

Delhi High Court

Harsh Mander & Anr. vs Uoi & Ors. on 8 August, 2018

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*IN THE HIGH COURT OF DELHI AT NEW DELHI

% Reserved on : 7th August, 2018

Date of decision : 8th August, 2018

+ W.P.(C) 10498/2009 & CM APPL. 1837/2010

HARSH MANDER & ANR. Petitioners

Through : Mr. Colin Gonsalves, Sr. Adv.
with Mr. Chaudhary Zia Ali
Kabir, Ms. Pragya P Singh &
Ms. Aditi Saxena, Adv.

versus

UOI & ORS. Respondentss

Through : Mr. Anil Soni, CGSC for UOI.
Mr. Gautam Narayan, ASC,
GNCTD with Ms. Mahamaya
Chatterjee, Adv.

+ W.P.(C) 1630/2015

KARNIKA SAWHNEY Petitioner

Through : Mr BB Sawhney, Sr. Adv. with
Ms. Indira Sawhney, Mr.
Vaibhav Mishra, Yogendar
Singh, Adv.

versus

UNION OF INDIA & ORS Respondents

Through : Ms. Monika Arora, Adv. with
Mr. Harsh Ahuja, Adv. for
UOI.
Mr. Gautam Narayan, ASC,
GNCTD with Ms. Mahamaya
Chatterjee, Adv.

W.P.(C)Nos.10498/2009 & 1630/2015

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CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT

GITA MITTAL, ACTING CHIEF JUSTICE "...A society that sees legislating inequality and homelessness into invisibility has unquestionably lost its way..."

- An article in The Guardian

1. These writ petitions challenge the constitutionality and validity of all sections, except Section 11, of the Bombay Prevention of Begging Act, 1959 (hereafter referred to as the 'Act'), as extended to the Union Territory of Delhi (now the NCT of Delhi) vide G.S.R. No. 638 dated 2nd June, 1960, published in the Gazette of India, pt. II, Section 3(i), dated 11th June, 1960 on the ground that it violates the Fundamental Rights guaranteed under Articles 14, 19, 20, 21 and 22 of the Constitution of India.

2. For the purposes of effective adjudication of the issue, we may advert to the scheme of the enactment.

3. Section 2(1) (i) thereof defines "Begging". Section 4(1) allows the police to arrest the beggar without a warrant. Section 5 of the Act enables a summary enquiry by the court following which the person may be detained in a certified institution. Section 6 contemplates punishment for a person who had been previously detained in a Certified Institution under the act, upon his being found begging. The remaining provisions of Section 6 provide the quantum of detention or imprisonment, based on the repetition of convictions.

4. Significantly, Section 11 of the act provides a penalty for employing or causing persons to beg or using them for the purpose of begging.

5. The relevant statutory provisions deserve to be extracted in extenso and read as follows:

"2. Definitions.-- (1) In this Act, unless the context otherwise requires--

(i) "begging" means--

(a) soliciting or receiving alms in a public place, whether or not under any presence such as singing, dancing, fortune- telling, performing or offering any article for sale;

(b) entering on any private premises for the purpose of soliciting or receiving alms;

(c) exposing or exhibiting, with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease whether of a human being or animal;

(d) 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;

(e) allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms;

but does not include soliciting or receiving money or food or gifts for a purpose authorised by any law, or authorised in the manner prescribed in Greater Bombay by the Commissioner of Police, and elsewhere by the District Magistrate, or in any part of the State by the State Government.

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4. Power to require person found begging to appear before Court.-- (1) Any police officer, or other person authorised in this behalf in accordance with rules made by the State Government, may arrest without a warrant any person who is found begging:

Provided that, no person entering on any private premises for the purpose of soliciting or receiving alms shall be so arrested or shall be liable to any proceedings under this Act, except upon a complaint by the occupier of the premises. (2) Such police officer or other person shall take or send the person so arrested to a Court.

(3) The provisions of Section 61 of the Code of Criminal Procedure, 1898 (V of 1898), shall apply to every arrest under this section, and the officer in charge of the police station or section shall cause the arrested person to be kept in the prescribed manner until he can be brought before a Court.

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5. Summary inquiry in respect of persons found begging and their detention.-- (1) Where a person who is brought before the court under the last preceding section is not proved to have previously been detained in a Certified Institution under the provisions of this Act, the Court shall make a summary inquiry, in the prescribed manner, as regards the allegation that he was found begging.

(2) If the inquiry referred to in sub-section (1) cannot be completed forthwith, the court may adjourn it from time to time and order the person to be remanded to such place and custody as may be convenient.

(3) If on making the inquiry referred to in sub-section (1), the court is not satisfied that the person was found begging, it shall order; that such person be released forthwith.

(4) If on making the inquiry referred to in sub-section (1), the court is satisfied that such person was found begging, it shall record a finding that the person is a beggar. (5) If a person is found to be a beggar under the last preceding sub-section, the Court shall declare him to be a beggar and may--

(a) if the Court is satisfied from the circumstances of the case that the person is not likely to beg again, admonish and release the beggar on his or any other person whom Court considers suitable, executing a bond, with or without surety as the Court may require, requiring the beggar to abstain from begging and to be of good behaviour; or

(b) if the Court is of opinion that the person is not likely to give up begging, by order direct such person to report himself forthwith to the Commissioner of Police or the District Magistrate having jurisdiction in the area and shall forward a copy of such order to the Commissioner of Police or, as the case may be, the District Magistrate; or

(c) order the beggar to be detained in a Certified Institution for a period of not less than one year, but not more than three years.] (6) In passing any order under the provisions of this Act, 2[the court may] have regard to the following considerations, that is to say--

(a) the age and character of the beggar,

(b) the circumstances and conditions in which the beggar was living,

(c) reports made by the Probation Officer, and

(d) such other matters as may, in the opinion of the court, require to be taken into consideration in the interest of the beggar.

(7) The report of the Probation Officer or any other report considered by the court under the sub-section immediately preceding, shall be treated as confidential:

Provided that if such report relates to the character, health or conduct of, or the circumstances and conditions in which, the beggar is living, the court may, if it thinks expedient, communicate the substance thereof to the beggar or (in case of dependants) to the guardian concerned, and may give the beggar or the guardian, as the case may be, an opportunity of producing evidence which may be relevant to the matters stated in the report.

(8) A copy of the order made under sub-section (5) shall be sent forthwith to the Chief Inspector.

(9) Notwithstanding anything in this section, when the person found to be a beggar as aforesaid is a child, being a child who is not under the age of five years, the court shall forward him to a Juvenile Court, and shall not make any order under sub-section (5). The Juvenile Court shall deal with the child under Section 40 of the Bombay Children Act, 1948 (Bom. LXXI of 1948), as if the child were a person described in clause (a) of that section. For the purpose of ascertaining the age of the person, the court may, if necessary, cause the beggar to be examined by a medical officer.

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6. Penalty for begging after detention as beggar.-- (1) Whoever, having been previously detained in a Certified Institution under this Act is found begging, shall on conviction be punished as hereinafter in this section provided. (2) When a person is convicted for the first time under sub-section (1) the Court shall order him to be detained in a Certified Institution for a period of not less than two years and not more than three years.

(3) When a person is convicted for the second or subsequent time under sub-section (1), the court shall order him to be detained for a period of ten years in a Certified Institution, and may convert any period of such detention (not exceeding two years) into a sentence of imprisonment extending to a like period.

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11. Penalty for employing or causing persons to beg or using them for purposes of begging.-- Whoever employs or causes, any person to solicit or receive alms, or whoever having the custody, charge or care of a child, connives at or encourages the employment or the causing of a child to solicit, or receive alms or whoever uses another person as an exhibit for the purpose of begging, shall on conviction be punished with imprisonment for a term which may extend to three years but which shall not be less than one year."

6. So far as the opposition of the respondents is concerned, Mr. Anil Soni, Id. Standing Counsel, Govt. of India, has placed a counter affidavit before us dated 28th November, 2017 stating as follows:-

"8. ...Begging should not be a crime if it is done because of poverty. However, in order to ascertain whether it is being done out of poverty or willingly by a person even if he'/she is well off or has been forced into begging, it is necessary to detain him/her. Only after detention of such person and subsequent investigation, the cause of begging by an individual can be ascertained. Hence, the provision of detention as mentioned the Section in the Act is warranted."

(Emphasis by us)

7. Interestingly in para 9 of the counter affidavit, the respondents have further stated as follows:

"9. ... as per the Seventh schedule of the Constitution of India and under Entry 9 of State List the subject matter of Relief of disabled and employable come under the purview of State List. As per Entry 6 of State List, issue related to Public Health and sanitation, hospital and dispensaries is a State subject."

8. So far as expanse of anti-beggary legislations is concerned, in para 10 of the counter affidavit, it is submitted that 20 States and 2 Union Territories have either enacted their own legislations or adopted the legislations adopted by other states.

9. Before considering the statutory provisions, we may extract the Preamble of the Act, which gives the object and purpose of the enactment in the following terms:

"An Act to consolidate and amend the law relating to beggars for the purpose of making uniform and better provision for the prevention of begging in the State of Bombay and for matters connected therewith.

Where it is expedient to make uniform and better provision for the prevention of begging in the State of Bombay; for the detention, training and employment of beggars and their dependents in certain institutions; for the custody, trial and punishment of beggar offenders; and for these and other purposes to consolidate and amend the law relating to beggars"

10. The petitioner has urged several grounds relating to Articles 14, 19, 20, 21 and 22 of the Constitution of India on the basis of which the law ought to be struck down as being ultra vires thereof.

11. The petitioners have filed their submissions. Mr. Gautam Narayan. Id ASC has undertaken the exercise of summarizing the submissions into a brief note. We may extract the necessary limbs of the submissions filed by the petitioners, on which the constitutional challenge stands:-

"2. Violates Article 14 - Right to equality 2.1 Section 2(1)(i)(a) violates Article 14 in as much as it does not make any distinction between persons who solicit or receive money for authorized purposes and those who are singing, dancing, or engaged in similar activities. further, pretence is a very vague terms for the police to take action on beggary.

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3. Article 19(1)(a) - Freedom of speech and
expression

3.1 Petitioner submits that (a) soliciting is a verbal request and is covered under the right to free speech and expression (Jolly Jose Varghese v. Bank of Cochin AIR 1980 Sc 470) and (b) the Act imposes unreasonable restrictions on the right in the interests of public order, decency and morality. The Act imposes unreasonable restrictions on (i) soliciting and (ii) expressing poverty and vulnerability.

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5. Arbitrary application of law 5.1 While the Act unjustly restricts the movement of beggars, the application of the Act also limits the movement of a large number of no-beggars. Interviews with lawyers providing legal aid have revealed that 74% of persons arrested were from the informal labour sector such as those employed in small hotels, markets and construction, and 45% were homeless. It was observed that beggars were unaware of the reasons of arrest and were taken to the Beggars Court at the pretext of doing some work like cleaning.

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8. Article 21 - Right to life

8.1 It is well settled that the right to life is the right to live with dignity and with necessities of life required for it. The petitioner submits that this right includes the right to take steps including begging to survive and keep body and mind together (Gopalanachari v. State of Kerala AIR 1981 SC 674), Criminalisation of begging by the Act deprives a person of the right to obtain basic necessities of life. The Act further requires people to make an unreasonable choice between committing a crime to be rehabilitated or not commit the crime and starve which goes against the spirit of the Constitution and violates Article 21."

12. The question, placed before is simple. In our constitutional framework that promises every person the right to live with dignity, can the State criminalize begging? The social contract between the citizen and the State is a contract by which in exchange for the citizen ceding her autonomy partially, the State promises her security over her person and a life with dignity.

13. In our constitutional framework, this is guaranteed by Part III which enjoins the State not only to protect life but also to advance it, and Part IV which mandates that the State shall allocate resources so as to further the common good.

In short the constitution envisages the vision of a society that is humane, just and fair.

14. So far as the threshold of a constitutional challenge is concerned, in (2017) 9 SCC 1 Shayara Bano v. Union of India, the Supreme Court, has held that a statute can be invalidated on the anvil of being violative of Article 14 for it being manifestly arbitrary.

"101. It will be noticed that a Constitution Bench of this Court in *Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India* [*Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India*, (1985) 1 SCC 641 : 1985 SCC (Tax) 121] stated that it was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14. The test of manifest arbitrariness, therefore, as laid down in the aforesaid judgments would apply to invalidate legislation as well as subordinate legislation under Article 14. Manifest arbitrariness, therefore, must be something done by the legislature capriciously, irrationally and/or without adequate determining principle. Also, when something is done which is excessive and disproportionate, such legislation would be manifestly arbitrary. We are, therefore, of the view that arbitrariness in the sense of manifest arbitrariness as pointed out by us above would apply to negate legislation as well under Article 14."

(Emphasis by us)

15. It is our view that law does not make any distinction between types of begging i.e. voluntary or involuntary as has been urged by the petitioners. The absence of any such distinction exposes the statute to a judicial evaluation on the ground of being arbitrary.

16. On the contrary, the comprehensiveness of the definition of begging in Section 2(1) (i), appears to indicate a legislative intent to cover a broad area, including in its sweep, all types of begging. It has also been pointed out that the respondents are using homelessness and begging synonymously

and are in fact detaining the homeless as if they were begging and implementing the penal provision of the act qua them.

17. This in our view is manifestly arbitrary.

18. In this process, the State would be detaining persons who are not engaged in begging, such persons may be daily wagers and/or having family members to support. As a result of the detention of the bread earner of the family, the entire family may be reduced to financial deprivation and penury. Such can never be the object, spirit and intendment of a welfare state by way of what is touted as a social benefit legislation.

19. For these reasons, we find Sections 4, 5 and 6 of the statute to be unconstitutional for being violative of Article 14 of the Constitution of India.

20. We also find that the explanation of the respondents that a persons 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. The explanation given by the respondent is that as a result, the respondents 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.

21. Some essential concomitants and contours of Article 21 of the Constitution of India guaranteeing Right to Life have been elucidated and expounded upon by the Supreme Court of India. This includes inter alia the right to shelter, education, healthcare and clean environment. We consider these judicial pronouncements hereafter.

22. The Supreme Court has emphasised that food, clothing and shelter constitute the essential needs of every human being in (1990) 1 SCC 520 *Shantistar Builders v. Narayan Khimalal Totame* the Supreme Court held thus:

"9. Basic needs of man have traditionally been accepted to be three -- food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect -- physical, mental and intellectual. The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-built thatched house or a mud-built fire-proof accommodation."

(Emphasis by us)

23. The right of education as flowing from Article 21 was recognised in a judgment reported at (1993) 1 SCC 645 Unni Krishnan J.P. v. State of Andhra Pradesh, the Supreme Court held as follows:

"226. xxx 1. The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however, not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the State.

(Emphasis by us)

24. This led to a Constitutional amendment and incorporation of Article 21A which provides the right to free and compulsory education for all children between the ages of 6 to 14, as a fundamental right. In pursuance to this, the Right of Children to Free and Compulsory Education (RTE) Act, 2009 was enacted to implement the constitutional mandate.

25. In a case reported at (1997) 2 SCC 83 State of Punjab & Ors. v. Mohinder Singh Chawla & Ors., it was held that "[i]t is now settled law that right to health is integral to the right to life. Government has a constitutional obligation to provide health facilities".

26. Protection of health of citizens, freedom and entitlement to live with human dignity with certain facilities was recognized in the judgment reported at AIR 1984 SC 802 Bandhua Mukti Morcha vs. Union of India & Ors. it was held as follows:

"10. ... 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."

(Emphasis by us)

27. There can be no cavil that the above are the basic and primary needs of every human being.

28. It remains a 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. We find reports of starvation deaths in the newspapers and ensuring education to the 6 to 14 year old remains a challenge.

29. 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 government has the

mandate to provide social security for everyone, to ensure that all citizens have basic facilities, and the presence of beggars is evidence that the state has not managed to provide these to all its citizens.

30. If we want to eradicate begging, artificial means to make beggars invisible will not suffice. A move to criminalize them 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.

31. 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.

32. Mr. Gautam Narayan, Id ASC, has placed before us the several schemes of the Government of India including the Antyodaya Anna Yojna, Rashtriya Swasthya Bima Yojana, Swarna Jayanti Shahari Rozgar Yojna, National Family Benefit Scheme and other welfare Schemes of the Government which recognize the deprivations to which the people are being subjected. These schemes are intended to impact every possible need of the poor and manifest an admission on the part of the State to ensure the right to life of the citizens.

33. The State simply cannot fail to do its duty to provide a decent life to its citizens and add 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 such actions in these circumstances.

Any legislation, penalizing the people therefor, is in the teeth of Article 21 of the Constitution of India.

34. We find that a Id. Single Judge of this court in the judgment rendered in (2007) 137 DLT 173 Ram Laxhan v. State has examined begging from a different perspective. We extract hereunder paras 13 to 16 of the judgment which shed light on the question under consideration:

13. Before I specify those reasons, there is another interesting but, difficult aspect to the question of legitimacy of begging. What does the beggar do? He solicits alms by words spoken or actions expressed. And, it would be instructive to remember that Article 19(1)(a) of the Constitution of India guarantees to all citizens the right to "freedom of speech and expression". Would "begging",

therefore, not be covered by this guarantee? Just as an advertisement of a product would be within the perimeter of this valuable fundamental right, begging, too, could fall within it. After all, begging involves the beggar displaying his miserable plight by words or actions and requesting for alms by words (spoken or written) or actions. Does the starving man not have a fundamental right to inform a more fortunate soul that he is starving and request for food? And, if he were to do so, would he not be liable under the said Act for being declared as a 'beggar' and consequently being deprived of his liberty by being sent for detention at a certified institution? Does this not mean that the said Act leads to deprivation of liberty on the basis of a law which runs counter to the fundamental right of freedom of speech and expression? Does this, therefore, not mean that even the fundamental right of protection of life and personal liberty, which is enshrined in Article 21 of the Constitution, is also violated?

14. I am mindful of the fact that I am not deciding a writ petition where the validity of the said Act is in question. It is true that the case before me is only a revision petition challenging the judgment passed in an appeal under the said Act. But, an examination of these aspects touching upon the constitutional validity of the said Act is necessary because such a discussion would reveal the manner in which and the limits to which the provisions of the said Act can be taken. Although, on first impression, the idea of "begging" being protected by article 19(i)(a) of the Constitution may appear a little quaint, there are decisions of Courts in United States of America holding begging to be constitutionally protected speech. But, this does not mean that begging cannot be prohibited. The prohibition must, however, operate within limitation. In *The People of the State of New York v. Eric Schroder*, 617 N.Y.S. 2d 429 the validity of the ban on begging in the New York City Transit System came in question. Comparing the solicitation of funds by legitimate charities and begging by individuals in need, the Court observed:

"Thus, it is uncontested that a charity has a First Amendment right to solicit funds to feed or clothe or otherwise aid those in need. It would be unreasonable to conclude that the Federal Constitution does not provide the same free speech protection to the individual in need as it does to the solicitor for a charity, to stand on the same public street corner and ask for money. No rational distinction can be made between the message involved, whether the person standing in the corner says 'Help me, I'm homeless' or 'Help the Homeless'."

15. Though begging was accepted as constitutionally protected speech, the law banning begging in the New York City transit system was upheld because it was found to be a reasonable safety precaution.

16. Viewed in this light, begging being part of the Constitutional guarantee of freedom of speech and expression, can only be subjected to reasonable restrictions by law in the interest of, inter alia, public order, decency or morality. Thus the said Act and, in particular, its provisions having penal consequences and effecting the liberty of individuals must be construed in a manner which results in their being interpreted as imposing reasonable restrictions. These considerations lead to the conclusion that even where the person is found begging, he need not necessarily be ordered to be detained in a Certified Institution. As discussed above, he ought not to be ordered to be detained if, in considering his condition and circumstances of living as required under Section 5(6) of the said Act, the Court discerns a defence of necessity; a situation where the person had no legitimate alternative to begging to feed and clothe himself or his family. Similarly, where it is apparent that the person was found begging under the exploitative command of others, he ought not to be deprived of his liberty by being sent to a Certified Institution for detention. In the light of the discussion above, the word "shall" appearing in Section 5(5) of the said Act would have to be tampered with the considerations specified in Section 5(6) of the said Act, which also contains the

word "shall". The effect would be that, since "interest of the beggar" is dominant, the word "shall" appearing in Section 5(5) would have to yield to the "shall" appearing in Section 5(6) and be read as "may". Such a reading would not only serve the object of the Act better but would also bring in the restrictions to liberty within the Constitutional requirements of reasonableness. It is true that the proviso to Section 5(5), on a plain reading, does give the Court power to release a beggar after due admonition. But, that is pre-fixed by the condition that he is not likely to beg again and suffixed, if I may use the expression, with the requirement of furnishing a bond for abstaining from begging and good behaviour. That would be wholly inappropriate where a person begs out of sheer necessity or compulsion.

35. It is the least to ask that the state, mandated by the Preamble to the Constitution, ensures to all its citizens, Justice, Liberty, Equality and promotes Fraternity.

36. If the State wishes to criminalize specific types of forced beggary, it has to first think out a clear factual basis and impact thereof to pass a well thought legislation after due application of mind and being mindful of the constitutional rights provided under the Constitution of India.

37. The view we have taken is supported by the stand of the Government of NCT of Delhi before us.

38. In this regard, it is essential to note the written submission dated 15th September, 2009 filed under the signature of Ms. Debashree Mukherjee, Secretary, Department of Social Welfare of Government of NCT of Delhi wherein the NCT of Delhi has conceded thus :-

"4. That it is submitted that the Answering Deponent fairly agrees that some provisions, in the Act are outdated, and need amendment in light of the present socio-economic conditions, namely Section 6, relating to the detention of a person, convicted for second or subsequent time, for a period of ten years in a certified institution; Section 8 - contribution of parents; Section 16

- payment of contribution by local authority and recovery thereof; Section 20 - disciplinary imprisonment; Section 26 - medical examination and detention of leprosy patients and lunatics.

5. xxx xxx xxx

6. That it is submitted that the issue of beggary may be seen in larger social context of destitution, homelessness and vagrancy, which need specific policy interventions. In this direction the State has taken initiative in formulating the "Samajik Suvidha Sangam", which is carrying out a filed survey of urban slums, jhuggi - jhopri clusters, resettlement colonies etc. to identify the target population of the poor, destitute, homeless and vagrants which can be covered by the welfare schemes run by the Government."

(Emphasis by us)

39. We have before us another reason supporting our decision which is the futility of lodging and detaining beggars in beggars homes and the resultant wastage of public funds. We find that in W.P.(Crl.) No1840/2006 Court on its own Motion v. Re Begging in Public by an order dated 8th February, 2007, Shri V.P. Chaudhary, Sr. Advocate was appointed as amicus curiae to visit beggars

home and submit a report. Shri Chaudhary has submitted a status report dated 3 rd December, 2007 after visiting and inspecting three beggars homes at Nirmal Chaya, and reported thus:-

"I was informed that about 35 lakhs of rupees were being spent on these Homes every year. As compared to that investment, the benefit accruing from them to the society is rather negligible"

Conclusions

40. When, in the backdrop of the above discussion, we examine, holistically, the provisions of the Act, we find that, while most of the provisions contained therein directly deal with begging, treating it as an offence, or other provisions ancillary thereto, there are certain provisions which do not treat beggary per se as an offence and which therefore, may not be hit by the vice of unconstitutionality.

41. We are, therefore, spared the necessity of striking down the entire Act, wholesale. The provisions which treat beggary/ begging, as an offence, committed by the beggar, or are ancillary thereto, would be Sections 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29.

42. These provisions either treat begging as an offence committed by the beggar, or deal with ancillary issues such as powers of officers to deal with the said offence, the nature of enquiry to be conducted therein, punishments and penalties to be awarded for the offence, the institutions to which such "offenders" could be committed and procedures following the awarding of sentence for committing the said offence. These provisions, in our view, cannot sustain constitutional scrutiny and deserve, therefore, to be struck down.

43. The remaining provisions of the Act, which do not directly or indirectly criminalize begging, or relate to the "offence" of begging, such as Section 11 (which deals with penalty for employing or causing persons to solicit or receive alms, causing persons or children to solicit or receive alms, or using such persons as exhibits), Section 30 (which deals with seizure and disposal of animals exposed or exhibited, for obtaining or extorting alms), and other provisions which deal with the nature of offences under the Act, appeals, the power to frame rules and removal of difficulties, would not be required to be struck down and are, therefore, maintained.

Result

44. In the result, we declare Section Sections 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28 and 29 of the Bombay Prevention of Begging Act, 1959, as extended to Delhi, as unconstitutional and strike down the said provisions.

45. The inevitable sequitur to our decision would be that all prosecutions, under the Act against persons alleged to have committed the offence of begging, would be liable to be struck down. The power to do so would, however, appropriately vest in the Courts seized of such prosecutions, and

we, therefore, limit ourselves to observing that the fate of such prosecutions, if any, would have to abide by the present judgment, and our observations and findings contained herein.

46. The state is always at liberty to bring in alternative legislation to curb any racket of forced begging after undertaking an empirical examination on the sociological and economic aspects of the matter.

47. Before parting with the case, we are reminded of the words of Krishna Iyer, J in the pronouncement reported at AIR 1981 SC 674 Gopalanachari v. State of Kerala when he said that "...If men can be whisked away by the police and imprisoned for long months and the court can keep the cases pending without thought to the fact that an old man is lying in cellular confinement without hope of his case being disposed of, Article 21, read with Articles 14 and 19 of the Constitution, remain symbolic and scriptural rather than a shield against unjust deprivation. Law is not a mascot but a defender of the faith. Surely, if law behaves lawlessly, social justice becomes a judicial hoax."

ACTING CHIEF JUSTICE AUGUST 08, 2018/mk C.HARI SHANKAR, J