

A Critique of the Persons in Destitution Model Bill, 2016



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A Critique of the Persons in Destitution Model Bill, 2016

Introduction

According to the 2011 State-wise Census, the total population of beggars and vagrants in India was approximately 4.13 lakhs.¹ In the absence of any Central legislation, the enactment and implementation of laws pertaining to beggary is within the purview of the State governments. At present, twenty states and two union territories have laws in place which criminalise ‘begging,’ defined so ambiguously that it affords enough scope for the authorities to detain any person who merely ‘looks’ poor.

Under the current beggary laws, any person found ‘begging’ can be arrested without a warrant by either a police officer or anyone authorised in this behalf. A ‘summary enquiry’ is then held in any court exercising criminal jurisdiction in respective area. The arrested person can either be released – after admonition – on a bond, or be detained in a ‘Certified Institution’ – also called beggar home – for a period ranging between one year and three years. If a person is convicted for ‘begging’ for the subsequent time, the detention period can be extended to ten years.

Beggar homes are custodial centres which are supposed to provide training, employment and medical facilities to the inmates; but the inhuman treatment meted out to the inmates inside these homes has continued to draw strong condemnation from both civil society activists and statutory bodies. It was only in January 2017 that the Delhi Commission for Women noted cases of ‘serious human rights violations’ – including alleged sexual assault – against women foreign nationals, who were detained as beggars after their visas had expired. The DCW had also cited cases of racial discrimination, provision of unhygienic food, filthy toilets, and lack of medical treatment to pregnant women.²

Two things are sufficiently clear. First, the present approach of the legal system towards beggary is not rehabilitative but punitive, i.e., rather than rehabilitating the destitute person engaged in begging, such laws legitimise detention and punishment as tools to prevent the proliferation of beggars, thereby equating poverty with illegality. Second, under the current laws, to ‘beg’ and to ‘look like a beggar’ are not any different from each other. Hence, what is criminalised is not only the *act* of begging, but also the very *presence* of a person who might beg – a reason why the beggary laws operate on what Usha Ramanathan (2008: 33) calls the “presumption of potential criminality.”³

These questions need to be kept in mind while reading the Persons in Destitution (Protection, Care and Rehabilitation) Model Bill, 2016,⁴ which was introduced last year by the Ministry of Social Justice and Empowerment. According to the Minister of Social Justice and Empowerment, the Bill seeks to address the problem of ‘destitution’ through rehabilitative – rather than punitive – measures, which include protection,

¹ See Press Information Bureau’s release, ‘M/O SJ&E organizes Pre-Legislative Consultation meeting on ‘Persons in Destitution Model Bill- 2016.’ Retrieved from <http://pib.nic.in/newsite/PrintRelease.aspx?relid=151786> on August 20, 2017.

² Express News Service. (2017, January 6). DCW notice to FRRO: Condition of foreigners in Beggars’ Home ‘horrific’. *The Indian Express*. Retrieved from <http://indianexpress.com/article/cities/delhi/dcw-notice-to-frro-condition-of-foreigners-in-beggars-home-horrific-4461148/> on 8th September, 2017.

³ Ramanathan, U. (2008). Ostensible Poverty, Beggary and the Law. *Economic and Political Weekly*, 43(44), 33-44.

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care, support, shelter, training, etc. for the destitute population.⁴ It has been in the consultation phase for over a year and largely invisible in popular discourse.

Although packaged as a progressive legislation, a close reading of the proposed Bill raises a number of questions, which, if left unaddressed, will defeat the very purpose of introducing such legislation in the first place. The present article would first highlight the key issues residing with the Bill, and would then provide some recommendations needed to ensure that the legal approach towards destitution moves beyond the status-quo.

Issues of Definition

The purpose of the Bill is to rehabilitate ‘persons in destitution,’ which, under Section 2(1), include “homeless persons, persons in begging, persons with physical and mental disabilities, the old, infirm and other such persons who are above 18 years of age and in a state of poverty or abandonment arising from economic or social deprivation and sustained unemployment.” It is important to note that not only does the Bill continue to include the term ‘begging’ in ‘persons in destitution,’ but that the definition of ‘begging’ has been taken verbatim from the Bombay Prevention of Begging Act, 1950 (BPBA) – a law which has more or less served as a model for the beggary laws in other states. It defines ‘begging’ as:

- 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;
- (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 exists by soliciting or receiving alms;
- (e) Allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms but does not include soliciting or receiving money or food or given for a purpose authorized by any law.

This ambiguity in terms of defining who exactly a beggar is poses a number of problems. First, clause (a) of the definition subsumes a number of identities which vary across social and occupational borders. For many nomadic communities, travelling from place to place and performing on the streets to earn a livelihood is what defines the centre of their everyday lives. As Meena Radhakrishna (2008: 20) writes, these communities include “singers, dancers, street performers, acrobats, fortune-tellers, and also those who earned a living by selling medicinal herbs, iron implements, goods made of bamboo or leaves like baskets, mats, brooms and so on.”⁵ The definition used in the BPBA waters down this complex web of socioeconomic identities into the homogenous category of ‘beggar.’

⁴ See footnote 1.

⁵ Radhakrishna, M. (2008). Laws of Metamorphosis: From Nomad to Offender. In Kalpana Kannabiran, and Ranbir Singh (Eds.), *Challenging the Rules(s) of Law: Colonialism, Criminology and Human Rights in India*

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Second, clauses (c), (d) and (e) – especially the emphasis of (c) on the physical appearance of beggars – have often resulted in poor migrants, daily-wage labourers, vegetable-vendors, etc., being detained by police authorities simply because they ‘looked’ like ‘wanderers’ or suffered from an ailment or injury.⁶ Media reportage around the issue has highlighted numerous cases where people detained were not even asking for alms in the first place, but fell prey to the police/anti-begging squads simply because they ‘looked’ like beggars. In a shocking report by *Midday* in 2014, it was found that almost 70-80% of inmates in Chembur’s beggar-home were not beggars; they included a cancer patient, an I.T. diploma graduate, a retired government servant, a street hawker, etc. The only offence they committed was to ‘look’ poor.⁷

Areas with ‘Special Emphasis’

Under Section 5, ‘Outreach and Mobilization Units,’ constituted by State governments at the district levels, shall conduct surveys to map areas and identify ‘persons in destitution.’ The Section lays ‘special emphasis’ on areas such as bus depots, railway stations, trains, and platforms. Since these are sites which observe a daily transit of a number of poor migrants, it is here that most incidents of non-beggars being hounded by police authorities take place. Additionally, since the criteria to identify ‘persons in destitution’ includes ‘persons in begging,’ there are high chances that cases of misidentification in these areas remain largely unaffected.

There also seems to be a contradiction in this provision. Whereas the Bill proposes that ‘persons in destitution’ found in areas such as stations, trains and platform will not be punished but rehabilitated, Section 144 of the Railways Act 1989 punishes both beggars and unlicensed vendors/hawkers with imprisonment up to one year or a fine up to 2,000 rupees, or both. In fact, as per the official data on the Indian Railways website, the number of people convicted under section 144 during the year 2013 was 150384. The fine so realised amounted to an enormous Rs. 61645748.⁸

The ‘Good Faith’ Clause

Usha Ramanathan (2008: 33) describes a ‘good faith’ clause as “the element that is routinely introduced into legislations to protect persons acting under the law from being prosecuted by a presumption of good faith.”⁹ The present Bill does the same through Section 15, which directs that “no suit, prosecution or legal proceedings shall lie against the State government or any person acting under the direction of the State government in respect of anything which is done in good faith or intended to be done in pursuance of this Act or of any rules or orders made under this Act.”

(pp. 3-27). New Delhi: Sage Publications India.

⁶ For instance, see Chamberlain, G. (2009, November 8). Delhi Sweeps Streets of Beggars as India Prepares for Commonwealth Games. *The Guardian*. Retrieved from <https://www.theguardian.com/world/2009/nov/08/delhi-commonwealth-games-beggars-police> on 20th August, 2017; and Akela. (2011, August 26). How Cops Forced Me to Live as a Beggar for a Week. *Mid Day*. Retrieved from <http://www.mid-day.com/articles/how-cops-forced-me-to-live-as-a-beggar-for-a-week/132732> on 20th August, 2017.

⁷ Menon, V. (2014, March 26). Shocking! 80% of People in Mumbai Beggars' Home are not Beggars. *Mid-Day*. Retrieved from <http://www.mid-day.com/articles/shocking-80-of-people-in-mumbai-beggars-home-are-not-beggars/15183058> on 8th September, 2017.

⁸ Retrieved from http://indianrailways.gov.in/railwayboard/uploads/directorate/security/downloads/2014/RAILWAY_Act_Upto_2013.pdf on 8th September, 2017.

⁹ See footnote 3.

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This provision assumes major significance, given the status-quo whereby the mass of the destitute population, under the present beggary laws, is prone to arbitrary harassment and arrest by state authorities. The Bill, far from providing any safeguards against state coercion, legitimises it through the ‘good faith’ clause.

The Right to Beg

In *Ram Lakhan vs State*, the Delhi High Court had questioned the idea of a complete prohibition on begging. Although not questioning the validity of the respective Act (Delhi Prevention of Begging Rules, 1960), it noted that depriving a beggar of the liberty to solicit alms by spoken words or action can run counter to Article 19(1)(a) of the Indian Constitution, which guarantees to all citizens the right to “freedom of speech and expression.” The court highlighted that “[j]ust as an advertisement of a product would be within the perimeter of this valuable fundamental right, begging, too, could fall within it.”¹⁰ It also underlined the observation made in the *People of the State of New York vs. Eric Schrader*, where the solicitation of funds by legitimate charities was compared to begging by individuals in need – “No rational distinction can be made between the message involved, whether the person standing in the corner says ‘Help me, I’m homeless’ or ‘Help the Homeless.’”¹¹

Thus, any progressive law that proposes to address the issues of destitute persons requires not only that the state rehabilitates them, but also that it allows them to exercise their right to peacefully solicit alms.

However, under Section 3 of the new Bill, ‘beggar offenders’ (people found begging even after receiving rehabilitation) shall invite police action and indefinite detention in the Rehabilitation Centre.

Ultimately, the Bill does not delink beggary from illegality. Additionally, since the definition of ‘persons in destitution’ includes ‘persons in begging,’ and ‘begging’ includes ‘offering any article for sale,’ rehabilitated people carrying out legitimate economic activities, or worse, appearing as ‘wanderers’ with possible injuries and ailments, still stand a chance of being detained by the police authorities.

This brings us to the question of consent. All rehabilitative measures by the state should be undertaken based on a consensus between itself and the destitute persons. In majority of the cases where people were misidentified as beggars, protesting innocence bore no fruit. Moreover, the existing beggary laws in India have a continuing history of harassment of destitute persons by the police outside and the authorities inside the beggar homes. It then becomes critical for any rehabilitative legislation to categorically provide for the protection of destitute persons against coercion and abuse in the process of identification and rehabilitation. Alas, through introducing the ‘good faith’ clause, the Bill walks in a completely opposite direction – providing state actors with enough scope to resort to coercive means while identifying unwilling destitute persons to send them to rehabilitation centres.

Recommendations

If the draft Bill indeed strives to build a successful rehabilitative framework for the destitute populace, the government should (i) amend Section 2(1) to remove ‘persons in begging’ from the definition of ‘persons in destitution’; (ii) remove Section 2(3) – which includes the definition of ‘begging’ from the BPBA, 1959 – in its entirety; (iii) remove part 3 – on ‘beggar offenders’ – in its entirety, to ensure that no person who resorts to

¹⁰ See 137 (2007) DLT 173. Retrieved from <https://indiankanoon.org/doc/434096/> on 20th August, 2017.

¹¹ 617 N.Y.S.2d 429 cited in *Ibid*.

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begging (even after seeking rehabilitation) is detained by the police under any circumstances;¹² (iv) include sub-sections which underline that no state authorities or other individuals, in any capacity, be entitled to forcefully take unwilling destitute persons to rehabilitation centres – that consent of the destitute persons in such cases be mandatory; (iv) and to further this goal, Section 15 should be removed in its entirety, ensuring that legal action be taken against authorities and other actors which use coercive methods in the process of identification and rehabilitation.

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¹² The provision for ‘beggar-offenders’ comes under Section 11(3) of Part 3. The remaining two Sections, 11(1) and 11(2) deal with ‘forced beggary’ and ‘child beggary’ respectively. Since both these offences can be dealt with standalone legislations and provisions in the Indian Penal Code, their inclusion in the draft Bill seems superfluous.

Headlines

GDP growth falling for 6 quarters: How India trailed after overtaking China

Prabhash K Dutta, *India Today*, September 1, 2017

By the end of 2015, India emerged as the fastest growing economy leaving China behind. But since, January-March 2016 quarter, the GDP growth has been continuously declining. Although, decline in growth rate was speculated post demonetisation, the Government maintained that the step taken will not harm the growth rate much. Economist Ajit Ranade wrote on twitter saying, “1 per cent lower annual GDP growth = loss of 1.5 lakh crore national income and and loss of millions of jobs.” He also wonders despite the Government’s conducive macroeconomic effort, the country recorded GDP growth of 5.7 per cent in the April – June quarter.

Read More: <http://indiatoday.intoday.in/story/gdp-growth-rate-economic-slowdown-narendra-modi-arun-jaitley/1/1038563.html>

Date Accessed: 01.09.2017

Economy

More jobs, FDI exports to be priority

Arun S, *The Hindu*, September 3, 2017

New Commerce and Industry Minister Suresh Prabhu has mentioned job creation and increase in FDI and India's share of global exports as his priorities. The focus will be to ensure better job opportunities and investment through the Make In India initiative to boost local manufacturing as well as increase the share of exports in the country's GDP. He will also be incharge of formulating a future-ready Industrial Policy for India by October and will represent India at the WTO meet in December where he will have to ensure broad support for India's proposal an agreement on Trade Facilitation in Services and elimination of trade barriers including movement of labourers across borders.

Read More; <http://www.thehindu.com/business/Industry/more-jobs-fdi-exports-to-be-priority/article19615869.ece>

Date Accessed: 03.09.2017

Governance & Development

URBAN

After Bhendi Bazaar Building Collapse, 16,000 Buildings in Mumbai Declared Dangerous For Living

Sujit Mahamulkar, *India Times*, September 1, 2017

Around 16,000 old buildings are in a dilapidated condition but have yet to be completely vacated by residents. People prefer to risk their lives in buildings that may fall anytime, but to move far from where they have lived and feel they may never be able to return in their lifetime. Many residents do not vacate even after receiving notices. "The process of redevelopment is too lengthy and takes years. We have seen people leave houses and not get their redeveloped houses. So it is better to stay back," a resident said. Meanwhile, minister of state for housing Ravindra Waikar has written to chief minister Devendra Fadnavis about dilapidated buildings. He demanded that tenants be given 320 sq ft houses instead of 269 sq ft.

Read More: <http://www.indiatimes.com/news/india/after-bhendi-bazaar-building-collapse-16-000-buildings-in-mumbai-declared-dangerous-for-living-328947.html>

Date Accessed: 04.09.2017

ENVIRONMENT

Government will do everything to clean Ganga at the earliest: Nitin Gadkari

Rajat Arora, *The Economic Times*, September 3, 2017

Nitin Gadkari, who was allotted the Ministry of Water Resources, River Development and Ganga Rejuvenation has highlighted that Modi's pet project of Ganga Rejuvenation will be prioritised and all the resources required will be devoted to it. He also asked for the support of the citizens and other stakeholders and not to allow "our rivers to die". Another focus will be to increase trade along waterways by making it more navigable as it is cheaper and more environment friendly.

Read More: <http://economictimes.indiatimes.com/news/politics-and-nation/government-will-do-everything-to-clean-ganga-at-earliest-nitin-gadkari/articleshow/60347983.cms>

Date Accessed: 03.09.2017

LAW AND JUSTICE

Narendra Modi needs to revamp labour laws to spur growth: Arvind Panagariya

Shruti Srivastava, *Livemint*, August 29, 2017

Prime Minister Narendra Modi's top adviser sees faster movement on reforming labour laws helping the government spur economic growth, attract investments and create more jobs. "When we do it through states the impact is only in those states where law is changed," said Panagariya, who resigned from the post and will serve his last day on 31 August. "We could also reform federal law." After Modi's landslide win in 2014, expectations that he will ease labour laws increased. However, more than halfway through his term he has shied away from making any major changes because of opposition.

Read More: <http://www.livemint.com/Politics/m8DpnzanTxMrJNLeyX91KI/Narendra-Modi-needs-to-revamp-labour-laws-to-spur-growth-Ar.html>

Date Accessed: 02.09.2017

Society

GENDER

14 BJP legislators face cases of crime against women

The Hindu, August 31, 2017

The Bharatiya Janata Party is among the recognized political parties which has the highest number of 14 MLAs and MPs who have declared cases against women, says a report of the Association for Democratic Reforms and the National Election Watch. “Out of the 1,581 MPs/MLAs analysed with declared criminal cases, 51 have declares cases related to crimes against women, “said the report.

Read More: <http://www.thehindu.com/news/national/14-bjp-legislators-face-cases-of-crime-against-women/article19595943.ece>

Date Accessed: 01.09.2017

India and World

INDIA IN THE WORLD

India deplores North Korea's nuclear test, likely to raise proliferation at BRICS

Suhasini Haider, *The Hindu*, September 3, 2017

North Korea's decision to test its thermo-nuclear device was met with criticism globally with India also expressing concern over the country's irresponsible attitude towards peace and stability in the region and rest of the world. India plans to discuss the issue of proliferation in the upcoming BRICS meet specifically in relation to Pakistan and North Korea's nuclear projects, both of which are supported by China. India had also publicly condemned North Korea's belligerent actions previously in the Indo-US joint statement during Modi's last visit to Washington. Russia and China, which have been supportive of the DPRK's regime has also voiced its disapproval over North Korea's test along with countries like Japan and USA which has registered strong complaints over the country's violation of its international commitments.

Read More: <http://www.thehindu.com/news/national/india-deplores-north-koreas-nuclear-test-likely-to-raise-proliferation-at-brics/article19615610.ece>

Date Accessed: 03.09.2017

Switzerland for early India-EFTA pact

The Hindu, September 1, 2017

Swiss President Doris Leuthard's visit to India prioritised on the early conclusion of the free trade agreement with European Free Trade Association and the setting up of an investment protection framework. The president felt that the agreement would benefit both sides especially since India's IPR laws are at par with the global rules. Data security was also one the components of the agreement which Both parties agreed have to developed further in the interest of investors.

Read more: <http://www.thehindu.com/business/Industry/switzerland-for-early-india-efta-pact/article19604210.ece>

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