



ANALYSIS OF THE CONSTITUTIONAL PROVISION AND OTHER LAWS FOR PROTECTION AND SAFEGUARDS TO THE BEGGAR

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ABSTRACT

The present paper makes a modest attempt to analyze the provisions of the Constitutional framework of Legal Rights Beggars in India. It is fact a humble attempt to scrutinize the provision from the angle of social, economic and political justice which as Beggars in India. The paper has outlined the provision of Constitutional Rights and, other acts related to the Beggars in India. The present paper makes efforts to bring into the notice that state are really fulfill the Constitutional commitment for availing the safeguard and welfare measure to the Beggars in India. For this purpose, the secondary data from books, articles, journal, newspaper etc. have been used.

Keywords: Beggars, Constitutional Rights, central Acts, state Acts, Indian penal code.

INTRODUCTION

It is very important to understand the approach adopted by the Country towards the problem of Beggary. In order to assess the same it is important to analyze the laws on the problem of beggary.

The constitutional provisions are prohibiting beggary and also the Central legislations and the State Legislations dealing with beggary. This article also looks in the Bills dealing beggary and pending before the Houses of Parliament. India is a place of diversities with cultural, linguistic diversity and mixture of variety of people and groups and classes from extreme poor to extreme rich classes of society. Hence concept of beggary is not new and unknown to India. In our country, we find beggars everywhere especially in religious places, at traffic

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signals, tourist spots and similar public places. The problem of begging has attracted attention for a long time. Its extensive character and ramification has further hindered development. Beggary causes demoralization and it further brings discredit to the country”¹.

Beggary is in existence in India since time immemorial and is an age old problem. Existence of beggary can be traced in Indian mythology as well as in religious texture. Beggary is a problem with its deep roots in India. Further religious faith has stimulated begging in India, believing that it is one way to please the Almighty which further stimulate the beggars to occupy footpaths and steps leading in religious places whether it is mosque or temple, particularly during festive occasions”². Hence a kind of religious sanctity is attached to alms giving and many people are by nature reluctant to reject beggar.

Constitutional Provisions on Beggar:

Constitution of India is Law of the Land and the Supreme law of our country. The Constitution of organizes India to be a social welfare State, hence the state has to render social services to the people and promote their general welfare. Beggars under the Constitution of India is not directly given any protection, nonetheless Beggar by virtue of being human and being citizen has certain inalienable rights and the same will be discussed in the foregoing discussion. The Constitutional provisions directly dealing with Beggar or begging are discussed below.

Article 23 of the Constitution of India prohibit Traffic in Human being. Article 23 prohibits traffic in human being, beggar, and other forms of forced labour. Any contravention of the aforementioned provision is punishable in accordance with law. Hence Article 23 forbids three unsocial practices out of which one is begar. This Article gives protection to individual against state and private individual. As effect of this Article a person cannot be forced to be begar. However the use of the word begar under Article 23 is limited and begar is interpreted to means compulsory work without any payment or labour”³ or service which a person is forced to give without receiving any remuneration for it”⁴. Under the Constitution of India entry 9, List II i.e. the State List of the Seventh Schedule of the Constitution of India which provide for “Relief of the disable and unemployable” is relatable to Beggary and hence it is within the eradication of beggary is within the state jurisdiction.

Directive Principles of State Policy

The Directive Principles of State Policy strengthen the concept of Welfare state. These Principles are not enforceable but are fundamental in governance of the state. Following is the Directive Principles which direct state take up measures for rehabilitation or care of Beggars being weaker section of the society. Article 38 direct state to secure social order for



promotion of welfare of people. Further Article 39 direct state to ensure for its citizens adequate means of livelihood. If a law is made providing means of livelihood, then a person begging for survival will be having employment which will take care of this problem. The state is also directed to provide public assistance in case of unemployment, old age, sickness and disablement and in other cases of underserved wants⁵⁵. State is also under responsibility to raise the level of nutrition and standard of living and to improve public health⁵⁶. All the aforesaid Directive principles of state policy calls for state measures for welfare of people, providing adequate means of livelihood, providing public assistance to certain sections in society. Such state measures can be used for creating rehabilitation homes for the Beggars and providing beggars with assistance in certain cases where person is forced by circumstances such as unemployment, disablement and old age, to survive on alms.

Central Legislation

Under Indian Penal Code section 363A deals with “Kidnapping or maiming a minor for purpose of Begging”. This provision of law was inserted by the Act LII of 1959. The Statement of Object and Reason stated that: To put down effectively the evil of kidnapping of children for exploiting them for begging, the provisions existing in the Indian Penal Code are not quite adequate. There is also no special provision for deterrent punishment for the greater evil of maiming of children so as to make them objects of pity. Hence the need was felt to come up with a provision specially dealing with kidnapping and maiming of minor for the purpose of employing them for begging. This provision provide for stringent punishment for kidnapping or maiming of a minor for purpose of begging⁵⁷. When a minor is found in custody of a person other than lawful guardian, who uses him for begging, presumption of kidnapping for purpose of begging is drawn⁵⁸. Section 363A(4) (a) further defines “begging” as “(i) soliciting or receiving alms in a public place, whether under the pretense of singing, dancing fortune-telling, performing tricks or selling articles or otherwise; (ii) entering on any private premise for the purpose of soliciting or receiving alms; (iii) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease, whether of himself or of any other person or an animal; (iv) using a minor as exhibit for purpose of soliciting or receiving alms” Further minor is denied as person below 16 years of age in case of a male and person below age of 18 years in case of a female⁵⁹.

The Children Act, 1960

The Children Act, 1960 aim at providing care, maintenance, protection, welfare, training, rehabilitation and education for neglected and delinquent children for trial of delinquent children in Union Territories. The Act gives four circumstances where a child means neglected Child. Out of the four circumstances given in the definition two directly covers the Children involved in begging. The definition of Neglected Child include child found begging



or who is without any home or stable residence or any ostensible means of subsistence or is found destitute, whether orphan or not.

The Children Act describe begging as soliciting and receiving of alms by singing, dancing, fortune-telling, performing tricks and selling articles or by other way in public place or private place or exhibiting any sore, wound, injury, etc to obtain alms and allowing exhibition of oneself to obtain alms¹⁰. Further this Act makes employment of child in begging and also abetment of the same a cognizable offence punishable with imprisonment which may extend to one year or with fine or both¹¹.

This Act tries to deal with problem of Child Beggary by providing measures for their welfare and further goes to criminalizing employment of child as beggar. This Act and provision making use of child as beggar complementary to Section 363A of IPC. However this Act goes forward and deals with general welfare of child found begging i.e. neglected child.

Indian Railways Act, 1898

The Railways Act No. 24 of 1898 which is a central legislation applicable to the entire territory of India prohibits beggary in railway carriage and upon a railway station. Section 144 of the Railway Act, 1898 expressly prohibits begging in railway carriage and upon railway station. Hence any person found begging in any railway carriage or upon a railway station are liable for imprisonment for a term which may extend to 1 year, or with fine which may extend to Rs. 2000/- or with both¹². Under this Act such person found begging in railway carriage or any part of railway or railway station may be removed by the railway servant authorized to do so. Further such railway servant who is so authorized may take help of any other person to remove such beggar¹³. The Railway Protection Forces are authorized to remove and arrest such beggars. The aforesaid provisions under the Railways Act, 1898 is in order to remove and punish the miscreants from causing inconvenience to the passengers. There have been various instances where the beggars have been arrested and in many cases removed from the railway premises. In reply to the RTI filed by RTI activist Mr. Mansoor Darvesh it was revealed by the Central Railways 7 persons were arrested for begging over period of 5 years. From the given number of people arrested for begging in railway it is quite evident that there is need for proper implementation of the law. So also Mr. mansoorDarvesh claimed that many times these beggars are overlooked by the Railway Authorities¹⁴. In the year 2014 as much as 70 lakh was collected in form of fine from the beggars and hawkers in the Mumbai local trains¹⁵.

Proposed Central Anti- beggary laws



The need for uniform law dealing with beggary has always been felt in our country since it is not a problem which is based on specific circumstances in particular area which led to its inception. Following are some of the Bill's presented in Parliament Houses dealing with beggary with its prominent provisions. In the year 2014, Mr. Chandrakant Raghunath Patil, M.P., presented The Abolition of Begging Bill, 2014¹⁶ in the Lok Sabha and the Bill is still pending in Lok Sabha. The Bill provide for Abolition of begging and made forcing a person in begging an offence punishable with not less than 5 years imprisonment. Thus this bill comes heavily on begging syndicates. There is provision for rescue home for rehabilitation of beggars at district level. With similar provisions The Abolition of Begging Bill, 2014 came to be presented by Mr. SharadTripathi on 11th of July 2014 which is pending before LokSabha.

Similarly there is The Beggars (Empowerment, Skill Development & Rehabilitation) Bill, 2014 pending before Rajya Sabha which aims at providing adequate facility to beggars to earn their livelihood and tries to put positive responsibility on the State to protect the rights of the destitute and beggars, granted under the constitution like right to life, right to equality and right against exploitation. This Bill on one hand makes abetment to begging a cognizable and non-bailable offence and on the other hand makes provision for receiving vocational shelter, separate shelter for children and for children with disability which will provide for lodging, food, education, skill development, basic physical fitness and training. Further shelter for children to provide house, lodging, food, medical facility, free and compulsory education, physical and sports facilities, etc. Likewise The Prevention of Begging and Rehabilitation of Beggars Bill, 2015, presented by Kirit Premjibhai Solonkar in year 2015 is pending before Lok Sabha. This bill like all aforesaid Bills abolish begging and aim at rehabilitation of the Beggars by providing facilities of rehabilitation, welfare fund, etc.

State Legislations.

Currently the Legislation working on controlling Beggary in India are in form of various state legislation and there is no central legislation covering entire India. Under the Constitution of India, the subject matter of beggary is relatable to entry 9 of the State List of the Seventh Schedule and entry 15 of concurrent list of the Seventh schedule. Hence, by virtue of these entries of the State List and concurrent list of the Seventh Schedule of the Constitution of India, the implementation of the programmes pertaining to the eradication of beggary is within the authority of the State Government. Hence it is responsibility of the State to take preventive and rehabilitative measures in this respect.

In accordance to the legislative competency, legislature of Andhra Pradesh, Assam, Bihar, Goa, Bombay, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Madras, Madhya Pradesh, Chhattisgarh, Jharkhand, Kerala Punjab, Sikkim, Uttar Pradesh West Bengal



and union territories of Delhi and Daman and Diu have enforced anti-beggary Acts in their respective areas¹⁷. Currently in India, there are 22 state and union territory having their Anti-Beggary legislation either enacted or adopted from other State¹⁸.

Critical Evaluation of the State Legislations on Beggary in India with judgments.

Each State approach offense of Beggary and the offenders in different way yet all states criminalize begging. All the Acts enacted by the aforesaid States provide for prevention of begging through detention in certified institution, training and employment of beggars and also by means of custody, trial and punishment of beggars. All the Municipal Act prohibiting Beggary unanimously and declares Begging to be cognizable offence. So also there are special police squads operating in areas where the anti-beggary legislation is in force. The Police Authority is given power to round up the beggars and to be produced before the court. The court after considering the report by the probation officer with respect to the age, character, circumstances and conditions in which the accused was living, his health, etc, if found guilty may pass an order under the provisions of the anti-beggary act. Such person who is found guilty is sent to an institution for treatment, care and training for a period of not less than one year, but not more than three years. Till the year 1977, there were around seventy-six institutions for beggars in the total inmates population of 8, 951 approximately¹⁹. It is important to note the definition of Beggary under the state laws. They are wide enough to cover even a destitute person surviving on alms is made a criminal. There is no difference between a person who opts to beg out of wish and who is left with no option to survive. The definition of begging under the state laws is very wide. It makes helpless person surviving on alms, poor or homeless person a criminal. Even a person shabbily dressed like a shoe polisher and mechanics are often wrongfully arrested. Even the public performance of arts and skills for financial benefits is brought within the scope of Beggar.

However certain categories of persons are excused by these anti beggary laws like the religious mendicants permitted by the Central Relief Committee to solicit alms, religious and customary collection of alms for performing religious obligation, students collecting alms for pursuance of his studies and Central Relief Committee permitted contribution collection. These exemptions creates vagueness and ambiguity in the basis on which classification is made. If beggary is crime then soliciting alms should be held as a wrong irrespective of the reason or permission to do so.

On the other hand there is no distinction between beggars and others like the street performers, small vendor, mendicants, pavement dwellers and migrant who might solicit alms. A boy was arrested who was a shoe polisher was arrested and held liable as a Beggar²⁰. Though the State Anti-Beggary laws makes provision of Rehabilitation centers or receiving centers, these centers are most of the time are not maintained properly and reported

to be in unhygienic conditions. There are media reports revealing pathetic conditions of one of the centres in Bangalore, where 286 inmates died due to unhygienic conditions and food poisoning, while several flee. There are severe violations, medical negligence and inhuman attitude of the staff towards the Beggars in Rehabilitation centres.

The Delhi High Court has observed that such practice in causing “further ignominy and deprivation” which leads to “dehumanization” of Beggars²¹. Hence to attain the object behind forming the rehabilitation centres good quality assistance should be provided to the beggars in such centres. Apart from the afore said provisions beggary is not directly dealt under any other provisions, however there are various judicial opinions and academic discussion suggesting various articles to cover rights of Beggar.

Suggestions and conclusion

The Goa, Daman and Diu Prevention of Begging Act, 1972 was enacted to prevent begging, however it has not been adequate to prevent it, which calls for reform and change in the existing approach and law to prevent begging. Some of the suggestion in order to effectively prevent begging are as follows:-

1. The law needs to reform its approach towards beggars. Though the law tries to have a kind and humanitarian and reformative approach towards beggars, however the approach fails when a beggar is exposed to criminal procedure. Hence it is suggested that Beggars should not be exposed to Criminal procedure and shouldn't be denominated as offender.
2. The summary trial conducted by the respective court is to decide whether a person is a beggar or not. This summary inquiry is insufficient to find out root cause of begging and hence there is failure to remedy the same. Hence there is need to have a Special Court to deal with matter booked under The Goa, Daman and Diu Prevention of Begging Act, 1972. The trial undertaken should investigate to find out the reason due to which the undertrial person resorted to begging. For this reason there is need to provide the beggar with a counsellor and free legal aid to defend him. So also the presiding officer should not only be a person with legal knowledge and qualification but must also possess special experience of dealing with beggars and their laws.
3. Once a person is found begging for the first time, the power should be given to the court to release such beggar on admonitions and fine. However in case a person is convicted as beggar second or subsequent times, he should be compulsorily sent to rehabilitation home. The rehabilitation home should be the Certified Institution under the Act of 1972.



4. The rehabilitation homes maintained for a beggar should provide basic facilities as well as some special facilities such as free education, training in vocation, training of some basic skill, etc compulsorily, in order to enable them to get employment.
5. The person on being detained in the rehabilitation home should be trained for initial 6 months period and thereafter he should be employment while serving detention. Such detenu should be picked from the rehabilitation home and dropped to the place of employment. While providing the pick and drop facility at least two constables should accompany them. After serving the term of detention at the time of release the detenu should be provided with the wages and experience certificate for the term of employment. On being release the detenu should be allowed to continue his employment until he gets suitable employment.
6. There is need for establishment of destitute home in Goa. There is need to provide a homeless person with free shelter, food and clothing. Even after providing the same free of cost if the person refuse to accept stay in destitute home without valid cause and is found begging than he should be forwarded for trial to the special court for beggars for penalty. However it should be ensured that such destitute home provide basic facilities such as proper health facilities, medical facilities and welfare facilities. There should be monthly surprise visits to the destitute home to ensure that there is no violation of the human rights in destitute home.
7. The NGO's should play an active role is connecting with the beggars and bringing the beggars in the destitute home. Police Authorities should be direction to entertain a destitute or beggar when he approach them for help. On being so approached such destitute should be sent to certified destitute home where he should be provided with counselor.
8. There is need for Anti- beggary Squads in Goa in order to raid the places where beggars are found. On taking in custody any beggar he should be immediately send to the rehabilitation homes.



ENDNOTE

1. 3rd Five Year plan, Chapter 35, Government Of India, Planning Commission, Yojana Bhavan, New Delhi.
2. Dr. Jabir Hasan Khan, Dr. Menka, Shamsad,” Beggars in rural areas: A socio-economic analysis”IOSR Journal of Humanities And Social Science (IOSR –JHSS) (Feb. 14, 2016, Volume 14) at. 122 , available at http://www.iosrjournals.org/iosr-jhss/papers/Vol14_issue6/N0146122129.pdf?id=6927 (on 12/09/2017), visited on September , 12, 2017, 6:13:11 PM.
3. See M.P. Jain, Indian Constitutional Law, Wadhwa, Nagpur, 4th Ed. 2003, reprinted 2004) at. 1189-1197
4. People’s Union of Democratic Rights v. Union of India AIR 1982 SC 1473
5. Article 41, the Constitution of India
6. Article 47, the Constitution of India
7. Ratanlal & Dhirajlal’s, “*Law of Crimes*”,(Bharat Law House, New Delhi 2nd Ed. 1988), at. 1361-1362.
8. Section 363A, Indian Penal Code, 1860
9. Section 363A(4)(b), Indian Penal Code, 1860
10. Section 2 (b), The Childrens Act, 1960
11. Section 42, The Childrens Act, 1960
12. Section 144(2), The Railways Act, 1898
13. Section 144(3), The Railways Act, 1898
14. <http://www.dnaindia.com/india/report-railways-fine-train-qawwals-and-beggars-collect-rs-13-lakh-2260761>, visited on , Monday ,November,1,2016,11:30:02 AM.
15. <http://www.ndtv.com/mumbai-news/beggars-shell-out-rs-70-lakh-in-fines-on-mumbais-local-trains-in-2014-731749>,visited on ,Wednesday, November,05,2016, 07:11:11Pm.
16. Bill No. 175 of 2014
17. S. K. Bhattacharyya, “*Beggars and the law*”, The Indian Law Institute,(1977, Vol. 19)
18. K. Jaishankar & Natti Ronel, *Global criminology, Crime & Victimization in a Globalized Era*(CRC Press Taylor & Francis Group, London New York,2013) at.222
19. S. K. Bhattacharyya, “*Beggars and the law*”, The Indian Law Institute,(1977, Vol. 19)
20. Manjula S. v. State of Maharashtra W. P. (Civil) No. 1639
21. Ram Lakhan v. State 37 (2007) DLT 173/MANU/DE 9811/2006



REFERENCE

REFERENCE OF BOOKS.

- G.S., P. (2007). *Constitutional Law of India (As amended up to Ninety-Third Amendment)*. Jaipur: M/s University Book House (p) Ltd. 79 Chaura Rasta.
- J.C., J. (1995). *The Constitution of India: A Polotoca-Legal Study*. New Delhi: Sterling Publisher Private Limited.
- J.N., P. (2004). *Constitutional Law of India*. Allahabad: Central Law Agency, 30-D/1, Motilal Nehru Road.
- J.N., P. (2007). *Constitutional Law of India*. Allahabad: Central Law Agency, 30-D/1, Motilal Nehru Road.
- Kumar, M., Tyagrajan, K. R., & Sharma, M. R. (2011). *Indian Constitution*. New Delhi: Anmol Puublications Pvt. Ltd.
- N.K., B., & Panigrahi, N. (2006). *Tribal's and the Indian Constitution*. Jaipur: Prem Rawat for Rawat Publications.
- P., S. M. (2008). *V.N. Shukla's Constitution of India*. Lucknow: Eastern Book Company.
- P.M., B. (2010). *The Constitution of India*. New Delhi: Universal Law Publishing Co. Pvt. Ltd. C-FF-1A, Dilkhush Industrial Estate.
- P.M., B. (2010). *The Constitution of India*. Haryana: LexisNexis (A Division of Reed Elsevier India (Pvt.) Ltd. 14th Floor, Bulding No.10, Tower B, DLF Cyber City, Phase II.
- P.M., B. (1999). *The Constitution of India: With Comments & Subject Index*. New Delhi: Universal Law Publishing Co.Pvt.Ltd., C-FF-1A, Dilkhush Industrial Estate.

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- Riya jain. ((2015), July Sunday). Articles 21 of the Constitution of India-Right to Life and Personal Liberty. published online AcademikeLawctopus Law journal, www.academike.com , p. 03.