

“Why is the Karnataka Prohibition of Beggary Act 1975 unconstitutional?”

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On a close look at the Karnataka prohibition of beggary Act 1975, it is seen that the legislation criminalizes those who solicit or receive alms in public places. However, this criminalization is fallacious to the very core of our constitution. The Act contradicts the country's position as a welfare state. The reasons for its unconstitutional nature are as follows:

1) Violates the principles of governance under DPSPs-

Most of the citizens who are found begging are forced to do so as a means of sustenance^[1]. Under article 41^[2] the constitution guarantees the right to work. Although article 37^[3] states that this right is not enforceable, it also states that these principles are essential instruments of policy making and governance by the government. Hence, the presence of beggars portrays the failure of the government. To top things off, the government has criminalized this stratum of society by enacting this legislation instead of bringing about welfare schemes to uplift them.

2) Violative of Article 19 of the Constitution-

In *Jolly Jose Varghese v. Bank of Cochin* it was held that soliciting a verbal request comes under the right to freedom of speech and expression. A beggar as defined by the act is a person who solicits alms verbally. As stated earlier, article 19(1)(a) of the constitution guarantees the freedom of speech and expression to all citizens. Would begging, therefore not come under this right? If this were the case, then even advertisements of products which are mere invitations to offer would come under the act of begging.

3) Violative of Article 21 of the Constitution-

Right to life under article 21 extends to right to live with dignity and necessities of life required for it.^[4] Prohibition of begging under the Act deprives the person who is begging to obtain these necessities to sustain his/her life. The act provides for arbitrarily detaining people for a period extending to 3 years in relief centres if found begging. By the definition of begging under the act, street performers are also deprived of earning their livelihood. This

¹ *Harsh Mander and another v. Union of India and Ors.*

² The state shall within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

³ The provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in governance of the country and it shall be the duty of the state to apply these principles in making laws.

⁴ *Gopalanachari v. State of Kerala.*

is in direct Contravention with Article 23(1) of the Universal Declaration of Human Rights which explicitly recognises the right to work.

4) Arbitrary imposition of fines

The section 11(4) of the Act^[5] provides that the magistrate may impose a fine by furnishing a bond for a sum of rupees one thousand in case the magistrate before whom a person is produced, under section 11(1), is satisfied that such person has committed the offence of begging but undertakes not to commit such offence. As stated earlier, the people who beg do so because they have no other means of sustenance. How will these citizens, who have no other means of sustenance, pay off their debt?

5) Criminalizes one section of the society

This act more than working on the social issue of begging, aims at criminalising the community to which such individuals belong. Here the community that is being targeted are the under privileged. By doing so, the act criminalises poverty which is extremely contradictory because the existence of poverty is because of the lack of action by the state.

6) The definition of Begging leads to arbitrary application of the law

The learned Supreme Court judge in *Ram Lankhan vs State* stated four reasons as why an individual would resort to begging:-

- 1) Firstly, it may be that he is down-right lazy and doesn't want to work.
- 2) Secondly, he may be an alcoholic or a drug-addict in the hunt for financing his next drink or dose.
- 3) Thirdly, he may be at the exploitative mercy of a ring leader of a beggary "gang".
- 4) fourthly, there is also the probability that he may be starving, homeless and helpless

The act does not differentiate between these four kinds of beggars. The arbitrary definition^[6] provided by the Act does not have enough scope for the police to take action on beggary.

⁵ The magistrate before whom a person is produced under sub-section (3) shall hold an enquiry and if satisfied that such a person has committed the offence of begging but undertakes not to commit such an offence, shall release him on his furnishing a bond [for a sum of rupees one thousand].

⁶ “ Beggar means any person other than a child who,- (a) solicits or receives alms in a public place whether or not under any pretence such as singing, dancing, fortune telling, performing tricks, or selling articles; (b) enters any private premises for the purpose of soliciting or receiving alms; (c) exposes or exhibits with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease whether of a human being or of an animal; (d) having no visible means of subsistence, wanders about or remains in any public place in such condition or manner as makes it likely that he exists by soliciting or receiving alms;(e) allows himself to be used as an exhibit for the purpose of soliciting or receiving alms:

Provided that a person shall not be deemed to be a beggar if he,- (i) is a religious mendicant licensed by the Central Relief Committee to solicit alms in the prescribed manner ; (ii) in the performance of any religious vow or obligation as sanctioned by custom or religion collects alms in a private or public place, without being a nuisance; or (iii)is permitted in writing by the Central Relief Committee to collect contributions in cash or kind

More often than not, the police detain people who may be street performers or those who work in the informal labour sector. This leads to arbitrary application of the law.

CONCLUSIONS

Dire need to amend/peal this act to prevent the criminalization of beggars and others who are arbitrarily classified as beggars such as street performers. Begging cannot be made a crime to reduce the number of beggars. Begging exists because of poverty. Thus, Criminalising begging is as good as criminalising poverty.

from the public for any public institution, whether religious or secular or for the furtherance of any object for the good of the public; or (iv) is a student collecting alms for the prosecution of his studies”
