**Inputs on Decriminalization of Homelessness and Extreme Poverty in India**

**Submitted by**

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**Dear Sir/Ma’am,**

This input is in response to the Questionnaire by the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights on efforts made to decriminalize offences frequently associated with homelessness and poverty, such as street vending, begging, staying, sleeping, easting or undertaking any other life sustaining activities in public spaces seeking information regarding the following issues-

1. **Laws or regulations that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places (please kindly include the wording of these laws and regulations and specify whether they are effectively enforced).**

Begging is not considered a criminal offense in India. Nevertheless, the Bombay Prevention of Begging Act of 1959[[1]](#footnote-1), along with similar legislation in other states, allows local authorities to detain and provide rehabilitation for individuals found begging in public areas. The primary goal of these laws is to offer assistance to those who are unable to support themselves rather than penalize them. The rehabilitation process typically includes provisions for food, shelter, medical care, and vocational training to help individuals become self-sufficient.

Approximately 22 states and union territories in India have anti-begging laws, with the Bombay Prevention of Begging Act, 1959 serving as the model for most of these statutes. These laws, however, have faced criticism for allegedly targeting marginalized and impoverished individuals while failing to address the underlying social and economic issues contributing to begging.

Here is a summary of various laws related to begging in India:

* **Delhi 2018 BPBA reform:** In 2018, the Delhi High Court invalidated certain sections of the Bombay Prevention of Begging Act, 1959, which had criminalized begging in Delhi. The court ruled that these sections violated the Indian Constitution's Article 14[[2]](#footnote-2), which guarantees equality and prohibits discrimination. Consequently, begging has largely been decriminalized in Delhi.
* **Indian Penal Code:** Section 363A of the Indian Penal Code makes it illegal to kidnap or maim a minor for the purpose of begging. It also defines begging and the qualifications for minors. Additionally, Section 268 of the Indian Penal Code deals with public nuisance and can be applied when begging is considered a public nuisance.[[3]](#footnote-3)
* **Juvenile Justice Act, 2015:** Section 76 of this act criminalizes employing or inducing a child to beg and prescribes penalties, including imprisonment and fines, for those involved in such activities. More severe penalties apply if a person amputates or maims a child for the purpose of begging.[[4]](#footnote-4)
* **The Children Act, 1960:** Section 42 of the Juvenile Justice Act punishes those who employ or involve a child in begging with imprisonment or fines.[[5]](#footnote-5)
* **Prevention of Beggary Act 1960:** The Delhi High Court, in 2018, declared the Delhi Prevention of Begging Rules, 1960, unconstitutional, as they were derived from the Bombay Prevention of Begging Act, 1959. The court argued that this act failed to address the root causes of begging, like poverty, lack of education, social protection, and caste and ethnic discrimination, and criminalizing begging didn't solve the problem.[[6]](#footnote-6)
* **Power of Police to Arrest Beggars:** Under the Bombay Prevention of Begging Act, 1959, and similar state laws, authorized police officers can arrest individuals found begging in public without a warrant. Private property begging can only lead to arrest based on a formal complaint by the property owner. Detained beggars are taken to court, where they may be released if not involved in begging activities or may receive appropriate punishment, including detention in a certified institution, based on the circumstances of the case.
* **Punishments for Begging:** The court may detain a beggar for a period of one to three years in a Certified Institution or release them on a bond for abstaining from begging. Various factors, such as the beggar's age, character, and living conditions, are taken into account when determining the appropriate course of action.
* **Provision for Medical Checkups:** Beggars suffering from mental illness or leprosy may be shifted to appropriate medical facilities for treatment and care, with recommendations from medical officers guiding their care.

In summary, the anti-begging laws in India are often seen as punitive rather than curative. While they may have had some impact on reducing begging, they have faced criticism for not effectively addressing the underlying causes of begging, such as poverty and discrimination.

1. **Laws or regulations that allow the detention or imprisonment of individuals who are unable to pay the fine imposed for petty offences.**

Fine, as a form of punitive measure, finds its legal basis in Section 53 of the Indian Penal Code (IPC), 1860. This section outlines the provisions for imposing fines as a penalty for various offenses under the IPC. It serves as an essential component of the Indian legal system, ensuring that individuals who commit offenses face appropriate consequences for their actions.

In cases where an offense warrants both imprisonment and a monetary fine, Section 64 of the IPC comes into play. This section offers guidance on the sentencing process, stating that if an offender is sentenced to pay a fine, whether alongside imprisonment or independently, the court has the authority to direct that failure to pay the fine will result in a specific term of imprisonment. This imprisonment term is separate from any other incarceration the offender may have received or may be subject to under a sentence commutation.

While the IPC extensively defines various offenses and their penalties, it does not explicitly define the term "petty offense." However, Section 206 of the Code of Criminal Procedure (CrPC), 1973 [[7]](#footnote-7)addresses special summons in cases of petty offenses. According to this section, a petty offense refers to any wrongdoing punishable solely by a fine not exceeding one thousand rupees. It's important to note that this definition excludes offenses falling under the Motor Vehicle Act, 1939, or other laws that permit the conviction of accused persons in their absence upon a plea of guilt.

In the Indian legal system, fundamental rights and procedural safeguards are of paramount importance. These safeguards ensure that individuals accused of offenses are afforded a fair hearing by an independent court. The presumption of innocence until proven guilty, minimum guarantees for the defence, and the right to seek review by a higher court are all enshrined in Indian law. The legal framework is dynamic, and amendments to criminal laws are continuously undertaken to align them with evolving societal norms and changing circumstances.

It is vital to recognize that the Indian legal system places a strong emphasis on fairness, justice, and the protection of individual rights. As such, the inclusion of fines as a punitive measure, the guidelines for imprisonment in default of fine payment, and the definitions related to petty offenses are all part of a comprehensive legal framework designed to uphold the principles of justice and ensure that individuals receive due process under the law. This commitment to legal evolution and protection of rights underscores the resilience and adaptability of the Indian legal system in the face of evolving societal challenges.

1. **Information about attempts made or planned to decriminalize street vending, informal business activities, sex work, begging, eating, sleeping, or performing personal hygienic activities in public places.**

The Constitution of India includes provisions for the protection of street vendors in the country. Article 14 of the Constitution, which deals with equality before the law, ensures that street vendors have the same rights and legal protection as any other citizens without discrimination. Article 19(1)(g) of the Indian Constitution grants every citizen the fundamental right to practice any profession, trade, or business of their choice, including street vending. Article 21 of the Constitution, which guarantees the right to life, also encompasses the right to livelihood, meaning that street vendors have the right to earn a living through their trade. In 2014, the Supreme Court of India made a landmark decision affirming that street vending constitutes a fundamental right. The court emphasized that vending activities cannot be banned or prohibited without offering alternative arrangements for the vendors. Despite this crucial ruling, the practical application and enforcement of these principles have been sluggish, leading to ongoing harassment of street vendors by law enforcement authorities.

In cases where street vendors face forcible eviction without prior notice, it is considered a violation of the right to livelihood and, consequently, an infringement of Article 21 of the Constitution. In the South “**Calcutta Hawkers Association vs. Govt. of West Bengal”** [[8]](#footnote-8)case, the court affirmed that street trading is indeed a fundamental right under Article 19(g) but subject to the reasonable restrictions imposed by Article 19(6) in the interest of the general public. The court also emphasized the importance of regulating vending rights to ensure that the smooth flow of traffic on roads is not hindered.

In the **“Olga Tellis & Ors vs. Bombay Municipal Council[[9]](#footnote-9)”** case, the court emphasized that a person cannot survive without a means of livelihood. Failing to recognize the right to livelihood as a fundamental right would deprive individuals of their right to life. However, the court also emphasized that the exercise of this right should be fair and reasonable. Providing notice before the eviction of hawkers would not infringe on the rights of street vendors.

In the case of **“Maharashtra Ekta Hawkers Union and another vs. Municipal Corporation,”** [[10]](#footnote-10)Greater Mumbai, the Supreme Court highlighted the rights of street vendors and called for the establishment of vending and hawking zones following the 2009 policy. Once these zones are set up, street vendors should operate under the guidance of the town vending committee. This judgment has been seen as a positive development for street vendors, recognizing their importance and rights.

The Supreme Court's ruling in the **Sodan Singh vs. NDMC** [[11]](#footnote-11)case has significantly contributed to the jurisprudence of street vendors' rights in India. In this case, the court expanded on the rights granted under Article 19(1)(g) but emphasized that municipal authorities have the power to impose limitations on these rights. The exercise of these rights should not create public nuisance or inconvenience. Additionally, the court stressed the importance of identifying designated hawking zones and addressed issues related to the number of days and hours street vendors can operate.

In 1956, the Indian Government enacted The Immoral Traffic (Suppression) Act (SITA), [[12]](#footnote-12)which has some unique provisions regarding prostitution. Under this Act, prostitution itself is not illegal, but certain activities related to it are. Prostitution, as defined in the Immoral Traffic (Prevention) Act, 1956, refers to the sexual exploitation or abuse of individuals for commercial gain. Interestingly, this Act doesn't classify sex work as an offense under the Indian Penal Code (IPC).

However, there's a contradiction in the law because running a brothel is illegal. This forces sex workers to meet clients in hotels, which can lead to police raids. These raids often result in arrests, even though the law technically allows for sex work. The Act also expects prostitutes to keep a low profile and avoid public attention. Additionally, the Indian Penal Code, which predates the SITA, is sometimes used to charge sex workers with vague crimes such as "public indecency" or being a "public nuisance," without clear definitions of these offenses.

In 1986, the old law was amended, leading to the Immoral Traffic (Prevention) Act, or ITPA. This change was partly influenced by India's commitment to the United Nations' declaration on the suppression of trafficking.

Apart from the ITPA, several other laws, including the Indian Penal Code of 1860, the Indian Constitution of 1950, the Juvenile Justice (Care and Protection of Children) Act 2015, and various state legislations, have been enacted to combat prostitution and trafficking. These laws do not criminalize prostitution itself but do address activities such as operating and using brothels, living off the earnings of prostitution, pimping, soliciting, luring others into prostitution, and engaging in prostitution in public places.

Article 19(1)(g) of the Indian Constitution guarantees citizens the fundamental right to choose their trade, profession, or occupation, but it also allows for reasonable restrictions in the interest of public order, decency, and morality. This means that restrictions imposed on individuals must be reasonable and serve the public interest.

There are two primary arguments surrounding prostitution in India. Firstly, there's a debate about whether prostitution should be considered a profession or a business. Some argue that prostitution requires specific skills and can be seen as a profession, while others view it as a business, especially when it involves managing brothels. Owning and managing a brothel is illegal in India, even though prostitution itself is legal.

The second argument revolves around whether prostitution goes against public morality, decency, and obscenity laws. In India, obscenity is assessed using the Hicklin test, which focuses on whether the material in question tends to deprave and corrupt those exposed to it. However, many argue that sex work, typically conducted in private settings, does not have a corrupting influence on society.

In summary, India's approach to prostitution is complex, with a legal framework that allows for sex work but places restrictions on related activities. Debates continue regarding whether it should be considered a profession or a business and whether it goes against public morals and decency.

Constitution of India. However, under entry 9 of the State List in the seventh Schedule of the Constitution of India, the "Relief of the disabled and unemployable" falls under the jurisdiction of individual states. Additionally, entry 15 of the Concurrent List includes "Vagrancy" as a concurrent subject. Various states and Union Territories have either enacted their own legislation concerning anti-beggary or have adopted legislation from other states. These laws differ in their provisions, and the implementation of these laws, as well as measures taken for the rehabilitation of individuals engaged in begging, varies widely.

Many states and Union Territories have adopted the "Bombay Prevention of Begging Act 1959," which criminalizes begging. However, it is worth noting that the High Court of Delhi, in its order dated August 8, 2018, in cases W.P. (C) 10498/2009 & C.M. Appl 1837/2010 and W.P. (C) 1630/2015, has declared various sections of the Bombay Prevention of Begging Act, 1959, as extended to Delhi, which directly and indirectly criminalize begging or treat it as an offense, as unconstitutional. These provisions have been struck down by the court.

1. **Information concerning initiatives to change the response of law enforcement officials and of the criminal justice system from penalization, punishment or detention, towards facilitating social inclusion of persons living in poverty or experiencing homelessness.**

In recent years, India has witnessed a growing awareness of the need to reform how the police and legal system interact with people who are poor or homeless. Recognizing the injustice of punishing individuals solely for their economic status, several initiatives have emerged with the aim of providing support and opportunities to help them reintegrate into society and lead better lives.

One significant effort is the establishment of "Homeless Shelters" in major cities across the country. These shelters not only offer a roof over the heads of those without homes but also provide essential services like food, clothing, and healthcare. The goal is to address the immediate needs of the homeless population and create a safe environment where they can access support networks.

Furthermore, there is a growing emphasis on rehabilitation rather than incarceration for those living in poverty. Diversion programs have been introduced, allowing non-violent, economically disadvantaged offenders to receive counseling, vocational training, and educational opportunities instead of serving jail time. This shift acknowledges that breaking the cycle of poverty involves addressing the root causes of criminal behaviour.

Legal aid clinics have also emerged as crucial resources for the poor and homeless. These clinics connect individuals with legal experts who help them navigate complex legal issues, such as eviction cases or disputes over public spaces. By ensuring access to legal representation, these initiatives aim to prevent wrongful arrests and protect the rights of marginalized individuals.

Additionally, awareness campaigns and advocacy groups have played a pivotal role in highlighting the rights and dignity of the poor and homeless. These efforts aim to reduce stigmatization and discrimination while fostering empathy within society.

In conclusion, India is witnessing a paradigm shift in how the police and legal system interact with the poor and homeless. The focus is shifting from punishment to support, with initiatives such as homeless shelters, diversion programs, legal aid clinics, and awareness campaigns working together to empower vulnerable individuals and integrate them into society, ultimately paving the way for a more just and compassionate society.

1. **Measures and services available at national, regional or municipal level to support people living in poverty and in situations of vulnerability from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places, because they lack access to employment, social assistance, adequate housing, public showers and toilets.**

The Ministry has introduced a program known as SMILE - Support for Marginalized Individuals for Livelihood and Enterprise. This initiative includes a sub-scheme called the Central Sector Scheme for Comprehensive Rehabilitation of individuals engaged in begging. The primary focus of this scheme is to address the basic needs of those involved in begging, such as providing food, shelter, medical care, counseling, rehabilitation, essential documentation, education, skill development, and opportunities for economic advancement.

True social justice can only be achieved in a society that respects and ensures the fundamental human dignity and human rights of all its members, including those who are incarcerated or deprived of their liberty. The Preamble to the Constitution of India commits to securing social, economic, and political justice for all citizens. Article 39A of the Constitution mandates the provision of free legal assistance to the disadvantaged and vulnerable sections of society. Articles 14 and 22(1) of the Constitution impose a duty on the State to ensure equality before the law. Article 22(1) further guarantees the right of every person taken into custody to be represented by a legal practitioner of their choice. The right to have state-sponsored legal aid counsel is inherent in Articles 39A and 14 and is applicable at all stages when an individual has the right to consult a private lawyer. Consequently, the right to legal counsel during questioning, arrest, interrogation, and detention is firmly established in the law. The Supreme Court has also placed an obligation on both the police and magistrates to inform the accused or suspect of their right to legal aid counsel and to involve the legal aid institution if the person cannot access a private lawyer.

One of the significant barriers to accessing justice is legal illiteracy, particularly among those who are unaware of their entitlements under the welfare laws and government schemes, both at the central and state levels. To address this, legal awareness programs are conducted nationwide by Legal Services Authorities. These programs cover various laws and schemes pertaining to marginalized groups within society, including children, laborers, disaster victims, Scheduled Castes, Scheduled Tribes, and individuals with disabilities. Legal Services Authorities also create booklets and pamphlets in simple language to educate people about their fundamental rights and responsibilities. Electronic and print media are effectively utilized to disseminate information about people's legal rights.

In carrying out these responsibilities, the National Legal Services Authority (NALSA) collaborates closely with 37 State Legal Services Authorities, 673 District Legal Services Authorities, and 2281 Taluk Legal Services Committees. Additionally, Legal Services clinics have been established in various locations across the country, including colleges/universities, Juvenile Boards, observation homes, villages, community centers, and jails. These clinics aim to facilitate access to legal services institutions, particularly for individuals facing geographical, social, and other barriers. This effort also helps individuals exercise their right to housing and other fundamental rights, promoting hygienic living conditions and overall well-being.

Regards

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1. “The Bombay Prevention of Begging Act, 1959. (1969). (n.p.): (n.p.).” [↑](#footnote-ref-1)
2. “Assembly of India, C. (2020). The Constitution of India: Bare Act. (n.p.): Independently Published.” [↑](#footnote-ref-2)
3. “The Indian Penal Code. (n.d.). (n.p.): Universal Law Publishing.” [↑](#footnote-ref-3)
4. “The Juvenile Justice (Care and Protection of Children) Act, 2000 (56 of 2000): With the Juvenile Justice (Care and Protection of Children) Rules, 2007, National Charter for Children, 2003, Alongwith Short Notes. (2015). India: Universal Law Publishing Company Pvt. Limited.” [↑](#footnote-ref-4)
5. “The Children Act, 1960. (1985). India: Government of India, Ministry of Law and Justice.” [↑](#footnote-ref-5)
6. Available at- <https://www.indiacode.nic.in/bitstream/123456789/9661/1/prevention_of_beggary_act%2C_1960.pdf>. [↑](#footnote-ref-6)
7. “The Code of Criminal Procedure, 1973. (2023). India: ABS Books.” [↑](#footnote-ref-7)
8. AIR 1997 Cal 234 [↑](#footnote-ref-8)
9. 1986 AIR 180 [↑](#footnote-ref-9)
10. 2004 (1) SCC 625 [↑](#footnote-ref-10)
11. 1989 SCR (3)1038 [↑](#footnote-ref-11)
12. “The Immoral Traffic (Prevention) Act, 1956: (104 of 1956) with Short Notes. (2015). India: Universal Law Publishing Company Pvt. Limited.” [↑](#footnote-ref-12)