

Ostensible Poverty, Beggary and the Law

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Beggary laws persist in Indian jurisprudence despite evidence of abuse and presumption of criminality among the “ostensibly poor”. A quartet of encounters with the law, in Mumbai and in Delhi, provides a context to exploring the relationship between poverty and criminality, and the extensive loss of rights that emerge as a consequence.

Beggary laws have begun to demonstrate how the law may be made, continued, expanded and practised when the constituency affected by the laws are powerless – so rendered by the illegality that the law visits on them, the prejudice that poverty provokes, the distance between privilege and poverty, and the vanishing obligations of the state.

The Bombay (Prevention of Begging) Act 1959, in particular, has led to the callous treatment of those who are “ostensibly poor” and in the denial of rights to them, thereby rendering itself unconstitutional. It is therefore necessary to repeal the law.

The crackdown on the urban poor in Delhi has been on for some time. Aspirations to create a global city, the Commonwealth Games 2010, the desire of the city’s more prosperous denizens to banish the poor and their poverty to locations in which they have no interest has each acted as provocation. In this midst is the complicity of the law and judicial dicta which foists illegality on the poor, and allows an easy presumption of potential criminality. A stunning instance of an area of law that has accumulated a baggage of crime and wrongdoing by the law enforcers is found in the law relating to ostensible poverty. In the law’s rendering, though, it is ostensible poverty, in and of itself, that could be the crime. Ostensible poverty may require no specific, or even general, act or conduct to acquire the attributes of criminality; dire poverty that is visible, and witnessed in public spaces, could attract the exercise of the authority of law. The class of persons who may be the intended subjects of a law that deals with this phenomenon of ostensible poverty have been identified as “status offenders”¹; that is, they offend by being who they are, and not by doing what they do.

Laws dealing with the context of beggary are vivid, and obvious, illustrations of this phenomenon. The Bombay (Prevention of Begging) Act 1959 (BPBA), which was extended to Delhi in 1960, has acquired a wealth of experience over the years, providing stark proof of the inherent injustice of this law and laws of similar ilk. A quartet of encounters with the law, in Mumbai and in Delhi, provides a context to exploring the relationship between poverty and criminality, and the extensive loss of rights that emerge as a consequence. It reflects on the depleting obligation of the state where poverty persists, and the onus cast on the person in poverty to procure gainful employment or, at the least, to make poverty invisible. Interestingly, this is a law without a “good faith” clause² – the element that is routinely introduced into legislations to protect persons acting under the law from being prosecuted by a presumption of “good faith”. Yet, documented excesses in the guise of enforcing the BPBA 1959 have not led to the prosecution and punishment of those abusing their power; nor has it resulted in changes in the law to prevent, or at least discourage, the exploiting of the already vulnerable. This marginalisation, and exiling from constitutional treatment, of the ostensibly poor stands demonstrated. This can reasonably lead to only one conclusion: that the law relating to begging and ostensible poverty is insupportable as well as unconstitutional, and must be either repealed, or struck down by a court which possesses the power to test a legislation for its constitutionality.

These remarks anticipate the narrative. To start at the beginning, first, the law.

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The Law to Prevent Beggary: There are three ways in which a person may fall within the net of the BPBA 1959: by definition,³ by

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being dependent on a person who is convicted of beggary,⁴ and by “employing or causing persons to beg or using them for purposes of begging”⁵

Ostensible Poverty: The direct, and most practised, way is by definition. “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”⁶ could constitute “begging”. So too could “entering on any private premises for the purpose of soliciting or receiving alms”,⁷ or exposing or exhibiting wounds, injuries or deformities to “extort” alms, or allowing oneself to be used as an exhibit.⁸ And, in an effort to extend the exercise of authority to all of ostensible poverty, “begging” includes “having no visible means of subsistence and, wandering about or 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”.⁹

The effect of this overbroad generalisation has been documented over the years. In a student investigation into the administration of the beggary law in Delhi conducted between 1976 and 1979, they found Chottan Choudhary, a man in frail health who had lost his right arm below the elbow and which “natural disability exposed him to a very high degree of risk of arrest”.¹⁰ He had been arrested several times, although the students were able to track his livelihood to a small grocery store that he ran.¹¹

In 1990, when Manjula Sen, a journalist, filed a public interest litigation (PIL) in the Bombay High Court challenging the constitutionality of the BPBA 1959 and the tyranny under the law that had become standard practice, she cited the case of Rajguru, 16 years of age, a bootblack who was “caught outside Churchgate station while he was sleeping during the day on November 15, 1989. He protested...“(that) he was not a beggar but a shoe-polisher but to no effect. Although he was a child [under the Juvenile Justice Act 1986], his age was deliberately entered as 19... The interesting thing is that Rajguru is handicapped. He has only one hand. Because of this, he was presumed to be a beggar and arrested”.¹²

In an assessment of two beggars’ homes in Delhi done by a senior civil servant of the Delhi government following reports of inhuman conditions in the institutions, Gyanendra Dhar Badgaiyan wrote, in March 2001:

Wrong people are being arrested by the anti-beggary squad. One reason for this possibly is that the squads are venal. This was established beyond doubt by an internal inquiry [conducted by Mr A K Sinha, District Officer, Social Welfare Department]. It confirmed that in the case of one Mr Gyan Chand Gupta, a retired clerk, the squad released him after snatching Rs 9,000 of the pension money that he was carrying. His only crime was that he was dressed shabbily. That this may not have been an isolated case was pointed out by the inquiry itself, which suggested that the squad regularly indulged in such malpractices. During interviews..., inmate after inmate complained that they were hauled up only because they could not pay the hundred rupees bribe demanded of them. Some of them at least, like the retired clerk referred to above, may not be beggars but may have just looked like one at the time of their arrest”.¹³

Significantly, a committee appointed by the Bombay High Court on the basis of Manjula Sen’s petition, having accompanied

the “police squad” and followed through on the working of the BPBA 1959 on the street and in the court, concluded:¹⁴

- (1) The arrest is made of the people who are found on the street in dirty clothes and wandering. They are not actually found begging
- (4) Large number of wrong arrests are made which is inhumane and unjust.
- ...
- (7) There is no criteria to decide as to who is a beggar, who is sick, physically handicapped or in need of economic help.

‘Raids’ and ‘Rounding Up’

Relying on perceptions of the feckless poor has allowed for conducting raids, and rounding up “beggars”. The students of Delhi University reported meeting “beggars” “who had been picked up from all over town in the recent raid”.¹⁵ The high court appointed committee in Bombay observed in court that “when the members (of the committee) left the police vehicle there were only six beggars and when they were produced in the court, there were 21 which is a large number. The feeling that one gathers is that the procedure they adopted to arrest the beggars was different when the committee members were present, whereas the arrest later on perhaps was different”.¹⁶

The breadth of identity by definition, and the idea of presumed criminality of the ostensibly poor, has clearly settled comfortably into the reading and rendition of the law. The perception of the proximate poor as fearful and threatening has proved to be easy to accommodate within this expanded relationship between poverty and crime. The invocation of the BPBA 1959 to put away a community of persons who the law projects as offenders and, therefore, as persons whose criminal propensity need not be doubted, is a striking statement about the remarkable power of the definition.

Fear, Poverty and Presumed Criminality

In July 2006, a criminal complaint was lodged in the court of the additional metropolitan magistrate in New Delhi. This was sent on to the high court, where it is presently pending. The immediate provocation was the “harassment by the lepers at Ashram Crossing near Maharani Bagh, New Delhi”.¹⁷

It was

submitted that on February 13, 2006, the leper in a blue lungi who used to harass and threaten our member at the Ashram Crossing again threatened (her) with dire consequences in case (she) reported the matter to the police in order to stop him from begging at the Ashram Crossing. The leper in blue lungi told our member to give him money, otherwise (she) would be kidnapped and taken to the *basti* of lepers where (she) would be touched by the lepers so that (she) would get affected by the disease of leprosy.¹⁸

Complaints to the police resulting in a mere suspension, and return, of the beggars at Ashram Crossing, “our member again saw the same leper who had threatened (her)...Our member was scared and mentally disturbed that the leper *might try to take revenge and may harm* as he had earlier threatened our member” (emphasis added). A further reappearance of the beggars, after a temporary cessation of their activities following sustained pressure on the police to act, had “our member...again threatened

and (she) *apprehends danger to life* as (she) has been threatened that (she) can even be murdered in case (she) reports the matter to the police".¹⁹

There were references in the letter of referral to the high court by the ACMM²⁰

– to some, unspecified, members of the New Delhi Bar Association being accosted and threatened by beggars;

– to reports in "some news channels including Channel 7 and CNN-IBN" on July 29, 2006 and July 30, 2006 "regarding the involvement of some doctors in a racket of cutting healthy limbs of human beings for the purposes of begging";²¹

– the "illegal activities" of "anti-social elements and goondas" increasing "at the Ashram Crossing and in the nearby localities as is evident from the murder of two lady advocates" of the Delhi High Court.²²

What followed, however, has little, if any, relevance to these last two incidents, although, surely, they must have been perceived to be somehow related. In the event, the department of social welfare, National Capital Territory of Delhi "recently conducted a special drive to apprehend beggars from September 2, 2006 to September 8, 2006 and apprehended 53 beggars. Besides this, the department conducted 31 raids during the period from May 3, 2006 to October 5, 2006 in various localities in south Delhi, namely, Maharani Bagh, Ashram, Moolchand crossing, South Extension and Lodhi Road and apprehended 133 beggars".²³

Between April and October 9, 2006, 619 persons had been apprehended as beggars by the department of social welfare, and 40 persons had been pulled in by the police.²⁴ In a display of institutional competitiveness while reporting to the high court, the "status report" of the department of social welfare "submitted that the respondent-department has already apprehended more number of beggars than the police authorities within the limited resources and personnel available"²⁵ despite "apprehending beggars" being a responsibility "primarily cast on the police".²⁶

In a status report February 2, 2007, the DCP (south) claimed to have detained 63 beggars between August 1, 2006 and November 25, 2006, even as the department of social welfare had "intensified their drive of detaining the beggars from public places".²⁷ In the status report of the department of social welfare filed pursuant to directions of the high court dated January 9, 2007, it was

further submitted that the respondent-department has started conducting regular raids with the assistance of police, districtwise. During the month of January 2007, 294 beggars were apprehended, which includes 263 male, 25 female and six children.

In view of the aforesaid averments and reports annexed [of the number of persons apprehended as beggars, released, acquitted and committed in 2005 and 2006] it is submitted that the respondent-department is taking steps to apprehend more number of beggars within the resources and personnel available.²⁸

This exercise in clearing the streets had begun as "a criminal complaint...regarding harassment and threat extended by beggars/lepers to one of the lady members of the complainant association [the New Delhi Bar Association] at Ashram Chowk".²⁹ More specifically, it was an exchange that the lawyer had with a "leper in a blue lungi" that constituted the provocation. While hundreds of

persons were being apprehended and detained as beggars, the department of social welfare reports having requested the lawyer

to identify the offender and to provide all other evidences/witnesses in this regard so that the investigation in this case may be completed expeditiously. In view of detention of large number of beggars by police and social welfare department, Ms S was requested to try to identify the offenders from the detainees but she has declined the request saying that the accused leper is not there at Ashram Chowk now and that if she is shown the photographs of all the detainees, she can identify the offender's photograph. Accordingly, Ms S has been provided with the photographs of all the beggars detained in beggar's house during last one and a half year (approximately 1,100). She could not identify any person from the photographs.³⁰

In the meantime, so as "to keep the identity of some of its members secret...since (they) were apprehending danger and threat to their lives",³¹ the president of the New Delhi Bar Association (NDBA), and not the lawyer, was directed to be registered as the complainant. Significantly, in the case, the case was variously listed in the name of *New Delhi Bar Association vs Commissioner of Police or Court on Its Own Motion vs In Re Begging in Public, or Court on Its Own Motion vs Commissioner of Police*, both advertising to the same case indicating the consanguinity of interest of the court and the complainant. The "*vs In re Begging in Public*" is a statement on the intolerance of ostensible poverty. By February 2, 2007, the "informant, Ms S, advocate was contacted but she refused to divulge any information saying that she is not a complainant in this matter and showed her helplessness in providing any further assistance".³²

The non-cooperation of the complainant on whose fears and apprehensions hundreds of persons were rounded up as beggars, and her "refus(al) to divulge any information" because she was no longer, formally, the complainant is tolerated by the law. It, in fact, reaches beyond tolerance. For, on July 30, 2007, the court records the lawyer-complainant's protest when the amicus curiae³³ suggested that, since 95 per cent of the inmates that he had met were from states outside Delhi and were willing to be sent back to their states of origin, they may be released under the law.³⁴ The court records that the lawyer "apprehends mayhem on the streets of Delhi like rape, murder and loot, making the life of citizens totally unsafe if the beggars who, according to her, are in fact criminals are allowed to be set free."³⁵

Paucity of Debate

The equation of a state of poverty with criminality, and the extreme inequality of power in activating the law, and in being heard, is self-evident. What is striking is the paucity of debate on how such prejudice, and such imbalances in power, continue to be entrenched in law. How is it that a law can lay claim to constitutionality even when its very existence can be the basis for mass action against the ostensibly poor, set off by fears and perceptions of threat, while the persons under attack get objectified and become completely "right-less"?

There is no evidence that these preventive arrests have captured any space in the public arena of dispute, contention and challenge beyond the case initiated in the court. The connection between the crackdown on ostensible poverty and the invisibilising of the violations practised on those who are publicly poor

could explain this in part. That invisibilising the role of law and authority in the lives of those in ostensible poverty has persisted, despite the abuse of power and the extremes of right-less-ness exploding anecdotally on the scene, points to a complicity among those with the capacity to make, or influence, law, policy and practice. Implicit in this invisibilising, and complicity, is a hierarchy of constitutional citizenship, where the “right to life” of a class of persons includes a range of rights and freedoms including freedom from insecurity and fear, and the right not to be accosted by that which is a nuisance or which is aesthetically disturbing. What may be displaced in the process may well be life, liberty, freedom of expression, the right against torture, the right to live with one’s family, freedom from fear and everyday threat and the disappearance of state obligation in relation to another class of persons. It is difficult to conceive of such a legal order as being constitutional or just.

In the court, the case is currently being processed, and some responses will eventually emerge. Reflecting on the law need not, however, bide the verdict. In part, there is the assistance that another recent pronouncement of the Delhi High Court provides in unravelling the import of the definition and, more generally, of the law.

*Ram Lakhan vs State*³⁶ was a challenge to a conviction under the BPBA 1959 based on a finding that the person before the court was a “beggar”. The metropolitan magistrate had imposed a sentence of one year, which had been reduced to six months by the additional sessions judge while setting aside the conviction since the only witnesses were the two police officers who had picked him up when they were on an “anti-begging raid”, and even they had not testified to being witness to anyone giving money to the petitioner. While deciding the case, and acquitting the person charged of beggary, the judge considered the act of begging, and its promptings, to understand what the law could possibly mean. Imbedded in this analysis was an exploration of what could constitute motive and intention that could constitute offending conduct. After all, as the judge explained, it is not all solicitation of alms that is illegal; a person may be given a “permit” to solicit alms and that would make the otherwise illegal act legal.³⁷ As a court in New York had remarked in *The People of the State of New York vs Eric Shrader*,³⁸ surely “no rational distinction can be made”, when considering the freedom of expression aspect of begging, “between the message involved, whether the person standing in the corner says ‘help me, I’m homeless’, or ‘help the homeless’”³⁹ – and it is the latter that the law may support while the definition that makes a crime of begging “is essentially targeted at solicitation of alms by individuals”.⁴⁰

Reasons behind Begging

“Why does a person beg?”⁴¹ the judge asked, as a prelude to applying his judgment to who may have the heavy hand of the law laid on them. The act of solicitation may be similar, but the impulse may vary; and the law’s logic ought to be able to sustain the treatment meted out under its aegis. Or such is the reasoning which underlies this decision. So, a person may beg because “he is downright lazy and doesn’t want to work”.⁴² Or, “he may

be an alcoholic or a drug addict in the hunt for financing his next drink or dose”.⁴³ Or, “he may be at the exploitative mercy of a ring leader of a beggary ‘gang’”.⁴⁴ Or, “there is also the probability that he may be starving, homeless and helpless”.⁴⁵ Even as the BPBA 1959 does not, apparently, draw distinctions among these “four different kinds of ‘beggars’”,⁴⁶ there is scope enough in the law “to treat them differently as, indeed, they should be”.⁴⁷ Maybe professional beggars “who find it easier to beg than to work”⁴⁸ could appropriately be dealt with by detention in a certified institution. But, “begging” is not the problem when it is addiction, or exploitation, that drives the person to the act of begging; de-addiction, or release from the exploitative clutches may hold the solution.⁴⁹ As for those “driven to beg for alms and food as they are starving or their families are in hunger...[t]hey beg to survive; to remain alive”.⁵⁰ “For any civilised society”, the judge observed, “to have persons belonging to this category is a disgrace and a *failure of the state*. To subject them to further ignominy and deprivation by ordering their detention in a certified institution is nothing short of dehumanising them. ...Prevention of begging is the object of the said Act. But, one must realise that embedded in this object are the twin goals – Nobody should beg and nobody should need to beg”.⁵¹

In 1959, Gore and his colleagues at the Delhi School of Social Work had said of the law:

[I]t may be noted that in the face of a general economic maladjustment, little good can be done to beggars by merely passing deterrent and punitive legislation. ...Thus ...All the legislative and other attempts have been directed to solving the problem at a stage when a person has actually taken to begging, but little has been done to meet the economic and other needs on their first appearance.⁵²

Since 1950, the Directive Principles of State Policy in the Constitution had adverted specifically to providing social security to meet all cases of “undeserved want” – an aspect which, unfortunately, has had hardly any jurisprudence developing around it.

Given the context, the judge adopted the “doctrine of necessity”.⁵³ The factors that the BPBA 1959 required the court to consider included “helplessness, poverty and duress”.⁵⁴ There is, too, the aspect of soliciting alms being, in effect and in its practice, an exercise of “freedom of speech and expression”. What, as the judge asked, does the beggar do? “After all, begging involves the beggar displaying his miserable plight by words or actions and requesting for alms by words (spoken or written) or actions. Does the starving man not have a fundamental right to inform a more fortunate soul that he is starving and request for food?”⁵⁵ And would the consequence of being detained and denied his liberty not run “counter to the fundamental right to speech and expression?”⁵⁶

The judge specifically clarified that this delineation of the contours of the law was not meant to conclude that begging cannot be prohibited.⁵⁷ What it meant was that the prohibition, and its penal consequences, would have to be within the “reasonable restrictions” enunciated in the Constitution.⁵⁸ And, where “no legitimate alternative to begging” was evident, pre-fixing a “condition that he is not likely to beg again and suffix(ing)...the requirement of furnishing a bond for abstaining from begging”

and for "good behaviour" "would be wholly inappropriate where a person begs out of sheer necessity or compulsion".⁵⁹

The prejudices within the judicial process which the judge notices are telling:

- The metropolitan magistrate had recorded that "the accused was found begging by raising his front paws from the passers by".⁶⁰ It moved the irate judge to exclaim: "Beggars are not beasts with claws! They are human beings and they should be treated as such."⁶¹
- The Social Investigation Report had found him to be a 'habitual beggar'. The court has acted on this finding. At no point had the person to be detained on the count of being a habitual beggar been allowed to explain, controvert or contest the report. There was no legal obligation recognised to hear what he had to say.
- There was a further "ugly twist".⁶² He had been detained in a certified institution set up under the BPBA 1959. Yet, he was sent to Tihar jail, contrary to the law, and there he remained for close to a month, till the court summoned him to its presence.⁶³

On one side, then, is choicelessness, necessity and, often, undeserved want. On another, the Constitution, the law and institutions that could be legitimately expected to protect the rights and interests of those less equal than others. On still another, are prejudice, presumption, practice and a priority of interests that determines the constituency of the law.

The BPBA 1959 had not been challenged in the case before the high court in *Ram Lakhan*; it was action taken under the law that had been brought into question. The judge was inhibited by the way the case was posed to limit himself to "an examination of (the) aspects touching upon the constitutional validity"⁶⁴ of the BPBA 1959 as applied to Delhi. The Bombay High Court was not so constrained when dealing with *Manjula Sen vs Superintendent, Beggars' Home*.⁶⁵ In an "oral judgment" delivered in court on July 16, 1990, a single judge set up a committee of five persons to investigate a range of issues emerging from the law and practice of the BPBA 1959, charging them, specifically, with suggesting a "method of implementation" of the BPBA 1959 or "amendments to the Act and Rules for achieving the objective of the Act".⁶⁶ There was especial emphasis on the circumstances in which "rounding up" of beggars may be done; and an invitation to make recommendations on "whether any legal aid is to be given to those who are rounded up under the provisions of the Beggars Act".⁶⁷

The committee adopted a method of inquiry that included visiting the homes housing those picked up under the BPBA 1959, collecting data on the capacity of homes and the occupancy, diet and medical facilities, and the meaning given to "rehabilitation" within the institutions. It sought, and obtained, the opinion of experts on the law. Legislation in other countries including Hong Kong and Singapore were consulted. The members of the committee witnessed raids, and the process in the court. They explored the significance of various agencies of state in relation to the BPBA 1959, including the police, the probation officers, the lawyers, the staff of custodial institutions and the social welfare department. When the exercise was completed, the unanimous and unhesitating recommendation was that the BPBA 1959 is "totally outdated and cannot achieve the stated objectives and therefore needs to be abolished without any delay".⁶⁸ In setting out this conclusion, the committee found support in the opinion of Satyaranjan Sathe, a highly regarded teacher and expert in constitutional,

administrative and public interest law. In his note to the committee, his scathing remarks on the law included these: "This whole law is an attempt to treat street poverty as a law and order problem".⁶⁹ "This is actually a preventive detention under the garb of punitive detention".⁷⁰ "Those who are forced to beg by circumstances ought not to be treated as offenders of the law. They need a healing touch of the protective law, not the deterrence of a criminal sanction".⁷¹

Heeding this advice which was bolstered by what they had witnessed, the committee recommended the introduction of "a new law which will be in tune with modern thought".⁷²

- Such a law, it said, must –
- Redefine begging, narrowing it down, and drawing a distinction between destitution and beggary,⁷³ and placing only professional beggars within a regime of restraint and punishment.
- Decriminalise begging, and establish welfare homes which persons in situations of helplessness may access, voluntarily, and where they may "seek shelter, training and rehabilitation".⁷⁴
- Discontinue the institution of beggars' courts. "It is reported", the committee said, "that about 100 cases are disposed in less than 15 minutes".⁷⁵ On the day that the committee had witnessed proceedings in the court, there had been 33 cases on remand and 21 new cases. "When the names of the new cases beggars were called", the committee recorded in its report to the high court, "the judge had just glanced at them and remanded them to custody in the beggars home. Out of the 33 remand cases, most of them (31) were released and only two were detained. The whole proceeding was over in 8 minutes".⁷⁶ "Looking at a face and deciding the fate of a person", the committee had said, "was shocking to the members witnessing the proceedings".⁷⁷ "Therefore", the committee found it impelled to recommend, "these so-called beggars' courts be discontinued as they will not be needed under the new Act".⁷⁸
- Strengthen supervision of the workings of the BPBA 1959, for "regular inspection, field counselling and management control seems to be tragically absent".⁷⁹
- Establish cost effectiveness. The institutionalising of control over the poor, rather than concern with the needs of those in poverty is evidenced in the committee's statement that: "It should be considered whether it is worthwhile to maintain a beggar's home for 400 beggars spending Rs 30 lakh per year. It would be far better to introduce some social security system (public assistance with supervision). This would enable to cover (sic) far more people and with better facilities and programmes."⁸⁰
- Re-establish committees, enhance people's participation. In the Male Beggars' Home, it seemed that there had been no visiting committee in over 15 years.⁸¹ In the Female Beggars' Home, no visiting committee had held any meeting since 1969.⁸² This neglect, it was suggested, had resulted in the decline in this area of the working of the law.
- Include participation of voluntary organisations.
- Train staff.
- Remodel vocational training.
- Provide for public assistance which, in any event, is also more "economical than institutionalisation".
- Start sponsorship programmes.
- Promote organised charity.

– Reorganise medical work, for, “case workers, doctors and quasi-medical doctors in beggars’ homes appear to suffer the blight of ignorance, apathy and incompetence, more so in case of the female beggars who suffer from mental disorder and male beggars who suffer from leprosy”.⁸³

Even as these were intended to be indicative of where the committee believed a new act should be headed, it was “unanimous on this Report and feels very strongly about the need for a new Act and establishment of welfare homes”.⁸⁴

This categorical denunciation of the BPBA 1959 after an elaborate exercise undertaken at the behest of a high court has, plainly, not had any effect on the letter of the law, or in its practice.⁸⁵ The BPBA 1959 remains unchanged. Raids continue. Institutions are horrific and have not the faintest connection with humane, or even formal constitutionally justifiable, conditions. Destitution and undeserved want are still crimes despite judicial engagement that challenges the irrationality and injustice of such treatment. And the extreme inequality of power that is aggravated by the law persists resulting, as witnessed in 2007 in Delhi, in the ostensible poor, as a class, becoming vulnerable to being punished for being publicly poor.

Excesses in the Law

Episodically, evidence has accumulated about the impunity that has developed through apathy and the casual disregard of law in dealing with ostensible poverty. The law, too, bears bold signatures of unconstitutionality which, if it had affected classes more proximate to power, would assuredly have faced severe tests in courts, legislatures and on the streets of democratic protest. A read through the law would produce, for instance –

- The power invested in a police officer or anyone else that the government may authorise to “arrest without warrant any person who is found begging”.⁸⁶
- Once produced in court, they would be subjected to a “summary trial” preceded by a “summary inquiry”.⁸⁷
- If “the court is satisfied that such person was found begging”,⁸⁸ the sentence could be an admonishing and release on a bond “requiring the beggar to abstain from begging and to be of good behaviour”,⁸⁹ or be ordered “to be detained in a certified institution for a period of not less than one year, but not more than three years”.⁹⁰ There is a third possibility, of requiring the person to report to the commissioner of police or district magistrate,⁹¹ but the point of this possibility is unstated and obscure.
- A person previously detained in a certified institution found begging again shall be detained for two to three years.⁹² And, when convicted for the second or subsequent time, the court “shall order him to be detained for a period of 10 years”, and may even convert up to two years of that detention into a “sentence of imprisonment”,⁹³ revealing a nexus that the law sees between poverty and common criminality.
- When such detention occurs, and after the court has made “such inquiry as it thinks fit”, it may “order any other person who is wholly dependent on such person to be detained in a certified institution for a like period”,⁹⁴ with the concession to due process that such person shall be given an opportunity to be heard on why such an order of detention should not be made.⁹⁵

This is guilt by association and, along with destitution, makes a crime of dependency.

- Every person detained in a certified institution “shall at any time allow his fingerprints to be taken” by the police or magistracy.⁹⁶ This would include all those who have been “rounded up” and brought in “raids”. Were they to refuse to allow their fingerprints to be taken, they shall be liable, on conviction, to have their period of detention “not exceeding three months converted to a term of imprisonment extending to a like period”.⁹⁷ The invasion of privacy of persons who stand accused has, in recent times, been sought to be justified as being necessary to meet the extraordinary situation created by terrorism. This has generated much debate and dissent, but, even there, there is no talk (at least, not yet) of punishment for refusing to allow the violation of privacy.

The Delhi High Court has spoken of “its wish to give certain directions with regard to biometric identification of beggars as also the creation of a Personal Data Bank” which, the court suggests, “will help the authorities to keep a tab on the beggars who are repeat offenders as also whether rehabilitation is working or not”.⁹⁸ The “existing system at Tihar jail” which houses undertrials and convicts provided the inspiration.⁹⁹ By early December 2007, the amicus appointed by the court reported that the Delhi administration had taken its cue from the court to begin to set the process in place for introducing biometric identification of those roped into the system as beggars.¹⁰⁰ There are questions of constitutionality of this procedure which may never get asked or answered unless constitutional advocacy triumphs over administrative procedure-making. There are also questions that arise about the purpose of this exercise. In a system where people in conditions of poverty are numerous; the state system offers no social security or opportunity for overcoming economic redundancy, nor does it desist from implementing policies that render many unemployable; where rehabilitation and training have never been pursued; where the state’s willingness and capacity to aid the ostensibly poor stands seriously depleted – what would a roster of the ostensibly poor do? There are no consequences to the state or any of its officers or agencies if they do not improve the possibilities of those dragged into the net of this law. What, then, is the point of the introduction of this invasive technique of surveillance surely deserves some explanation?

The Fig Leaf

The law, as it stands, places the onus on those in destitution not to continue to be ostensibly poor when it equates “good behaviour” with taking themselves off the streets. It lets the notion of state obligation vanish almost without a trace, but for references to rehabilitation and training. The failure to deliver on rehabilitation, it would appear, has done nothing to deflect the control and authority of the state; it has consequences only for those in destitution.

In 1959, Gore had noticed that the laws governing beggary were not meticulous in their treatment of rehabilitation. Yet, their study had found there has been attempts by those running certified institutions to send the inmates to factories where they could

earn wages, or engage some of them in work within the institutions. How far this would take them towards finding honest work when it became time to leave the institution was, however, “yet to be seen”. The importance of the possibilities with which convicted beggars left the institution was heightened because “if such a beggar does not succeed in finding a living by his own efforts, it becomes his crime which is sought to be punished with seven to 10 years of detention” in the different state laws. Yet, no state had dwelt on rehabilitation, and, in the Hyderabad Act, “the provision for training, employment and education in these institutions is optional. To that extent, these Acts fail to accomplish their objective of preventing beggary”.¹⁰¹ The record reflects an erosion of even that which was attempted in the early years.

In 1990, the College of Social Work, Bombay had said: “There are several sections mentioned under the office record supposed to be for the purpose of training and occupation of the inmates. However, it is obvious that the so-called ‘facilities’ are just a misnomer for utilising free labour for the cleaning, upkeep and maintenance of the home. The so-called areas of training are actually inoperative. These (i.e., the ‘so-called areas’) are, for the male section, pin-making, tailoring, broom-making and weaving. In the female section, out of the facilities of broom-making and tailoring, only tailoring is in operation”.¹⁰²

In 2001, Badgaiyan had said: “the most significant lacuna is regarding provision of training infrastructure...The home management...has failed to generate enthusiasm among the inmates for the courses that it runs. This is because of not just the low motivation of the staff and the inmates but also because of poor course selection and the inadequate linkages with the employers and the buyers”.¹⁰³

In 2007, a scholar writing up the findings of his study on leprosy-affected persons in India said of “rehabilitation”¹⁰⁴ “that state and NGO-sponsored microeconomic enterprises and other income generation schemes, despite some notable exceptions, are often ill-matched to the needs that they are set up to serve”. Skills imparted in making soap, phenyl, pickles and in cigar rolling were difficult to sell both because of the fear generated by leprosy and because there are already multinationals in the area selling at competitive rates. And, while “begging ... has been identified as a social problem to be tackled; a disturbance both to the local population and to India’s image on a global stage...”,¹⁰⁵ to his informants, “begging provided a major income stream and, with it, a route to dignity”.¹⁰⁶

Again in 2007, the joint director (administration) of the department of social welfare, in her status report filed in the court, set out handloom/weaving, printing, drawing, cycle repair, book-binding, adult education and cutting and tailoring as “facilities available” in homes where male beggars are lodged (including the “homes for male beggars (diseased)” and the “home for old and infirm beggars”), and cutting and tailoring as the vocational possibility for female beggars.¹⁰⁷ In addition, and with the court’s gaze on it, the department of social welfare “undertook” to “start new vocational trades for the rehabilitation of beggars”.

It would, then, seem that neither round up and detention, nor a stint in certified institutions, is likely to alter the state of destitution which drives many to public places that the privileged

frequent, to seek alms or to hawk or to offer their services or otherwise. It would also appear that the law has been structured not to ensure that the state perform its obligations in relation to those who reach, or reside in, a state of poverty. It is, instead, about enabling control over the publicly poor where they may be viewed as a nuisance, a threat, an inconvenience, a blot on the landscape or an administrative embarrassment. The perception of poverty as a motive, in itself, for crime lies within the inner reaches of the law. It is not what they do, but that they are that is offensive. In this, the fault of poverty lies with the poor, and gets constituted into an offence.

This reading of the law can explain how a “leper in a blue lung” may be projected as the provocation for the reaction, and all those around get picked up, detained and tagged (if the biometric identification proposal goes through) while he remains a vanished presence. The inability to follow through on the individual complaint by disengaging the relevance of the individual complaint from the general act of “activating the law” is possible only because the word of the law and its practice renders its subject both rightless and voiceless. The experience is revealing about the complete irrelevance of the individual to this law. Rounding up and raids are mere manifestations of this disappearance of the individual.

Within the Institution

There is, unfortunately, more. For, once within the institution, the ring closes in on the detained. The rules are such as apply in coercive custodial institutions. So, to take one instance,¹⁰⁸ persons detained in certified institutions “shall not”

- refuse to receive any training *or to do work allotted to him*;
- misbehave or quarrel with any other inmate;
- answer untruthfully or refuse to give a “true account of his movements”;
- cause any disturbance or violence *or omit to assist in suppressing any disturbance*;
- do any act or use any language calculated to hurt or offend the feelings and prejudices of a fellow inmate;
- disobey any order regulating the cleanliness of his person, clothing, or bedding, utensils or other articles;
- refuse, without reasonable excuse, to eat the food prescribed or wilfully destroy any food or render it unpalatable or unwholesome (all emphasis added).

And so on. The superintendent is the proximate judge of what disciplinary breach has occurred, and the imposition of punishment which may range from formal warning, to forfeiture of privileges “if any”, to confinement in the lock-up for not longer than three days, to handcuffing (but not in the case of a woman), to “solitary confinement not exceeding 10 days at a time”.¹⁰⁹ The supervisory authority vests in the visiting committee which, as was seen, may not exist or, if it does, may not meet. The idea of control over those in poverty, aided by the power to punish by, and in, detention, is explicit.

The rule making power has, of course, not been asserted to recognise rights in persons detained in these institutions. There is no rule regarding the right to receive training or education. There is no power in the person to resist violence. There is no

guarantee that it is wholesome food or clean water that is provided in the institution. And, with visiting committees only found in the provisions of formal law, there is no appeal or extramural oversight. Into this melee, add a dispirited administrative workforce,¹¹⁰ and there, it may be, is a recipe for a routine of intramural death and institutionalised violence.

Eight persons in detention died in the Lampur Beggars Home between May 13, 2000 and the end of the month. An inquiry conducted by the sub-divisional magistrate (SDM), Narela, found that 114 inmates of the home had suffered from gastroenteritis. "It is apparent from the fact-finding report of the SDM", the high court observed in a public interest case initiated before it, "that there was faecal contamination in the water. The report also pointed out that eight deaths took place. The reason given as the cause of death by the authorities was 'cardio-respiratory failure'. This does not seem to be correct."¹¹¹

Informal Conditions

In the meantime, an interim report had been filed in court by a committee constituted by the court to investigate the conditions prevailing in the beggars' homes in Delhi and what it described was, indeed, "infernal", in the language of the court. "The home lacks pipeline for drinking water; most of the time electricity supply is not available; sanitary conditions are appalling; home is not connected to sewer line; toilets are choked and emanating bad odour... unhygienic conditions are prevailing everywhere..."¹¹²

The frequency of deaths in beggars' homes was cause for comment in 1990 too. The "death register" maintained in the Beggars' Home for Males in Chembur had recorded 19 deaths between April 1, 1990 and September 20, 1990. In the Female Beggars' Home, the record read; 55 in 1987-88, 94 in 1988-89, 20 in 1989-90, and four in 1990-91.

The two commissioners who gathered the figures offered this in explanation: "Since most of the inmates come in a very emaciated condition and are suffering from one or the other disease, they succumb to death easily". The medical officer "had informed the members of the commission that more than due care is taken in the hospital ward whenever they are admitted"¹¹³ If this statement were to be credited, the death of such numbers after they have entered the custody of the institution should still raise uneasy questions. The legitimacy of the law deserves to be tested on this experience too, where those in such proximity to death because of their poverty are prescribed punishments for their poverty.

The "register of deaths", the "escape register", the "indefinite detention register", the register documenting release from the institution, the register recording punishments for breach of discipline – each carry evidence of what the institution means to those sent into it. The "escape register" in the female beggars' home recorded 48 women as having "escaped" between 1985 and 1991, 33 from the institution, one person from the hospital and "there is no mention regarding 14 cases". Between April 1, 1990 and September 1, 1990, 29 persons escaped from the male beggars' home. The "leave of absence" register in the female beggars' home showed 48 women as having been given leave of absence between 1985 and 1991, during which period 1,386 women had passed through detention. "Leave of absence is a provision", the

commission remarked, "... (which) is made with a view to help inmates to go to their homes or relatives whenever there is a need. It also helps in reconciliation and giving a trial for their rehabilitation."¹¹⁴ But it had lain underutilised.

The "indefinite detention register" in the female beggars' home had 14 women named in it. "There are persons from 1962 onwards which shows that they are there for at least 30 years"¹¹⁵

Besides, there were discrepancies in recording the age – where the probation officer thought a person picked up under the law was 62 at the time of remand, the medical officer recorded the age of 85 in the admission register;¹¹⁶ persons were recorded as released even before the date that they were allegedly arrested,¹¹⁷ orders were found to have been received long after the period of detention was over – even, in one recorded instance, "the office has not been able to obtain orders of two inmates whose period was over in 1980. This means these two inmates have been detained illegally for the last 10 years."¹¹⁸ The list is endless.

That, over the years, if anything has changed, it is as a descent into the irremediable stands proven. In 2001, the Delhi High Court was saying:

According to the (interim) report, in some of the homes located in the complex as soon as beggars are remanded to the homes, they are administered beatings by the caretakers to break and subjugate their will. The committee also found that ferocious dogs which have been kept by the caretakers have bitten a number of inmates...¹¹⁹

In response, the court directed the "immediate removal of the dogs from the complex. We also direct that no inmate should be subjected to beatings and should be treated with dignity which is his fundamental right under Article 21 of the Constitution."¹²⁰

Badgaiyan's inquiry, and report of March 2001, followed up on the issues raised in the interim report that had been presented to the Delhi High Court. Since January 2001, when some of the staff were transferred following the order of the high court, he was told by the "hundreds of inmates" who he interviewed, that beatings, and "stray dogs", had ceased. Prior to that, almost everybody complained that "beatings were common but not quite torturous. They were mostly by hands and occasionally by sticks, less than a dozen times in the whole year, according to one who was himself beaten with sticks."¹²¹ "The staff", Badgaiyan said, "pretty much admitted the fact of beatings". To them, "an atmosphere of fear" was necessary to avoid "serious indiscipline". In 1986, they said, inmates had beaten up a caretaker during an escape attempt. The "beatings", Badgaiyan observed, "have stopped now but can easily return once the pressure caused by the high court intervention, and the subsequent transfer of the three caretakers, have eased."¹²² "Unless", he added, "something is done to address the causes that underlie those beatings"¹²³

It is intriguing, and not a little disturbing, that six-years later, a report on "The Beggars in Delhi" instituted by the department of social welfare as a fallout of the case before the Delhi High Court, and conducted by the department of social welfare, University of Delhi, only met the street beggars, on the street, and asked them questions that included "do you know that the government has established beggars' homes where the beggar can stay and are provided vocational training?"¹²⁴ There was no follow-up on

Badgaiyan's caution. Maybe the study was influenced by what was presumed to have prompted the study. The reasons as mentioned in the study:

The menace of beggary in the NCTD has been of concern to all especially in view of the forthcoming Commonwealth Games in 2010. Hence the Department of Social Welfare, Government of National Territory of Delhi decided to get a survey of beggars conducted with a view to know the exact profile of the beggars so that planning for their rehabilitation could be done accordingly. *Also beggary prevention plans could be formulated.*¹²⁵

Conclusions

The logic of the law relating to beggary would be elusive unless the route to understanding it meanders through the perception of the poor as potential criminals rendered so by their poverty; as irritants to the forces of law and urban order; as nuisances to those to whom they appeal for alms. Ostensible poverty has the added charmlessness of denting the image of a world class city and a globalising economy. The showcasing of the city demands clean-up operations, and the power to effect these. When Mike Davis writes, "In the urban third world, poor people dread high-profile international events – conferences, dignitary visits, sporting events, beauty contests, and international festivals – that prompt authorities to launch crusades to clean up the city",¹²⁶ he is merely expressing a sentiment that has acquired the status of an axiom.

The law relating to beggary is unabashedly clear that it is intended to provide control over all those who are publicly poor. The point is the "prevention of begging", and, to this end, is enacted the power to label, to detain, and to sentence to long years in coerced custody. The law, including the rules made under the law, does not expend word or intent on the autonomy, volition, citizenship rights, or dignity of those in its net. Unsurprisingly, it provides neither incentive nor sanction to those who have the obligation to identify, and deal with, the causes of destitution. Neither the possibility of employment nor the impossibility foisted on the destitute by unemployability are required to be the responsibility of the state and its agencies. The continuum, where it exists, which leads, say, from mass displacement to destitution, or disability to destitution, or drought to destitution is not acknowledged. In its preoccupation with the ostensibly poor as a class, an aspect that suggests, and encourages, raids and rounding up as legitimate exercises, and the individual circumstance to be subsumed in the generality of conditions of poverty.

The practices that the law has fostered are directly attributable to the powerlessness of the poor, as also the otherwise rightless who are, or bear a likeness to, the destitute. The pervasiveness of abuse and extortion, the casual disregard of individual circumstance, even the easy acceptance of the death of the destitute, is a symptom, and a consequence, of the way the law constructs the ostensibly poor as status offenders. There has been the occasional genuflection to activist opinion: as was a 2002 regulation of the Delhi Traffic Police which charged motorists with giving alms to beggars or buying goods from vendors at traffic intersections on pain of penalty; this avowedly shifted the sanction from the beggar or vendor to the alms giver, adopting the understanding

that the poor should not be punished for expressing their need. Yet, when this was overtaken in 2007 by a circumstance created by the lawyer's demand that all "beggars" be rounded up and carted away, there was not even a whisper that the rationale of penalty and sanction had shifted in 2002.

Where criminality has been rife it has been within the certified institution, and it has been documented, often at the instance of the court. These are, then, matters of public record. It is not only the absence of rehabilitation in these institutions which casts a cloud on the logic of the institution; it is, too, the practice of abuse, violence and exploitation within the walls. It is criminal neglect resulting in death and disease. Neither law nor practice conforms to the Constitution or to any known parameters of acceptable conduct. This, it would be fair to expect, ought to have had the consequence of repeal of the law, and disbanding the institutional structures within which abuse is hidden, and lives waste away. The only consequence, it seems, has been transfer of some officials, some years ago.

"In the face of a general economic maladjustment, little good can be done to beggars by merely passing deterrent and punitive legislation", Gore said, nearly four decades ago. Indeed, the attempt made by a member of the Uttar Pradesh Vidhan Parishad to get a bill drafted on the lines of state laws that punish the poor failed, because it was argued by the minister of social welfare that "it would be unjust to ban beggary if society could not provide jobs to everyone".¹²⁷

In 1956, Caleb Foote published an article on "Vagrancy-type law and its administration" which is a chilling reporting and analysis of the practice, and letter, of vagrancy laws in Pennsylvania.¹²⁸ The casual dispensation of the law, disregard of process, summary procedure as adequate for the vagrant, the pride of place occupied by prejudice, the catch-all role of the vagrancy law "as the garbage pail of criminal law", "dressing up the city centre", "abating nuisances" – each, and together, resonate in the experiences that have accumulated in the Indian system. The policy objectives that Foote identifies as determining the existence and practice of vagrancy laws might have been written for contemporary India. "The acts which are made punishable are petty in terms of social dangerousness", he wrote, "but the chief significance of this branch of the criminal law lies in its qualitative impact and administrative usefulness".¹²⁹

There have been at least three occasions when the judiciary has recognised the constitutional imperfections and impossibilities of the law relating to beggary, and in its practice. Unemployability, either as a consequence of state policy or as ignored by it, is an economic and social phenomenon that makes impoverishment and poverty assume hyperbolic proportions.¹³⁰ The history of vagrancy laws testifies to their repressive potential and impact. Even as this is written, it is reported that the government of Delhi has decided to use biometric identification to track those drawn into the system under the laws relating to beggary, and this at a mere suggestion from the court, and without testing the logic, or the invasions of constitutional rights, implied in its adoption.

Beggary laws have begun to demonstrate how the law may be made, continued, expanded and practised when the constituency

affected by the laws are powerless – so rendered by the illegality that the law visits on them, the prejudice that poverty provokes, the distance between privilege and poverty, and the vanishing obligations of the state. Appraising the law, and the practices that have developed in its shadow, will reveal the patterns of impunity, callousness and despair that now constitute this law. This is a law whose logic is long deceased, if such ever existed. Yet, it persists on the law books, despite mounting evidence of

abuse and malpractice and the incapacity that the law has demonstrated for doing any good. It is, by any reckoning, a ruthless assertion of untrammelled power over classes of people who do not possess the capacity to resist, who have been rendered choiceless, and whom prejudice and callousness have consigned to the margins of human existence and beyond the bounds of citizenship.

And there the case rests.

NOTES

- 1 S Muralidhar, *Law, Poverty and Legal Aid: Access to Criminal Justice*, pp 260 et seq, 2004; B B Pande, *Vagrants, Beggars and Status Offenders in Law and Poverty: Critical Essays*, p 248 at pp 251 et seq (Upendra Baxi (ed) 1988) (hereafter Pande).
- 2 E g, Section 18 of the Lepers Act 1898: "Protection to persons acting bona fide under Act – No suit, prosecution or other legal proceeding shall lie against any officer or person in respect of anything in good faith done or intended to be done under, or in pursuance of, the provisions of this Act."
- 3 BPBA 1959, Section 2(i).
- 4 Ibid, Section 9.
- 5 Ibid, Section 11.
- 6 Ibid, Section 2(i) (a).
- 7 Ibid, Section 2 (i) (b).
- 8 Ibid, Section 2 (i) (c).
- 9 Ibid, Section 2 (i) (d).
- 10 Pande, supra n 1, at p 271.
- 11 Ibid.
- 12 *Manjula Sen vs State of Maharashtra*, Writ Petition No 1639 of 1990, in the High Court of Bombay, p 3, in Report of the Commission on Beggars Act, Annexure No 1 (S D Gokhale, chairman, Bombay, 1990).
- 13 Gyanendra Dhar Badgaiyan, *Beggar Institutions – Lampur, Narela: An Assessment*, pp 2-3 (Government of NCT of Delhi, March 2001).
- 14 *Report on the Procedure Followed in Arrest of Beggars under the BPBA 1959*, p 6, in Report of the Commission on Beggars Act, Annexure No 4 (S D Gokhale, Chairman, Bombay, 1990).
- 15 Pande, supra n 1 at p 271.
- 16 Report of the Commission on Beggars Act, supra n 13, Annexure No 4, at p 5.
- 17 *New Delhi Bar Association vs Commissioner of Police, New Delhi* (sometimes written as *Court on its own Motion vs Commissioner of Police, New Delhi*), criminal complaint in the court of Kamini Lau, A C M M, New Delhi, March 24, 2006, p 4, appended as Annexure A to the Letter of Referral No 324, ACMM/ND to High Court of Delhi, by Kamini Lau, ACMM, New Delhi, August 3, 2006.
- 18 Ibid, at 4/7.
- 19 Ibid, at 7/10 (emphasis added).
- 20 Letter of Referral No 324 ACMM/ND to High Court of Delhi, by Kamini Lau, ACMM, New Delhi August 3, 2006.
- 21 Ibid.
- 22 A reference to a crime reported in 'Woman, Daughter Murdered in Flat' in *The Hindu* dated March 13, 2006 at <http://www.hindu.com/2006/03/13/stories/2006031312010100.htm>. On April 25, a report titled "Siddharth Enclave Double Murder Solved" appeared in the same newspaper, at <http://www.thehindu.com/2006/04/25/stories/2006042522280300.htm>, which indicated that a domestic handyman and his friends had been picked up by the police, adding to the mystery of why the crime was mentioned in this context of beggary.
- 23 Status Report on Behalf of the Department of Social Welfare, Government of NCT of Delhi, November 20, 2006, in the matter of *Court on Its Own Motion vs Commissioner of Police and Ors*, Writ Petition (Criminal) No 1840/2006, in the high court of Delhi, pp 68-72, at p 70 (These are upper class neighbourhoods in the city).
- 24 Ibid, at p 71.
- 25 Ibid, at p 71.
- 26 Ibid, at p 70.
- 27 Status Report by Deputy Commissioner of Police (South) February 2, 2007, in the matter of *Court on Its Own Motion vs Commissioner of Police and Ors*, Writ Petition (Criminal) No 1840/2006, in the high court of Delhi, pp 74-75, at p 74.
- 28 Status Report on Behalf of the Department of Social Welfare, Government of NCT of Delhi, February 2, 2007, in the matter of *Court on Its Own Motion vs Commissioner of Police and Ors*, Writ Petition (Criminal) No 1840/2006, in the High Court of Delhi, pp 80-81, at p 81.
- 29 Status Report of the Deputy Commissioner of Police (head quarters), October 13, 2006, in the matter of the *New Delhi Bar Association vs Commissioner of Police*, Writ Petition (Criminal) No 1840/2006, pp 63-67, at p 65.
- 30 Status Report by Deputy Commissioner of Police (south), supra n 27, at 74.
- 31 Application under Section 482 CrPC in the matter of *Court on Its Own Motion vs In Re Begging in Public*, Crl M A No 11314/2006 in W P (Criminal) No 1840/2006, pp 50-59, at p 53.
- 32 Status report by deputy commissioner of police (head quarters), supra n 29, pp 63-67 at p 66.
- 33 Counsel appointed by the court to assist it in dealing with the matter.
- 34 This could happen, according to the *Amicus Curiae*, by invoking Section 5(5), of the BPBA 1959.
- 35 Order of Delhi High Court, July 30, 2007 in *The Court on Its Own Motion vs In Re Begging in Public*, W P (Criminal) No 1840/2006.
- 36 Criminal Revision Petition No 784 of 2006 decided on December 5, 2006 (single judge).
- 37 Delhi Prevention of Begging Rules 1960, Rule 32, read with BPBA 1959, Section 5(i).
- 38 617 NYS 2d 429 cited in the *Ram Lakhan vs State*, supra no 36, para 10.
- 39 Ibid.
- 40 *Ram Lakhan vs State*, supra no 36, at para 5.
- 41 Ibid, at para 6.
- 42 Ibid.
- 43 Ibid.
- 44 Ibid.
- 45 Ibid.
- 46 Ibid.
- 47 Ibid.
- 48 Ibid.
- 49 Ibid.
- 50 Ibid.
- 51 Ibid (emphasis added).
- 52 M S Gore et al, 'The Beggar Problem in Metropolitan Delhi (1959)', extracted in *Law and Poverty: Cases and Materials*, p 267 (L M Singhvi (ed) 1973) (hereafter "Gore") at p 269.
- 53 *Ram Lakhan vs State*, supra no 36, at paras 6-7; In this, the judge took assistance from the development of the doctrine in *Hibbert vs The Queen* (1955), 2 SCR 973 at 1012 (Canadian Supreme Court), *R vs Howe* 1987 AC 417 at 429 (English Court of Appeals) and the majority judgment of the Supreme Court of Canada in *Perka vs The Queen* (1984), 2 SCR 232.
- 54 The BPBA Act, under Section 5(6), required the court to take into account inter alia, "the circumstances and conditions in which the beggar was living", before passing an order under the Act. The judge has read this to include the person's 'helplessness, poverty and duress': *Ram Lakhan vs State*, supra no 36, at para 8.
- 55 *Ram Lakhan vs State*, supra no 36, at para 9.
- 56 Ibid.
- 57 See *Ram Lakhan vs State*, supra no 36, at para 10.
- 58 Ibid.
- 59 Ibid, para 11.
- 60 Ibid, at para 4.
- 61 Ibid.
- 62 Ibid, at para 14.
- 63 Ibid.
- 64 Ibid, at para 10.
- 65 *Manjula Sen vs Superintendent, Beggars Home, Bombay High Court (Ordinary Original Civil Jurisdiction)*, W P No 1639/1990, in Report of the Commission on Beggars Act, supra no 12, Annexure No 2.
- 66 Ibid, Annexure 2, at p 4, clause 25.
- 67 Ibid.
- 68 Report of the Commission on Beggars Act, supra no 12, Recommendations (Chapter VI), pp 28-29.
- 69 S P Sathe, *The Bombay Prevention of Begging Act, 1959: Opinion Regarding Constitutional Validity* in report of the Commission on Beggars Act, supra no 12, Annexure No 5(A), at p 5.
- 70 Ibid.
- 71 Ibid, p 6.
- 72 Report of the Commission on Beggars Act, supra no 12, Recommendations (Chapter VI), p 29.
- 73 Ibid.
- 74 Ibid.
- 75 Ibid, at p 31.
- 76 Report of the Procedure Followed in Arrest of Beggars under Bombay Prevention of Begging Act, in Report of the Commission on Beggars Act, supra no 12, Annexure 4, p 5.
- 77 Ibid, p 5.
- 78 Report of the Commission on Beggars Act, supra no 12, Recommendations (Chapter VI), p 31.
- 79 Ibid, at p 31.

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80 Inspection Report on Beggars' Home for Males, Chembur in report of the Commission on Beggars Act, supra no 12, Annexure 3, at p 15.

81 Ibid, at p 13.

82 Inspection Report of Beggars' Home for Females of Chembur, in Report of the Commission on Beggars Act, supra no 12, Annexure 3, at p 34.

83 Report of the Commission on Beggars Act, supra no 12, Recommendations (Chapter VI), at p 34.

84 Ibid.

85 In fact, there is evidence that the prescriptions in the law are being replicated in other state legislations. See, for e.g. the Kerala Prevention of Begging Bill 2006 found at http://www.kerala.gov.in/begging_ban.pdf

86 BPBA 1959, Section 4(1).

87 Ibid, Section 5 (1).

88 Ibid, Section 5(4).

89 Ibid, Section 5(5)(a).

90 Ibid, Section 5(5)(c).

91 Ibid, Section 5(5)(b).

92 Ibid, Section 6(2).

93 Ibid, Section 6(3).

94 Ibid, Section 9(1).

95 Ibid, Section 9 (1) Proviso.

96 Ibid, Section 29 (1).

97 Ibid, Section 29 (2).

98 *Court on Its Own Motion vs In Re Begging in Public*, supra no 31, Delhi High Court order dated February 2, 2007.

99 Ibid, Order dated February 8, 2007, p 3.

100 *The Hindu*, December 5, 2007.

101 Gore, supra no 52, at p 270.

102 Report on the Working of the Beggars Home and Implementation of the Prevention of Begging Act (1959) and Rules, p 12 (College of Social Work, Bombay 1999), in Report of the Commission on Beggars Act, supra no 12, Annexure 6.

103 Badgaiyan, Beggar Institutions – Lampur, Narela, an Assessment, supra no 13, at p 12.

104 James Staples, "Leprosy and the State", 2007 EPW 437 at 442. It is his idea to place the term "rehabilitation" within inverted commas.

105 Ibid at 442, citing M Chaudhary (2000), 'India's Image as a Tourist Destination: A Perspective of Foreign Tourists' in *Tourism Management* 21,3, Kurukshetra University, pp 293-97.

106 Staples, supra no 104, at p 442.

107 Compliance Report on Behalf of Department of Social Welfare, Government of NCT of Delhi, Annexure "R-V" in compliance with High Court's direction dated February 8, 2007, filed on or before March 15, 2007, in *Court on Its Own Motion vs Commissioner of Police*, supra no 27, at pp 89 et seq.

108 The Delhi Prevention of Begging Rules, 1960, Rule 15 (hereafter, DPBR).

109 Ibid, Rule 29.

110 Report of the Four One-day Workshops Organised for Caretaking Staff of Residential Institutions, p 13 (Tata Institute of Social Sciences, Department of Criminology and Correctional Administration, 1990), in report of the Commission on Beggars Act, supra no 12, Annexure 6; See also, Badgaiyan, Beggar Institutions – Lampur, Narela: An Assessment, supra no 13, at pp 8-9: "These all important caretakers are class IV employees lying right at the bottom of the entire bureaucratic heap. Their salaries are dismal and as a class they enjoy very little respect in the establishment. There are no rewards for good performance... And the resounding message... is that their job is mainly about keeping inmates under control and that coercion is an acceptable means of doing so".

111 *M S Pattar vs Government of NCT of Delhi W P (Civil) No 3118 of 2000*, order dated January 10, 2001, p 2.

112 Cited in *ibid*, order dated January 10, 2001, at p 1 (Anil Dev Singh & O P Dwivedi J J).

113 Inspection Report of Beggars Home for Females of Chembur, Bombay, supra no 82, at p 29.

114 Ibid, at p 28.

115 Ibid, at p 31.

116 And the "mistakes" were numerous: see, 'Inspection Report on Beggars Home for Males', Chembur, supra n 80, at p 12.

117 Ibid, at p 12.

118 'Inspection Report of Beggars Home for Females of Chembur', Bombay, supra no 82, at p 32.

119 *M S Pattar vs Government of NCT of Delhi*, supra no 111, order dated January 10, 2001, at p 2.

120 Ibid, order dated January 10, 2001, at p 3.

121 Badgaiyan, Beggar Institutions – Lampur, Narela: An Assessment, supra no 13, at p 7.

122 Ibid, at p 8.

123 Ibid, at p 8.

124 Snehlata Tandon, Report on the Survey of the

Beggars in Delhi, p 34 (Department of Social Work, University of Delhi, 2007).

125 Ibid, at p 12.

126 Mike Davis, *Planet of Slums*.

127 Gore, supra no 52, at p 269.

128 Caleb Foote, 'Vagrancy-Type Law and Its Administration' in William Chambliss, *Crime and the Legal Process*, 1969.

129 Ibid, at p 303.

130 A 2007 report by one of India's largest staffing companies assesses, for instance, that in "the working age group of 15-60, almost 40% is not literate". "Only 7% of the population in the 15-29 age group has received some form of vocational training": See, Teamlease Services, *India Labour Report 2007* reported in "Unemployability: Bigger Crisis in India" dated November 16, 2007 found at <http://www.rediff.com/money/2007/nov/16labour.htm> visited on December 10, 2007.



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