. Furthermore, once the first dose of MDT is taken by a person affected by leprosy, they are rendered non-infectious and are no different from a person who has never been affected by leprosy. Therefore, it is submitted that there is no rational nexus between the removal of persons affected by leprosy and the administration of the University, and the impugned provision violates Article 14 of the Constitution.

45. The other provisions in ANNEXURE P-1 that are similar to Section 35(2) of the Karnataka Rajya Dr. Gangubai Hangal Sangeetha Mattu Pradarshaka Kalegala Vishwavidyalaya Act, 2009 are: Section 35(2) of the Karnataka Samskrita Vishwavidyalaya Act, 2009, Section 34 of the Andhra Pradesh Universities Act, 1991, Section 40(2) of the Kannada University Act, 1991, Section 27(1)(a) of the Pondicherry University Act 1985, Section 23(1)(a) of the Goa University Act, 1984, Section 39(2) of the Tamil University Act, 1982, Section 49(2) of the Bharathidasan University Act, 1981, Statute 24(1)(a) of the Schedule to the Sri Krishnadevaraya University Act, 1981, Statute 23(1)(a) of the Schedule to the Nagarjuna University Act, 1976, Statute 28(1)(a) of the Schedule to the University Of Hyderabad Act, 1974, Statute 28(1)(a) of the Schedule to the North-

Eastern Hill University Act, 1973, Statute 31(1)(a) of the Schedule to the Jawahar Lal Nehru University Act, 1966, Section 34 of the Osmania University Act, 1959, Section 40 of the Madras University Act, 1923, Section 38B(3)(a) of the Visva Bharati Act, 1951, and Section 32(1)(a) of the Banaras Hindu University Act, 1915. These provisions also allow the automatic removal of persons affected by leprosy solely on account of their affliction by the disease. However, as already submitted, there is no rational nexus between such removal of persons affected by leprosy and the spread of leprosy. There is also no rational nexus between the removal of persons affected by leprosy and the administration of the University, as the affliction of leprosy does not render a person physically or mentally incapable of performing his or her functions within the University. Consequently, these provisions also violate Article 14 of the Constitution.

46. Under Section 37(1)(a) of the Sri Venkateswara Vedic University Act, 2006, any person suffering from leprosy is not qualified to stand for election or nomination as a member of any of the authorities of the University, if, on the date of such election or nomination, he is afflicted by the disease. 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. It has already been argued that there is no rational nexus between such isolation and containing the spread of the disease. Another object and purpose of the impugned provision and the Act is to ensure the competent administration of the University. One of the ways of ensuring this is by removing persons who are unfit on account of their mental, physical or financial disabilities from being elected or nominated to the University. While this object and purpose may be reasonable, the automatic disqualification of persons affected by leprosy from being elected or nominated as members of the University is unreasonable. This is because there is no medical evidence to suggest that persons affected by leprosy will be rendered physically or mentally incapable of carrying out functions associated with the administration of a University. Therefore, it is submitted that there is no rational nexus between the removal of persons affected by leprosy and the

administration of the University, and the impugned provision violates Article 14 of the Constitution.

47. The other provisions in **ANNEXURE P-1** that are similar to Sri Venkateswara Vedic University Act, 2006 are: Section 40(1)(a) of the Dravidian University Act, 1997, Sections 29(a) of the Andhra Pradesh Universities Act, 1991, Section 7(1)(a) of the Kannada University Act, 1991, Section 41(1)(a) of the University of Health Sciences Act, 1986, Section 36(1)(a) of the Pondicherry University Act 1985, Section 39(1)(a) of the Potti Sreeramulu Telugu University Act, 1985, Section 39(1)(a) of the Telugu University Act, 1985, Section 7(1)(a) of the Alagappa University Act, 1985, Section 30(1)(a) of the Goa University Act, 1984, Section 6(1)(a) of the Mother Teresa Women's University Act, 1984, Statute 12(a) of the Schedule to the Dr. B.R Ambedkar Open University Act, 1982, Section 6(1)(a) of the Bharathiar University Act, 1982, Section 9(1)(h) of the Sikkim Panchayat Act, 1982, Section 6(1)(a) of the Bharathidasan University Act, 1981, Statute 31(1)(a) of the Schedule to the Sri Krishnadevaraya University Act, 1981, Statute 30(1)(a) of the Schedule to the Nagarjuna University Act, 1976, Statute 35(1)(a) of the Schedule to the University Of Hyderabad Act, 1974, Statute 37(1)(a) of the Schedule to the North-Eastern Hill University Act, 1973, Statute 23(1)(a) of the Schedule to the Jawahar Lal Nehru University Act, 1966, Section 6(1)(a) of the Madurai-Kamaraj University Act, 1965, Section 29(a) of the Osmania University Act, 1959, Section 5(2)(a) of the Madras University Act, 1923, and Section 12B(1)(a) of the Banaras Hindu University Act, 1915. They also automatically disqualify persons affected by leprosy from being elected or nominated to posts in the University administration. As has already been submitted, there is no rational nexus between the disqualification of persons affected by leprosy and the spread of leprosy. There is also no rational nexus between the disqualification of persons affected by leprosy and the administration of the University, as the affliction of leprosy does not render a person physically or mentally incapable of performing his or her functions within the University. Consequently, these provisions also violate Article 14 of the Constitution.

48. Section 70(3)(b) of the Orissa Municipal Corporation Act, 2003, 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. It has already been argued that there is no rational nexus between such segregation and containing the spread of leprosy. Another object and purpose of the impugned provision and the Act is to ensure that competent persons are elected to the Corporation. One of the ways of ensuring this is by removing persons who are unfit on account of their mental, physical or financial disabilities from being elected to the Corporation. While this object and purpose may be reasonable, the automatic disqualification of persons affected by leprosy from contesting elections is unreasonable. This is because there is no medical evidence to suggest that persons affected by leprosy are rendered physically or mentally incapable of carrying out functions of the Municipal Corporation. Therefore, it is submitted that there is no rational nexus between the removal of persons affected by leprosy and the functioning of the Corporation, and the impugned provision violates Article 14 of the Constitution.
49. The other provisions in **ANNEXURE P-1** that are similar to Section 70(3)(b) of the Orissa Municipal Corporation Act, 2003 are: Sections 15(2)(a) and 16(1)(c) of the Andhra Pradesh Municipalities, 1965, Section 35(f) of the Chhattisgarh Municipalities Act, 1961, Section 35(f) of the Madhya Pradesh Municipalities Act, 1961, Section 22(1)(b) of the Greater Hyderabad Municipal Corporation Act, 1955, Sections 16(1)(iv) and 17(1)(b) of the Orissa Municipal Act, 1950, Sections 49(2)(a) and 50(1)(b) of the Tamil Nadu District Municipalities Act, 1920, and Sections 52(2)(a) and 53(1)(b) of the Chennai Municipal Corporation Act, 1919. They also disqualify persons affected by leprosy from contesting election or being nominated to posts in Municipal Corporations or Municipalities. As has already been submitted, there is no rational nexus between the disqualification of persons affected by leprosy and the spread of leprosy. There is also no rational

nexus between the disqualification of persons affected by leprosy and the administration of Municipal Corporations or Municipalities, as the affliction of leprosy does not render a person physically or mentally incapable of performing the functions vested in him or her within the Corporation or Municipality, and the impugned provisions violate Article 14 of the Constitution.

50. Section 19(f) of the Rajasthan Panchayati Raj Act, 1994, 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 has already been argued that there is no rational nexus between such removal and containing the spread of leprosy. Another object and purpose of the impugned provision and the Act is to ensure that competent persons are elected to the Panchayati Raj Institution. One of the ways of ensuring this is by disqualifying persons who are unfit on account of their mental, physical or financial disabilities from being elected to the Institution. While this object and purpose may be reasonable, the automatic disqualification of persons affected by leprosy from contesting election is unreasonable. This is because there is no medical evidence to suggest that persons affected by leprosy are rendered physically or mentally incapable of carrying out functions of the Institution. Therefore, it is submitted that there is no rational nexus between the removal of persons affected by leprosy and the functioning of the Panchayati Raj Institution, and the impugned provision violates Article 14 of the Constitution.

51. The other provisions in **ANNEXURE P-1** that are similar to Section 19(f) of the Rajasthan Panchayati Raj Act, 1994 are: Section 36(1)(h) of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, Section 33(1)(d) of the Orissa Zilla Parishad Act, 1991, Section 25(1)(e) of the Orissa Gram Panchayats Act, 1964, Section 45(1)(e) of the Orissa (Panchayat Samiti) Act, 1959, Sections

25(2)(a) and 26(b) of the Madras Panchayats Act, 1958, Section 153(b) of the Delhi Land Reforms Act, 1954, and Section 44(4)(c) of the Delhi Panchayat Raj Act, 1954. They also automatically disqualify persons affected by leprosy from contesting election or being nominated to posts in rural local bodies, such as Panchayats, Gram Panchayats and Zilla Parishads. However, as has already been argued, there is no rational nexus between the disqualification of persons affected by leprosy and the spread of leprosy. There is also no rational nexus between the disqualification of persons affected by leprosy and the administration of rural local bodies, as affliction by leprosy does not render a person physically or mentally incapable of performing the functions vested in him or her within the rural local body. Therefore, the impugned provisions violate Article 14 of the Constitution.

52. Section 25(5)(ii) of the Hindu Religious Institutions and Charitable Endowments Act, 1997, 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. 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 institution and to prevent the transmission of the disease to such other members. It has already been argued that there is no rational nexus between such removal and containing the spread of leprosy. Another object and purpose of the impugned provision and the Act is to ensure that competent persons are responsible for the administration of the institution or endowment. One of the ways of ensuring this is by disqualifying persons who are unfit on account of their mental, physical or financial disabilities from being appointed to or continuing as a member of the institution. While this object and purpose may be reasonable, the automatic disqualification of persons affected by leprosy from being appointed to or continuing as a member of the institution is unreasonable. This is because there is no medical evidence to suggest that persons affected by leprosy are rendered physically or mentally incapable of carrying out functions of the institution. Therefore, it is submitted that there is no rational nexus between the removal of persons affected by

leprosy and the administration of the institution or endowment, and the impugned provision violates Article 14 of the Constitution.

53. The other provisions in **ANNEXURE P-1** that are similar to Section 25(5)(ii) of the Hindu Religious Institutions and Charitable Endowments Act, 1997 are: Section 7(a) of the Jammu And Kashmir Shri Amarnath Ji Shrine Act, 2000, Section 6(3)(iv) of the Shri Sanwaliaji Temple Act, 1992, Section 8(b) of the Haryana Shri Mata Mansa Devi Shrine Act, 1991, Section 8(b) of the Jammu And Kashmir Shri Mata Vaishno Devi Shrine Act, 1988, Section 19(1)(b) of the Andhra Pradesh Charitable and Hindu Religious Institution And Endowments Act, 1987, Section 5(2)(d) of the Nathdwara Temple Act, 1959, Sections 26(1)(d) and 53(2)(f) of the Tamil Nadu Hindu Religious And Charitable Endowments Act, 1959, Sections 8(1)(b) and 23(2)(c) of the Madhya Bharat Shri Mahakaleshwar Temple Act, 1953, and Section 8(b) of the Shri Shiv Khori Shrine Act, 2008. They also automatically disqualify persons affected by leprosy from being elected or nominated to posts in the temple administration. However, as has already been submitted, there is no rational nexus between the disqualification of persons affected by leprosy and the spread of leprosy. There is also no rational nexus between the disqualification of persons affected by leprosy and the administration of the temple, as affliction by leprosy does not render a person physically or mentally incapable of performing his or her functions within the temple. Therefore, the impugned provisions violate Article 14 of the Constitution.
54. Section 11A(1)(c) of the Andhra Pradesh Public Libraries Act, 1969, disqualifies a person affected by leprosy from becoming a member of the Zilla Grandhalaya Samstha, 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 Samstha and to prevent the transmission of the disease to such other members. It has already been argued that there is no rational nexus between such isolation and containing the spread of leprosy. Another object and purpose of the impugned provision and the Act is to ensure that only competent persons become members of the Samstha. One of the ways

of ensuring this is by disqualifying persons who are unfit on account of their mental, physical or financial disabilities from becoming members of the Samstha. While this object and purpose may be reasonable, the automatic disqualification of persons affected by leprosy from becoming members of the Samstha is unreasonable. This is because there is no medical evidence to suggest that persons affected by leprosy are rendered physically or mentally incapable of carrying out the functions of the Samstha. Therefore, it is submitted that there is no rational nexus between the disqualification of persons affected by leprosy and the administration of the Samstha, and the impugned provision violates Article 14 of the Constitution.

55. The other provisions in **ANNEXURE P-1** that are similar to Section 11A(1)(c) of the Andhra Pradesh Public Libraries Act, 1969 are: Section 6(b) of the Andhra Pradesh Medical Practitioners Registration Act, 1968, Section 6(1)(a) of the Kerala Fishermen Welfare Societies (Determination Of Strength Of Committees And Conduct Of Election) Rules, 1980, Section 32(b) of the Bye-Laws Of Pradeshik Co-Operative Dairy Federation Limited, 1979, Section 6(1)(b) of the Kerala Khadi And Village Industries Board Act, 1957, Section 9(2)(a) of the Andhra Pradesh (Andhra Area) Ayurvedic and Homeopathic Medical Practitioners Registration Act, 1956, Section 6(c) of the Nurses And Midwives Act, 1953, Section 21A(1)(e) of the Andhra Pradesh Co-Operative Societies Act, 1964, and Rule 453(1)(c) of the Uttar Pradesh Co-operative Societies (Forty-fifth Amendment) Rules, 2006. They also disqualify persons affected by leprosy from becoming members of associations or boards or committees or councils. However, as has already been argued, there is no rational nexus between the disqualification and subsequent isolation of persons affected by leprosy and the spread of leprosy. There is also no rational nexus between the disqualification of persons affected by leprosy and the administration of associations, boards, committees or councils, as the affliction of leprosy does not render a person physically or mentally incapable of performing his or her administrative duties. Consequently, the impugned provisions violate Article 14 of the Constitution.

56. Section 340 of the Punjab Municipal Corporation Act, 1976, empowers persons in charge of markets to prevent the entry of or expel persons suffering from leprosy, who sell or expose for sale any article or who touch any article exposed for sale. The object and purpose of the impugned provision is to prevent the spread of leprosy by attempting to eliminate contact in public places between healthy persons and persons affected by leprosy. The object and purpose of this provision is irrational because it is based on outdated conceptions regarding the manner in which leprosy spreads and methods for its treatment. It must be noted that leprosy is neither a fatal disease, nor a disease that spreads easily from an affected person to an unaffected person. A person affected by leprosy, even though he or she may not have received any treatment, does not pose an immediate threat to every person who comes in contact with him/her. Furthermore, the administration of the first dose of MDT renders a person affected by leprosy non-infectious. In light of this etiology of the disease, it is submitted that the immediate expulsion of persons affected by leprosy from public places does not bear a rational nexus with the object and purpose of the impugned provision i.e. to prevent the transmission of leprosy. Therefore, Section 340 does not bear a rational nexus with its object and purpose, thereby violating Article 14 of the Constitution.
57. The other provisions in **ANNEXURE P-1** that are similar to Section 340 of the Punjab Municipal Corporation Act, 1976 are: Section 390 of the Coimbatore City Municipal Corporation Act, 1981, Section 378(a) of the Puducherry Municipalities Act, 1973, Section 245 of the Karnataka Municipalities Act, 1964, Section 287 of the Andhra Pradesh Municipalities, 1965, Section 414 of the Delhi Municipal Corporation Act, 1957, Section 306 of the Orissa Municipal Act, 1950, Section 268 of the Tamil Nadu District Municipalities Act, 1920, Section 308B of the Chennai Municipal Corporation Act, 1919, Rule 7 of the Chennai Metro Railway (Carriage And Ticket) Rules, 2014, Rule 6 of the Metro Railways (Carriage And Ticket) Rules, 2014, Rule 6 of the Bangalore Metro Railway (Carriage And Ticket) Rules, 2011, Section 83 of the Inland Steam Vessels (Madhya Pradesh) Rules, 1962, Rule 7(c) of the Andhra Pradesh Excise (Lease Of Right To Sell Liquor In Retail) Rules,

1969, Section 22(1) of the Madhya Pradesh Gram Panchayat (Regulation Of Slaughter House) Rules, 1998, Sections 82 and 83 of the Travancore Cochin Public Health Act, 1955, Rule 34(vi) of the Kerala Places Of Public Resort Rules, 1965, Bye-Law 32(a) and (b) of the Karnataka Municipalities (Regulation and Inspection Of Lodging And Boarding Houses) (Model) Bye-Laws, 1966 and Section 81 of the Madhya Pradesh Public Health Act, 1949. These provisions also bar persons affected by leprosy from entering public spaces, including markets, schools and workplaces. As has already been submitted, there is no rational nexus between the ban imposed on persons affected by leprosy from entering public spaces and the spread of leprosy. Leprosy is not a highly infectious disease and can be rendered completely non-infectious through the first dose of MDT. Consequently, the impugned provisions violate Article 19 of the Constitution.

58. Section 19(2) of the Andhra Pradesh Excise Act, 1968, prohibits persons who are licensed to sell any intoxicants for human consumption on their premises, from employing, either with or without remuneration, persons affected by leprosy. One of the objects and purposes of this provision is to prevent persons affected by leprosy from transmitting the disease onto other persons through the stocks of beer or liquor that they handle personally. While this object and purpose may be reasonable, the prohibition on the employment of persons affected by leprosy on premises that sell intoxicants is unreasonable. As has already been argued, leprosy does not spread from one person to another easily, and with the first dose of MDT, it is rendered completely non-infectious. Therefore, it is submitted that the prohibition on the employment of persons affected by leprosy in premises that sell intoxicants has no rational nexus with the spread of leprosy and the impugned provision violates Article 14 of the Constitution.
59. The other provisions in **ANNEXURE P-1** that are similar to Section 19(2) of the Andhra Pradesh Excise Act, 1968 are Bye-Law 32(c) of the Karnataka Municipalities (Regulation and Inspection Of Lodging And Boarding Houses) (Model) Bye-Laws, 1966, Rule 6(ii) of the Orissa Professional Typists For Civil And Criminal Courts (Registration) Rules, 1981, Rule 5(f) of the Chapter II of Orissa (Licensing Of)

Deed Writers' Rules, 1979, Rules 27(iii) and 53(2) of the Andhra Pradesh Indian Liquor & Foreign Liquor Rules, 1970, Rule 4(e) of the Bihar Document Writers Licensing Rules, 1968, Rule 7(g) of the Kerala Document Writers' Licence Rules, 1960, Rules 16(2), 22, and 23 of the Allahabad High Court Rules, 1952, Rule 7(iii) of the Telangana Microbrewery Rules, 2015, Rule 4(4) of the Delhi Petty Offences (Trial By Special Metropolitan Magistrates) Rules, 1998, Rule 6(iii) of the Andhra Pradesh Excise (Grant Of Licence Of Selling By In-House And Conditions Of Licence) Rules, 2005, Section 18(2) of the Tamil Nadu Excise Act, 1971, Rule 141(16) of the Pondicherry Excise Rules, 1970, Rule 9(1)(a) of the Andhra Pradesh Excise (Lease Of Right To Sell Liquor In Retail) Rules, 1969, Sections 19(2) and 36(1)(h) of the Andhra Pradesh Excise Act, 1968, and Clause II(1) of the Second Schedule to the Jammu And Kashmir Motor Vehicles Act, 1998 . They also bar persons affected by leprosy from practising a profession, from obtaining a licence to engage in trade or business, from obtaining a motor vehicle license or from obtaining employment. However, such automatic disqualification of persons affected by leprosy does not bear a rational nexus with the object and purpose of the provision, i.e. curbing the spread of leprosy from a healthy person to an unhealthy person. As has already been argued, leprosy is not highly infectious and is rendered completely non-infectious through the first dose of MDT. Consequently, the impugned provisions violate Article 14 of the Constitution.

60. Under Section 82 of the Madhya Pradesh Public Health Act, 1949, the State Government, in consultation with the Director of Health Services, has the power to segregate or detain persons affected by leprosy from the rest of the population in order to curb the spread of the disease. The object and purpose of the impugned provision is to prevent the spread of leprosy by eliminating the possibility of contact between healthy persons and persons suffering from such diseases. As has already been argued, the object and purpose of this provision is irrational because it is based on outdated conceptions regarding the manner in which leprosy spreads and methods for its treatment. A person affected by leprosy, even though he or she may not have received any treatment, does not pose an immediate threat to every person who comes in contact with him/her.

Furthermore, the administration of the first dose of MDT renders a person affected by leprosy non-infectious. In light of this, it is submitted that the segregation and detention of persons affected by leprosy does not bear a rational nexus with the object and purpose of the impugned provision i.e. to prevent the transmission of leprosy, and consequently violates Article 14 of the Constitution.

61. The other provisions in **ANNEXURE P-1** that are similar to Section 82 of the Madhya Pradesh Public Health Act, 1949 are: Section 35 of the Rajasthan Rehabilitation Of Beggars Or Indigents Act, 2012, Section 25 of the Sikkim Prohibition Of Beggary Act, Section 6(6) of the Andhra Pradesh Prevention Of Beggary Act, 1977, Section 6(6) of the Telangana Prevention Of Begging Act, 1977, Section 21 of the Uttar Pradesh Prohibition Of Beggary Act, 1975, Section 14 of the Karnataka Prohibition Of Beggary Act, 1975, Section 26(1) and (2) of the Madhya Pradesh Bhiksha Vrittinivaran Adhiniyam, 1973, Section 26 of the Goa, Daman And Diu Prevention Of Begging Act, 1972, Section 23 of the Haryana Prevention Of Beggary Act, 1971, Section 26(2) and (3) of the Bombay Prevention of Begging Act, 1959, Section 26(2) and (3) of the Bombay Prevention Of Begging Act, 1959 [Delhi Extension], Section 24 of the Assam Prevention Of Begging Act, 1964, Section 26(2) and (3) of the Gujarat Prevention Of Begging Act, 1959, Section 6(2)(b) of the Bihar Prevention Of Beggary Rules, 1954, Sections 10A, 12A and 23 of the Tamil Nadu Prevention Of Begging Act, 1945, Section 9 of the Bengal Vagrancy Act, 1943, and Section 84 of the Travancore Cochin Public Health Act, 1955, are similar to Section 82 of the Madhya Pradesh Public Health Act, 1949. They also promote and enforce the segregation and isolation of persons affected by leprosy from the rest of the population. However, such segregation and isolation of persons affected by leprosy does not bear a rational nexus with the object and purpose of the impugned provision i.e. to prevent the transmission of leprosy. A person affected by leprosy, even though he or she may not have received any treatment, does not pose an immediate threat to every person who comes in contact with him/her. A person affected by leprosy, even though he or she may not have received any treatment, does not pose an immediate threat to every person who comes in contact with him/her.

Furthermore, the administration of the first dose of MDT renders a person affected by leprosy non-infectious. Consequently, the impugned provisions violate Article 14 of the Constitution.

THE IMPUGNED PROVISIONS UNDER CENTRAL AND STATE LAWS THAT DENY PERSONS AFFECTED BY LEPROSY THEIR FREEDOM TO MOVE FREELY WITHIN INDIA ARE IN VIOLATION OF SUB-CLAUSE (D) OF CLAUSE (1) OF ARTICLE 19 OF THE CONSTITUTION

62. It is humbly submitted that clause (1) of Article 19 of the Constitution enumerates a list of essential freedoms that are guaranteed to every citizen of India. Among other things, these include the freedom to, *inter alia*, move freely throughout the territory of India, settling in any part of the territory of India, and practicing any profession. Persons affected by leprosy, who are citizens of India, are also entitled to these freedoms under Article 19(1).
63. However, it is submitted that some of the impugned provisions under the Central and State laws mentioned in **ANNEXURE P-1** restrict persons affected by leprosy from moving freely throughout the territory of India, thereby violating their right under sub-clause (d) of clause (1) of Article 19 of the Constitution. These provisions either impose restrictions on the freedom of persons affected by leprosy to enter certain premises or public places or empower public authorities to expel, segregate, isolate and confine persons affected by leprosy.
64. Section 35 of the Rajasthan Rehabilitation of Beggars or Indigents Act, 2012, 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, 1987 (Central Act No. 14 of 1987) or the Lepers Act, 1898 (Central Act No. 3 of 1898) 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. However, their repeal is reflective of the obsolescence of the Rajasthan Act. Hence, the provision in the Rajasthan Act which refers to these Acts should also be repealed.

65. The other provisions in **ANNEXURE P-1** that are similar to Section 35 of the Rajasthan Rehabilitation of Beggars or Indigents Act, 2012 are: Bye-Law 32(a) and (b) of the Karnataka Municipalities (Regulation And Inspection Of Lodging And Boarding Houses) (Model) Bye-Laws, 1966, Section 25 of the Sikkim Prohibition Of Beggary Act, Section 6(6) of the Andhra Pradesh Prevention Of Beggary Act, 1977, Section 6(6) of the Telangana Prevention Of Begging Act, 1977, Section 21 of the Uttar Pradesh Prohibition Of Beggary Act, 1975, Section 14 of the Karnataka Prohibition Of Beggary Act, 1975, Section 26(1) and (2) of the Madhya Pradesh Bhiksha Vrittinivaran Adhiniyam, 1973, Section 26 of the Goa, Daman And Diu Prevention Of Begging Act, 1972, Section 23 of the Haryana Prevention Of Beggary Act, 1971, Section 26(2) and (3) of the Bombay Prevention of Begging Act, 1959, Section 26(2) and (3) of the Bombay Prevention Of Begging Act, 1959 [Delhi Extension], Section 24 of the Assam Prevention Of Begging Act, 1964, Section 26(2) and (3) of the Gujarat Prevention Of Begging Act, 1959, Section 6(2)(b) of the Bihar Prevention Of Beggary Rules, 1954, Sections 10A, 12A and 23 of the Tamil Nadu Prevention Of Begging Act, 1945, Section 9 of the Bengal Vagrancy Act, 1943, Section 84 of the Travancore Cochin Public Health Act, 1955, Sections 81 and 82 of the Madhya Pradesh Public Health Act, 1949, Section 390 of the Coimbatore City Municipal Corporation Act, 1981, Section 378(a) of the Puducherry Municipalities Act, 1973, Section 245 of the Karnataka Municipalities Act, 1964, Section 287 of the Andhra Pradesh Municipalities, 1965, Section 414 of the Delhi Municipal Corporation Act, 1957, Section 306 of the Orissa Municipal Act, 1950, Section 268 of the Tamil Nadu District Municipalities

Act, 1920, Section 308B of the Chennai Municipal Corporation Act, 1919, Rule 7 of the Chennai Metro Railway (Carriage And Ticket) Rules, 2014, Rule 6 of the Metro Railways (Carriage And Ticket) Rules, 2014, Rule 6 of the Bangalore Metro Railway (Carriage And Ticket) Rules, 2011, Section 83 of the Inland Steam Vessels (Madhya Pradesh) Rules, 1962, Rule 7(c) of the Andhra Pradesh Excise (Lease Of Right To Sell Liquor In Retail) Rules, 1969, Section 22(1) of the Madhya Pradesh Gram Panchayat (Regulation Of Slaughter House) Rules, 1998, Sections 82 and 83 of the Travancore Cochin Public Health Act, 1955, and Section 340 of the Punjab Municipal Corporation Act, 1976. They also restrict the movement of persons affected by leprosy by banning them from accessing public spaces or by isolating and segregating them in leper asylums.

THE IMPUGNED PROVISIONS UNDER CENTRAL AND STATE LAWS THAT DENY PERSONS AFFECTED BY LEPROSY THEIR FREEDOM TO PRACTICE ANY PROFESSION ARE IN VIOLATION OF SUB-CLAUSE (G) OF CLAUSE (1) OF ARTICLE 19 OF THE CONSTITUTION

66. Among the essential freedoms guaranteed to every citizen of India under clause (1) of Article 19 of the Constitution, there is also the freedom to practise any profession, or carry on any occupation, trade or business. Persons affected by leprosy, who are citizens of India, are also entitled to these freedoms under Article 19(1)(g). However, some of the impugned provisions under the Central and State laws mentioned in ANNEXURE P-1 violate this right insofar as these provisions either disqualify persons affected by leprosy from the membership of the governing board (or other equivalent) of associations, boards, councils, committees or universities or from practicing some professions, from obtaining licences to engage in a trade or business or from obtaining employment.
67. Section 35(2) of the Karnataka Samskrita Vishwavidyalaya Act, 2009, empowers 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. Hence, persons affected by leprosy are automatically restricted from gaining employment in the University administration, solely due to their

affliction by the disease and thereby violate their freedom to practise a profession under sub-clause (g) of clause (1) of Article 19 of the Constitution.

68. The other provisions in **ANNEXURE P-1** that are similar to Section 35(2) of the Karnataka Samskrita Vishwavidyalaya Act, 2009 are: Section 34 of the Andhra Pradesh Universities Act, 1991, Section 40(2) of the Kannada University Act, 1991, Section 27(1)(a) of the Pondicherry University Act 1985, Section 23(1)(a) of the Goa University Act, 1984, Section 39(2) of the Tamil University Act, 1982, Section 49(2) of the Bharathidasan University Act, 1981, Statute 24(1)(a) of the Schedule to the Sri Krishnadevaraya University Act, 1981, Statute 23(1)(a) of the Schedule to the Nagarjuna University Act, 1976, Statute 28(1)(a) of the Schedule to the University Of Hyderabad Act, 1974, Statute 28(1)(a) of the Schedule to the North-Eastern Hill University Act, 1973, Statute 31(1)(a) of the Schedule to the Jawahar Lal Nehru University Act, 1966, Section 34 of the Osmania University Act, 1959, Section 40 of the Madras University Act, 1923, Section 38B(3)(a) of the Visva Bharati Act, 1951, Section 32(1)(a) of the Banaras Hindu University Act, 1915, 35(2) of the Karnataka Rajya Dr. Gangubai Hangal Sangeetha Mattu Pradarshaka Kalegala Vishwavidyalaya Act, 2009, Section 40(1)(a) of the Dravidian University Act, 1997, Sections 29(a) of the Andhra Pradesh Universities Act, 1991, Section 7(1)(a) of the Kannada University Act, 1991, Section 41(1)(a) of the University of Health Sciences Act, 1986, Section 36(1)(a) of the Pondicherry University Act 1985, Section 39(1)(a) of the Potti Sreeramulu Telugu University Act, 1985, Section 39(1)(a) of the Telugu University Act, 1985, Section 7(1)(a) of the Alagappa University Act, 1985, Section 30(1)(a) of the Goa University Act, 1984, Section 6(1)(a) of the Mother Teresa Women's University Act, 1984, Statute 12(a) of the Schedule to the Dr. B.R Ambedkar Open University Act, 1982, Section 6(1)(a) of the Bharathiar University Act, 1982, Section 9(1)(h) of the Sikkim Panchayat Act, 1982, Section 6(1)(a) of the Bharathidasan University Act, 1981, Statute 31(1)(a) of the Schedule to the Sri Krishnadevaraya University Act, 1981, Statute 30(1)(a) of the Schedule to the Nagarjuna University Act, 1976, Statute 35(1)(a) of the Schedule to the University Of Hyderabad Act, 1974, Statute 37(1)(a) of the Schedule to the North-Eastern Hill

University Act, 1973, Statute 23(1)(a) of the Schedule to the Jawahar Lal Nehru University Act, 1966, Section 6(1)(a) of the Madurai-Kamaraj University Act, 1965, Section 29(a) of the Osmania University Act, 1959, Section 5(2)(a) of the Madras University Act, 1923, Section 12B(1)(a) of the Banaras Hindu University Act, 1915, Section 37(1)(a) of the Sri Venkateswara Vedic University Act, 2006, Section 7(a) of the Jammu And Kashmir Shri Amarnath Ji Shrine Act, 2000, Section 6(3)(iv) of the Shri Sanwaliaji Temple Act, 1992, Section 8(b) of the Haryana Shri Mata Mansa Devi Shrine Act, 1991, Section 8(b) of the Jammu And Kashmir Shri Mata Vaishno Devi Shrine Act, 1988, Section 19(1)(b) of the Andhra Pradesh Charitable and Hindu Religious Institution And Endowments Act, 1987, Section 5(2)(d) of the Nathdwara Temple Act, 1959, Sections 26(1)(d) and 53(2)(f) of the Tamil Nadu Hindu Religious And Charitable Endowments Act, 1959, Sections 8(1)(b) and 23(2)(c) of the Madhya Bharat Shri Mahakaleshwar Temple Act, 1953, Section 8(b) of the Shri Shiv Khori Shrine Act, 2008, Section 25(5)(ii) of the Hindu Religious Institutions and Charitable Endowments Act, 1997, Section 6(b) of the Andhra Pradesh Medical Practitioners Registration Act, 1968, Clause II(1) of the Second Schedule to the Jammu And Kashmir Motor Vehicles Act, 1998, Section 6(1)(a) of the Kerala Fishermen Welfare Societies (Determination Of Strength Of Committees And Conduct Of Election) Rules, 1980, Section 32(b) of the Bye-Laws Of Pradeshik Co-Operative Dairy Federation Limited, 1979, Section 6(1)(b) of the Kerala Khadi And Village Industries Board Act, 1957, Section 9(2)(a) of the Andhra Pradesh (Andhra Area) Ayurvedic and Homeopathic Medical Practitioners Registration Act, 1956, Section 6(c) of the Nurses And Midwives Act, 1953, Section 21A(1)(e) of the Andhra Pradesh Co-Operative Societies Act, 1964, Rule 453(1)(c) of the Uttar Pradesh Co-operative Societies (Forty-fifth Amendment) Rules, 2006, Section 11A(1)(c) of the Andhra Pradesh Public Libraries Act, 1969, Bye-Law 32(c) of the Karnataka Municipalities (Regulation and Inspection Of Lodging And Boarding Houses) (Model) Bye-Laws, 1966, Rule 6(ii) of the Orissa Professional Typists For Civil And Criminal Courts (Registration) Rules, 1981, Rule 5(f) of the Chapter II of Orissa (Licensing Of) Deed Writers' Rules, 1979, Rules 27(iii) and 53(2) of the Andhra Pradesh Indian Liquor & Foreign

Liquor Rules, 1970, Rule 4(e) of the Bihar Document Writers Licensing Rules, 1968, Rule 7(g) of the Kerala Document Writers' Licene Rules, 1960, Rules 16(2), 22, and 23 of the Allahabad High Court Rules, 1952, Rule 7(iii) of the Telangana Microbrewery Rules, 2015, Rule 4(4) of the Delhi Petty Offences (Trial By Special Metropolitan Magistrates) Rules, 1998, Rule 6(iii) of the Andhra Pradesh Excise (Grant Of Licence Of Selling By In-House And Conditions Of Licence) Rules, 2005, Section 18(2) of the Tamil Nadu Excise Act, 1971, Rule 141(16) of the Pondicherry Excise Rules, 1970, Rule 9(1)(a) of the Andhra Pradesh Excise (Lease Of Right To Sell Liquor In Retail) Rules, 1969, and Sections 19(2) and 36(1)(h) of the Andhra Pradesh Excise Act, 1968. These provisions also bar persons affected by leprosy from practising a profession, from obtaining a licence to engage in trade or business, from obtaining a motor vehicle license or from obtaining employment.

THE IMPUGNED PROVISIONS THAT RESTRICT PERSONS AFFECTED BY LEPROSY FROM EXERCISING THEIR FUNDAMENTAL FREEDOMS DO NOT COMPLY WITH THE STANDARD OF "REASONABLENESS" UNDER CLAUSES (5) AND (6) OF ARTICLE 19

69. It is humbly submitted that clauses (5) and (6) of Article 19 of the Constitution permit the State to impose, by law, "reasonable restrictions" upon the freedom of every Indian citizen to move freely throughout the territory of India, and practice any profession, or to carry on any occupation, trade or business, in the interests of, *inter alia*, the general public. The meaning of the phrase "reasonable restrictions" has been clarified by the Supreme Court in ***State of Madras v. V.G. Row***, AIR 1952 SC 196, where it was observed (at para 15):

The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict.

70. In ***Dr. N.B. Khare v. the State of Delhi***, AIR 1950 SC 211, the majority decision held (at para 5) that:

the law providing reasonable restrictions on the exercise of the right conferred by article 19 may contain substantive provisions as well as procedural provisions. While the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the consideration of the

Court the question of reasonableness of the procedural part of the law.

71. This dictum was subsequently affirmed in **V.G. Row** (supra at para 16), which clarified that the question of reasonableness is context-specific, and must be decided on a case-to-case basis. One important factor that must be considered is whether the restriction imposed is excessive. In this context, while striking down a law prohibiting *beedi* manufacture during the agricultural season under Article 19(1)(g), it was observed in **Chintaman Rao v. State of Madhya Pradesh**, AIR 1951 SC 118 that (at para 6 and 7):

The phrase “reasonable restriction” connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word “reasonable” implies intelligent care and deliberation, that is, the choice of a course which reason dictates.

.....

The effect of the provisions of the Act, however, has no reasonable relation to the object in view but is so drastic in scope that it goes much in excess of that object. Not only are the provisions of the statute in excess of the requirements of the case but the language employed prohibits a manufacturer of bidis from employing any person in his business, no matter wherever that person may be residing. In other words, a manufacturer of bidis residing in this area cannot import labour from neighbouring places in the district or province or from outside the province. Such a prohibition on the face of it is of an arbitrary nature inasmuch as it has no relation whatsoever to the object which the legislation seeks to achieve and as such cannot be said to be a reasonable restriction on the exercise of the right. Further the statute seeks to prohibit all persons residing in the notified villages during the agricultural season from engaging themselves in the manufacture of bidis. It cannot be denied that there would be a number of infirm and disabled persons, a number of children, old women and petty shopkeepers residing in these villages who are incapable of being used for agricultural labour. All such persons are prohibited by law from engaging themselves in the manufacture of bidis; and are thus being deprived of earning their livelihood. It is a matter of common knowledge that there are certain classes of persons residing in every village who do not engage in agricultural operations. They and their womenfolk and children in their leisure hours supplement their income by engaging themselves in bidi business. There seems no reason for prohibiting them from carrying on this occupation. The statute as it stands, not only compels those who can be engaged in agricultural work from not taking to other avocations, but it also prohibits persons who have no connection or relation to agricultural operations from engaging in the business of bidi making and thus earning their livelihood. These provisions of the statute, in our opinion, cannot be said to amount to reasonable restrictions on the right of the applicants and that being so, the statute is not in conformity with the provisions of Part III of the Constitution. The law even to the extent that it could be said to authorize the imposition of

restrictions in regard to agricultural labour cannot be held valid because the language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the right. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly void.

72. It is humbly submitted that the reasonableness of restrictions on the fundamental freedoms under Article 19(1) must be measured on the basis of the test of proportionality, which was not only indirectly applied in *Chintaman Rao* (supra), but was also directly alluded to in *Om Kumar & Others v. Union of India*, (2001) 2 SCC 386, where it was observed at paragraphs 30 & 35, that:

Ever since 1950, the principle of 'proportionality' has indeed been applied vigorously to legislative (and administrative action) in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article 19(1) of the Constitution of India, - such as freedom of speech and expression, freedom to assemble peaceably, freedom to form associations and unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India, - this Court had occasion to consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. The burden of proof to show that the restriction was reasonable lay on the State. 'Reasonable restrictions' under Article 19(2) to (6) could be imposed on these freedoms only by legislation and Courts had occasion throughout to consider the proportionality of the restrictions. In numerous judgments of this Court, the extent to which 'reasonable restrictions' could be imposed was considered.

Thus, the principle that legislation relating to restrictions on fundamental freedoms could be tested on the anvil of 'proportionality' has never been doubted in India. This is called 'primary' review by the Courts of the validity of legislation which offended fundamental freedoms.

73. On the basis of the judicial pronouncements cited above, if a restriction on a fundamental freedom under Article 19(1) is disproportionate to the aim it seeks to achieve and is beyond what is permitted by the Constitution, then the provision imposing such a restriction is liable to be struck down by the Court.
74. It is humbly submitted that the restrictions which automatically confine or segregate persons affected by leprosy or which restrict them from employment in shops, temples and other public establishments are disproportionate to the aim they seek to achieve and are liable to be struck down. Such restrictions do not take note of medical advancements that can now fully cure leprosy and render it non-infectious. They also do not take note of the fact that the most

effective treatment for leprosy i.e. MDT is available free of cost at public health establishments all over India. However, instead of encouraging or directing persons affected by leprosy to report their illness and get treatment, or providing them access to public spaces or avenues for livelihood, such restrictions automatically bar persons affected by leprosy from accessing such services, and in fact make it difficult for such persons to report the disease and have themselves treated. In the case of *O. Samuel Armstrong v. Government of Tamil Nadu*, (2008) 1 LW 197 (Mad), the Hon'ble High Court of Madras made the following observations when a person affected by leprosy was discharged from his employment (pg 446):

7. However, there is no dispute that the petitioner's parents were leprosy patients and the petitioner was also a leprosy patient. Now, he got cured of the disease. As such, it is not easy for him to get job anywhere as a normal person. Unless this aspect is borne in mind while dealing with cases of cured leprosy patients, there will be no meaning for the schemes introduced by the Government for the welfare of the cured leprosy patients and unless a specific provision is made to provide employment to such cured leprosy patients, their survival will become a question mark. Even the right to life enshrined in Article 21 of the Constitution of India means something more than survival or animal existence... It would include the right to live with human dignity....It would include all those aspects of life which go to make a man's life meaningful, complete and worth living....That which alone can make it possible to live must be declared to be an integral component of the right to live... Hence, public employment cannot be taken away by any procedure which is not reasonable, fair and just....The right to work, though, not a fundamental right, is a means to development and source to earn livelihood for a workman, lower class, middle-class and poor people. Right to live guaranteed in any civilised society implies the right to food, water, decent environment, education, medical care and shelter....Hence, a direction is issued to the respondent, keeping in view the above aspects, to consider the case of the petitioner for appointment, on humanitarian ground, in any one of the posts to which he is suitable and pass orders thereon....

75. Hence, in light of the above, it is humbly submitted that the restrictions imposed by the impugned provisions violate Article 19(1) (g) and (d) insofar as they go beyond what is required in the interests of the general public, and do not, therefore, constitute reasonable restrictions within the meaning of clauses (5) and (6) of Article 19 of the Constitution.
76. Furthermore, these provisions in ANNEXURE P-1 allow public authorities to automatically segregate persons affected by leprosy and deny them avenues for employment as well as access to public goods and services, without giving them

an opportunity to produce evidence regarding the status of their treatment. It is submitted that some of the impugned provisions (i.e. Rule 7 of the Chennai Metro Railway (Carriage And Ticket) Rules, 2014, Rule 6 of the Metro Railways (Carriage And Ticket) Rules, 2014, Rule 6 of the Bangalore Metro Railway (Carriage And Ticket) Rules, 2011, and Rule 16(2) of the Allahabad High Court Rules, 1952) contain exceptions that allow persons affected by leprosy to obtain a medical certificate that confirms that such persons have been cured of the disease. However, such exceptions do not expressly include those persons affected by leprosy, who have been administered the first dose of MDT and may be undergoing treatment, but who are also non-infectious. The absence of this results in the denial of employment, and access to public transport and conveyance for persons affected by leprosy, who are no longer infectious after being administered with the first dose of MDT. Such persons may require a source of employment to support themselves and their families, or may need access to public transport to complete their treatment under MDT at a public health establishment. However, the impugned provisions automatically deny such persons the right to obtain employment or to access public transport.

77. Hence, it is respectfully submitted that the impugned provisions impose excessive, and therefore unreasonable restrictions because-
- (i) many of these provisions deny persons affected by leprosy the opportunity of producing medical evidence confirming the non-infectiousness of their disease and fitness to work or travel by public transport; and
 - (ii) the impugned provisions do not expressly recognise that persons affected by leprosy, who have been administered with the first dose of treatment under the MDT, are also non-infectious.

NATIONAL PRECEDENTS CONFIRM THE NEED FOR AMENDING/REPEALING OLDER LAWS THAT DO NOT REFLECT TECHNOLOGICAL AND SOCIETAL DEVELOPMENTS OVER TIME

78. It is humbly submitted that the impugned provisions are outdated and have no place in modern society, in view of medical advancements that can not only render leprosy non-infectious through the first dose of treatment under MDT, but can also cure the disease fully. The continued existence of the impugned provisions on the statute books denies persons affected by leprosy certain basic rights and freedoms, which are essential to securing a life of dignity and self-worth for such persons.

79. It is submitted that various judicial pronouncements have held that the dynamics of social, economic and technological development must inform judicial opinion regarding the context and the content of legislation. This was famously observed in *State of Karnataka and Anr. v. Shri Ranganatha Reddy and Anr.*, (1977) 4 SCC 471, where it was held (at para 85, pages 516-517) that:

...an all-too-large gap between the law and public needs, arising out of narrow notions, must be bridged by broadening the constitutional concepts to suit the changing social consciousness of the emerging Welfare State...The law, in the words of Justice Holmes, is a magic mirror in which we see reflected not only our own lives but also the lives of those who went before us-and may we add, of those who come after us.

80. This was explained further in *Deena v. Union of India*, (1983) 4 SCC 645, where it was observed (page 653) that:

4. No one of course can question that law is a dynamic science, the social utility of which consists in its ability to keep abreast of the emerging trends in social and scientific advance and its willingness to readjust its postulates in order to accommodate those trends. Life is not static. The purpose of law is to serve the needs of life. Therefore, law cannot be static.

81. In light of the above, it is most respectfully submitted that since the disease of leprosy is now fully curable and can also be rendered non-infectious through the first dose of treatment under MDT, the impugned provisions that discriminate against persons affected by leprosy serve no utility and have been rendered obsolete. These provisions violate the fundamental rights of persons affected by leprosy under Articles 14, 19 and 21 of the Indian Constitution. Hence, it is respectfully submitted that in view of up-to-date medical evidence on the

etiology, non-infectiousness and curability of leprosy, the impugned provisions no longer serve the purpose for which they were enacted, and therefore ought to be declared unconstitutional because they violate Articles 14, 19 and 21 of the Constitution.

82. Parliament has also consistently repealed and replaced obsolete laws with new and updated laws that keep up with technological, economic and social advancements. The following laws have repealed and replaced older laws, *inter alia*, to keep up with technological, social and economic advancements:

- (i) the Legal Metrology Act, 2009, which repealed the Standards of Weights and Measures Act, 1976 and the Standards of Weights and Measures (Enforcement) Act, 1985,
- (ii) the Indian Companies Act, 2013, which repealed the Indian Companies Act, 1956,
- (iii) the Food Safety and Standards Act, 2005, which repealed the Prevention of Food Adulteration Act, 1954,
- (iv) the Cable Television Networks (Regulation) Amendment Act, 2002, which amended the Cable Television Networks (Regulation) Act, 1995, and
- (v) the Payment of Wages (Amendment) Act, 2017, which amended a pre-independence legislation, namely, the Payment of Wages Act, 1936.

83. It is submitted that archaic laws, such as the ones mentioned in **ANNEXURE P-1** not only pose obstacles to the fulfilment of their own objectives, but also unreasonably deny persons affected by leprosy their fundamental right to a life of dignity under Article 21. Parliament has recently repealed obsolete laws through the Repealing and Amending Act, 2015, the Repealing and Amending (Second) Act, 2015 and the Repealing and Amending Act, 2016. Since the obsolete, impugned provisions listed in **ANNEXURE P-1** additionally violate fundamental rights, and have not been repealed by Parliament thus far, there is all the more reason for this Hon'ble Court to declare them unconstitutional.

Hence, it is respectfully submitted that there exists sufficient basis to declare unconstitutional the impugned provisions because of their obsolescence and violation of the fundamental rights of persons affected by leprosy under the Constitution.

INDIA HAS AN INTERNATIONAL OBLIGATION TO REMOVE THE STIGMA ASSOCIATED WITH LEPROSY AND PROMOTE THE SOCIAL INCLUSION OF PERSONS AFFECTED BY LEPROSY

84. It is humbly submitted that the Government of India's obligation to protect the right to life of persons affected by leprosy is derived in part from the Government's international obligations to guarantee equality of opportunity and non-discrimination for all persons affected by leprosy. As a State party to the United Nations Convention on the Rights of Persons with Disabilities, 2007 (hereinafter referred to as "UNCRPD"), the Government of India is mandated to comply with clauses (b) and (e) of Articles 4(1) and Article 5 of the UNCRPD, which require all State parties to eliminate discrimination against persons with disabilities, including persons affected by leprosy, and to promote their equal treatment in 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. A copy of the relevant extracts of Articles 4 and 5 of the UNCRPD are attached hereto and marked as **ANNEXURE P-7 (Page Nos. __ to ____)**.
85. It is also submitted that other international bodies such as the General Assembly of the United Nations (Res. 65/215 of 2011) and the United Nations Human Rights Council (Res. 29/5 of 2015) have also issued calls to Governments around the world, including India to combat all forms of discrimination against persons affected by leprosy and members of their families. Copies of these resolutions are attached hereto and marked as **ANNEXURES P-8 and P-9** respectively (**Page Nos. __ to ____**).
86. In 2016, the WHO 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. A copy of the document laying out the Global Strategy to Eliminate Leprosy by 2020 as issued by the WHO is attached hereto and marked as **ANNEXURE P-10 (Page Nos. __ to ____)**.

87. According to the WHO, the complete eradication of leprosy could only be achieved through the swifter detection of leprosy cases among the population. However, the prospect of being ostracized from society dissuades persons affected by leprosy from approaching doctors and having themselves screened for the detection of leprosy. It is submitted that such stigma and discrimination, which is perpetuated through discriminatory laws, including the provisions challenged in this petition, serves as the biggest obstacle to the complete eradication of leprosy.
88. In view of these findings, numerous 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. India, however, has a long way to go before it can create a safe and enabling environment for persons affected by leprosy, so long as the impugned provisions remain on the statute books. A copy of the United Nations report is attached hereto and marked as **ANNEXURE P-11 (Page Nos. __ to ____)**.
90. In the Report of the Office of the United Nations High Commissioner for Human Rights on *'Elimination of discrimination against persons affected by leprosy and their family members'* (2009), India's treatment of persons affected by leprosy and members of their families was found to be discriminatory and in need

of reform. It was observed at paragraph 30(g) at page 12, and paragraph 34 at page 17 that:

“..In India, testimonies referred to existing discriminatory laws relating to leprosy, such as the recently publicized Orissa Municipal Act, which disqualified persons affected by leprosy from contesting elections or holding the post of councillor of a municipality. The Supreme Court upheld this law in September 2008, when a man who had been disqualified from holding a post brought his case before the Court. There were also discriminatory provisions relating to marriage and divorce, juvenile justice, transportation, life insurance and industrial disputes for persons affected by leprosy in existing...”

..The International Leprosy Union from India submitted a report on laws and leprosy covering the period 2006-2007, summarizing various meetings convened in different parts of India in order to review existing legislation and to make recommendations to Government institutions. The report concluded that existing discriminatory legislation must be modified in order to ensure that the leprosy-affected are not denied their human rights. In some cases, amendments were proposed, while in others the Government was requested to clarify the nature of the disease and to remove references to leprosy as an incurable disease...”

91. In another, more recent *Progress report on the implementation of the principles and guidelines for the elimination of discrimination against persons affected by leprosy and their family members (Human Rights Council, Advisory Committee, Seventeenth session, 8 - 12 August 2016)*, A/HRC/AC/17/CRP.1, 29 July 2016, Imeru Tamrat Yigezu, Rapporteur of the drafting group of the Human Rights Council on the elimination of discrimination against persons affected by leprosy and their family members, also made similar observations about the treatment of persons affected by leprosy in India (pages 13-15, and 17-18):

“39. In India, the right to stand for elections is curtailed at present under six Municipal and Panchayati Raj Acts (local level acts) of the States of Rajasthan, Andhra Pradesh, Orissa, Chattishgarh and Madhya Pradesh. This fact is corroborated by a decision passed by the Supreme Court of India in 2008 which upheld a decision of the lower court disqualifying a person affected by leprosy from contesting civic elections or hold municipal office by citing discriminatory provisions in place against persons affected by leprosy in a 2005 Orissa Municipal Act. Moreover, although the right to citizenship and the right to vote are legally allowed for persons affected by leprosy, it is not easy to exercise such rights in practice for those living in the leprosy colonies since most of them cannot obtain a national identity card as proof of residence as they do not have rights to the land and houses they live in.....

.....

44..... A nursing student in India was recently discriminated against at college since she developed early symptoms of leprosy.....

.....

46. In India, it was mentioned that discrimination in the health sector for persons affected by leprosy still occurs. Two cases were cited where hospitals in Delhi denied admission for persons affected by leprosy, and in one of the instances, this led to the death of the patient.....

.....

59. On the other hand, in India, one of the serious gaps mentioned by both the National Human Rights Commission and all of the NGOs is the existence of several laws that are discriminatory against persons affected by leprosy and their family members. In this respect, all have made reference to a very important recent step taken by the Law Commission of India, a recommendatory body to the Government of India on the issue of laws, produced a comprehensive report entitled "Eliminating Discrimination Against Persons Affected by Leprosy" in April 2015, which identifies several discriminatory laws against persons affected by leprosy and their family members, and calls for such laws to either be repealed or amended by the Government of India or its constituent State Governments . Apart from the "Leprosy Act" which provided for the segregation of persons affected by leprosy and their family members from the general community, several laws provide that "leprosy" is a legitimate ground for divorce or separation between the spouses. Under the State Beggary Acts, among others, leprosy affected people are classified under the same category as persons suffering from lunacy. Generally, it is pointed out that around sixteen discriminatory laws against persons affected by leprosy and their family members are still in place in India....Very recently, the Ministry of Law and Justice of India has issued a notification of the Repealing and Amending Act 2016 repealing the 1898 "Lepers Act" of India . However, it remains to be seen whether the Government will take the appropriate measures to repeal or amend the other discriminatory laws and pass the draft bill proposed by the Indian Law Commission in the future.....

60. Although to date, India has been cited as a country that still retains several laws that are discriminatory against persons affected by leprosy and their family members, a recent study by the International Federation of Anti-Leprosy Associations (ILEP) reveals that several countries have discriminatory laws still in place which have not yet been repealed....."

A Copy of the Progress report is annexed hereto and marked as **ANNEXURE**

P-12 (Page Nos. __ to ____).

92. It is submitted that these observations point towards the lack of effort made by the Government of India in repealing and amending laws that unfairly discriminate against persons affected by leprosy and deny them their right to live with dignity and a sense of self-worth. It is also submitted that the present petition identifies a far greater number of laws (119) than those set out in the Progress Report cited above. The existence of such a large number of provisions

under various laws points to the severity and scale of discrimination and stigma to which persons affected by leprosy are subjected. These provisions deny persons affected by leprosy their right to live with dignity and self-worth, thereby violating their right to life under Article 21 of the Indian Constitution. Hence, it is respectfully submitted that the impugned provisions must be declared unconstitutional by this Hon'ble Court for being obsolete and in violation of Articles 14, 19 and 21.

PRAYER

93. In view of the submissions made above, it is most respectfully prayed that this Hon'ble Court may be pleased to:

- (a) Issue a writ declaring Item Nos. 1 to 119 enumerated in ANNEXURE P-1 as unconstitutional for violating Articles 14, 19(1)(d), 19(1)(g) and 21 of the Constitution of India;
- (b) Pass any other orders as it deems fit in the interest of justice.

AND FOR THIS ACT OF KINDNESS THE APPLICANT HEREIN SHALL HUMBLY EVERY PRAY.

Place: New Delhi

Dated:

Filed by:

Drafted by:

Yashaswini Mittal, Advocate

Dhvani Mehta, Advocate

Pallavi Mohan, Advocate