



Undoing a legacy of injustice

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Colonial legacy

- In 1871, the colonial regime passed the notorious Criminal Tribes Act which was based upon the racist British belief that in India there were entire groups and communities that were criminal by birth, nature, and occupation.
- The Act unleashed a reign of terror, with its systems of surveillance, police reporting, the separation of families, detention camps, and forced labour.
- More than six decades after independent India repealed the Act, the “denotified tribes” continue to suffer from stigma and systemic disadvantage.

Through laws such as the Criminal Tribes Act, and other legal weapons such as vagrancy laws (Vagrancy is the condition of a person who wanders from place to place homeless without regular employment or income, referred to as a vagrant, vagabond or drifter. Vagrants usually live in poverty and support themselves by begging, temporary work, petty theft, garbage scraping or, where available, welfare), the regime attempted to destroy these patterns of life, by using criminal laws to coerce communities into settlements and subjecting them to forced labour.

- Independence brought with it many changes, but also much continuity, despite the birth of a Constitution that promised liberty, equality, fraternity, and dignity to all, independent India’s rulers continued to replicate colonial logic in framing laws for the new republic.
- They continued to treat individuals as subjects to be controlled and administered, rather than rights-bearing citizens.
- One of the most glaring examples of this is the Bombay Prevention of Begging Act.
- The Begging Act was passed in 1959 by the State of Bombay, and has continued to exist in as many as 20 States and two Union Territories.

But last week, in a remarkable, landmark and long overdue judgment, the Delhi High Court struck it down as inconsistent with the Constitution.

Why?

- From its first word to the last, the Begging Act reflects a vicious logic.
- First, there is the definition of “begging”.
- Not only do these vague definitions give unchecked power to the police to harass citizens but they also reveal the prejudices underlying the law.
- The pointed reference to “singing, dancing, fortune telling, performing or offering any article for sale” makes it clear that the purpose of the Act is not simply to criminalise the act of begging, but to target groups and communities whose itinerant patterns of life do

not fit within mainstream stereotypes of the sedentary, law-abiding citizen with a settled job.

- And the reference to “no visible means of subsistence and wandering about” punishes people for the crime of looking poor — but it also reflects the lawmakers’ desire to erase from public spaces people who look or act differently, and whose presence is perceived to be a bother and a nuisance.

The judicial view

- In its judgment delivered last week (*Harsh Mander v. Union of India* and *Karnika Sawhney v. Union of India*), a Bench of the Delhi High Court presided over by the Chief Justice, held that the Begging Act violated Article 14 (equality before law) and Article 21 (right to life and personal liberty) of the Constitution.
- In oral argument, the government conceded that it did not intend to criminalise “involuntary” begging.
- The High Court noted, however, that the definition of begging under the Act made no such distinction, and was therefore entirely arbitrary.
- More importantly, it also held that under Article 21 of the Constitution, it was the **state’s responsibility to provide the basic necessities for survival such as food, clothing, shelter** to all its citizens.
- Poverty was the result of the state’s inability or unwillingness to discharge these obligations.

Therefore, the state could not turn around and criminalise the most visible and public manifestation of its own failures and indeed, penalise people who were doing nothing more than communicating the reality of their situation to the public.

Conclusion and Way forward

- Nonetheless, it is important to remember one thing: a court can strike down an unconstitutional law, but it cannot reform society.
- Poverty as the Chief Justice recognised in her judgment held that is a systemic and structural problem.
- The Delhi High Court has done its job in striking down a vicious law that criminalised poverty.

But it is the task of the Legislative Assembly and the government to replace the punitive structure of the (now defunct) Begging Act with a new set of measures that genuinely focusses on the rehabilitation and integration of the most vulnerable and marginalised members of our society.