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Case Comment

Juresprudential Analysis of

Ram Lakhan vs State on 5 December, 2006

137 (2007) DLT 173

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Abstract

A famous poet 'Rahim' has once said in his hindi poem 'a beggar has to die before he starts begging' but those already die who refuse him to give bounty which shows the pitiness of the beggars who are forced by circumstances to beg. The problem of begging and the laws connected with it is a core issue concerned with the whole world. The author has focused on the contemporary issue relating to beggars and the laws concerning begging. The paper has tried to critically analyze an Indian case involving the issue of Anti-Begging Law prevailing in India which has been presented in the form of a legislative comment by applying various Schools of Jurisprudence to the situations. Begging and anti-begging is not just a concern for India but has indulged thinking of a lot of countries. This study also explains the various circumstances under which the begging is started. It also explains how the state functionaries misinterpret the judgment passed by competent court of law. As a result of which, an individual has to suffer by way of illegal confinement. This paper contemplates the role of the state to come forward and ensure that the beggars are used in the making of the society rather than disowning them, they should be provided with a helping hand by the state. This case shows that how the beggars are being deprived of fundamental rights and not been given equal rights as that of any citizen of the country and also leaves us with a question that whether begging should at all be banned?

Introduction

Current is a revision petition in which, the petitioner, is the person who has been found to be a beggar by the learned Metropolitan Magistrate and the respondent is the State. This judgment has talked of the rights of a person who begs. This one bench judgment delivered by Justice Badar Durrez Ahmed differs from that of the judgment given by the learned Metropolitan Magistrate.

This study wants to highlight the jurisprudential value of rights of a person and that even beggars have the Fundamental Rights which no one whosoever can make them deprived of.

Brief Facts

- The petitioner was found begging from the passers-by at the Railway Crossing of Rampura, Delhi.

- A sum of Rs. 47 was recovered from him when a personal search was done by the anti-begging raid members.
- Announced "guilty" by the learned Metropolitan Magistrate only on the basis of testimony given by the two police officers who were also members of the anti-begging raid.
- The petitioner was convicted for 1 year as per the provision of Bombay Prevention of Begging Act, 1959.
- Instead of sending him to Certified Institution, he was sent to Tihar Jail meant for rigorous prisoners.

Questions of Law

- Is the petitioner a beggar according to the provision of Bombay Prevention of Begging Act, 1959?
- Is it in violation of his Fundamental Rights to confine him in the Tihar Jail?

Judgment

The judgment delivered by the Hon'ble Court has critically analyzed every situation of a beggar from legal, social and ethical point of view which is summarized as follows:-

- The said Act (Bombay Prevention of Begging Act, 1959) has called every person to be a beggar who in one way or the other deals with solicitation and receiving of alms but the Judge in this judgment has classified beggars into 4 categories viz;
    - Down-right lazy who doesn't want to work
    - Alcoholic or drug-addict
    - Forced by a ring leader of a beggary "gang"
    - Starving, hopeless and helpless
- Judge says that people falling under 3rd and 4th category are doing the act under a duress or necessity and thus those should not be convicted for the act which they are not performing voluntary.

- Says that the provision is contrary to the fundamental right of freedom of speech and expression.
- Judge set the impugned judgment aside and freed the man to go home on the grounds of illegal detention in Tihar jail and not being proved beyond reasonable doubt of him to be a beggar.

Applicable Schools of Jurisprudence

It is evident from the fact that these many schools apply to the instant case.

Natural Law School:

Is it morally correct to convict a person only because the act is prohibited but not wrong? The legal maxim "*malum prohibitum* meaning a wrong prohibited; a thing which is wrong because prohibited; an act which is not inherently immoral but becomes so because its commission is expressly forbidden by positive law; an act involving an illegality resulting from positive law"[1] itself explains the situation to be immoral because even according to the theorist, **John Locke** who has talked of natural inborn rights which are inalienable and can't be taken away. The inalienable rights being - right to life, liberty and estate. Law has a direct link with society according to which no rule can be counted as a law unless it is morally acceptable. Here, the petitioner has been deprived of his right to personal liberty as the arrest made by police officers is under the guidance of an unjust and unfair practice as he was detained into a prison instead of the Certified Institution when there was no occasion of detaining him in Tihar Jail. This is provided in Sec 5 (5) of the Bombay Prevention of Begging Act, 1959 that a person found to be a beggar shall be detained only into a Certified Institution[2].

Jurist **Finnis** who supports **Natural Law** and who, in his writings, has written about practical reasonableness tells that "practical reasonableness and its principles are the means of achieving the goods and together they produce morality"[3] which is understood in a way that no objective can be achieved without having reason and rationality which is, in fact, not present in the subsequent case. What can be expected out of a person who does not have any other source of

[1] Black's Law Dictionary (Second Edition) by Henry Campbell Black.
[2] THE BOMBAY PREVENTION OF BEGGING ACT, 1959.
[3] Jurisprudence and Legal Theory, V. D. Mahajan 5th Edition.

survival but to beg or by a person who is coerced to beg? These are the acts of necessity or duress respectively. The key issues in necessity is 'whether in the circumstances it was morally imperative to act' and the key issue in duress cases is that 'should the person be expected to make the personal sacrifice involved in refusing to give in to a coercive threat, rather than avoid implementation of the coercive threat by doing wrong?'. *'Like the other defenses of self-defense and duress, this is also a defense against culpability and punishment. Comparing the defenses of self-defense, necessity and duress, Lamer, CJ of the Supreme Court of Canada in Hibbert vs The Queen observed: The defenses of self-defense, necessity and duress all arise under circumstances where a person is subjected to an external danger, and commits an act that would otherwise be criminal as a way of avoiding the harm the danger presents. In the case of self-defense and duress, it is the intentional threats of another person that are the source of the danger, while in the case of necessity the danger is due to causes, such as forces of nature, human conduct and other than intentional threats of bodily harm, etc. Although this distinction may have important practical consequences, it is hard to see how it could act as the source of significant juristic differences between the three defenses.'*[4]

Not only this but also his act of begging was not proved beyond reasonable doubt as the Sec 5 (4) suggests that the court has to be satisfy itself on evidential basis before convicting him that he was a beggar but in this case the learned Magistrate placed his order of the detention solely relying on the Social Investigation Report prepared by the police officers who found the petitioner to be "guilty" and the report indicated that the petitioner was a habitual beggar and no other witness was produced supporting the same which does not seem to be reasonable on the part of the judge. Also, no opportunity was given to the petitioner to produce any evidence of his favour. **Jhering** who belongs to the **Sociological School** of Jurisprudence in his writing, 'the Spirit of the Roman Law' has said that a legal right is a legally protected right[5] but in this particular case, the petitioner's legal rights, Article 14 and Article 19 (1) (a) of Indian Constitution Act being Right to Equality and Right to Freedom of Speech and Expression respectively are not been protected. It is in violation of Article 14 as no Intelligible Diffrentia has been made between Charities and Beggars and between the people who have got Form A permit and are doing the same act which is provided in the proviso of Sec 2 (1) (i) of Bombay

[4] Hibbert v. The Queen, [1955] 2 SCR 973.
[5] James A. Gardner, the Sociological Jurisprudence of Roscoe Pound (Part I), 7 Vill. L. Rev. 1 (1961).

Prevention of Begging Act, 1959[6] as the govt. provides such people with a certain permit for begging and if you buy such a permit you are free to beg but not otherwise. It is in violation of Article 19 (1) (a) as they are not being given opportunity to express their opinions freely as free speech and expression includes 'convictions, opinions and beliefs freely by word of mouth, writing, printing, pictures or any other modes'[7] and justice should not only be done but it should be shown as have been done, is the established cannon of law which should be adhered to at any cost while delivering the justice but the same has been openly violated in the given matter.

Roscoe Pound belonging to **Sociologist School** of Jurisprudence has talked about balancing or weighing the interest against each other with reference to harmonizing the scheme as a whole which has been given in his theory of 'Social Engineering'.[8] According to his theory, a balancing has to be done of the rights which are at an equal footing but as per the critics, there are some rights which can't be put into equal footing with that of the other rights like the fundamental rights which would always supersede the other rights as the Constitution of India provides a guarantee of the 6 fundamental rights which cannot be violated even by the State at any cost namely- Right to equality, Right to freedom, Right against exploitation, Right to freedom of religion, Cultural and Educational rights, Right to Constitutional remedies.

The framers of the Constitution have been thoroughly gone into the Constitutions framed by the other countries and had reached to the conclusion that, in the country like India, there is huge diversity and inequality in the society, no justice can be ensured until and unless some basic rights are guaranteed in the name of fundamental rights in the constitution of the country.

Denial of fair trial is also regarded as a violation of fundamental rights as the same forms its essential part which supersedes all other rights. Right to fair trial is not only provided by the Indian Constitution but has also been protected by ICCPR which is binding in international law on the 72 States in Article 14 and Article 16 of it. Article 14 (1) states that:

"All persons shall be equal before the courts and tribunals. In the determination of any Criminal Charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

[6] Ram Lakhan vs State, 137 (2007) DLT 173.
[7] M. P. Singh, V N Shukla's Constitution of India (2008).
[8] *Supra* note 4

The press and the public may be excluded from all or part of a trial for reasons of morals, public order or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children."[9]

According to the theory of **Hohfeld**, the petitioner is the person of Inherence, who has his Right to personal liberty against the person of Incidence who are the court and the title of which, is given to every citizen of the nation[10]. Here is a Jural Relationship of Privilege and No Claim where Right to Liberty is a privilege given to the petitioner by the Constitution of India which no one can deprive him of and if there was no such privilege then and then only the court would have made him duty bound to not exercise the liberty and then and then only it could have claimed against the petitioner.[11]

As said by Prof. Upendra Baxi, different judges have their different perception which can be seen in their judgments. People can look at same thing but may have a completely different opinion on the same. This can clearly be seen in this particular case as the different perception of both the judges is observed as the judge of this particular revision petition has been sensitive and practical while delivering the judgment as he analyzed the situation of the beggar and applied the law in more flexible way than being rigid which suggests that the judge belongs to the **Sociological School** of jurisprudence who focused more on Individualistic interest of a person i.e. the interest of the beggar as the jurist **Jhering** has talked of, "who was the first person to advance what is now the generally accepted theory that the law is the means by which society recognizes and protects individual interests"[12] but the judge detaining him for one year for an act of necessity belonged to the **School of Realism** who just "reacted to the situation without considering the conditions of a beggar which is laid down in the Sec 5(6)6 of the Act which talks of the court taking all conditions of a beggar into account having consideration 'in the interest of

[9] International Covenant on Civil and Political Rights.
[10] The Constitution of India.
[11] THEORIES OF RIGHTS: HOHFELD AND THE INTEREST/WILL DEBATE.
[12] Borchard, Edwin, "Jurisprudence in Germany" (1912). Faculty Scholarship Series. Paper 3467

the beggar' in delivering the judgment"[13] which can be deduced by **Leiter's** words which say that in the realist school "judges react primarily to the underlying facts of the case, rather than to applicable legal rules and reasons."[14]

Conclusion

The objective of a punishment is rehabilitation but penalizing a person doing an act out of necessity would not provide any good as it would not even control the crime. Convicting a person for a year, who does not have any money would not make the money appear for him after spending that year into any Certified Institution, for that the State needs to provide a helping hand to such people than taking punitive actions against them. The court must, at least, see to the possibility of Principle of Admonition[15] before convicting any person under such Act which talks of giving a warning to the person and also the nature of punishment should be given according to the type of beggar that the person is. Begging is nothing but disgrace and failure of the state as the state is failing to provide them with the facilities. This is a problem which communicates a number of other social problems like poverty, lack of education, homelessness, drug addiction, alcoholism etc. for which state needs to take measures for minimizing the friction of conflict of interests as also suggested by **Roscoe Pound** in his theory[16].

[13] *Supra* note 2
[14] Michael Steven Green, Legal Realism as Theory of Law, 46 Wm. & Mary L. Rev. 1915 (2005)
[15] *Supra* note 6
[16] *Supra* note 5