**Introduction:**

An unfortunate truth that has been observed in nations around the world is that poverty is directly proportional to prosecution. It is often observed that those who belong to the down trodden and economically weak sections of the society are compelled to undertake activities such as begging, living on the streets, using public transport without a valid ticket or to undertake unlawful occupations such as rag picking or sex work. These people live on the fringe and these activities are the only option they have for survival. However, it is often seen that these people have to face fines, arrest, detention or other forms of legal punishment for these petty offences. The concerns raised by this are two-fold; This prosecution of such a large number of poor people over burdens the criminal justice system, including the courts and the prisons. These issues, which could have been dealt with using other means such as policies addressing their root cause end up choking the courts and diverting their attention from matters that are of greater relevance to them. The second issue that this gives rise to is the human rights concern.

In light of the above, inputs are sought to inform a joint report of Special Rapporteur of the concerned areas about the efforts made by each nation to decriminalize the issues relating to poverty and homelessness.

**Any laws or rules that forbid begging, eating, sleeping, or engaging in personal hygiene activities in public spaces, and the current status of their applicability:**

In order to describe Indian rules and regulations that deal with begging and life sustaining activities in public, it is important to draw a distinction between begging and vagarancy. Historically speaking, colonial laws on which Indian laws have based themselves differentiated between them. Beggars were those who were frail, aged, sick or disabled and hence unable to undertake a meaningful way of sustaining themselves. On the other hand, vagarants are those who are able-bodied, but have chosen to beg. Under the English Vagarants and beggars act dating back to 1494, the former were allowed to beg while the latter were deemed worthy of punishment. [[1]](#footnote-1) Vagarancy includes theft, prostitution and gambling. There is no legislation that deals with the broad term of vagrancy, but there are specific legislations that criminalize acts such as immoral trafficking and gambling. [[2]](#footnote-2) The approach to begging is in line with the old English view. Begging is not a crime in India. However, there are several provisions of the Indian Penal Code that can effectively operate to curtail begging. Section-365, 366A, 368, 372 and 373 can all be extrapolated to infer the criminalization of the act of abducting, kidnapping or illicit trafficking of persons for purposes such as begging. Also, According to Section 42 of the Juvenile Justice (Care and Protection of Children) Act, 2015, anyone who hires a kid for begging, encourages the child to beg, or compels the child to beg faces up to a year in prison, a fine, or both. Such an offence is one that can be recognized, and aiding it is punished as well.[[3]](#footnote-3) Further, Section-363A of the code deals with "Begging in Public Places." It empowers the state governments and union territories to take measures to prevent begging and rehabilitate beggars. The provision allows for the establishment of homes and rehabilitation centers for the care and treatment of beggars. However, it must be noted that most regions in India have their specific laws dealing with begging. Most states have modeled their laws after the Bombay Prevention of Begging Act, 1859.

According to the provisions of this act and the corresponding local laws of other states, A court has the authority to imprison a beggar in a Certified Institution for a term of not less than one year and not more than three years. If the court is convinced, based on the facts of the case, that the individual determined to be a beggar as aforesaid is unlikely to beg again, the court may release the beggar on a bond for refraining from begging and being of good behaviour after proper warning. The bond may be executed by the beggar or by any other person the court finds proper, with or without sureties, as the court may demand. The following factors will be taken into account by the Court: the beggar's age and personality, the circumstances and surroundings in which he or she lived and the report of the probe officer. [[4]](#footnote-4)

However, a key point to be noted here is that in the case of Harsh Mander & Anr. v. UOI & Ors., W.P. 10498/2009 decided on August 8, 2018,  Delhi Prevention of Begging Rules, 1960, which were based on the Bombay act mentioned above were declared unlawful by the Delhi High Court. The act, according to the court, violates the constitutional rights to equality, life, and personal freedom in India. The act did not address the core reasons of begging, such as poverty, a lack of access to education, social support, and discrimination based on caste and ethnicity. The court further highlighted that the statute's definition of begging was arbitrary. The court determined that the government is responsible for providing all of its citizens with the needs of life and that criminalising begging does not address the underlying causes of the issue. The court relied on various fundamental rights guranteed by the constitution of India, such as Article-14 and 21. The act's provisions allowing the arrest and detention of beggars without a warrant were also overturned by the court, but those dealing with the penalties for employing or compelling persons to beg—which address the problem of forced begging or begging rackets—were upheld.[[5]](#footnote-5)

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

Section 64 of the IPC deals with the non-payment of fines. It states that when a person is sentenced to pay a fine and they are unable to pay it immediately, the court may order the person to be detained in custody until the fine is paid. Each day of detention may be counted as a day's imprisonment in lieu of the unpaid fine.

However, Indian courts have interpreted and applied existing legal provisions to limit imprisonment for non-payment of fines. The Supreme Court of India has issued guidelines emphasizing the importance of considering the financial capacity of the offender before ordering imprisonment for non-payment of fines. There are also various procedural safeguards in Indian criminal proceedings, such as the right to a fair hearing, the presumption of innocence, the right to be represented in the court by a government provided lawyer and the right to review at a higher forum. [[6]](#footnote-6)

**Whether any of these laws and regulations may violate international human rights law?**

The Human Rights Council's adoption of the Guiding Principles on Extreme Poverty and Human Rights (A/HRC/21/39) in September 2012 emphasizes the need for States to repeal and rewrite any laws that make it illegal to conduct life-sustaining activities such as sleeping, begging, eating, or using the restroom in public places. States should also reexamine sanctions policies that subject people living in poverty to disproportionate fines, particularly those relating to begging, using public property, and welfare fraud, and take into consideration eliminating prison terms for non-payment of fines for those who are unable to pay.

According to the Guidelines for the Implementation of the Right to Adequate Housing, States should prohibit and address discrimination based on homelessness and repeal any laws or policies that do so. These policies include those that criminalize or penalize homelessness or actions related to it, like eating or sleeping in public places. It must be against the law to evict homeless people forcibly from public areas and destroy their possessions. Wherever they reside, homeless people should be similarly shielded from intrusions on their privacy and their homes. To help homeless persons break the cycle of criminalization, incarceration, and homelessness and obtain their right to housing, they further urge that states offer alternative methods within their legal systems for dealing with minor offenses. [[7]](#footnote-7) Further, according to Article 25(1) of the Universal Declaration of Human Rights, 1948, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond his control."

On a prima facie glance, it may be noted that the provisions of the IPC that criminalize the non-payment of fines and the anti-begging laws may be contrary to these International Human rights provisions. However, it has to be seen that several judicial precedents have interpreted these laws in such a manner that their operation is consistent with human rights. While the courts are undeniably trying their best to uphold human rights and the other fundamental rights of the poor and down trodden, there are still some key issues that still need to be taken care of. Accoridng to the 2011 census, there are close to 2 million homeless people in India and in fact, independent experts estimate the number to be much higher. In 2010, the Supreme Court of India ordered for one homeless shelter to be constructed per 100,000 of the population. Accordingly, In 2013, the National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless (NULM–SUH) converted this into a policy directive and set standards for shelters and facilities for the homeless. However, implementation remains poor and the conditions for several of these people remains poor. For instance, the Delhi government failed to utilize 206 million rupees that were allocated for this purpose. [[8]](#footnote-8) Thus, the adherence to Article-25(1) of the UDHR, 1948 has not been very successful, though there have been no violations of international human rights law. This lack of adherence can be attributed to the sheer size of the population of this country and its socio-economic history that has not been in favor equitable distribution of wealth.

**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:**

Over the years, judicial interpretation in this regard has been such that it had always acted as a catalyst for the entire system to become more and more sensitive towards the fringe groups and their rights. As mentioned above, the case of Harsh Mander & Anr. v. UOI was a landmark judgment as far as the anti-begging laws in the national capital were concerend. Further, as has been mentioned in the context of Section-64 of the Indian Penal Code, the Apex court of India has issued guidelines emphasizing the importance of considering the financial capacity of the offender before ordering imprisonment for non-payment of fines. The case of Olga Tellis v. Bombay Municipal Corporation (1986 AIR 180, 19) is also a landmark precedent in India that dealt with the issue of the right to livelihood and housing for pavement dwellers in the city of Mumbai. Here, it was held that the right to life under Article 21 of the Constitution includes the right to livelihood and shelter. The court also ruled that the municipal authorities could not forcibly evict pavement dwellers without providing alternative accommodation and conducting a proper survey of the homeless population. This case established the principle that the state had a duty to provide shelter and protect the right to livelihood of its citizens, especially those living in vulnerable conditions. The case laid the foundation for subsequent legal developments and policy changes aimed at addressing homelessness and slum rehabilitation in India. [[9]](#footnote-9) The Supreme Court has also taken the firm view that the institutions of the nation cannot take an elitist view and prohibit begging altogether. the honorable court recognized that a person would not be begging unless their situations compel them to. The court recognized it as a socio-economic issue. The court held the view that rehabilitation, education and employment with a sympathetic and humanitarian view are the way forward. [[10]](#footnote-10)

**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.**

As seen from the above, inclusivity is the very soul of the Indian constitution, and the laws of the country carry the same essence. Article 21 of the constitution contains the Fundamental Right to Life and Personal Liberty- a term whose meaning is an ever widening umbrella, thanks to numerous judicial precedents that have been set.

A recent example of this is the inclusion of Right to Sleep in the ambit of this article, which was done by the apex court in 2012 after the police reacted against people sleeping during a rally.[[11]](#footnote-11) A parallel understanding of no national laws existing against people sleeping on the street is the sensitivity of the legislature towards poverty and that people resort to sleeping on the streets as a fait accompli. With that said, the Government is constantly striving to improve the housing situation with schemes like Pradhan Mantri Awas Yojana (PMAY).

Some local agents like motor accident claims tribunals blame those sleeping on the roads for road accidents, but these cases ultimately boil down to negligent driving and is not the fault of the victims who are helplessly exposed to the vagaries of nature as they have no shelter.[[12]](#footnote-12)

However, the case with open defecation is not the same, because the action creates a public health issue- many diseases are transmitted via the faeco oral route. In order to curb this, in 2015, the ministry of Drinking Water and Sanitation has called for an ODF (Open Defecation Free) environment, which means that every household should have proper toilets and no fecal matter should be found in public areas like fields. [[13]](#footnote-13) On the way to achieving this goal, India has already constructed about 10.9 crore latrines for individual households, under the Swachh Bharat Mission.[[14]](#footnote-14)

Similarly, there may be health and even morality concerns that arise out of sex work and the Indian Penal Code (IPC) criminalises it when it is done without consent and involves exploitation. However, the practice itself is not illegal here and the Supreme Court has highlighted in its 2022 verdict that sex workers have the right to a dignified life and get equal protection of law. [[15]](#footnote-15)

As for begging, it is considered an offence in the Indian states of Bihar, Gujarat, Punjab, Haryana and Maharashtra. The Delhi High Court has decriminalised begging, stating that it is a violation of Article 21- the Supreme Court issued a notice to the above mentioned states on a similar argument.[[16]](#footnote-16)

**Measures and services available at national, regional or municipal level to support people living in poverty or 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 hygienic activities in public places, because they lack access to employment, social assistance, adequate housing, public showers and toilets:**

Recognising that the problem of poverty in India is structural, the government has made available several provisions for the havenots, particularly aiming at the alleviation of poverty- a phenomenon which may manifest itself as begging, sleeping on the roads or performing other hygienic activities in public places.

Some schemes working towards these include Public Distribution System (PDS) and Fair Price Shops with an aim to provide food grains like rice and wheat at a subsidised rate. The former also includes Targeted PDS and SMART-PDS (A digitised form of the scheme by the Ministry of Consumer Affairs, Food and Public Distribution, to reduce human intervention).[[17]](#footnote-17)

Recognising that there are people who have no shelter at night, the Pradhan Mantri Awas Yojana (PMAY) aims to provide housing to non-propertied people with annual family income up to 18 lakhs, thus covering a wide range of low income groups.[[18]](#footnote-18) Similarly, toilets are being constructed at public places, as well as at homes, under the Swacch Bharat Mission. There are also many homeless shelters set up by the government and other organisations, such as the one set up by the Salaam Bharat Trust for homeless children. [[19]](#footnote-19)The national Urban Livelihoods Mission also runs a Scheme of Shelters for Urban Homeless, which aims to converge with similar programmes run at statue level to enhance efficacy. [[20]](#footnote-20)

Apart from specific schemes, there are measures which are wide ranging in nature such as SMILE (Support for Marginalised Individuals for Livelihood and Enterprise), which works for the rehabilitation of beggars, providing medical facilities, giving food and shelter, etc.[[21]](#footnote-21)

For providing free legal aid, the government has set up NALSA (National Legal Services Authority), as per the 1987 act, and also SALSA, which conducts Lok Adalats in the state. [[22]](#footnote-22)

To bring an end to the cycle of poverty and unemployment, the government has a number of schemes for upskilling such as the Pradhan Mantri Kaushal Vikaas Yojana (PMKVY)- which includes training and placement. Standard Training Assessment and Reward Scheme (STAR) and Skill Acquisition and Knowledge Awareness for Livelihood Promotion (SANKALP) work on similar lines.

Since the time of Independence, the Indian government has been striving to come out of the shackles of colonialism and seeks to overcome a number of structural problems through multi sectoral schemes as well as schemes applying to different sectors. These measures are in line with the 17 SDGs which the world strives to achieve. [[23]](#footnote-23)

1. *Bibek Debroy: Which state has most beggars, and how beggars differ from vagrants*. (n.d.). The Week. https://www.theweek.in/columns/bibek-debroy/2021/04/15/bibek-debroy-which-state-has-most-beggars-and-how-beggars-differ-from-vagrants.html [↑](#footnote-ref-1)
2. KS, C. (2022, October 21). *Is Beggary a Crime? - A Critical Socio-Legal Outlook on Beggar and Vagrancy in India | KnowLaw*. KnowLaw. https://knowlaw.in/index.php/2022/10/21/is-beggary-a-crime/ [↑](#footnote-ref-2)
3. *Laws related to Begging in India - Is it Crime?* (2023, January 4). Rest the Case. https://restthecase.com/knowledge-bank/anti-begging-laws-in-india [↑](#footnote-ref-3)
4. *Laws related to Begging in India - Is it Crime?* (2023, January 4). Rest the Case. https://restthecase.com/knowledge-bank/anti-begging-laws-in-india [↑](#footnote-ref-4)
5. *Guest Post: Delhi HC Decriminalises Begging – An Outlier or the Start of Nationwide Reform?* (2018, August 9). Guest Post: Delhi HC Decriminalises Begging – an Outlier or the Start of Nationwide Reform? – Indian Constitutional Law and Philosophy. https://indconlawphil.wordpress.com/2018/08/09/guest-post-delhi-hc-decriminalises-begging-an-outlier-or-the-start-of-nationwide-reform/ [↑](#footnote-ref-5)
6. *OHCHR | Call for Input: Decriminalization of homelessness and extreme poverty*. (n.d.). OHCHR. https://www.ohchr.org/en/calls-for-input/2023/call-input-decriminalization-homelessness-and-extreme-poverty [↑](#footnote-ref-6)
7. *OHCHR | Call for Input: Decriminalization of homelessness and extreme poverty*. (n.d.). OHCHR. https://www.ohchr.org/en/calls-for-input/2023/call-input-decriminalization-homelessness-and-extreme-poverty [↑](#footnote-ref-7)
8. The Human Rights to Adequate Housing and Land in India: Report for the United Nations Human Rights Council for India’s Third Universal Periodic Review: <https://www.hlrn.org.in/documents/Housing_Land_Rights_UPRIII_HLRN.pdf> [↑](#footnote-ref-8)
9. <https://indiankanoon.org/doc/709776/> [↑](#footnote-ref-9)
10. *Supreme Court: Can’t take elitist view to ban begging | India News - Times of India*. (n.d.). The Times of India. https://timesofindia.indiatimes.com/india/cant-take-elitist-view-to-ban-begging-supreme-court/articleshow/84809917.cms

 [↑](#footnote-ref-10)
11. *Right To Sleep: You Can File Case Against Anyone For Not Letting You Sleep*. (2023, August 1). India.com. https://www.india.com/news/india/right-to-sleep-legal-case-against-anyone-for-not-letting-you-sleep-article-21-6199279/ [↑](#footnote-ref-11)
12. Mander, H. (2017, April 10). *What a tribunal that blamed a man sleeping on the road for his death should know about homelessness*. Scroll.in. https://scroll.in/article/833565/what-a-tribunal-that-blamed-a-man-sleeping-on-the-road-for-his-death-should-know-about-homelessness [↑](#footnote-ref-12)
13. *Open defecation - Wikipedia*. (2015, March 12). Open Defecation - Wikipedia. https://en.wikipedia.org/wiki/Open\_defecation [↑](#footnote-ref-13)
14. *Toilets Built Under Swachh Bharat Mission*. (n.d.). https://pib.gov.in/Pressreleaseshare.aspx?PRID=1797158 [↑](#footnote-ref-14)
15. *India’s Supreme Court Recognizes Sex Work as a Profession*. (2022, June 13). India’s Supreme Court Recognizes Sex Work as a Profession – the Diplomat. https://thediplomat.com/2022/06/indias-supreme-court-recognizes-sex-work-as-a-profession/ [↑](#footnote-ref-15)
16. *SC to decide on decriminalising begging, issues notice to states treating it as offence | India News - Times of India*. (n.d.). The Times of India. https://timesofindia.indiatimes.com/india/sc-to-decide-on-decriminalising-begging-issues-notice-to-states-treating-it-as-offence/articleshow/80791166.cms [↑](#footnote-ref-16)
17. S. (2023, March 31). *SMART-PDS Scheme | Current Affairs*. SMART-PDS Scheme | Current Affairs. https://www.iasparliament.com/current-affairs/smart-pds-scheme [↑](#footnote-ref-17)
18. Prasad, D. (2023, January 16). *Pradhan Mantri Awas Yojana Scheme: Documents Required, Eligibility & Features*. A Comprehensive Guide to Money Transfer, Recharges, Bill Payments and Other Digital Payments | Paytm Blog. https://paytm.com/blog/saving-schemes/government-schemes/pmay-pradhan-mantri-awas-yojana-scheme/ [↑](#footnote-ref-18)
19. *Homelessness in India - Wikipedia*. (2016, March 12). Homelessness in India - Wikipedia. https://en.wikipedia.org/wiki/Homelessness\_in\_India#:~:text=One%20such%20organization%20known%20as,health%20and%20mental%20health%20services. [↑](#footnote-ref-19)
20. https://mohua.gov.in/upload/uploadfiles/files/7NULM-SUH-Guidelines.pdf [↑](#footnote-ref-20)
21. https://www.ohchr.org/sites/default/files/2022-03/India.pdf [↑](#footnote-ref-21)
22. *National Legal Services Authority!* (2023, September 11). National Legal Services Authority! https://nalsa.gov.in/ [↑](#footnote-ref-22)
23. *Skill India Mission Programme - Objectives, Advantages, Features | Bajaj Finserv*. (2021, May 25). www.bajajfinserv.in. https:///insights/skill-india-scheme [↑](#footnote-ref-23)