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Original Review Article

Vitiligo and The Indian Constitution- A Medicolegal Perspective

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Abstract

Right to equality is one of the sacrosanct fundamental rights of a democratic polity. Indian judiciary has time and again upheld the importance of Article 14 and 16 of the constitution in ensuring good governance. Vitiligo/Leucoderma is a skin condition which causes white colour patches over body surface. Persons with vitiligo face a lot of stigma in society because of 'cosmetic unpalatability' among the masses of our country. Not so surprisingly, vitiligo/Leucoderma is often confused with leprosy leading to a tremendous social ostracization of this class of citizens. The Sanskrit word 'Swethakusth' is perhaps the reason for this urban legend, which is a misnomer with respect to the pathophysiology of disease. Though persons with vitiligo generally face a lot of issues in interpersonal and matrimonial relationships, we are limiting to discuss in detail about state laws which are discriminatory to vitiliginans in public employment matters. Such impugned statutes are nonetheless ultra-vires of the Indian constitution per se and in the light of catena of judgements of the Supreme Court as well. Our effort is to bring into limelight about the inhuman nature of these discriminatory provisions and prepare ground for fighting prejudice towards vitiliginans.

1. Introduction

The American Academy of Dermatology defines Vitiligo (vit-uh-lie-go) as a medical condition causing the skin to lose its natural colour. It can be restricted to few areas of skin as patches or it can be global, spreading to the whole-body skin.¹ Vitiligo can affect any area of the skin or hair, but generally occurs on skin exposed to the sun, such as face, neck, and hands.²

Leucoderma is the genus and Vitiligo is the species in de-pigmentation diseases. However, they are used synonymously world over. Vitiligo is often

confused with leprosy and people with vitiligo are discriminated against everywhere. Matrimonial relationships, recruitment, international travel, sanction of work visa, retrenchment upon developing vitiligo are some situations where persons suffering with vitiligo are stigmatised a lot. As it is often quoted everywhere, Indians are so fond of white skin, but they do not like white patches on skin. People in the west do not treat vitiligo because they consider it as a variation in skin tone and not as a disease. It would be astonishing for any good-spirited constitutionalist

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to find statutory sanction for this discrimination. Perhaps they are vestiges of the colonial racial practices. It is our bounden responsibility to amend the statutes and do away with such provisions to uphold the ideals of justice and equality.

In previous days, when diagnostic medicine was not well sophisticated to diagnose every disease, vitiligo was considered as a cutaneous marker for several other internal diseases. White patches on skin can occur in several medical ailments. However, if that is the rationale for raising a blanket ban against persons with vitiligo, the recruiting state agencies can very well perform all tests in today's advanced technology scenario to rule out any associated disease with vitiligo. Presuming that several other diseases are co-existent with vitiligo without investigating the same when the wherewithal to do is available is nothing but false labelling, stigmatizing and a wilful discrimination on the part of recruiting agencies. Vitiligo is purely a clinical diagnosis for a trained eye, but a skin biopsy can be further confirmatory. The risk of a false diagnosis of vitiligo is a possibility when the recruitment medical officer in the medical board is not a dermatologist.

There are almost no Indian studies that establish the statistical probability of other disease associations with vitiligo. A person with vitiligo has a mere probability of having any co-existent disease. Vitiligo may be just indicative of an underlying disease condition but not probative. The same must be thoroughly investigated and confirmed.

2. Conditions Associated with Vitiligoⁱ

Skin Diseases-

Premature greying of the hair, leukotrichia, halo nevus, lichen planus and alopecia areata are frequently reported. Occasionally, other skin disorders like dermatitis herpetiformis, giant congenital melanocytic nevus with neurotization, chronic urticaria, nevus depigmentosus, polymorphic light eruption and malignant melanoma have also been recorded in association with vitiligo. Hashimoto's thyroiditis and morphea are other autoimmune associations.

Ocular associations:

Vogt-Koyanagi-Harada syndrome refers to the full constellation of vitiligo, poliosis and alopecia with pan-uveitis and auditory and neurological manifestations. Sometimes, few vitiligo patients show iris and retinal pigmentary abnormalities as

isolated findings. Although visual acuity is unaffected in such patients, choroidal abnormalities may be detected in up to 30% and iritis in 5% of vitiligo patients.

Systemic associations:

Systemic disorders like hypo / hyperthyroidism, diabetes mellitus, Addison's disease, pernicious anaemia, lymphoma, leukaemia and human immunodeficiency virus (HIV) infection, autoimmune polyendocrinopathy candidiasis-ectodermal dystrophy (APECED) are associated with vitiligo. Like many autoimmune diseases, pathogenesis of vitiligo is influenced by genetic, stochastic, and environmental factors. So, any of us can acquire this disease for no fault of us. However, a small subset of individuals develops contact/occupational vitiligo following exposure to chemicals. The phenolic/catecholic derivatives are the largest class of chemicals known to trigger contact/occupational vitiligo. Detailed classification and nature of disease can be accessed from this medical publication.ⁱⁱ

3. Indian Statutes Discriminating Vitiligans

Recruitment medical manuals of various government agencies describe vitiligo as a general ground for rejection in state employment. The recruitment rules of Ministry of Defence and Ministry of Home affairs preventing persons with vitiligo/leukoderma entering service in combat positions are some patent examples to cite. This is sheer bigotry towards people with vitiligo.

There is no scientific rationale behind such bar against persons with vitiligo to be a part of any combat force. Such practice is not only bad in law but is also against the medical ethics. The fundamental argument of Vitiligans is that vitiligo does not cause any handicap to a person in discharging any form of duties. It is just a skin-deep condition. However, if someone can establish that persons suffering with vitiligo are less human; they will make a strong case for declaring vitiligo as a 'disability' or even a 'bench mark disability' that needs to be recognised under the disabilities legislation to provide them additional benefits for protecting their rights and to look after their welfare.

Since the inception of our constitution there were a lot of legal cases against such discrimination towards persons with vitiligo. Nonetheless, very few of them questioned the constitutionality of the provisions in recruitment medical manuals of various

governmental agencies. In *K. Gangadhar v. A.P State Road Transport Corporation, Hyderabad and Another*ⁱⁱⁱ it was held:

“Clause 4(c)(ii) of the Medical Manual undoubtedly discriminates, between those who suffer from Vitiligo and are seeking appointment in the A.P.S.R.T.C. vis-a-vis those who have contracted this skin disorder after appointment in the Corporation and falls foul of the equality clauses enshrined in Articles 14 and 16 of the Constitution of India.

If all persons suffering from "Vitiligo" are to constitute one homogenous class, there cannot be a further classification between those already employed and those who seek employment. Persons afflicted with Vitiligo are vulnerable to discrimination on the basis of prejudice and unfounded assumptions.

This is manifestly unfair. The constitutional right of the petitioner not to be unfairly discriminated against cannot be determined by ill-informed public perception regarding this skin disorder. Prejudice can never justify unfair discrimination.

Having regard to all these considerations, denial of employment to the petitioner, only because he suffers from "Vitiligo" impairs his dignity and constitutes unfair discrimination. (Mr. X, Indian Inhabitant's case (supra). Since Clause 4(c) (ii) of the Medical Manual is patently arbitrary, irrational, and discriminatory it is ultra vires Articles 14 and 16 of the Constitution of India.

As a result, no person can be denied employment, in the respondent-Corporation, solely on the ground that he suffers from "Vitiligo".

In *Satish Chander v. Delhi Transport Corporation*^{iv}, the honourable court held,

“9. The various diseases mentioned in para-VII of the Medical standard would show that same have to be read with the initial paragraphs dealing with patient's performance of duty. Thus, sub clause (j) has to be read in that context and it has to be an inveterate disease which is likely to interfere in the person's performance of duty.”

“10. In my considered view the disease of vitiligo commonly known as leucoderma cannot be stated to be a disease which would fall within this sub-clause (j) of para VII. I am thus of the considered view that the petitioner has been wrongly denied his appointment on medical grounds.”

Let us consider few discriminatory rules in recruitment process for combat positions and non-combat positions in armed forces of the union like the

Army, the Navy, the Air Force, and other Central Armed Police Forces. The below stated illustrations bring-forth the policy of these organisations in connection with vitiligo-

I. The Recruitment Medical Manual of Indo Tibetan Border Police (Central Armed Police Forces) states that- (These rules are similar for other Central Armed Police Forces including Assam Rifles).^v

10.4 General grounds for rejection: The man presenting with any of the following conditions will be rejected.

Chronic Skin diseases like Leucoderma, Leprosy, SLE, Eczema, Chronic fungal dermatitis.

II. National Defence Academy notification for recruitment of cadets prescribes the following medical standards.^{vi}

18. Dermatological System

Candidates suffering from minor degree if Leucoderma affecting the covered parts may be accepted. Vitiligo limited only to the glans and prepuce may be considered fit. Those having extensive degree of skin involvement especially, when the exposed parts are affected even to a minor degree, will not be accepted.

The above mentioned I, II and similar provisions with respect to persons with vitiligo during recruitment process has led to discrimination towards them for hundreds of years so far. Among the multitude of those who lost an opportunity to serve the armed forces of the union, very few had the economic strength to fight a legal case. Nevertheless, they were lost in technicalities and the constitutionality of discriminatory provisions was rarely brought forward into question. Some cases like *Aakash Tyagi (Petitioner) Vs Union of India & Others*^{vii}, *Durga Singh (Petitioner) Vs Union of India & Others*^{viii} are some good examples to refer to.

4. Whether these provisions discriminating persons with vitiligo stand the test of Article 14, Article 16 and subsequent court decisions in connection with the same?

The Supreme Court of India in *State of West Bengal v. Anwar Ali Sarkar*^{ix} brought forward test of reasonable classification and rational nexus for any statute to pass the test of non-arbitrariness-

- The classification must be founded on an intelligible differentia which distinguishes those that are grouped from others are left out of the group

- The differentia must have a rational relation to the object sought to be achieved by the Act.

The entire imbroglio can be sorted out by answering the following questions. These questions are framed in view of several contentions by raised government recruiting agencies so far.

1. Will a person with vitiligo withstand harsh environmental conditions and work in higher altitude, deep sea, and combat environment?

- A. Yes, a person with vitiligo can withstand vicissitudes of weather and environmental conditions like everyone else. The risk of acquiring any new disease by working in harsh locations is like persons without vitiligo.

2. What is the chance that vitiligo can progress and effect the entire skin in the event of an injury on warfront? Will any disability subsequent thereto be of an aggravated nature to render him/her unfit for service?

- A. The Koebner phenomenon is the development of similar white patches in the injured uninvolved skin of patients who have cutaneous diseases like Vitiligo.^x The prevalence of Koebner Phenomenon in Vitiligo differs widely, and it is reported to occur in 21% to 62% of patients.^{xi} So, vitiligo may progress and spread further in the event of any injury to the person. On the other hand, it shall not bring-forth any new disease or disability on the person to render him unfit for service.

3. What is the common percentage of coexistent diseases among persons with vitiligo in Indian population?

- A. Practically very less. Reliable Indian studies are required in this area to prove any considerable associations. In a western study, the data confirmed earlier results of association with autoimmune thyroid disease, whereas purported association with many other diseases was found to be a random event. 6.2% of the patients had congenital nevi compared with 2.8% in a normal healthy population.^{xii} The randomness of being associated with some other disease is like the general population.^{xiii}

4. Is there any predictive tool to declare the likelihood of developing more diseases because that a person is having certain percentage of body surface area involved in vitiligo?

- A. Risk factors for some diseases are generally formulated after conducting thorough scientific studies. It is highly unlikely to devise such a tool because in that case if you work up at the genetic

level, you may come up with some finding in every individual having predilection for one or the other disease. Every applicant will become unfit on medical grounds for employment. Trying to view and predict biological matters purely on genetic basis is ill-founded, unethical and is discriminatory as multitude of environmental factors influence disease incidence.

5. How does vitiligo affect the mental health of a person?

No person with vitiligo has any mental illness associated with it. They may develop depression or anxiety only if people around them ridicule, discriminate or vilify them. Vitiligo is considered a serious illness by affected persons in view of possible adverse effects on marriage, securing a job, undesirable appearance, stigma, medication side effects, treatment failures etc. However few people felt it was not serious and stated that the disease was asymptomatic, not contagious, was at an early stage, was curable and was not leprosy and that nobody had responded adversely to the patches.^{xiv}

6. Should only the 'cosmetic un-acceptableness' for colleagues and other stakeholders at workplace be considered a criterion for rejecting/retraining a person with vitiligo from any job?

No. such a practice would amount to creation of a statutory vitiligo apartheid which is inhuman.

The contention of the Ministry of Defence that vitiligo in non-exposed parts is accepted and even of a minor degree in exposed parts is a ground for rejection is arbitrary, flawed, illegal and unconstitutional prima facie. The concerned organisation has given too much emphasis for cosmetic reasons and appearance of an individual to serve in the combat positions than the ability, attitude, and aptitude of the person.

In the light of all the facts discussed above, the classification of persons with vitiligo being made ineligible for recruitment is not founded on any 'intelligible differentia'. Vitiligo is just a skin-deep condition and has nothing to do with ability of individual to perform any sort of duties including combat, high altitude, and any other hardship duties like every other human. In connection with the 'reasonableness test', let us assume the object of these organisations is to recruit healthy subjects. When a person with vitiligo is no less human than any other healthy person and the disease is non-contagious and a non-infective condition the classification of denying them, equal opportunity fails

to stand the test of 'intelligible differentia and rational nexuses.

Several dermatologists informed that they have come across many patients who were rejected work visas merely for the presence of white patches/hypopigmentation. If that is the case, this matter needs an international consensus for vitiligo friendly visa regimes.

Several sports persons like Rasheed Abdul Wallace, Karl Dunbar, Scott Jorgensen, Hedvig Lindahl etc excelled despite their vitiligo.^{xv} There are many famous vitiligans like Michael Jackson and Amitabh Bachan to name a few who are role models for all.

Persons with vitiligo are eligible for all sorts of combat and non-combat service in the United States of America and the United Kingdom.^{xvi} It is very unfortunate that we failed to amend the recruitment medical manuals of organisations including the armed forces for so long even though the sources of such laws were amended in the west.^{xvii}

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5. Conclusion

It is indeed very prudent on the parts of state governments of Tamil Nadu and Maharashtra to officially delegitimize the use of words like 'Swethakusth', 'Ven Kushtum' and 'Ven kuttum' from public usage in all forms within their territories.

The first step in promoting equality and equal opportunities for vitiligans should start by striking down all biased public employment laws. On a personal level, people with vitiligo have a lot of inhibitions, majority of them concerning the other's perception of disease. Hence it is our responsibility to welcome them into mainstream. The legal environment should usher a utopia where every white patch on skin is celebrated as something new rather than make them sulk secretly away from us. Hope this white patch apartheid is a history soon.

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