(2019) 10 J&K CK 0043

Jammu & Kashmir High Court (Srinagar Bench)

Case No: Public Interest Litigation (PIL) No. 24 Of 2018

Suhail Rashid Bhat		APPELLANT
	Vs	
State Of Jammu & Kashmir And Others		RESPONDENT

Date of Decision: Oct. 25, 2019

Acts Referred:

- Constitution Of Jammu And Kashmir, 1956 - Section 4, 10, 13, 19, 23, 103
- Jammu And Kashmir Prevention Of Beggary Act, 1960 - Section 2, 2(a), 2(a)(i), 2(a)(ii), 2(a)(iii), 2(a)(iv), 2(a)(v),3, 4, 5, 5(1), 5(2), 5(5), 6, 7, 9
- Code Of Criminal Procedure, 1989 - Section 61
- Prisons Act, 1894 - Section 30(2)
- Indian Penal Code, 1860 - Section 124A, 268, 294, 505, 510
- Information Technology Act, 2000 - Section 66A, 66B, 67B
- Gold (Control) Act, 1968 - Section 27, 27(6), 27(6)(a), 27(6)(b), 27(6)(e), 27(6)(g)
- Communications Act, 2003 - Section 127(1)(a)
- Uttar Pradesh Special Powers Act, 1932 - Section 3, 4
- West Bengal Criminal Law Amendment (Special Courts) Act, 1949 - Section 5(1)
- Jammu And Kashmir Prevention Of Beggary Rules, 1964 - Rule 3, 4, 4(1), 5, 5(1), 6, 6(a)(ii), 6(a)(iii),6(1)(b), 6(2), 7, 8, 8(2), 9, 10
- Bihar Government Servants Conduct Rules, 1956 - Rule 4A Constitution Of India, 1950 - Article 14, 15, 19, 19(1), 19(1)(a), 19 (1)(b), 19(1)(d), 19(1)(e), 19 (1)(g), 19(2), 19(3), 19(4), 19(5), 19(6), 20, 21, 21A(III), 22, 31, 32, 39, 41, 42, 226

Hon'ble Judges: Gita Mittal, CJ; Rajesh Bindal, J

Bench: Division Bench

Advocate: Sheikh Feroz Ahmad

Final Decision: Allowed

Judgement

,,Paragraph numbers

(g) â€œBeggar's Homeâ€ means a home notified by the Government as suitable for the reception of beggars above the age of 14 years;,,

(h) â€œChildren's Homeâ€ means a home notified by the Government as suitable for the reception of beggars below the age of 14 years and not,,

suffering from any infectious or contagious disease.,,

3. Begging an offence under this Act.â€" If any person is found begging within an area to which this Act applies, he shall be guilty of an offence",,

under this Act.,,

4. Arrest without Warrant.-,,

(1) Any Police Officer or other person authorised in this behalf by the District Magistrate may arrest without a warrant any person who is found,,

begging.,,

(2) The provisions of Section 61 of the Code of Criminal Procedure, Svt. 1989, shall apply to every arrest under this Section, and the officer-incharge",,

of the Police Station shall cause the arrested person to be kept in the prescribed manner until he can be brought before the Court.,,

5. Summary inquiry in respect of persons found begging and their detention.-,,

(1) Where a person is brought before the Court under Section4, the court shall make a summary inquiry as regards the allegation that he was found",,

begging.,,

(2) If the inquiry referred to in sub-section (1) cannot be completed forthwith, the court may adjourn it from time to time and order the person to be",,

remanded to such place and custody as may be convenient.,,

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

released forthwith.,,

(4) If on making the inquiry referred to in sub-section (1) the Court is satisfied that such person was found begging, it shall record a declaration that",,

the person is a beggar. The Court shall also determine after making an inquiry whether the person was born in the State of Jammu and Kashmir and,,

ordinarily resides therein and shall include the findings in the declaration.,,

(5) The Court shall order the person declared as beggar under sub-section (4) to be detained in a Sick Home, Children's Home, or a Beggar's Home,",,

as the case may be, for a period not less than one year and not more than three years in the case of first offence.",,

6. Penalty for begging after detention as beggar.-,,

(1) Whoever having been previously declared or detained in a Sick Home, Beggar's Home or Children's Home, as the case may be, in accordance",,

with the provision of section 5, is found begging shall on conviction be punished as is hereinafter referred to in this section.",,

(2) When a person is convicted for the second time under subsection (1) the court shall order him to be detained in a Sick Home, Beggar's Home or",,

Children's Home, as the case may be, for not less than three years and not more than seven years:",,

Provided that if the Court, at any time after the passing of the sentence, of its own motion, or on an application, is satisfied that the person",,

sentenced under this sub-section or Section 7, sub-section (2) sub-section (5) of Section 5 is not likely to beg again, it may release that person after",,

due admonition on a bond for his abstaining from begging and being of good behaviour, being executed with or without sureties, as the court may",,

require, by the beggar or any other person whom the court consider suitable.",,

7. Punishment for escape from Sick Home, Beggar's Home or Children's Home.â€" Whoever escapes from a Sick Home, Beggar's Home or",,

Children's Home to which he has been committed, on conviction under the provisions of this Act, before the expiry of the period for which he has",,

been committed, shall be punished with fine which may extend to one hundred rupees or with imprisonment which may extend to three months.",,

8. Release.â€"If the Government at any time, of its own motion, or an application, is satisfied that a person convicted under Section 5 or 6 and",,

committed to a Sick Home, a Beggar's Home or a Children's Home has been cured of disease or is in a fit state of health to earn his living or is",,

otherwise fit to be discharged before the expiry of the period for which he has been committed, the Government may by order direct that the person",,

so detained be released subject to such restrictions and conditions, if any, as may be specified in the order.",,

9. Rule making power.â€"The Government may by notification and subject to the condition of previous publication, make rules for carrying into effect",,

the provisions of this Act.,,

(Emphasis by us),,

9. Inasmuch as Section 2(a)(v) refers to soliciting money or fee or gifts for a purpose authorized by any law or authorized in the â€˜prescribed,,

mannerâ€™ by the District Magistrate, we may also extract hereunder the relatable Rules prescribed in the Jammu& Kashmir Prevention of Beggary",,

Rules, 1964, (referred to as the Rules, 1964) which have been framed in exercise of powers conferred by Section 9 of the Jammu & Kashmir Act of",,

1960. Rule 3 thereof, which prescribes the manner of authorizing persons under Section 2(a)(v), reads as follows:",,

â€œ3. Manner of authorising Persons under Section 2 (a)(v)-,,

(1) A person desiring to solicit or receive money or food or gifts for any purpose shall apply for a permit to the District Magistrate. The application,,

shall contain the following particulars, namely:â€"",,

(a) full name of the applicant;,,

(b) his age;,,

(c) his occupation;,,

(d) his address;,,

(e) the period, the purpose and the manner of collection of money, food or gifts;",,

(f) the method of its disposal and the area within which the disposal is to be made.,,

(2) The District Magistrate may, after making such enquiry as he deems fit, issue a permit in Form â€˜Aâ€™ appended to these rules subject to such",,

conditions as he may think necessary to impose.,,

(3) The permit holder shall carry the permit with him while soliciting or receiving money, food, or gifts and shall, on demand by a Police Officer,",,

produce it for inspection.,,

(4) A breach of any of the conditions of a permit shall render the permit liable to cancellation.,,

(5) If the District Magistrate is of opinion that a permit should not be issued to the applicant, he shall as soon as possible inform the applicant",,

accordingly.,,

(Emphasis supplied),,

10. We may also extract Rules 4, 5, 6, 7, 8, 9 and 10 hereunder which prescribe the manner in which a person detained is to be treated. The same",,

read as follows:,,

â€œ4. Manner of keeping persons arrested.-(1) The Officer-in-Charge of a Police Station shall cause a person arrested under Section 4, until he can",,

be brought before a Court, to be kept at the Police Station apart from other persons in custody therein:",,

Provided that nothing in this sub-rule shall require his being kept apart from persons kept at the Police Station in pursuance of this sub-rule.,,

(2) No person shall in pursuance of sub-rule (1) be kept with a person not of the same sex:,,

Provided that nothing in this sub-rule shall apply to a child under fourteen years of age.,,

5. Procedure of summary inquiry under Section 5.-(1) So far as may be, the procedure prescribed in the Code Criminal Procedure, Samvat 1989, for",,

the trial of summons cases, and for recording evidence therein shall be followed in making an inquiry under sub-section (1) of Section 5.",,

6. Cleansing and medical examination of persons detained.-(1) Every person detained in a Sick Home, Beggars' Home or a Children Home shall:â€"",,

(a) submit to-,,

(i) preliminary medical examination and such medical dressing as may in the opinion of the Medical Officer be necessary and who will record the,,

findings thereof in Form â€˜Bâ€™ or Form â€˜Câ€™ as may be necessary;,,

(ii) such trimming or shaving of the hair on any part of the person as may in the opinion of the Medical officer be necessary, for the administration of",,

medical treatment or for securing cleanliness and health;,,

(iii) thorough cleansing and washing of the body with such materials as may be provided and the complete removal of clothing in order to secure this,,

object;,,

(b) wear such clothes as the Officer-in-Charge of the Home may from time to time direct.,,

(2) Without prejudice to the provisions of these rules, the minimum physical force necessary may be used to secure compliance with all or any of the",,

provisions of sub-rule (1).,,

7. Person remanded by Court to be kept separate.â€"A person received in a Sick Home, Beggars' Home or a Children Home on remand by a Court",,

shall in such Home, as far as possible, be kept apart from persons undergoing a term of detention and shall be allowed all reasonable facilities in",,

connection with the hearing of his case.,,

8. Articles found on search and inspection to be entered in register.-(1) In every Sick Home, Beggars' Home and Children Home a register of money,",,

valuables and other articles found with or on persons received therein shall be maintained.,,

(2) On a person being received in such Home, the money, valuables and other articles found with or on him on search and inspection and taken",,

possession of, shall be entered in such register, and the entries relating to him shall be read over to him and in token of the correctness of such entries,",,

his signature or thumb impression obtained in the presence of the Officer-in-Charge of the Home:,,

Provided that-,,

(a) if the property consists of obscene pictures or literature or perishable articles of trivial value, the same should be destroyed;",,

(b) the clothing and bedding or other articles of such persons shall be destroyed if the Officer-in-Charge consider it essential on hygienic grounds or if,,

the clothing and bedding is ragged; and the clothing, bedding and other articles of persons found to be suffering from any contagious disease shall be",,

destroyed by burning.,,

(3) Entries shall be made in such register showing in respect of every such search:â€",,

(a) particulars of articles, if any, destroyed, sold or stored;",,

(b) in the case of articles sold, the amount realized from them; and",,

(c) the payment to him of the amounts mentioned in clause (b).,,

(4) No person on the staff of the Home should purchase any property sold under these rules.,,

(5) All entries in such register shall be attested by the Officer-in-Charge of the Home.,,

9. A person detained in a Sick Home, Beggars' Home and Children Home shall not:â€"",,

(a) refuse to receive any training arranged or ordered for him or do the work allotted to him;,,

(b) manufacture any article without the knowledge or permission of the Officer-in-Charge of the institution;,,

(c) misbehave or quarrel with any other inmate;,,

(d) do or omit to do any act with intent to cause to himself any illness, injury or disability;",,

(e) cause any disturbance or violence or omit to assist in suppressing any disturbance;,,

(f) do any act or use any language calculated to hurt or offend the feelings and prejudices of a fellow inmate;,,

(g) commit a nuisance or any act of indecency in any part of the institution or refuse to obey any orders issued for proper sanitation;,,

(h) leave without permission the working party to which he is assigned or the part of the premises or grounds in or at which he may be required to be,,

present at any particular time;,,

(i) refuse to eat food prescribed by the diet scale or willfully destroy any food.,,

10. The following articles shall be prohibited to be consumed or used in a Sick Home, Beggars' Home and Children Home:â€"",,

(i) Alcohol;,,

(ii) Bhang, ganja and opium; (iii) Drugs of every description;",,

(iv) Matches and materials for producing fire;,,

(v) Any implements capable of causing hurt or facilitating escape;,,

(vi) Implements of gambling,,

(vii) Any other article specified in this behalf by the Officer-in-Charge of the institution by his order.â€,,

(Emphasis by us),,

(II) Petitioner's contentions,,

11. Mr. Suhail Rashid Bhat, the petitioner and a young lawyer who appears in person, has filed this writ petition in this Court laying the challenge to",,

the constitutional validity of the Jammu & Kashmir Prevention of Beggary Act, 1960, as well as the Rules being the Jammu & Kashmir Prevention of",,

Beggary Rules, 1964 on multifold submissions. In order to explain the rights impacted by the legislation, it is submitted by Mr. Bhat, that the",,

Constitution of India was made applicable to the State of Jammu & Kashmir by the Constitution (Application to Jammu & Kashmir) Order of 1954.,,

All Fundamental Rights as contained in Part-III of the Constitution of India stood extended to the State with certain exceptions in respect of,,

preventive detention laws and land reform legislations. In this regard, Mr. Bhat has also placed reliance on Section 10 of the Constitution of Jammu &",,

Kashmir which guarantees all rights under the Constitution of India. It is the petitioner's submission that, therefore, a conjoint reading of the",,

Constitution (Application to Jammu & Kashmir) Order of 1954 and Section 10 of the Constitution of Jammu & Kashmir give a twofold protection to,,

the citizens of India, who are also permanent residents of Jammu and Kashmir.",,

12. So far as the challenge to the statutory provisions are concerned, Mr. Bhat has vehemently urged that the very preamble of the enactment which",,

reads as â€œan act for preventing beggary and making beggars good citizensâ€ presumes every beggar not to be a good citizen. The submission is,,

that the expression â€œgood citizenâ€ is not defined and that the object of the Act is not simply to criminalize the act of begging but to target groups,,

and communities whose pattern of life do not fit with the perception of what constitutes â€œgood citizensâ€.,,

13. Mr. Bhat has also urged that prevention of begging necessarily and entwins the twin intentions that â€œnobody should begâ€ as well as,,

â€œnobody should need to begâ€.,,

14. Placing reliance on the pronouncement of the Supreme Court of India in the judgment reported at AIR 1960 SC 554 Hamdard,,

Dawakhana v. Union of India, it is urged that while considering a challenge to the vires of an enactment, what is to be ascertained is the true",,

character of the legislation, for which purpose regard has to be had to the enactment as a whole which includes its objects, purpose, intention as well",,

as the scope and effect of the provisions and what they are directed against as well as what they aim to achieve.,,

15. A strong challenge has been laid to the definition of â€œbeggingâ€ as contained in Section 2 of the Act contending that the same is so broad,",,

covering not just a specific act or activity but an entire way of life. Mr. Bhat has referred to this legislation as being of a classist character; which,,

envisions public places as exclusionary and closed to those who appear poor. Mr. Bhat has referred to the impact of the legislation as sensitizing from,,

the public sphere, those â€œwho are not like usâ€ as undesirable.",,

16. The contention is that the legislation has reserved public places for the use of what the preamble of the statute has labelled as â€œgood citizensâ€.,,

Thus, persons who are perceived as poor, the legislation has rendered the constitutional guarantee of inclusiveness as not existing.",,

17. The petitioner challenges the definition of begging as contained in Section 2(a) of the Act also on the ground that it is violative of Article 14 for the,,

reasons and grounds which are bunched together hereafter.,,

Submission that classification not based on intelligible differentia nor has rational relation to the object of the legislation,,

(i) It is urged that the definition clause makes no distinction between â€œvoluntaryâ€ and â€œinvoluntaryâ€ begging; that it also takes in homelessness,,

within its ambit; fails to distinguish between those who solicit and those who simply receive alms thereby criminalizing the behaviour of those who,,

simply receive a charitable donation without actively seeking it as well as those giving alms and the submission is that the classification in the,,

enactment is not based on any intelligible differentia nor does it have any rational/reasonable relation to the object sought to be achieved by the Act.,,

Mr. Bhat has contended that for this reason the legislation must fail the arbitrariness test as laid down by the Supreme Court in its pronouncement,,

reported at (1974) 4 SCC 3 E.P. Royappa v. State of Tamil Nadu and AIR 1952 SC 75 The State of West Bengal v. Anwar Ali Sarkar.,,

(ii) An important ground is pressed by Mr. Bhat when it is urged that Section 2(a)(iv) denies equal treatment between those â€œhaving no visible,,

means of subsistenceâ€ and those â€œhaving visible means of subsistenceâ€ but are likely to subsist by receiving alms. Mr. Bhat has referred to the,,

baggage handler, gate keepers, security guards and waiters amongst others who, apart from their salary, survive with the tips received from customers",,

and guests. Tips, it is urged, are akin to â€œalmsâ€, yet receipt of tips is not criminalized.",,

(iii) Mr. Bhat has also, in the passing, assailed the legality of the statute on the ground that it fails to take into consideration the fact that several",,

religions encourage receiving of alms while at the same time promote giving of alms. The submission is that the Act fails to treat equally those with no,,

such religious ideology and those with the religious obligation who request for alms and render an act of charity as illegal.,,

(iv) The petitioner also challenges the constitutionality of Section 2(a)(iii) on the ground that it denies equal treatment between the disabled and able,,

bodied thereby preventing the society from seeing the real heart; a matter of significant public interest.,,

(v) On the same ground, the petitioner has assailed the vires of Section 2(a)(iv) on the ground that it denies equal treatment between those who have",,

â€œhaving no visible means of subsistenceâ€ and â€œwandering about or remaining in any public placeâ€ â€œin such condition or manner as makes it,,

like that the person does so exists by soliciting almsâ€ and those who have â€œno visible means of subsistenceâ€. The submission is that this,,

classification is not only arbitrary but also irrational. It is also not based on characteristics which are to be found in all the persons grouped together,,

and not others who are left out.,,

(vi) The submission is that the attempt of the legislation is to target shifting populations in the State whose changing movements and patterns render,,

them â€œinvisibleâ€ to the Administration/State. Urging that targeting such individuals/groups/communities was central to the colonial legislations and,,

that there is no place for such legislation under a Constitution with the aim of ensuring justice, liberty, equality and fraternity to all.",,

(vii) The legislation has excluded from public places such persons who are soliciting or receiving alms or have no visible means of subsistence. It has,,

labelled these persons as offenders and mandated their confinement to â€œhomesâ€ after a truncated summary judicial procedure.,,

(viii) Mr. Bhat has stanchly contended that the characteristics in these statutory provisions clearly fail to have any reasonable relation to the object of,,

the legislation. The provision, it is submitted, treats differently those who â€˜look wealthyâ€™ as against those â€˜who look poorâ€™.",,

(ix) Sections 2(a)(i) and 2(a)(ii) also fail to treat individuals and organizations equally in relation to soliciting alms. The law allows the private,,

organizations who solicit alms but criminalizes private individuals from doing so which is indicative of the suggestion that the legislation is not,,

concerned about the harms caused by begging but is seeking to conceal a social problem from legitimate criticism of the government.,,

Challenge on ground of vagueness of legislation,,

(x) The petitioner submits that Section 2(a)(i) incorporates the expression â€œunder any pretenceâ€ which is extremely vague and does not permit the,,

police to determine whether a person accused under the enactment may be actually providing a service or whether they are begging. Section 2(a)(iii),,

denies equal treatment between the disabled and the able bodied.,,

(xi) Mr. Bhat, the petitioner, has placed reliance on the principles laid down by the Supreme Court of the United States in the judgment reported at 408",,

US 104 (1972) Grayned v. City of Rockford, and drawn our attention again to the definition of begging under Section 2(a) of the statute. It is",,

submitted that the definition suffers from vagueness as it lays down no reasonable standards to define the guilty in the statute which creates a penal,,

offence. Mr. Bhat submits that no clear guidance is given to law abiding citizens or to the authorities and the courts and, therefore, being vague, has to",,

be voided as being arbitrary and unreasonable.,,

(xii) An important vacuum in the legislation has been highlighted before us. It has been pointed out that the statute is so vague that it criminalizes the,,

act of beggary even when compelled but does not criminalize organized/forced beggary. Mr. Bhat would urge that as a result, one could safely",,

conclude that a person is a â€œgood citizenâ€ if he compels a person to beg but the victim is rendered a criminal and not a â€œgood citizenâ€ under,,

the Act.,,

(xiii) Additionally, it is urged that criminal law requires two basic elements of a crime; one is the actus reus i.e. the act itself and, the other is mens",,

rea i.e. the guilty mind. Mr. Bhat would urge that while â€œto begâ€ is an act, however, there is a complete absence of a â€œguilty mindâ€ in the act",,

of begging. Mr. Bhat would contend that no person begs out of choice or takes a conscious decision to beg but is compelled to do so on account of,,

circumstances driven by necessity. The criminalization of begging is assailed on the ground that it runs contrary to the basic theory of criminal law,,

i.e. â€œActus Reus Non Facit Reum Nisi Mens Sit Reaâ€ Violation of rights under Article 19 of the Constitution.,,

(xiv) An important challenge has been laid by Mr. Bhat on the ground that soliciting of alms is largely a verbal request or expression which is,,

essentially a form of speech. Having â€œno visible means of subsistenceâ€; â€œwandering or remainâ€; â€œexisting by soliciting or receiving almsâ€,,

as well as â€œexposition of injury, deformity or diseaseâ€ is urged to be, either expressly or impliedly, an expression of despair. It is submitted that all",,

the above expressions, including exposure of hurt and disability for the purposes of receiving alms, by their very nature fall within the scope of",,

freedom of expression which is guaranteed under Article 19 of the Constitution of India. The submission is that curtailment of such freedom of,,

expression by criminalization of the act or omission and imprisonment for the same, is not a reasonable restriction and in any case is highly",,

disproportionate. The contention is that such criminalization runs contrary to the express protection of freedom of speech and expression guaranteed,,

by Article 19 of the Constitution of India and has to be declared as unconstitutional and accordingly struck down.,,

(xv) Mr. Bhat would urge that the definition as contained in Section 2(a)(iv) of the Statute and its other provisions interdicts the freedom of a person to,,

move freely through the territory of India.,,

Violation of Article 21,,

(xvi) Placing reliance on the pronouncement of the Supreme Court reported at (1980) 2 SCC 360 Jolly George Verghese v. Bank of Cochin, the",,

petitioner contends that poverty ipso facto can never be a crime and that an act of begging is the normal response of an individual who finds it,,

impossible to survive. It is submitted that the legal provisions which have the effect of criminalizing begging, therefore, are in the teeth of Article 21 of",,

the Constitution of India.,,

(xvii) Mr. Bhat has drawn our attention to the pronouncement of the Supreme Court reported at (1990) 1 SCC 520 Shantistar Builders v. Narayan,,

Khimalal Totame; (1993) 1 SCC 645 Uni Krishnan JP v. State of Andhra Pradesh; (1997) 2 SCC 83 State of Punjab v. Mohinder Singh ,and (1984) 3",,

SCC 161 : AIR 1984 SC 802 Bandhua Mukhti Morcha v. Union of Ind,i awherein the Supreme Court has interpreted the fundamental right to life",,

under Article 21 of the Constitution of India. Mr. Bhat has submitted that the State is duty bound to ensure a meaningful right to life to all citizens. If,,

the State fails to ensure these basic rights and people are existing in complete penury and indigency, then in such an eventuality the legislation which",,

criminalizes an action of a citizen to ensure his or her survival, which is begging, is rendered violation of the right to life of an individual under Article",,

21 of the Constitution of India.,,

(xviii) On the issue of the impact of the legislation, it is urged that the statute compels a person to choose between committing a crime to be",,

rehabilitated under the legislation or not committing the crime and starving. The law, therefore, puts an individual into a cruel dichotomous situation",,

where an individual has to choose between his right to life or to be criminal, completely against the constitutional spirit.",,

Violation of due process,,

(xix) Placing reliance on the pronouncement of the Supreme Court reported at (1978) 1 SCC 248 : AIR 1978 SC 597 Maneka Gandhi v. Union of,,

India; (1978) 4 SCC 494 : AIR 1978 SC 1675 Sunil Batra v. Delhi Administration ,(1979) 2 SCC 656 : AIR 1979 SC 745 Sita Ram v. State of U.",,

P. and (1980) 3 SCC 488 : AIR 1980 SC 1579 Sunil Batra v. Delhi Administration (II), it is urged that the Jammu and Kashmir Prevention of Beggary",,

Act, 1960, provides for summary detention provisions which are violative of the â€œdue processâ€ guaranteed under into Article 21 of the Constitution",,

of India.,,

(xx) It has lastly been contended that the legislation under challenge actually has the effect of treating individuals as subjects to be controlled and,,

administered rather than right bearing citizens; conferring draconian powers over beggars.,,

Challenge to the order dated 23rd May, 2016 of the District Magistrate.",,

(xxi) Mr. Bhat has assailed the order dated 23rd May, 2016, of the District Magistrate, Srinagar, seeking to remove the presence of beggars from",,

public places as their presence embarrasses the State in the eyes of domestic and foreign tourists.,,

Reliance on judicial precedent,,

(xxii) Mr. Bhat has also placed reliance on a Division Bench judgment of the Delhi High Court, of which one of us (Gita Mittal, CJ) was a member,",,

dated 8th August, 2018, rendered in Writ Petition (Civil) 10498/2009 Harsh Mander v. Union of India and Writ Petition (Civil) 1630/2015 Karnika",,

Sawhney reported at AIR 2018 Del 188 whereby similar provisions of Bombay Prevention of Begging Act, 1959, as extended to Delhi, which did not",,

withstand constitutional scrutiny, were declared unconstitutional and struck down.",,

III-Respondents submissions,,

18. Per contra, appearing for the respondents, Mr. Sheikh Feroz Ahmad, learned Dy.AG, has heavily relied on the counter affidavit which has been",,

filed by the respondents. Mr. Sheikh has urged that the provisions of the Jammu & Kashmir Prevention of Beggary Rules are not punitive as they,,

enable beggars to undergo a training to earn livelihood in future. It is submitted that restrictions which are necessary to maintain law and order in the,,

groups of people who are lodged in the homes are imposed which are not violative of any fundamental or constitutional rights of the individuals who,,

are so lodged. It has been further explained that the preamble of the enactment explains that the law has been made to prevent begging and to make,,

beggars good citizens.,,

19. The respondents have submitted in the counter affidavit that Jammu & Kashmir receives a large number of tourists from outside State/Country,,

and begging often causes annoyance to the visitors by the persons who have adopted begging as a profession.,,

20. We also find reference in the counter affidavit to the statement on behalf of the respondents that the object of the law is to undermine acts of,,

begging as some organized gangs are exploiting children and force them to go for begging. Some people kidnap children and force them to go for,,

begging and collect huge amount of money. According to the respondents, the act of begging that actually happens is so systemized and is practiced as",,

a profession.,,

21. Mr. Sheikh defends the order dated 23rd May, 2016 passed by the District Magistrate, Srinagar, submitting that the same has been passed",,

pursuant to powers conferred upon the District Magistrate by the Jammu & Kashmir Prevention of Beggary Act read with Section 61 of the Code of,,

Criminal Procedure.,,

22. So far as the establishment of Beggars Homes is concerned, Mr. Sheikh would explain that directions were passed in PIL 23 of 2013 Parimoksh",,

Seth v. State of J&K, regarding creation of Beggar Homes. Consequently, the Social Welfare Department by its order dated 14th January, 2015,",,

established Beggar Homes.,,

23. It stands stated by the respondents that rules stand notified in exercise of the power conferred under Section 9 of the Act by way of SRO 12,,

dated 9th January, 1965 to achieve the objects of the law.",,

24. Mr. Sheikh has placed heavy reliance on Rule 3 of SRO 12, whereby a person desiring to solicit or receive money/food or gift for any purpose can",,

apply for permission to do so and grant of a permit to the District Magistrate. Mr. Sheikh submits that after making such enquiry as deemed fit, the",,

District Magistrate would issue the permit in Form â€œAâ€. It has been submitted that the District Magistrate, in the enquiry, ascertains the economic",,

conditions of the person and other circumstances and then issues the permit. He further submits that once a permit is issued in Form â€œAâ€ such,,

person may solicit or receive money, food or gifts. Thus, it is defended that the Act and the Rules framed thereunder in fact provide a mechanism to",,

solicit money/food items under the permit so that the person genuinely in need of help can solicit the money.,,

25. So far as detention, training and employment is concerned, the respondents have submitted that the same is undertaken with the aim to rehabilitate",,

beggars and remove beggars from their current illegal profession.,,

26. The statutory provisions are defended as being regulatory in nature and that the law has been enacted with a laudable object. The respondents,,

contend that in case the Act and the Rules are declared unconstitutional, this area would remain unregulated.",,

27. Placing reliance on the well settled principle that there is a presumption of validity attached to legislation, it is urged that the law under challenge is",,

constitutionally and legally valid.,,

IV-Rights of residents of the State of Jammu & Kashmir,,

28. In the present case the petitioner has laid a substantive challenge to the constitutionality of the Jammu and Kashmir Prevention of Beggary Act,",,

1960 as also the Jammu & Kashmir Prevention of Beggary Rules, 1964, primarily for the reason that they violate the fundamental rights guaranteed",,

under Part-III of the Constitution of India.,,

29. Before dwelling on the challenge, we may advert to the rights which are assured to the residents of the State of Jammu & Kashmir.",,

30. Mr. Suhail Rashid Bhat has also drawn our attention to the provisions of Jammu & Kashmir Constitution (Application to Jammu & Kashmir),,

Order of 1954.,,

31. By virtue of the Constitution (Application to Jammu and Kashmir) Order, 1954, Part III of the Constitution of India, was made applicable to",,

Jammu and Kashmir. Article 14, 20 & 21 were made applicable without any modification. However, Article 19 was made applicable subject to",,

following modification:,,

32. In Article 19, for a period of [twenty-five] years] from the commencement of this Order: (i) in clauses (3) and (4), after the words â€œin the",,

interests ofâ€, the words â€œthe security of the State orâ€ shall be inserted; (ii) in clause (5), for the words â€œor for the protection of the interests of",,

any Scheduled Tribeâ€, the words â€œor in the interests of the security of the Stateâ€ shall be substituted; and (iii) the following new clause shall be",,

added, namely:â€"",,

â€˜(7) The words â€œreasonable restrictionsâ€ occurring in clauses (2), (3), (4) and (5) shall be construed as meaning such restrictions as the",,

appropriate Legislature deems reasonable.,,

33. In view of the provisions of the Constitution (Application to Jammu & Kashmir) Order of 1954, all fundamental rights as are contained in Part-III",,

of the Constitution of India stood extended to the State of Jammu & Kashmir with exceptions with regard to preventive detention laws and land,,

reform legislations.,,

34. In this regard, reference is also required to be made to Section 10 of the Constitution of Jammu & Kashmir which reads as follows:",,

â€œ10. Rights of the permanent residents,,

The permanent residents of the State shall have all the rights guaranteed to them under the Constitution of India.â€,,

35. A conjoint reading of the Constitution (Application to Jammu & Kashmir) Order of 1954 and Section 10 of the Constitution of Jammu & Kashmir,,

the rights guaranteed under Part-III of the Constitution of India are ensured to the citizens of India who are also permanent residents of Jammu and,,

Kashmir.,,

(V) Scope of Judicial Review,,

36. We may briefly advert to the permissibility of an examination of the challenge to an enactment on the ground of violation of constitutional,,

provisions. In this regard, reference may usefully be made to the observations of Khanna, J. in the judgment reported at (1974) 1 SCC 549 State of",,

Punjab v. Khan Chand, which reads thus:",,

â€œ12. It would be wrong to assume that there is an element of judicial arrogance in the act of the Courts in striking down an enactment. The,,

Constitution has assigned to the Courts the function of determining as to whether the laws made by the Legislature are in conformity with the,,

provisions of the Constitution. In adjudicating the constitutional validity of statutes, the Courts discharge an obligation which has been imposed upon",,

them by the Constitution. The Courts would be shirking their responsibility if they hesitate to declare the provisions of a statute to be unconstitutional,",,

even though those provisions are found to be violative of the Articles of the Constitution. Articles 32 and 226 are an integral part of the Constitution,,

and provide remedies for enforcement of fundamental rights and other rights conferred by the Constitution. Hesitation or refusal on the part of the,,

Courts to declare the provisions of an enactment to be unconstitutional, even though they are found to infringe the Constitution because of any notion",,

of judicial humility would in a large number of cases have the effect of taking away or in any case eroding the remedy provided to the aggrieved,,

parties by the Constitution. Abnegation in matters affecting one's own interest may sometimes be commendable but abnegation in a matter where,,

power is conferred to protect the interest of othersagainst measures which are violative of the Constitution is fraught with serious consequences. It is,,

as much the duty of the courts to declare a provision of an enactment to be unconstitutional if it contravenes any article of the Constitution as it is,,

theirs to uphold its validity in case it is foundâ€™ to suffer from no such infirmity.â€,,

(Emphasis by us),,

37. We may also advert to the following observations on this issue made by Dr. D. Y. Chandrachud, J. in his concurring judgment in (2018) 10 SCC",,

1 Navtej Singh Johar v. Union of India (para 521):,,

â€œ521. The power to enact legislation in the field of criminal law has been entrusted to Parliament and, subject to its authority, to the State",,

Legislatures. Both Parliament and the State Legislatures can enact laws providing for offences arising out of legislation falling within their legislative,,

domains. The authority to enact law, however, is subject to the validity of the law being scrutinised on the touchstone of constitutional safeguards. A",,

citizen, or, as in the present case, a community of citizens, having addressed a challenge to the validity of a law which creates an offence, the authority",,

to determine that question is entrusted to the judicial branch in the exercise of the power of judicial review. The Court will not, as it does not, in the",,

exercise of judicial review, second guess a value judgment made by the legislature on the need for or the efficacy of legislation. But where a law",,

creating an offence is found to be offensive to fundamental rights, such a law is not immune to challenge. The constitutional authority which is",,

entrusted to the legislatures to create offences is subject to the mandate of a written Constitution. Where the validity of the law is called into question,",,

judicial review will extend to scrutinising whether the law is manifestly arbitrary in its encroachment on fundamental liberties. If a law discriminates,,

against a group or a community of citizens by denying them full and equal participation as citizens, in the rights and liberties granted by the",,

Constitution, it would be for the Court to adjudicate upon validity of such a law.â€",,

(Emphasis by us),,

38. Thus, the power of this Court to go into the issue of constitutionality of the provisions of the Jammu & Kashmir Prevention of Beggary Act, 1960,",,

and the Rules framed thereunder cannot be doubted.,,

(VI) Historical analysis and the rationale behind the legislation,,

39. The practice of giving alms to others including beggars was and is still considered a virtuous act. Traditionally, giving of â€œbhikshaâ€ (alms) is",,

popular in Hinduism, Jainism and Buddhism. Buddhists valorize begging by noble persons for the reason that it enables them to imbibe humility and",,

empowers them to break all forms of material bondage. The Muslim religion believes in â€œZakatâ€ which means charity. In the middle ages, even in",,

Europe and Britain, beggary was an accepted practice of providing succor to the needy, an act considered to be at par with prayer. The focus",,

subsequently changed to assessments of character and of the deservedness of a beggar. Slowly this further led to a consideration of whether those,,

not working were fraudulent and immoral. During the Victorian era beggary was considered to embody laziness and moral degeneration. It is a fact,,

that begging is not only a universal issue but is an age-old social phenomenon. However, criminalization of begging is a development of colonial",,

construction.,,

40. Beggary came to be banned by enacting laws for â€œmaintaining orderâ€ since the period of Athelstan and Canute to Henry the VIII. These,,

prohibitory laws were enacted with the intent of providing the feudal lords with agricultural labour and compelling able-bodied people to work.,,

41. Break up of feudal estates in England led to labour shortages which resulted in enactment of statutes of labourers designed to stabilize the labour,,

migration by prohibiting increases in wages and prohibiting the movement of workers from their home areas in search of improved conditions. Later,,

vagrancy laws were enacted which treated beggars as criminals. These laws were based on the perception and continued in the belief that people,,

without stable means of support may pose a threat to the stability of the society and are likely to get involved in criminal activities. This legislation of,,

the 14th and 15th centuries was based on the economic purpose of retention of labour by protecting the interests of the ruling class; ensuring that only,,

the disabled had the opportunity to beg and a perception that the legislation would keep a check on public order and crime.,,

42. These were the reasons for enactment of the Vagrancy Act, 1824 which made begging a crime in England, which is still in force.",,

43. It was in the 1920's that begging was for the first time criminalized in British India. This was part of the ethos in which efforts were made to,,

subjugate certain communities imputing criminality to them. (as the Criminal Tribes Act, 1871 notified in India). West Bengal came up with the first",,

law, followed by Mysore and then Madras.",,

44. In a post dated 10th August, 2018, by Gautam Bhatia â€œSomething of freedom is yet to comeâ€: the significance of the Delhi High Court's",,

decriminalization of beggary (https://indconlawphil.wordpress. com/2018/08/10 something-of-freedom-is-yet-come-the-significance-of-the-delhi-high-,,

courts-decriminalisation-of-beggary), reference is made to the vicious colonial logic that underlay the entire family of laws noting that the Anti-",,

Beggary Act was a late post colonial entrant. The Beggary Acts are referred to as â€œthe most worst and most enduring legacies of colonialism in a,,

criminal legal systemâ€. The article notes that the Criminal Tribes Act was repealed in the 1950's but other similar laws as the Habitual Offenders,,

Act, the vagrancy statutes, the Anti-Beggary laws to various sections of the IPC which continued to exist.",,

45. By 1947, eighteen Indian states had laws criminalizing beggary. Even in the post-colonial era, this very law came to be updated as the Bombay",,

Prevention of Begging Act, 1959 which was extended to all Indian states including, in 1960, to the Union Territory of Delhi.",,

46. It is noteworthy that the Jammu & Kashmir State legislature enacted the â€œJammu & Kashmir Prevention of Beggary Act, 1960â€, which was",,

applicable to the entire State of Jammu and Kashmir, received the assent of the Sadar-i-Riyasat on 16th October, 1960 and was published in the",,

Government Gazette on 6th December, 1960. The Act became enforceable on 01.01.1965 within the municipal limits of cities of Jammu and Srinagar",,

and Town Area Committees of Udhampur, Kathua, Baramulla, Anantnag, Sopore, Katra, Jammu by Notification No. SRO 298, dated 16.09.1964.",,

47. It is this law which stands assailed in this writ petition.,,

48. It is important to note that there is no single national legislation dealing with beggary in India.,,

(VII) What is begging and reasons for it,,

49. Several terminologies have been used to describe persons who beg which includes beggars; panhandlers; mendicancy; tramps; rough sleepers and,,

cadgers (commonly called the homeless). Beggars have also been found to be defined as street beggars which comprises individuals including,,

children, the elderly, disabled and even families making a living by begging on streets and in public spaces. Public spaces include shopping and",,

commercial areas, religious spaces as temples, churches and mosques.",,

50. At this stage it becomes necessary to understand why do people beg? Several discourses and discussions on the subject would show that beggars,,

have been considered in three distinct categories; the first being those for whom begging is a vocation; the second comprises of those who are forced,,

into begging; while the third consists of those who beg due to circumstances.,,

51. Those for whom begging is a vocation have been observed to be connected with interested and influential groups who actively engage to obtain,,

acquittal of beggars when arrested. People who are forced into begging is a category which includes kidnapped children; victims of force, oppression",,

and exploitation. The third category is that of those who beg due to circumstances which includes people who are weak and vulnerable and live life on,,

the edge, struggling for a means of livelihood.",,

52. A Single Bench decision of the High Court of Delhi reported at (2007) 137 DLT 173 Ram Lakhan v. State, considered the reasons behind",,

begging. Amongst the reasons enlisted, the learned Judge had observed that a person may beg â€œbecause he is down-right lazy and doesn't want to",,

workâ€; or â€œhe may be an alcoholic or a drug-addict in the hunt for financing his next drink or doseâ€; or â€œhe may be at the exploitative mercy,,

of a ring leader of a beggary gangâ€. It was also observed that â€œthere is also the probability that he may be starving, homeless and helplessâ€.",,

53. Efforts to prepare data banks of beggars have received much criticism. In an article captioned â€œOstensible Poverty, Beggary and the Lawâ€",,

(Economic and Political Weekly November 1, 2008), Dr. Usha Ramanathan while commenting on the excesses of the law and the inadequacy of",,

preparation of a personal data bank of beggars, has observed as follows:",,

â€œIn a system where people in conditions of poverty are numerous; the state system offers no social security or opportunity for overcoming,,

economic redundancy, nor does it desist from implementing policies that render many unemployable; where rehabilitation and training have never been",,

pursued; where the state's willingness and capacity to aid the ostensibly poor stands seriously depleted - what would a roster of the ostensibly poor,,

do?â€,,

54. Several authors have considered begging and homelessness synonymously. However, it is unanimously concluded that begging and homelessness",,

are indicators of abject, chronic poverty.",,

55. We may briefly dwell on the causes of poverty and the conditions in which the poor are compelled to survive. There is never a single reason,,

leading to creation of poverty but various interlocking factors. Causes of poverty may vary according to gender, age, culture and other social and",,

economic contests. As per research by Swati Chauhan, a Senior Family Court Judge in Maharashtra (published in",,

https://tiss.edu/vievo/6/projects/koshish-projects/publications/) even the World Bank has noted these causes. Poverty generally implies inadequate,,

infrastructure and inability to access basic social services of education and health. It often includes living in areas without hygienic facilities or potable,,

water rendering poor people much more susceptible to illness and disease resulting in high mortality rates. According to Ms. Chauhan, these elements",,

as leading to poverty are the subject matter of reports of the United Nation.,,

56. The various perspectives of poverty thus primarily include social exclusion, relative deprivation and lack of capability as well as capacity or the",,

poor.,,

57. In a Joint Report on Social Inclusion 2004, the European Commission defined a person living in poverty thus â€œpeople are said to be living in",,

poverty if their income and resources are so inadequate as to preclude them from having a standard of living considered acceptable in the society in,,

which they live. Because of their poverty they may experience multiple disadvantages through unemployment, low income, poor housing, inadequate",,

health care and barriers to lifelong learning, culture, sport and recreation. They are often excluded and marginalized from participating in activities",,

(economic, social and cultural) that are the norm for other people, and their access to fundamental rights may be restrictedâ€",,

58. Poverty has been measured and construed on several parameters which have included ability to meet minimum number of calories; minimum level,,

of income to satisfy needs; deprivation of different aspects of standards of living; material and social.,,

59. In India, the practice of begging is inextricably linked to poverty. Other reasons could be unemployment; illiteracy; ignorance or the pressure on",,

public resources on account of increasing population; unfair distribution of wealth; homelessness; problem of social structures and economic,,

mismanagement; lack of work opportunities; decline in public assistance; the structure and administration of Government support; lack of affordable,,

housing; addiction disorders and mental illness. It includes those who have no access to education; or social protection, may be victims of",,

discrimination based on caste and ethnicity; invariably would be landless, may be facing physical and mental challenges as well as isolation.",,

60. Unlike the common perception, or for that matter, the legislative presumption, people thus beg on the street not because they desire to do so but",,

because of the ultimate need. The presumptions against the beggars (of laziness etc) necessarily overlooks the fact that it is impossible for even,,

educated and trained people to always find employment. Begging is their last resort to procure subsistence, as they have no other means to survive.",,

Beggary is a manifestation of the fact that the person has fallen through the socially created net. It is evidence of the fact that the State has failed to,,

ensure that all citizens have even the basic essential facilities. Judicial notice can be taken of the hard reality that the State has not been able to ensure,,

these bare necessities of the right to life to all its citizens.,,

61. Swati Chauhan, in her aforesaid research, has extensively developed the â€˜broken window theoryâ€™ relating to the linkage which is presumed",,

between beggary, homelessness and crime. This unfortunate perception has encouraged the criminalization of beggary.",,

62. Reference stands made in Section 2(a)(iv) of the Jammu & Kashmir Prevention of Beggary Act, 1960, to â€œhaving no visible means of",,

subsistenceâ€ as a fault of the individual who has to be excluded. We find that thereby, statutorily, the expression â€œbeggarâ€ is used to create an",,

â€˜economic otherâ€™ as differentiated from those who are in a position to earn money through work. Beggary is perceived as demeaning. A,,

meaning stands assigned to the word to signifynot being able to find subsistence for survival and not being able to work and not being able to access,,

official social protection access.,,

63. Thus, several factors, as discussed above, cumulatively contribute to the reason why a person may beg.",,

(VIII) What is entailed in begging-whether any recognized right is involved?,,

64. The Preamble of the Jammu & Kashmir Prevention of Beggary Act, manifests that beggars exist and beggary is prevalent in Jammu & Kashmir.",,

65. The notion that begging as defined in Section 2(a) is a crime stands created by the legislature under Section 3 of the Act of 1960. It is a notion that,,

is used by the authorities to exercise power over the â€œhave notsâ€. It enables those in power to actually use the resourceless position of the poor to,,

further deprive them. Does the act of begging involve any constitutional and legal rights of the person begging? Does criminalization thereof result in,,

violations of these rights? What is the manner in which a person could be implicated under the law?,,

66. Let us undertake an examination of these aspects first and foremost. In the State of Jammu & Kashmir, rights stand guaranteed to all residents",,

under Section 19 & 23 of the Constitution of Jammu & Kashmir. It requires to be examined as to whether the existence of begging also manifests,,

failure of the Government to discharge its constitutional duty under Section 13 of the State Constitution. The working of the rights guaranteed under,,

the State Constitution and the responsibility of the State are important issues which also arise for consideration.,,

67. The definition of begging under Section 2(a) of the Jammu & Kashmir Prevention of Beggary Act, 1960, amongst others, refers to the expression",,

â€œsoliciting almsâ€ (in Section 2(a)(i)).,,

68. The expressions â€˜begâ€™, â€˜solicitâ€™ and â€˜almsâ€™ used in the statute, have not been defined in the law. Reference can usefully be",,

made to the dictionary meaning of the expressions â€˜begâ€™, â€˜solicitâ€™ and â€˜almsâ€™. We extract hereunder the meaning of these",,

expressions as assigned in several English dictionaries:,,

Definition of â€˜begâ€™,,

69. Macmillan Dictionary,,

Intransitive/Transitive Verb,,

1. To ask people for money or food, usually because you are very poor.",,

Merriam Webster Dictionary,,

Intransitive Verb,,

1. To ask for alms, children begging on the streets; Transitive Verb",,

2. To ask for as a charity, begging food from strangers, begged him for some change.",,

Collins Dictionary,,

1. If someone who is poor is begging, they are asking people to give them food or money.",,

Cambridge English Dictionary,,

Intransitive/Transitive Verb,,

1. To ask for food or money because you are poor.,,

Oxford Dictionary 10th Edition,,

Verb,,

1. Ask someone earnestly or humbly for something;,,

2. Ask for food or money as charity.,,

Definition of â€˜solicit/solicitingâ€™,,

Merriam Webster Dictionary: (Solicit),,

Verb,,

1. To make petition to: entreat;,,

2. To entice or lure especially into evil,,

Oxford Dictionary 10th Edition: (Solicit),,

Verb,,

1. Ask for or try to obtain (something) from some (Ask for something from),,

Definition of â€˜almsâ€™,,

Noun,,

1. Money, food or clothes given to poor.",,

Merriam Webster Dictionary,,

Noun,,

1. Something (such as money or food) given freely to relieve the poor,,

2. Distributing alms to the needy.,,

Collins Dictionary,,

Noun,,

1. Alms are gifts of money, clothes, or food to poor people.",,

Cambridge English Dictionary,,

Noun,,

1. Clothing, food or money that is given to the poor people.",,

Oxford Dictionary 10th Edition,,

Noun,,

1. (In historical context) Charitable donations of money or food to the poor;,,

70. All the dictionaries give the same meaning for these expressions.,,

71. Commonly, begging has been defined as conduct by which a person seeks assistance, either by asking for food, clothing, money, or, expressing",,

need through clear form of communication which may include a sign, a donation cup or utensil or even an outstretched hand. The beggar's solicitations",,

may include out pouring of their pathetic condition, showering of blessings etc., sometimes it may include social or political solicitations or exhortations.",,

Often, without any element of a spoken word, the very presence of an impoverished person, holding out his or her hand or a utensil to receive a",,

donation, by itself conveys a message that he is in need of support and assistance.",,

72. Begging, thus, undoubtedly involves communication of some kind conveying the plight of the beggar. Such communication could be verbal or by",,

actions. It could be even by mere physical presence, when, by his very pitiable appearance, the needs of a beggar are conveyed to the viewer.",,

73. The act of begging thus entails nothing more than peaceful communication with strangers, verbally or non-verbally, conveying a request for",,

assistance. Such communicative activity is necessarily part of the valuable right of freedom of speech and expression guaranteed to all under Article,,

19(1)(a) of the Constitution of India.,,

74. As noted above, the definition of begging refers to â€œsoliciting almsâ€, exposing wounds for extorting alms, having no visible means of",,

subsistence. It, therefore, implies persons of financial penury begging for sustenance. In other words, persons' who survive on alms. Criminalizing their",,

act of begging would thus impact their basis of their very existence, that is to say, their constitutionally protected right to life under Article 21 of the",,

Constitution of India.,,

75. The legislation in question has grouped together all persons who are found or perceived to be begging or soliciting alms, whether voluntary or",,

involuntarily, as one composite class. Thereby it has included persons who are compelled to beg on account of extreme need and deprivation along",,

with those who have been compelled by organized syndicate into begging.,,

76. At the same time, the legislation has drawn a distinction and carved out a group which is permitted to beg. The rationality of these classifications",,

has to be tested on the ground as to whether it meets the well settled tests laid down under Article 14 of the Constitution of India. Thus, violation of",,

rights guaranteed under Article 14 of the Constitution of India would also require to be considered in the present consideration.,,

77. Therefore, we are required to examine the statute and the Rules thereunder from the perspective of ensuring the guarantees under Articles 14, 19",,

and 21 of the Constitution of India.,,

(IX) Inter-relationship of the fundamental rights guaranteed under Part-III of the Constitution of India.,,

78. In the instant case, a challenge has been laid to the Jammu & Kashmir Prevention of Beggary Act, 1960, on the ground that it violates the",,

fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution of India.",,

79. A view stood taken in AIR 1950 SC 27 A.K. Gopalan v. State of Madras t,hat fundamental rights must be seen in watertight compartments and",,

therefore a challenge under Article 14 has to be viewed separately from a challenge under Article 19 was upset by an eleven Judge Bench of the,,

Supreme Court in (1970) 1 SCC 248 : AIR 1970 SC 564 Rustom Cavasjee Cooper v. Union of Indi aw,hich view was followed in (1978) 1 SCC",,

248 : AIR 1978 SC 597 Maneka Gandhi v. Union of India.,,

80. The issue of inter relationship between several fundamental rights guaranteed under Part III of the Constitution has been the subject matter of,,

consideration before the Supreme Court of India. In the judgment reported at (1978) 1 SCC 248 Maneka Gandhi v. Union of India, the Supreme Court",,

considered the inter relationship between Articles 14, 19 and 21. Referring to the change in perception on this issue and principles laid down in several",,

judicial precedents, the Supreme Court had laid down inter relationship in the following terms:",,

â€œ5â€¦â€¦â€¦We shall have occasion to analyse and discuss the decision in R.C. Cooper's case a little later when we deal with the arguments based,,

on infraction of Articles 19(1)(a) and 19(1)(g), but it is sufficient to state for the present that according to this decision, which was a decision given by",,

the full Court, the fundamental rights conferred by Part III are not distinct and mutually exclusive rights. Each freedom has different dimensions and",,

merely because the limits of interference with one freedom are satisfied, the law is not freed from the necessity to meet the challenge of another",,

guaranteed freedom. The decision in A.K. Gopalan's (supra) case gave rise to the theory that the freedoms under Articles 19, 21, 22 and 31 are",,

exclusive-each article enacting a code relating to the protection of distinct rights, but this theory was over-turned in R. C. Cooper's case (supra) where",,

Shah, J., speaking on behalf of the majority pointed out that â€œPart III of the Constitution weaves a pattern of guarantees on the texture of basic",,

human: rights. The guarantees delimit the protection of those rights in their allotted fields: they do not attempt to enunciate distinct rights.â€ The,,

conclusion was summarised in these terms:,,

â€œIn our judgment, the assumption in A.K. Gopalan's case that certain articles in the Constitution exclusively deal with specific matters cannot be",,

accepted as correctâ€. It was hold in R.C. Cooper's case and that is clear from the judgment of Shah, J., because Shah, J., in so many terms",,

disapproved of the contrary statement of law contained in the opinions of Kania, C. J., Patanjali Sastri, J., Mahajan, J., Mukherjee, J., and S. R. Das,",,

J., in A.K. Gopalan's case that even where a person is detained in accordance with the procedure prescribed by law, as mandated by Article 21, the",,

protection conferred by the various clauses of Article 19(1) does not cease to be available to him and the law authorising such detention has to satisfy,,

the test of the applicable freedom under Article 19, clause (1). This would clearly show that Articles 19(1) and 21 are not mutually exclusive, for, if",,

they were, there would be no question of a law depriving a person of personal liberty within the meaning of Article 21 having to meet the challenge of",,

a fundamental right under Article 19(1). Indeed, in that event, a law of preventive detention which deprives a person of â€˜personal libertyâ€™ in the",,

narrowest sense, namely, freedom from detention and thus falls indisputably within Art. 21 would not require to be tested on the touchstone of clause",,

(d) of Article 19 (1) and yet it was held by a Bench of seven Judges of this Court in Shambhu Nath Sarkar v. The State of West Bengal [(1973) 1,,

SCC 856 : AIR 1973 SC 1425]that such a law would have to satisfy the requirement inter alia of Article 19 (1), clause (d) and in Haradhan",,

Saha v. The State, of West Bengal, [(1975) 1 SCR 778: (1975) 3 SCC 198]which was a decision given by a Bench of five judges, this Court",,

considered the challenge of clause (d) of Article 19(1) to the constitutional validity of the Maintenance of Internal Security Act, 1971 and held that that",,

Act did not violate the constitutional guarantee embodied in that article. It is indeed difficult to see on what principle we can refuse to give its plain,,

natural meaning to the expression â€˜personal libertyâ€™ as used in Article 21 and read it in a narrow and restricted sense so as to exclude those,,

attributes of personal liberty which are specifically dealt with in Article 19. We do not think that this would be a correct way of interpreting the,,

provisions of the Constitution conferring fundamental rights. The attempt of the court should be to expand the reach and ambit of the fundamental,,

rights rather than attenuate their meaning and content by a process of judicial construction. The wave length for comprehending the scope and ambit,,

of the fundamental rights has been set by this Court in R.C. Cooper's case and our approach in the interpretation of the fundamental rights must now,,

be in tune with this wave, length. We may point out even at the cost of repetition that this Court has said in so; many terms in R.C. Cooper's case that",,

each freedom has different dimensions and there may be overlapping between different fundamental rights and therefore it is not a' valid argument to,,

say that the expression â€˜personal libertyâ€™ in Article 21 must be so interpreted as to avoid overlapping between that article and Article 19(1). The,,

expression â€˜personal libertyâ€™ in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty,,

of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.â€¦â€¦â€¦â€¦â€¦,,

6. We may at this stage consider the inter-relation between Article 21 on the one hand and Articles 14 and 19 on the other. We have already pointed,,

out that the view taken by the majority in A.K. Gopalan's case war,. that so long as a law of preventive detention satisfies the requirements of Article",,

22, it would be within the terms of Article 21 and it would not be required to meet the challenge of Article 19. This view proceeded on the assumption",,

that â€œcertain articles in the constitution exclusively deal with specific mattersâ€ and where the requirements of an article dealing with the particular,,

matter in question are satisfied and there is no infringement of the fundamental right guaranteed by that article, no recourse can be had to a",,

fundamental right conferred by another article. This doctrine of exclusivity was seriously questioned in R.C. Cooper's case and it was over-ruled by a,,

majority of the Full Court, only Ray, J., as he then was, dissenting. The majority judges held that though a law of preventive detention may pass the",,

test of Article 22, it has yet to satisfy the requirements of other fundamental rights such as Article 19. The ratio of the majority judgment in R.C.",,

Cooper's case was explained in clear and categorical terms by Shelat, J., speaking on behalf of seven judges of this Court in Shambhu Nath",,

Sarkar v. State of West Bengal (supra). The learned Judge there said (SCC p.879):,,

â€œIn Gopalan's case (supra) the majority court had held that Article 22 was a self-contained Code and therefore a law of preventive detention did,,

not have to satisfy the requirement of Articles 19, 14 and 21. The view of Fazal Ali, J., on the other hand, was that preventive detention was a direct",,

breach of the right under Article 19(1)(d) and that a law providing for preventive detention. had to be subject to such judicial review as is obtained,,

under clause (5) of that Article. In R.C. Cooper v. Union of India, (supra) the aforesaid premise, of the majority in Gopalan's case (supra) was",,

disapproved and therefore it no longer holds the field. Though Cooper's case (supra) dealt with the inter-relationship of Article 19 and Article 31, the",,

basic approach to construing the fundamental rights guaranteed in the different provisions of the Constitution adopted in this case held the major,,

premise of the majority in Gopalan's case (supra) to be incorrect.â€ Subsequently, in Haradhan Saha v. State of West Bengal (supra) also, a Bench of",,

five Judges of this Court, after referring to the decisions in A.K. Gopalan's case and R. C. Cooper's case, agreed that the Maintenance of Internal",,

Security Act, 1971, which is a law of preventive detention, has to be tested in regard to its reasonableness with reference to Article",,

19. That decision accepted and applied the ratio in R.C. Cooper's case and Shambhu Nath Sarkar's case and proceeded to consider the challenge of,,

Article 19 to the constitutional validity of the Maintenance of Internal Security Act, 1971 and held that the Act did not violate any of the constitutional",,

guarantees enshrined in Art. 19. The same view was affirmed once again by a Bench of four judges of this Court in Khudiram Das v. The State of,,

West Bengal [(1975) 2 SCC 81)] Interestingly, even prior to these decisions, as pointed out by Dr. Rajive Dhawan, in his book: â€œThe Supreme",,

Court of India:â€ at page 235, reference was made, by this court in Mohd. Sabir v. State of Jammu and Kashmir [(1972) 4 SCC 558]to article 19(2)",,

to justify preventive; detention. The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if",,

there is a law prescribing a procedure for depriving a person of â€˜personal libertyâ€™ and there is consequently no infringement of the fundamental,,

right conferred by Article 21, such law, in so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge",,

of that article. This proposition can no longer be disputed after the decisions in R.C. Cooper's case, Shambhu Nath Sarkar's case and Haradhan",,

Saha's case. Now, if a law depriving a person of â€˜personal libertyâ€™ and prescribing a procedure for that purpose within the meaning of Article",,

21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex-hypothesi",,

it must also be liable to be tested with reference to Article 14. This was in fact not disputed by the learned Attorney General and indeed he could not,,

do so in view of the clear and categorical statement made by Mukharjea, J., in A.K. Gopalan's case that Article 21 â€œpresupposes that the law is a",,

valid and binding law under the provisions of the Constitution having regard to the competence of the legislature and the subject it relates to and does,,

not infringe any of the fundamental rights which the Constitution provides forâ€, including Article 14.",,

xxxxxxxxxxxxâ€,,

(Emphasis by us),,

81. On the interplay of the fundamental rights and that they are to be read along with one another, we must also advert to the pronouncement of the",,

Constitution Bench judgment of the Supreme Court reported at (2014) 9 SCC 737 Mohd. Arif v. Supreme Court of India, wherein the court placing",,

reliance on Maneka Gandhi, held as follows:",,

â€œ27. The stage was now set for the judgment in Maneka Gandhi [Maneka Gandhi v. Union of India, (1978) 2 SCR 621: (1978) 1 SCC 248.]",,

Several judgments were delivered, and the upshot of all of them was that Article 21 was to be read along with other fundamental rights, and so read",,

not only has the procedure established by law to be just, fair and reasonable, but also the law itself has to be reasonable as Articles 14 and 19 have",,

now to be read into Article 21. [See at SCR pp. 646-48: SCC pp. 393-95, paras 198-204 per Beg, C.J., at SCR pp. 669, 671-74 & 687: SCC pp. 279-",,

84 & 296-97, paras 5-7 & 18 per Bhagwati, J. and at SCR pp. 720-23: SCC pp. 335-39, paras 74-85 per Krishna Iyer, J.]. Krishna Iyer, J. set out the",,

new doctrine with remarkable clarity thus:(SCR p. 723: SCC pp. 338-39, para 85)",,

â€œ85. To sum up, â€˜procedureâ€™ in Article 21 means fair, not formal procedure. â€˜Lawâ€™ is reasonable law, not any enacted piece. As",,

Article 22 specifically spells out the procedural safeguards for preventive and punitive detention, a law providing for such detentions should conform to",,

Article 22. It has been rightly pointed out that for other rights forming part of personal liberty, the procedural safeguards enshrined in Article 21 are",,

available. Otherwise, as the procedural safeguards contained in Article 22 will be available only in cases of preventive and punitive detention, the right",,

to life, more fundamental than any other forming part of personal liberty and paramount to the happiness, dignity and worth of the individual, will not be",,

entitled to any procedural safeguard save such as a legislature's mood chooses.â€,,

28. Close on the heels of Maneka Gandhi case [Maneka Gandhi v. Union of India, (1978) 2 SCR 621: (1978) 1 SCC 248] camMe ithu v. State of",,

Punjab [(1983) 2 SCC 277: 1983 SCC (Cri) 405], in which case the Court noted as follows: (SCC pp. 283-84, para 6)",,

â€œ6. â€¦ In Sunil Batra v. Delhi Admn. [(1978) 4 SCC 494: 1979 SCC (Cri) 155]w, hile dealing with the question as to whether a person awaiting",,

death sentence can be kept in solitary confinement, Krishna Iyer J. said that though our Constitution did not have a â€œdue processâ€ clause as in the",,

American Constitution; the same consequence ensued after the decisions in Bank Nationalisation case [Rustom Cavasjee Cooper (Banks,,

Nationalisation) v. Union of India, (1970) 1 SCC 248] and Maneka Gandhi case [Maneka Gandhi v. Union of India, (1978) 2 SCR 621: (1978) 1 SCC",,

248].â€¦,,

In Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684: 1980 SCC (Cri) 580]which upheld the constitutional validity of the death",,

penalty, Sarkaria J., speaking for the majority, said that if Article 21 is understood in accordance with the interpretation put upon it in Maneka Gandhi",,

[Maneka Gandhi v. Union of India, (1978) 2 SCR 621: (1978) 1 SCC 248], it will read to say that: (SCC p. 730, para 136)",,

â€˜136. â€œNo person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid",,

law.â€,,

The wheel has turned full circle. Substantive due process is now to be applied to the fundamental right to life and liberty.â€,,

(Emphasis by us),,

82. This judgment importantly has also pointed out that the substantive due process is part of Article 21 and it is to be read with Articles 14 and 19 of,,

the Constitution of India.,,

83. On this very aspect, we may also advert to the Constitution Bench judgment of the Supreme Court reported at (1978) 4 SCC 494 Sunil",,

Batra v. Delhi Administration, wherein a challenge was laid to Section 30(2) of the Prisons Act, which required that the prisoner under a sentence of",,

death shall be placed under solitary confinement. The Supreme Court read down the sub-section (2) of Section 30 and expounded on the word,,

â€œlawâ€ in the expression â€œprocedure established by lawâ€ article 21 holding as follows:,,

â€œ228â€¦â€¦â€¦.The word â€œlawâ€ in the expression â€œprocedure established by lawâ€ in Article 21 has been interpreted to mean in Maneka,,

Gandhi's case (supra) that the law must be right, just and fair, and not arbitrary, fanciful or oppressive. Otherwise it would be no procedure at all and",,

the requirement of Article 21 would not be satisfied. If it is arbitrary it would be violative of Article 14. Once Section 30(2) is read down in the manner,,

in which we have done, its obnoxious element is erased and it cannot be said that it is arbitrary or that there is deprivation of personal liberty without",,

the authority of law.â€,,

(Emphasis by us),,

84. The interplay between the requirements of Article 14, 19 and 21 stands considered in this case in the judgment of Krishna Iyer, J., in para 52 (at",,

page 518 of the SCC) whence his lordship stated as follows:,,

â€œ52. True, our Constitution has no â€˜due processâ€™ clause or the VIII Amendment; but, in this branch of law, after R.C. Cooper v. Union of",,

India, (1970) 1 SCC 248 and Maneka Gandhi v. Union of India, (1978) 1 SCC 248, the consequence is the same. For what is punitively outrageous,",,

scandalizingly unusual or cruel and rehabilitatively counter-productive, is unarguably unreasonable and arbitrary and is shot down by Articles 14 and 19",,

and if inflicted with procedural unfairness, falls foul of Article 21.â€",,

(Emphasis by us),,

85. In the same context, we may usefully refer to the discussion by R. F. Nariman, J., in the judgment reported at (2017) 9 SCC 1 Shayara",,

Bano v. Union of India, wherein his lordship has summed up the principles from the two Constitution Bench judgments in Sunil Batra and Mithu and",,

held that â€œArticle 14 has been referred to in the context of the constitutional invalidity of statutory law to show that such statutory law will be,,

struck down if it is found to be â€œarbitraryâ€.,,

86. Nariman, J., has further observed as follows:",,

â€œ84â€¦â€¦.Arbitrariness in legislation is very much a facet of unreasonableness in Articles 19(2) to (6), as has been laid down in several Judgments",,

of this Court, some of which are referred to in Om Kumar (infra) and, therefore, there is no reason why arbitrariness cannot be used in the aforesaid",,

sense to strike down legislation under Article 14 as well.â€,,

(Emphasis by us),,

87. It is, therefore, well settled that the fundamental rights guaranteed under Part-III of the Constitution of India are not to be read independently or in",,

isolation but each one of them is to be read along with others. Our consideration as to whether Jammu & Kashmir Prevention of Beggary Act violates,,

the rights of any person under Articles 14, 19 and 21 of the Constitution are not to be considered in isolation. The law itself has to satisfy the tests of",,

reasonableness in order to make available the guarantees under Article 14 and 19 of the Constitution of India and the procedure prescribed by the law,,

has to be just, fair and reasonable as is mandated by Article 21. We shall consider the legislation in question from these perspectives.",,

(X) Whether the legislation curtails any of the right guaranteed under Article 19 of the Constitution,,

88. Is communication of his plight by speech or action to seek alms, protected under any constitutional provision? Is such communication in public",,

places so protected? We may advert to the Article 19(1)(a) of the Constitution of India which guarantees freedom of speech and expression. Article,,

19 of the Constitution of India provides the following guarantees:,,

â€œ19. Protection of certain rights regarding freedom of speech, etc.-(1) All citizens shall have the right- (a) to freedom of speech and expression;",,

xxxxx,,

(d) to move freely throughout the territory of India;,,

(e) to reside and settle in any part of the territory of India;,,

(g) to practise any profession, or to carry on any occupation, trade or business.â€",,

89. Are the above rights absolute or can they be curtailed?,,

90. The power of the State to restrict the rights guaranteed under Article 19(1) and extent thereof is provided under Article 19(2) which reads thus:,,

â€œ19(2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, in so far",,

as such law impose reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity,,

of India, the security of the State, friendly relations with Foreign States, public order, decency or morality or in relation to contempt of court,",,

defamation or incitement to an offence.â€,,

(Emphasis supplied),,

91. The importance of freedom of speech and expression from the perspective of the liberty of the individual as well as the State has been held to be,,

of paramount importance in several judicial precedents including AIR 1950 SC 124 Romesh Thapar v. State of Madras; AIR 1962 SC 305 Sakal,,

Papers (P) Ltd. v. Union of India, (Constitutional Bench;) (1972) 2 SCC 788 Bennett Coleman & Co. v. Union of India; (2010) 5 SCC 600 S.",,

Khushboo v. Kanniamal.,,

92. It is necessary to examine the contours of the expression â€œfreedom of speech and expressionâ€ as guaranteed under Article 19(1)(a) and the,,

Article 19(2). So far as this expression and restrictions thereon are concerned, the enunciation of the principles by R.F. Nariman, J, in the judgment",,

reported at (2015) 5 SCC 1 Shreya Singhal v. Union of India, explains this concept completely when it has been stated thus:",,

â€œ13. This leads us to a discussion of what is the content of the expression â€œfreedom of speech and expressionâ€. There are three,,

concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the",,

third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1)(a). It is only when,,

such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage that a law may be made curtailing the speech,,

or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the",,

security of the State, friendly relations with foreign States, etc.",,

xxxxxxxxxxxxâ€,,

(Emphasis by us),,

93. We have extracted heretofore Article 19(2) of the Constitution of India which is recognition of the power of the State to make any law imposing,,

reasonable restrictions on the exercise of the right conferred by Article 19(1)(a).However, Article 19(2) mandates that for such restrictions to be",,

reasonable, they must be necessary in the interests of the sovereignty and integrity of India; the security of the State; friendly relations with foreign",,

states; public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence. Thus, the offence created by a",,

law, by operation of Article 19(2) has to have a proximate relationship to any of these eight subject matters as are contained in Article 19(2).",,

94. The Constitutional scheme which enables curtailment of freedom of speech has been the subject matter of several judicial precedents. In the,,

judgment of the Supreme Court reported at AIR 1962 SC 305 Sakal Papers (P) Ltd. v. Union of India, the Supreme Court has in the following terms",,

stated that it was not open to the State to curtail freedom of speech to promote the general public interests or better enjoyment of another freedom:,,

â€œIt may well be within the power of the State to place, in the interest of the general public, restrictions upon the right of a citizen to carry on",,

business but it is not open to the State to achieve this object by directly and immediately curtailing any other freedom of that citizen guaranteed by the,,

Constitution and which is not susceptible of abridgment on the same grounds as are set out in clause (6) of Article 19. Therefore, the right of freedom",,

of speech cannot be taken away with the object of placing restrictions on the business activities of a citizen. Freedom of speech can be restricted only,,

in the interests of the security of the State, friendly relations with foreign State, public order, decency or morality or in relation to contempt of court,",,

defamation or incitement to an offence It cannot, like the freedom to carry on business, be curtailed in the interest of the general public. If a law",,

directly affecting itis challenged, it is no answer that the restrictions enacted by it are justifiable under clauses (3) to (6).For, the scheme of Article 19",,

is to enumerate different freedoms separately and then to specify the extent of restrictions to which they may be subjected and the objects for,,

securing which this could be done. A citizen is entitled to enjoy each and every one of the freedoms together and clause (1) does not prefer one,,

freedom to another. That is the plain meaning of this clause. It follows from this that the State cannot make a law which directly restricts one freedom,,

even for securing the better enjoyment of another freedom. All the greater reason, therefore for holding that the State cannot directly restrict one",,

freedom by placing an otherwise permissible restriction on another freedom.â€,,

(Emphasis by us),,

95. In AIR 1960 SC 633 Superintendent Central Prison v. Ram Manohar Lohi,a the Supreme Court explained the expression â€œin the interest",,

ofâ€ as appears in Article 19(2) in the following terms;,,

â€œâ€¦â€¦â€¦We do not understand the observations of the Chief Justice to mean that any remote or fanciful connection between the impugned Act,,

and the public order would be sufficient to sustain its validity. The learned Chief Justice was only making a distinction between an Act which,,

expressly and directly purported to maintain public order and one which did not expressly state the said purpose but left it to be implied there from; and,,

between an Act that directly maintained public order and that indirectly brought about the same result. The distinction does not ignore the necessity for,,

intimate connection between the Act and the public order sought to be maintained by the Act.,,

â€¦â€¦â€¦â€¦. The restriction made â€œin the interests of public orderâ€ must also have reasonable relation to the object to be achieved, i.e., the public",,

order. If the restriction has no proximate relationship to the achievement of public order, it cannot be said that the restriction is a reasonable restriction",,

within the meaning of the said clauseâ€¦â€¦â€¦.The decision, in our view, lays down the correct test. The limitation imposed in the interests of public",,

order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical",,

or problematical or too remote in the chain of its relation with the public order.â€¦â€¦â€¦,,

â€¦â€¦â€¦â€¦..There is no proximate or even foreseeable connection between such instigation and the public order sought to be protected under section.,,

We cannot accept the argument of the learned Advocate General that instigation of a single individual not to pay tax or dues is a spark which may in,,

the long run ignite a revolutionary movement destroying public order.â€,,

(Emphasis supplied),,

96. It is noteworthy that the reference in the above extract to the observations of the Chief Justice stands made with regard to those of Das, CJ",,

in 1957 SCR 860 Ramji Lal Modi v. State of UP.,,

97. On this aspect in the judgment of the Supreme Court reported at (1969) 1 SCC 853 Mohd. Faruk v. State of M.P,. in para 10, the Supreme Court",,

had observed thus:,,

â€œâ€¦â€¦â€¦.The Court must in considering the validity of the impugned law imposing a prohibition on the carrying on of a business or,,

profession, attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public",,

interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious",,

nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less",,

drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency-national or local-or the necessity to",,

maintain essential supplies, or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority",,

that no case for imposing the restriction is 2019-08-20 made out or that a less drastic restriction may ensure the object intended to be achieved.â€,,

(Emphasis supplied),,

98. In yet another decision of the constitutional bench of the Supreme Court reported at AIR 1962 SC 1166 Kameshwar Prasad v. State of Biha,r a",,

challenge was made to Rule 4A of the Bihar Government Servants Conduct Rules, 1956, which prohibited Government servants from participating in",,

any demonstration or from resorting to any form of strike in connection with any matter pertaining to the conditions of service. This rule was,,

challenged on account of infraction of rights guaranteed under Article 19(1)(a) and (b) of the Constitution of India. Following the principles laid down,,

in Ram Manohar Lohia, the Constitutional Bench accepted the challenge. The court examined the question as to whether the ban imposed was",,

reasonable restriction in the interest of public order observing as follows:,,

â€œ17â€¦â€¦â€¦â€¦â€¦.The threat to public order should therefore arise from the nature of the demonstration prohibited. No doubt, if the rule were so",,

framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquillity or which â€˜Would fall under the,,

other limiting criteria specified in Art. 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it",,

lays a ban on every type of demonstrationâ€"be the same however innocent and however incapable of causing a breach of public tranquillity and does,,

not confine itself to those forms of demonstrations which might lead to that result.â€,,

(Emphasis by us),,

99. We may also usefully extract the observations of the Bench in para 5 of the judgment in Kameshwar Prasad regarding the width of the prohibition,,

imposed by the rule under examination and the approach which the court must adopt while examining the constitutionality of such a rule.,,

â€œ5â€¦â€¦â€¦The approach to the question regarding the constitutionality of the rule should be whether the ban that it imposes on demonstrations,,

would be covered by the limitation of the guaranteed rights contained in Art. 19(2) and 19(3). In regard to both these clauses the only relevant criteria,,

which has been suggested by the respondent-State is that the rule is framed-in the interest of public order â€œ. A demonstration may be defined as,,

â€œan expression of one's feelings by outward signsâ€. A demonstration such as is prohibited by, the rule may be of the most innocent type-peaceful",,

orderly such as the mere wearing of a badge by a Government servant or even by a silent assembly say outside office hours-demonstrations which,,

could in no sense be suggested to involve any breach of tranquillity, or of a type involving incitement to or capable of leading to disorder. If the rule",,

had confined itself to demonstrations of type which would lead to disorder then the validity of that rule could have been sustained but what the rule,,

does is the imposition of a blanket-ban on all demonstrations of whatever type-innocent as well as otherwise-and in consequence its validity cannot be,,

upheld.â€,,

(Emphasis supplied),,

100. So far as the impact on public order was concerned, in Kameshwar Prasad, it was held that the remote disturbances of public order by the",,

demonstration would fall outside the purview of Article 19(2); that the connection with the public order has to be intimate, real and rational and should",,

arise directly from the demonstration sought to be prohibited. Most importantly in para 17, the Court held as follows;",,

â€œThe vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration be the same however innocent and however",,

incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result.â€,,

(Emphasis supplied),,

101. Restrictions or prohibition which impact the fundamental rights guaranteed under Article 19(1)(a) must be in the narrowest terms. In the,,

pronouncement of the Supreme Court reported at AIR 1962 SC 955 Kedar Nath Singh v. State of Biha, rthe constitutionality of Sections 124A and",,

505 of the Indian Penal Code was called into question on the ground that the restrictions imposed by the impugned provisions violated the fundamental,,

right of freedom of speech and expression guaranteed under Article 19(1)(a) of the petitioner and the restrictions imposed by the impugned provisions,,

were not within the permissible limits under Article 19(2) of the Constitution. While examining the constitutionality of the enactment, the court made",,

certain pertinent observations on the manner in which statutory provisions are required to be interpreted which facilitate our consideration as well. In,,

para 26 of the judgment, the court had observed as follows:",,

â€œ26â€¦â€¦â€¦.It is well settled that if certain provisions of law construed in one way would make them consistent with the Constitution, and another",,

interpretation would render them unconstitutional, the Court would lean in favour of the former construction. The provisions of the sections read as a",,

whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have",,

a tendency, to create disorder or disturbance of public peace by resort to violence. As already pointed out, the explanations appended to the main body",,

of the section make it clear that criticism of public measures or comment on Government action, however strongly worded, would be within",,

reasonable limits and would be consistent with the fundamental right of freedom of speech and expression. It is only when the words, written or",,

spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent",,

such activities in the interest of public order. So construed, the section, in our opinion, strikes the correct balance between individual fundamental rights",,

and the interest of public order. It is also well settled that in interpreting an enactment the Court should have regard not merely to the literal meaning,,

of the words used, but also take into consideration the antecedent history of the legislation, its purpose and the mischief it seeks to suppress",,

vide (1) Bengal Immunity Co. Ltd. v. The State of Bihar, 1955-2 SCR 603: ((S) AIR 1955 SC 66 1a)nd (2) R. M.D. Chamarbaugwalla v. Union of",,

India, 1957 SCR 930: ((S) AIR 1957 SC 628.) Viewed in that light, we have no hesitation in so construing the provisions of the sections impugned in",,

these cases as to limit their application to acts involving intention or tendency to create disorder, or disturbance of law and order, or incitement to",,

violence.â€,,

(Emphasis by us),,

102. In this judgment, the Supreme Court held that the impugned Sections impose restrictions on the fundamental freedom of speech and expression,",,

but those restrictions cannot but be said to be in the interest of public order and within the ambit of permissible legislative interference with that,,

fundamental right and the challenge to the constitutionality of the provisions was rejected. (para 28).,,

103. The permissibility of the prohibitions imposed by the legislation under consideration before us have to be examined on these tests.,,

104. In the judgment reported at (2015) 5 SCC 1 Shreya Singhal v. Union of India, it was observed that, on the construction of Article 19(1)(a), almost",,

every significant judgment of the Supreme Court has referred to American case law. In para 15 of Shreya Singhal, the Supreme Court has noted the",,

distinction between the First Amendment of the US Constitution when contrasted with Article 19(1)(a) of the Indian Constitution. The Supreme Court,,

carefully notes firstly the absoluteness, which is exhibited in the language of the US First Amendment when it states that â€˜Congress shall make no",,

law which abridges the freedom of speechâ€™. It was secondly noted that while the American Constitution speaks of freedom of speech and press,,

without reference to â€œexpressionâ€ whereas Article 19(1)(a) refers to freedom of speech and expression without any reference to â€œpressâ€. It,,

was observed thirdly, that under the U.S. Constitution, speech may be abridged while under the Constitution of India, reasonable restrictions may be",,

imposed and, fourthly, that under the Constitution of India, the restrictions have to be proximately related to the eight designated subject matters set out",,

in Article 19(2).,,

105. In para 18 of Shreya Singhal, the Court observed that the American judgements have great persuasive value on the content of freedom of speech",,

and expression and the tests laid down for its infringement. It is only when it comes to sub-serving the general public interest that there is the world of,,

a difference with Indian law.,,

106. So far as the beggary enactments in India are concerned, there is hardly any jurisprudence available. International perspectives on prohibitions to",,

begging, prohibitions against the beggars, the homeless, vagrants and panhandlers, as have been imposed by the Jammu & Kashmir Act of 1960, have",,

been the subject matter of legislations which have been subjected to challenges in jurisdictions in different parts of the world. The outcome of these,,

considerations facilitates consideration of the issue in the present case. We have therefore undertaken an examination of the jurisprudence on the,,

issue under consideration from jurisdictions in other parts of the world.,,

107. Vagrancy laws were enacted by several states of the United State of America. Constitutionality of vagrancy laws in various states in the United,,

States of America have been the subject matter of challenge before the courts including the Supreme Court of United States of America inter alia on,,

the ground that the vagrancy laws violated the protection to speech granted by the First Amendment and also the due process requirements of the,,

Fourteenth Amendment to the Constitution of the United States of America.,,

108. Our attention has been drawn to a pronouncement of the Court of Appeal of Florida First District reported at 458 So.2d 47; 1984 Fla. App.,,

LEXIS 15409; 9 Fla.L. Weekly 2217 C.C.B., A Child v. State of Florida (judgment of the Court of Appeal of Florida). In this case, the appellant had",,

challenged the denial of his motion to dismiss a charge against him of violating Jacksonville, Fla. Municipal Ordinance 330.105 which prohibited all",,

forms of begging or soliciting alms for an individual's own use. It was argued that this ordinance was facially unconstitutional as it violated the,,

freedoms guaranteed under the First Amendment. The challenge was premised on the submission that the ordinance was overbroad because it,,

violated all forms of solicitation for alms or charity and that it lacked precisely drawn standards to prevent the prohibition of activities protected by the,,

First Amendment.,,

109. The court placed reliance on certain precedents which shed valuable light on our consideration as well and deserve to be extracted in extenso and,,

read as follows:,,

â€œIn League of Mercy Association, Inc. v. Walt, 376 So. 2d 892 (Fla. 1stDCA 1979)[**3]this Court upheld the validity of the City of Jacksonville's",,

Municipal Ordinance Chapter 404 against the constitutional attack that it did not set forth sufficient guidelines for the issuance of permits. When read,,

in parimateria with chapter 404, Ordinance 330.105 does not prohibit the established first amendment right of individuals or groups to solicit",,

contributions for religious and charitable purposes but merely validly limits that right by requiring permits. Thus, the ordinance is not overbroad in that",,

sense.,,

However, Ordinance 330.105 is unconstitutionally overbroad by its abridgment in a more intrusive manner than necessary, of the first amendment",,

right of individuals to beg or solicit alms for themselves. The City's alleged legitimate and compelling interest is its duty and responsibility under its,,

police power to control undue annoyance on the streets and public places and prevent the blocking of vehicle and pedestrian traffic. That lofty goal,,

must be measured and balanced against the rights of those who seek welfare and sustenance for themselves, by their own hand and voice rather than",,

by means of the muscle and mouths of others. We have learned through the [**4] ages that â€œcharity begins at home,â€ and if so, the less fortunate",,

of our social admixture should be permitted, under our system, to apply self help. This right, nevertheless, must be subject to the state's interest but",,

conditioned upon less intrusive means than absolute preclusion.,,

We find a dearth of cases in our state to give us guidance and would opine that such scarcity is due to this particular segment of society not having the,,

ability or wherewithal to pursue the challenge. The parties, caught in the same plight, refer us to cases from other jurisdictions which we find to be",,

well reasoned and persuasive in our determinations.,,

In Goldstein v. Town of Nantucket, 477 F. Supp. 606 (D. Mass. 1979), the court found that a troubadour's public performance of Nantucket's",,

traditional folk music was clearly within the scope of protected first amendment expression. The court recognized that [HN1] the rights to the first,,

amendment [*49] freedoms are not absolute but are subject to the imposition of reasonable and impartial regulations regarding the time, place and",,

manner of public expression. The court found that Nantucket's permit requirements did not contain narrow, objective [**5] or definite standards and",,

therefore they exceeded in their scope the constitutionally permissible grounds for regulating free expression and consequently the ordinance did not,,

pass constitutional muster. The Goldstein case rejected the older view that commercial speech is not to be afforded the same first amendment,,

protection as other types of speech and stated:,,

â€œThe fact that plaintiff accepts contributions of passersby during his public performance, thus, does not dilute plaintiff's protection of the first",,

amendment.â€,,

Goldstein, at 6069 (Virginia State Board of Pharmacy v. Virginia Consumer Council, 425 U.S. 748, 96 S. Ct. 1817, 48 L.Ed. 2d 346 (1976) in which",,

the court stated:,,

â€œ[HN2] Speech â€¦is protected even though it is carried in a form that is â€œsoldâ€ for profit, and even though it may involve a solicitation to",,

purchase or otherwise pay or contribute money.â€,,

We find in Bates v. State Bar of Arizona, 433 U.S. 350, 97 S.Ct. 2691, 53 L.Ed. 2d 810 (1977), the Arizona State Bar's disciplinary rule prohibiting all",,

advertising by attorneys was struck down on the holding that some commercial speech is entitled to first amendment [**6],,

protection. In People v. Fogelson, 21 Cal. 3d 158, 577 P.2d 677, 145 Cal. Rptr. 542 (1978), a Hare Krishna follower was arrested in an airport for",,

soliciting without a permit pursuant to an ordinance that required a permit before soliciting for oneself or another on ity property. In a footnote, the",,

court recognized the enlarged first amendment protection of commercial speech as discussed in Bates. The court declared that [HN3] the state may,,

reasonably regulate the time, place and manner of engaging in solicitation in public places in order to prevent fraud or undue harassment of passerby.",,

But, in another footnote, the court pointed out that the State must recognize that [HN4] individuals in public places cannot expect the same degree of",,

protection from contact with others as they are entitled to in their own homes. The court found the ordinance unconstitutional on the ground that it,,

contained no standards to guide licensing officials in exercising their discretion to grant or deny applications to solicit on city property. In concurring,",,

one judge stated:,,

It has been held that [HN5] begging and soliciting for alms do not enjoy absolute constitutional protection. (Ulmer v. Municipal [**7] Court, 55 Cal.",,

App. 3d 263, 127 Cal. Rpt. 445 (1976)).",,

Xxxxxxxxx,,

Even in Ulmer, the court referred to the comments of the legislative draftsmen noting that the statute was aimed at the conduct of the individual who",,

goes about the streets accosting others for handouts. The comment stated:,,

â€œIt is framed in this manner in order to exclude from one ambit of the law the blind or crippled person who merely sits or stands by the wayside, the",,

Salvation Army worker who solicits funds for charity on the streets at Christmas time and others whose charitable appeals may well be left to local,,

control. (2 Assem. J. Appendix (1961 Reg. Sess.) Assem. Interim Com. Rep. (1959-1961) Crim. Proc. Pp.12-13)â€,,

(Ulmer, 55 Cal. App. 3d at 266, 127 Cal. Rptr. 445).",,

The Ulmer court held that [HN6] regulation of conduct bearing no necessary [**8] relationship to the freedom to speak does not abridge the,,

guarantees of the first amendment. The court stated, however, that the statute in question does not extend to one",,

â€œâ€¦..who merely sits or stands by the wayside.â€ Walking up to and approaching [*50] another for the purpose of soliciting, as opposed to merely",,

receiving donations, is prohibited by the statute.",,

The manner of approach is thus pertinent.â€,,

Ulmer, at 267, 127 Cal. Rpt. 445.",,

On the basis of the above authorities and upon our own reflection, we find that [HN7] a total prohibition of begging or soliciting alms for oneself is an",,

unconstitutional abridgment of the right to free speech as guaranteed by the first and fourteenth amendments of the Constitution of the United State,,

and article I, section 4 of the Constitution of the State of Florida. No compelling reason justifies that total abridgment. [HN8] Protecting citizens from",,

mere annoyance is not a sufficient compelling reason to absolutely deprive one of a first amendment right. Coates v. Cinicinnati, 402 U.S. 611, 91",,

S.Ct. 1686, 29 L.Ed. 2d 214 (1971). Compare also Carter v. Town of Palm Beach, 237 So. 2d 130 (Fla. 1970), in which, [**9] in declaring invalid an",,

ordinance prohibiting the operation of surfboards on the basis that the prohibition was arbitrary and unreasonable, the court rules that [HN9] a",,

municipality, under its police power, may regulate and restrain certain activities which threaten the public health, safety and welfare, but the power to",,

restrain and regulate does not include the power to prohibit an activity which is not a nuisance per se. The court determined that surfing was not a,,

nuisance per se.,,

We conclude that Municipal Ordinance 330.105 is unconstitutional in that it curbs a first amendment right in a more intrusive manner than necessary.,,

The City of Jacksonville is not entitled to absolutely prohibit a beggar's exercise of his freedom of speech, but the city may regulate that right subject",,

to strict guidelines and definite stands closely related to permissible municipal interest, such as could be imposed by a narrowly drawn permit",,

system. Goldstein; Fogelson. The drafting of such a regulatory ordinance is a task for the City of Jacksonville and not for this Court. We adopt the,,

view of the Fogelson court, which stated:",,

â€œ[HN10] This Court should not, and does not, undertake [**10] the essentially legislative task of specifying which of the legitimate municipal",,

interests in regulating solicitations are to be included in permit conditions, nor how such conditions might be drafted.â€",,

Fogelson, 145 Cal. Rptr. At 565, 577 P.2d at 700.",,

Municipal Ordinance 330.105 is stricken as facially unconstitutional and the order of the trial court denying appellant's motion to dismiss the charge,,

against him is reversed.â€,,

(Emphasis supplied),,

110. Mr. Bhat has placed reliance on the pronouncement of the Court of Appeals for the Second Circuit, United States, reported at 999 F.2d 699;",,

1993 U.S. App. LEXIS 19725 Jennifer Loper v. The New York City Police Department. In this case, the court was confronted with a New York",,

Penal Law Â§ 240.35(1) which prohibited loitering for the purposes of begging. It was observed that the challenged statute proscribed speech and,,

conduct of a communicative nature which prohibition violated the First Amendment of the US Constitution. The court observed that the city, streets",,

and parks were classified as a traditional public forum which is a category of public property open for expressive activity of the public, which may be",,

of a limited or unlimited character. The regulation of expressive activity on public property must be reasonable and not designed to prohibit the activity,,

merely because of disagreement with the views expressed. It was held that a regulation that was neither content neutral nor narrowly tailored was not,,

justifiable as a proper time, place or manner restriction on protected speech.",,

111. It was further held in Loper that the statute in no way advances a substantial and important governmental interest so as to constitute a reasonable,,

restriction on the freedom of speech. The legislation was found to suffer from the vice of over breadth and vagueness and that it also enforced a,,

content-based exclusion. It was held that the regulation was not necessary to serve a compelling state interest. The regulation was also not content,,

neutral nor narrowly tailored to serve significant government interest. It did not leave open alternative channels of communication. It was observed,,

that â€œeven if the State was considered to have a compelling interest in preventing the evils sometimes associated with begging, a statute that totally",,

prohibits begging in all public places cannot be considered â€œnarrowly tailoredâ€ to achieve that end. A total prohibition raises a question whether a,,

statute even can be said to â€œregulateâ€ the time, place, and manner of expression but even if it does, it is not content neutral when it prohibits all",,

speech related to begging; it certainly is not narrowly tailored to serve any significant governmental interest, as previously noted, because of the total",,

prohibition it commands; it does not leave open alternative channels of communication by which beggars can convey their messages of indigencyâ€.,,

112. In Loper the court concluded as follows:,,

â€œThe statute that prohibits loitering for the purpose of begging must be considered as providing a restriction greater than is essential to further the,,

government interests listed by the City Police, for it sweeps within its overbroad purview the expressive conduct and speech that the government",,

should have no interest in stifling.â€,,

(Emphasis supplied),,

113. An ordinance in the petitioner village prohibiting door to door or on street solicitation of the contributions by charitable organizations that do not,,

use at least 75 percent of their receipts for â€œcharitable purposesâ€, such purposes being defined to exclude solicitation expenses, salaries, overhead",,

and other administrative expenses, was before the U. S. Supreme Court in the judgment reported at 444 U.S. 620 (1980) Village of",,

Schaumburg v. Citizens for a Better Environment.,,

114. The respondents had challenged the facial validity of the ordinance on First Amendment grounds. The court held that the ordinance in question is,,

â€œunconstitutionally overbroad in violation of the First and Fourteenth Amendmentsâ€. It was held that charitable appeals for funds, on the street or",,

door to door involve a variety of speech interests-communication of information, dissemination and propagation of views and ideas and advocacy of",,

causes-that are within the First Amendment's protection. It was held that while soliciting financial support is subject to reasonable restriction, such",,

regulation must give due regard to the reality that the solicitation is characteristically intertwined with informative and perhaps persuasive speech,,

seeking support for particular causes or for particular views on economic, political or social issues, and to the reality that without solicitation the flow",,

of such information and advocacy would likely to cease. It was also observed that since the charitable solicitation is not primarily concerned with,,

providing information about the characteristics and cost of goods, it is not dealt with as a variety of purely speech.",,

115. It was held that the 75 per cent limitation was a direct and substantial limitation on protective activity which could not be sustained unless it,,

served a sufficiently strong, subordinating interest that the petitioner was entitled to protect. The U.S. Supreme Court found that prevention of fraud",,

was the Village's principal justification for prohibiting the solicitation by the charities that spend more than one quarter of their receipts on salaries and,,

administrative expenses. The other reason projected by the Village was protecting public safety and residential privacy. The Supreme Court found,,

these justifications as inadequate. It was observed that such interests could be better served by a measure less intrusive than a direct prohibition on,,

solicitation. Fraudulent misrepresentations could be prohibited and penal laws used to punish such conduct directly. The Supreme Court failed to,,

perceive any substantial relationship between the 75 percent requirement and the protection of public safety or of residential privacy. The court struck,,

down the ordinance under challenge.,,

116. The Supreme Court of Massachusetts in Craig Benefit v. City of Cambridge 424 Mass. 918 (1997) dealt with a constitutional challenge to the,,

General Law (Chapter 272, Section 66) which provided that â€œpersons wandering abroad and begging, or who go about from door to door or in",,

public or private ways, areas to which the general public is invited, or in other places for the purpose of begging or to receive alms, and who are not",,

licensed may be imprisoned for up to six months.â€ The Court concluded that (a) the peaceful begging engaged in by the plaintiff involves,,

communicative activity protected by the First Amendment; (b) the criminal sanction, imposed on that activity by the statute is content based and bans",,

the activity in traditional public forums, and therefore the statute is subjected to a strict scrutiny. The Court finally struck down Section 66 of the",,

General Law stating:,,

â€œ2. We conclude that (a) the peaceful begging engaged in by the plaintiff involves communicative activity protected by the First Amendment; (b),,

the criminal sanction, imposed on that activity by G.L.c.272, s.66, is content-and viewpoint-based and bans the activity in traditional public forums; and",,

(c) as a result, the statute is subject to strict scrutiny, a test which it cannot pass.",,

(a) It is beyond question that soliciting contributions is expressive activity that is protected by the First Amendment. In Schaumburg v. Citizens for a,,

Better Env't, 444 U.S. 620 (1980), the United States Supreme Court struck down an ordinance prohibiting solicitations by charitable organizations that",,

did not use at least seventy-five per cent of their revenues for charitable purposes. The Court held that â€œcharitable appeals for funds, on the street",,

or door to door, involve a variety of speech interests - communication of information, the dissemination and propagation of views and ideas, and the",,

advocacy of causes - that are within the protection of the First Amendmentâ€¦[S]olicitation is characteristically intertwined with informative and,,

perhaps persuasive speech seeking support for particular causes or for particular views on â€¦.social issues, and â€¦.. without solicitation the flow of",,

such information and advocacy would likely cease.â€ Schaumburg, supra at 632. See United States v. Kokinda, 497 U.S. 720, 725 (1990);",,

Riley v. National Fed'n of the Blind of N.C., Inc., 487 U.S. 781, 788 (1988); Secretary of State of Md. v. Joseph H. Munson Co., 467 U.S. 947, 961",,

(1984); Loper v. New York City Police Dep't, 999 F.2d 699, 704 (2d Cir. 1993).â€",,

(Emphasis by us),,

117. A constitutional challenge to beggary was also laid before the Federal Court in Grand Rapids, Michigan, United States (U.S. Court of Appeal,",,

6th Cir., 2013) in James Speet and Ernest Sims v. Bill Schuette No. 12-2213. The Federal Court held that begging or the soliciting of alms is a form of",,

solicitation and speech protected by the First Amendment to the Constitution. The Court struck down the law prohibiting panhandling as being overly,,

broad and violative of free speech and equality.,,

118. In Austria, begging was criminalized under Section 29 of the Salzburg Land Security enactment. The constitutionality of this provision was",,

challenged before the Constitutional Court of Austria in Case No. G155/10 in 2012. The enactment laid a complete ban on all forms of begging in,,

public places including a prohibition from invoking other people's plight in public places, say, for instance, the beggars standing or sitting in the street",,

calling for help from passers by using a sign. It also banned invoking other people in any unobtrusive and non-aggressive manner of verbally asking for,,

help. It was held by the Constitutional Court of Austria that the Act forbids solicitation of financial benefits in public places of foreign persons and,,

silent forms of begging and was thus violative of the freedom of communications under Article 10 of the European Convention of Human Rights. We,,

may usefully extract the relevant observations of the Court which read as follows:,,

â€œThe comprehensive prohibition of any kind of begging in public places violates Article 10 of ECHR: According to the settled case law of the,,

Constitutional Court Art 10 ECHR guarantees everyone freedom of communication. The scope of this provision, which includes the right of freedom",,

of opinion and freedom to receive and communicate messages and ideas without interference from public authorities, covers not only pure publicity but",,

also factual statements and advertising. The communication of facts is therefore also subject to the scope of Art 10 ECHR.â€,,

(Emphasis by us),,

119. Several instances are available of countries where begging has been completely de-criminalized. In Finland, since 1987, the poor law was",,

invalidated. This was followed in 2003 when the Public Order Act of Finland replaced any local government rules and completely decriminalized,,

begging. In Greece as well, under the original Article 407 of the Greek Penal Code, begging was punishable by up to 6 months in jail and up to a 3000",,

Euros' fine. After protests from street musicians in the city of Thessaloniki, this law was repealed in November, 2018",,

120. In Belgium, silent begging is not a crime.",,

121. The Jammu & Kashmir Prevention of Beggary Act, 1960, imposes a complete interdiction and prohibition on begging which is the beggars right",,

of freedom of speech and expression guaranteed under Article 19(1)(a). We have extracted hereinabove the explanation given by the respondents for,,

enacting the law in question.,,

122. We have also extracted above the statement made in the preamble that the law has been enacted for preventing beggary and making beggars,,

â€œgood citizensâ€.,,

123. In the Statement of Objects and Reasons, the legislature has declared that beggary had become a â€œnuisanceâ€ and deserved to be checked.",,

Additionally, it is stated that some persons adopted this as a profession and were exploiting the philanthropic instinct though capable of manual labour.",,

It is further stated that when we are marching towards a welfare State, it is high time to stop it and that legal measures are required to be adopted.",,

124. To achieve these objects and reasons, Section 3 of the Statute has declared begging as offence. After the summary inquiry, under Section 5, if",,

the Court is satisfied that the person detained was found begging, he shall be declared as a beggar and detained in a sick home, children's home or",,

beggar's home for a period not less than one year and not more than three years in the case of first offence.,,

125. The substantive legislation as well as the rules thereunder do not take into consideration the circumstances of the persons found begging or the,,

reasons for the same. What are the qualities required for consideration to be a good citizen are not disclosed.,,

126. We have elaborately discussed the circumstances which compel a person to beg. People have been compelled to beg on account of extreme,,

financial penury, deprivation and lack of means for sustenance. The legislation does not establish that the economic status of a beggar, who is ordered",,

by the court to be put in detention in terms of Section 5, improves by such detention. What would such a person do for sustenance when he is released",,

from the detention centre? What makes a beggar a â€œbad citizenâ€? And how detention of the beggar in the home would make a â€œgood citizenâ€,,

out of a beggar is not disclosed.,,

127. We have noticed above that begging would be covered within the exercise of the freedom of speech and expression of the beggar, a fundamental",,

right guaranteed under Article 19(1)(a) of the Constitution of India. Exercise of this right can only be subject to reasonable restrictions in accordance,,

with the purposes declared under clause 2 of Article 19. Merely because exercise of the right is perceived as a â€œnuisanceâ€ by some people would,,

not justify the absolute restriction on exercise of the right by any law which could be treated as a reasonable restriction permissible under Article,,

19(2).,,

128. Before us, it is not disputed that the fundamental rights of freedom of speech and expression guaranteed by Article 19(1)(a) is not an absolute",,

right. The right is subject to reasonable restrictions which would come within the purview of clause 2 of Article 19.,,

129. It is trite that so far as abridgement of the freedom of speech and expression is concerned for the restrictions to be considered reasonable and in,,

order to fall within Article 19(2) of the Constitution of India, must be couched in the narrowest possible terms or narrowly interpreted so as to abridge",,

or restrict only what is absolutely necessary. (Ref: (2015) 5 SCC 1: Shreya Singhal v. UOI, para 90; AIR 1962 SC 955; AIR 1962 (Supp.) 2 SCR",,

769: Kedar Nath Singh v. State of Bihar). An illuminating discussion on this is to be found in paras 90 to 94 of the Shreya Singhal wherein the Court,,

has discussed various judicial precedents.,,

130. So far as the judicial review of the reasonableness of a restriction as required under Article 19(2) is concerned, in AIR 1951 SC 118 Chintaman",,

Rao v. State of M.P., the Supreme Court has stated as follows;",,

â€œ6.The question for decision is whether the statute under the guise of protecting public interests arbitrarily interferes with private business &,,

imposes unreasonable & unnecessarily restrictive regulations upon lawful occupations; in other words, whether the total prohibition of carrying on the",,

business of manufacture of bidis within the agricultural season amounts to a reasonable restriction on the fundamental rights mentioned in Art. 19(1),,

(g) of the Constitution. Unless it is shown that there is a reasonable relation of the provisions of the Act to the purpose in vie, the right of freedom of",,

occupation and business cannot be curtailed by it.,,

7. The phrase â€œreasonable restrictionâ€ connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an,,

excessive nature, beyond what is required in the interests of the public. The word â€œreasonableâ€ implies intelligent care and deliberation, that is, the",,

choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of,,

reasonableness and unless it strikes a proper balance between the freedom guaranteed in article 19(1)(g) and the social control permitted by clause (6),,

of article 19, it must be held to be wanting in that quality.â€",,

(Emphasis supplied),,

131. We have held that begging necessarily entails exercise of the right of freedom of speech and expression guaranteed under Article 19(1)(a) of the,,

Constitution of India. Article 19(2) thus enables the respondents only to regulate a right guaranteed under Art 19(1)(a), subject to strict guidelines and",,

standards as could be imposed only by narrowly drawn limits. Such regulation has to be in consonance with the objects laid down in Article 19(2). Is,,

the prohibition imposed by the J&K Prevention of Beggary Act, 1960 protected under Article 19(2) of the Constitution of India?",,

132. Given the above discussion, it cannot be disputed that the impugned legislation absolutely interdicts the right to freedom of speech and expression",,

of beggars. The reasons expounded by the respondents in the counter affidavit constituting the necessity for enacting the law do not specifically advert,,

to any of the circumstances detailed in Article 19(2) which could justify imposition of restrictions on the right conferred under Article 19(1)(a).,,

133. The respondents have not asserted that the restrictions were necessary in the interests of public order or decency or morality in the community,,

(as permitted by Article 19(2). Though neither pleaded nor urged before us, is it possible to contend that the stated object of the law as pleaded by",,

respondents that the Act is intended to undermine the act of begging as some organized gangs are exploiting children and forcing them to go for,,

begging, be held to be a permissible restriction in terms of Article 19(2)?",,

134. In the present case, none of the reasons set out in the counter affidavit, as extracted above, make out even remotely that the necessity for the",,

restriction or the prohibition imposed by the legislation is to maintain law and order.,,

135. Begging may entail only passive and silent communication of the condition of a beggar and his peaceful entreaty for assistance. Furthermore, the",,

act of begging stands penalized in the legislation in public places which are open to all and are not exclusive. It is not explained by the respondents as,,

to how any of such activity adversely impacts the law and order situation.,,

136. We are unable to comprehend as to what would be indecent about or impacting public order if someone is peacefully saying â€œI have no,,

means, I have to eat, please help meâ€.",,

137. The respondents have suggested also that beggary has become a â€œnuisanceâ€ and also adverted to beggary as a profession and exploitation of,,

the philanthropic instinct though capable of manual labour. None of these reasons can be covered amongst the conditions cited in Article 19(2) which,,

permit curtailment of the right under Article 19(1)(a).,,

138. Amongst the reasons cited by the respondents, it has been stated in the counter affidavit that the provisions of the law enable beggars to undergo",,

a training to earn a livelihood in future; that the restrictions are necessary to maintain law and order; that no fundamental or constitutional rights of the,,

persons lodged in the homes are violated; that Jammu & Kashmir receives a large number of tourists from outside the State/country and begging often,,

causes annoyance to the visitors by such persons; undermine the act of begging as some organized gangs are exploiting children and force them to go,,

for begging; the act of begging that actually happens is so systemized and practiced as a profession. Nothing has been placed before us to support any,,

of these statements.,,

139. In the counter affidavit, the respondents have made a bald statement that beggars undergo training to earn livelihood in future. No details of the",,

training provided or the outcome thereof is disclosed. What is the law and order problem which results on account of begging is not also not disclosed.,,

140. Other than a backhanded reference in the reply filed by the respondents, to large number of tourists visiting the State and begging â€œoftenâ€",,

causing annoyance to the visitors, the respondents have not made any reference to any specific instance when begging has actually caused annoyance",,

to the visitors. No empirical study or examination of this issue is available. The respondents also do not refer to any complaint having been made by,,

any person in this regard. It also appears that there was no material placed before the authorities at the time legislation was enacted. These,,

submissions in the counter affidavit, and as orally pressed before us, are found to be baseless. Even otherwise â€œannoyanceâ€ to a visitor, or even a",,

resident of the State, rests on individual sensitivities. What causes irritation or annoyance to one person, may be a reason for invocation of sympathy,",,

or, be inconsequential to another. Such perceived â€œsubjective annoyanceâ€ to a casual visitor cannot justify under Article 19(2), a complete",,

prohibition on the exercise of a right under Article 19(1)(a) of a person.,,

141. Before us, there is no submission that the activity of the beggars impacts any of the conditions detailed in Article 19(2) i.e., the sovereignty and",,

integrity of India or the security of the State or friendly relations with foreign states or public order or decency or morality. Certainly, the respondents",,

cannot contend that begging requires to be restricted on the ground that it has any relation to contempt of court or results in defamation of any person,,

or results in incitement of an offence.,,

142. The legislation has been assailed by Mr. Suhail Rashid Bhat also for the reason that Section 2(a)(iv) of the statute and its other provisions,,

interdict the freedom of a person to move freely through the territory of India guaranteed under Article 19(1)(d) of the Constitution of India.,,

143. As discussed hereinabove, Section 2(a)(iv) include â€œwandering aboutâ€ or â€œremaining in any public placeâ€ or â€œpublic worshipâ€ in such",,

a condition or manner as it makes likely that a person doing so is soliciting alms and is â€œhaving no visible means of subsistenceâ€.,,

144. Article 19(1)(d) guarantees to all citizens of India the right to â€œmove freely throughout the territory of Indiaâ€. Article 19(1)(e) ensures to the,,

citizens the right to â€œreside and settle in any part of the territory of India.â€ Section 2(a)(iv) specifically refers to public places. By the very,,

description public places are meant for the enjoyment of every member of the public without any exception. Implicit in the impugned legislation is the,,

intent that it proposes to restrict the Constitutional right of freedom of movement in such places of the poor and the marginalized. Thus Section 2(a),,

(iv), by restricting the right of freedom to move freely through the territory of India, results in violation of their rights guaranteed under Article 19(1)(d)",,

of the Constitution of India and is not sustainable for this reason as well.,,

145. The present challenge merits consideration from another angle as well. Proportionality as a constitutional doctrine has been highlighted in the,,

pronouncement of the Supreme Court reported at (2001) 2 SCC 386 (at page 400-401) Om Kumar v. Union of India, in the following terms:",,

â€œ30. On account of a Chapter on Fundamental Rights in Part III of our Constitution right from 1950, Indian Courts did not suffer from the disability",,

similar to the one experienced by English Courts for declaring as unconstitutional legislation on the principle of proportionality or reading them in a,,

manner consistent with the charter of rights. Ever since 1950, the principle of â€œproportionalityâ€ has indeed been applied vigorously to",,

legislative (and administrative) action in India. While dealing with the validity of legislation infringing fundamental freedoms enumerated in Article,,

19(1) of the Constitution of India â€" such as freedom of speech and expression, freedom to assemble peaceably, freedom to form associations and",,

unions, freedom to move freely throughout the territory of India, freedom to reside and settle in any part of India â€" this Court has occasion to",,

consider whether the restrictions imposed by legislation were disproportionate to the situation and were not the least restrictive of the choices. The,,

burden of proof to show that the restriction was reasonable lay on the State. â€œReasonable restrictionsâ€ under Articles 19(2) to (6) could be,,

imposed on these freedoms only by legislation and courts had occasion throughout to consider the proportionality of the restrictions. In numerous,,

judgments of this Court, the extent to which â€œreasonable restrictionsâ€ could be imposed was considered. In Chintaman Rao v. State of M.P. [AIR",,

1951 SC 118: 1950 SCR 759] Mahajan, J. (as he then was) observed that â€œreasonable restrictionsâ€ which the State could impose on the",,

fundamental rights â€œshould not be arbitrary or of an excessive nature, beyond what is required in the interests of the publicâ€. â€œReasonableâ€",,

implied intelligent care and deliberation, that is, the choice of a course which reason dictated. Legislation which arbitrarily or excessively invaded the",,

right could not be said to contain the quality of reasonableness unless it struck a proper balance between the rights guaranteed and the control,,

permissible under Articles 19(2) to (6). Otherwise, it must be held to be wanting in that quality. Patanjali Sastri, C.J. in State of Madras v. V.G.",,

Row [AIR 1952 SC 196: 1952 SCR 597: 1952 Cri LJ 966,]observed that the Court must keep in mind the â€œnature of the right alleged to have been",,

infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the",,

imposition, the prevailing conditions at the timeâ€. This principle of proportionality vis-Ã -vis legislation was referred to by Jeevan Reddy, J. in State of",,

A.P. v. McDowell & Co. [(1996) 3 SCC 709] recently. This level of scrutiny has been a common feature in the High Court and the Supreme Court in,,

the last fifty years. Decided cases run into thousands.â€,,

(Emphasis by us),,

146. Challenges to legislation on the ground of its impact being disproportionate to the fact situation which it was attempting to address also stands,,

considered in several cases. In (2017) 9 SCC 1 : AIR 2017 SC 4609 Shayara Bano v. Union of India (in para 272(4) at page 4823), the Supreme",,

Court had occasion to consider the submission that the proportionality doctrine which was doubtful even an administrative law should not, therefore,",,

apply to Article 14 in constitutional law.,,

147. The restrictions imposed by the Jammu & Kashmir Prevention of Beggary Act, 1960, which cast an absolute prohibition on the rights of persons",,

guaranteed under Article 19(1)(a) have to be held to be the restrictions as are disproportionate to the object sought to be achieved by the statute and,,

unsustainable for this reason as well.,,

148. We hold that the provisions of J&K Prevention of Beggary Act, 1960, unreasonably, unfairly and arbitrarily invades the right of free speech and",,

expression ensured under Article 19(1)(a) of the Constitution; that it clearly upsets the balance between the right guaranteed and such reasonable,,

restrictions that Article 19(2) constitutionally permits as may be imposed on such right and that such restrictions are not required in the interest of the,,

public.,,

149. Looked at from any angle, the restrictions which have been imposed by the impugned legislation and the curtailment of the right to freedom of",,

speech and expression of the beggars are disproportionate to the situation sought to be addressed and in appropriate and therefore are not saved as,,

permissible regulation under Article 19(2) of the Constitution of India.,,

(XI) The definition of begging-its broad sweep and vagueness,,

150. A staunch challenge has also been laid to the definition of â€œbeggingâ€ as contained in Section 2(a) of the Act on the ground that it is broad and,,

vague. Before we examine this objection, let us consider the parameters on which a definition can be so challenged.",,

151. In a recent pronouncement reported at (2015) 5 SCC 1 Shreya Singhal v. Union of India, the Supreme Court of India was called upon to consider",,

the constitutionality of Section 66A of the Information Technology Act, which creates a penal offence, inter alia, on the ground that the expressions",,

used in Section 66A were completely open and undefined in contrast to Section 66B to Section 67B (of the same legislation) wherein mens rea was an,,

ingredient and the expressions â€œdishonestlyâ€ and â€œfraudulentlyâ€ stood defined with some degree of specificity, unlike the expressions used in",,

Section 66A. It was noticed that the provisions contained in Sections 66B up to Section 67B also provided for various punishments for offences that,,

are clearly made out. It was observed that a number of expressions which had been used in Section 66A by the legislature are also to be found in,,

Section 268 of the Indian Penal Code. While these expressions were ingredients for the offence of â€˜public nuisanceâ€™ under Section 268 of the,,

IPC, they were offences by themselves under Section 66A. It was pointed out that the expression â€˜annoyanceâ€™ used in Section 66A is not",,

defined whereas â€˜annoyanceâ€™ is defined in Sections 294 and 510 of the Indian Penal Code. Section 66A did not even import the definitions of,,

these expressions as contained in the Indian Penal Code. The Supreme Court has held that Section 66A was constitutionally vague and that it,,

arbitrarily, excessively and disproportionally invaded the Constitutional right of free speech guaranteed under Article 19 of the Constitution of India",,

putting unreasonable restrictions thereon and could not be saved constitutionally.,,

152. In para 65 of Shreya Singhal, relying upon the pronouncement reported at (1970) 2 SCC 780 : (1971) 2 SCR 446 K.A. Abbas v. The Union of",,

India, the Supreme Court dispelled the notion that doctrine of vagueness was not a part of the constitutional law of India.",,

153. We extract hereunder the observations in K.A. Abbas which must guide the consideration of the issue before us:,,

â€œ44. This brings us to the manner of the exercise of control and restriction by the directions. Here the argument is that most of the regulations are,,

vague and further that they leave no scope for the exercise of creative genius in the field of art. This poses the first question before us whether the,,

â€˜void for vaguenessâ€™ doctrine is applicable. Reliance in this connection is placed on Municipal Committee Amritsar v. State of Punjab. In that,,

case a Division Bench of this Court lays down that an Indian Act cannot be declared invalid on the ground that it violates the due process clause or,,

that it is vagueâ€¦â€¦,,

These observations which are clearly obiter are apt to be too generally applied and need to be explained. While it is true that the principles evolved by,,

the Supreme Court of the United States of America in the application of the Fourteenth Amendment were eschewed in our Constitution and instead,,

the limits of restrictions on each fundamental right were indicated in the clauses that follow the first clause of the nineteenth article, it cannot be said",,

as an absolute principle that no law will be considered bad for sheer vagueness. There is ample authority for the proposition that a law affecting,,

fundamental rights may be so considered.,,

xxxxxxxxxxxxxxxxxxxxxxx,,

The real rule is that if a law is vague or appears to be so, the court must try to construe it, as far as may be, and language permitting, the construction",,

sought to be placed on it, must be in accordance with the intention of the legislature. Thus if the law is open to diverse construction, that construction",,

which accords best with the intention of the legislature and advances the purpose of legislation, is to be preferred. Where however the law admits of",,

no such construction and the persons applying it are in a boundless sea of uncertainty and the law prima facie takes away a guaranteed freedom, the",,

law must be held to offend the Constitution as was done in the case of the Goonda Act. This is not application of the doctrine of due process. The,,

invalidity arises from the probability of the misuse of the law to the detriment of the individual. If possible, the Court instead of striking down the law",,

may itself draw the line of demarcation where possible but this effort should be sparingly made and only in the clearest of cases.â€ (at pages 470,",,

471)â€,,

(Emphasis by us),,

154. It is noteworthy that while after K. A. Abbas, several legislations have been struck down as being void for vagueness, however, Shreya",,

Singhal appears to be the first and only judgment where a speech restricting law has been struck down on grounds of vagueness.,,

155. In support of the conclusions reached by it on the argument of the applicability of principle of a legislation being void on application of the doctrine,,

of vagueness, in Shreya Singhal the Supreme Court, has relied on other judicial precedents as well which lend illumination and guidance to our",,

consideration of the constitutional permissibility of the prohibitions imposed by the J&K Prevention of Beggary Act, 1960.",,

156. In para 64 of Shreya Singhal, the Supreme Court considered the judicial precedent reported at(1961) 1 SCR 970 State of Madhya",,

Pradesh v. Baldeo Prasad wherein the inclusive definition of the word â€œgoondaâ€ was held to be vague and the offence created by Section 4A of,,

the Goondas Act was found violative of Article 19(1(d) of the Constitution of India, holding that the definition afforded no assistance in deciding which",,

citizen could be put into the category of the word â€œgoondaâ€; that the definition of â€œgoondaâ€ was an inclusive definition which did not indicate,,

which tests have to be applied in deciding whether a person falls in the first part of the definition; that the Act authorizes the District Magistrate to,,

deprive a citizen of his fundamental rights under Article 19(d) and (e). The Supreme Court had thus struck down the speech restricting law on the,,

ground of vagueness observing that it would not be permissible for the legislature to cast â€œa net large enough to catch all possible offenders and,,

leave it to the Court to step in and say who could be rightfully detained and who could be set at liberty.â€,,

157. We may also usefully refer to the pronouncement of the Supreme Court reported at (1969) 2 SCC 166 Harakchand Ratanchand,,

Banthia v. Union of India, (as relied upon by the Supreme Court in para 66 of Shreya Singhal). In Harakchand Ratanchand Banthia, the Supreme",,

Court was called upon to consider the constitutionality of Section 27 of the Gold Control Act which provided for licensing of traders on the ground that,,

the provision was uncertain, vague and unintelligible. The Supreme Court had held as follows:",,

â€œ21. We now come to Section 27 of the Act which relates to licensing of dealers. It was stated on behalf of the petitioners that the conditions,,

imposed by sub-section (6) of Section 27 for the grant or renewal of licences are uncertain, vague and unintelligible and consequently wide and",,

unfettered power was conferred upon the statutory authorities in the matter of grant or renewal of licence. In our opinion this contention is well,,

founded and must be accepted as correct. Section 27(6)(a) states that in the matter of issue or renewal of licences the Administrator shall have regard,,

to â€œthe number of dealers existing in the region in which the applicant intends to carry on business as a dealerâ€. But the word â€œregionâ€,,

is nowhere defined in the Act. Similarly Section 27(6)(b) requires the Administrator to have regard to â€œthe anticipated demand, as estimated by",,

him, for ornaments in that region.â€ The expression â€œanticipated demandâ€ is a vague expression which is not capable of objective assessment and",,

is bound to lead to a great deal of uncertainty. Similarly the expression â€œsuitability of the applicantâ€ in Section 27(6)(e) and â€œpublic interestâ€ in,,

Section 27(6)(g) do not provide any objective standard or norm or guidance. For these reasons it must be held that clauses (a), (d), (e) and (g) of",,

Section 27(6) impose unreasonable restrictions on the fundamental right of the petitioner to carry on business and are constitutionally invalid.,,

xxxxxxxxxxxxxxâ€,,

(Emphasis by us),,

158. In para 67 of Shreya Singhal, the Supreme Court has referred to the decision reported at(1982) 1 SCC 271 : (1982) 2 SCR 272 A.K.",,

Roy v. Union of India, wherein the constitutionality of Section 3 of the National Security Ordinance was under consideration. The Supreme Court had",,

read down a part of Section 3 on the ground that â€œacting in any manner prejudicial to the maintenance of supplies and services essential to the,,

communityâ€ was an expression so vague that it is capable of wanton abuse.,,

159. Reference stands made in Shreya Singhal v. Union of India to the judgment of the Supreme Court reported in Grayned v. City of Rockford 33 L,,

Ed 2d 222: 408 U.S. 104, 108-109 (1972), wherein it was observed that the void for vagueness doctrine requires to address at least the following three",,

connected but discrete due process concerns:,,

â€œIt is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several,,

important values. First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of",,

ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not",,

providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who",,

apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis,",,

with the attendant dangers of arbitrary and discriminatory application. Third, but related, where a vague statute â€˜abut(s) upon sensitive areas of",,

basic First Amendment freedoms, it â€˜operates to inhibit the exercise of (those) freedoms.â€™ Uncertain meanings inevitably lead citizens to",,

â€œsteer far wider of the unlawful zoneâ€™ . . . than if the boundaries of the forbidden areas were clearly marked.â€™â€ at page 227-228)â€,,

(Emphasis by us),,

160. The legislation in question before us must address these three concerns.,,

161. In Shreya Singhal, the Supreme Court conducted an elaborate examination of the Indian and American jurisprudence elaborating on the principles",,

of vagueness and concluded that the expressions used in Section 66A of the Information Technology Act, were completely â€œopen ended and un-",,

defined.â€ (para 72 of the SCC).,,

162. Further noting the subjectivity of the expressions used in Section 66A of the I.T. Act, the Supreme Court observed that â€œâ€¦â€¦.every",,

expression used is nebulous in meaning. What may be offensive to one may not be offensive to another. What may cause annoyance or inconvenience,,

to one may not cause annoyance or inconvenience to another. Even the expression â€œpersistentlyâ€ is completely imprecise-suppose a message is,,

sent thrice, can it be said that it was sent â€œpersistentlyâ€?â€",,

163. We have extracted above the definition as contained in Section 2(a) of the Jammu and Kashmir Prevention of Beggary Act. As per clause (i) of,,

sub-section (a) of Section 2, begging means â€œsoliciting almsâ€ in a â€œpublic placeâ€, or â€œin or about a temple, mosque or other place of public",,

worshipâ€, â€œwhether or not under any pretenceâ€.",,

164. This definition of â€˜beggingâ€™ as contained in the Jammu & Kashmir Prevention of Beggary Act, is at variance with the definition contained",,

in the Bombay Prevention of Begging Act, 1959. The Bombay Act does not contain any reference to a temple, mosque or a place of public worship.",,

Furthermore, under the Bombay Prevention of Begging Act, the expression â€œpretenceâ€ is qualified by use of the expression â€œsuch as singing,",,

dancing, fortune telling, performing or offering any article for saleâ€. As a result, several innocent activities (such as singing, dancing etc. in a public",,

place) for which one may receive money from the bystanders, may be considered permissible and legitimate activity to one person, while the same",,

may be covered under the description â€œsoliciting alms to anotherâ€.,,

165. The definition as contained in Section 2(a)(i) of the Jammu & Kashmir enactment also brings into its net, every possible vulnerable person",,

especially having failed to elaborate on the expression â€œunder any pretenceâ€. Legitimate activities in Jammu & Kashmir (which stand specifically,,

criminalized under the Bombay enactment) inclusive of singing, dancing, fortune telling, any other performance as well as offering articles for sale are",,

left to the perception of the enforcing agency to construe as an act of solicitation of alms, to apply the punitive provisions of the law. Thus, street",,

performers; traditional artistes as madaris, puppeteers; petty vendors and people struggling to make ends meet by display of some art or skill in a",,

public space would be rendered susceptible to prosecution under this law as they may be perceived to be â€œsoliciting almsâ€.,,

166. Section 2(a)(i) thus makes no distinction between persons who were actually receiving money for authorized purposes as, say for instance,",,

against sale of goods. It does not explain â€œpretenceâ€ which, perse is an extremely vague, indefinite, imprecise expression, to take action for",,

beggary.,,

167. In clause (iii) of Section 2(a) of the enactment, the legislature has used the expression â€œexposing or exhibitingâ€ with the object of obtaining or",,

extorting alms which would render a person liable for criminal prosecution under this law. While the presence in a public place of one who stands,,

deprived of a limb, may be completely natural to one person, another may perceive the same as an act of exposure or exhibition of the disability to be",,

covered under Section 2(a)(iii). By such a widely worded definition, the legislation has rendered vulnerable every person been born disabled or who",,

may have suffered a physical deformity in an accident or otherwise; somebody suffering from disease say for instance leprosy even though they are,,

not begging.,,

168. The sweep of the legislation as to what is to constitute â€œobject of securing almsâ€ is also not stated. Thus, it is left to the absolute arbitrary",,

perception and view of the law enforcing official to assess as to whether an injury is being â€œexposedâ€ or â€œexhibitedâ€ to obtain or extort alms.,,

169. Clause (iv) of Section 2(a), is even broader than the other clauses as it defines begging as meaning having â€œno visible means of subsistenceâ€",,

and â€œwandering aboutâ€ or â€œremaining in any public placeâ€ or â€œin a temple, mosque or other place of public worshipâ€ in such a condition",,

or manner as â€œmakes it likeâ€ that the person doing so exists by soliciting alms.,,

170. Clause (iv) goes way beyond the act of â€œsoliciting almsâ€. It takes into its sweep, entire way of life of entire communities when it criminalizes",,

â€œwandering aboutâ€ or â€œremaining in any public placeâ€. This definition overlooks the hard reality that there are large numbers of homeless in,,

the community and even larger number without any fixed abode who live only in public places. It also ignores the reality that in the mountainous,,

regions of Jammu & Kashmir, there are legally recognized nomadic communities which include the Gujjars and the Bakerwals. These communities do",,

not remain in a single place and move from one place to another. The community displays none of the conventional means of subsistence or,,

permanent residence. On application of the above statutory definition of begging the very presence and manner of existence of these nomads could be,,

easily perceived as â€œbeggingâ€ rendering them liable for prosecution under the legislation under question. Thus, the law as it exists in Section 2(a)",,

(iv) would actually punish the way of life of the nomads which is a life style different from commonly perceived notions of what should be an,,

â€œacceptableâ€ life style.,,

171. It needs no elaboration that homelessness is also compelled by the reality of abject poverty, lack of income and employment, deprivation of public",,

assistance and government support, no sufficient housing, illness including sickness including mental ailment or even addiction disorders.",,

172. We find that the â€œhomelessâ€ has been defined by the court of Appeals of British Columbia, Canada, in the judgment reported at 2009 BCCA",,

563 [Adams BCCA]: Victoria (City) v. Adams, in the following terms;",,

â€œâ€¦â€¦â€¦.A person who has neither a fixed address nor a predictable safe residence to return to on a daily basisâ€,,

173. This definition squarely applies to the homeless in this State as well.,,

174. This condition results in the homeless having to â€œwander aboutâ€ or to â€œremain in public placeâ€ or to seek shelter in â€œtemple, mosque",,

or other place of public worshipâ€,,

175. Section 2(a)(iv) thus also treats homelessness and begging synonymously. It also does not require a person to actually â€˜begâ€™ for application,,

of the penal provisions.,,

176. Does â€œvisible means of subsistenceâ€ envisage waving your economic prosperity in public spaces? Or is it sufficient to have a hefty bank,,

balance?,,

177. â€œHaving no visible means of subsistenceâ€ and the other conditions spell out in Section 2(a) clearly advert to a condition of a person. It does,,

not render punitive any particular act or omission on the part of the person but would render a person liable to be prosecuted under the enactment if he,,

did not make a public display means of subsistence or his wealth and, again, is left completely to the perception by the law enforcing authority that he",,

or she existed so by soliciting alms.,,

178. Clause (iv) of Section 2(a) lays down no parameters at all. On what would rest the presumption that a person exists only by soliciting alms?,,

These assessments are completely undefined and indeterminate. We have no manner of doubt that the definition of begging in Section 2(a)(iv) leaves,,

culpability completely to the imagination and opinion of the person who is enforcing the provisions of the law.,,

179. For the same reasons Clause (v) of Section 2(a) is completely unclear as to what is the action which could be penalized. The legislature has,,

losely used the expression â€œallowing himself to be used as an exhibitâ€ for the purposes of soliciting alms. At the same time, the legislation has",,

made an exception of actions for â€œsoliciting money or fee or gift for a purpose authorized by any law or authorized in the prescribed manner by the,,

District Magistrate.â€ The legislation fails to define or describe what would be a â€œpurpose authorized by any lawâ€. Such purpose could very well,,

include soliciting money for dispensation in charity. Thus, the legislation makes a difference between a person soliciting money or fee or gift for a",,

purpose authorized by the District Magistrate and a person seeking assistance for self.,,

180. Just as in Section 66A of the Information Technology Act, we find that in Section 2(a) of the Jammu & Kashmir Prevention of Beggary Act,",,

1960, there is complete absence of the requirement of any â€œmens reaâ€ for the conduct of the person to constitute a criminal offence.",,

181. Similarly, the legislature has used the series of expressions including â€œsolicitingâ€; â€œunder any pretenceâ€; â€œexposing or exhibitingâ€;",,

â€œobtaining or extortingâ€; â€œno visible meansâ€; â€œwandering aboutâ€; â€œor remaining in such condition or mannerâ€; and â€œmake it likeâ€,,

in Section 2(a) which defines begging under the Jammu & Kashmir Prevention of Beggary Act, 1960, which would have different interpretations to",,

different individuals.,,

182. The expressions used in Section 2(a) are so broad that they do not give any notice at all to anybody as to what is the conduct which has been,,

legislatively forbidden.,,

183. Every expression used in Section 2(a) is inchoate and undefined. Borrowing the words used by the Supreme Court to describe legislation,,

in Shreya Singhal, we also find that the expressions used to describe â€œbeggingâ€ in Section 2(a) of the Jammu & Kashmir Prevention of Beggary",,

Act, 1960, are nebulous, to say the least.",,

184. Section 2(a)(v) of the legislation contemplates protection of persons or organized groups seeking dispensation of charity for which the District,,

Magistrate may permit them. Thus, it can very well be urged that the statute is â€œview pointâ€ based and the restrictions are premised on",,

the â€œcontent of the communicationâ€ because it supports the view that poor people should not be making public requests for their own needs but,,

the poor people could be helped by such organized groups who have been permitted to help them. The statute thus discriminates between lawful and,,

unlawful conduct based upon the content of the communication.,,

185. It is also noteworthy that Section 2(a) draws a distinction based on the content of the message. Under this law only such communicative activity,,

that can be considered soliciting alms, i.e. direct charitable assistance for the beggar himself, constitutes a crime. Therefore, a person can legitimately",,

solicit money for other purposes, say, as donation for a school function and school activities; or money for social or political causes; or a request for",,

assistance when a bag is stolen or lost. Such conduct would also be similar to â€œwanderingâ€¦â€¦â€¦â€¦.. in any public placeâ€. However, requesting",,

strangers for such assistance would not draw you within the net of definition of â€œbeggingâ€ under Section 2(a) of the statute. There is also no,,

prohibition under the impugned legislation to speaking at will to strangers or soliciting information, say for instance, seeking the time of the day or",,

direction. It is only approaching any person and soliciting alms which is prohibited.,,

186. The law, in terms, clearly draws a distinction based on the content of the message conveyed and only such communication that calls for direct",,

charitable assistance constitutes a crime. The statute imposes a total prohibition on peaceful requests by the poor for financial aid. It punishes such,,

requests for help to meet their basic human needs while protecting similar requests by more affluent people in such precarious situations (say a lost,,

bag) as cited above. Thus, it is the content of the persons' message which determines the culpability for criminal offence under the Act.",,

187. Is there any real distinction between an individual soliciting alms for himself or, on the other hand, soliciting as envisaged by Section 2(a)(v)",,

â€œfor a purpose authorized by any lawâ€ or â€œauthorizedâ€¦â€¦â€¦. by the District Magistrateâ€?,,

188. Is it possible to say that there is a difference between such a person who is soliciting assistance for himself and those who solicit for organized,,

charities, with regard to the message that they convey? While the former is communicating a personal need, the later are communicating needs of",,

others. Are not both soliciting charity, one for self and one for others? In our view, the distinction which the legislation has sought to draw is neither",,

real nor significant enough to justify the restriction.,,

189. We find that this very view stands taken in the judgment of the Supreme Court of Massachusetts in Craig Benefit v. City of Cambridge 424,,

Mass. 918 (1997) whence it was stated thus:,,

â€œBegging is generally defined as speech in which the person seeking assistance either asks for money or expresses need through some other clear,,

form of communication such as a sign, a donation cup, or an outstretched hand. Many times a beggar's solicitations will be accompanied, as were the",,

plaintiff's, by communications that convey social or political messages. â€œEven without particularized speech, however, the presence of an unkempt",,

and disheveled person holding out his or her hand or a cup to receive a donation itself conveys a message of need for support and assistance, We see",,

little difference between those who solicit for organized charities and those who solicit for themselves in regard to the message conveyed. The former,,

are communicating the needs of others while the latter are communicating their personal needs. Both solicit the charity of others. The distinction is not,,

a significant one for First Amendment purposes. Loper, supra at 704. Indeed, it would be illogical to restrict the right of the individual beggar to seek",,

assistance for himself while protecting the right of a charitable organization to solicit funds on his behalf. Such a conclusion would require citizens to,,

organize in order to avail themselves of free speech guarantees, a requirement that contradicts the policies underlying the First Amendment. We",,

conclude, on the strength of the charitable solicitation cases cited above, that there is no distinction of constitutional dimension between soliciting funds",,

for oneself and for charities and therefore that peaceful begging constitutes communicative activity protected by the First Amendment. [Note 4]â€,,

(Emphasis by us),,

190. The Supreme Court of the United States of America had an occasion to consider the constitutionality of the Florida Vagrancy Law in the,,

judgment reported at 405 U.S. 156 (1972) Papachristou v. Jacksonville. The Supreme Court had ruled that the law (which was similar to the Begging,,

enactment being examined by us) was unconstitutional because it was too vague to be understood. The law was criticized for the reason that it,,

punishes a person's condition rather than his acts. This case involved eight defendants who were convicted in a Florida Municipal Court of violating a,,

Jacksonville, Florida, vagrancy ordinance. Their convictions were affirmed by a Florida Circuit Court in a consolidated appeal and their petition for",,

certiorari was denied by the District Court of appeal. The US Supreme Court granted the petition for certiorari. The opinion of the Court was,,

delivered by Douglas, J., in which all members joined except Powell and Rehnquist, JJ., who did not take part in the consideration or decision. The",,

court considered the historical background in which the Vagrancy Ordinance was enacted. It was observed that the Jacksonville Ordinance made,,

criminal activities which by modern standards are normally innocent, that it failed to give a person of ordinary intelligence fair notice that his",,

contemplated conduct was forbidden by the law and was voided on the ground of vagueness holding as follows:,,

â€œThe theory of Elizabethan poor laws no longer fits the facts (Edwards v. California, 314 U.S. 160, 314 U.S. 174). The conditions which spawned",,

these laws may be gone, but the archaic classifications remain.â€",,

This ordinance is void for vagueness, both in the sense that it â€œfails to give a person of ordinary intelligence fair notice that his contemplated",,

conduct is forbidden by the statuteâ€, (United States v. Harriss, 347 U.S. 612, 347 U.S. 617), and because it encourages arbitrary and erratic arrests",,

and convictions. (Thornhill v. Alabama, 310 U.S. 88; Herndon v. Lowry, 301 U.S. 242).",,

Living under a rule of law entails various suppositions, one of which is that â€œ[all persons] are entitled to be informed as to what the State",,

commands or forbids. (Lanzetta v. New Jersey, 306 U.S. 451, 306 U.S. 453)",,

Lanzetta is one of a well recognized group of cases insisting that the law give fair notice of the offending conduct. (Connally v. General Construction,,

Co., 269 U.S. 385, 269 U.S. 391; Cline v. Frink Dairy Co., 274 U.S. 445; United States v. Cohen Grocery Co., 255 U.S. 81). In the field of regulatory",,

statutes governing business activities, where the acts limited are in a narrow category, greater leeway is allowed. (Boyce Motor Lines, Inc v. United",,

States, 342 U.S. 337; United States v. National Dairy Products Corp., 372 U.S. 29; United States v. Petrillo, 332 U.S.).",,

The poor among us, the minorities, the average householder, are not in business and not alerted to the regulatory schemes of vagrancy laws; and we",,

assume they would have no understanding of their meaning and impact if they read them. Nor are they protected from being caught in the vagrancy,,

net by the necessity of having a specific intent to commit an unlawful act. (Screws v. United States, 325 U.S. 91; Boyce Motor Lines, Inc. v. United",,

States).,,

â€œPersons able to work but habitually living upon the earnings of their wives or minor childrenâ€â€"like habitually living â€œwithout visible means of,,

supportâ€ -might implicate unemployed pillars of the community who have married rich wives.,,

â€œPersons able to work but habitually living upon the earnings of their wives or minor childrenâ€ may also embrace unemployed people out of the,,

labor marker, by reason of a recession or disemployed by reason of technological or so-called structural displacements.â€",,

(Emphasis by us),,

191. So far as the question of vagueness of a legislation is concerned there is one more angle which this issue has to be considered. It is well settled,,

penal statute must notify all persons as of the fact that what conduct would be perceived as criminal. An illuminating discussion on this aspect is to be,,

found in Shreya Singhal which illustrates that the same conduct evaluated in terms of an unclear statute, when placed even before two judicially",,

trained minds could result in diametrically opposite conclusions. This by itself established that the legislation in question did not lay down any clear,,

standards and had to be voided on the ground of vagueness. In this regard we may usefully extract paras 83, 84 and 85 of the pronouncement",,

in Shreya Singhal which reads thus;,,

â€œ83. Similarly in Chambers v. Director of Public Prosecutions, [2013] 1 W.L.R. 1833, the Queen's Bench was faced with the following facts:",,

(WLR p.1833),,

â€œFollowing an alert on the Internet social network, Twitter, the defendant became aware that, due to adverse weather conditions, an airport from",,

which he was due to travel nine days later was closed. He responded by posting several â€œtweetsâ€ on Twitter in his own name, including the",,

following: â€œCrap1 Robin Hood Airport is closed. You've got a week and a bit to get your shit together otherwise I am blowing the airport sky,,

highâ€ None of the defendant's â€œfollowersâ€ who read the posting was alarmed by it at the time. Some five days after its posting the defendant's,,

tweet was read by the duty manager responsible for security at the airport on a general Internet search for tweets relating to the airport. Though not,,

believed to be a credible threat the matter was reported to the police. In interview the defendant asserted that the tweet was a joke and not intended,,

to be menacing. The defendant was charged with sending by a public electronic communications network a message of a menacing character,,

contrary to section 127(1)(a) of the Communications Act 2003. He was convicted in a magistrates' court and, on appeal, the Crown Court upheld the",,

conviction, being satisfied that the message was â€œmenacing per seâ€ and that the defendant was, at the very least, aware that his message was of",,

a menacing character.â€,,

84. The Crown Court was satisfied that the message in question was â€œmenacingâ€ stating that an ordinary person seeing the tweet would be,,

alarmed and, therefore, such message would be â€œmenacingâ€. The Queen's Bench Division reversed the Crown Court stating: (Director of Public",,

Prosecutions case, WLR p.1842, para 31)",,

â€œ31. Before concluding that a message is criminal on the basis that it represents a menace, its precise terms, and any inferences to be drawn from",,

its precise terms, need to be examined in the context in and the means by which the message was sent. The Crown Court was understandably",,

concerned that this message was sent at a time when, as we all know, there is public concern about acts of terrorism and the continuing threat to the",,

security of the country from possible further terrorist attacks. That is plainly relevant to context, but the offence is not directed to the inconvenience",,

which may be caused by the message. In any event, the more one reflects on it, the clearer it becomes that this message did not represent a terrorist",,

threat, or indeed any other form of threat. It was posted on â€œTwitterâ€ for widespread reading, a conversation piece for the defendant's followers,",,

drawing attention to himself and his predicament. Much more significantly, although it purports to address â€œyouâ€, meaning those responsible for",,

the airport, it was not sent to anyone at the airport or anyone responsible for airport security, or indeed any form of public security. The grievance",,

addressed by the message is that the airport is closed when the writer wants it to be open. The language and punctuation are inconsistent with the,,

writer intending it to be or it to be taken as a serious warning. Moreover, as Mr. Armson noted, it is unusual for a threat of a terrorist nature to invite",,

the person making it to be readily identified, as this message did. Finally, although we are accustomed to very brief messages by terrorists to indicate",,

that a bomb or explosive device has been put in place and will detonate shortly, it is difficult to imagine a serious threat in which warning of it is given",,

to a large number of tweet â€œfollowersâ€ in ample time for the threat to be reported and extinguished.â€,,

85. These two cases illustrate how judicially trained minds would find a person guilty or not guilty depending upon the Judge's notion of what is,,

â€œgrossly offensiveâ€ or â€œmenacingâ€. In Collins' case, both the Leicestershire Justices and two Judges of the Queen's Bench would have",,

acquitted Collins whereas the House of Lords convicted him. Similarly, in the Chambers case, the Crown Court would have convicted Chambers",,

whereas the Queen's Bench acquitted him. If judicially trained minds can come to diametrically opposite conclusions on the same set of facts it is,,

obvious that expressions such as â€œgrossly offensiveâ€ or â€œmenacingâ€ are so vague that there is no manageable standard by which a person,,

can be said to have committed an offence or not to have committed an offence. Quite obviously, a prospective offender of Section 66A and the",,

authorities who are to enforce Section 66A have absolutely no manageable standard by which to book a person for an offence under Section 66A.,,

This being the case, having regard also to the two English precedents cited by the learned Additional Solicitor General, it is clear that Section 66A is",,

unconstitutionally vague.â€,,

(Emphasis supplied),,

192. On this issue, the pronouncement of the Supreme Court of US reported at 132 S.Ct. 2307 Federal Communications Commission v. Fox Television",,

Stations, sheds valuable light when it was stated as follows:",,

â€œA fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or,,

required. See Connally v. General Constr. Co., 269 U.S. 385, 391 (1926) (â€œ[A] statute which either forbids or requires the doing of an act in terms",,

so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due",,

process of lawâ€),,

(Emphasis supplied),,

193. The summarization of the applicable principles on the question of voiding a statute for vagueness as contained in paras 130-131 of (1994) 3 SCC,,

569 Kartar Singh v. State of Punjab, which have to guide the consideration by this Court. We may usefully extract paras 130 and 131 (also extracted",,

in para 68 of Shreya Singhal), which read as follows:",,

â€œ130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws,,

offend several important values. It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know,,

what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Such a law impermissibly",,

delegates basic policy matters to policemen and also judges for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary",,

and discriminatory application. More so uncertain and undefined words deployed inevitably lead citizens to â€œsteer far wider of the unlawful zone â€¦,,

than if the boundaries of the forbidden areas were clearly marked.,,

131. Let us examine clause (i) of Section 2(1)(a). This section is shown to be blissfully and impermissibly vague and imprecise. As rightly pointed out,,

by the learned counsel, even an innocent person who ingenuously and undefiledly communicates or associates without any knowledge or having no",,

reason to believe or suspect that the person or class of persons with whom he has communicated or associated is engaged in assisting in any manner,,

terrorists or disruptionists, can be arrested and prosecuted by abusing or misusing or misapplying this definition. In ultimate consummation of the",,

proceedings, perhaps that guiltless and innoxious innocent person may also be convicted.â€",,

(Emphasis by us),,

194. In the judgment reported at 408 US 104 (1972) Grayned v. City of Rockford, the test laid down for examination of the issue of vagueness of a",,

statute is that the laws give a person of ordinary intelligence a reasonable opportunity to know what is prohibited so that he may act accordingly. The,,

concern is that vague laws may result in entrapment of an innocent as they do not provide fair warning. The second concern articulated in Grayned is,,

that laws must provide explicit standards for those who may apply them in order to prevent arbitrary and discriminatory enforcement. The Court,,

observed that a vague law impermissibly delegates basic policy matters to policemen, judges and juries for resolution on adhoc and subjective basis",,

which also has the attendant dangers of arbitrary and discriminatory application.,,

195. The definitional clause in Section 2(a) of the J&K Prevention of Beggary Act, 1960, is all inclusive and extremely generalized. We have no",,

manner of doubt that it is uncertain, completely vague and unintelligible.",,

196. The definition of begging under Section 2(a) does not distinguish between begging which is peaceful; which does not entail any intrusive action or,,

threat, either physical or verbal or obstruction of any kind. As discussed above, the alms which are received by the individuals are either necessities in",,

life or used to purchase basic essentials. Thus, statutory provision, therefore, directly targets the content of the communications, punishing requests by",,

the individual for help for essential basic human needs. At the same time, it protects requests for help made by the more affluent persons for other less",,

critical needs, say donations for charity (for instance orphanages or school activity or such like purposes).",,

197. The clause is undoubtedly irredeemably and extraordinarily over broad and over inclusive without criminalizing a particular act or omission, simply",,

making a reference to the condition of a person and merely requiring the law enforcer to draw an arbitrary perception from the bare appearance of a,,

person, without anything more, for considering a person liable for action under the penal provisions of the law. This law has unfortunately criminalized",,

what are otherwise absolutely normal activities and has been framed in a manner so broad and inclusive that it has enabled punishment for virtually,,

anything that affronts the subjective sensturity of the implementing authority. Visible dire poverty witnessed in public places is enough to bring a,,

person within the net of the criminality envisaged under the Jammu & Kashmir Prevention of Beggary Act, 1960.",,

198. With regard to the distinction based on content of the message, in a judgment of the Supreme Court of Massachusetts in Craig Benefit v. City of",,

Cambridge 424 Mass. 918 (1997), the court ruled as follows:",,

â€œ(b) General Laws c. 272, s. 66, states a broad ban on begging that by its terms makes distinctions based on the content of the message conveyed.",,

Under the statute, only communicative activity that asks for direct, charitable aid for the beggar constitutes a crime. The statute permits speech by",,

those who ask in public places for money for other purposes, such as money for parking meters, change for the bus, money to make a telephone call,",,

assistance where a wallet has been lost, donations for school teams and activities, money for all kinds of political and social causes, and money for",,

newspapers and articles sold on the street. The conduct by the solicitor in all of these examples is the same: â€œwandering aboutâ€ (in the parlance of,,

the statute) in a public place, communicating with strangers, and requesting assistance of some kind. By prohibiting peaceful requests by poor people",,

for personal financial aid, the statute directly targets the content of their communications, punishing requests by an individual for help with his or her",,

basic human needs while shielding from government chastisement requests for help made by better-dressed people for other, less critical needs. The",,

statute is thus necessarily content based because the content of the individual's message determines criminal guilt or innocence.â€,,

(Emphasis supplied),,

199. In Craig Benefit, the court also found that the legislation favoured a particular view point. It was observed as follows:",,

â€œThe statute may also be fairly characterized as viewpoint based because it favors the view that poor people should be helped by organized groups,,

and should not be making public requests for their necessities. See Hershkoff & Cohen, Begging to Differ: The First Amendment and the Right to",,

Beg, 104 Harv. L. Rev. 896, 907 (1991) (â€œWhen the government prohibits begging, it takes one position among several existing views on charity",,

and prohibits speech that implicitly promotes a contrary viewpointâ€). [Note 5],,

These types of bans are not lightly permitted. â€œThe First Amendment's hostility to content-based regulation extends not only to restrictions on,,

particular viewpoints, but also to prohibition on public discussion of an entire topic.â€ Consolidated Edison Co. of N.Y. v. Public Serv. Comm'n of",,

N.Y., 447 U.S. 530, 537, 100 S.Ct. 2326, 2333, 65 L.Ed.2d 319 (1980). See Turner Broadcasting Sys., Inc. v. FCC, 512 U.S. 622, 643, 114 S.Ct. 2445,",,

2459, 129 L.Ed.2d 497 (1994) (laws that â€œdistinguish favored speech from disfavored speech on the basis of the ideas or views expressed are",,

content-basedâ€); R.A.V. v. St. Paul, 505 U.S. 377, 382, 112 S.Ct. 2538, 2542, 120 L.Ed.2d 305 (1992) (â€œ[c]ontent-based regulations are",,

presumptively invalidâ€).â€,,

(Emphasis by us),,

200. That the ban directed by the statute applied at all public places, legitimately expected to be accessible and therefore not sustainable was",,

discussed in Craig Benefit in the following terms.,,

â€œThe statute directs its ban Statewide at all public places, and thus includes the public sidewalks where the plaintiff conducted his activity as well as",,

public parks and other areas. These sites fall within the category of property traditionally held open to the public for expressive activity. Since we are,,

concerned with a content-based prohibition on communicative activity occurring in what have historically been considered public forums, the statute",,

must be subjected to strict scrutiny. See Commonwealth v. A Juvenile, 368 Mass. 580, 584, 334 N.E.2d 617 (1975).â€",,

(Emphasis by us),,

201. The court also rejected the State's defence that the legislation served a compelling state interest and held that its implementation rested on,,

presumptions, observing thus (in Craig Benefit):",,

â€œ(c) It has not been shown that G.L. c. 272, s.66, is â€œnecessary to serve a compelling state interest and that it is narrowly drawn to achieve that",,

end.â€ Perry Educ. Ass'n v. Perry Local Educators' Ass'n, 460 U.S. 37, 45 (1983).",,

We reject the district attorney's argument that the statute supports the Commonwealth's compelling interest in preventing crime and in providing safe,,

streets. There is no basis whatsoever in the record to support the assumption that those who peacefully beg are likely to commit crimes. It cannot,,

â€œbe seriously contended that because a person is without employment and without funds he constitutes a â€˜moral pestilence.â€™ Poverty and,,

immorality are not synonymous.â€ Edwards v. California, 314 U.S. 160, 177, 62 S.Ct. 164, 168, 86 L.Ed. 119 (1941). Further, the government cannot",,

make communicative activity criminal solely on the ground that the person engaging in the activity might commit a future crime. â€œA presumption,,

that people who might walk or loaf or loiter or stroll â€¦ or who look suspicious to the police are to become future criminals is too precarious for a rule,,

of law. The implicit presumption in these generalized vagrancy standards-that crime is being nipped in the bud-is too extravagant to deserve extended,,

treatment.â€ Papachristou v. Jacksonville, 405 U.S. 156, 171, 92 S.Ct. 839, 848, 31 L.Ed.2d 110 (1972). Nor are we impressed with the argument that",,

the statute is justified because, to quote the district attorney's brief, it â€œcreate[s] an atmosphere where citizens may go about their way free from",,

being accused, intimidated, or harassed.â€ A listener's annoyance or offense at a particular type of communicative activity does not provide a basis for",,

a law burdening that activity, see Texas v. Johnson, 491 U.S. 397, 408-09, (1989), especially because people are free to ignore or walk away from the",,

beggar's request for money or attention. We conclude that no compelling State interest has been demonstrated that would warrant punishing a,,

beggar's peaceful communication with his or her fellow citizens in a public place â€¦.for some panhandlers, begging is a way to augment their meager",,

sources. For a few, it may be their only source of income. Panhandling is therefore close to the center of the personal liberty of some people in",,

contemporary American society.â€,,

(Emphasis supplied by us),,

202. In the judgment reported at 83 Nev 214, 427 P2d 642 Parker v. Municipal Judge of Las Vegas, the court has stated that it was not a crime to be",,

unemployed, without funds, and in a public place. The court declared unconstitutional an ordinance which made it a misdemeanour for one with",,

physical ability to work and no visible means of support to be in a public place. It was concluded that to make the status of poverty, rather than",,

conduct, a crime, is to violate due process.",,

203. In the judgment reported at 353 Mass 287, 231 NE2d 201 Alegata v. Commonwealth, the court declared yet another similarly vagrancy statute",,

enacted in Massachusetts as unconstitutional again for the reason that it was violative of the due process clause. It was again pointed out that what,,

the statute attempts to prescribe is not the commission of some act or acts but seeks to punish a person because of his status, idleness and poverty.",,

Thus, the court held that it should not be treated as a criminal offence.",,

204. Similarly, in the judgment reported at 224 Ga 255 Wallace v. State, the Court observed that such statute made it a crime merely to be idle, or",,

merely to be loitering. This would be constitutionally defective which defect could get cured if the statute is interpreted to require the presence of,,

several factors to sustain a conviction for vagrancy.,,

205. Clearly the legislation under examination has been imprecisely drawn and per se suffers from the vice of vagueness.,,

206. We find that in Shreya Singhal, the court has also referred to the judgment reported at AIR 1960 SC 633 The Superintendent, Central Prison,",,

Fatehgarh v. Ram Manohar Lohia, wherein the Court had struck down Section 3 of the U.P. Special Powers Act, which penalized those who",,

instigated either expressly or by implication any person or class of persons not to pay or to defer payment of any liability. The Court held that this,,

section also laid a wide net to cover a variety of acts of instigation ranging from friendly advice to systematic propaganda, taking into its amplitude the",,

innocent as well as the guilty, bonafide or malafide would cover persons who could be a legal adviser, a friend or a well wisher of the person",,

instigated. It was held that the section was not possible to predicate with precision the different categories of instigation which fell within or without,,

the field of constitutional prohibitions. It was held that section must be declared as unconstitutional as the offence made out would depend upon,,

uncertain factors.,,

207. In para 8 of AIR 1951 SC 118 Chintaman Rao v. State of M.P., the Supreme Court invalidated the statute in question for the reason that â€œthe",,

language employed is wide enough to cover restrictions both within and without the limits of constitutionally permissible legislative action affecting the,,

right. So long as the possibility of its being applied for purposes not sanctioned by the Constitution cannot be ruled out, it must be held to be wholly",,

void.â€,,

208. It is noteworthy that in this judgment the Supreme Court has not referred to the concept of the legislation being overbroad specifically.,,

209. In Shreya Singhal the Supreme Court also applied the tests laid down in Chintaman Rao and v. G. Row and thereafter held that Section 66A,,

arbitrarily, excessively and disproportionately invaded the right of free speech and upsets the balance between such right and the reasonable",,

restrictions that may be imposed on such right.,,

210. We also find that the vague definition in Section 2(a) results in conferment of untrammeled and uncontrolled power on the police to arbitrarily,,

arrest citizens. As a result, persons remain confined in the homes during the inquiry following a truncated summary procedure and, if found guilty,",,

thereafter, further detained.",,

211. The U. S. Supreme Court in Papachristou v. City of Jacksonville considered this aspect of the vague criminal statute and noted as follows:,,

â€œThis aspect of the vagrancy ordinance before us is suggested by what this Court said in 1876 about a broad criminal statute enacted by Congress:,,

â€œIt would certainly be dangerous if the legislature could set a net large enough to catch all possible offenders, and leave it to the courts to step",,

inside and say who could be rightfully detained, and who should be set at large.â€ (United States v. Reese, 92 U.S. 214, 92 U.S. 221).",,

â€œWhile that was a federal case, the due process implications are equally applicable to the States and to this vagrancy ordinance. Here, the net cast",,

is large not to give the courts the power to pick and choose, but to increase the arsenal of the police. In Winters v. New York, 333 U.S. 507, the Court",,

struck down a New York statute that made criminal the distribution of a magazine made up principally of items of criminal deeds of bloodshed or lust,,

so massed as to become vehicles for inciting violent and depraved crimes against the person. The infirmity the Court found was vaguenessâ€"the,,

absence of â€œascertainable standards of guiltâ€ in the (page 165) sensitive First Amendment area. Mr. Justice Frankfurter dissented. But concerned,,

as he, and many others, had been over the vagrancy laws, he added:",,

â€œOnly a word needs to be said regarding Lanzetta v. New Jersey, 306 U.S. 451. The case involved a New Jersey statute of the type that seek to",,

control â€˜vagrancyâ€™. These statutes are in a class by themselves, in view of the familiar abuses to which they are putâ€¦â€¦Definiteness is",,

designedly avoided so as to allow the net to be cast at large, to enable men to be caught who are vaguely undesirable in the eyes of police and",,

prosecution, although not chargeable with any particular offense. In short, these â€˜vagrancy statutesâ€™ and laws against â€˜gangsâ€™ are not",,

fenced in by the text of the statute or by the subject matter so as to give notice of conduct to be avoided.â€(Id. At 333 U.S.540),,

Where the list of crimes is so all-inclusive and generalized as the one in this ordinance, those convicted (page 167) may be punished for no more than",,

vindicating affronts to police authority:,,

â€œThe common ground which brings such a motley assortment of human troubles before the magistrates in vagrancy-type proceedings is,,

the procedural laxity which permits â€˜convictionâ€™ for almost any kind of conduct and the existence of the House of Correction as an easy and,,

convenient dumping-ground for problems (page 168) that appear to have no other immediate solution.â€ (Foote, Vagrancy-Type Law and Its",,

Administration, 104 U.Pa. L. Rev. 603, 631).",,

Another aspect of the ordinance's vagueness appears when we focus not on the lack of notice given a potential offender, but on the effect of the",,

unfettered discretion it places in the hands of the Jacksonville police. Caleb Foote, an early student of this subject, has called the vagrancy-type law as",,

offering â€œpunishment by analogy.â€ Id. At 609 Such crimes, though long common in Russia, are not compatible with our constitutional (page",,

169) system. We allow our police to make arrests only â€œprobable causeâ€, at Fourth and Fourteenth Amendment standard applicable to the State",,

as well as to the Federal Government. Arresting a person on suspicion, like arresting a person for investigation, is foreign to our system, even when",,

the arrest is for past criminality. Future criminality, however, is the common justification for the presence of vagrancy statutes. (Foote, Vagrancy-",,

Type Law and Its Administration). Flordia has, indeed, construed her vagrancy statute â€œas necessary regulations,â€ inter alia, â€œto deter",,

vagabondage and prevent crimes.â€ (Johnson v. State, 202 So.2d 852; Smith v. State, 239 So.2d 250, 251).",,

A direction by a legislature to the police to arrest all â€œsuspiciousâ€ persons would not pass constitutional muster. A vagrancy prosecution may be,,

merely the cloak for a conviction which could not be obtained on the real but undisclosed grounds for the arrest. (Page 170) (People v. Moss, 309 N.",,

Y. 429, 131 N.E.2d 717).",,

But as Chief Justice Hewart said in Frederick Dean, 18 Crim. App. 133, 134 (1924):",,

â€œIt would be in the highest degree unfortunate if, in any part of the country, those who are responsible for setting in motion the criminal law should",,

entertain, connive at or coquette with the idea that, in a case where there is not enough evidence to charge the prisoner with an attempt to commit a",,

crime, the prosecution may, nevertheless, on such insufficient evidence, succeed in obtaining and upholding a conviction under the Vagrancy Act,",,

1824.â€,,

Those generally implicated by the imprecise terms of the ordinanceâ€"poor people, nonconformists, dissenters, idlersâ€" may be required to comport",,

themselves according to the lifestyle deemed appropriate by the Jacksonville police and the courts. Where, as here, there are no standards governing",,

the exercise of the discretion granted by the ordinance, the scheme permits and encourages an arbitrary and discriminatory enforcement of the law. It",,

furnishes a convenient tool for â€œharsh and discriminatory enforcement by local prosecuting officials, against particular groups deemed to merit their",,

displeasure.â€ (Thornhill v. Alabama, 310 U.S. 88, 310 U.S. 97-98). It results in a regime in which the poor and the unpopular are permitted to",,

â€œstand on a public sidewalkâ€¦. Only at the whim of any police officer.â€ (Shuttlesworth v. Birmingham, 382 U.S. 87, 382 U.S. 90). Under this",,

ordinance, â€œIf some carefree type of fellow is satisfied to work just so much, and no more, as will pay for one square meal, some wine, and a",,

flophouse daily, but a court thinks this kind of living subhuman, the fellow can be forced to raise his sights or go to jail as a vagrant.â€ (Amsterdam,",,

Federal Constitutional Restrictions on the Punishment of Crimes of Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers,",,

and the Like, 3 Crim. L. Bull. 205, 226 (1967)) (Page 405 U.S. 171).",,

A presumption that people who might walk or loaf or liter or stroll or frequent houses where liquor is sold, or who are supported by their wives or who",,

look suspicious to the police are to become future criminals is too precarious for a rule of law. The implicit presumption in these generalized vagrancy,,

standardsâ€"that crime is being nipped in the budâ€"is too extravagant to deserve extended treatment. Of course, vagrancy statutes are useful to the",,

police. Of course, they are nets making easy the roundup of so-called undesirables. But the rule of law implies equality and justice in its application.",,

Vagrancy laws of the Jacksonville type teach that the scales of justice are so tipped that even-handed administration of the law is not possible. The,,

rule of law, evenly applied to minorities as well as majorities, to the poor as well as the rich, is the great mucilage that holds society together.â€",,

(Emphasis by us),,

212. These principles and observations squarely apply to the provisions of the Jammu & Kashmir Prevention of Beggary Act, 1960, we have no",,

manner of doubt that the definition of begging and what constitutes begging is vague, arbitrary and excessively overbroad. Thereby this legislation",,

clearly denies the constitutional guarantees of pluralism and inclusiveness.,,

213. In fact, clearly the definition under Section 2(a) of the enactment leaves it to the whim and fancy of the law enforcing agency as to arbitrarily",,

construe from the conduct or appearance of a person, or his very way of life, as presuming a person liable for punishment under the Jammu &",,

Kashmir Prevention of Beggary Act, 1960.",,

(XII) Inevitable and chilling effect of the overbroad Statute,,

214. We have extracted above the Preamble as well as the Statement of Objects and Reasons for the enactment of criminalizing beggary in Jammu &,,

Kashmir as also the statutory provisions and the rules thereunder.,,

215. The legislation has enabled any police officer or any other person authorized in this behalf by the District Magistrate to arrest without warrant,,

any person who is found begging. Rule 4 of the Jammu and Kashmir Prevention of Beggary Rules, 1964, provides the manner of getting a person",,

arrested. Sub-rule (1) of Rule 4 mandates that the officer-in-charge of the police station â€œshallâ€ cause a person arrested under Section 4 to be,,

kept at the police station until he is brought before a court.,,

216. So far as the remand of the person is concerned, the same would be to the sick home, beggars' home or children home.",,

217. Thus, the immediate effect of the implementation of the statutory provision is to remove the person perceived to be begging from the society i.e.",,

to eliminate them from the community. Simply put, the statutory provisions and the rules render beggars invisible, only for the reason that they are",,

poor.,,

218. Such inhibiting effect was considered in the decision of the Supreme Court reported at (1994) 6 SCC 632 R. Rajagopal v. State of Tamil Nadu,",,

wherein the Supreme Court considered the chilling effect on the freedom of speech by allowing governmental institutions to sue for libel in the,,

following terms:,,

â€œ19. The principle of Sullivan was carried forward â€" and this is relevant to the second question arising in this case â€" in Derbyshire County,,

Council v. Times Newspapers Ltd., a decision rendered by the House of Lords. The plaintiff, a local authority brought an action for damages for libel",,

against the defendants in respect of two articles published in Sunday Times questioning the propriety of investments made for its superannuation fund.,,

The articles were headed â€œRevealed: Socialist tycoon deals with Labour Chiefâ€ and â€œBizarre deals of a council leader and the media tycoonâ€.,,

A preliminary issue was raised whether the plaintiff has a cause of action against the defendant. The trial Judge held that such an action was,,

maintainable but on appeal the Court of Appeal held to the contrary. When the matter reached the House of Lords, it affirmed the decision of the",,

Court of Appeal but on a different ground. Lord Keith delivered the judgment agreed to by all other learned Law Lords. In his opinion, Lord Keith",,

recalled that in Attorney General v. Guardian Newspapers Ltd. (No. 2) popularly known as â€œSpycatcher caseâ€, the House of Lords had opined",,

that â€œthere are rights available to private citizens which institutions ofâ€¦ Government are not in a position to exercise unless they can show that it is,,

in the public interest to do soâ€. It was also held therein that not only was there no public interest in allowing governmental institutions to sue for libel,",,

it was â€œcontrary to the public interest because to admit such actions would place an undesirable fetter on freedom of speechâ€ and further that,,

action for defamation or threat of such action â€œinevitably have an inhibiting effect on freedom of speechâ€. The learned Law Lord referred to the,,

decision of the United States Supreme Court in New York Times v. Sullivan and certain other decisions of American Courts and observed â€" and,,

this is significant for our purposesâ€",,

â€œwhile these decisions were related most directly to the provisions of the American Constitution concerned with securing freedom of speech, the",,

public interest considerations which underlaid them are no less valid in this country. What has been described as â€˜the chilling effectâ€™ induced by,,

the threat of civil actions for libel is very important. Quite often the facts which would justify a defamatory publication are known to be true, but",,

admissible evidence capable of proving those facts is not available.â€,,

Accordingly, it was held that the action was not maintainable in law.â€",,

(Emphasis supplied),,

219. In Shreya Singhal, a recent decision of the Supreme Court reported at (2010) 5 SCC 600 S. Khushboo v. Kanniammal has also been considered,",,

wherein it was observed as follows;,,

â€œ47. In the present case, the substance of the controversy does not really touch on whether premarital sex is socially acceptable. Instead, the real",,

issue of concern is the disproportionate response to the appellant's remarks. If the complainants vehemently disagreed with the appellant's views, then",,

they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling,,

effects on the â€œfreedom of speech and expressionâ€.,,

(Emphasis by us),,

220. In a judgment of the U. S. Supreme Court reported at 364 U.S. 339 (1960) Gomillion v. Lightfoot, the Supreme Court, sustained the complaint",,

which, if true, established that the â€œinevitable effectsâ€ of redrawing of municipal boundaries, was to deprive the petitioners of their right to vote for",,

no reason other than that they were negro. It was held that the inevitable effect â€œnecessary scope and operationâ€ of the legislation abridged,,

constitutional rights.,,

221. We have held above that begging constitutes exercise of the right to freedom of speech and expression of the person engaging in the activity.,,

The impact of the criminalization of such activity by the impugned legislation results in total prohibition of every type of begging, be it silent or passive",,

communication of the condition of beggar, a peaceful entreaty for assistance or just the display of the pathetic condition of the beggar. A purely",,

content-based restriction stands imposed. The impact of the prohibition is that it completely inhibits the freedom of speech and expression of beggars,,

and is certainly an undesirable fetter on their freedom of speech. Criminalization of begging thus indubitably has a chilling effect on begging which is,,

induced by the threat of detention and criminal prosecution under the impugned legislation.,,

222. In similar circumstances, the Supreme Court found Section 66A of the Information Technology Act unconstitutional in Shreya Singhal holding as",,

follows:,,

â€œ90. These two Constitution Bench decisions bind us and would apply directly on Section 66A. We, therefore, hold that the Section",,

is unconstitutional also on the ground that it takes within its sweep protected speech and speech that is innocent in nature and is liable therefore to be,,

used in such a way as to have a chilling effect on free speech and would, therefore, have to be struck down on the ground of overbreadth.â€",,

(Emphasis by us),,

223. The inevitable effect of the implementation of the Jammu & Kashmir Prevention of Beggary Act, 1960, and the Jammu & Kashmir Prevention",,

of Beggary Rules, 1964, is to render beggars invisible only for the reason that they appear poor. Thus, on account of the width and sweep of the",,

definition of begging, the consequential impact of detention if perceived to be begging or likely to beg, this law would deter and discourage all needy",,

persons from begging. Thus, the vague statute operates to completely inhibit free exercise of the fundamental right of freedom of speech and",,

expression, which is the third concern articulated in Grayned v. City of Rockford. As a result, because of its chilling effect on free speech as well, the",,

impugned legislation and the Rules thereunder have to be held unconstitutional and struck down.,,

(XIII) Whether the legislation results in violation of the rights guaranteed under Article 14 of the Constitution of India?,,

224. The Beggary legislation has classified begging into that permitted by the District Magistrate (exception to Section 2(a)(v)) and that which is not,,

(Section 2a(i) to (v)). The legislature has also bunched together those begging of their own volition with such persons who have been compelled to beg,,

i.e., involuntary beggars.",,

225. The petitioner, Mr. Suhail Rashid Bhat, has also complained that the legislation results in violation of the protection afforded by Article 14 of the",,

Constitution of India.,,

226. Article 14 of the Constitution of India ensures equality before the law to any person within the territory of India in the following terms:,,

â€œ14. Equality before law.â€" The State shall not deny to any person equality before the law or the equal protection of the laws within the territory,,

of India.â€,,

227. In the judgment of the Supreme Court reported at AIR 1952 SC 75 The State of West Bengal v. Anwar Ali Sarka,r a challenge was laid to the",,

validity of Section 5(1) of the West Bengal Special Courts Act (X of 1950) on the ground that it offended Article 14 of the Constitution as it laid down,,

a procedure which was less advantageous to the accused than the ordinary procedure and that it was based on an unreasonable classification of,,

persons to whom or the offence in respect of which the special procedure laid down in the statute was to apply. The majority of the Bench (Fazil Ali,",,

Mahajan, B.K. Mukherjea, S. R. Dar, Chandra Sekhara Aiyar and Bose JJ) held that the impugned legislation offended Article 14 and was ultra vires",,

of the Constitution of India. It was observed that the impugned Act had completely ignored the principles of classification followed in the Criminal,,

Procedure and proceeded to lay down a new procedure without making any attempt to particularize or classify the offences or cases to which it,,

applies (Para 24).,,

228. It was further held (in Anwar Ali Sarkar) that the Act itself laid down a procedure which was less advantageous to the accused than the ordinary,,

procedure and this fact must in all cases be the root cause of the discrimination which may result application of the Act (para 27).,,

229. It was held that it was no classification at all in the real sense of the term as it was not based on any characteristics which are peculiar to persons,,

or cases which are to be subject to the special procedure prescribed by the Act. The mere fact of classification was found not sufficient to relieve a,,

statute from the reach of the equality clause of Article 14. To get out of its reach, it must appear that not only a classification has been made but also",,

that it is one based upon a reasonable ground on some difference which bears a just and proper relation to the attempted classification and is not a,,

mere arbitrary selection. (Para 37).,,

230. It was also held (in Anwar Ali Sarkar) that speedy trial of offences may be the reason and motive for the legislation but it does not amount either,,

to classification of offences of cases. The necessity of the speedy trial was found to be too vague, uncertain and elusive classification (para 37).",,

231. Even if it be said that the statute on the face of it is not discriminatory, it is so in its effect and operation inasmuch as it vests in the executive",,

government un-regulated official discretion and, therefore, has to be adjudged unconstitutional (para 38).",,

232. So far as the present consideration before us is concerned, an important principle was laid down by Mukherjea, J in para 45 (of Anwar Ali",,

Sarkar) in the following terms:,,

â€œ45. As regards the first point, it cannot be disputed that a competent legislature is entitled to alter the procedure in criminal trials in such way as it",,

considers proper. Article 21 of the Constitution only guarantees that â€œno person shall be deprived of his life or personal liberty except in accordance,,

with the procedure established by law.â€ The word â€œlawâ€ in the Article means a State made law: A.K. Gopalan v. State of Madras, 1950 S.C.R.",,

88, but it must be a valid and binding law having regard not merely to the competency of the legislature and the subject it relates to, but it must not also",,

infringe any of the fundamental rights guaranteed under Part III of the Constitution. A rule of procedure laid down by law comes as much within the,,

purview of Art. 14 as any rule of substantive law and it is necessary that all litigants, who are similarly situated, are able to avail themselves of the",,

same procedural rights for relief and for defence with like protection and without discrimination: Weaverâ€"Constitutional law, p.407",,

xxxxxxxxxxx.â€,,

(Emphasis supplied),,

233. We may usefully advert to the pronouncement of the Canadian Supreme Court reported at [1995] 2 SCR 513: James Egan and John Norris,,

Nesbit v. Her Majesty The Queen in Right of Canada, wherein an illuminating discussion and elaboration has been made by L'Heureux-Dube, J, on",,

Section 15 of the Canadian Charter of Rights and Freedoms, which ensures equality before and under the law, equal protection and equal benefit of",,

the law without any discrimination to every individual, observed as follows:",,

â€œTo summarize, at the heart of s. 15 is the promotion of a society in which all are secure in the knowledge that they are recognized at law as equal",,

human beings, equally capable, and equally deserving. A person or group of persons has been discriminated against within the meaning of s. 15 of the",,

Charter when members of that group have been made to feel, by virtue of the impugned legislative distinction, that they are less capable, or less",,

worthy of recognition or value as human beings or as members of Canadian society, equally deserving of concern, respect, and consideration. These",,

are the core elements of a definition of â€œdiscriminationâ€â€" a definition that focuses on impact (i.e. discriminatory effect) rather than on,,

constituent elements (i.e. the grounds of the distinction).,,

Three clarifications should be made at this juncture. First, I acknowledge that the above definition essentially tries to put into words the notion of",,

fundamental human dignity. Dignity being a notoriously elusive concept, however, it is clear that this definition cannot, by itself, bear the weight of s.",,

15 â€˜s task on its shoulders. It needs precision and elaboration. I shall attempt to demonstrate shortly how this approach to discrimination can find,,

more concrete and principled expression using many of the criteria that have in the past proven themselves to be highly apposite under the approach,,

taken by this Court in Andrews. As such, it will become evident that the approach I suggest is far less a departure from that developed in Andrews",,

than may appear at first blush. I believe many of those analytical tools to be valid. The problem, in my mind, lies not with the tools but with the",,

framework within which they have in the past been employed. In short, if the framework is not perfectly suited for the tools, then we do not use the",,

tools to their full potential.,,

Second, I note that although the utopian ideal would be a society in which nobody is made to feel debased, devalued or denigrated as a result of",,

legislative distinctions, such an ideal is clearly unrealistic. The guarantee against discrimination cannot possibly hold the state to a standard of conduct",,

consistent with its most sensitive citizens. Clearly, a measure of objectivity must be incorporated into this determination. This being said, however, it",,

would be ironic and, in large measure, self-defeating to the purposes of s. 15 to assess the absence or presence of discriminatory impact according to",,

the standard of the â€œreasonable, secular, able-bodied, white maleâ€. A more appropriate standard is subjective-objective â€" the reasonably held",,

view of one who is possessed of similar characteristics, under similar circumstances, and who is dispassionate and fully apprised of the circumstances.",,

The important principle, however, which this Court has accepted, is that discriminatory effects must be evaluated from the point of view of the victim,",,

rather than from the point of view of the state.â€,,

(Emphasis by us),,

234. Thus, equality before the law and equal protection of law envisages a guarantee against â€œdiscriminationâ€ & â€œdiscriminatoryâ€ impact of",,

the action/legislation which must be assessed from the perspective of the victim, and not the State.",,

235. Making a reference to the pronouncement of the Canadian Supreme Court reported at [1989] 1 SCR 143 Andrews v. Law Society of British,,

Columbia, L'Heureux-Dube, J, also analyzed the effect of impugned legislative actions so far as discriminatory effect thereof was concerned and",,

observed thus:,,

â€œIn order to realize fully the purpose of Charter rights, it is necessary to look to the effects of impugned legislative actions. In the context of s.",,

15, no intention to discriminate need be demonstrated in order to render a particular distinction discriminatory. In Andrews, supra, in the course of his",,

discussion on the nature of discrimination, McIntyre J. referred to the conclusions of this Court in the human rights case of Ontario Human Rights",,

Commission v. Simpsons-Sears Ltd., [1985] 2 S.C.R. 536. I believe the following observation, at p. 173 of Andrews, to be at the core of this Court's",,

philosophy regarding the notion of discrimination:,,

. . . no intent was required as an element of discrimination, for it is in essence the impact of the discriminatory act or provision upon the person",,

affected which is decisive in considering any complaint. [Emphasis added.]â€,,

(Emphasis by us),,

236. The Supreme Court has considered the content and reach of the great equalizing principle enunciated in Article 14 of the Constitution and placing,,

reliance on the pronouncement reported at (1974) 4 SCC 3 E.P. Royappa v. State of Tamil Nadu, observed as follows:",,

â€œ7.â€¦â€¦.Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which",,

legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and",,

the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be â€œright and,,

just and fairâ€ and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be",,

satisfied.â€,,

(Emphasis by us),,

237. The law on the contours of the protection against discrimination as is guaranteed by Article 14 and the permissibility of creating classes for,,

differential treatment was also clearly established. In (1974) 4 SCC 3 E.P. Royappa v. State of T. N, it has been authoritatively held that arbitrariness",,

is a well-accepted doctrine on which State action including legislation can be struck down on the ground that same is violative of equality as,,

guaranteed under Article 14 of the Constitution of India. In the judgment by Bhagwati, J., while considering the distinction between Articles 14 and 16,",,

it has been observed as follows:,,

â€œ85. â€¦â€¦..The basic principle which, therefore, informs both Articles 14 and 16 is equality and inhibition against discrimination. Now, what is the",,

content and reach of this great equalising principle? It is a founding faith, to use the words of Bose. J., â€œa way of lifeâ€, and it must not be",,

subjected to a narrow pedantic or lexicographic approach. We cannot countenance any attempt to truncate its all-embracing scope and meaning, for to",,

do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be â€œcribbed, cabined",,

and confinedâ€ within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness.",,

In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an",,

absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore",,

violative of Article 14, and if it effects any matter relating to public employment, it is also violative of Article 16. Articles 14 and 16 strike at",,

arbitrariness in State action and ensure fairness and equality of treatment. They require that State action must be based on valid relevant principles,,

applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of,,

equality. Where the operative reason for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and",,

relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Articles",,

14 and 16. Mala fide exercise of power and arbitrariness are different lethal radiations emanating from the same vice: in fact the latter comprehends,,

the former. Both are inhibited by Articles 14 and 16.â€,,

(Emphasis by us),,

238. It is also well settled that even though a statutory provision satisfies the requirements of other part III rights, it must meet the validity of tests",,

under Article 14 of the Constitution of India. In this regard, we may refer to the following observations contained in para 6 & 7 of the pronouncement",,

of the Supreme Court reported at (1978) 1 SCC 248 Maneka Gandhi v. Union of India.,,

â€œ6â€¦â€¦This Court also applied Article 14 in two of its earlier decisions, namely, The State of West Bengal v. Anwar Ali Sarkar (AIR 1952 SC 75)",,

and Kathi Raning Rawat v. The State of Saurashtra (AIR 1952 SC 123)where there was a special law providing for trial of certain offences by a,,

speedier process which took away some of the safeguards available to an accused under the ordinary procedure in the Criminal Procedure Code. The,,

special law in each of these two cases undoubtedly prescribed a procedure for trial of the specified offences and this procedure could not be,,

condemned as inherently unfair or unjust and there was thus compliance with the requirement of Article 21, but even so, the validity of the special law",,

was tested before the Supreme, Court on the touchstone of Article 14 and in one case, namely, Kathi Raning Rawat's case, the validity was upheld",,

and in the other, namely, Anwar Ali Sarkar's case, it was struck down. It was held in both these cases that the procedure established by the special",,

law must not be violative of the equality clause. That procedure must answer the requirement of Article 14.,,

7. Now, the question immediately arises as to what is the requirement of Article 14: what is the content and reach of the great equalising principle",,

enunciated in this article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the,,

foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be",,

made to truncate its all-embracing scope and meaning, for to do so would be to violate its activist magnitude. Equality is a dynamic concept with many",,

aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. We must reiterate here what was pointed out by the,,

majority in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3: 1974 SCC (L&S) 165: (1974) 2 SCR 348].,,

xxxxxxxxxxxâ€,,

(Emphasis by us),,

239. It has been observed in (2017) 9 SCC 1 : AIR 2017 SC 4609 Shayara Bano v. Union of India (at page 4822), that arbitrariness can be used to",,

strike down legislation under Article 14 as well. It is also well settled that arbitrariness in legislation is very much a facet of unreasonableness in,,

Article 19(2) to (6) as has been laid down in several Judgments of the Supreme Court in the following terms:,,

â€œ(2) The second reason given is that a challenge under Article 14 has to be viewed separately from a challenge under Article 19, which is a",,

reiteration of the point of view of A.K. Gopalan v. State of Madras, 1950 SCR 88: (AIR 1950 SC 27), that fundamental rights must be seen in",,

watertight compartments. We have seen how this view was upset by an eleven Judge Bench of this Court in Rustom Cavasjee Cooper v. Union of,,

India, (1970) 1 SCC 248 : (AIR 1970 SC 564), and followed in Maneka Gandhi ((1978) 1 SCC 248 : AIR 1978 SC 597) (supra). Arbitrariness in",,

legislation is very much a facet of unreasonableness in Article 19(2) to (6), as has been laid down in several Judgments of this Court, some of which",,

are referred to in Om Kumar (infra) and, therefore, there is no reason why arbitrariness cannot be used in the aforesaid sense to strike down",,

legislation under Article 14 as well.â€,,

(Emphasis by us),,

240. Placing reliance on E. P. Royappa, the Supreme Court in Shayara Bano considered several fundamental rights and observed that fundamental",,

rights must be read together and must overlap and fertilize each other. The Supreme Court had also reiterated the position laid down in E. P.,,

Royappa that arbitrariness in State action was violative of Article 14 which ensures fairness and equality of treatment and further that the principle of,,

reasonableness was an essential element of equality or non-arbitrariness pervaded Article 14. It was specifically laid down that â€œprocedure,,

contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14â€.,,

241. Before us, a challenge has been made to the â€œclassificationâ€ effected by the legislation. We find that Article 14 requires an examination as to",,

whether the legislation ensures â€˜equalityâ€™ which this Constitutional provision guarantees. The Supreme Court had occasion in the judgment,,

reported at (1979) 1 SCC 380 Special Courts Bill, 1978, In re, to examine this aspect. While reiterating the permissibility of classification, the Supreme",,

Court had held that it was not open for the courts to insist on delusive exactness or apply doctrinaire tests for determining the validity of classification,,

in any given case. However, at the same time, a classification would be treated as justified only if it is not palpably arbitrary. The Supreme Court had",,

emphasized that the underlining principle in Article 14 of the Constitution was to treat all persons similarly circumstanced alike, both in privileges",,

conferred and liabilities imposed. We may borrow the words of the Supreme Court in para 72 in this regard as under:,,

â€œ72â€¦â€¦(4)â€¦It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal,,

laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the",,

subject matter of the legislation their position is substantially the same.â€,,

(Emphasis by us),,

242. It is noteworthy that in In Re: Special Courts Bill, the Supreme Court had reiterated the principle that the classification must not be arbitrary but",,

must be rational; that it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in,,

others who were left out but such qualities and characteristics must have a reasonable relationship to the object of the legislation.,,

243. The specific issue regarding permissibility of legislative classification under Article 14 is also not res-integra. In the pronouncement of the,,

Supreme Court reported at (1981) 1 SCC 722 Ajay Hasia v. Khalid Mujib Sehravard,i the court expounded on the scope of Article 14; the",,

permissibility of classification and also the guarantee against the arbitrariness. The Supreme Court referred to the pronouncements in E. P.,,

Royappa as well as in Maneka Gandhi and laid down the distinction between reasonableness and arbitrariness as also the contours of permissible,,

classification as do not negate equality. We extract para 16 of Ajay Hasia which sheds valuable light on our consideration hereunder:,,

â€œ16â€¦â€¦ The true scope and ambit of Article 14 has been the subject-matter of numerous decisions and it is not necessary to make any detailed,,

reference to them. It is sufficient to state that the content and reach of Article 14 must not be confused with the doctrine of classification.,,

Unfortunately, in the early stages of the evolution of our constitutional law, Article 14 came to be identified with the doctrine of classification because",,

the view taken was that that article forbids discrimination and there would be no discrimination where the classification making the differentia fulfils,,

two conditions, namely, (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together",,

from others left out of the group; and (ii) that that differentia has a rational relation to the object sought to be achieved by the impugned legislative or,,

executive action. It was for the first time in E.P. Royappa v. State of Tamil Nadu [(1974) 4 SCC 3, 38: 1974 SCC (L&S) 165, 200:(1974) 2 SCR 348]",,

that this Court laid bare a new dimension of Article 14 and pointed out that that article has highly activist magnitude and it embodies a guarantee,,

against arbitrariness.,,

xxxxxx,,

This vital and dynamic aspect which was till then lying latent and submerged in the few simple but pregnant words of Article 14 was explored and,,

brought to light in Royappa case [(1975) 1 SCC 485: 1975 SCC (L&S) 99: (1975) 3 SCR 616] and it was reaffirmed and elaborated by this Court,,

in Maneka Gandhi v. Union of India [(1978) 1 SCC 248] where this Court again speaking through one of us (Bhagwati, J.) observed: (SCC pp. 283-",,

84, para 7)",,

xxxxxxxxx,,

This was again reiterated by this Court in International Airport Authority case [(1979) 3 SCC 489] at p. 1042 (SCC p. 511) of the Report. It must,,

therefore now be taken to be well settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve",,

negation of equality. The doctrine of classification which is evolved by the courts is not paraphrase of Article 14 nor is it the objective and end of that,,

article. It is merely a judicial formula for determining whether the legislative or executive action in question is arbitrary and therefore constituting,,

denial of equality. If the classification is not reasonable and does not satisfy the two conditions referred to above, the impugned legislative or executive",,

action would plainly be arbitrary and the guarantee of equality under Article 14 would be breached. Wherever therefore there is arbitrariness in State,,

action whether it be of the legislature or of the executive or of an â€˜authorityâ€™ under Article 12, Article 14 immediately springs into action and",,

strikes down such State action. In fact, the concept of reasonableness and non-arbitrariness pervades the entire constitutional scheme and is a golden",,

thread which runs through the whole of the fabric of the Constitution.â€,,

(Emphasis by us),,

244. On this aspect, we may also usefully advert to the judicial pronouncement reported at (1983) 1 SCC 305 D.S. Nakara v. Union of India, wherein,",,

after extracting the above observations of Bhagwati, J, in Maneka Gandhi, the court observed thus:",,

â€œ11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of",,

legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) that the classification must",,

be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group; and,,

(ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question [See Shri. Ram Krishna,,

Dalmia v. Shri. Justice S.R. Tendolkar [5]]. The classification may be founded on differential basis according to objects sought to be achieved but,,

what is implicit in it is that there ought to be a nexus, i.e. casual connection between the basis of classification and object of the statute under",,

consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by,,

a law of procedure.â€,,

(Emphasis by us),,

245. Therefore, it is well settled that for a classification to be permissible under Article 14 of the Constitution of India, it must be founded on an",,

intelligible differentia which clearly distinguishes persons/things which are grouped together from those left out from the group and secondly such,,

differentia must have a relation to the object sought to be achieved in the statute in question.,,

246. It is also trite that (D.S. Nakara v. Union of India) a challenge premised on an allegation of violation of Article 14 could be successfully made on,,

the ground of discrimination by not only the substantive law but also the law of procedure.,,

247. That arbitrariness results in denial of equality and equal protection of law, was also considered by the Supreme Court in (1984) 3 SCC 316 A.L.",,

Kalra v. Project and Equipment Corpn., when it held as follows:",,

â€œ19â€¦â€¦ It thus appears well-settled that Article 14 strikes at arbitrariness in executive/administrative action because any action that is arbitrary,,

must necessarily involve the negation of equality. One need not confine the denial of equality to a comparative evaluation between two persons to,,

arrive at a conclusion of discriminatory treatment. An action per se arbitrary itself denies equal of (sic) protection by law.â€,,

(Emphasis by us),,

248. An argument has been pressed before us that both the substantive statute as well as the rules framed thereunder suffer from arbitrariness and,,

must be struck down for violation of Article 14 of the Constitution of India. The submission was that merely because a person appears to be poor or,,

was perceived to be poor, he was presumed to be a beggar and the stringent penal provisions of the anti-begging law kicked in exposing such person",,

to the worst possible consequences including detention in the police station or prison.,,

249. Therefore, a person, though actually poor, but did not appear to be so, say for instance a taddily dressed beggar, can freely â€œwander",,

aboutâ€ in public places without suffering any of the penal consequences. This would be possible as he would not appear poor or be so perceived.,,

Thus, the entire classification is premised on appearance of a person and the classification rests on an arbitrary perception by the enforcing agency",,

that the person was begging for alms.,,

250. It is also necessary to note that the legislation itself recognizes that all solicitation of alms is not illegal. Section 2(a)(v) of the Jammu & Kashmir,,

Prevention of Beggary Act, itself recognizes that â€œsoliciting money or fee or gift for a purpose authorized by any lawâ€¦â€¦â€¦â€¦.by the District",,

Magistrateâ€ is not covered under the definition of begging as contained in Section 2(a).,,

251. Thus, the legislation itself permits such begging as for which a licence stands issued by the District Magistrate under Rule 3 of the Rules of 1964.",,

A person begging for alms for himself and someone begging for a cause for which he has a licence, are actually undertaking the same activity i.e.,",,

seeking alms for charity. There is no justification at all for the distinction which has been drawn for this classification.,,

252. In this regard, we may usefully advert to the remarks contained in the judgment reported at 617 NYS 2d 429 State of New York v. Eric",,

Schrader that â€œno rational distinction can be made between the message involved, whether the person standing in the corner says â€˜Help me, I am",,

homelessâ€™ or â€˜help the Homelessâ€™â€,,

253. We have observed that the legislation in the instant case has also drawn no distinction between voluntary and involuntary begging. Even the,,

classification between persons begging for themselves and those seeking alms for others with permission from the District Magistrate is neither based,,

on any intelligible differentia nor does it have any relationship to the object sought to be achieved under the statute in question.,,

254. In (2001) 2 SCC 386 (at page 400-401) Om Kumar v. Union of India, it has been held that the validity and adequacy of the differences is actually",,

application of the principles of proportionality in the following terms:,,

32. So far as Article 14 is concerned, the courts in India examined whether the classification was based on intelligible differentia and whether",,

the differentia had a reasonable nexus with the object of the legislation. Obviously, when the courts considered the question whether the classification",,

was based on intelligible differentia, the courts were examining the validity of the differences and the adequacy of the differences. This is again",,

nothing but the principle of proportionality. There are also cases where legislation or rules have been struck down as being arbitrary in the sense of,,

being unreasonable [see Air India v. Nergesh Meerza [(1981) 4 SCC 335: 1981 SCC (L&S) 599] (SCC at pp. 372-373.)]But this latter aspect of,,

striking down legislation only on the basis of â€œarbitrarinessâ€ has been doubted in State of A.P. v. McDowell and Co. [(1996) 3 SCC 709].â€,,

(Emphasis by us),,

255. In the same context we may usefully refer to the observations of the Supreme Court as contained in para 273 of the pronouncement reported,,

at (2017) 9 SCC 1 : AIR 2017 SC 4609 Shayara Bano v. Union of India (at page 4825) which reads thus:,,

â€œ273. The thread of reasonableness runs through the entire fundamental rights Chapter. What is manifestly arbitrary is obviously unreasonable and,,

being contrary to the rule of law, would violate Article 14. Further, there is an apparent contradiction in the three Judges' Bench decision",,

in McDowell (supra) when it is said that a constitutional challenge can succeed on the ground that a law is â€œdisproportionate, excessive or",,

unreasonableâ€, yet such challenge would fail on the very ground of the law being â€œunreasonable, unnecessary or unwarrantedâ€. The arbitrariness",,

doctrine when applied to legislation obviously would not involve the latter challenge but would only involve a law being disproportionate, excessive or",,

otherwise being manifestly unreasonable. All the aforesaid grounds, therefore, do not seek to differentiate between State action in its various forms, all",,

of which are interdicted if they fall foul of the fundamental rights guaranteed to persons and citizens in Part III of the Constitution.â€,,

(Emphasis by us),,

256. In the light of the detailed discussion above, we have no manner of doubt that the classification made by Section 2(a) of the Jammu & Kashmir",,

Prevention of Beggary Act, 1960, is arbitrary, irrational and discriminatory. It has no nexus at all with the object sought to be achieved. It fails to",,

ensure equality before the law to the persons whom it targets.,,

(XIV) Right to life-the Constitutional guarantee under Article 21 of the Constitution of India-Impact of the legislation,,

257. We may briefly conduct an examination of another very important constitutional protection to all persons. Article 21 of the Constitution of India,,

guarantees as a fundamental right that â€œno person shall be deprived of his life or personal liberty except according to procedure established by,,

lawâ€.,,

258. Article 21 of the Constitution of India ensures that no person shall be deprived of his life or personal liberty except by procedure established by,,

law. In this case, the impugned law enables detention of a person perceived to be a beggar for the purposes of conducting the inquiry into the",,

allegations, resulting in deprivation of his liberty. The present consideration therefore necessarily entails an inquiry into the question as to whether the",,

legislation results in violation of or impact on the right to life guaranteed to all person under Article 21 of the Constitution of India as well.,,

259. Before examining as to whether the impugned legislation infracts this valuable constitutional guarantee, it is essential to understand the contours",,

and concomitants of Article 21 of the Constitution of India, as judicially recognized.",,

Concomitants of the guarantee under Article 21,,

260. In a judgment of the Supreme Court reported at (1978) 1 SCC 248 Maneka Gandhi v. Union of India (a seven Judge bench decision) P. N.,,

Bhagwati, J as his lordship then was, had observed that the expression â€œpersonal libertyâ€ in Article 21 is of the widest amplitude covering a",,

variety of rights which go to constitute the personal liberty of man and some of which stand raised to the status of distinct fundamental rights and,,

given additional protection under Article 19.,,

261. In (1981) 1 SCC 608 Francis Coralie Mullin v. Administrator, Union Territory of Delh,i the Supreme Court expounded on the essentialities which",,

comprise the right to life including the right to dignity. The judgment was authored by P. N. Bhagwati, J, who observed as follows:",,

â€œâ€¦â€¦. We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of",,

life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and",,

mixing and commingling with fellow human beings. â€¦â€¦â€¦ Every act which offends against or impairs human dignity would constitute deprivation,,

pro tanto of this right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands the test of",,

other fundamental rights.â€ [para 8 of SCC]â€,,

(Emphasis by us),,

262. It is noteworthy that the Preamble of the Constitution of India assures the â€œdignity of the individualsâ€, Justice V.R. Krishna Iyer, J, in the",,

judgment reported at (1980) 3 SCC 526 Prem Shankar Shukla v. Delhi Admn ,pointing out that that the expression â€œdignity of the individualâ€ is",,

mentioned in the Preamble to the Constitution of India, had observed that the guarantee of human dignity forms a part of our constitutional culture.",,

263. What constitutes â€˜dignityâ€™ of a person? L'Heureux-Dube, J, in a judgment of the Supreme Court of Canada reported at (1995) 29 CRR",,

(2nd) 79 at 106 Egan v. Canada, had observed that dignity is a notoriously elusive and difficult concept to capture in precise terms but it needs no",,

elaboration that dignity necessarily entails an acknowledgement of the knowledge and worth of every single individual as a member of our society.,,

The dignity of an individual would comprise recognition of the autonomy of a person's private will, his freedom of choice and of action. Such choice",,

and autonomy is an essential part of right of life of every individual and has to be respected irrespective of the economic and social standing of the,,

person.,,

264. An extremely informative exposition of the meaning of human dignity is found in a judgment of the Supreme Court of Canada reported at (1999),,

1 S.C.R. 497 Law v. Canada (Ministry of Employment and Immigration) when it has been observed as follows:,,

â€œHuman dignity means that an individual or group feels self-respect and self-worth. It is concerned with physical and psychological integrity and,,

empowerment. Human dignity is harmed by unfair treatment premised upon personal traits or circumstances which do not relate to individual needs,",,

capacities, or merits. It is enhanced by laws which are sensitive to the needs, capacities, and merits of different individuals, taking into account the",,

context underlying their differences. Human dignity is harmed when individuals and groups are marginalized, ignored, or devalued, and is enhanced",,

when laws recognise the full place of all individuals and groups within Canadian society.â€[at para 53],,

(Emphasis by us),,

265. We find a valuable elaboration of the rights ensured by Article 21 in the judgment of the Supreme Court reported at (1984) 3 SCC 161 : AIR,,

1984 SC 802 Bandhua Mukti Morcha v. Union of India ;wherein the Court held as follows:,,

â€œ10. â€¦ This right to live with human dignity enshrined in Article21 derives its life breath from the Directive Principles of State Policy and,,

particularly clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of",,

workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and",,

in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum",,

requirements which must exist in order to enable a person to live with human dignity and no State â€" neither the Central Government nor any State,,

Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.â€,,

(Emphasis by us),,

266. In the judgment reported at (1990) 1 SCC 520 Shantistar Builders v. Narayan Khimalal Totame ,placed by Mr. Suhail Rashid Bhat, the petitioner",,

before us, the Supreme Court explained that the right of food, clothing, environment and shelter are essential components of the right to life in the",,

following terms:,,

â€œ9. Basic needs of man have traditionally been accepted to be threeâ€" food, clothing and shelter. The right to life is guaranteed in any civilized",,

society. That would take within its sweep the right to food, the right to clothing, the right to decent environment and a reasonable accommodation to",,

live in. The difference between the need of an animal and a human being for shelter has to be kept in view. For the animal it is the bare protection of,,

the body; for a human being it has to be a suitable accommodation which would allow him to grow in every aspect -- physical, mental and intellectual.",,

The Constitution aims at ensuring fuller development of every child. That would be possible only if the child is in a proper home. It is not necessary,,

that every citizen must be ensured of living in a well-built comfortable house but a reasonable home particularly for people in India can even be mud-,,

built thatched house or a mud-built fire-proof accommodation.â€,,

(Emphasis by us),,

267. The right to education has also been held to be flowing from Article 21 of the Constitution of India and stands so recognized in the judgment,,

reported at (1993) 1 SCC 645 Unni Krishnan J.P. v. State of Andhra Pradesh, when the Supreme Court held thus:",,

â€œ226. â€¦â€¦â€¦..1. The citizens of this country have a fundamental right to education. The said right flows from Article 21. This right is, however,",,

not an absolute right. Its content and parameters have to be determined in the light of Articles 45 and 41. In other words every child/citizen of this,,

country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic,,

capacity and development of the State.â€,,

(Emphasis by us),,

268. It is noteworthy that above pronouncement led to a Constitutional amendment and incorporation of Article 21A in Part-III of the Constitution of,,

India, which provides the right to free and compulsory education for all children between the ages of 6 to 14 as a fundamental right. Pursuant to this",,

valuable amendment, the Right of Children to Free and Compulsory Education Act, 2009, was enacted to implement the spirit, object and intendment",,

of the constitutional amendment.,,

269. Yet another valuable right as part of the right to life was recognized by the Supreme Court in the judgment reported at (1997) 2 SCC 83 State of,,

Punjab v. Mohinder Singh Chawla, when it was observed that â€œit is now settled law that right to health is integral to the right to life. Government",,

has a constitutional obligation to provide health facilitiesâ€.,,

Entitlement to protection of dignity, privacy and liberty",,

270. The right to personal liberty and entitlement to protection of privacy is yet another important concomitant of and flowing from the right to life,,

guaranteed under Article 21 of the Constitution of India. It is also derived from the right to freedom of speech and expression in Article 19(1)(a) of the,,

Constitution and right to freedom of movement as contained in Article 19(1)(d).,,

271. As to what would constitute the meaning and content of personal liberty in Article 21 and the interplay amongst the other rights guaranteed under,,

Part III of the Constitution of India, we may usefully advert to the observations of P. N. Bhagwati, J, in the pronouncement of the Supreme Court",,

reported at (1978) 1 SCC 248 Maneka Gandhi v. Union of India, in the following terms:",,

â€œ5. It is obvious that Article 21, though couched in negative language, confers the fundamental right to life and personal liberty. So far as the right",,

to personal liberty is concerned, it is ensured by providing that no one shall be deprived of personal liberty except according to procedure prescribed by",,

law. The first question that arises for consideration on the language of Article 21 is : what is the meaning and content of the words â€˜personal,,

libertyâ€™ as used in this article? This question incidently came up for discussion in some of the judgments in A. K. Gopalan v. State of Madras (AIR,,

1950 SC 27) and the observations made by Patanjali Sastri, J., Mukherjee, J., and S. R. Das, J., seemed to place a narrow interpretation on the words",,

â€˜personal libertyâ€™ so as to confine the protection of Article 21 to freedom of the person against unlawful detention. But there was no definite,,

pronouncement made on this point since the question before the Court was not so much the interpretation of the words â€˜personal libertyâ€™ as the,,

interrelation between Article 19 and 21. It was in Kharak Singh v. State of U.P. (AIR 1963 SC 1295)that the question as to the, proper scope and",,

meaning of the expression personal libertyâ€™ came up pointedly for consideration for the first time before this Court. The majority of the,,

Judges took the view â€œthat personal libertyâ€™ is used in the article as a compendious term to include within itself all the varieties of rights which,,

go to make up the personal liberties' of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1)",,

deals with particular species or attributes of that freedom, â€˜personal libertyâ€™ in Article 21 takes in and comprises the residueâ€. The Minority",,

judges, however, disagreed with this view taken by the majority and explained their position in the following words: â€œNo doubt the expression",,

â€˜personal libertyâ€™ is a comprehensive one and the right to move freely is an attribute of personal liberty. It is said that the freedom to move,,

freely is carved out of personal liberty and, therefore, the expression â€˜personal libertyâ€™ in Article 21 excludes that attribute. In our view, this is",,

not a correct approach. Both are independent fundamental rights, though there is overlapping. There is no question of one being carved out of another.",,

The fundamental right of life and personal liberty has many attributes and some of them are found in Article 19. If a person's fundamental right under,,

Article 21 is infringed, the State can rely upon a law to sustain the action, but that cannot be a complete answer unless the said law satisfies the test",,

laid down in Article 19(2) so far as the attributes covered by Article 19(1) are concernedâ€. There can be no doubt that in view of the decision of this,,

Court in R. C. Cooper v. Union of India [(1970) 2 SCC 298] the minority view must be regarded as correct and the majority view must be held to,,

have been overruled.,,

xxxxxxxxxâ€,,

(Emphasis by us),,

272. Article 12 of the Universal Declaration of Human Rights (1948) refers to privacy stating thus:,,

â€œNo one shall be subjected to arbitrary interference with his privacy, family, home or correspondence nor to attacks upon his honour and",,

reputation. Everyone has the right to the protection of the law against such interference or attacks.â€,,

273. India is also a party to the International Covenant of Civil and Political Rights, Article 17 whereof refers to privacy in the following terms;",,

â€œNo one shall be subjected to arbitrary or unlawful interference with his privacy, family, home and correspondence, nor to unlawful attacks on his",,

honour and reputation.â€,,

274. We may also usefully advert to the European Convention on Human Rights, which mentions the following rights:",,

â€œ1. Everyone has the right to respect for his private and family life, his home and his correspondence.",,

2. There shall be no interference by a public authority except such as is in accordance with law and is necessary in a democratic society in the,,

interests of national security, public safety or the economic well-being of the country, for the protection of health or morals or for the protection of the",,

rights and freedoms of others.â€,,

(Emphasis by us),,

275. So far as the development of the law of privacy in India is concerned, we find the same considered in judgments on legislation permitting",,

domiciliary visits by authorities. In the judgment of the Supreme Court reported at (1964) 1 SCR 332 Kharak Singh v. The State of U.P,. the Supreme",,

Court was concerned with domiciliary visits under the U.P. Regulations. The majority of the Bench referred to a pronouncement of the U.S. Supreme,,

Court reported at 94 US 113 (1877) Munn v. Illinois and held that even though the Constitution of India does not make an express right to privacy, it",,

could be traced from the right to life as contained in Article 21 of the Constitution.,,

276. All the seven judges constituting the Bench held that â€œright to privacyâ€ was an essential part of the right to life guaranteed under Article 21,,

of the Constitution. The Court held that Clause 236 of the U.P. Regulations was bad in law as it offended Article 21 for the reason that there was no,,

law permitting interference in the right to privacy by such visits.,,

277. It is noteworthy that Subba Rao, J, while concurring that the fundamental right to privacy was a part of the right to liberty as contained in Article",,

21; observed that it was also a part of right to freedom of speech and expression as contained in Article 19(1)(a) and the right to movement in Article,,

19(1)(d) and held that the regulations permitting the surveillance violated the fundamental right to privacy.,,

278. The next judgment on this issue thereafter was the celebrated judgment of the Supreme Court reported at 1975) 2 SCC 148 Gobind v. State of,,

M.P. ;Placing reliance on well-known pronouncements of the Supreme Court of United States of America reported at 381 US 479,,

(1965) Griswold v. State of Connecticut and 410 US 113 (1973) Jane Roe v. Wade, the Supreme Court of India had, in para 20, observed thus:",,

â€œThere can be no doubt that the makers of our Constitution wanted to ensure conditions favourable to the pursuit of happiness. They certainly,,

realized as Brandeis, J. said in his dissent in Olmstead v. United States, 277 US 438, 471 the significance of man's spiritual nature, of his feelings and",,

of his intellect and that only a part of the pain, pleasure, satisfaction of life can be found in material things and therefore they must be deemed to have",,

conferred upon the individual as against the Government a sphere where he should be let alone.â€ [para 20 of SCC],,

279. In this judgment Mathew, J. held that privacy and dignity claims had to be examined with care and were to be denied only when an important",,

countervailing interest was shown to be superior or where a compelling state interest was shown. If the Court finds that the claimed right is entitled to,,

protection as a fundamental privacy right, a law infringing it must necessarily satisfy the compelling state interest test. The question which would",,

require to be answered is as to whether the state interest is of such paramount importance as would justify an infringement of the right. Therefore, the",,

right was not absolute and also that the same had to be examined on case to case basis.,,

280. In (1994) 6 SCC 632 R. Rajagopal v. State of Tamil Nadu, the Supreme Court reiterated that the right to privacy was implicit in the right to life",,

and liberty guaranteed to the citizens of India by Article 21. This necessarily included â€œthe right to be left aloneâ€. A citizen has the right to,,

safeguard, amongst others, the privacy of his self.",,

281. The right to privacy stands accepted as implied in the Constitution in the judgments reported at (1997) 1 SCC 301 People's Union for Civil,,

Liberties v. Union of India and (2003) 4 SCC 493 Sharda v. Dharampal.,,

282. Most of the judgments on the subject in India have again referred to some important judgments of the Supreme Court of the United States. While,,

the right to privacy in a challenge to wire-tapping or electronic surveillance in the Supreme Court of United States was held not to be subject to Fourth,,

Amendment restrictions in the judgment reported at 277 US 438 (1928) Olmstead v. United States, however, in the dissent authored by Justice",,

Brandeis, the learned Judge had opined that the Fourth amendment protected the right to privacy which meant â€œthe right to be left aloneâ€, and its",,

purpose was â€œto secure conditions favourable to the pursuit of happinessâ€. While recognizing â€œthe significance of man's spiritual nature, of his",,

feelings and intellectâ€; the right sought â€œto protect Americans in their beliefs, their thoughts, their emotions and their sensationsâ€,",,

283. This minority view was accepted and became the law more than forty years thereafter when by the judgment reported at 381 US 479,,

(1965): Griswold v. State of Connecticut, the Supreme Court of USA invalidated the State law prohibiting the use of drugs or devices of contraception",,

and counseling or aiding and abetting the use of contraceptives. The Court referred to the protected interest as a right to privacy. These rights were,,

reiterated in the subsequent judgments reported at 405 US 438 (1972) Eisenstadt v. Baired and in the off cited pronouncement reported as 410 US 113,,

(1973) Jane Roe v. Wade.,,

284. In the judgment of the US Supreme Court reported at 505 US 833 (1992) Planned Parenthood of Southeastern Pa v. Casey, the Supreme Court",,

explained the respect demanded by the Constitution for the autonomy of the person in making certain personal choices stating as follows:,,

â€œThese matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and",,

autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of",,

existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood",,

were they formed under compulsion of the State.â€ [page 851],,

(Emphasis supplied),,

285. In Abbotsford (City) v. Shantz (2015) BCSC 1909, the concept of liberty as part of human dignity recognized by the Canadian charter stands",,

elaborated upon. Reference has been made to observations made by La Forest J. in the judgment of the Supreme Court of Canada reported at (1995),,

1 SCR 315 (R.B) entitled R.B. v. Children's Aid Society of Metropolitan Toronto (para 80), which deserve to be considered in extenso and read as",,

follows:,,

â€œThe above cited cases give us an important indication of the meaning of the concept of liberty. On the one hand, liberty does not mean",,

unconstrained freedom; see Re B.C. Motor Vehicle Act, [1985] 2 S.C.R. 486 (per Wilson J., at p.524); R. v. Edwards Books and Art Ltd., [1986] 2",,

S.C.R. 713 (per Dickson C.J., at pp.785-86). Freedom of the individual to do what he or she wishes must, in any organized society, be subjected to",,

numerous constraints for the common good. The state undoubtedly has the right to impose many types of restraints on individual behavior, and not all",,

limitations will attract Charter scrutiny. On the other hand, liberty does not mean mere freedom from physical restraint. In a free and democratic",,

society, the individual must be left room for personal autonomy to live his or her own life and to make decisions that are of fundamental personal",,

importance. In R. v. Morgentaler [1988] 1 S.C.R. 30, Wilson J. noted that the liberty interest was rooted in the fundamental concepts of human",,

dignity, personal autonomy, privacy and choice in decisions going to the individuals fundamental being. She stated, at p.166:",,

Thus, an aspect of the respect for human dignity on which the Charter is founded is the right to make fundamental personal decisions without",,

interference from the state. This right is a critical component of the right to liberty. Liberty, as was noted in Singh, is a phrase capable of a broad",,

range of meaning. In my view, this right, properly construed, grants the individual a degree of autonomy in making decisions of fundamental personal",,

importance.â€,,

(Emphasis supplied),,

286. Thus, right to live with dignity as well as the right to privacy are critical components of the right to liberty, all of which are essential concomitants",,

of the right to life guaranteed under Article 21 of the Constitution of India.,,

287. On this aspect, we may also extract from the concurring judgment of Dr. D. Y. Chandrachud, J. in (2018) 10 SCC 1 Navtej Singh Johar v. Union",,

of India (at page 231), wherein his Lordship has elaborated on the linkage between the right to privacy, liberty and human dignity in the following",,

terms:,,

â€œ462. The right to privacy is intrinsic to liberty, central to human dignity and the core of autonomy. These values are integral to the right to life",,

under Article 21 of the Constitution. A meaningful life is a life of freedom and self-respect and nurtured in the ability to decide the course of living. In,,

the nine judge Bench decision in Puttaswamy, this Court conceived of the right to privacy as natural and inalienable. The judgment delivered on behalf",,

of four judges holds: (SCC p.365, para 42)",,

â€œ42. Privacy is a concomitant of the right of the individual to exercise control over his or her personality. It finds an origin in the notion that there,,

are certain rights which are natural to or inherent in a human being. Natural rights are inalienable because they are inseparable from the human,,

personality. The human element in life is impossible to conceive without the existence of natural rights.â€,,

Bobde, J., in his exposition on the form of the â€œright to privacyâ€ held thus: (K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, para 392)",,

â€œ392â€¦â€¦..Privacy, with which we are here concerned, eminently qualifies as an inalienable natural right, intimately connected to two values",,

whose protection is a matter of universal moral agreement: the innate dignity and autonomy of man.â€,,

Nariman, J. has written about the inalienable nature of the right to privacy: (K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, para 490)",,

â€œ490â€¦Fundamental rights, on the other hand, are contained in the Constitution so that there would be rights that the citizens of this country may",,

enjoy despite the governments that they may elect. This is all the more so when a particular fundamental right like privacy of the individual is an,,

â€œinalienableâ€ right which inheres in the individual because he is a human being. The recognition of such right in the fundamental rights chapter of,,

the Constitution is only a recognition that such right exists notwithstanding the shifting sands of majority governments.â€,,

Sapre, J., in his opinion, has also sanctified â€œprivacyâ€ as a natural right: (K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1, para 557)",,

â€œ557. In my considered opinion, â€œright to privacy of any individualâ€ is essentially a natural right, which inheres in every human being by birthâ€¦",,

It is indeed inseparable and inalienableâ€¦it is born with the human beingâ€¦â€,,

These opinions establish that the right to privacy is a natural right.,,

xxxxxxxxxxxxxxxxâ€,,

469. Citizens of a democracy cannot be compelled to have their lives pushed into obscurity by an oppressive colonial legislation,,

xxxxxxxxxx.â€,,

(Emphasis by us),,

288. The Supreme Court has therefore recognized what are the primary and basic needs of every human being. Thus, the protection of health,",,

freedom, food, clothing, shelter, educational facilities, just and humane conditions of work and maternity benefits, privacy, dignity and liberty are",,

amongst the minimum requirements essential to ensure the right to live.,,

289. The constitutionality of vagrancy/anti begging legislations in different parts of Canada (similar to the Jammu & Kashmir Prevention of Beggary,,

Act, 1960) have also been tested by courts in Canada. Judgments in these cases also shed valuable light on the matter under consideration before us.",,

290. The Supreme Court of British Columbia, Canada in Abbotsford (City) v. Shantz (2015) BCSC 1909 has held that in view of protection accorded",,

to the right to life by the Canadian Constitution Act, 1982, the Sections 14 and 15 of the Consolidated Parks Bylaw, and subsection 2.7(d) of the Good",,

Neighbour Bylaws are required to be struck down as not having any force or effect to the extent that they apply to the City's homeless and prohibit,,

sleeping or being in a City park overnight or erecting a temporary shelter without permits. The Court held as follows:,,

â€œCertain kinds of regulation of public spaces, which by definition limit citizens' fundamental freedoms, may be necessary and justifiable. But",,

the protection of s. 7 (right to life) rights and freedoms will advance the dignity and autonomy of the City's homeless, by safeguarding their safety and",,

securityâ€¦I find, however, that the impugned Bylaws fail to minimally impair DWS' members' s.7 freedoms and rights, and lack overall proportionality",,

between the benefits and the burdens of the effects of those regulations as they do almost nothing to accommodate the City's homeless' s.7 freedoms,,

and rights. In the result, I conclude that the City has failed to justify the infringement of the s.7 rights of the City's homeless.â€",,

(Emphasis by us),,

291. Again in Federated Anti-Poverty Groups of BC v. Vancouver (City), (2002) BCSC 105, the Supreme Court of British Columbia, Canada has held",,

that general panhandling is the ability to provide for one's self (and at the same time deliver the â€œmessageâ€) and is an interest that falls within the,,

ambit of the constitutionally protected necessity of life.,,

292. The high value of human dignity and the worth of every human life, irrespective of his financial health, stands recognized almost 40 years ago by",,

the Supreme Court of India in the judgment reported at (1980) 2 SCC 360 Jolly George Varghese v. Bank of Cochin. This was an appeal by judgment,,

debtors whose personal freedom was endangered because the court below had issued warrants for their arrest and detention in civil prison on account,,

of their inability to make payment of an amount due to a bank which claim of the bank had ripened into a decree and the liability not discharged by the,,

appellant. While considering the legality of the fetters on the personal liberty of the appellants in the context of impoverished circumstances, the",,

Supreme Court had placed reliance on the obligations of the State under international instruments including the Universal Declaration of Human Rights,,

and the International Covenant of Civil and Political Rights in addition to the rights guaranteed to every person under Article 21 of the Constitution of,,

India and held as follows;,,

â€œ10. Equally meaningful is the import of Article 21 of the Constitution in the context of imprisonment for non-payment of debts. The high value of,,

human dignity and the worth of the human person enshrined in Article 21, read with Article 14 and 19, obligates the State not to incarcerate except",,

under law which is fair, just and reasonable in its procedural essence. Maneka Gandhi case [(1978) 1 SCC 248] as developed further in Sunil",,

Batra v. Delhi Administration [(1978) 4 SCC 494: 1979 SCC (Cri) 155], Sita Ram v. State of U.P. [(1979) 2 SCC 656: 1979 SCC (Cri) 576: (1979) 2",,

SCR 1085] and Sunil Batra v. Delhi Administration [WP No. 1009 of 1979, decided on December 20, 1979] lays down the proposition. It is too",,

obvious to need elaboration that to cast a person in prison because of his poverty and consequent inability to meet his contractual liability is appalling.,,

To be poor, in this land of daridra Narayana, is no crime and to recover debts by the procedure of putting one in prison is too flagrantly violative of",,

Article 21unless there is proof of the minimal fairness of his willful failure to pay in spite of his sufficient means and absence of more terribly pressing,,

claims on his means such as medical bills to treat cancer or other grave illness. Unreasonableness and unfairness in such a procedure is inferable from,,

Article 11 of the Covenant. But this is precisely the interpretation we have put on the proviso to Section 51 CPC and the lethal blow of Article 21,,

cannot strike down the provision, as now interpreted.â€",,

(Emphasis by us),,

293. With regard to the requirement of mandatory detention of a person perceived to be begging and confinement irrespective of his innocence or,,

guilt, we are reminded of the observations of Krishna Iyer, J, in the judgment reported at 1980 Supp SCC 649 : AIR 1981 SC",,

674 Gopalanachari v. State of Kerala, when he stated thus:",,

â€œâ€¦â€¦.If men can be whisked away by the police and imprisoned for long months and the court can keep the cases pending without thought to the,,

fact that an old man is lying in cellular confinement without hope of his case being disposed of, Article 21, read with Articles 14 and 19 of the",,

Constitution, remain symbolic and scriptural rather than a shield against unjust deprivation. Law is not a mascot but a defender of the faith. Surely, if",,

law behaves lawlessly, social justice becomes a judicial hoax.â€",,

(Emphasis by us),,

294. We may also advert to the position under international instruments. Article 23(1) of Universal Declaration of Human Rights, 1948 provides as",,

under:,,

â€œ(1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against",,

unemployment.â€,,

295. Article 6(1) of the International Covenant of Civil and Political Rights, provides as under:",,

â€œ1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.â€,,

296. We may also extract Article 11 of the International Covenant of Civil and Political Rights, which reads as follows:",,

â€œNo one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.â€,,

297. Thus, it would appear that the international instruments have militated against deprivation of personal freedom for non-payment of amount due",,

under a contract. They also seek to guarantee means of economic empowerment by guaranteeing right to work, free choice of employment as well as",,

protection against employment.,,

298. We may also note that the provisions of the Constitution of Jammu & Kashmir, 1956, which sought to achieve for its citizens the following:",,

â€œ13. State to establish a socialist order of society for the promotion of welfare of the people,,

The prime object of the State consistent with the ideals and objectives of the freedom movement envisaged in â€œNew Kashmirâ€ shall be the,,

promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been,,

abolished and wherein justice-social, economic and political-shall inform all the institutions of national life.â€",,

(Emphasis by us),,

299. Thus, there is a constitutional mandate under the Constitution of Jammu & Kashmir, 1956, upon the State to ensure its citizens justice-social",,

economic and political and a society that promotes welfare of all.,,

300. Further, Section 19(a) and (d) of the State Constitution enjoin upon the State the following:",,

â€œ19. Right to work and to public assistance in certain cases,,

The State shall, within the limits of its economic capacity and development, make effective provision for securing-",,

(a) that all permanent residents, men and women equally, have the right to work, that is, the right to receive guaranteed work with payment for labour",,

in accordance with its quantity and quality subject to a basic minimum and maximum wages established by law;,,

(b) xxxxxxxxxxxxx,,

(c) xxxxxxxxxxxxx,,

(d) that all permanent residents have adequate maintenance in old age as well as in the event of sickness, disablement, unemployment and other cases",,

of undeserved want by providing social insurance, medical aid, hospitals, sanatoria and health resorts at State expense.",,

Xxxxxxxxxxxxxxâ€,,

(Emphasis by us),,

301. The State thus was constitutionally required to make provisions for securing amongst others the right to work, adequate maintenance in the event",,

of unemployment and other cases of undeserved want by providing social insurance etc.,,

302. We may also note Section 23 of the Constitution of Jammu & Kashmir, 1956 which provides as follows:",,

â€œ23. Protection of educational, material and cultural interests of socially and economically backward sections",,

The State shall guarantee to the socially and educationally backward sections of the people special care in the promotion of their educational, material",,

and cultural interests and protection against social injustice.â€,,

(Emphasis by us),,

303. It is manifest therefrom that the residents of Jammu & Kashmir stood constitutionally protected against social injustice.,,

304. We have noted that a person is compelled to beg on account of abject poverty and unable to secure sustenance. Mr. Sheikh Feroz Ahmad,",,

learned Dy.AG, is unable to point out anything in the counter affidavit which would show that the State Government had discharged the constitutional",,

mandate under Section 19(a) and (d) of the Constitution of Jammu and Kashmir to make any provision for securing the â€œright to workâ€ or any,,

measures providing social insurance which would enable adequate maintenance in the event of unemployment and other cases of undeserved want of,,

the citizens. The State has not discharged its obligation to secure the protection of persons in Jammu & Kashmir against the social injustice as,,

warranted under Section 23 of the Constitution.,,

305. The existence of the need to beg for sustenance manifests that the State has miserably failed to achieve for all its citizens real justiceâ€" social,",,

economic or a society that promotes welfare of all as is required under Section 13 of the State Constitution.,,

306. We also find that no effort stands made by the State or its agencies to discharge its obligation to identify, deal with the causes of destitution of the",,

beggars and to address the same.,,

307. Begging is also in fact evidence of the failure of the Government as well as the society at large to protect its citizens from debilitating effects of,,

extreme poverty and to ensure to them basics of food, clothing, shelter, health, education, essential concomitants of the right to life ensured under",,

Article 21 of the Constitution of India.,,

308. Legislations which clothe and empower authorities and agencies with drastic powers, have been found generally to contain â€œgood faithâ€",,

clauses which are intended to insulate bonafide actions of these authorities/officers working the enactment from prosecution of the same. For,,

instance, Section 18 of the Lepers Act, 1898, contains the protection to persons acting bona fide under Act-It states that no suit, prosecution or other",,

legal proceeding shall lie against any officer or person in respect of anything done in good faith or intended to be done under, or in pursuance of, the",,

provisions of this Act. Similar protection is found in Section 18 of the Unlawful Activities Prevention Act, 1967; Section 16 of the National Security",,

Act, 1980; Section 428 of the Companies Act, 2013, amongst other legislations.",,

309. The Jammu & Kashmir Prevention of Beggary Act, does not contain any such protection suggesting legislative arrogance in that it does not",,

expect any complaint against the authorities working this law in view of the powerless status of the targeted population.,,

310. It is obvious that the legislation is steeped in prejudice against poverty and premised on an absolute presumption of potential criminality of those,,

faced with choicelessness, necessity and undeserved want of those who have no support at all, institutional or otherwise and are bereft of resources of",,

any kind. The legislation in fact manifests the complete apathy of the State and abdication of the Constitutional functions and public law obligations,",,

when instead of providing support, it has criminalized poverty and exposed the extreme poor and marginalized to penal prosecutions and punishment.",,

311. The criminalization of begging, undeniably adversely impacts the most vulnerable people in the society i.e., that group of people who do not have",,

access to basic essentialities as food, shelter, health and criminalization of begging ignores the reality that persons who are begging are the poorest of",,

the poor and the most marginalized in the society. Criminalization of poverty results in further deprivation and social exclusion.,,

312. Denial of the right to beg i.e. to ask for alms will push this group of extreme poor to further deprivation, let alone upholding or enabling their right",,

to entitlement and right to decent living conditions.,,

313. Poverty, and the consequential begging, is not out of choice but compelled out of the circumstances. The impugned legislation treats the targeted",,

population, that is beggars, as having no personal autonomy or entitlement to the freedom to make a choice so far as their life and conduct is",,

concerned. The dignity of the targeted individuals is irreparably harmed by the unfair treatment wielded out to them which is directly based on their,,

circumstances. The treatment is completely insensitive to the individual needs and fails to take into account the fact that these are persons who are,,

already marginalized in life, living on the fringes of the communities without the bare essentials for mere existence.",,

314. The United Nations Special Rapporteur in a report on â€œExtreme Poverty and Human Rights Magdalena Sepulveda Carmona, 32, U.N. Doc.",,

A/66/265 (Aug. 4, 2011)â€ has conducted an in-depth analysis on extreme poverty and human rights as well as several laws, regulations and practices",,

that punish, segregate, control and undermine the autonomy of a person's living in poverty. It has been found in this report that:",,

â€œ5. States have long recognized that poverty is a complex human condition characterized by sustained or chronic deprivation of the resources,",,

capabilities, choices, security and power necessary for the enjoyment of an adequate standard of living and other economic, civil, cultural, political and",,

social rights. Poverty is not an autonomous choice, but rather a multifaceted situation from which it may be difficult, if not impossible, to escape",,

without assistance. Persons living in poverty are not to blame for their situation; accordingly, States must not punish or penalize them for it. Rather,",,

States must adopt wide-reaching measures and policies designed to eliminate the conditions that cause, exacerbate or perpetuate poverty, and ensure",,

the realization of all economic, social, cultural, civil and political rights of those living in poverty.",,

6. Penalization policies reflect a serious misunderstanding of the realities of the lives of the poorest and most vulnerable and ignorance of the pervasive,,

discrimination and mutually reinforcing disadvantages that suffer.,,

7. Penalization measures respond to discriminatory stereotypes that assume that persons living in poverty are lazy, irresponsible, indifferent to their",,

children's health and education, dishonest, undeserving and even criminal.",,

xxxxxxxâ€,,

(Emphasis by us),,

315. The report also notes the disproportionate impact of poverty on women and that they are particularly vulnerable to penalization measures. It also,,

records that â€œBans on begging and vagrancy represent serious violations of the principles of equality and non-discrimination. Such measures give,,

law enforcement officials wide discretion in their application and increase the vulnerability of persons living in poverty to harassment and violence.,,

They serve only to contribute to the perpetuation of discriminatory societal attitudes towards the poorest and most vulnerable.â€,,

316. It is not justifiable to imprison a person who has been compelled to resort to begging as a means of subsistence especially when the State is itself,,

responsible on account of economic or other factors to implement the constitutional guarantee of a society which is free from all forums and,,

deprivation.,,

317. We find that even liberty guaranteed under Article 21 has been subjected to principles of proportionality. In (2001) 2 SCC 386 (400) Om,,

Kumar v. Union of India, the Supreme Court had observed thus:",,

31. Article 21 guarantees liberty and has also been subjected to principles of â€œproportionalityâ€. Provisions of the Criminal Procedure Code, 1974",,

and the Indian Penal Code came up for consideration in Bachan Singh v. State of Punjab [(1980) 2 SCC 684: 1980 SCC (Cri) 580] the majority,,

upholding the legislation. The dissenting judgment of Bhagwati, J. (see Bachan Singh v. State of Punjab [(1982) 3 SCC 24: 1982 SCC (Cri) 535])",,

dealt elaborately with â€œproportionalityâ€ and held that the punishment provided by the statute was disproportionate.,,

(Emphasis by us),,

318. Section 3 of the Act, 1960, which makes begging an offence; Section 4 which enables mandatory arrest without a warrant, detention and",,

imprisonment; Section 5 which permits a summary inquiry and detention for purpose therefore; Section 6 which permits imposition of a penalty and,,

Section 7 which envisages punishment for escaping from the place of detention of persons who are compelled to beg in order to meet the basic needs,,

for bare survival which is way below even the minimum level of sustenance, have a clearly disproportionately impact and violate rights of these",,

persons guaranteed under Article 21 of the Constitution of India and cannot be sustained.,,

319. Rule 4 of the J&K Prevention of Begging Rules, 1964, prescribes the manner of detention of the person; Rule 5 provides for a summary",,

procedure thereof. Rule 6 completely strips the person detained of his privacy and dignity by compelling him to submit to medical examination without,,

any option.,,

320. Rule 6(a)(ii) mandates every person is detained to submit â€œtrimming or shaving of the hair on any part of the personâ€ as may â€œin the,,

opinion of the medical officerâ€ be necessary. The detenue has no option whatsoever in the matter. Similarly, under sub-rule (iii) of Rule 6(a), it is",,

mandated that every person detained in the home shall submit to â€œcleansing and washing of the body with such materials as may be provided and,,

the complete removal of clothing in order to secure this objectâ€. The detenue has no volition either as to the cleansing or washing or to the materials,,

with which he is required to do so. The delegated legislation requires â€œcomplete removal of clothingâ€ to secure the object of the rule. Under,,

clause (b) of Rule 6(1), the detenue is mandated to â€œwear such clothes as the Officer-in-Charge of the Home may from time to time directâ€.",,

321. To secure compliance of the above provisions, Rule 6(2) even enables the authorities â€œuse of minimum physical forceâ€ for the purpose.",,

322. Under Rule 8, money, valuables and other articles found with the person detained are required to be entered in a register.",,

323. The proviso to sub-rule (2) of Rule 8, however, enables the Officer-in-Charge of the Home to destroy clothing, bedding or articles as are",,

considered on hygienic grounds or if the same is â€œraggedâ€ or suffering from any contagious disease. Again, as to whether an article is ragged or",,

not is left to the absolute discretion of the Officer-in-Charge of the Home while the owner thereof i.e. the person detained has no say or option in the,,

matter at all.,,

324. Rule 9 of the Jammu & Kashmir Prevention of Beggary Rules, 1964, inter alia enumerates that person detained shall not refuse to receive any",,

training arranged or ordered for him or do the work allotted to him.,,

325. Rule 9 vests absolute power over the detained person in the authorities at the Sick Home/Beggar's Home/Children Home and gives unchecked,,

power to the authorities manning these facilities over the person detained.,,

326. The deprivations and compulsions imposed under Rules 6, 8, and 9 as stand envisaged and permitted under the Rules of 1964 in the detention",,

centers are also an extreme intrusion on the privacy of the detained person and tantamounts to infringement of his right to privacy assured under,,

Article 21 of the Constitution of India. These Rules enable treating the detained person with utmost disdain and disrespect, violate his dignity, thus also",,

eroding his self worth and are an assault on the guarantee contained in Article 21 of the Constitution of India.,,

327. We thus hold that the mandate under the Jammu & Kashmir Prevention of Beggary Rules, 1964, violates the privacy and dignity of the person",,

detained in the most intrusive manner possible infringing all the rights of the person under Article 21 of the Constitution of India.,,

(XV) Directive Principles of State Policy,,

328. It is also essential to note that Part IV of the Constitution of India enlists the â€œDirective Principles of State Policyâ€. These principles obligate,,

the State to take positive action in certain circumstances so as to promote the welfare of the people and achieve economic democracy. Guidance and,,

direction is given to the legislatures as well as the executive as to the manner in which they should exercise their power (Ref: (1996) 4 SCC,,

37 Paschim Banga Khet Mazdoor Samity v. State of Bengal.) It has been stated that while fundamental rights seek to introduce an egalitarian society,,

and to ensure liberty for all, the directive principles seek to achieve a welfare state. The two together constitute the conscience of the Constitution",,

(Ref: MP Jain â€œIndian Constitution Law, 6th Edition page 1972).",,

329. Social and economic justice stands raised to the level of a fundamental right (Ref: (1997) 9 SCC 377 Air India Statutory Corpn. v. United Labour,,

Union, (1996) 10 SCC 104 : (1996) 4 JT (SC) 555 Dalmia Cement (Bharat) Ltd. v. Union of India; ;(1992) 1 SCC 441: C.E.S.C. Ltd. v. S. C. Bose)",,

330. In the judgment of the Supreme Court reported at (1997) 11 SCC 121 Ahmedabad Mun. Corp. v. Nawabkhan Gulab Khan, the Preamble of the",,

Constitution of India, the fundamental rights guaranteed under Part III and the Directive Principles under Part IV of the Constitution have been",,

characterized as the â€˜trinityâ€™ of the Constitution of India.,,

331. Article 39 has enumerated the object towards which the State should direct its policy. We extract hereunder the relevant extract thereof:,,

â€œ39. Certain principles of policy to be followed by the State.- The State shall, in particular, direct its policy towards securing-",,

â€œ(a) that the citizens, men and women equally, have the right to an adequate means of livelihood;",,

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;,,

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;,,

(d) xxxxxxxxxxx,,

(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by",,

economic necessity to enter avocations unsuited to their age or strength;â€,,

(Emphasis supplied),,

332. The Constitution of India has thus specifically mandated that the State should aim its policies towards providing social security to meet all cases.,,

333. It is well settled that a court will not issue an order or writ of mandamus to the Government to fulfill a directive principle (Ref: (1983) 3 SCC,,

307: Ranjan Dwivedi v. Union of India; ;(2000) 6 SCC 224: Lily Thomas v. Union of India) .However, courts are bound to â€œevolve, affirm and",,

adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy.â€ (Ref: U.B.S.E.,,

Board v. Hari Shankar: (1978) 4 SCC 16 : AIR 1979 SC 65 at 69: (1978) 4 SCC 16; P. M. Ahswathanarayand v. State of Karnataka, Ibid., at 109;",,

See also Steel Authority of India Ltd. v. National Union Waterfront Workers, (2001) 7 SCC , at page 17: (2001) 7 SCC 1 : AIR 2001 SC",,

35271; Orissa Textile & Steel Ltd. v. State of Orissa, (2002) 2 SCC 578, at page 594: (2002) 2 SCC 578 : AIR 2002 SC 70; 8Ashoka Smokeless Coal",,

India (P) Ltd. v. Union of India, (2007) 2 SCC 640, at page 682: (2007) 1 JT 12;5 State of U.P. v. Jeet S. Bisht, (2007) 6 SCC 586, at page 614:",,

(2007) 8 JT 59).,,

334. Thus, the Directive Principles of State Policy would guide the exercise of legislative power without controlling the same. (Ref:D eep",,

Chand v. State of Uttar Pradesh, AIR 1959 SC 648, 664: 1959 Supp (2) SCR 8. In re Krishnadas Mondal, AIR 1981 Cal 11).",,

335. Directive Principles of the State policy have been enumerated in Part IV of the Constitution of Jammu & Kashmir, 1954, which read thus:",,

12. Application of the principles contained in this Part,,

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the",,

governance of the State and it shall be the duty of the State to apply these principles in making laws.,,

13. State to establish a socialist order of society for the promotion of welfare of the people,,

The prime object of the State consistent with the ideals and objectives of the freedom movement envisaged in â€œNew Kashmirâ€ shall be the,,

promotion of the welfare of the mass of the people by establishing and preserving a socialist order of society wherein all exploitation of man has been,,

abolished and wherein justice-social, economic and political-shall inform all the institutions of national life.",,

14. Economy of the State to be developed in a planned manner,,

Consistently with the objectives outlined in the foregoing section, the State shall develop in a planner manner the productive forces of the country with",,

a view to enriching the material and cultural life of the people and foster and protectâ€",,

(a) the public sector where the means of production are owned by the State;,,

(b) the co-operative sector where the means of production are co-operatively owned by individuals or groups of individuals; and,,

(c) the private sector where the means of production are owned by an individual or a corporation employing labour; provided that the operation of this,,

sector is not allowed to result in the concentration of wealth or of the means of production to the common detriment.,,

15. Stat to ensure speedy improvement in standard of living of rural masses.,,

The State shall endeavour to organize and develop agriculture and animal husbandry by bringing to the aid of the cultivator the benefits of modern and,,

scientific research and techniques so as to ensure a speedy improvement in the standard of living as also the prosperity of the rural masses.,,

19. Right to work and to public assistance in certain cases,,

The State shall, within the limits of its economic capacity and development, make effective provision for securing-",,

(a) that all permanent residents, men and women equally, have the right to work, that is, the right to receive guaranteed work with payment for labour",,

in accordance with its quantity and quality subject to a basic minimum and maximum wages established by law;,,

(b) that the health and strength of workers, men and women and the tender-age of children are not abused and that permanent residents are not",,

forced by economic necessity to enter avocations unsuited to their sex, age or strength;",,

(c) that all worker, agricultural, industrial or otherwise, have reasonable, just and humane conditions of work with full enjoyment of leisure and social",,

and cultural opportunities;,,

(d) that all permanent residents have adequate maintenance in old age as well as in the event of sickness, disablement, unemployment and other cases",,

of undeserved want by providing social insurance, medical aid, hospitals, sanatoria and health resorts at Stat expense.",,

21. Rights of children,,

The State shall strive to secureâ€",,

(a) to all children the right to happy childhood with adequate medical care and attention; and,,

(b) to all children and youth equal opportunities in education and employment, protection against exploitation and against moral or material",,

abandonment.,,

22. Rights of women,,

The State shall endeavour to secure to all womenâ€",,

(a) the right to equal pay for equal work;,,

(b) the right to maternity benefits as well as adequate medical care in all employments;,,

(c) the right to reasonable maintenance, extending to cases of married women who have been divorced or abandoned;",,

(d) the right to full equality in all social, educational, political and legal matters;",,

(e) special protection against discourtesy, defamation, holliganism and other forms of misconduct.",,

23. Protection of educational, material and cultural interests of socially and economically backward sections",,

The State shall guarantee to the socially and educationally backward sections of the people special care in the promotion of their educational, material",,

and cultural interests and protection against social injustice.,,

24. Duty of the State to improve public health,,

The State shall make every effort to safeguard and promote the health of the people by advancing public hygiene and by prevention of disease through,,

sanitation, pest and vermin control, propaganda and other measures, and by ensuring widespread, efficient and free medical services throughout the",,

State and, with particular emphasis, in its remote and backward regions.â€",,

336. So far as the enforceability of these principles is concerned, the jurisprudence with regard to the Constitution of India would squarely apply to",,

these Directive Principles as well.,,

337. It is trite that the values underlying the Directive Principles must necessarily creep into interpretation of economic and social welfare legislation.,,

We find that the prescription under Article 39 of the Constitution of India and Part IV of Constitution of Jammu & Kashmir has been completely,,

overlooked while enacting and implementing the provisions of the Jammu & Kashmir Prevention of Beggary Act, 1960, and the Rules framed",,

thereunder.,,

(XVI) Obligations under International Instruments,,

338. We have heretofore adverted to the article 12 of the Universal Declaration of Human Rights and Article 6(1) and 17 of the International,,

Convention on Civil and Political Rights which India has ratified. These instruments impose obligations on the States to protect all individuals from,,

violations of the stated rights.,,

339. The legislation which we are examining results in violation of the rights of the most marginalized in the community. We have found that the,,

working of the law in question impacts the right to life, which includes their right to the privacy and dignity of the individuals and violates their right to",,

freedom from discrimination. The implementation of the law results in denial of equal protection of the law to the persons who are prosecuted under,,

this law.,,

340. Penal provisions must conform to the principles of the International Law and instruments that India has ratified while guaranteeing the rights,,

guaranteed to all individuals under the Constitution of India.,,

341. The above discussion manifests that the criminal law provisions that, so far as beggars are concerned, fail to even recognize the rights ensured to",,

all individuals under the afore stated international instruments.,,

(XVII) Working of Anti Begging Legislations,,

342. In order to ensure that justice results from the outcome of our consideration, it is necessary to consider the working of the existing laws which",,

have criminalized begging and the outcome of their implementation. We do not have any empirical study on this subject or statistical data nor do we,,

have the benefit of jurisprudential developments within the country.,,

343. What further can this court examine for completing meaningful examination of the Challenge? Reference may usefully be made to the principles,,

laid down by the Supreme Court in the pronouncement reported at AIR 1960 SC 554 Hamdard Dawakhana v. Union of Indi,a wherein authoritative",,

delineation of the matters which are required to be taken into consideration while examining a challenge to the constitutionality of an enactment have,,

been laid down. The Supreme Court has laid down the principles thus:,,

â€œ8. Therefore, when the constitutionality of an enactment is challenged on the ground of violation of any of the articles in Part III of the",,

Constitution, the ascertainment of its true nature and character becomes necessary, i.e., its subject matter, the area in which it is intended to operate,",,

its purport and intent have to be determined. In order to do so it is legitimate to take into consideration all the factors such as history of the legislation,",,

the purpose thereof, the surrounding circumstances and conditions, the mischief which it intended to suppress, the remedy for the disease which the",,

legislature resolved to cure and the true reason for the remedy; Bengal Immunity Company Ltd. v. The State of Bihar, 1955-2 SCR 603 at pp.632:",,

((S) AIR 1955 SC 661 at p.674) ;R.M.D. Chamarbaughwala v. Union of India, 1957 SCR 930 at p.936: ((S) AIR 1957 SC 628 at p. 63;1)Mahant",,

Moti Das v. S. P. Sahi, AIR 1959 SC 942 at p.948.",,

9. Another principle which has to borne in mind in examining the constitutionality of a statute is that it must be assumed that the legislature understands,,

and appreciates the need of the people and the laws it enacts are directed to problems which are made manifest by experience and that the elected,,

representatives assembled in a legislature enact laws which they consider to be reasonable for the purpose for which they are enacted. Presumption,,

is, therefore, in favour of the constitutionality of an enactment.",,

12. In England as far back as 1889, an Act called the Indecent Advertisements Act (52 and 53 Viet. Ch. 18) was passed to suppress indecent",,

advertisements in which advertisements relating to syphilis, gonorrhoea, nervous debility or other complaints or infirmity arising from intercourse was",,

prohibited. In 1917 the Venereal Diseases Act (7 and 8 Geo. V Ch. 21) was passed in England. This placed restrictions on advertisements relating to,,

treatment for venereal diseases. In 1941, The Pharmacy and Medicine Act, 1941 (4 and 5 Geo. VI Ch. 42) was passed which corresponds in material",,

particulars to the impugned Act. It cannot be said that there was no material before Parliament on the basis of which it proceeded to enact the,,

impugned legislation. This material shows the history of the legislation, the ascertained evil intended to be cured and the circumstances in which the",,

enactment was passed. In Ram Krishna Dalmia v. Shri. Justice S. R. Tendolkar, 1959 SCR 279 at p.297: (AIR 1958 SC 538 at p.548,)Das C. J.,",,

observed:â€",,

â€œthat in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, the history of the",,

times and may assume every state of facts which can be conceived existing at the time of legislation;â€,,

Thus it is open to the court for the purpose of determining the constitutionality of the Act to take all these facts into consideration and in the present,,

case we find that there was the evil of self-medication, which both in this country and in other countries, the medical profession and those, who were",,

conversant with its dangers, had brought to the notice of the people at large and the Government in particular. They had also warned against the",,

dangers of self-medication and of the consequences of unethical advertisement relating to proprietary medicines particularising those diseases which,,

were more likely to be affected by the evil. There is reason, therefore, for us to assume that the state of facts existed at the time of the legislation",,

which necessitated the Act. These facts we have already set out and it is not necessary to reiterate them.â€,,

(Emphasis by us),,

344. Guided by the above authoritative principles, we have therefore undertaken a search for any studies on similar existing legislations. Some light is",,

shed on this aspect in writings by different authors on the subject. In an article published in: 43/44 Economic and Political Weekly 33(2008) titled,,

â€œOstensible Poverty, Beggary and the Lawâ€, Dr. Usha Ramanathan has assimilated episodical evidence about the impunity that has developed",,

through the apathy and casual disregard of law in dealing with ostensible poverty. Dr. Ramanathan examined available material regarding the Bombay,,

Prevention of Begging Act, 1959, in Delhi and Mumbai and has specifically commented that the anti-beggary legislation bears â€œbold signatures of",,

unconstitutionality which, if it had affected classes more proximate to power, would assuredly have faced severe tests in court, legislatures and on the",,

streets of democratic protest.â€ The article critiques the legislation for the powers vested on the authorities on which we have also commented herein.,,

Dr. Ramanathan concludes:,,

â€œThe logic of the law relating to beggar would be elusive unless the route to understanding it meanders through the perception of the poor as,,

potential criminals rendered so by their poverty; as irritants to the forces of law and urban order; as nuisances to those to whom they appeal for alms.,,

Xxxxxxxxxxx,,

Beggary laws have begun to demonstrate how the law may be made, continued, expanded and practised when the constituency affected by the laws",,

are powerless-so rendered by the illegality that the law visits on them, the prejudice that poverty provokes, the distance between privilege and poverty,",,

and the vanishing obligations of the state. Appraising the law, and the practices that have developed in its shadow, will reveal the patterns of impunity,",,

callousness and despair that ow constitute this law. This is a law whose logic is long deceased, if such ever existed. Yet, it persists on the law books",,

despite mounting evidence of abuse and malpractice and the incapacity that the law has demonstrated for doing any good It is, by any reckoning, a",,

ruthless assertion of untrammeled power over classes of people who do not possess the capacity to resist, who have been rendered choiceless, and",,

whom prejudice and callousness have consigned to the margins of human existence and beyond the bounds of citizenship.â€,,

(Emphasis by us),,

345. We are informed in this writing about the documentation by a student investigation into the administration of the Beggary Law in Delhi conducted,,

between 1976 and 1979, which documents the experience of one Chottan Choudhary, a man in frail health who had lost his right arm below the elbow",,

and which natural disability exposed him to a very high degree of risk of arrest under this law. (Ref: Vagrants, Beggars and Status Offenders in Law",,

and Poverty: Critical Essays, P 248 at pp 251 et Seq. (Upendra Baxi (ed) 1988). He had been so arrested several times, although the students were",,

able to track his livelihood to a small grocery store that he ran.,,

346. The second instance documented by Dr. Ramanathan is that of a Public Interest Litigation being Writ Petition no. 1639/1990, which was filed",,

before the Bombay High Court by Manjula Sen, challenging the constitutionality of the Bombay Prevention of Begging Act, 1959 and the tyranny",,

under the law that had become standard practice. Manjula Sen cited the case of Rajguru who was 16 years of age, a bootblack, who was caught",,

outside the Churchgate station while he was sleeping during the day on November 15, 1989. He protested that he was not a beggar but a shoe-polisher",,

but to no effect. Although he was a child under the Juvenile Justice Act 1986, his age was deliberately entered as 19. Manjula Sen commented that",,

the interesting thing was that Rajguru was handicapped. He had only one hand. Because of this fact he was presumed to be a beggar and arrested,,

under the Anti Beggary law.,,

347. We also find in the documentation, an assessment of two Beggars' Homes in Delhi done by a senior civil servant of the Delhi government",,

following reports of inhuman conditions in the institutions. The civil servant Gyanendra Dhar Badgaiyan wrote, in March 2001, as follows:",,

â€œWrong people are being arrested by the anti-beggary squad. One reason for this possibly is that the squads are venal. This was established,,

beyond doubt by an internal inquiry [conducted by Mr. A. K. Sinha, District Officer, Social Welfare Department]. It confirmed that in the case of one",,

Mr. Gyan Chand Gupta, a retired clerk, the squad released him after snatching Rs. 9,000 of the pension money that he was carrying. His only crime",,

was that he was dressed shabbily. That this may not have been an isolated case was pointed out by the inquiry itself, which suggested that the squad",,

regularly indulged in such malpractices. During interviewsâ€¦., inmate after inmate complained that they were hauled up only because they could not",,

pay the hundred rupees bribe demanded of them. Some of them at least, like the retired clerk referred to above, may not be beggars but may have just",,

looked like one at the time of their arrest.â€,,

(Emphasis by us),,

348. It appears that in the Writ Petition No. 1639/1990, which was filed by Manjula Sen, the Bombay High Court had appointed a committee which",,

accompanied the police squad and followed through on the working of the begging enactment on the street. The Committee submitted its report,,

(Report on the Procedure followed in arrest of beggars under the BPBA 1959). The conclusions of the Committee as cited in the aforesaid article,,

inter alia read thus:,,

â€œ(1) The arrest is made of the people who are found on the street in dirty clothes and wandering. They are not actually found beggingâ€¦â€¦.,,

(4) Large number of wrong arrests are made which is inhumane and unjustice.,,

â€¦â€¦.,,

(7) There is no criteria to decide as to who is a beggar, who is sick, physically handicapped or in need of economic help.â€",,

349. The fourth instance cited in the article (by Dr. Ramanathan) is that of a criminal complaint lodged by the New Delhi Bar Association in July,",,

2006 in the Court of the Additional Metropolitan Magistrate, New Delhi, on the stated provocation and harassment of one of its member by lepers at",,

the Ashram Crossing near Maharani Bagh, New Delhi. This complaint was referred by way of a letter registered as Referral no. 324, ACMM/ND to",,

the High Court of Delhi by the then ACMM, New Delhi, on 3rd August, 2006. (New Delhi Bar Association v. Commissioner of Police, New Delhi,",,

also referred to as Court on its Own Motion v. Commissioner of Police, New Delhi). The complaint makes the following submission:",,

â€œsubmitted that on February 13, 2006, the leper in a blue lungi who used to harass and threaten our member at the Ashram Crossing again",,

threatened (her) with dire consequences in case (she) reported the matter to the police in order to stop him from begging at the Ashram Crossing. The,,

leper in blue lungi told our member to give him money, otherwise (she) would be kidnapped and taken to the basti of lepers where (she) would be",,

touched by the lepers so that (she) would get affected by the disease of leprosy.â€,,

350. A further complaint regarding the beggars at Ashram Crossing was made wherein, it was stated thus:",,

â€œOur member again saw the same leper who had threatened (her)â€¦. Our member was scared and mentally disturbed that the leper might try to,,

take revenge and may harm as he had earlier threatened our member. A further reappearance of the beggars, after a temporary cessation of their",,

activities following sustained pressure on the police to act, had â€œour memberâ€¦.again threatened and (she) apprehends danger to life as (she) has",,

been threatened that (she) can even be murdered in case (she) report the matter to the policeâ€.,,

There were references in the letter of referral to the high court by the ACMM,,

-to some, unspecified, member of the New Delhi Bar Association being accosted and threatened by beggars;",,

-to reports in â€œsome news channels including Channel 7 and CNN-IBNâ€ on July 29, 2006 and July 30, 2006 â€œregarding the involvement of",,

some doctors in a racket of cutting health limbs of human being for the purposes of begging;,,

-the â€œillegal activitiesâ€ of â€œanti-social elements and goondasâ€ increasing â€œat the Ashram Crossing and in the nearby localities as is evident,,

from the murder of two lady advocatesâ€ of the Delhi High Court.â€,,

351. It is noteworthy that the murder of the two lady advocates referred in the above complaint reportedly was resolved and it was found that it was a,,

domestic handyman and his friends who have been implicated for the same and there was no involvement of beggars at all. The reaction of the,,

authorities, however, to the above complaint was a series of raids and apprehension of beggars in the city of Delhi and reporting of the efforts",,

regarding removal of beggars in the referral proceedings pending before the High Court.,,

352. Dr. Ramanathan's observations on the presumption of potential criminality of the poor is a telling commentary on the prejudice of the State and,,

society against poverty. So far as the working of the anti-begging legislations is concerned, she summed up thus:",,

â€œBeggary laws have begun to demonstrate how the law may be made, continued, expanded and practised when the constituency affected by the",,

laws are powerlessâ€"so rendered by the illegality that the law visits on them, the prejudice that poverty provokes, the distance between privilege and",,

poverty, and the vanishing obligations of the State.â€",,

353. Gautam Bhatia, in the above noted post dated 10th August, 2018, has referred to his experience while inspecting a court file in the Patiala House",,

(New Delhi District Courts), where he came across a charge sheet where in the requirement of individual's particulars, it was listed thus",,

â€œResidence; Vagabondâ€. This incident is cited to illustrate the incapability of linguistics to deal with the range of issues which could arise in,,

society in the context of dealing with poverty, let alone addressing them in any meaningful way. This instance manifests' the inherent arbitrariness in",,

the description of the conduct which has been rendered penal under the Anti-Beggary enactment and the width of behavior, circumstances and",,

condition of a person which would render him culpable for penal action.,,

354. Several experts have commented on the fact that despite the excesses which have resulted on account of enforcement of beggary enactments,",,

there has been no prosecution or punishment of those abusing the power or exploiting the marginalized and vulnerable.,,

355. The above real time accounts establish beyond doubt that criminalization of begging does not withstand constitutional scrutiny. On the other hand,",,

it results in extreme marginalization and violation of the rights of the poorest of the poor, those who are already barely surviving on fringes of our",,

society.,,

356. It is evident that the law under examination does not require any specific act or behavior or omission on the part of a person to acquire attributes,,

of criminality. Abject poverty visible in the public domain attracts the penalty of the law. The legislation enables such detention of persons who may,,

not be begging but are perceived by the enforcing authority to be beggars or begging. In order to avoid the operation of the penal provisions of the,,

beggary law, a poverty-stricken person is thus required to make his poverty invisible or to obtain gainful employment or acquire a faÃ§ade of",,

affluence as socially perceived.,,

357. We are reminded here of an observation in an Article in â€œThe Guardianâ€ wherein it was observed:,,

â€œâ€¦A society that sees legislating inequality and homelessness into invisibility has unquestionably lost its wayâ€¦â€,,

358. The criminalization of begging is the outcome of extremely prejudiced social constructs of presumption of criminality against the poor and,,

baseless stereotypes, which have developed in ignorance of the extreme exclusion and disadvantages faced by the poor who are struggling to survive.",,

359. We also find that a similar test based on perceptions of conduct considered deviant by the majority (â€œpopular acceptanceâ€) stands rejected,,

in (2018) 10 SCC 1 Navtej Singh Johar v. Union of India (para 521) when the Supreme Court affirmed the view taken in K. S. Puttaswamy v. Union,,

of India in the following terms:,,

â€œ464. Puttaswamy (K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1) rejected the â€œtest of popular acceptanceâ€ employed by this Court",,

in Koushal (National Legal Services Authority v. Union of India, (2014) 5 SCC 438)and affirmed that sexual orientation is a constitutionally",,

guaranteed freedom:,,

â€œ144â€¦The guarantee of constitutional rights does not depend upon their exercise being favourably regarded by majoritarian opinion. The test of,,

popular acceptance does not furnish a valid basis to disregard rights which are conferred with the sanctity of constitutional protection. Discrete and,,

insular minorities face grave dangers of discrimination for the simple reason that their views, beliefs or way of life do not accord with the",,

â€˜mainstreamâ€™. Yet in a democratic Constitution founded on the rule of law, their rights are as sacred as those conferred on other citizens to",,

protect their freedoms and libertiesâ€¦â€¦â€¦.,,

(Emphasis by us),,

360. It is high time that society and legislation evolved to ensure that no law is legislated which results in an individual being deprived of his,,

constitutional rights by operation of law and that justice (social, economic and political); liberty (of thought, expression, belief, faith and worship);",,

equality (as a guarantee against arbitrary treatment of individuals) and fraternity (which assures a life of dignity to every individual) are ensured to the,,

most marginalized of all in society; that no person has to beg for sustenance and survival.,,

(XVIII) Challenge to the procedure prescribed by the law,,

361. In the present case, we have noted the restrictive impact of the impugned legislation on the rights of the beggars under Article 14, 19 and 21 of",,

the Constitution. Can the constitutionality of the legislation and the rules thereunder be challenged on grounds of any procedural unreasonableness?,,

362. In the judgment of the Constitution Bench reported at AIR 1950 SC 211 N.B. Khare v. State of Delh, ithe Supreme Court also emphasized",,

reasonableness of the procedural part of the law by which exercise of a fundamental right may be restricted, in the following terms:",,

â€œWhile the reasonableness of the restrictions has to be considered with regard to the exercise of the right, it does not necessarily exclude from the",,

consideration of the Court the question of reasonableness of the procedural part of the law. It is obvious that if the law prescribes five years,,

externment or ten years externment, the question whether such period of externment is reasonable, being the substantive part, is necessarily for the",,

consideration of the court under clause (5). Similarly, if the law provides the procedure under which the exercise of the right may be restricted, the",,

same is also for the consideration of the Court, as it has to determine if the exercise of the right has been reasonably restricted.â€",,

(Emphasis by us),,

363. On the aspect of permissibility of a judicial review of the procedural aspects of an impugned restrictive law, in the judgment of the Supreme",,

Court reported at AIR 1952 SC 196 State of Madras v. V. G. Row, also the Supreme Court has observed as follows:",,

â€œThis Court had occasion in Dr. Khare's case (1950) S.C.R. 519 to define the scope of the judicial review under clause (5) of Article 19 where the,,

phrase â€œimposing reasonable restriction on the exercise of the rightâ€ also occurs and four out of the five Judges participating in the decision,,

expressed the view (the other Judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law,,

should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and the",,

extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this",,

context to bear in mind that the test of reasonableness, where ever prescribed, should be applied to each, individual statute impugned and no abstract",,

standard, or general pattern of reasonableness can be laid down as applicable to all cases.â€",,

(Emphasis by us),,

364. In V.G. Row, the Supreme Court has clearly laid down the factors to be examined while examining a challenge to the constitutionality of a",,

statute.,,

365. So far as any law which has the effect of interfering with the â€œpersonal libertyâ€ of a person, in (1978) 1 SCC 248 Maneka Gandhi v. Union",,

of India, it stands declared that such law has to satisfy the following triple test:",,

(i) it must prescribe a procedure;,,

(ii) the procedure necessarily withstands a test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a,,

given situation; and,,

(iii) it must be liable to be tested with reference to Article 14.,,

366. We also find that the tests propounded for the Article 14 examination prevail the Article 21 consideration as well. Thus, the law and procedure",,

which authorizes interference with personal liberty must also be just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does",,

not satisfy the requirement of Article 14, it would not be a procedure at all within the meaning of Article 21.",,

367. Having held that Section 2(a) of the Jammu & Kashmir Prevention of Beggary Act creates an offence which is vague, therefore, void and",,

unconstitutional under Article 19(1)(a) and not saved by Article 19(2) as well as violative of the rights guaranteed under Article 21, it becomes",,

necessary to also consider as to whether procedure prescribed under the Jammu & Kashmir Prevention of Beggary Act, 1960, and rules framed",,

thereunder suffers from any procedural unreasonableness.,,

368. Section 3 unequivocally declares that if any person is found begging within the area to which the Act applies, he â€œshallâ€ be guilty of an",,

offence under the Act. Section 4 empowers any police officer or other person authorized in this behalf by the District Magistrate to arrest â€œwithout,,

a warrantâ€ any person who is found begging.,,

369. Sub-section 2 of Section 4 does requires that Section 61 of the Code of Criminal Procedure shall apply to every arrest under this section and that,,

the officer-in-charge of the police station shall cause an arrested person to be kept in the prescribed manner until he can be brought before the court.,,

Undoubtedly drastic, completely unregulated and absolute unguided power is vested in the police officer or the authorized person to arrest a person",,

found begging or even subjectively perceived by such person to be begging.,,

370. Once the person is produced before the Court, Section 5 of the statute mandates that the court shall make a â€œsummary inquiryâ€ as regards",,

the allegation that he was found begging. The court is empowered under sub-section (2) of Section 5 to adjourn the inquiry if it could not be completed,",,

from time to time, and order that the person to be remanded to such place and custody as may be convenient. Upon making the above inquiry, if the",,

â€œcourt is satisfied that such person was found beggingâ€, the court is mandatorily required to make a declaration that the person is a beggar; also",,

determine, after making an inquiry, whether the person was born in the State of Jammu & Kashmir and ordinarily resides therein including the findings",,

and relations thereto in its declaration.,,

371. Thereafter, under Section 5(5), the court is required to order the person who has been declared as a beggar under sub-section (4) to be detained",,

in a Sick Home, Children's Home or a Beggar's Home, as the case may be, for a period â€œnot less than one yearâ€ and â€œnot more than three",,

yearsâ€ in the case of first offence.,,

372. In the event of a person being found begging for a second time, the court is mandatorily required to detain him in a Sick Home/Beggar's",,

Home/Children's Home, as the case may be, for â€œnot less than three yearsâ€ and â€œnot more than seven yearsâ€. A proviso has been provided in",,

subsection 2 of Section 6 to the effect that if the court, at any time, after passing of the sentence, on its own motion or on an application is satisfied",,

that the person sentenced under Section 6(2) or Section 5(2) is not likely to beg again, it may release the said person after â€œdue admonition on a",,

bond for his abstaining from begging and being of good behavior, being executed with or without sureties, as the Court may requireâ€.",,

373. Sections 5 and 6 make no reference to the circumstances of the beggar which may have caused him to take to begging. It makes no reference to,,

the age or character of the beggar or the circumstances and conditions in which such beggar was living. No reference is made to examination of the,,

reasons for which the person resorted to begging.,,

374. Section 8 enables the Government to direct release of a person who has been convicted under Section 5 or 6 and committed to one of the,,

detention homes if he â€œhas been cured of disease or is in a fit state of health to earn his living or is otherwise fit to be discharged before the expiry,,

of the period for which he has been committedâ€. This provision, however, is inconsequential inasmuch as a person who has been begging on account",,

of financial penury would not have developed the capacity to secure his living by means other than begging while under detention.,,

375. It is noteworthy that the provisions of the Bombay Prevention of Begging Act, 1959, and the Delhi Prevention of Begging Rules, 1960, mandate",,

that in passing any order under the Act, including the order under Section 5(4) and 5(5), the court is required to have regard to all the circumstances",,

mentioned therein including the consideration of the age and character of the beggar which encompasses all antecedents of the person. It has been,,

held that the court was required to consider the circumstances and conditions in which the beggar was living; a report from the Probation Officer was,,

required to be called and a wide latitude stands given to the courts in passing orders under the statute. Section 5(7) of the Bombay Act requires,,

communication of the report of the Probationary Officer to the beggar concerned who has to be given an opportunity of producing evidence relevant,,

to the matter stated in the report.,,

376. Unfortunately, no such requirement is prescribed under the provisions of the Jammu & Kashmir Prevention of Beggary Act, 1960 or the Rules",,

framed thereunder. Rule 5 of the Jammu & Kashmir Prevention of Beggary Rules, 1964, simply prescribes that so far as the inquiry under subsection",,

(1) of Section 5 is concerned, the procedure prescribed in the Code of Criminal Procedure, for the trial of summons cases, and for recording evidence",,

therein, shall be followed under Rule 5(1).",,

377. The procedure which is prescribed under Section 5 of the Act under challenge would show that even in order to undertake the summary inquiry,",,

the person is mandatorily required to be detained, first arrested under Section 4; then, while undergoing the summary inquiry, â€œremanded to such",,

place and custody as may be convenientâ€ under Section 5(2).,,

378. Implicit in this requirement is that, if, on making the inquiry as referred to under Section 5(1) of the Act, the court is not satisfied that the person",,

was found begging, it shall order such person be released forthwith. Therefore, as per the scheme of the enactment, in order to ascertain the",,

innocence of a person, the law mandates his arrest first, and, thereafter his remand till completion of the inquiry, in order to enable determination of his",,

innocence. Thus, innocent persons are required to be deprived of their liberty without following any process of law. Clearly there is a serious infraction",,

of the rights of the persons detained guaranteed under Article 21 of the Constitution of India.,,

379. In the aforenoticed report submitted by the United Nations Special Rapporteur on extreme poverty and human rights, a critical consequence of",,

poverty is reported as follows:,,

â€œ12. A significant obstacle in breaking this cycle of penalizationand poverty is the inability of persons living in poverty to access legal assistance, as",,

they are unable to afford private legal representation and legal aid is often unavailable or inadequate. Without access to competent, comprehensive",,

legal assistance, the poorest and most excluded are further disadvantaged in their dealings with authorities not only when they are facing criminal",,

charges, but also with respect to administrative procedures such as child protection cases, benefit fraud matters or eviction and immigration",,

proceedings.,,

13. When persons living in poverty do not have access to legal representation or advice, particularly in circumstances where they are unfamiliar with",,

complex legal language, they are more likely to receive and accept unfair or unequal treatment. There is a higher likelihood that they will be",,

detrimentally affected by corruption or asked to pay bribes, will be detained for longer periods of time and, if facing trial, will be convicted. Even when",,

legal assistance is available, discrimination and linguistic barriers are powerful obstacles in the way of those seeking access to justice and redress.â€",,

(Emphasis by us),,

380. Beggars don't have a voice in society. They are definitely least equipped to have a voice in any informal inquiry conducted against them. We,,

have no manner of doubt that they cannot effectively represent themselves in the summary inquiry contemplated under the Act and the Rules. The,,

lack of effective legal representation is yet another access barrier which works against them.,,

381. An extremely detailed and in-depth analysis of the barriers faced by poor people in accessing justice is to be found in Law, Poverty and Legal",,

Aid: Access to Criminal Justice by Dr. S. Muralidhar.,,

382. The presumption in the minds of the authorities and the equation of a state of poverty with criminality as well as the extreme inequality of power,,

in activating the law and seeking judicial remedies so far as beggars is concerned, is writ large on the operationalisation of the anti-begging",,

enactments. The legislation as well as its working is entrenched in a deep prejudice without any consideration of the rights of the people who are,,

impacted thereby. The enactment and its working highlights the unsurmountable gap between the privileged and the extreme poor.,,

383. The constitutionality of Section 6(2) which provides for a mandatory minimum sentence of detention of three years which can extend up to seven,,

years has been assailed on the ground that this provision violates Article 20 of the Constitution of India.,,

384. Article 20 of the Constitution provides thus:,,

â€œ20. Protection in respect of conviction for offences.â€"(1) No person shall be convicted of any offence except for violation of a law in force at,,

the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the",,

law in force at the time of the commission of the offence.,,

(2) No person shall be prosecuted and punished for the same offence more than once.,,

(3) No person accused of any offence shall be compelled to be a witness against himself.â€,,

385. We also find substance in the submission made by Mr. Suhail Rashid Bhat on the constitutionality of Section 6(2) for the reason that though the,,

Section purports to provide for repeat conviction, however, the same tantamounts to actually penalization of a person for second time for what is really",,

a continuation of his previous act. Section 5 enables arresting anybody who looks poor and appears to be soliciting alms. There is nothing laced before,,

us which shows that the person who is so detained is either empowered or economically uplifted when he is released even after his detention. We are,,

unable to fathom as to how the appearance of a beggar would change merely because of his detention in a detention centre. Therefore, even after his",,

release after undergoing the detention, the beggar would continue to look the same, inviting action under Section 6 again and again premised on the",,

same presumptions and conjectures. The detention as prescribed under Section 6 results in the worst kind of deprivation of constitutional rights that a,,

poor person could be subjected to.,,

386. In Ram Lakhan v. State, it has been pointed out that if a person is begging out of share necessity, what would be the purpose of his detention in a",,

sick home/children's home/beggar's home without any effort to mitigate such person's need and uplift him economically even upon a second conviction,,

as under Section 6 of the present statute? These very questions can be asked with regard to the detention of a beggar under the Jammu & Kashmir,,

Prevention of Beggary Act, 1960. What would be the utility or efficacy of releasing such person under the proviso to Section 6(2) after an admonition",,

or after procuring a bond for his abstaining from begging and being of good behavior?,,

387. We find that Section 5(5) prescribes a minimum sentence of not less than one year to a person who is declared to be a beggar by the court.,,

Section 6(2) prescribes a minimum sentence of three years for a person convicted for a second time. We find that while prescribing punishments,,

under the Ranbir Penal Code, even for serious offences such as voluntarily causing hurt (Section 323); voluntarily causing hurt by dangerous weapons",,

(Section 324); grievous hurt (Section 325); voluntarily causing grievous hurt to extort property or to constrain to an illegal act (Section 329); causing,,

grievous hurt to extort confession or to compel restoration of property (Section 331) amongst others, no minimum sentences have been prescribed",,

amongst other. The unfairness of the prescription of sentence in Sections 5(5) and 6(2) is glaring on the face of these comparisons. The prescription,,

of mandatory sentence completely takes away the judicial discretion in imposing the sentence.,,

388. The decision of the Supreme Court in Sunil Batra was followed by yet another Constitution Bench judgment reported at(1983) 2 SCC,,

277: Mithu v. State of Punjab, wherein Section 303 of IPC laying down mandatory sentence of death to be imposed on life convicts who commit",,

murder in jail was challenged on the ground that it was arbitrary and oppressive so as to be violative of the fundamental rights conferred by Article 21,,

of the Constitution of India. The court held that Section 303 created a particular class of persons who are deprived of the opportunity under Section,,

235(2) of the Cr.P.C. to show cause as to why they should not be sentenced to death and it also relieved the court of its obligation under Section,,

354(3) of the Code to state special reasons for imposing the sentence of death. In para-18, the Supreme Court held that the deprivation of these rights",,

and safeguards which were bound to result in injustice is â€œharsh, arbitrary and unjustâ€. In para 19, the Supreme Court further held that",,

prescription of the mandatory sentence of death for the second of such offences for the reason that the offender was under the sentence of life,,

imprisonment for the first of such offences, is arbitrary and beyond the bounds of all reason.",,

389. The court posed the question which the court would be required to frame if Section 235(2) of Cr.P.C. were applicable to the cases observed as,,

follows:,,

â€œ19â€¦â€¦.Assuming that Section 235(2) of the Criminal Procedure Code were applicable to the case and the court was under an obligation to hear,,

the accused on the question of sentence, it would have to put some such question to the accused:",,

â€œYou were sentenced to life imprisonment for the offence of forgery. You have committed a murder while you were under that sentence of life,,

imprisonment. Why should you not be sentenced to death?â€,,

The question carries its own refutation. It highlights how arbitrary and irrational it is to provide for a mandatory sentence of death in such,,

circumstances.,,

23. On a consideration of the various circumstances which we have mentioned in this judgment, we are of the opinion that Section 303 of the Penal",,

Code violates the guarantee of equality contained in Article 14 as also the right conferred by Article 21 of the Constitution that no person shall be,,

deprived of his life or personal liberty except according to procedure established by law.â€,,

(Emphasis by us),,

390. The observations of Chinnappa Reddy, J., in the concurring judgment striking down the law in Mithu v. State support the above observations",,

made by this Court on the challenge to the procedure prescribed under Section 5 of the Act and the mandatory sentence under Section 6 of the Act,,

for a repeat offence in the present case and deserve to be extracted in extenso. These observations of the Learned Judge read thus:,,

â€œ25. Judged in the light shed by Maneka Gandhi [(1978) 1 SCC 248] and Bachan Singh [(1980) 2 SCC 684], it is impossible to uphold Section 303",,

as valid. Section 303 excludes judicial discretion. The scales of justice are removed from the hands of the Judge so soon as he pronounces the,,

accused guilty of the offence. So final, so irrevocable and so irrestitutable is the sentence of death that no law which provides for it without",,

involvement of the judicial mind can be said to be fair, just and reasonable. Such a law must necessarily be stigmatised as arbitrary and oppressive.",,

Section 303 is such a law and it must go the way of all bad laws. I agree with my Lord Chief Justice that Section 303, Indian Penal Code, must be",,

struck down as unconstitutional.â€,,

(Emphasis by us),,

391. We may well briefly examine what is the outcome of the detention first under Section 5 and then for a repeat misdemeanor under Section 6 of,,

the Jammu & Kashmir Prevention of Beggary Act, 1960. The person detained is deprived of his right to life. His liberty and freedom of expression is",,

absolutely curtailed. He is removed from the company of his family and near and dear ones and compelled to exist under the strict regimentation of,,

the authorities in the detention home.,,

392. The legislature while enacting the Jammu & Kashmir Prevention of Beggary Act, 1960, has completely ignored the fact that there may be",,

persons dependent who was detained for begging. As a result of the mandatory detention under the legislation, all rights of the persons who are",,

dependent on him would also result in extreme deprivation.,,

393. We may also advert to an unusual provision contained in Section 9 of the Bombay Prevention of Begging Act, 1959, which reads as follows:",,

â€œS.9 Court may order detention of persons wholly dependent out beggar-(1) When the Court has ordered the detention of a person in a Certified,,

Institution under section 5 or 6 it may after making such inquiry as it thinks fit, order any other person who is wholly dependent on such person to be",,

detained in a Certified Institution for a like period:,,

Provided that before such order is made such dependent person shall be given an opportunity of showing cause why it should not be made.,,

(2) Where the dependent person is a child the Court shall forward him to a Juvenile Court which shall deal with him under section 40 of the Bombay,,

Children Act, 1948 (Bom LXXt of (948), as if the child were a person described in clause (a) of that section:",,

Provided that where the dependent person in the beggar's child, being a child who is under the age of five years, and the beggar is an able bodies",,

mother, not being a contagious leper or a lunatic, the child may be ordered to be detained in a Certified Institution without being separated from the",,

mother as regards the place of detention, until it attains the age of five years-and thereafter dealt with as provided in this sub-section.",,

(3) For the purpose of this section the court may if necessary cause the dependent person to be arrested and brought before itself and caused to be,,

examined by a medical officer. The provisions of section 61 of the Code of Criminal Procedure, 1898 (V of 1898) shall apply to every arrest under this",,

subsection, and the officer in charge of the police station or section shall cause the arrested person to be kept in the prescribed manner until he can be",,

brought before a court.,,

(Emphasis by us),,

394. While enacting the Bombay Prevention of Begging Act, 1959, the legislature had anticipated the fact that there may be persons who are wholly",,

dependent on the person who was detained because he was found begging. It has enacted Section 9 mandating that even the person who is wholly,,

dependent on the person detained for begging has to be detained in a Certified Institution for a like period.,,

395. We are not commenting hereby upon the reasonableness, fairness or constitutionality of Section 9 of the Bombay Prevention of Begging Act.",,

This provision has been noticed only to point out that detention of a beggar impacts persons dependent on him, who would suffer on account thereof as",,

well.,,

396. We may also note that this Section 9 of the Bombay Act, as was applicable to Delhi, has been declared unconstitutional by the Delhi High Court",,

in the judgment dated 8th August, 2018 in WP(C) No. 10498/2009 entitled Harsh Mander v. Union of India.",,

397. No consideration of the rights or impact on dependents of a detained beggar is to be found in the Jammu & Kashmir Prevention of Beggary Act,",,

1960. As a result of the detention of the beggar all rights of the persons who are dependent on the beggar would also face extreme deprivation.,,

398. So far as the challenge to the rules framed under the legislation is concerned, in (2017) 9 SCC 1 : AIR 2017 SC 4609 Shayara Bano v. Union of",,

India (at page 4830 in para 282), the Supreme Court relied upon the judgment reported in (2016) 7 SCC 703 (AIR 2016 SC 2336) Cellular Operators",,

Association of India v. Telecom Regulatory Authority of India and held thus:,,

â€œ282. To complete the picture, it is important to note that subordinate legislation can be struck down on the ground that it is arbitrary and, therefore,",,

violative of Article 14 of the Constitution. In Cellular Operators Association of India v. Telecom Regulatory Authority of India, (2016) 7 SCC 703, this",,

Court referred to earlier precedents, and held:",,

â€œViolation of fundamental rights,,

42. We have already seen that one of the tests for challenging the constitutionality of subordinate legislation is that subordinate legislation should not be,,

manifestly arbitrary. Also, it is settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary",,

legislation. (See Indian Express Newspapers (Bombay) (P) Ltd. v. Union of India [(1985) 1 SCC 641: 1985 SCC (Tax) 121], SCC at p. 689, para 75:",,

((1985) 1 SCC 641 : AIR 1986 SC 515, at p.542, para 73)).",,

43. The test of â€œmanifest arbitrarinessâ€ is well explained in two judgments of this Court. In Khoday Distilleries Ltd. v. State of Karnataka [(1996),,

10 SCC 304], this Court held: (SCC p. 314, para 13): ((1996) 10 SCC 304 : AIR 1996 SC 911 at p.915).",,

â€œ13. It is next submitted before us that the amended Rules are arbitrary, unreasonable and cause undue hardship and, therefore, violate Article 14",,

of the Constitution. Although the protection of Article 19(1)(g) may not be available to the appellants, the Rules must, undoubtedly, satisfy the test of",,

Article 14, which is a guarantee against arbitrary action. However, one must bear in mind that what is being challenged here under Article 14 is not",,

executive action but delegated legislation. The tests of arbitrary action which apply to executive actions do not necessarily apply to delegated,,

legislation. In order that delegated legislation can be struck down, such legislation must be manifestly arbitrary; a law which could not be reasonably",,

expected to emanate from an authority delegated with the law-making power. In Indian Express Newspapers (Bombay) (P) Ltd. v. Union of,,

India [(1985) 1 SCC 641: 1985 SCC (Tax) 121: ((1985) 1 SCC 641 : AIR 1986 SC 515,) t]his Court said that a piece of subordinate legislation does",,

not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. A subordinate legislation may be questioned,,

under Article 14 on the ground that it is unreasonable; â€˜unreasonable not in the sense of not being reasonable, but in the sense that it is manifestly",,

arbitraryâ€™. Drawing a comparison between the law in England and in India, the Court further observed that in England the Judges would say,",,

â€˜Parliament never intended the authority to make such Rules; they are unreasonable and ultra viresâ€™. In India, arbitrariness is not a separate",,

ground since it will come within the embargo of Article 14 of the Constitution. But subordinate legislation must be so arbitrary that it could not be said,,

to be in conformity with the statute or that it offends Article 14 of the Constitution.â€,,

44. Also, in Sharma Transport v. State of A.P. [(2002) 2 SCC 188], this Court held: (SCC pp. 203-04, para 25): ((2002) 2 SCC 188 : AIR 2002 SC",,

322 at pp.330-331, para 23).",,

â€œ25. â€¦ The tests of arbitrary action applicable to executive action do not necessarily apply to delegated legislation. In order to strike down a,,

delegated legislation as arbitrary it has to be established that there is manifest arbitrariness. In order to be described as arbitrary, it must be shown that",,

it was not reasonable and manifestly arbitrary. The expression â€œarbitrarilyâ€ means: in an unreasonable manner, as fixed or done capriciously or at",,

pleasure, without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment,",,

depending on the will alone.â€ (at pages 736-737): (at pages 2356-2357 of AIR).â€,,

(Emphasis by us),,

399. In para 282 of Shayara Bano the Supreme Court summed up the applicable principles thus:,,

â€œIt will be noticed that a Constitution Bench of this Court in Indian Express Newspapers v. Union of India, (1985) 1 SCC 641, stated that it",,

was settled law that subordinate legislation can be challenged on any of the grounds available for challenge against plenary legislation. This being the,,

case, there is no rational distinction between the two types of legislation when it comes to this ground of challenge under Article 14.â€",,

(Emphasis by us),,

400. We have held above the procedure provided in the Jammu & Kashmir Prevention of Beggary Act, 1960 and Rules thereunder thus treats a",,

beggar with utmost indignity, impact his personal autonomy, liberty and privacy, impinging on matters most personal to him or her, without giving any",,

option in these matters. We have held the law therefore, adversely impact the constitutionally ensured as right to life (Article 21) of the beggars.",,

401. We further find that for impacting the valuable rights as well as the guarantees under Articles 14 & 19, the procedure prescribed by the law",,

impugned is a summary truncated procedure which does not ensure a level playing field to the person affected. Even to establish his innocence, the",,

detenu is detained in the police station. Even if the beggar could procure effective legal representation, he is deprived of the opportunity to do so by his",,

confinement.,,

402. Therefore, even if it could be held that the restrictions imposed by the substantive law were Constitutional and had to be sustained, we have no",,

hesitation in holding that the procedure prescribed for imposing these restrictions is arbitrary and unreasonable and so liable to be struck down.,,

403. We also have no manner of doubt that Sections 3, 4, 5, 6, 7 and 8 of the Jammu & Kashmir Prevention of Beggary Act, 1960, and Rules 3, 4, 5,",,

6, 8 and 9 of the Jammu & Kashmir Prevention of Begging Rules, 1964, making begging an offence; prescribing a mandatory detention on the mere",,

perception of the law enforcer (Section 4); mandatory incarceration even to establish innocence; mandatory sentence upon a second conviction,,

(Section 6) and further conviction on conclusion of a summary inquiry (Section 5), are arbitrary, beyond the bounds of reason. The provisions which",,

take away the complete judicial discretion, cannot be considered fair, just and reasonable. For all these reasons, these statutory provisions violate the",,

rights guaranteed to a person under Article 14 of the Constitution of India and are so held to be unconstitutional.,,

404. In view of the above discussion, we also hold that the provisions of Rules 3 4, 5, 6, 7, 8 and 9 of Jammu & Kashmir Prevention of Beggary Rules,",,

1964, are unreasonable and so manifestly arbitrary that they offend Article 14 of the Constitution of India.",,

(XIX) Defence of necessity to explain an act of begging,,

405. Another interesting aspect of the matter merits consideration. We have noticed herein as to the reasons why people are compelled to beg, the",,

main reason being their extreme poverty and inability to provide or sustain their own and dependents minimal needs and essentials.,,

406. So far as their defence against criminal implication and imposition of penalty, an interesting discussion is found on the probable defence of",,

necessity which could be available to them in the Single Bench judgment of the Delhi High Court reported at (2007) 137 DLT 173 Ram,,

Lakhan v. State. Reference has been made to jurisprudence from the Supreme Court of Canada and England which deserves to be usefully,,

considered herein.,,

407. In Ram Lakhan, reference stands made to the judgment of the Supreme Court of Canada reported at [1955] 2 SCR 973 (at page",,

1012) Hibbert v. The Queen, Lamer, G, observed as follows:",,

â€œthe defences of self-defence, necessity and duress all arise under circumstances where a person is subject 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-defence 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 defences.â€,,

(Emphasis by us),,

408. Another judgment referred stands reported at [1987] AC 417 (at page 429), (1987) 2 WLR 568; (1086) 4 KHL 4, (1987) 85 Cr App R",,

32 R v. Howe, Lord Hailsham made the following similar observations:",,

â€œthere is, of course, an obvious distinction between duress and necessity as potential defences; duress arises from the wrongful threats or violence",,

of another human being and necessity arises from any other objective dangers threatening the accused. This, however, is, in my view, a distinction",,

without a relevant difference, since on this view duress is only that species of the genus of necessity which is caused by wrongful threats. I cannot",,

see that there is any way in which a person of ordinary fortitude can be excused from the one type of pressure on his will rather than the other.â€,,

(Emphasis by us),,

409. We have discussed above four reasons why a person may solicit alms. So far as the beggar falling in the third category i.e. the beggar who is,,

being exploited and compelled to beg by a begging racket is concerned, he would be begging under the compulsion of fear of harm from those",,

exploiting him. Such beggar would have available the defence of â€˜duressâ€™. On the other hand in a criminal prosecution, under the Anti begging",,

legislation, a beggar who begs on account of homelessness, poverty and extreme need, would have available the defence of â€˜necessityâ€™ to him.",,

410. In Ram Lakhan, it is noted that in both kinds of begging and defences, there is no element of volition of the beggar in the act of begging. The",,

person lacks legitimate alternatives and hence an element of involuntariness is attached to his conduct.,,

411. Such conduct has been considered in the majority opinion of the Supreme Court of Canada in the judgment reported at [1984] 2 SCR,,

232 Perka v. The Queen, and it is observed that â€œgiven that the accused had to act, could he nevertheless realistically have acted to avoid the peril",,

or present the harm, without breaking the law? Was there a legal way out? I think this is what Bracton means when he lists â€œnecessityâ€ as a",,

defence, providing the wrongful act was not â€œavoidableâ€. The question to be asked is whether the agent had any real choice: could he have done",,

otherwise? If there is a reasonable legal alternative to disobeying the law, then the decision to disobey becomes a voluntary one, impelled by some",,

consideration beyond the dictates of â€œnecessityâ€ and human instincts.â€,,

(Emphasis by us),,

412. So far as the beggar is concerned, even to establish such defence in his prosecution, he has to be detained. We have noted above the absolute",,

barrier faced by the poverty stricken detenu in establishing his case in the summary inquiry. Certainly to establish such defences would be a challenge,,

for him.,,

(XX) Legality of order dated 23rd May, 2018, passed by the District Magistrate, Srinagar.",,

413. On 23rd of May, 2018, the following order came to be passed by District Magistrate, Srinagar:",,

â€œWhereas, Srinagar being the summer capital of the State of Jammu & Kashmir holds great importance in the socioeconomic landscape of the",,

State of Jammu & Kashmir. Being the capital city of the state with a vast population, it is contingent upon the administration to take all measures",,

necessary to make the district more citizen friendly & to prevent public nuisance at all costs. Further being a prime tourist destination, it is home to",,

tourists both domestic and foreign.,,

Whereas, it has been observed that off late there is a proliferation of beggars on the streets of Srinagar which creates massive nuisance for the",,

general public.,,

Whereas, begging at any public place or places of worship whether or not under any pretence is repugnant to the Jammu & Kashmir Prevention of",,

Beggary Act, 1960.",,

Whereas, being an offence under that Act, it is imperative that strict necessary action under law be initiated against the offenders.",,

Now therefore, I, Dr. Syed Abid Rasheed Shah, District Magistrate Srinagar do hereby order, by the powers vested in me under the Jammu &",,

Kashmir Prevention of Beggary Act, 1960 with immediate effect that any person found:â€"",,

soliciting alms in a public place, or in or about a mosque, temple or other place of public worship, whether or not under any pretence;",,

entering on any private premises for the purpose of soliciting alms;,,

exposing or exhibiting with the object of obtaining or extorting alms, any sore, wound, injury, deformity or disease whether of human being or an",,

animal;,,

having no visible means of subsistence and wandering about or remaining in any public place or in a temple, mosque or other place of public worship in",,

such condition or manner as makes it like that the person doing so exists by soliciting alms; allowing himself to be used as an exhibit for the purpose of,,

soliciting alms, does not include soliciting money or fee or gift for a purpose authorized by law or authorized in the prescribed manner by the District",,

Magistrate,",,

shall be immediately arrested under Section 4 of the Jammu & Kashmir Prevention of Beggary Act, 1960 read with Section 61 of the Code of",,

Criminal Procedure, Svt 1989.",,

Senior Superintendent of Police, Srinagar and Senior Superintendent of Police, Budgam shall implement this order in letter & spirit and report the",,

number of such arrests on a daily basis.â€,,

(Emphasis by us),,

414. As stated in the order, it was intended as a measure to â€œmake Srinagar District more citizen friendly and to prevent public nuisance at all",,

costsâ€. The order observes that there was proliferation of beggars on the streets of Srinagar. The District Magistrate has presumed that such,,

proliferation ipso facto â€œcreates massive nuisance for the general publicâ€. This order extracts the definition of begging under Section 2(a) of the,,

Jammu & Kashmir Prevention of Beggary Act and in exercise of the powers vested under Section 4 thereof, the District Magistrate has notified the",,

public that any person found indulging in the stated acts shall be immediately arrested.,,

415. At the face of it, the order is premised on no specific material. It presumes that beggars render the District unfriendly for citizens without any",,

basis, it assumes also that begging is a massive nuisance for the general public. We have found these presumptions, assumptions and prohibitions",,

imposed in the order dated 23rd May, 2018, violative of the rights guaranteed under Article 14, 19 and 21 of the Constitution of India. We have also",,

found unconstitutional the provisions of Jammu & Kashmir Prevention of Beggary Act, 1960 which incorporate such prohibitions. The order dated",,

23rd May, 2018 which is based on prejudice that beggars are per se nuisance is, therefore, unsustainable for the detailed reasons which we have",,

recorded above with regard to the constitutionality legislation and has to be struck down and quashed.,,

(XXI) Impact of notification dated 5th August, 2019 (Re-organization Act)",,

416. Post reservation of this judgment, the Government of India has proposed to reorganize the State of Jammu & Kashmir in terms of the Jammu &",,

Kashmir Re-organization Act, 2019. This enactment was introduced before the Rajya Sabha on 5th August, 2019 and passed on the same date.",,

Thereafter, on 6th August, 2019, the Lok Sabha granted its assent to this law. The enactment received the assent of the President on 6th August,",,

2019. As per Sections 3 and 4 of the Act, on and from the appointed day, the existing State of Jammu & Kashmir would stand re-organized into two",,

Union Territories being the Union Territory of Jammu & Kashmir and Union Territory of Ladakh.,,

417. The Government of India has issued a notification being SO No. 2889(E) declaring that the appointed day has been fixed as 31st October, 2019.",,

418. In so far as the extant laws applicable to the State of Jammu & Kashmir are concerned, in terms of Section 95(2) of the Re-organization Act, the",,

same shall be made applicable in the manner as appears in the relevant table in the First Schedule.,,

419. So far as the Jammu and Kashmir Prevention of Beggary Act, 1960, is concerned, the same is mentioned as Entry No. 103 in table IV of the",,

5th Schedule which is concerned with State Acts including Governors Act that shall remain in force in the Union Territory of Jammu & Kashmir and,,

Union Territory of Ladakh. Therefore, the enactment, the constitutionality where of is being subjected to scrutiny by us, has been made applicable to",,

the Union Territories declared by the Government in terms of the Jammu & Kashmir Re-organization Act 2019.,,

420. As such, the present challenge survives despite the reorganization of the State into Union Territories.",,

(XXII) Compelling another to beg is not penal,,

421. The respondents have also adverted to the objects of the law as intended to underline acts of begging â€œsome organized gangs are exploiting,,

childrenâ€ and forcing them to go for begging; that children are kidnapped and forced to beg and a huge amount of money is collected. In this regard,",,

we may advert to the scheme of the Jammu & Kashmir Prevention of Beggary Act 1960. The Act does not criminalize kidnapping or exploitation of,,

any children or person and their being compelled to beg. Instead, under clause (v) of sub-section (a) of Section 2 of the Act â€œallowing himself to be",,

used as an exhibit for the purpose of soliciting almsâ€ has been made an offence. Therefore, the victim who has been compelled to beg has been",,

made an offender under the statutory scheme.,,

422. Similar legislations in other States in India penalize not only begging, but also compelling others to beg. In this regard, we may usefully refer to the",,

provisions of Section 11 of the Bombay Prevention of Begging Act, 1959, which reads thus:",,

â€œS.11 Penalty for employing or causing persons to beg or using them for purposes of begging: Whoever employs or causes any person to solicit or,,

receive alms, or whoever having the custody, charge or care of a child, continues at or encourages the employment or the causing of a child to splice,",,

or receive alms or whoever poses another person as an exhibit for the purpose of begging shall on conviction be punished with imprisonment for a,,

term which may extend to three years but which shall not be less than one year.â€,,

423. By this provision, anybody who employs any person to solicit or receive alms is liable on conviction to be punished with imprisonment for a term",,

which may extend to three years but it shall not be less than one year. Thus, a minimum sentence of imprisonment stands prescribed for employing or",,

causing any person to beg.,,

424. The Jammu & Kashmir Prevention of Beggary Act, thus does not penalize the person who is compelling or exploiting another person for begging.",,

It thus draws no distinction between voluntary and involuntary begging. The legislation does not penalize the person who compels another to beg or is,,

running a racket or controlling a syndicate of begging.,,

425. Criminal law is founded on â€œActus Reus Non Facit Reum Nisi Mens Sit Reaâ€. However, the impugned legislation also does not require any",,

element of mensrea on the part of person implicated to invite penal liability or consequences.,,

(XXIII) A word for the petitioer,,

426. Before parting with this case, we must acknowledge the contribution made by the petitioner, Mr. Suhail Rashid Bhat, is a fresh law graduate who",,

has been enrolled as an advocate only on 17.08.2017. We are impressed with his engagement with such an important social cause as raised by him in,,

the writ petition. He has displayed extreme sensitivity to the cause of the marginalized and impressed us with his deep analysis of the Constitutional,,

and legal issues which have arisen for consideration. We place on record our appreciation for the sensitivity of the petitioner, his application to law,",,

comprehension of the issues examined by us and his ability to apply judicial precedents to the propositions raised.,,

(XXIV) Conclusions,,

427. In view of the above, we hold as under:",,

(I) Poverty is human rights issue. The poor are entitled to a meaningful right of life which includes health, freedom, food, clothing, shelter, educational",,

facilities, just and humane conditions of work and maternity benefits, privacy, dignity and liberty. It is primarily on account of deprivation of the",,

essentialities of life that poor people are compelled to resort to begging to make out their sustenance.,,

(II) Criminalization of begging is the outcome of extremely prejudiced social constructs of presumption of criminality against the poor and baseless,,

stereotypes, in ignorance of the extreme exclusion and disadvantages faced by the poor who are struggling to survive. The criminalization of begging",,

which makes poverty an offence, is intended to remove poor people from public spaces, deprive them of the Constitutional guarantees of inclusiveness",,

and pluralism and results in further deprivation to them.,,

(III) Unlike other legislations which clothe and empower authorities with drastic powers, the Jammu & Kashmir Prevention of Beggary Act, 1960,",,

does not contain a â€œno faithâ€ clause which protects officials against civil and criminal actions in respect of anything intended to be done or done,,

pursuant to the provisions of law, suggesting legislative arrogance in that it does not expect any complaint against the authorities working this law in",,

view of the powerless status of the targeted population.,,

(IV) Section 3 of the enactment which makes begging, as defined under Section 2(a) of the Jammu & Kashmir Prevention of Beggary Act, 1960, an",,

offence does not require any element of mens rea.,,

(V) Begging involves peaceful communication with strangers, verbal or non-verbal, whereby a beggar conveys a request for assistance. Such",,

communicative activity is essentially part of the valuable right of freedom of speech and expression guaranteed to all under Article 19(1)(a) of the,,

Constitution of India.,,

(VI) The definition of begging under Section 2(a) of the enactment criminalizes people for what they are rather than what they do. The criminal,,

sanction under Section 3 of the Act, 1960, on the communicative activity is content based and premised on presumption of criminality of the poor",,

under Section 2(a) thereof. It results in banning of permissible activity in traditionally public forums and, therefore, essentially is subject to strict",,

scrutiny. The definition of the offence is vague, overbroad and not narrowly tailored so as to achieve the object of the Act.",,

(VII) The irredeemably broad and vague definition confers completely unchecked and untrammeled powers on the law enforcing authorities to apply,,

the drastic powers to detain people. The definition of begging has the chilling effect on free speech and expression of the beggars.,,

(VIII) The prohibition of communicative activity by beggars in public spaces is violative of their rights guaranteed under Article 19(1)(d) of the,,

Constitution and not sustainable for this reason as well.,,

(IX) The provisions of the Jammu & Kashmir Prevention of Beggary Act, 1960 and the Jammu & Kashmir Prevention of Beggary Rules, 1964,",,

unreasonably, unfairly and arbitrarily invade the right of free speech and expression guaranteed under Article 19(1)(a) and (d) of the Constitution. The",,

law also upsets the balance between the rights guaranteed and such reasonable restrictions, that Article 19(2) constitutionally permits, as may be",,

imposed thereon. Such restrictions are not in the interest of public.,,

(X) The restrictions imposed by the Jammu & Kashmir Prevention of Beggary Act, 1960 and the Jammu & Kashmir Prevention of Beggary Rules,",,

1964 and the curtailment of the right of freedom of speech and speech are also disproportionate to the object of the legislation and the situation sought,,

to be addressed. The restrictions imposed are in a manner more intrusive than necessary. The restrictions are inappropriate and, for this reason as",,

well, are not saved as permissible regulation under Article 19(2) of the Constitution of India.",,

(XI) The classification under Section 2(a) of the Act based on no intelligible differentia is impermissible and invalid classifications. They do not have,,

any nexus with the object of the legislation let alone a reasonable nexus thereto. The classification is arbitrary and irrational and fails to ensure equality,,

before the law to the persons who are targeted resulting in their discrimination and, as such, is violative of rights of the beggars under Article 14 of the",,

Constitution of India.,,

(XII) Sections 3, 4, 5, 6, 7 and 8 of the Jammu & Kashmir Prevention of Beggary Act, 1960, and Rules 3, 4, 5, 6, 8 and 9 of the Jammu & Kashmir",,

Prevention of Begging Rules, 1964, which make begging an offence (Section 3); prescribing a mandatory detention on the mere perception of the law",,

enforcer (Section 4); mandatory incarceration even to establish innocence (Section 5); mandatory sentence upon a second and further conviction,,

(Section 6); the nature of the summary inquiry (Section 5); punishment for escaping from the place of detention of persons who are compelled to beg,,

in order to meet the basic needs for bare survival (Section 7) which is way below even the minimum level of sustenance; drastic powers vested in the,,

institutions to which the perceived offenders are required to be committed; undignified treatment and procedures following the awarding of the,,

sentence (Sections 8 and 9), are arbitrary beyond the bounds of reason. Those provisions taking away the judicial discretion completely cannot be",,

considered fair, just and reasonable. As such, these statutory provisions violate the rights guaranteed to a person under Article 14 of the Constitution",,

of India and are held to be unconstitutional.,,

(XIII) Begging manifests the failure of the State to ensure basic entitlements of health, food, clothing, shelter, just and humane conditions of survival,",,

opportunity to work which are all essential concomitants of Article 21 of the Constitution of India. The J&K Act of 1960 and the Rules of 1964 result,,

in disproportionate infringement of the right to a meaningful life, dignity, privacy and liberty guaranteed under Article 21 of the Constitution of India of",,

the poor.,,

(XIV) Section 6(2) which provides for a mandatory detention upon a second conviction is held to be specifically inflicted with procedural unfairness. It,,

is an unreasonable restriction on the rights conferred by Article 19(1), is punitively outrageous, rehabilitatively counter-productive, unreasonable,",,

arbitrary, unfair unjust and is voided as being also violative of Article 14 and the right to life conferred by Article 21.",,

(XV) The deprivations and compulsions imposed, envisaged and permitted under Rules under Rules 6, 8, and 9 of Rules of 1964 in the detention",,

centers enable treating the detained person with utmost disdain and disrespect, violate his dignity, thus also eroding his self worth, are also an extreme",,

intrusion on the privacy of the detained person and are an assault on the guarantee assured to all persons as in contained in Article 21 of the,,

Constitution of India.,,

(XVI) The prescription under Article 39 of the Constitution of India, has been completely overlooked while enacting and implementing the provisions",,

of the Jammu & Kashmir Prevention of Beggary, Act, 1960 and the Jammu & Kashmir Prevention of Beggary Rules, 1964.",,

(XVII) The State Government has failed to ensure discharge of the Constitutional mandate under Section 13 of the Constitution of India as well the,,

Constitution of the Jammu & Kashmir State, to ensure the citizens of the State justice-social, economic and political and a society that promotes",,

welfare of all; that Sections 19(a) and (d) which enjoins upon the State to make provisions for securing amongst others the right to work, adequate",,

maintenance in the event of unemployment and other cases of undeserved want by providing social insurance; Section 23 which guarantees to the,,

socially and educationally backward section of people special care, and, inter alia, protection against social injustice.",,

(XVIII) The prescription under Article 39 of the Constitution of India and Part IV of Constitution of Jammu & Kashmir has been completely,,

overlooked while enacting and implementing the provisions of the Jammu & Kashmir Prevention of Beggary Act, 1960, and the Rules framed",,

thereunder.,,

(XIX) As a result of the above, all prosecutions under the enactment against the persons alleged to have committed offences of begging would not",,

survive. The power to do so would appropriately vest in the court seized of such prosecution. We are hereby confining ourselves to the present,,

observation that the fate of the prosecutions, if any, has to abide by the present judgment and our observations and findings herein contained.",,

(XX) The order dated 23rd May, 2018, passed by the District Magistrate, Srinagar, is based on no material at all, is premised on sheer prejudice and",,

violates the rights of beggars guaranteed under Article 14, 19 and 21 of the Constitution of India. The same is legally unsustainable.",,

(XXV) Result,,

428. In the result, we declare that the provisions of the Jammu & Kashmir Prevention of Beggary Act, 1960 and the Jammu & Kashmir Prevention of",,

Beggary Rules, 1964, are unconstitutional and hereby strike them down.",,

429. As a result of the above, all prosecutions under the enactment against the persons alleged to have committed offences of begging would not",,

survive. The power to do so would appropriately vest in the court seized of such prosecution. We are hereby confining ourselves to the present,,

observation that the fate of the prosecutions, if any, has to abide by the present judgment and our observations and findings herein contained.",,

430. The impugned order dated 23rd May, 2018, passed by the District Magistrate, Srinagar, is hereby quashed.",,

431. This writ petition is allowed in the above terms.,,