

Criminalization of Poverty – Examining the Impact of Legal Practices on Socio-Economic Marginalization in India

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Introduction

The intersection of poverty and criminal justice in India is a multifaceted issue having profound implications on the socio-economic framework of the country. The concept of criminalizing poverty begins by the process of how socio-economic conditions like homelessness, unemployment and minor infractions of poverty are made subject to punitive measures. Poverty is often a cycle that is difficult to break from. Individuals living in poverty face limited access to education, healthcare, housing and employment opportunities. These systemic disadvantages contribute to increased involvement in activities such as petty theft, drug offenses and survival related crimes.¹ The Indian Penal Code (IPC), a colonial law practiced in India until 2024, designed to maintain order and control disproportionately targets these categories of behaviours by creating punitive provisions for vagrancy, petty theft etc associated with poverty. This perpetuates a cycle of poverty and criminalization where the poor becomes poorer and both a criminal for his disability.

¹ Duncan A. The criminalization of poverty: A critical examination. *Addict Criminol.* 2023;6(4):159

The criminalization of such poverty related issues of vagrancy and beggary is justified by portrayal of a beggary as an act of harm and beggars as potential offenders causing a law-and-order problem. Socially, they are treated as disease carrying parasites who chose to use their able-bodied bodies for beggary just influenced by laziness. This reasoning eliminates the poor from the society and criminalization further facilitates the method for the process. By criminalizing beggary, the State is further criminalizing unemployment and poverty. The definition of vagrancy includes 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 public place. It also includes people with no declared income as found wandering in public places. This misassumption of these people as actually engaged in begging undermines their spirit of fundamental right to livelihood and liberal jurisprudence.²

With the introduction of the Bharatiya Nyaya Sanhita (BNS), 2023 intending to Indianize and modernize the Indian criminal justice system, it presents an opportunity to evaluate and rectify potential biases against the poor in IPC. The paper focuses on the extent to which the removal of colonial law may benefit in making progress to the underlying socio-economic marginalization that is caused by the criminalization of poverty. The idea of marginalization is a wide phenomenon which may not only come in form of judicial hostility wherein the Delhi High Court Order of 2002 directed Delhi Administration to clear capital city of beggars and street-hawkers to transport beggars during visits of foreign dignitaries but also societal and governmental hostility in the recent G20 summit where a part of Delhi slum was covered with blue sheets to hid the reality as disgust.

² Geetanjali Swamy, Pritam Baruah & Saurabh Bhattacharjee, *THE EMBARRASSMENT OF POVERTY - A CRITIQUE OF STATE RESPONSE AND RESPONSIBILITY*, Nalsar Student Law Review.

The paper therefore seeks to analyse the broader socio-economic implications of criminalizing poverty in India and the legal practices perpetuating this exclusion. Systemic biases and discretionary power exclusion is explored by examining how legal practices impact access to basic rights and services and the role of law enforcement agencies, the judiciary and the penal system in contributing to that. Real life case studies are utilized to illustrate real-world consequences of these legal practices in marginalization against caste, gender, ethnicity etc. The paper further evaluates the role and extent of Bharatiya Nyaya Sanhita in addressing these issues and whether it serves as a meaningful solution to the discrimination created under Indian Penal Code's colonial legacies.

Statement of Problem

The criminalization of poverty in India is perpetuated by both historical and contemporary legal frameworks and practices resulting in socio-economic marginalization of impoverished communities. It further exacerbates their vulnerability by hindering opportunities and basic rights.

Aim of Study

The aim of the study is to examine how Indian legal practices criminalize poverty resulting in socio-economic marginalization of vulnerable communities. The paper analyses the role of colonial and contemporary legal frameworks including the IPC and BNS in building mechanisms wherein poverty is criminalized. Through examination of legal codes, their enforcement and judicial hostility, the paper intends to highlight the measures that are to be taken advocating reforms in socio-economic consequences of poverty. The end goal is therefore promoting social justice and equity in the criminal justice system of India.

Review of Literature

The literature available on criminalization of poverty in India seeks to examine the interplay between legal frameworks and socio-economic marginalization. The studies of Partha Chatterjee (1993) examine colonial legal systems targeting behaviours associated with poverty wherein IPC includes provisions for vagrancy, begging and petty theft. Studies of Upendra Baxi (1982) further suggest the need for legal reforms aiming to address deep seated biases against the poor. The concept of intersectionality by Kimberle Crenshaw (1989) further applies to the framework by examining how caste, gender and ethnicity intersect with poverty to create layered experiences of marginalization. The introduction of Bharatiya Nyaya Sanhita through the lens of scholars like Arvind Narain (2023) further evaluated the new legal frameworks to ensure and prevent replication of biases of the IPC.

Policy recommendations by organizations like the Human Rights Watch 2009 (HRW) and National Campaign on Dalit Human Rights, 2011(NCDHR) emphasize the need for legal reforms advising decriminalization of poverty to break the socio-economic marginalization cycle.

The author begins with

- (a) Discussing the available legal frameworks that facilitate criminalization of poverty
- (b) Key parameters of judicial and social hostility in aspects of poverty related issues
- (c) And suggesting legal and social reforms to address poverty as a legal and socio-economic issue.

Research Objectives

- (a) To identify and examine particular laws, rules and legal processes in India supporting criminalization of poverty.

- (b) To review case studies or actual data to highlight instances where legal practices have disproportionately affected individuals from lower socio-economic groups.
- (c) To assess effectiveness of social welfare programs and legal aid programs in mitigating negative impacts of criminalizing poverty.
- (d) To propose suggestions for social and legal policy reforms advancing socio-economic fairness and lessen the possibility of criminalization of poverty in India.

Research Questions and Hypothesis

- (a) What role do Indian laws and legal procedures play in making poverty a crime in underprivileged socioeconomic groups?
- (b) Which particular legal frameworks and policies in India disproportionately impact people from lower socioeconomic backgrounds?
- (c) How do these legal procedures affect marginalized communities' social mobility, economic prospects and access to justice?
- (d) How does India's criminalization of poverty affect people on an individual and collective level in terms of society and economy?

It is hypothesized that criminalization of poverty is perpetuated through punitive legal frameworks and systemic biases within IPC and the BNS further contributing to socio-economic marginalization of the vulnerable population.

Research Methodology

The research is a desk-based study. The research follows an approach of empirical study that is vastly dependent on the analytical study of various legal frameworks and advancements in criminalization of poverty while examining the old and existing systems and challenging the possible reforms and strategies to overcome the issue.

The data will be drawn from various case laws and case studies and their outcomes along with publications of policy experts. The researcher will utilize the legal Acts, judicial interpretations and judgments, online articles, reports and publications in attempting the research questions.

Limitations of Study

While the research aims to provide a broad overview, it is subject to regional disparities. India is a diverse country with disparities in socio-economic conditions, legal enforcements and judicial interpretation across states and union territories. The availability and reliability of data in rural and under-researched areas may seem a potential challenge in analysis. The author's reliance on available publications and cases may not reflect the entire lived experiences of all the marginalized populations affected by the legal framework.

Historical Context and the evolution of Legal Frameworks in India

Introduction

The historical context of legal frameworks regarding criminalization of poverty amplifies insight of the persistent impact of poverty on socio-economic marginalization. The legal frameworks shaped during colonial past and the post-independence change show the intersection of poverty as a punitive bias between legal practices and socio-economic conditions. With the implementation of India's first colonial criminal justice system through Indian Penal Code, 1860, colonial mindset on marginalized communities has been embedded into the law. The Code was not merely a set of legal norms but a tool for maintaining colonial order and addressing perceived threats to British interests.³ The laws were highly disproportionate to the poor like the laws against vagrancy and begging criminalized affecting the economically disadvantaged groups.

The colonial period associated poverty with criminality wherein colonial authorities viewed poverty as a law-and-order issue rather than a socio-economic inequality. This led to the creation of a punitive approach of IPC towards penalizing activities like begging and petty theft. The criminalized poor becomes the centre of socio-economic marginalization and poverty falls into a cycle of stigmatization.

After 1947, the period of independence, there were efforts to address socio-economic disparities. But many colonial era laws continued to impact marginalized communities. The post-independence laws concentrated more on political and administrative reforms than addressing criminalized poverty.

³ Sugata Bose, *MODERN SOUTH ASIA: History, Culture, Political Economy*, (July 4, 2001), <https://hostnezt.com/cssfiles/pakistanaffairs/Modern%20South%20Asia%20History,%20Culture%20and%20Political%20Economy%20By%20Sugata%20Bose%20&%20Ayesha%20Jalal.pdf>.

By the later 20th century, there was growing concern addressing the necessity of making socio-economic reforms through legal reforms. The role of the relationship between different social systems and rationalization of violence in law for caging subalterns and marginalized people must end with decriminalization and decolonization of criminal law for recourse to social justice and not criminal justice for social deviance.⁴ From the colonial imposition of IPC to contemporary developments, it is important to understand the evolution of legal practices and their impact on poverty.

Socio-Economic Landscape of Colonial India

During the colonial era, India's socio-economic landscape was marked with profound inequalities shaping further the context of the legal frameworks addressing them. After the Battle of Plassey in 1757, the British transformed the social and economic structure of India exacerbating the existing inequalities and creating new forms of socio-economic marginalization.

Agrarian policies were most impacted with revenue systems like the Permanent Settlement of 1793. It created a system where land was concentrated in the hands of a few zamindars who imposed Ryotwari and Mahalwari systems imposing heavy taxation on peasants.⁵ This led to widespread debts and land dispossession increasing economic vulnerability and created deeper poverty for the rural population. The agrarian economy remained

⁴ Taylor & Francis, *Thinking beyond penal reform in India*, Questioning the logic of (Mar. 30, 2021), <https://www.taylorfrancis.com/chapters/edit/10.4324/9780429425035-41/thinking-beyond-penal-reform-india-shailesh-kumar>.

⁵ Parul Rishi, *Permanent Settlement 1793, History, Features, Impact, Merits, Demerits*, (Apr. 17, 2024), <https://www.pw.live/exams/ssc/permanent-settlement-1793/>.

fragile and liable to famine and scarcity. The problem was accentuated by the action of the outsider traders in creating an artificial shortage by exporting most of the produce outside to Calcutta and other urban centres.⁶

While the colonies in Calcutta and Bombay enhanced economic growth, they led to a large number of slums and informal settlements. The slums were filled with migrants looking for better work and living conditions leading to overcrowding and unsanitary conditions. This results in marginalization of the urban poor class.

The imposition of British codes like the IPC embedded a reflection and response to the economic and social inequalities brought in by British policies. The disparity and bias is evident in which kinds of poverty were criminalized under the cover of maintaining order resulting in economic vulnerability of the poor.

Analysis of Indian Legal Provisions against Poverty related Activities (Pre-BNS)

The Indian Penal Code (IPC), 1860 has historically targeted behaviours and conditions associated with poverty thus criminalizing the act itself. Some of the sections discussed here impact poverty-related offences:

(a) Section 41: Power to Arrest without Warrant⁷

“When any person shall, in the presence of a police officer, commit a cognizable offence, the police officer may arrest such person without a warrant.”

This broader discretion granted to police officers may led to arbitrary arrests of people from marginalized and impoverished backgrounds. It is usually used by the officials to arrest individuals associated with poverty for petty theft, vagrancy and minor public order offenses. It leads to wrongful confinement of individuals engaged in confrontation with authorities. The Supreme Court also felt the

⁶ Sanjukta Das Gupta, *Accessing Nature: Agrarian Change, Forest Laws and Their Impact on an Adivasi Economy in Colonial India*, 7 *Conservation & Society* 227-238 (2009).

⁷ <https://indiankanoon.org/doc/1899251/>

disproportionate target of poor individuals under this section in the case of *Gian Kaur v. State of Punjab* (1996) although the case was not dependent on it. By criminalizing acts of such minor nature reinforces social and economic barriers against the poor. The lack of protection may also lead to potential abuses and wrongful arrests.

(b) Section 379: Punishment for Theft⁸

The provision states:

“Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

Theft includes a wide range of property-related offenses. Its applicability disproportionately affects individuals who resort to theft of economic necessity or desperation. In many instances, theft of essential goods or stealing food is driven by economic desperation rather than criminal intent. In the case of *K.K.Verma v. State of Rajasthan* (1972), the court applied S.379 to a case of theft of economic desperation. This shows how the legal system is quite rigid and does not account for the social and economic potential of the accused. This imprisonment will further restrict their access to employment and social services barring their entry into the society creating marginalization of the poor.

⁸ Admin, “Section 379 of the Indian Penal Code: Punishment for Theft – Explained in Detail | IPC” (*Century Law Firm Blog*, November 16, 2023) <https://www.centurylawfirm.in/blog/section-379-in-the-indian-penal-code-ipc-section-of-the-day/>

(c) Section 186 of IPC: Obstructing public servant in discharge of public functions⁹

“Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.”

The application of the following section has been often used disproportionately on marginalized individuals contributing to criminalization of poverty. For example, it includes the homeless individuals and street vendors who operate without permits obstructing discharge of public duties. Arresting and imprisonment of these individuals may further perpetuate a cycle of poverty as it disrupts their livelihood and creates a legal record which hinder their further opportunities. Informal sectors like street vending face the discretionary strength of law that can lead to misuse and target by law enforcement officers. The regulatory regimes governing where, when, and how vendors may work are often inconsistent, contradictory within a single area, or inconsistently enforced. Street vendors in many cities are forced to pay bribes or excessive fines/fees in order to work. In urban planning decisions, the needs of street vendors and their customers are often dismissed as irrelevant to a modern city’s growth. Street vendors are often evicted by force when their traditional vending sites overlap with sites for proposed development. And, like members of many sectors of the informal economy, street vendors are often left out of social protection schemes.¹⁰

⁹ “IPC : Contempts of Authority of Public Servants” (*A Lawyers Reference*) https://devgan.in/ipc/chapter_10.php#s186

¹⁰ *Street Vendors and the Law* | WIEGO, Home page | WIEGO, <https://www.wiego.org/street-vendors-and-law>

(d) Section 411 of IPC: Dishonestly receiving stolen Property¹¹

“Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.”

The applied provision may be more vulnerable to the poor and marginalized communities who get entangled in these said criminal offences out of economic desperation or lack of awareness. Their socio-economic status in the society restricts access to question the origin of the goods where it may be framed as an act of criminal offence. Street vendors, small shopkeepers and daily wage labourers may be susceptible to a lack of resources to verify the property and fall in a cycle of criminal jurisprudence. This was seen in the case of *Lakshman Rao v. State of Andhra Pradesh* (1999) wherein a small time trader was charged with Section 411 for unknowingly selling stolen goods.

(e) Against Vagrancy

Begging is seen as an offence in many states of India though there is no central law governing it. They derive their figure from the Bombay Prevention of Begging Act, 1959. The states incarcerate the beggars based on their applied law. This was seen in the 2010 Commonwealth Games where beggars were arrested in Delhi.

The following are the anti-begging laws in various states of India:

¹¹ “IPC Section 411 - Dishonestly Receiving Stolen Property” (*A Lawyers Reference*)
<https://devgan.in/ipc/section/411/#:~:text=Description,with%20fine%2C%20or%20with%20both.>

Sr. No	States and Union Territories	Legislation in Force
1.	Andhra Pradesh	The Andhra Pradesh Prevention of Beggary Act, 1977
2.	Assam	The Assam Prevention of Begging Act, 1964
3.	Bihar	The Bihar Prevention of Begging Act, 1951
4.	Chhattisgarh	Adopted the Madhya Pradesh Bikshavirty Nivaran Adhiniyam, 1973
5.	Goa	The Goa, Daman & Diu Prevention of Begging Act, 1972
6.	Gujarat	Adopted the Bombay Prevention of Begging Act, 1959
7.	Haryana	The Haryana Prevention of Begging Act, 1971
8.	Himachal Pradesh	The Himachal Pradesh Prevention of Begging Act, 1979
9.	Jammu & Kashmir	The J&K Prevention of Begging Act, 1960
10.	Jharkhand	Adopted the Bihar Prevention of Begging Act, 1951
11.	Karnataka	The Karnataka Prevention of Begging Act, 1975
12.	Kerala	The Madras Prevention of Begging Act, 1945, the Travancore Prevention of Begging Act, 1120 and the Cochin Vagrancy Act, 1120 are in force in different areas of the State.

13.	Madhya Pradesh	The Madhya Pradesh Bikshavirty Nivaran Adhiniyam, 1973
14.	Maharashtra	The Bombay Prevention of Begging Act, 1959
15.	Punjab	The Punjab Prevention of Begging Act, 1971
16.	Sikkim	The Sikkim Prohibition of Beggary Act, 2004
17.	Tamil Nadu	The Madras Prevention of Begging Act, 1945
18.	Uttar Pradesh	The Uttar Pradesh Prohibition of Begging Act, 1972
19.	Uttarakhand	Adopted the Uttar Pradesh Prohibition of Begging Act, 1972
20.	West Bengal	The West Bengal Vagrancy Act, 1943
21.	Daman & Diu	The Goa, Daman & Diu Prevention of Begging Act, 1972
22.	Delhi	Adopted the Bombay Prevention of Begging Act, 1959

The Indian law defines begging as an activity where:

- a) Soliciting or receiving money, clothes or other things ordinarily given to a beggar, in a public place whether or not by singing, dancing, fortune telling, performing or offering any article for sale,
- b) or Entering on any private premises for the purpose of soliciting or receiving money, clothes or other things ordinarily given to a beggar.

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- c) Exposing or exhibiting, with the object of obtaining or extorting money, clothes or other things ordinarily given to a beggar, any sore, wound injury, deformity of diseases 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, makes it likely that the person doing so exists soliciting or receiving money, clothes or other things ordinarily given to a beggar.
- e) Allowing oneself to be used as an exhibit for the purpose of soliciting or receiving alms.¹²

These laws have historically targeted penalizing rather than solving the cause of socio-economic deprivation. It targets individuals who resort to begging out of economic necessity. This imprisonment also raises questions of Human Rights violations under the standards of organizations like the Human Rights Watch (HRW) as it imprisons people for their economic conditions without providing for rehabilitation and support services. Many argue that these laws are in fact the reason for begging, unemployment as it focuses on criminalizing the symptoms rather than killing the cause. In the case of *Sanjay Kumar v. State of Uttar Pradesh* (2007) where anti-beggary laws were used where individuals found begging were imprisoned shows the punitive nature of the law.

¹² Anubhav Pandey, *Indian anti-begging laws. Is begging crime in India? iPleaders.*, (Apr. 12, 2017), <https://blog.ipleaders.in/anti-begging/>.

Legal Reforms towards Decriminalization of Poverty before the Bharatiya Nyaya Sanhita (BNS)

The legal framework of India has undergone many changes to align with the socio-economic challenges and combat them. It has been felt in many cases that the colonial laws only aimed at maintaining order even at the cost of social and economic justice. Therefore, several reforms were made both legally and socially in addressing the issue of poverty.

Some of the judicial reforms include the bail system being made accessible and affordable. Poorer citizens may not be able to afford bonds and bail securities leading to an unnecessary prolonged pre-trial detention. This issue was addressed in the case of *Moti Ram v. State of Madhya Pradesh* where bail was granted without surety concerning the poor economic status of the mason. It emphasized the need for a more equitable bail system affordable to all. There have been several reforms in sentencing and reducing the prison sentence for petty offenders by promoting alternative forms of punishments. This helps them fit their economic status as well as rehabilitate into more acceptable members of the society. The cruel role of undertrials, which majorly consists of the poor backgrounded individuals was also addressed in the Supreme Court case of *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81 where it was declared that right to speedy trial is a fundamental right under Article 21 of the Constitution.

Some of the pro-poor legislations include:

The Legal Services Authorities Act, 1987 giving effect to provisions of Art. 39A of Constitution of India providing free and efficient legal services to all the indigenous sections of the society. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 which aimed at ensuring

security of tenure and access to minor forest products and other related rights to tribals and other forest dwellers. And, The Food Security Legislation provided for subsidized food-grains to the poor.

Judiciary adopted a further expansive interpretation of f Art. 21, bringing within its ambit almost all facets of poverty. The judiciary has rendered judgments focusing on poverty in its various facets, such as the right to food, child labour, beggars' rights, debt-ridden farmer suicides, the homeless, street vendors, cycle rickshaw pliers, pavement dwellers, slum dwellers and ascertainment of below poverty line families. These were facilitated through various judgments in the following cases:

- a) Right to Food: Chameli Singh v. State of U.P AIR 1996 SC 1051;
- b) Child Labour: M.C. Mehta v. State of Tamil Nadu, (1996) 6 SCC 756;
- c) Beggars' Rights: Ram Lakhan v. State 137 (2007) DLT 173
- d) Pavement Dwellers: Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.¹³

Despite these reforms, the IPC continued to have provisions that criminalize poverty and the presence of these laws gave powers to law enforcement officials. This indicates that the poor are still vulnerable to criminalization and there needs to be an overhaul of the IPC to address the insufficiencies in the system. The Bharatiya Nyaya Sanhita, 2023 is a step towards this as it incorporates many progressive changes which include decriminalization of minor offenses and better protection for marginalized groups.

¹³ Vikrant Narayan Vasudeva, *Legal Intervention in Poverty Alleviation: Enriching the Poor Through Law*, NUJS L. REV. 448-463 (2010).

Contemporary Legal Practices – Socio-Economic Impact

Introduction

The legal landscape has undergone the process of “Indianization” in the transition from the Indian Penal Code (IPC) of 1860 to the Bharatiya Nyaya Sanhita (BNS) of 2023. The BNS is introduced with the aim of a more progressive approach to criminal justice suiting better to India’s socio-economic and cultural realities. The BNS has revised punishments for several offences increasing jail time for almost 33 offences, fines for 83 offences and introduction of mandatory minimum punishments for certain others. Community service has been introduced as a punitive measure for minor offenses. Several outdated colonial era provisions were removed including the omittance of S.377 and S.309 of IPC which talk about consensual same-sex relationships and offense of attempting to commit suicide respectively. This shift aimed towards prioritizing mental health over punishment.

This chapter deals with the current legal provisions covering criminalization of poverty post the introduction of Bharatiya Nyaya Sanhita, compares them with IPC and examines how law enforcement and judicial practices understand the broader socio-economic ramifications with empirical data.

Analysis of current Legal Provisions (Post BNS)

(a) Broader Definitions

The BNS has made much inclusive and broader definitions with updated definitions for “child” and “transgender” promoting protection under the law under Section 2. It focusses on the intent rather than strict and outdated criteria. Uniformity has been introduced in the use of expression ‘child’ throughout

the BNS, 2023 which is achieved by replacing the expression ‘minor’ and ‘child under the age of eighteen years’ with the word ‘child’.¹⁴

It decriminalized various offenses that affected marginalized groups including the decriminalization of Section 377 of IPC that criminalized consensual same-sex relationships reducing the criminal burden.

(b) Protection of the Vulnerable Groups

BNS introduces stringent punishments for crimes against women and children which includes Section 95 of BNS penalizing hiring children with imprisonment and fine. These harsher punishments aim to curb exploitation and protects the vulnerable homeless available for exposure of crimes like rape, assault etc. Apart from those, illegal begging done forcefully by using children is also found exploitative under BNS provision S.143 which states “using people for exploitation, including begging, is an offence”. Additionally, Section 139 stipulates that anyone who kidnaps a child to employ them for begging will face up to 10 years of rigorous imprisonment.¹⁵ This protects the children of the poorer households who are highly prone to such exploitation.

Comparison with the Indian Penal Code

The IPC, 1860 was designed to maintain colonial order at the expense of socio-economic justice. The BNS, on the other hand, aims to protect and safeguard societal values addressing socio-economic disparities. The IPC was heavily punitive while BNS incorporates principles of reformatory justice. The BNS introduces

¹⁴ *Key Highlights of the three new criminal laws introduced in 2023*, SCC Times (Dec. 31, 2023), <https://www.sconline.com/blog/post/2023/12/31/key-highlights-of-the-three-new-criminal-laws-introduced-in-2023/>.

¹⁵ Times Of India, *Crackdown on begging under BNS provisions*, Times of India (July 2, 2024), <https://timesofindia.indiatimes.com/city/jaipur/crackdown-on-begging-under-bns-provisions/articleshow/111416382.cms>.

community service as an alternative to imprisonment for minor offenders which reduces criminalization of poverty providing opportunities for reintegration into the society. The BNS has removed provisions treating homelessness and poverty as social issues rather than criminal deserving punitive treatment.

Crime	Indian Penal Code (IPC)	Bharatiya Nyaya Sanhita (BNS)
Theft for survival	Sentenced to imprisonment	Judicial consideration of economic condition and necessity, resulting in alternative punishment like community service instead of imprisonment.
Begging	Arrest and short-term imprisonment	Directed to community/social services aimed ultimately at providing housing and employment assistance.
Migrant workers	Targeted for public nuisance and vagrancy	Focused on support systems allowing migrant workers to seek employment and housing without a fear of arrest.

Reformative Approach of the Bharatiya Nyaya Sanhita

BNS empowers the judges to exercise great discretion when it comes to matters concerning the economic status of the offender. Judges can opt for alternative punishment for such offenders instead of imprisonment for minor offenses which are driven by economic urgency. This further helps deal with overcrowding of the person and allows easy reintegration of these people in the society without a fear of marginalization tagged as “criminals”. It practices restorative justice which emphasizes restitution and rehabilitation over punishment.

By initiating programs aimed to provide education, vocational training and employment opportunities, it helps break the cycle of poverty and crime.

Case Studies and Empirical Data

(a) Progressive Approach by Rajasthan

Across India, begging is often dealt with by regressive state laws. The mother law for begging followed by many states as principles, Bombay Prevention of Begging Act, 1959, has no provision of providing means of sustenance for vagrants and allowing them to be arrested without a warrant. There is a huge absence of the arrest data on the National Crime Records Bureau(NCRB) portal as well. All this ultimately leads to them being tagged as “lazy”, “unsanitary” and “criminals”.

Contrary to other states, Rajasthan took a different approach by enabling the Rajasthan Rehabilitation of Beggars or Indigents Act, 2012 which decriminalises begging and focuses on rehabilitating and integrating beggars back into society. The Act also recognises that some individuals may resort to begging due to physical and mental disabilities or old age and provides them shelter for their protection and care in the rehabilitation homes. It aligns with the spirit of the landmark judgment of Harsh Mander v. Union of India which held that: *“Criminalising 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 marginalised in society”*.¹⁶

The Rajasthan Government also undertook Project BHOR (Bhikshook Orientation and Rehabilitation) which aimed at providing training for beggars to work as confectioners, electricians and plumbers at the Kaushal

¹⁶ Jehosh Paul and Jehosh Paul, “A Progressive Model of Criminalisation to Rehabilitation | ISPP” (*Indian School of Public Policy* -, May 28, 2024) <https://www.ispp.org.in/rajasthans-progressive-model-of-rehabilitation-for-beggars-in-india/>

Vardhan Kendras. It even generated employment for them at organizations like the Akshay Patra, Fortis Hospital, Hotel Shahpura Residency etc.¹⁷

This approach aligns itself with the principles of restorative justice which focusses on welfare and equitable justice than imposing punitive measures for a crime born out of necessity without intent of deceit.

(a) **Recidivism**

Recidivism refers to the tendency of a convicted criminal to reoffend. It is measured by rates of re-arrest, re-conviction or re-imprisonment. This is highly seen in offenders from poverty status because of a lack of economic opportunities, social stigma and discrimination and insufficient rehabilitation and support services. Individuals from poorer backgrounds who are economically disadvantaged having increased risk of recidivism as they face huge barriers to reintegration into the society. Their necessity makes them commit survival related crimes labelling them as criminals. This status hinders their ability to secure employment and housing leading to further social stigma and discrimination.

Under the BNS, 2023, alternative sentencing prevents recidivism rates as it promotes restorative justice wherein both the victim and the offenders' needs are met. This approach of penalizing with social service helps better reintegration into the society which also acts as a system of rehabilitation for the offender. It generates educational and employment opportunities that reduce the likelihood of reoffending. Their economic development contributes to the broader social development in reducing poverty rate of the country. The system also benefits the judiciary machinery by shifting focus and resources on more serious and incorrigible offences.

¹⁷ Ibid.

Challenges and Future Outlook

Effective implementation of decriminalization of poverty under BNS requires training of the law enforcement agencies and social service providers wherein all the stakeholders understand the new applied provisions. Thorough implementation needs proper infrastructure and resources which include setting up rehabilitation centres and vocational training centres in all regions. Clear guidelines must be established for uniform application across the country.

BNS faces conflicts and inconsistencies with the existing state laws and local regulations relating to vagrancy and begging which may create challenges in uniform enforcement. Socially, the evil is difficult to be eliminated as many rural areas with lack of awareness may still exclude these communities hindering their reintegration into society. Therefore, there is a need for changing public perception on the idea of a beggar through awareness and reformative programs that target the deep-rooted cultural attitude towards them and crime.

Intersectionality

Introduction

Impact on Personal Laws

In times of social inequality, intersectionality is a framework understanding the multi-dimension nature of discrimination. Interdependent oppressions like race, gender, class, state and ethnicity. These intersections of these identities criminalize their marginalized status within society. Compounded marginalization at these intersections lead to fragmented interventions. Strengthening anti-discrimination against caste, gender and

ethnic biases help protect historical social exclusion and violence. These biases within the legal institutions limit and disrupt their access to justice and perpetuate further cycles of poverty and criminalization. Disproportionate target by law enforcement officials for minor offenses lead to higher arrest rates and harsher treatment of minorities.

Legal frameworks to combat poverty must therefore address the specific needs and vulnerabilities of the marginalized communities taking care of their intersectional identities. The laws that are penalizing vagrancy and begging should therefore focus on restorative justice than punitive measures. Enhancing legal aid and representation for those disadvantaged citizens navigate their entry into the legal system effectively. Additionally, training must be provided to law enforcement and judicial personnel for comprehensive and holistic dealing with the crime considering the socio-economic factors.

Caste, Gender, and Ethnicity

Caste and Criminalization of Poverty

The supposed “untouchables” of India rise from the four-tiered Hindu caste system representing the Scheduled Castes/ Dalits. They are traditionally occupied in professions like scavenging making them vulnerable to the rigid caste structure along with lack of economic privilege and legal protection in villages.¹⁸ The criminal justice system furthers this structure by Dalits being disproportionately targeted for minor offenses and subjected to harsher treatment by law enforcement agencies. Police forces and judiciary contribute by arresting, detaining and convicting for petty crimes in comparison to upper castes. Economic disadvantage

¹⁸ Zia Akhtar, *Scheduled Castes, Dalits and Criminalisation by 'Descent'*, 9 State Crime Journal pp.71-99 (2020).

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due to limited access to education, employment and social mobility increases their likelihood in survival related crimes further criminalizing poverty among the lower castes.

De-notified tribals were once considered as criminals under the Criminal Tribes Act of 1871(CTA) by the British law. Though the act is decriminalized in 1952, they are often targeted by police as “habitual offenders”. Several of the communities are not included in the list of Scheduled Castes (SC) and Scheduled Tribes (ST). The Pardhi community, for instance, is not categorised as either in several districts of Madhya Pradesh, including Bhopal. Nomadic Muslim communities such as Kasais are also bereft of such recognition. This denies them protection under the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 and makes these communities vulnerable to police violence.¹⁹

Gender and Criminalization of Poverty

Women, generally from the lower caste and ethnic minorities are affected by poverty on various stratus. Gender intersects with poverty therefore results in limited access to education, healthcare and employment opportunities. Women from these marginalized communities as a result of economic desperation engage in informal and illegal work like street vending and sex work leading to frequent arrests and legal repercussions furthering them into poverty. The justice and law enforcement systems which are meant to ensure their safety often victimize the women by making them vulnerable to sexual harassment, domestic violence and trafficking etc.

The United Nations Special Rapporteur on violence against women, its causes and consequences, notes that these pathways include: a strong correlation with experience of prior violence and abuse; coercion into crime

¹⁹ *How Poverty-Struck Tribals Become ‘Habitual Offenders’*, <https://www.article-14.com/post/born-a-criminal-how-poverty-struck-tribals-become-habitual-offenders>.

by an abuser or a person of influence; abortion in countries where it is illegal or legal only under limited circumstances; the commission of ‘moral’ crimes such as adultery; running away, for example, to escape violence; being held in prison for protection purposes (protective custody or detention); long periods of pretrial, immigration and/or refugee detention; and human trafficking.²⁰ In addition to these, the mental and physical health of the women prisoners are vulnerable to specific reproductive hygiene needs among the women prisoners. They are at particular risk of sexual violence in prison and are subject to additional trauma.

Ethnicity and Criminalization of Poverty

Ethnic minorities and religious minorities including the indigenous peoples face marginalization and economic exclusion. Lack of basic services exacerbated poverty among these communities who are disproportionately stereotyped and prejudiced by the police force contributing to higher arrests and harsher punishments. The Adivasi communities are also subject to land dispossession due to development projects leaving them homeless and adaptable to illegal activities like street vending that illustrate the intersection of ethnicity and poverty.

Intersectional Legal Impact Analysis

Individuals and communities at the intersection of caste, gender and ethnicity face legal and social marginalization with legal systems failing to address intersectional discrimination. Policies and laws overlook these fragmented solutions leading to ineffective interventions not catering to the specific needs and vulnerabilities of their specific identities. Despite having constitutional guarantees through Article 14,15 and

²⁰ *Crime Prevention & Criminal Justice Module 9 Key Issues: Topic 1 - Gender-based discrimination and women in conflict with the law*, Gender-based discrimination and women in conflict <https://www.unodc.org/e4j/zh/crime-prevention-criminal-justice/module-9/key-issues/1--gender-based-discrimination-and-women-in-conflict-with-the-law.html>.

17, lower castes face discrimination in the legal system. Specific Acts provides protection for the economically disadvantaged groups including the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Immoral Traffic (Prevention) Act, 1956, Prohibition of Child Marriage Act, 2006, Protection of Women from Domestic Violence Act, 2005 and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. There are other minority protection acts like the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Unlawful Atrocities (Prevention) Act, 1967.

Despite these acts and judicial regulations, ground level discrimination from officials is hard to avoid. Therefore, the law must work on the reformative end of justice by reviewing and decriminalizing minor offences. Legislation must address the intersectionality of caste, gender and ethnicity in criminalization making all marginalized identities inclusive. Training programs must be implemented for law and judicial personnel focussing on human rights, social justice and intersectionality. They must engage with the community in promoting collaborative efforts that enhance their access to society.

Conclusion and Recommendations

The criminalization of poverty has intertwined with criminal legal framework of India along with socio-economic marginalization perpetuating a cycle of criminality and poverty. This research examined the colonial legal frameworks, namely the Indian Penal Code, 1860 that prioritized maintaining social order over equitable treatment to the poor who is prone to exploitation because of limited resources. The law enforcement agencies often seek to target the impoverished individuals reflecting the biases of social stigma. This has seen greater change and improvement with the introduction of Bharatiya Nyaya Sanhita, 2023 that aimed to decriminalize

poverty by decriminalizing many smaller offenses and introducing alternative punishment that aim at restorative justice. But little improvement can be seen as having criminal records and legal entanglements will just lead to further marginalization of individuals, restricting their access to employment, education further entrenching their poverty. Alongside these challenges, the variations in legal enforcements and socio-economic conditions of different states also play an impact on their lives while dealing with gender, caste and ethnicity intersection.

To address these challenges, there is a necessity for resource generation that explores towards constructing rehabilitation centres and community service options. Legal aid services must be extended to these individuals at free of cost along with adequate representation and support. Law enforcement officials and judicial personnel must be engaged in training programs that sensitize them towards socio-economic issues reducing biases targeting the vulnerable populations.

The grass-root social level activities must also be encouraged by strengthening social welfare programs aimed at poverty alleviation and integration of legal literacy facilities empowering communities to be aware of their rights and responsibilities. Skill-building and vocational training enhances the employment of the legally and economically marginalized people. Awareness programmes and research along with monitoring must be addressed to deal with poverty intertwined with other discriminations.

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