

**PIL ON DECRIMINALISING THE ACT OF BEGGING-
NOTICE ISSUED BY HON'BLE SUPREME COURT OF
INDIA**

(FILED BY H.K. LAW OFFICES)



The Hon'ble Supreme Court of India issued notice on PIL filed under article 32 of the Constitution of India for decriminalising the act of begging and challenging the constitutional validity of Anti- Begging Acts of various states of India.

A bench of Hon'ble Justices Ashok Bhushan and R Subhash Reddy issued notice to Gujarat, Punjab, Bihar and Maharashtra where begging is still an offence under The Prevention of Begging Act. The Hon'ble Court granted six weeks time to file their response on PIL.

Advocate H.K. Chaturvedi has argued that the Hon'ble High Court of Delhi has declared the The Prevention of Begging Act, Delhi unconstitutional in the case of Harsh Mander & Anr. Vs Union of India & Ors.¹ while observing the hard reality that the State has not been able to ensure even the bare essentials of the right to life to all its citizens, even in Delhi. There are several reports on starvation deaths in the newspapers and ensuring education to the 6 to 14-year-old remains a challenge. It needs to be realised that people beg on the streets not because they wish to, but because they need to. Begging is their last resort to subsistence; they have no other means to survive. Begging is a symptom of a disease, of the fact that the person has fallen through the socially created net.

The petition contended that the provisions of the statutes criminalizing the act of begging puts people in a situation to make an unreasonable choice between committing a crime to be rehabilitated or not committing one and

¹ HARSH MANDER & ANR. VS UNION OF INDIA & ORS. (W.P.(C) 10498/2009)

starving, which goes against the very spirit of the Constitution and violates Article 21 i.e. Right to Life.

The petition further contends that Criminalizing begging is a wrong approach to deal with the underlying causes of the problem. It ignores the reality that people who beg are the poorest of the poor and marginalized in society. Criminalizing begging violates the most fundamental rights of some of the most vulnerable people in our society. People in this stratum do not have access to basic necessities such as food, shelter and health, and in addition criminalizing them denies them the basic fundamental right to communicate and seek to deal with their plight.

It must be observed and analysed by the states and parliament that if they intend to eradicate begging, artificial means to make beggars invisible will not suffice. A move to criminalize them in a county with more than 5 lakhs² beggars or vagrants will make them invisible without addressing the root cause of the problem. The root cause is poverty, which has many structural reasons: no access to education, social protection, discrimination based on caste and ethnicity, landlessness, physical and mental challenges, and isolation.

The government of India has the mandate to provide social security for everyone and ensure that all citizens have basic facilities embedded in Directive Principles of State Policy in Constitution of India. However, the presence of beggars is evidence that the state has not managed to provide these to all its citizens, thus instead of working on its failure and examining what made people beg, criminalizing the act of beggary is irrational and against the approach of a socialist nation as embedded in preamble of our constitution.

That the challenged statutes provide power to police to arrest without warrant and if a person has to be detained to ascertain the cause of poverty is in the teeth of the rights of such persons accorded under Article 21 of the Constitution of India. As a result of statutes, State would be arresting persons who may be subsequently found to have not been begging, thereby, depriving such persons of their liberty without following any process of law. This is also completely impermissible.

The provisions of the anti-begging legislations, criminalising the act of begging puts people in a situation to make an unreasonable choice between committing a crime to be rehabilitated or not committing one and starving, which goes against the very spirit of the Constitution and violates Article 21 i.e. Right to Life. Some essential concomitants and contours of Article 21 of the Constitution of India guaranteeing Right to Life have been elucidated and

² State-wise Census 2011, by the Office of Registrar General & Census Commissioner, India.

expounded upon by the Supreme Court of India. This includes inter alia the right to shelter, education, healthcare and clean environment³.

This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State, neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.⁴

Thus, it is well settled that the right to life is the right to live with dignity and with necessities of life required for it. This right includes the right to take steps including begging to survive and keep body and mind together⁵. And by enforcing such legislations, state is simply failing in its duty to provide a decent life to its citizens and adds insult to injury by arresting, detaining and, if necessary, imprisoning such persons, who beg, in search for essentials of bare survival, which is even below sustenance. A person who is compelled to beg cannot be faulted for his actions in such compelling circumstances.

READ WHOLE PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA AT-

<https://drive.google.com/file/d/12EQZRYywUE9-O2AJ9Midak2bBaxUyp32/view?usp=sharing>

³ Shantistar Builders v. Narayan Khimalal Totame (1990) 1 SCC 520

⁴ Bandhua Mukti Morcha vs. Union of India & Ors. AIR 1984 SC 802

⁵ Gopalanachari v. State of Kerala AIR 1981 SC 674