

CHILD BEGGING- DELETERIOUS TO THE DEVELOPMENT OF THE SOCIETY [INDIA]

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INTRODUCTION

Begging in simple terms mean to ask for food, money as charity. Beggary is an age old social phenomenon in India. In the medieval and earlier times begging was considered to be an acceptable occupation which was embraced within the traditional social structure.¹ This system of begging and alms-giving to mendicants and the poor is still widely practiced in India with over 400,000 beggars in 2015.² A woman carrying a baby-seemingly sick and sound asleep, running around begging for money to feed the baby, in the scorching sun is a common sight in India. We tend to think of it as a co-incidence but it might not be one.

There is more to begging and beggars in India than what we seem to know. Poverty is a sad state that our country is witnessing since a long time. This conundrum exists inspite of efforts made by the Government and the Non Government Organisations (NGOs). The beggars are just one of the effects of this state. Begging is sometimes by choice but most of the time, there is a begging racket wherein children are forced to beg, this is very clearly part of the organised crime and mafia which benefits from this lucrative business of exploitation and mutilation as children gain sympathy from public as a result get more money and profit to their business. As with organised crime and their deep roots, there are very few prosecutions against traffickers who bring children and force them to beg. These children generally stay in this set up for many years only to realise that there is no escape later as there is a disconnect with the other world.

At least 300,000 children across India are drugged, beaten and forced to beg every day, in what has become a multi million rupee industry controlled by human trafficking cartels³ showing that child forced begging is a major problem in the country. Forced child begging involves forcing boys and girls to beg through physical or psychological coercion. It falls into the category of forced labour as it is “work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.”⁴

It is generally observed that children may be forced to beg by their parents or guardians where children are viewed as a burden but because their vulnerability itself may stir the charity of others, they are treated as a financial opportunity. These families generally have many children and no source of living whatsoever, so their most viable solution is to put the children to beg, however children are also exploited by third parties where children are trafficked into begging by informal networks or organised criminal gangs as people feel more sympathetic towards children and give them food or money but these children more often don't accept the food, clothing and only want money. This is a result of the abuse they face from the traffickers if they don't circum to the target of a certain money everyday.

Experts say begging has become a multi-million rupee industry, which is controlled by human traffickers. Human traffickers sometimes burn and mutilate the children to gain people's sympathy and give more money when they beg. The children use the money earned from begging to pay the traffickers, buy alcohol or drugs.

¹ Pande, The Administrative of Beggary Prevention Laws in India: a legal aid view point,11,INTERNATIONAL JOURNAL OF THE SOCIOLOGY OF LAW, 291-3014,(1983).

² Press Trust India, “Over 4 lakh beggars in India, West Bengal tops the list among states”, NDTV INDIA NEWS, (Aug, 13, 2015,21:20 IST), <https://www.ndtv.com/india-news/over-4-lakh-beggars-in-india-west-bengal-tops-the-list-among-states-1207034>.

³ Reuters, 3,00,000 Children across India are forced to beg by cartels, DNA INDIA, Jun 2, 2016.

⁴ ILO Convention No. 29 on Forced Labour (1930).

This abuse leaves a grave scare on the children which takes away the essence of childhood and instils immense fear in them. In many cases this fear, turns into frustration and this leads to the child indulging in drugs. Drug addiction is common in child coerced into begging. The research in Delhi⁵ suggests that a number of boys are forced into begging by drug dealers. Drug dealers, often older children themselves, get boys addicted to drugs and into debt. They refuse to provide them with more drugs unless they return to the streets to beg and bring them further income. Boys in the three locations, who took part in the in-depth interviews, group discussions and rapid interviews, all suggested that drug dealers have several boys under their control at any one time. As a result of which beggars are drug addicts and take petty crimes to arrange for their daily dose of drugs.⁶

CAUSES

There are many other important causes of forced begging, namely; Poverty, Migration, Lack of Quality Education, Cultural- Religious- moral traditions followed by some, lack of exposure of the world outside begging etc.

1. Poverty:

In a country like India, 21.9% of the population was below the poverty line in 2011 according to the National poverty Line, in addition, many are just above the Poverty Line but still poor. They have difficulties in meeting the daily necessities. They have problem even in drinking water. Most often each family have more than 3 children which brings them in a vulnerable position as meeting their basic requirements. In this vulnerable position, begging seems to be a lucrative option to them compared to any other profession. They often tend to force their children to enter into the 'Begging Industry'. Leading children into begging is more profitable for them as they can get easy money because people are sympathetic towards them. This way parents themselves forcefully make their children beg.

2. Migration:

When the families migrate from one part of the city to another, they take a huge risk and sometimes if they can't find other jobs that are fit for their survival. These families are trafficked and made to beg. Being migrants, they have no knowledge about the city and can be easily kidnapped and used to earn their income by making them beg. This leads to more human trafficking.

3. Lack of Quality Education:

When one does not have quality education, there are more probabilities of them finding for something that seems like a lucrative way of earning. They decide to beg and earn money, sometimes the traffickers get hold of them and traffick them and then make them work under their small organisation and these families or persons become servitude to them.

4. Cultural- Religious- moral traditions followed by some:

Cultural and religious traditions can be deeply entrenched in societies and have great influence over community members, in this case the children forced to beg and their cultures and traditions of some communities appear to support or at least accept child begging. A 'tradition' of begging is different from forcing children to beg, although it is likely that widespread acceptance of begging in general will make girls and boys more vulnerable to this form of exploitation. Traditions and religious values also influence individuals' decisions to give to child beggars, and without such donations, forced child begging would no longer be viable. This sense of duty spans Christian, Hindu and Muslim religions. This is how archaic traditions force children to beg. This is also a form of begging.

5. Lack of exposure of the world outside begging:

Making begging illegal in India is taking a punitive step rather than a rehabilitative as some children have been trafficked when they were born itself and they have been in servitude since then. They aren't aware of the laws nor that they have been wronged, they do not know anything else except begging. This violates rights of men, women and children as they aren't aware of the legal consequences or remedies in law for them.

⁵ Delhi Commission for Protection of Child Rights on Substance Abuse, Government of NCT of Delhi, (jun,2015).

⁶ Ashok Kumar, Some facts about begging, HINDU, Jun 2, 2007.

Their rights can be protected only by proper legislations. Laws in India don't protect the interest of the beggars but rather begging is criminalised. We have majorly one legislation that is about prevention of begging.

INTERNATIONAL COVENTIONS FOR THE RIGHTS OF CHILDREN

One of the most significant convention is the United Nation-Convention for Rights of a Child which sees the best interest of the child. It would be apposite to apprise ourselves also about our commitment to world community. It would be enough to note that India has accepted the Convention on the Rights of the Child, which was concluded by the UN General Assembly on 20th November, 1989. This Convention affirms that children's right require special protection and it aims, not only to provide such protection, but also to ensure the continuous improvement in the situation of children all over the world, as well as their development and education in conditions of peace and security. Thus, the Convention not only protects the child's civil and political right, but also extends protection to child's economic, social, cultural and humanitarian rights.⁷

In specific for child begging which considered to be the worst form of child labour, these convention have been trying to find a solution for the problems of child labour faced by children in the world.

INTERNATIONAL LABOUR ORGANISATION CONVENTION

1. Convention No:5 of 1919 : Prohibits the employment of children below 14 years of age.⁸
2. Convention No:90 of 1948: Prohibits the employment of children below 18 for consecutive 12 hours.⁹
3. Convention No:138 of 1973: Prohibits the employment of children below 14, but allows after obtaining permission above the age of 14 years.¹⁰
4. Convention No:182 of 1999: Prohibits worst of forms of child labour including all forms of slavery, trafficking, child prostitution, pornography, use of children for illicit activities below 18 years of age.¹¹

CONSTITUTIONAL PROVISIONS FOR PROTECTION OF RIGHTS OF CHILDREN

The Constitution of India encompasses most of the Fundamental Rights and Directive Principles for protection of rights of a child from the UN Convention of Rights of the Child. These fundamental rights and available to all children irrespective of caste, class, sex or any other discriminations, they can be enforced whenever there is non-performance by any authority, However Directive Principles of State Policy are the directives given to the authority to make relevant provision in order to achieve the desirable state in the country.

These are certain provisions which are made exclusively for children for their best interest, development, and protection from all forms of exploitation.

FUNDAMENTAL RIGHTS

1. Article 15 (3):¹² Guarantee of right to equality without any discrimination; empowers State to make special provisions relating to children.
2. Article 19 (1):¹³ Appropriate legislative and administrative steps to protect children
3. Article 21¹⁴: Right to life.

⁷ M.C. Mehta v. State of Tamil Nadu & Ors [1996] RD-SC 1576 (India).

⁸ ILO Convention No. 5 on Forced Labour (1919).

⁹ ILO Convention No. 90 on Forced Labour (1948).

¹⁰ ILO Convention No. 138 on Forced Labour (1973).

¹¹ ILO Convention No. 182 on Forced Labour (1999).

¹² INDIA CONST. art.15,cl.3.

¹³ INDIA CONST. art.19,cl.1.

¹⁴ INDIA CONST. art.21.

4. Article 21 A :¹⁵ Free and compulsory education to all children of the age of six to fourteen years.
5. Article 23:¹⁶ Prohibits traffic in human beings and forced labour.
6. Article 24 :¹⁷ Prohibition on employment of child labour in any factory, or mine, or in any other hazardous employment.
7. Article 32:¹⁸ Protection against exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.

DIRECTIVE PRINCIPLES OF STATE POLICY

Article 39(e):¹⁹ State to direct its policy towards securing the health and strength of children and that their tender age is not abused and they are not forced by economic necessity to enter avocations unsuited to their age or strength.

Article 39 (f):²⁰ State to direct its policy towards securing that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and childhood and youth are protected against exploitation and against moral and material abandonment.

Article 45:²¹ Early childhood care and education for all children until they complete the age of fourteen years.

Article 51 A (k):²² It shall be the duty of every citizen of India, who is a parent or guardian to provide opportunities for education to his child or ward between the age of six to fourteen.

THE LAW

The Bombay Prevention of Begging Act, 1959, criminalised begging with the aim to shift beggars from their current illegal profession so that they may be detained, trained and eventually employed elsewhere. However, activists and advocates of homeless people consider the existing law as a violation of rights.

Under the Act, a “beggar” is defined as anyone “having no visible means of subsistence, and wandering about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exists by soliciting or receiving alms”. Begging under the 1959 Act includes “soliciting or receiving alms in a public place, whether or not under any pretence of singing, dancing, fortune-telling, performing or offering any article for sale”. The provisions of the 1959 Act give carte blanche powers to the enforcement agencies.

This department says that begging is a major problem in the country because of the severely low rate of conviction in such cases. This department also has three anti-begging squads that conduct raids from time to time. A welfare officer, along with a police constable, conducts the raids. According to the law, once a beggar is caught, he/she needs to be produced in the beggar’s court within 24 hours of his/her apprehension.

FOR CHILDREN:

¹⁵ INDIA CONST. art.21A.

¹⁶ INDIA CONST. art.23.

¹⁷ INDIA CONST. art.24.

¹⁸ INDIA CONST. art.32.

¹⁹ INDIA CONST. art.39,cl.e.

²⁰ INDIA CONST. art.39,cl.f.

²¹ INDIA CONST. art.45.

²² INDIA CONST. art.51A,cl.k.

Laws on begging in India are made at the state rather than national level. New Delhi and 21 other states have their anti begging laws based on the 1959 Bombay Prevention of Begging Act (the Begging Act) which defines begging as either soliciting alms or appearing to be in the process of soliciting alms, the same has been adopted by 22 states who have their legislations relating to the anti-begging such as the Karnataka Prohibition of Begging Act, according to which the definition and illegality of begging is the same as aforesaid. The Begging Act has been criticised for criminalising the poor, and for failing to address the roots of the problem especially rehabilitation of children suffered due to forced begging. However in the later developments, the government, even though having no specific central laws, has provided protection to children under different legislation such as Section 24(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000 which provides that whoever employs, abets or uses any juvenile or the child for the purpose of begging or causes any juvenile to beg can be imprisoned upto three years and shall also be liable to fine. Section 363A of Indian Penal Code (IPC) provides for punishment of a person who kidnaps or maims a minor for purposes of begging. Unauthorized vending/hawking and begging in trains and Railway premises is an offence under the provisions of Section 144 of the Railways Act, 1989. Significantly, the Juvenile Justice Act was amended in 2006 to define a child who begs as ‘in need of care and protection’ rather than ‘in conflict with the law.’ As a result, children who are found begging are to be sent before a child welfare committee, a quasi-judicial body, and if deemed appropriate, they are sent to children’s homes. The exclusion of children from the Begging Act is widely seen as a step in the right direction. They are treated the same way in the Integrated Child Protection Scheme (ICPS) being implemented by the Ministry of Women and child Development and provided rehabilitation.

In February 2009, the Government of Delhi also launched a telephone helpline to report children begging to enable them to rescue children and target assistance more effectively (IBN Live, 2009).²³ However, it is argued that it is too early to appreciate fully the impact of this shift in approach on the lives of children who beg has more imprisonment than the one who abets who in normal circumstances abscond. It is suggested that social welfare department officials and police still lack sensitivity to this issue and continue to think of child beggars as thieves, pick-pockets and drug addicts who should be punished.

THE CASE

In a landmark supreme court judgement of the case: Ram Lakhan v. State of Uttar Pradesh, the criminalisation of beggars was questioned as to whether they can be sent to jail if convicted.

In this case, The petitioner was found begging from the passers-by at the Railway Crossing of Rampura , Delhi. A sum of Rs. 47 was recovered from him when a personal search was done by the anti-begging raid members when they found that there were children forced to beg and were made a part of this gang. Announced “guilty” by the learned Metropolitan Magistrate only on the basis of testimony given by the two police officers who were also members of the anti-begging raid. The petitioner was convicted for 1 year as per the provision of Bombay Prevention of Begging Act, 1959. Instead of sending him to Certified Institution, he was sent to Tihar Jail meant for rigorous prisoners.

In the judgement; the court critically analyzed every situation of a beggar from legal, social and ethical point of view which is summarized as follows:

1. The said Act (Bombay Prevention of Begging Act, 1959) has called every person to be a beggar who in one way or the other deals with solicitation and receiving of alms but the Judge in this judgment has classified beggars into 4 categories viz;
 - (A) Down-right lazy who doesn’t want to work
 - (B) Alcoholic or drug-addict
 - (C) Forced by a ring leader of a beggary “gang”

²³ Subuhi Khan, “Dial 1098 to Rescue Child Beggars in Delhi,” (feb 4,2009, 11:29 AM)
<https://www.news18.com/videos/india/child-beggar-helpline-307882.html>.

(D) Starving, hopeless and helpless²⁴

Judge says that people falling under 3rd and 4th category are doing the act under a duress or necessity and thus those should not be convicted for the act which they are not performed voluntarily out of free-will.²⁵

2. The judgement says that the provision is contrary to the fundamental Right of Freedom of Speech and Expression [ARTICLE 19 1(a)] as there is a right for a person to express that he has no money or no food and he also has the right to request for food and with this there is an infringement of that Right. The judgement also hinted the possibility of Right To Life and Personal Liberty [ARTICLE 21] being violated.²⁶

Therefore, in this case the criminalisation of beggars was questioned and a clear demarcation of volunteer begging and forced begging was made. It was held that objective of a punishment is rehabilitation but penalizing a person doing an act out of necessity would not provide any good as it would not even control the crime. Thus, those who abet to beg are punished and the victims are rehabilitated, however, this has not been achieved and there has been an increase in the multimillion industry by exploitation of innocent minds and no strict action has still been taken against this. It can be deduced that there has to be efforts made in order to achieve a society with social equality and without exploitation of vulnerable classes of society.

RECOMMENDATION

To avoid the situation of forced begging, there has to be many measures taken. Protecting children who are forced to beg through appropriate legal frameworks and social welfare provisions is essential, but more is needed. Attention must also be paid to preventing forced child begging to solve the problem in the long-term. Work to prevent children from entering forced child begging must be based on a proper understanding of root causes which are poverty, discrimination, tradition/culture, lack of access to education etc..

Some of the strategies to overcome this is:

1. *Relevant Legislations in place for the best interest of the forced beggars especially children:*

Beggars should be sent to centres to learn any skill so that they do not have to beg later. Governments must also ensure that adequate legislation is in place to protect children from all forms of exploitation, including through begging, and punish those individuals who exploit children for their own benefit. Laws and provisions must be enforced if they are to be taken seriously. Legal responses are likely to be more effective in addressing the clearer-cut forced child begging cases, such as those involving criminal gangs. Fining or imprisoning parents who have exploited their children is less likely to be in the best interests of the children concerned. In many of these instances, working together with families holistically in order to improve the overall situation will have better success. However, in extreme cases, children may need to be taken away from their families and into protective care for their own safety.

2. *Identify, rescue and rehabilitate children:*

Governments should offer rehabilitative care appropriate to each child's needs and context, including for example, healthcare, bridging and/or vocational education, help with drug addiction and, where relevant and appropriate, careful support with reintegration back into their families and communities.

3. *Strict action taken against the abettors:*

With the current legislations, the action against the abettors has been lenient and poor such as provided under Section 17 of the Karnataka Prohibition of Beggary Act, 1975, which states that abettors shall be punished on conviction by a magistrate with simple or rigorous imprisonment for a term which may extend to three months or with fine, which may extend to three hundred rupees or with both. This has led to exploiters going scot-

²⁴ Ram Lakhan v State, 137 (2007) DLT 173.

²⁵ ibid

²⁶ ibid

free without any fear. Exploitation of children and others need to be taken as a threat to the nation and string action must be taken for the same

4. *Raise awareness among the general public:*

Those who give to children, mothers, handicapped persons who beg should be made aware that the money they donate is not always kept by the beggars they want to help, but may be handed over to others who are exploiting them. It is probable that the numbers of children begging and therefore those among them, who are forced to beg, would fall if individuals stopped giving. However, this would not address the underlying causes of this form of exploitation and so the beggars concerned could simply become vulnerable to other forms of exploitation. This approach is suitable, therefore, only if strategies can be put in place to protect children and their families from potential loss of income.

5. *Strict adherence to International conventions and treaties, fundamental rights and duties:*

International conventions and treaties make it obligatory for countries to make provisions to protect the rights of children and this leads the countries to make Fundamental Rights and Duties which helps the children (future of the country) develop and indeed developing the country.

The researcher strongly advocates that the problem of forced begging is to be looked upon in a serious light as it is the need of the hour. Each and every individual has Rights given as Fundamental Rights by the Constitution of India and the Government must work towards giving its citizens their rights without any discrimination. With respect to the existing Act for begging, the researcher believes that it needs to be updated and new provisions should be included taking into consideration the wider aspect of begging and concentrate on the root cause of the problem. The researcher advocates that there need to social equitable society without discrimination especially against children as they are the human beings of today, promises of tomorrow, dawn of humanity and lastly the buds of social development.

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CASE:

1. M.C. Mehta v. State of Tamil Nadu & Ors [1996] RD-SC 1576 (India).
2. Ram Lakhan v State, 137 (2007) DLT 173.

CONSTITUTION OF INDIA

INTERNATIONAL LABOUR ORGANISATION CONVENTION

