



Decriminalising Beggary

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This article is based on **“A blow against punitive constitutionalism”** which was published in The Hindu on 23/11/2019. It talks about issues of criminalisation the beggary.

Recently, in a landmark verdict, the Jammu and Kashmir High Court struck down the J&K law on Beggary.

Beggary laws in India is a **relic of the old colonial legacy**. For example, according to the Criminal Tribes Act (1871), indigenous peoples were deemed criminals by birth and herded into concentration camps, where families were separated and forced labour was the norm.

These criminal tribes are now called denotified tribes (after independence), which forms a major section of people engaged in beggary.

Beggary Laws In India

- There is **no central Act on beggary**, however, many States and Union Territories have used certain sections of the **Bombay Prevention of Beggary Act, 1959**, as the basis for their own laws.

Bombay Prevention of Beggary Act, 1959 criminalises the beggary.

- Through these legislations, the governments try to maintain public order, addresses forced begging or **“begging rackets”**, prevent annoyance to tourists.

Note:

In India, begging was first criminalised in the 1920s, as part of a colonial logic that sought to subjugate certain communities by imputing criminality to them.

Issues in Beggary

Definition of Beggary

The Act defines beggary as an activity of **having no visible means of subsistence**, and **wandering about** or **remaining in any public place** in such condition or manner, as makes it likely that the **person doing so exists by soliciting or receiving alms**.

However, the provisions of legislation aim to effectively “cleanse” these spaces of individuals who appear poor or destitute.

Unjust Process

- People found “begging” can be **arrested without a warrant**, and after a summary procedure, thrown into “**Beggars Homes**” for anything between a year and three years.
- Also, many of these beggars homes are **poorly regulated** without superintendents, probation officers or doctors.

Violation of Fundamental Rights

- Begging and homelessness are **indicators of chronic poverty**.
 - Therefore, criminalising poverty **violates basic human dignity**.
 - This coupled with the draconian processes under the Act, violated the right to life and personal liberty under **Article 21 of the Constitution**.
- Begging is a **peaceful method** by which a person sought to communicate their situation to another, and solicit their assistance.

Thus, criminalising begging is **violative of Article 19(1)(a)-freedom of speech guarantee**.
- **Criminalising “wandering about”** in public spaces (the places that were meant for the enjoyment of every member of the public without exception), **it is violative of Article 19(1)(d)-freedom of movement**.
 - Apart from this, there existed a large number of communities such as the Gujjars and the Bakarwals, whose very nature of existence moves from place to place, and displaying none of the conventional means of subsistence.
 - This would bring them within the ambit of the beggary law.

Failure of Welfare state

- Beggary is a manifestation of the fact that the person has fallen through the socially created net.
- The government has the mandate to provide social security for everyone, to ensure that all citizens have basic facilities, and the presence of beggars is evidence that the state has not managed to provide these to all its citizens.

Case of Punitive Constitutionalism

- Punitive constitutionalism seeks to submerge individual rights to a grand yet often undefined national project by holding that an individual may be stripped of their rights if they do not do their bit to contribute to this project.
- Criminalising begging is explicitly premised upon the “invisiblising” a social problem by criminalising it (as though poverty is a matter of individual fault).

Recent cases of **Punitive Constitutionalism**

- Laws barring political participation to those who have more than two children (thus submerging the right to participate in the imperatives of population control).
- Similarly barring those people from election who lack formal education.
- This effectively makes freedom and equality conditional upon the state’s vision of what a “good citizen” should be like.

Way Forward

- The Centre made an attempt at repealing the Act through the **Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016**, with provisions including doing away with the Beggary Act and proposing rehabilitation centres for the destitute in each district.
Persons in Destitution Bill, 2016, needs to see the light of the day.
- Bihar government’s **Mukhyamantri Bhikshavriti Nivaran Yojana** is a scheme worth emulation.
 - The scheme, instead of detaining persons under the Act, open homes were set up and community outreach for destitute persons was put in place.
 - Now, rehabilitation centres have been set up, with facilities for treatment, family reintegration and vocational training.
- The very real problem of organised begging rackets will have to be addressed by other means, perhaps **based on the law of trafficking**.

Drishti Mains Question

Criminalising Beggary is against constitutional values and human dignity.

Comment.