



CARCERAL WELFARE AND THE CRIMINALISATION OF POVERTY: A CONSTITUTIONAL ANALYSIS OF BEGGARY LAWS IN INDIA

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ABSTRACT

*Beggary laws in India are a disturbing convergence of criminal law, morality, and socio-economic regulation. While being presented as rehabilitative welfare legislation, laws such as the Bombay Prevention of Begging Act, 1959,¹ criminalise visible poverty and provide for the detention of persons whose primary “crime” is economic marginalisation. This paper contends that beggary laws are a manifestation of carceral welfare, wherein the State seeks to remedy structural inequality through punitive incarceration instead of rights-based redistribution. By undertaking a constitutional critique of Articles 14, 19, and 21,² and a detailed reading of *Harsh Mander v. Union of India*,³ this paper seeks to establish that beggary laws are unconstitutional in that they violate the transformative potential of the Constitution. By equating poverty with deviance, beggary laws are destructive of dignity, equality, and substantive justice. The paper concludes by suggesting a move towards decriminalisation and rights-based social regulation.*

Keywords: Bombay Prevention of Begging Act, 1959, Marginalisation, Article 14, Article 19, Article 21.

INTRODUCTION

In a constitutional democracy that upholds justice — social, economic, and political — the existence of beggary laws poses an important question: can poverty be made a crime? In several Indian states, the Bombay Prevention of Begging Act, 1959, has been used to authorise the arrest and detention of persons found “begging” in public places.⁴ These laws empower the

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¹ *Bombay Prevention of Begging Act 1959*, ss 2(1), 5

² *Constitution of India*, arts 14, 19, 21

³ *Harsh Mander v Union of India* 2018 SCC OnLine Del 10498

⁴ *Bombay Prevention of Begging Act 1959*, ss 2(1), 5

police to remove such persons from public sight and detain them in certified institutions, also known as “beggar homes,” for an indefinite period.

Although these laws are framed as welfare measures, their practical application betrays a punitive approach to beggary. Instead of addressing the root causes of inequality, unemployment, disability, and homelessness, the State offloads the responsibility of addressing these issues onto the affected persons by making them criminally liable for their socio-economic vulnerability.

This article contends that beggary laws embody a governance model that can be best characterised as carceral welfare — a contradictory approach to welfare that involves delivering welfare through coercion and confinement. Beggar laws not only do not remove poverty but also violate the provisions of Articles 14, 19, and 21 of the Indian Constitution.

HISTORICAL ORIGINS: POVERTY AS DEVIANCE

Regulation of beggary in India has a colonial past. British vagrancy legislation considered roaming, unemployment, and public destitution as threats to order. The aim was not rehabilitation but control. The post-independence legislation continued this approach, simply substituting the colonial nomenclature with reformist language.⁵

The Bombay Prevention of Begging Act, 1959, as enacted in different versions in different states, defines begging widely to include soliciting alms in public places or lacking any visible means of survival. The police can arrest without a warrant, and courts can order detention in certified institutions for terms up to several years.

The continuity between colonial vagrancy legislation and contemporary beggary legislation indicates that the moral concern about visible poverty continues.⁶ Rather than acknowledging poverty as a structural injustice, the law again sees it as deviance that needs to be disciplined.

⁵ Usha Ramanathan, ‘Law, Poverty and Vagrancy: Legal Histories and Contemporary Challenges in India’ (2015) 50 *Economic & Political Weekly* 33

⁶ Sunil S Amrith, ‘Governing the Urban Poor: Political Practices and Vagrancy Regulation in Colonial India’ (2018) 77 *Journal of Asian Studies* 343

CRIMINALISATION OF POVERTY AND STRUCTURAL INEQUALITY

Poverty is seldom a choice. It is a consequence of systemic failures: unemployment, caste-based discrimination, disability, migration, the absence of social security, and displacement in urban areas. However, the beggary laws individualise this structural fact.⁷

Through the criminalisation of seeking alms, the State redefines economic vulnerability as misconduct.⁸ This reversal of responsibility locates it in behaviour rather than in governance. It also conceals the absence of adequate shelter homes, employment guarantees, and disability support structures.

Criminal law has traditionally dealt with behaviour that causes harm to others. However, begging is not necessarily a harmful behaviour. The discomfort it causes is sometimes aesthetic/moral, not legal. Therefore, the criminalisation of begging seems to be based on majoritarian morality, the need to keep poverty out of sight, out of mind.⁹

CONSTITUTIONAL ANALYSIS

Article 14: Equality Before Law: Article 14¹⁰ deals with the prohibition of arbitrary classification. The Beggary Acts establish a classification according to economic status, which aims at persons lacking visible means of support.

This classification does not satisfy the double requirement of reasonable classification, namely, intelligible differentia and rational nexus.¹¹ Poverty cannot be equated with criminal propensity, nor does penal detention logically lead to the eradication of poverty. Rather, it cements marginalisation. Moreover, enforcement of this classification is selective, particularly against migrant workers, persons with disabilities, and urban homeless populations.

⁷ Veena Das, *Life and Words: Violence and the Descent into the Ordinary* (University of California Press 2007)

⁸ Loïc Wacquant, *Punishing the Poor: The Neoliberal Government of Social Insecurity* (Duke University Press 2009)

⁹ Harsh Mander, 'The Case Against Criminalizing Begging' (2016) 39 *Loyola of Los Angeles International and Comparative Law Review* 245

¹⁰ *Constitution of India*, art 14

¹¹ *State of West Bengal v Anwar Ali Sarkar* AIR 1952 SC 75

Article 19: Freedom of Movement and Expression: Article 19(1)(d)¹² enshrines the right to freedom of movement, and Article 19(1)(a) enshrines the right to freedom of expression. Begging can be considered a form of expressive conduct – a communication of need.

Banning begging is a restriction on freedom of movement in public spaces and a ban on communicative acts. It must be reasonable under Article 19(2) to (6). But very broad and general definitions of begging go beyond reasonableness.

In addition, where begging is the only means of survival, banning it amounts to denying a livelihood, which raises similar issues to the right to livelihood, as has been adjudged in other cases.¹³

Article 21: Right to Life and Dignity: Article 21¹⁴ shields life and personal liberty, except as provided for in a procedure established by law. This has been judicially expanded to cover dignity, autonomy, and the right to life with minimal human conditions.¹⁵

In *Harsh Mander vs Union of India*, the Delhi High Court declared unconstitutional the laws criminalising begging. The Court held that criminalising begging is equivalent to punishing people for their poverty and that it violates the dignity guaranteed under Article 21. The Court held that the State cannot criminalise the act of survival.

This case represented a transition towards the recognition of constitutional morality over social morality. It was held that poverty visible to the naked eye cannot be a ground for the deprivation of liberty.

PREVENTIVE DETENTION AND CARCERAL WELFARE

The beggary laws provide for detention in institutions termed as reformatory. But there are reports that these institutions are actually detention facilities with little supervision, limited mobility, and poor rehabilitation facilities.

The lack of effective procedural safeguards also raises similar concerns to preventive detention. People can be detained for long periods without committing any crime in the conventional sense. Welfare becomes coercion. The idea of carceral welfare summarises

¹² *Constitution of India*, art 19(1)(a), (d)

¹³ *Olga Tellis v Bombay Municipal Corporation* (1985) 3 SCC 545

¹⁴ *Constitution of India*, art 21

¹⁵ *Maneka Gandhi v Union of India* (1978) 1 SCC 248

this contradiction. Instead of securing social welfare, housing, and jobs, the State uses detention as a substitute for policy change.¹⁶

RECENT DEVELOPMENTS AND CONTINUING CHALLENGES

Despite the progressive judgment in *Harsh Mander vs. Union of India*, the existence of beggary legislation remains in various Indian states. The judgment declared the provisions of the Bombay Prevention of Begging Act, as applied to Delhi, unconstitutional, but the existence of such laws in other states continues unabated. This is a case of uneven constitutional protection, where the basic rights of people vary according to location, rather than ideology.

The manner of enforcement also makes it difficult to address the issue. In most major cities, detention drives are organised before major events or infrastructure development projects, as a measure to ensure public order or enhance the appearance of the city.¹⁷ These drives demonstrate that the rationale of enforcement is not based on rehabilitation but on the management of visibility. Poverty is conceptualised not as a problem to be addressed, but as a nuisance to be removed from the public domain.

Institutional factors are also a concern. “Beggar homes” and recognised institutions are often a custodial setting with little monitoring. Reports from civil society groups show a lack of proper healthcare, limited mobility, and no vocational training. When rehabilitation is involuntary, the line between welfare and detention becomes blurred. Persons who have committed no ordinary crime can be held for long periods of time, raising questions of proportionality and procedural justice.

Another area that remains a concern is the lack of data. There is no national registry that tracks arrests, detention periods, and rehabilitation rates under beggary laws. Without empirical analysis, lawmakers and judges have no way of assessing whether such laws have any useful purpose. The lack of transparency in enforcement also makes institutional practices unaccountable.¹⁸

¹⁶ Bernard E Harcourt, *Illusion of Order: The False Promise of Broken Windows Policing* (Harvard University Press 2001)

¹⁷ Alexander B Smith and others, ‘Arrested Development: Police Enforcement and Homelessness’ (2017) 41 *Social Problems* 157

¹⁸ National Human Rights Commission, *Advisory on Rights of Homeless Persons* (2010)

Lastly, a profound social attitude also contributes to the continued existence of such laws. Visible poverty is often viewed with a moralised perspective, linking begging to laziness or criminal intent. This majoritarian morality is at odds with constitutional morality, which values dignity, equality, and social justice. Until societal attitudes change, legislative change may meet with resistance not based on law but on prejudice.

POLICY RECOMMENDATIONS

Legislative Repeal: Legislatures should nullify provisions that criminalise begging in general. Public order bylaws, if required, should be proportionate and cannot equate economic vulnerability with criminal activity. Decriminalisation is the beginning of a process of harmonisation with constitutional mandates.

Transition to Rights-Oriented Welfare Regimes: Rehabilitation through detention should be replaced by community-based voluntary support services. These must cover access to shelters, food security programs, health services, and skill development programs. Welfare measures should be based on autonomy and consent, not coercion.

Enhancing Social Security Mechanisms: Begging is often a consequence of the lack of economic alternatives. Policy change should focus on enhancing disability pensions, urban employment schemes, and housing first approaches for homelessness. By addressing structural deprivation, the need to beg for survival is reduced without penalising the poor.¹⁹

Judicial Enforcement of Proportionality and Dignity: Courts should enforce proportionality in reviewing laws that impact marginalised sections. Any limitation on liberty must be necessary, proportionate, and least restrictive. Dignity must continue to play a central role in constitutional adjudication on poverty and vulnerability.

CONCLUSION

The Beggary laws reveal the existence of a deep contradiction between the constitutional aspirations and the practices of criminal law in India. The criminalisation of poverty, through these laws, affects equality, dignity, and liberty. The constitutional structure holds out a promise of change, and not control, over social injustice.

¹⁹ Julie Schwan and Robert Roach, 'Homelessness, Structural Inequality and Public Policy' (2019) 7 *Social Justice Research* 211

The judicial recognition in *Harsh Mander v. Union of India* that poverty cannot be criminalised is a significant move towards harmonisation of the law with constitutional morality. However, for effective change, judicial strike-downs are not sufficient; legislative and policy changes are also required.

In a just society, the remedy for poverty is not imprisonment but inclusion; the cure for begging is not detention but dignity. Decriminalisation of begging, therefore, is not only a matter of law reform but a constitutional mandate.