



Decriminalise The Margins

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Highlights

- Anti-begging law is one of many used to target the transgender community.
- In order to address this historical oppression, the Supreme Court pronounced its landmark judgment in NALSA vs Union of India, 2014, affirming fundamental rights of transgender persons.
- The Bombay Prevention of Begging Act, 1959, prescribes a penalty of three years of detention for first time “offenders” convicted for begging and can be ordered to be detained for 10 years for a subsequent “offence” of begging.
- The Delhi High Court in a landmark judgment has held the Act as unconstitutional in Delhi, on grounds that it violates Article 14 and Article 21 of the Constitution restoring the rights of persons who have no other means of sustenance but to seek alms.

The stigma around transgender persons had been instituted by the colonial rulers who introduced the Criminal Tribes Act, 1871 (CTA) enabling the police to arrest without warrant nomadic tribes and “eunuchs” who were found dancing, playing music or taking part in any public exhibition.

- Although repealed in 1952, the Act was readily replaced by the habitual offenders acts in various states for “restricting the movement of habitual offenders”, thereby importing the draconian legacy of the CTA into our penal code.
- To this day, draconian provisions of the CTA find their way into the statute books through acts such as the Telangana Eunuchs Act, 1919, that allow for “registration and regulation” of transgender persons, adding to the existing stigma, and abetting arrests of transgender persons engaged in begging or sex work.
- Even as recently as 2011, the Karnataka Police Act was amended to include a section 36A, titled “Power to regulate eunuchs,” providing impunity to the police to arbitrarily arrest and detain transgender persons.

In order to address this historical oppression, the Supreme Court pronounced its landmark judgment in NALSA vs Union of India, 2014, affirming fundamental rights of transgender persons, noting that they face extreme violence and discrimination and are pushed to the fringes of society where begging is often the only way to make ends meet.

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