



## ANTI-BEGGING LAWS IN INDIA : AN AFFIRMATIVE ASSAY\*

### INTRODUCTION

Panhandling is a result of poverty, which is a grave problem that plethora of humans are facing in this world. No one wants to live a miserable life, having no means for proper food, clothes & shelter. Due to in availability of basic needs people indulge in the pity & inhumane practice of begging leading a life equivalent to that of scavengers.

But the question that comes to everyone mind is who is a beggar? & what is begging? The answer to these questions is inextricably intertwined.<sup>1</sup>

De jure, beggar are defined as —A person who communicates with people, often in public places asking for money food or other necessities for personal use, often as a habitual means of making a living.<sup>2</sup>

So these are those, who are dependent upon other persons for their living because of their inability to earn money for themselves, which may be because of some mental or physical in capabilities or lacking proper skill or education to do some work.

Depending upon the age, gender & way of begging, beggars are classified into the types<sup>3</sup> such as, Child Beggars, Women Beggars, Religious Beggars, Physically Handicapped Beggars, Insane Beggars, Diseased beggars, Causal Beggars, Professional Hereditary Beggars etc.

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<sup>1</sup>Ram Lakhan v. State, 137(2007)DLT 173, available at <http://www.indiankanoon.org/doc/434096/>

<sup>2</sup>Blacks Law Dictionary, 9th edition, ISBN- 978-0-314-19949-2, p. 203

<sup>3</sup>RubinaIqbal, *BEGGING: A GROWING MENACE IN INDIA*, ISSN: 2278-62366, *International Journal Of Advanced Research In Management & Social Sciences*.

A Country like India which is considered as the most populous nation in the world has also tremendous amount of poor people which constitutes about 20.6% share of world's poorest population in 20134.

Due to such huge population of poor people, the rate of panhandlers in India is also huge, which has become a serious problem for the nation.

So, should the begging Prevention Act be repealed, when such situations exists in the society is matter for scrutiny.

### **A CONSTITUTIONALLY PROTECTED SPEECH?**

The preamble of the BPB Act (hereinafter referred to as the 'Act') says the following;

*“For the purpose of making uniform and better provisions for the prevention of begging in the State of Bombay; for the detention, training and employment of beggars and their dependents in certain institutions; for the custody, trial and punishment of beggar offenders”<sup>4</sup>*

A prima facie reading of the above mentioned, clearly indicates that what the State seeks to achieve is the upliftment of beggars to a better standard of living.

Under Section 2 (ii)<sup>5</sup> *“Certified Institution” means any institution which the [Chief Commissioner] provides and maintains for the detention, training and employment of beggars and their dependents.*

These institutions aim at providing a vocation for not only the beggars, but also to their dependents.

The way by which a person can fall within the sphere of 'beggar' under this act is, if he is :

- Soliciting or receiving alms in a public place, whether or not under any pretence of singing, dancing, fortune telling, performing or offering any article for sale
- entering on any private premises for the purpose of soliciting or receiving alms
- exposing or exhibiting wounds , injuries or deformities to 'extort' alms, or allowing oneself to be used an exhibit
- having no visible means of subsistence and, wandering about or

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<sup>4</sup> Preamble to the Bombay prevention of begging act, 1959

<sup>5</sup> Bombay prevention of begging act

\_\_ remaining in a public place in such condition or manner, as makes it likely that the person doing so exists by soliciting or receiving alms.

The general contention is that, beggars are entitled to the fundamental right of, “Freedom of Speech and Expression under 19(1)(a) ”

The fact that the legislature is enabled to impose restrictions upon the Freedom of Speech and Expression, on the ground of Public Order cannot be ignored.

‘Public order’<sup>6</sup> in Article 19(2) provides scope for the legislature to penalize activities that have a “tendency to cause and not actually causing public disorder”

In the case of *Gopal Gangaram Nepali Vs. Commissioner of Police and ors*<sup>7</sup>

*“Public order is the even tempo of life of the community taking the country as a whole or even a specified locality. It is the length, magnitude and intensity of the terror wave unleashed by a particular eruption of disorder that helps identify it as an act affecting ‘public’ order”*

In the case of *Smt. Victoria Fernandes*<sup>8</sup>,

*“It is to be considered in each case whether the activity affects adversely the public order or law and order.”*

It has been rightly held in the case of *Smt. Victoria*, that a question is to be asked, i.e.,

*Does it lead to disturbance of the current life of the community so as to amount to a disturbance of public order or does it affect merely an individual leaving the tranquility of the society undisturbed?*

In a recent Judgment in *Mutakmiya Jabbarmiya Shaikh v. M. M. Mehta*<sup>9</sup>, speaking for the Court, Faizan Uddin, J., pointed out as follows :

*“..... in order to bring the activities of a person within the expression of ‘acting in any manner prejudicial to the maintenance of public order’ the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at*

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<sup>6</sup> Public Order is general ideas of normal social behavior and moral values. Public order crimes are considered as harmful to the public good and disruptive to a community's daily life. For example, prostitution, paraphilia, pornography, alcohol and drug offenses are public order crimes.

<sup>7</sup> (1996) 3 GLR 823

<sup>8</sup> 1992 CriLJ 702

<sup>9</sup> (1995) 3 SCC 237

*large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of 'law and order' or it amounts to 'publicorder'. If the activity falls within the category of disturbance of 'publicorder' then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality.'*

*The impact of the activities upon the even tempo of life of the society will determine whether the disturbance caused by such activity amounts only to the breach of 'law and order' or it amounts to disturbance of 'publicorder'”*

Begging affects the even tempo of life of the society. The beggars are the fruitful source of disease spreading and they also spread reprehensible ills. The beggars represent a section of society which was rotten and is putrefying. This requires drastic and immediate tackling; otherwise beggars would contaminate the whole of society.

Begging is the conduct whereby a person appeals to others for the material help by words or gestures. Beggars adopt several modes for appealing for alms. While some sing to attract attention; some others exhibit wounds, real or fake yet some focus on their disabilities.

The beggars of today have adopted beggary as a profession. In most of the cases it is found that beggars are professionals who otherwise could have earned a decent living.<sup>10</sup>

It is in such a situation that the need for anti-beggary laws arises.

## **ANTI- BEGGING LEGISLATION**

Section 2 of the Act defines 'Begging' as follows;

(i) "*Begging*" means-

(a) *Soliciting or receiving alms, in a public place whether or not under any pretence such as singing, dancing, fortune telling, performing or offering any article for sale;*

(b) *entering on any private premises for the purpose of soliciting or receiving alms;*

(c) *exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound injury, deformity of diseases whether of a human being or animal;*

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<sup>10</sup> Delhi's anti-beggary drive faces practical problem, <http://www.wikipedia.org.com>,

*(d) 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 exist soliciting or receiving alms;*

The phenomenon of beggary assumes various forms;

### Child Beggary

A large number of children fend for their survival alone or in informal groups of two or three.

These children can be seen making appeals for private charity in various ways in the railway stations, religious centers and picnic spots. Such children are usually drawn from families where the parents are too poor to care for their children. Some child beggars adopt the way of life of their parents. Such children often become part of organized gangs of beggars and are often the victims of the beggary evil. While many beggars kidnap children and mutilate them in order to use them as their pawns in beggary. The especially vulnerable position of the child beggar has been appreciated by the society. That is why a child beggar is handled differently as a neglected child in terms of the children Act<sup>11</sup>. The Act recognizes the existence of aforementioned situation and has got relevant provisions to accommodate the same.

Section 5(6) says *“In passing any order under the provisions of this Act, the court shall have regard to the following considerations, that is to say:-*

- (i) the age and character of the beggar,*
- (ii) the circumstances and conditions in which the beggar was living,*
- (iii) reports made by the Probation Officer Section”*

5(9) of the act says, *“Notwithstanding anything in this section, when the person found to be a beggar is a child who is under the age of five years the court shall not make any order under sub-section (5)<sup>12</sup> but forward the child to a court constituted under the Children Act for being dealt with under that Act. For the purpose of ascertaining the age of the person the court may, if necessary, cause the beggar to be examined by a medical officer.”*

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<sup>11</sup> “Children Act” means the law relating to neglected and delinquent children and providing for their care, protection and other matters

<sup>12</sup> The court shall order the person found to be a beggar under the last preceding sub-section to be detained in a Certified Institution for a period of not less than one year, but not more than three years: Provided that, if the court is satisfied from the circumstances of the case that the person found to be a beggar as aforesaid is not likely to beg again, it may after due admonition release the beggar on a bond for the beggar’s abstaining from begging and being of good behavior, being executed with or without sureties as the court may require by the beggar or any other person whom the court considers suitable.

## The Physically Handicapped Beggars

Physical disabilities like blindness, deafness or dumbness, limb or bodily deformities and other kinds of physical disorganization excludes large section from normal work and employment. Such a disabled population is often compelled to struggle for their survival through private charity. The class of physically handicapped are the most successful in arousing sympathy and compassion in the heart of alms givers. That is why physically handicapped and bodily deformed are in great demand for organized beggary.

The Act safeguards the protection of these handicapped and also prevent them from being exploited for the purpose of begging. Further, it also curtail exploitative earnings from the society in form of charity using such a handicap. Therefore, the Act serves, the twin objective of securing both social interest and protection of handicapped.

Section 2(i)(c) bring within the definition of begging;

*“exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound injury, deformity of diseases whether of a human being or animal;”*

Section 10 of the Act reads as follows;

*When any person who is detained in a Certified Institution under section 5, section 6 or section 9 is considered, whether on an application by him to the Chief Commissioner or otherwise by the Chief Commissioner to be blind, a cripple or otherwise incurably helpless, the Chief Commissioner may order that he shall after the expiry of the period of detention be further detained indefinitely in a Certified Institution.<sup>13</sup>*

Section 2 and 10 read together brings to light that the Act recognizes the exposure of physical handicap as a mode of receiving alms and subsequently one is admitted to the certified Institution. Once admitted they can be kept in the Certified Institution<sup>14</sup> indefinitely or rather when they learn some vocation that can provide them with consistent earning and they are free from the clutches of begging and also any exploitation.

## The Diseased Beggars

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<sup>13</sup> Provided; The Chief Commissioner may release any such inmate to any person whom the Chief Commissioner considers suitable executes a bond with or without sureties as the Chief Commissioner may require, making himself responsible for the housing and maintenance of such inmate and for preventing him from begging or being used for the purpose of begging.

<sup>14</sup> Certified Institution” means any institution which the Chief Commissione provides and maintains for the detention, training and employment of beggars and their dependents

A large section of population suffers from chronic illness such as tuberculosis, leprosy, venereal diseases , skin diseases , heart condition etc. such chronic illness, means serious impairment of physical capacity and the resolve to work. Such diseased and sick, need prolonged medical treatment and proper nourishment; that is why they are often compelled to resort to private charity. These are the persons who cannot earn their livelihood because they are too ill to work. They spread such diseases not only among themselves, but are a great danger to the society at large and infect the innocent passers- by , by their contact.

In the case of *Kerala Leprosy Patients Organization Committee Vs. State of Kerala and Ors.*<sup>15</sup>

The court observed that *“the inmates in the rehabilitation centers are being treated in a fair manner. The inmates are being given cot, pillow and mat, and two pairs of new clothes in addition to the old ones that are received in the rehabilitation centers as donations. Good medical care is also being provided to the inmates of rehabilitation centers. Every day, the Assistant Health Officer and Junior Public Nurse are visiting sick inmates and necessary medicines are supplied to them. The Assistant Medical Officer of the Corporation of Kochi is put in charge of this item of work. Lepers and mental patients are provided with separate rooms. To keep the rooms clean and tidy, sanitary workers are provided separately for female and male inmates. Educational facilities are also provided to the inmates of the rehabilitation centers. 117 inmates (boys and girls) have been enrolled as students in the S.D.P.Y. High School and they are attending classes in different standards. Six children each are given training in weaving and tailoring. In order to manage the affairs of the centers, adequate staff are also provided.”*

The impugned order prohibiting begging which was challenged on the ground of *‘interfering with the ‘fundamental right of begging’* and that the order *‘violates their right under Article 19(1)(a) of the Constitution of India and imposes unreasonable restriction’*, was held valid on the ground that, *“when nuisance is created, it is the responsibility of the State to arrest such criminal action. That is what is done in this case. The beggars and lepers represented by the petitioner are being looked after fairly in the rehabilitation centers and their right to life or right to personal liberty within the limits of law has not been infringed at all”*

The rights protected by article 9 of the ICCPR<sup>16</sup> are:

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<sup>15</sup> AIR1992Ker344

<sup>16</sup>International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966

- to security
- to be informed of the reason for arrest and any charges
- to be brought promptly before a court and tried within a reasonable period, or to be released from detention.

Section 4<sup>17</sup> of the Begging prevention Act says; *“The powers conferred on courts by the Act shall be exercised only by the High Court, a Court of Sessions, a Magistrate of first class, a court constituted under the Children Act, or any other, court exercising criminal jurisdiction in the area, and may be exercised by such courts whether the case comes before them originally or on appeal or revision”.*

- to challenge the lawfulness of detention.

Article 9 also provides that persons should not generally be detained in custody pending trial. Release may be made subject to certain guarantees.

Section 5<sup>18</sup> throws light on the aforesaid requirement

*“(4) If on making the inquiry referred to in sub-section (1)<sup>19</sup>, the court is satisfied that such person was found begging, it shall record a finding that the person is a beggar.*

*(5) The court shall order the person found to be a beggar under the last preceding sub-section to be detained in a Certified Institution for a period of not less than one year, but not more than three years:”*

*“Provided that, if the court is satisfied from the circumstances of the case that the person found to be a beggar as aforesaid is not likely to beg again, it may after due admonition release the beggar on a bond for the beggar’s abstaining from begging and being of good behavior, being executed with or without sureties as the court may require by the beggar or any other person whom the court considers suitable.”*

## The Exploiter Beggar

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<sup>17</sup>Power of courts.

<sup>18</sup>Summary inquiry in respect of persons found begging and their detention

<sup>19</sup>Where a person who is brought before the court under the last proceeding section is not proved to have previously been detained in a Certified Institution under the provisions of this Act, the court shall make a summary inquiry, in the prescribed manner, as regards the allegation that he was found begging



There are some beggars who practice organized beggary. They take begging as any other business and trade activity and perform begging operations with a set organizational structure .the leader who masterminds the operations within a set organizational structure. He stays in the background and leaves the actual job of begging , collecting the daily proceeds and the supervision of the other members to his trusted men. Such organized beggars kidnap and deploy children for doing the actual begging work and merely provide them with some food and shelter in return. These groups are also responsible for maiming and disfiguring children for their permanent membership in the organization.

It is for this purpose that in Section 11<sup>20</sup> the following is mentioned;

*“Whoever employs or causes, any person to solicit or receive alms, or whoever having the custody, charge or care of a child, connives at or encourages the employment or the causing a child to solicit or receive alms or whoever uses another person as an exhibit, shall be punished with imprisonment for a term which may extend to three years but which shall not be less than one year.”*

A presumed mode of begging means the employment of humble ways of collecting alms, and that a beggar always appeals apologetically to the public sentiments, but there are other ways by which a beggar makes his way through and forces the people to give something or the other.

A beggar may force a man by turning himself as a nuisance to him by holding or touching the feet, by coming nearer the people, by showing such wounds or actions of abnormality physical or mental so that one may like to avoid his or her sight.

One can avoid such person only by giving some money to him. Some particular types of beggars, known as murchias would bleed before one who does not pay. Similarly, some sadhus, e.g.nagas, would threaten a hunger strike if they are not properly provided for.

Apart from the various techniques used by the beggars, they employ various tricks and trickeries in order to make their appeal more effective. Some beggars excite the people by exhibiting some strange natural phenomenon- a cow with four tounge or birth of a queer boy. Jugglers and snake charmers may show new feats. Some become palmists and show strange charts to attract the passers-by.

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<sup>20</sup>Penalty for employing or causing persons to beg or using them for purposes of begging.

The most sinister of the tricks is that when the child is deformed at the time of birth or in early childhood to be used as instrument for beggary. The crippled children are used as means to an end. A beggar leader may have under his control several beggar children and others whom he provides with the necessary food, clothes and shelter. All the earnings earned by these beggars go to his pocket. The greater the contribution of an individual beggar the greater the amenities provided by the gang leader.

In Madras city where a survey of beggars was carried out in November 1953 it was found that *the method used for begging, were ordinary, exhibiting wounds, exhibiting new-born babies, singing religious songs, exhibiting pregnancy or exhibiting dead bodies.*<sup>21</sup>

The rights inherent in Articles 21 and 22(1) of the Constitution require to be recognized and scrupulously protected. For effective enforcement of these, the following requirements:

1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.
2. The Police Officer shall inform the arrested person when he is brought to the police station of this right.
3. An entry shall be required to be made in the Diary as to who was informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly. It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with.

All these have been complied well within the Act.

## CONCLUSION

Beggary affects every individual in the society. They are an inconvenience to the smooth flow of traffic. Pull up a car at a traffic signal and they are bound to appear. They march in into restaurants, parks, cinema houses, bus stops, railway stations, local transports , mosques , hospitals , universities and where not.

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<sup>21</sup> Social legislation, its role in welfare (1955), 247

Shabby women carrying underfed children, old , sick, forsaken men and children (mostly under the age of 10) are commonly seen begging. They bother one when within the premises of ones house.

Nowadays, begging is another name for cheating. Beggars implore people to buy them medicines because their son/husband is ill. They usually succeed and when the giver is out of sight, they go back to the medical store to return medicines and claim cash.

To beg by harassing is perchance the worst form of begging. Begging is also a successful disguise, for burglars to clad themselves as beggars and are on the lookout for a locked house or a lonely child. Once kidnapped, the child is maimed and forced to beg. The biggest effect of such an act of beggary is that , the future of the child is ruined by this profession . achils who is 7 or 8 years old and his father is also a beggar, then the child also lives his whole life being a beggar.

The professional beggars have also become an inspiration for all the poor in the society, to just become a poor and earn easy money without hardworking

