

THE BATTLE OF DIGNITY: EXAMINING INDIA'S ANTI-BEGGING LAWS

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INTRODUCTION

A population entrapped in poverty and hardship exists among the bustling streets of India, where various cultures coexist and life thrives in a kaleidoscope of colours. This group of people is sometimes forgotten. Beggars stealthily move amid the noise of metropolitan life, aged faces, and torn clothing calling out for sympathy and a glimmer of hope. However, a complicated network of laws and societal assumptions that maintain their marginalized status is hidden beneath their outstretched fingers.

In this piece, we set out on a quest to understand India's beggary laws—an area where the struggles of the disadvantaged and the politics of poverty collide. We delve into the legal frameworks that influence their lives and consider how these laws affect their well-being, dignity, and human rights to understand the people we see on the streets beyond their outward appearance.

HISTORICAL CONTEXT

Anti-begging laws are an old colonial legacy.¹ The colonial government passed a similar kind of law. The terrible Criminal Tribes Act of 1871 was based on the racist British idea that some communities and groups in India were criminal by nature, vocation, and birth.² Through this act, individuals were imprisoned, split up from their families, and compelled to perform labour. All this contributed to the reign of terror.³ The colonisers drove the tribal groups to abandon their way of life by criminalising their identities. Similar to this, anti-begging regulations are compelling traditional street artists to relocate to a certain place and embrace a foreign way of life.

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¹ Gautam Bhatia, 'Undoing a legacy of injustice' *The Hindu* (New Delhi, 13 August 2018).

² Malli Gandhi, *Enforcing Criminality Application of the Criminal Tribes Act in India* (OUP 2022) p 16 para 3.

³ *Ibid* 2.

III. Legal Framework:

There are no central laws on begging.⁴ The legal framework concerning begging is complex, with different states and union territories having their laws. One of the earliest and most well-known regulations in this area is the Bombay Prevention of Begging Act of 1959, which served as a model for later legislation.⁵ The Act lays down five ways in which its provisions can be attracted by providing a somewhat ambiguous definition of begging. Soliciting or receiving alms in a public place, entering any private premises for receiving alms, and activities under the 'pretence' of singing, fortune-telling, dancing, performing or offering article for sale, exposing any sore or wound — all these attract punitive measure under the Act.⁶ The definition of beggary is very broad and often it leaves space for arbitrariness. The act further provides power to the police officer to arrest beggars without any warrant which is followed by a summary inquiry.⁷ In case it is proved that the arrested person was begging then that person is detained in a "Certified Institution". These certified institutions have absolute power of search and seizure over detainees.⁸ This act has always been controversial as it empowers the authorities to take fingerprints of detainees.⁹ Another controversial area of this act is its higher punishment. On the commission of the "first" offence, the magistrate can commit individuals to a detention facility for up to three years, and on the commission of the second "offense," for up to ten years.¹⁰ The arbitrary nature of the Magistrates is demonstrated by B.B. Pande's account of his experience at the Beggar's Courts at Kingsway Camp, New Delhi. The existence of blisters and cracks indicated that the person in question survived by hard work and not beggary; the magistrate's sentencing presumed the guilt of those who did not have blisters or cracks on their hands or feet.¹¹ Pande also details the reality supported by the Act, such as police extortion schemes to prevent the arrest of hawkers and street sellers, the anti-beggar attitudes of the judges in the "Beggar" Courts, and the dearth of legal aid for the poor.¹² Despite all the concerns about the anti-begging laws, little attention is paid to this; perhaps because the

⁴<https://www.hindustantimes.com/editorials/the-supreme-court-is-right-on-begging-101627471711972.html>-accessed on June 9, 2023.

⁵ Kalpana Kannabiran and Ranbir Singh, eds, *Challenging the Rule(s) of Law: Colonialism, Criminology and Human Rights in India* (Sage Publications, OUP 2008) p 20.

⁶ s 2(1) of Bombay Prevention of Begging Act 1959.

⁷ s 5 of the Bombay Prevention of Begging Act 1959.

⁸ s 18 of Bombay Prevention of Begging Act 1959.

⁹ s 29 of Bombay Prevention of Begging Act 1959.

¹⁰ s 6 Comments of Bombay Prevention of Begging Act 1959.

¹¹ B.B. Pande, *Criminality of the Marginalized Sections or the Lumpen-Proletariat Criminality*, in C. Raj Kumar and K. Chockalingam, eds, *Human Rights, Justice and Constitutional Empowerment* 408-9 (Oxford 2007).

¹² Ibid 11.

legislation deals with people with no resources, those who are not capable of generating credible threats of instability to society.¹³ Similar, laws have been passed by various other states like Bhopal, Bihar, Hyderabad, Bengal, and a few others.

THE CONSTITUTIONAL ANALYSIS OF ANTI-BEGGING LAWS

The Bombay Prevention of Begging Act, 1959 is the primary focus of study because it serves as the only derivative of the state-specific beggary laws. The anti-begging laws will be constitutionally examined in light of Articles 19 (1)(a)(g) and 21 of the Indian Constitution.

The honourable Supreme Court has extensively construed Article 21, holding that the right to life implies the right to live with human dignity, which entails being free from exploitative circumstances.¹⁴ In another case, Supreme Court determined that the right to life also includes the right to livelihood.¹⁵ Article 23 (1) of the Indian Constitution when read in conjunction with articles 39(e) and (f), which outline the Directive Principles of State Policy requires the government to safeguard citizens from exploitation.¹⁶ The provisions of the Bombay Prevention of Beggary Act 1959 stand in juxtaposition with Article 21 and the directive principle. Doing arrests without any warrant, taking fingerprints, and having absolute power to the superintendent of the certified institution for search and seizure are the parameters of exploitation that violate Article 21 of the Indian Constitution. Further anti-begging laws also violate the right to privacy of beggars since it takes the fingerprints of beggars.

Article 19(1)(a) is the “Mother of all liberties”¹⁷ and this is considered the “Lifeline of any democratic institution”¹⁸. When someone begs, they communicate their plight through words or acts, which entails some form of expression that comes under Article 19 (1)(a).

The constitutionality of anti-begging laws was analysed in the United States. Anti-begging laws were upheld to be constitutionally valid in *Young v. New York City Transit Authority*¹⁹. This decision was overturned in *Loper v. New York Police City*²⁰. In this case, it was held that

¹³ Upendra Baxi, ‘Crisis of Indian Legal System’ [1983] Economic and Political Weekly 1388.

¹⁴ *Bandhua Mukti Morcha v. Union of India*, AIR [1984] SC 802.

¹⁵ *Olga Tellis vs Bombay Municipal Corporation*, AIR [1986] SC 180.

¹⁶ Narendra Kumar, *Constitutional Law of India*, (Allahabad Law Agency, OUP 2015) 407.

¹⁷ Suman Pathak and Aakanksha Derashree, ‘Internet Censorship in India: Boom or bane’ [2018] NULJ 71.

¹⁸ *Kameshwar Prasad v. State of Bihar*, A.I.R. [1962] SC 1166

¹⁹ 903 F2d 146 (2d Cir. 1990) (supporting the validity of a law outlawing panhandling and begging in public transportation).

²⁰ 32 999 F2d 699 (2d Cir. 1993) (beggars had the same constitutionally protected speech rights as charitable solicitations on the streets and in parks of New York City).

begging is an expression of the plight that comes under free speech and thus, it is constitutionally protected. It was further said that criminalizing begging is no way to solve the root cause of the problem.

THE INTENT AND RATIONALE

Those who favour anti-begging legislation claim that their goal is to safeguard the weak and impoverished from exploitation. They contend that such regulations can control the cycle of poverty by prohibiting forced begging. Critics counter that criminalizing begging stigmatizes individuals who are already marginalized rather than addressing the underlying reasons for poverty. They claim that these rules frequently lead to human rights breaches, as innocent people are punished for their predicament rather than being given real assistance.

Rising above all the debates, the genuine measure of any society's development is found in its capacity to advance the weak and protect their fundamental rights. We may assess these laws from a humanitarian perspective and the degree to which they address the fundamental problems that the poor experience by looking at how these laws affect the lives of beggars and the success of rehabilitation initiatives.

RECENT DEVELOPMENT

The Nagpur Police on March 8, 2023, issued an order forbidding beggars from gathering at places like traffic junctions, foot traffic islands, and dividers in the city amid the rising complaints of motorists and pedestrians.²¹ As per the notification, the violator of the issued order will be held liable under section 188 Indian Penal Code as per which the maximum punishment is six months or a fine, or both. This order is seen as if beggary is criminalized.

The Bombay Prevention of Begging Act of 1959 was expanded to Delhi in 1960. In *Ram Lakhan v. State of Delhi*,²² certain provisions of this act were declared unconstitutional and begging in Delhi was decriminalized as it infringes fundamental rights. The court held that the definition of begging under this act was arbitrary. If people are begging, it is because the government is unable to meet their basic needs. The court asserted that the state cannot move from its responsibility to repercussion. In *Abhipraay Welfare Society v. Govt. of the State of*

²¹<https://timesofindia.indiatimes.com/city/nagpur/nagpur-police-chief-issues-order-against-begging/articleshow/98498997.cms?from=mdr> accessed on 9 June 2023.

²² [2007] 137 DLT 173.

*Andhra Pradesh*²³ the court also asserts that a welfare state has a responsibility to prevent citizens from "indulging" in begging and requires the state to construct additional beggar homes to further this goal.

A WAY FORWARD

As per 2011 data, 'the number of beggars and vagrants in India is 4,13,670'²⁴ and 'the number of child beggars is 45,296'²⁵. In such a scenario, it becomes extremely important to solve the issues related to beggary. Laws that focus on skill development, education, medical facilities, insurance, counseling, and rehabilitation of beggars should be more emphasized. Such steps are already taken by the government of India. For instance- certain bills like the Beggars (Empowerment Skill Development and Rehabilitation) Bill of 2014, The Beggars (Protection, Care, and Rehabilitation) Model Bill of 2016 were introduced. But the promises of these bills are not yet implemented. Special laws for protecting the dignity of women, person with disabilities, and children should be made. If the beggars are children, then free education, uniform, and books should be provided to make them self-reliant and at par with other children. In case the beggar is a woman vocational training can be provided to make her economically independent. The begging needs to be monitored from time to time for better implementation of schemes.

A duty on citizens needs to be created as per which the citizens should be advised not to give alms instead education or employment should be provided. In case the citizens want to donate money, then it can be donated to NGOs that are known to the poor and needy. Another way to minimize the rate of beggary is that the state should try to minimize the price of basic necessities of human life like health, education, rent of houses, etc. The cheap price will ensure that people do not fall into the trap of begging. Awareness regarding the right should be made so that people can demand their rights from the state instead of begging. The above advice is not for that beggary who causes social problems such as drug abuse, trafficking, and organized crime.

²³ AIR 2001 AP 273.

²⁴ Ministry for Social Justice and Empowerment, Lok Sabha, *Survey on beggars*, 2011.

²⁵ Ministry for Social Justice and Empowerment, Lok Sabha, *Child Begging*, 2011.

CONCLUSION

India's anti-begging laws stand at the crossroads of social justice, poverty eradication, and human rights. These inherent complexities (complexity is because all the states have their laws and there is no uniform law) and ambiguities (Ambiguities because the definition of begging varies leading to confusion and inconsistency) in these laws call for a critical analysis of how they affect society as a whole. Although it is admirable to want to lessen the suffering of the poor, it is crucial to establish a balance between humanitarian principles and workable solutions. As we seek holistic solutions that address poverty, inequality, and human dignity concurrently, we may contribute to a more nuanced conversation by creating a broader knowledge of the anti-begging legislation in India.

