

THE EMBARRASSMENT OF POVERTY - A CRITIQUE OF STATE RESPONSE AND RESPONSIBILITY

*Geetanjali Swamy, Pritam Baruah and Saurabh Bhattacharjee**

Legal institutions have the potential of being instruments of either empowerment or impoverishment. The legislative zeal in the early years of our republic and the judicial activism of the post emergency period have stamped their indelible imprint on the nation's strive towards the alleviation of the oppressed. At the same time, the politico-legal institutions have also demonstrated their vulnerability to majoritarian and socially entrenched pressures¹.

Laws on vagrancy are exemplar of this dualism inherent in the legal process. Enacted ostensibly with the goal of rehabilitation, they have wrought untold misery on their intended beneficiaries². This is manifested in contemporary instances of societal and judicial hostility to vagrants and beggars in the form of the Delhi High Court Order in 2002³ directing the Delhi Administration to clear the capital city of beggars and street-hawkers, along with the transportation of beggars during visits of foreign dignitaries.

These laws had their genesis in the colonial regime and were impelled by the socio-political imperatives of colonialism. In the light of the Constitutional ideal of socio-economic justice, their survival raises fundamental questions about the welfare character of the Indian State. This research paper endeavours to interrogate the legitimacy of such laws considering their import in the current socio-economic milieu.

* V year students, B.A., B.L (Hons), NALSAR, University of Law, Hyderabad. This paper was first conceived for the Law and Poverty Course. The authors would like to acknowledge the suggestions and comments of Prof. Amita Dhanda, the course instructor.

¹ See Jerry L Mashaw, "The Economics of Politics and the Understanding of Public Law", 65 Chi.-Kent L. Rev. 123 (1989) and Daniel A Farber and Philip P Frickey, "Symposium on the Theory of Public Choice", 74 Va. L. Rev. 167 (1988); Jane S Schacter, "Metademocracy: The Changing Structure of Legitimacy in Statutory Interpretation", 108 Harv. L. Rev 592 (1995).

² Amulya Gopalakrishnan, "Poverty as Crime", Frontline, Nov. 9, 2002 at <http://www.flonnet.com/fl1923/stories/20021122004703000.htm>, last visited 20th September 2004.

³ *ibid.*

I.

A beggar is generally understood to be a person who engages in a positive act of begging or seeking alms. Vagrancy, on the other hand, is merely a state of existence and a vagrant need not participate in any overt act of seeking alms; mere indulgence in idle existence is sufficient⁴. In spite of this lexical distinction, both vagrants and beggars are perceived as 'social parasites' due to their dependence on society for subsistence.

'Social parasitism', however, is not new to Indian society. Through different eras, the act of feeding young brahmans and fakirs was reified. The spirit of collectivization of misery was the dominant social outlook. Giving alms also served the purpose of diffusing tension and frustrations generated by unequal distribution of resources in a feudal society⁵.

With the advent of British rule, a capitalist system of production emerged, and those who could not contribute to the processes of production were considered to be impediments to the existing system. These '*idle and immoral people, reluctant to work*' set a bad example for the existing labour class and thus required regulation. This perception was reflected in the Government's approach towards the problem, founded on the idea of deterrence by means of criminalisation⁶. The adoption of this outlook was primarily motivated by the fact of increasing white vagrants- a fact which sought to undermine the proclaimed superiority of the European race⁷.

⁴ BB Pande, "Vagrants, Beggars and Status Offenders", 119 in Upendra Baxi (ed.), "Law and Poverty-Critical Essays", (1988).

⁵ *ibid.* at 118

⁶ It must be stated here that the initial approach to alleviate the problem was by dissemination of funds. Some philanthropists did establish rehabilitation homes and institutions for the betterment of vagrants. This, however, was not to last long, and most institutions did not last the 19th century. It was increasingly felt that such an approach would only encourage more beggars and vagrants. Criminalisation was seen as the next and more promising solution to the increasing number of vagrants. See Aravind Ganachari, "White Man's Embarrassment: European Vagrancy in the 19th Century Bombay", *Economic and Political Weekly*, Vol. XXXVII No. 25, 22nd June 2002, 2477.

⁷ The 'superiority of the white race' was seen as a legitimising factor in the British rule in India. Their superiority was sought to be questioned when there were increasing number of white beggars and vagrants, thus making the politico-economic structure of their rule questionable. The growing numbers

The Embarrassment of Poverty

The first step in this direction was the enactment of The European Vagrancy Act, 1869, which provided for the deportation of the vagrant and a daily subsistence allowance of eight annas. This was followed by the enactment of The Code of Criminal Procedure, 1898⁸, which provided that a Magistrate could attempt to ensure good behaviour by means of securing a bond with sureties from a person with no ostensible means of livelihood.

In the second quarter of the twentieth century, the problem increased multi-fold. Apart from the economic destruction caused by the British rule, famines and the Second World War cumulatively worked to create large numbers of beggars. The holocaust of partition also caused unparalleled displacement of people which only added to the already existing problem of large scale vagrancy in India. Despite the predominantly socialist overtones of the India Constitution, independent India chose to continue with the repressive approach of the colonial state towards the problem of vagrancy by enacting legislations on similar lines.

II.

In order to understand the law relating to beggars and vagrants in India, the enactments in Andhra Pradesh⁹, Bombay¹⁰ and Delhi¹¹ have been studied. These laws, on a comparative analysis, highlight the following features:

of vagrants in the 19th Century were due to: the daily discharge of workers in the railways, the fleeing of workers from the Lancashire cotton industry due to the stoppage of the imports from America and the inability for of young men to find berths in the Indian Navy, necessitating immediate redressal of the problem. This urgency is reflected in the words of BH Ellis a North Division Police Commissioner who opined, "...they [European vagrants] go from house to house begging, often get intoxicated in the bazaar, and in fact are becoming quite a nuisance. Something should be done to make these men return to Europe, as they bring great disrepute on the European character. Many of these men are old soldiers, who took their discharge when the Indian army was transferred to the Crown...they have become quite a pest to the community at large." See *ibid.* for a detailed discussion on the challenge of vagrancy to the white man's superiority.

⁸ The new Code of Criminal Procedure, 1973, has repealed this provision, but the absence is of little consequence, as the same provision has been re-enacted in different state legislations, which will be analysed subsequently.

⁹ The Andhra Pradesh Prevention of Begging Act, 1977 (hereinafter referred to as A.P. Act).

¹⁰ The Bombay Prevention of Begging Act, 1959 (hereinafter referred to as Bombay Act).

¹¹ The Delhi Prevention of Begging Rules, 1960 (hereinafter referred to as Delhi Rules).

- The definition of a 'beggar' is wide and includes within its fold, not only persons who solicit alms for their own survival or for the subsistence of their dependents, but also persons who act in any manner which may be seen as a pretext for obtaining alms. These acts include dancing, singing, fortune telling, performing tricks or offering any article for sale etc. Furthermore, any person found wandering around, creating the impression that they may be begging is also a beggar. The enactment in Bombay expressly excludes religious mendicants from the definition¹².
- Having defined a beggar, the act of begging then is an offence under the law. An authorized officer may, therefore, arrest any person caught in the act of begging without a warrant.¹³
- The arrested beggars are put on trial according to the procedure of summary trial as laid down in The Code of Criminal Procedure, 1973.¹⁴
- The enactments prescribe the punishment as imprisonment for a period between one to three years. If the beggar is above sixteen years of age and is able bodied, such person is to be detained in a work house.¹⁵
- Keeping the rehabilitative object of the enactments in mind, it will be interesting to note the role and functioning of these institutions. The enactments in Bombay and Andhra Pradesh provide for certain facilities, such as the training and education of inmates. These facilities are, however, subject to the discretion of the administrative authorities. Thus, the language of the enactments is more discretionary than mandatory with respect to providing the rehabilitative measures.¹⁶ It is also pertinent to note that the Delhi Rules do not even make a mention of any rehabilitative measure.
- Inside these institutions, the inmates are made subject to rules, the violation of which leads to the imposition of punishment.

The above features of the enactments which regulate beggars clearly reveal that the act

¹² See Sections 2(b) of the A.P. Act and 2(1)(i) of the Bombay Act.

¹³ Sections 4 of the A.P. Act and the Bombay Act, authorize the police officer to make an arrest of any person found begging as per the definition in the enactments. Rule 5 of the Delhi Rules is of the same import.

¹⁴ See Sections 5 of the A.P. Act and the Bombay Act.

¹⁵ Provision for punishment is made in Section 27 of the A.P. Act. In the Bombay Act, provision for punishment is made in Section 6.

¹⁶ See Sections 12 of the A.P. Act and 9 of the Bombay Act.

The Embarrassment of Poverty

of beggary or vagrancy is a criminal offence and any person who is arrested for it, is subject to confinement either in jails or in certified institutions, which are similar to prisons. The enactments, thus, seek to curb the act of begging through the use of coercion and force.

The enactments make nominal salutations to the objective of prevention of beggary through detention, training and employment of beggars and their dependents. However, the philosophy of criminalisation permeates the existing provisions. Therefore, it is exceedingly pertinent to examine the theories that postulate criminalisation of vagrancy. For this, three strands of thought on criminalisation may be used:

Morality - It has been asserted by many proponents of this theory that an act should be criminalised if it is immoral. Devlin stands as a vociferous proponent and takes the view that not all immoral acts call for criminal sanctions but only those which evoke from people, feelings of intolerance, indignation and disgust¹⁷. This argument of immorality may be extended to the act of begging, as it may be perceived to be immoral to depend on others for subsistence. It presumes that only idle persons refuse to work and thus turn beggars. It is submitted that such an argument does not justify criminalisation of the act. Besides, 'laziness' is not merely the prerogative of the poor, but is prevalent even among the affluent, though not observed as a social problem.

Legal Paternalism - According to this strand of thought, the State is justified in criminalising an act which could result in harm to the actor himself. Accordingly, beggary may be then criminalised to rehabilitate the poor and the unemployed, the logic being that beggars of their own volition do not work and thus lead a life of social exclusion. The enactments on the face of it, have envisioned a rehabilitative role of institutional confinement. However, if one were to analyse the provisions of the Acts, it will be ascertained that provisions for training and capability building measures are optional. For example, Section 12(3) of The A.P. Prevention of Begging Act, 1977 provides that every certified institution *may*, for the general upliftment of its inmates provide training in arts, crafts, agriculture, medical care, primary education etc. The language thus reveals

¹⁷ See P Devlin, "The Enforcement of Morals", 8-9, (1965) in CMV Clarkson & HM Keating, "Criminal Law: Text and Materials" (1998); Andrew Ashworth; "Principles of Criminal Law" (1999).

that there is no mandatory obligation on the Government to provide these measures. Thus, rehabilitation has not gained any statutory priority, defeating the paternalistic purpose of the enactments.

Moreover, real life experiences show that people who are detained in these certified institutions view them as punishment rather than as rehabilitation homes.¹⁸ Most of the detenus in these homes are not beggars, but people who had come to the cities to visit relatives or doctors and had lost their way. The 'beggars' or 'vagrants' are usually caught early in the morning at places like temples, mosques and railway stations. People who protest are often subjected to violence. They are usually taken to courts and after a hearing of sorts, are remanded to custody in the homes.¹⁹

The conditions in the remand homes are deplorable. Reminiscent of prisons, they are overcrowded and unhygienic, thus creating a conducive environment for spread of diseases such as cholera. Judges who preside over these cases are usually disinterested and the day's proceedings are, more often than not, determined by the mood of the judge.²⁰

These findings clearly signify the failure of the rehabilitative justification of these criminalising laws. The inmates are confined within these institutions, thereby curtailing their freedoms. These institutions rarely provide any constructive training or employment and, therefore, the inmates are devoid of means of subsistence for themselves and their dependents. The institutions are thus, more punitive than rehabilitative.

Harm - The last and perhaps the most convincing justification for criminalisation is that the act will result in harming another person, thing or animal. Beggars are perceived as potential criminals and a law and order problem. They are also considered carriers

¹⁸ See Harsh Mander, "Surviving the Streets", *Frontline*, May 10, 2003 at <http://www.flonnet.com/fl2010/stories/20030523003210300.htm> last visited 15th April 2004.

¹⁹ *ibid.*

²⁰ *supra* n.18. These details have been drawn from the report of organizations that have studied the lives of beggars. The first report referred to was made in 1980's by a Committee constituted by the Peoples Union for Civil Liberties (PUCL) to study the working of Sewa Kutir, a beggar home in Delhi. See further *supra* n.2, for living conditions in beggar homes.

The Embarrassment of Poverty

of diseases and pose a threat to public health. In addition, they are a nuisance to others in society and serve as bad examples to other able-bodied individuals who may be influenced by their 'laziness' and 'social parasitism'. It is on the basis of this reasoning that the class of beggars is required to be eliminated because of the potential harm that they could cause. Criminalisation is the method through which the purpose of elimination is sought to be fulfilled.

By virtue of the above justification, the underlying issues of beggary i.e. unemployment, homelessness and absolute deprivation have been side-lined. In criminalising beggary thus, the State is in effect, criminalising unemployment and poverty. The absurdity of such a situation is elaborated below.

III.

All the enactments referred to above, have included within the definition of begging, a provision where, people who have no ostensible means of livelihood wandering around in public places, may be arrested. This amounts to criminalisation of unemployment. Unemployment is not a product of volition, but a product of circumstances. It is essentially a result of poverty and iniquitous distribution of productive resources. Criminalisation of vagrancy, thus, is in essence, criminalisation of poverty. What is even more worrisome is the fact that certain attempts to overcome unemployment are also met with criminal sanctions, thus tying the poor to perennial impoverishment.

The above is exemplified by the fact that the definitions of vagrants in all these legislations include within their fold, a diverse set of people ranging from those engaged in singing, dancing, performing, and fortune telling in public places, to those who offer any article for sale in a public place. It also includes people who have no ostensible means of livelihood and are found wandering in public places. The underlying assumption is that such persons actually engage in begging and their proclaimed occupation is a mere façade. It is submitted, that, such an expansive definition is at odds with the spirit of the fundamental right to livelihood and the liberal jurisprudence that has been developed around it.

Article 19(1)(g)²¹ of the Constitution of India accords to every citizen, the right to practice any profession in order that they may earn a livelihood. A profession may be described as 'an occupation carried on by a person by virtue of his personal and specialised qualifications, training and skill.'²² Acts of singing, dancing and fortune-telling or selling wares in public certainly involve exercise of talent, skill and labour. These individuals carry them out in public places due to their inability to garner adequate financial capital. They are not in a position to afford a fixed establishment and thus are forced to profess their wares from the streets. These activities are inevitable consequences of poverty and their criminalisation would also be tantamount to criminalising poverty.

Further, the relationship between the performers and the people who witness and patronise their art, is that of an entertainer and his/her audience. Similarly, the relationship between those who offer articles for sale and those who transact with them is that of a buyer and a seller. Bracketing such relationships along with that of a beggar and an alms-giver is reflective of legislative myopia.

In addition, activities like street-singing, dancing and fortune-telling have been an integral part of our subaltern cultural ethos and practices. Their criminalisation would be destructive of our indigenous and popular forms of entertainment.

The specific question of rights of street-hawkers has been agitated before the Supreme Court in a host of cases with diverse results. At one end of the spectrum lies the case of *Bombay Hawkers Union and Others v. Bombay Municipal Corporation*,²⁴ where it was held that certain provisions of The Bombay Municipality Act, 1888 which prevented the hawkers from carrying on business on public streets, were constitutionally valid. It was held that no individual has the right to trade or business, which causes nuisance, annoyance or inconvenience to the other members of the public. Public streets, by their very nomenclature and definition, are meant for the use of the general public. They are not laid to facilitate the carrying on of private trade or business.²⁵

²¹ The provision reads as follows: "All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business."

²² *Sodan Singh v. New Delhi Municipal Committee*, AIR 1989 SC 1988.

²³ They are already in a precarious state due to the dangers posed by globalization.

²⁴ AIR 1985 SC 1206.

²⁵ *ibid.* at 1208, para 8.

The Embarrassment of Poverty

A diametrically opposite view was taken in *Sodan Singh v. New Delhi Municipal Committee*,²⁶ where the Court held that individuals have a right to carry on trade or business on the streets. While recognising the fact that such activities result because of the problem of unemployment and poverty, the Court was of the view that the only solution to the problem would be a policy of full employment and development of the rural sector. Kuldip Singh, J. observed

*"...even in London, street trading is recognized. This is so in spite of the fact that there is a complete social security in that country and as such, no compulsion on the citizen to be driven to street trading out of poverty and unemployment. On the other hand, abysmal poverty in India rejects outright the argument that nobody has a right to engage himself in street trading. Justice; social, economic and political; and citizens, men and women equally, have a right to an adequate means of livelihood which the Constitution of India promises. This Court in various judgments has reminded the Government of its constitutional obligation to ameliorate the lot of poor in India. Nothing much has been achieved. There are an alarming number of people below the poverty line and are also unemployed. The Government cannot provide employment for them, but when, by gathering meagre resources they try to employ themselves as hawkers or street traders, they cannot be stopped on the pretext that they have no right; rather the Government should render all help to rehabilitate them."*²⁷

It is submitted that the latter decision of the Supreme Court is on a stronger footing since it is in consonance with the constitutional prescription of Article 19(1)(g). The extensive horizons of the definition of vagrancy, which result in criminalisation of fortune-telling, singing, dancing, hawking on the streets among other activities, curtail the substantive content of this right.

²⁶ AIR 1989 SC 1988.

²⁷ *ibid.* at 2001, para 29.

In addition, it has rendered a significant part of the deprived sections of the society vulnerable to the continuous spectre of persecution and harassment by the law-enforcement machinery.

IV.

The preceding sections of this paper have served to highlight the fact that criminalisation fails to address the principal causes of the problem of vagrancy. It is submitted that vagrancy cannot be understood merely in legal terms and that it necessitates a holistic redressal. This requires a proper appreciation of the causes of vagrancy.

The fundamental cause of beggary lies in the inequities associated with the existing economic relations. The distributional crises of our economic relations have several manifestations in the form of landlessness, malnutrition, unemployment, underemployment, etc. which lead to poverty. In light of this crisis, it becomes imperative to examine the policies of the Indian State, which has enjoined upon itself, the responsibility of steering the country to economic progress. This responsibility of the State has to be fulfilled within the constitutional contours of fundamental rights and directive principles.

Thus the State must, unequivocally recognise the rights of vagrants. The recognition must not be nominal. People must be empowered with the capability to enjoy these rights. The State is under an obligation to provide a conducive atmosphere for the full and unconstrained exercise of these basic rights. Henry Shue, in his seminal formulation on correlative duties, argued that a right enjoins three important duties on the State.²⁸

- Avoiding deprivation - The State has the negative duty to refrain from depriving the citizens of their basic rights and means of subsistence.
- Protection against deprivation - Citizens are deprived of their basic rights by several agencies other than the State. The State, therefore, ought to perform the positive act of protecting the vulnerable sections from deprivation and exploitation by other citizens.

²⁸ Henry Shue, "Basic Rights Subsistence Affluence and U.S Foreign Policy", 54-63, (1980).

- Providing aid - This concerns people already deprived of their basic means of subsistence. The State has the positive obligation of providing means of rehabilitation of such people through food, shelter, health services, etc. In addition, it is incumbent on the State to empower them so that they are able to contribute to the processes of production and thereby provide for themselves.²⁹

An appraisal of the role of the Indian State on the above-mentioned touchstone portrays a dismal picture. Compliance with these duties has been, at best, sporadic. In fact, the policies of the State have been completely antithetical to the above-discussed postulates. The social and economic policies of the State have actually contributed in a significant manner to the deprivation of large masses. The development strategy based on large scale projects and ceaseless mechanisation has displaced³⁰ and rendered a large number of people unemployed. Several economists have documented the rise in unemployment³¹ in the aftermath of the liberalisation of the economy.³² The west-inspired beautification programmes that have been initiated in a number of metropolises, have further constricted the urban space available for vagrants and have imperiled low-skilled and minimal investment professions like street-hawking.

The State has also failed to protect its citizens from deprivation by others. It seems to have abdicated its constitutional obligations and acquiesced with the unscrupulous elements in impoverishing them.³³ The vestiges of colonialism that play a significant role in impoverishment, have been left untouched. Marginal farmers and landless labourers have been left at the mercy of landlords and money-lenders.³⁴ The sheer

²⁹ *ibid.*

³⁰ Arundhati Roy, "The Greater Common Good", *Frontline*, May 22, 1999 at <<http://www.flonnet.com/fl1611/16110040.htm>>, last visited 21st April 2004.

³¹ Traditional weavers in Karimnagar district of Andhra Pradesh were displaced by the introduction of powerlooms. See Asha Krishna Kumar, "Weavers in Andhra Pradesh: Despair and Death", *Frontline*, April 27, 2001 at <<http://www.flonnet.com/fl1808/18080050.htm>>, last visited 21st April 2004.

³² Mark Weisbrot and Dean Baker, "The Relative Impact of Trade Realization on Developing Countries", at <http://www.cepr.net/relative_impact_of_trade_liberal.htm>, last visited 21st April 2004.

³³ Devinder Sharma, "The Kalahandi Syndrome: Starvation In Spite of Plenty", at <<http://www.dsharma.org/hunger/kalahandi.htm>>, last visited 21st April, 2004.

³⁴ Venu Govindu, "The Great Betrayal: Indian Land Reforms", at <<http://www.indiatogether.org/2003/apr/pov-landref50.htm>> and Regional Node: Association for Land Reform and Development, Regional Report: South Asia at <http://www.landcoalition.org/KP_rep_sas_2.htm>, last visited 21st April 2004.

numbers of beggars today, proves that there has been a dereliction of duty on the part of the State to avoid deprivation and to protect these persons from being deprived. The economic policies have been oriented towards aggregate growth without giving adequate attention to the distribution of this growth among the different sections of society.

The problem has been further intensified by the State's dereliction from its third duty as well. The State has not only consented to the deprivation of basic means of subsistence, but also refrains from providing these deprived persons with basic necessities. With the onset of liberalisation, there has been a constant reduction in social expenditure and a gradual retreat of the State from the social security sector.³⁵ The mechanism of the Public Distribution System has constantly been weakened due to the exigencies of fiscal deficit.³⁶ To make matters worse, the 'Welfare State of India', then criminalises the last option of these deprived persons! Under such circumstances, one begins to question the very notion of a welfare state. In absence of proper aid from the State; philanthropy, charity and giving alms, act as a system of private aid towards the deprived masses. Criminalisation of begging imperils this system and further compounds the miseries of the deprived people.

The crisis is exacerbated by the foundational imperatives of neo-liberalism. It has been argued, that the creation of pools of unemployed labour serving as reserve for the relocated industries of the First World, is one of the primary objectives of structural adjustment and other neo-liberal reforms. Perpetuation of unemployment and consequently idle labour, thus, is a prerequisite for the maintenance of the capitalist economy.³⁷

³⁵ There has been large inter-sectoral reallocations and reduction of funds meant for poverty alleviation which have resulted in increase in unemployment and poverty; Abu Saleh Shariff, P Ghose, SK Mondal, "State Adjusted Public Expenditure on Social Sector and Poverty Alleviation Programmes", *Economic and Political Weekly*, 23rd February 2002, <<http://www.epw.org/showArticles.php?root=2002&leaf=02&filename=4148&filetype=pdf>>, last visited 21st April 2004.

³⁶ See Madhura Swaminathan, "A Demolition Job", *Frontline*, March 18, 2000 at <<http://www.flonnet.com/fl1706/17060980.htm>>; R Krishnakumar, "Public Distribution System: A System in Peril", *Frontline*, September 16, 2000 at <<http://www.flonnet.com/fl1719/17190970.htm>> last visited 21st April 2004.

³⁷ Michel Chossudovsky, "The Globalisation of Poverty", 75-81, (1997).

Another deleterious effect of the advent of neo-liberal economic philosophy and the transition towards a market economy has been the dilution of the State's endeavour towards the realization of our constitutional goal of socio-economic justice. The withdrawal of the State from the economy has resulted in a marked decline in its social expenditure. Veneration of consumption, inherent in a market-based economy, has spawned a new set of values and attitude that perceives marginalized and peripheral groups, not part of the league of consumption, but as deviants.³⁸ The concept of a welfare state has started losing its sheen and is increasingly being collapsed with charity. Questions of right to livelihood and development of the marginal classes of people have taken a backseat in this new worldview of consumption.

To conclude, an analysis of contemporary socio-economic history demonstrates the colossal failure of the State in addressing the systemic and structural factors behind poverty. Its policies have failed to live up to its pro-poor rhetoric and very often have been unabashedly repressive. The neo-liberal reorientation of the State and the social elite in the nineties has increased social hostility towards vagrants and other marginal groups. It is submitted that long-term amelioration of vagrants would necessarily entail resolution of structural causes of poverty and exploitation, thus requiring the State to fundamentally reorient its economic policies and priorities.

V.

Societal dependence for subsistence was a widely accepted practice throughout different phases of Indian history. The necessities of colonialism changed this perception and this departure culminated in the criminalisation of beggary. The prevalent economic philosophy required a cloak of invisibility over its pernicious effects for the sustenance of legitimacy. The failure of the State to radically alter its socio-economic policies in independent India has led the State to persist with its repressive policies. Market liberalisation further entrenches this approach. This is particularly anomalous in light of the fact that the cherished values and ideals of the State have been fundamentally

³⁸ Ironically, the present pre-occupation of contemporary observers with vilification of beggars and vagrants does not prevent them from marveling about the possibility of street-hawkers being used by multinational companies for marketing. See Arvind Rajagopal, "Violence of Commodity Aesthetics: Hawkers, Demolition Raids and a New Regime of Consumption", *Economic and Political Weekly*, Vol. XXXVII No.1, 5th January 2002, 65.

altered by the adoption of a 'socialist' Constitution geared towards the goal of realisation of 'justice- social, economic and political'. Criminalisation and the social exclusion of vagrants and beggars, stand as anachronisms in a rights-oriented Constitution.

The problem of beggary and vagrancy is essentially a problem of unemployment and inequity. The key to the problem lies not in its criminalisation but in addressing its causes and interrogating the economic relations and developmental priorities of the State.

REFERENCES

1. Abu Saleh Shariff, P Ghose & SK Mondal "State Adjusted Public Expenditure on Social Sector and Poverty Alleviation Programmes", Economic and Political Weekly, February 23, 2002, <http://www.epw.org/showArticles.php?root=2002&leaf=02&filename=4148&filetype=pdf>.
2. Ahmad Siddique, "Criminology - Problems and Perspectives", Eastern Book Company, Lucknow, (1997).
3. Amulya Gopalakrishnan, "Poverty as Crime", Frontline, Nov. 9, 2002 at <http://www.flonnet.com/fl1923/stories/20021122004703000.htm>.
4. Andrew Ashworth, "Principles of Criminal Law", Oxford University Press, Oxford, (1999).
5. Aravind Ganachari, "White Man's Embarrassment' European Vagrancy in the 19th Century Bombay", Economic and Political Weekly, Vol. XXXVII No.25, 22nd June 2002, 2477.
6. Arundhati Roy, "The Greater Common Good", Frontline, May 22, 1999 at <http://www.flonnet.com/fl1611/16110040.htm>.
7. Arvind Rajagopal, "Violence of Commodity Aesthetics: Hawkers, Demolition Raids and a New Regime of Consumption", Economic and Political Weekly, Vol. XXXVII No.1, 5th January 2002, 65.
8. Asha Krishna Kumar, "Weavers in Andhra Pradesh: Despair and Death", Frontline, April 27, 2001.
9. BB Pande, "Vagrants, Beggars and Status Offenders", in Upendra Baxi (ed.), "Law and Poverty- Critical Essays"; N.M. Tripathi Pvt. Ltd., Bombay, (1988).

The Embarrassment of Poverty

10. CMV Clarkson & HM Keating, "Criminal Law: Text And Materials" Sweet & Maxwell, London (1998).
11. Daniel A Farber and Philip P Frickey, "Symposium on the Theory of Public Choice", 74 Va. L. Rev. 167 (1988).
12. Devinder Sharma, "The Kalahandi Syndrome: Starvation In Spite of Plenty", at <http://www.dsharma.org/hunger/kalahandi.htm>.
13. Dr. L.M. Singhvi (ed.), "Law and Poverty- Cases and Materials", N.M. Tripathi Pvt. Ltd., Bombay, (1973).
14. Harsh Mander, "Surviving the Streets", Frontline, May 10, 2003 at <http://www.flonnet.com/fl2010/stories/20030523003210300.htm>.
15. Henry Shue, "Basic Rights Subsistence Affluence and U.S Foreign Policy" Princeton University Press, Princeton, (1980).
16. Jane S Schacter, "Metademocracy: The Changing Structure of Legitimacy in Statutory Interpretation", 108 Harv. L. Rev 592 (1995).
17. Jerry L Mashaw, "The Economics of Politics and the Understanding of Public Law", 65 Chi.-Kent L. Rev. 123 (1989).
18. Madhura Swaminathan, "A Demolition Job, Frontline", March 18, 2000 at <http://www.flonnet.com/fl1706/17060980.htm>.
19. Mark Weisbrot and Dean Baker, "The Relative Impact of Trade Realization on Developing Countries", at http://www.cepr.net/relative_impact_of_trade_liberal.htm.
20. Michel Chossudovsky, "The Globalisation of Poverty", The Other India Press, Goa (1997).
21. R Krishnakumar, "Public Distribution System: A System in Peril", Frontline Sept. 16, 2000 at <http://www.flonnet.com/fl1719/17190970.htm>.
22. Sukumar Murlidharan, "Weavers in Andhra Pradesh: Despair and Death" Frontline April 27, 2001.
23. Venu Govindu, "The Great Betrayal: Indian Land Reforms" at <http://www.indiatogether.org/2003/apr/pov-landref50.htm>.