



## Undoing A Legacy of Injustice

(This editorial appears today in The Hindu, August 13, 2018, and provides a good backgrounder and way-forward on the issue of decriminalization of beggary)

In, *Harsh Mander v. Union of India* and *Karnika Sawhney v. Union of India*, the Delhi High Court strikes down the Begging Act saying that ‘certain sections of the Bombay Prevention of Beggary Act, 1959, as extended to Delhi’ is unconstitutional.

The Indian Constitution is evolving. Earlier citizens of the country tended to be treated as ‘subjects’ (a colonial hangover), whereas now, citizens are being treated as ‘rights-bearing’ individuals. There have been other similar laws, like the Criminal Tribes Act (1871), passed by the British that were racist in nature as such laws tended to segregate and mark as ‘criminal’ entire groups and communities based on their birth, occupation and nature.

The Begging Act, though passed in independent India, was not completely free from colonial-type prejudices. This law was passed in the erstwhile State of Bombay and was gradually adopted by many states like Delhi in form and matter. This law not only criminalizes begging but also criminalizes the dependents (i.e. family) of a beggar. The ‘offence of begging’ could send a beggar to 3 years in prison for first offence and up to 10 years for subsequent offenses. This Act gives the power to police to arrest without a warrant and gives magistrates the power to commit beggars to a ‘certified institution’ which is typically a detention center. The act also authorizes the separation of children older than 5 years from their beggar parents.

Begging had been defined in the Act thus: *“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”* and *“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”*. Thus, this Act went beyond begging and targeted groups and communities whose life-style did not match the ‘mainstream stereotypes of the sedentary, law-abiding citizen with a settled job’. This goes against the grain of equality enshrined in the Constitution. This has racist undertones that openly discriminate against the poor and destitute and ‘whose presence is perceived to be a bother and a nuisance’.

Even in countries of the western, developed world, there had been a general disgust for the poor. There were poorhouses in Europe, in the 19<sup>th</sup> century that tried to segregate the poor from the others. These poorhouses were ‘based on a philosophy of first criminalizing poverty, and then making it invisible by physically removing “offenders” from public spaces’. A similar phenomenon was manifested when in the time of the 2010 Commonwealth Games, the Delhi government took beggars off the streets - in an attempt to save the country from embarrassment in front of visiting athletes and spectators. In fact, similar exercises are carried out regularly during the preparation of national events such as Independence Day and Republic Day.

To conclude, the Honourable Court has rightly said that ‘it was the state’s responsibility to provide the basic necessities for survival — food, clothing, shelter — to all its citizens’ and that ‘poverty was the result of the state’s inability — or unwillingness — to discharge these obligations’. It also added that ‘the state

could not turn around and criminalize the most visible and public manifestation of its own failures — and indeed, penalize people who were doing nothing more than communicating the reality of their situation to the public'. This dismantling of a vicious and enduring legacy of colonialism need to be followed by other courts of the country - the IPC needs to be cleaned of any and all such laws that 'subjectifies' Indian citizens.

## Way Forward

- Understand that poverty is a systemic and structural problem that will not go away with the simple repeal of an Act.
- Therefore, in order to reform society, to remove poverty, the Legislature must swing into action and replace these punitive measures with programs for rehabilitation and integration for the most vulnerable and marginalized members of the society.
- We should also cherish and support the transformative character of the Constitution, which is at the forefront undoing legacies of injustice and securing for all individuals and communities the right to equality.

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