

**IN THE HON'BLE HIGH COURT OF KARNATAKA
AT BANGALORE**

(Original Jurisdiction)

Writ Petition No. / 2019 (PIL)

BETWEEN:

Peoples Union of Civil Liberties, Karnataka
represented by its President,
Having its office at No. 15, 1st cross,
Post office road, Sampangiram Nagar,
Bengaluru- 560027.

... Petitioner

AND

1. The Union of India
Through its Secretary,
Ministry of Urban Development & Poverty Alleviation,
Nirman Bhavan,
Maulana Azad Road,
New Delhi – 110011.
2. The Ministry of Social Welfare and Empowerment
Through its Secretary,
Shastri Bhawan,
Dr. Rajendra Prasad Road,
New Delhi - 11000
3. State of Karnataka
Represented by its Chief Secretary,
Vidhana Soudha,
Bangalore – 560001
4. State of Karnataka
Represented by the Principal Secretary,
Department of Social Welfare,
Vikasa Soudha ,
Bangalore-560 001
5. Central Relief Committee,
Constituted under Karnataka Prohibition
of Beggary Act,1975, Magadi Road,
Bangalore- 560091
Represented by its chairman

6. State of Karnataka

Represented by its Principal Secretary,
Law Justice and Human Rights Department
Ground Floor, Vidhana Soudha,
Bangalore - 560001

7. Directorate Of Municipal Administration,

Represented by its Director,
Ambedkar Road, 9th & 10th Floor,
Vishveshwariah Tower,
Bengaluru - 560001

... Respondents

**MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA**

The Petitioner herein respectfully submits as follows: -

1. The address of the Petitioner for the purpose of service of summons, notices, etc. from this Hon'ble Court is as stated in the cause title, and that of its Counsels, Basawa Prasad Kunale, Mohammed Afeef, Savitha Siddi and Vinay Sreenivasa, Advocates, 122/4 Infantry Road, Opposite Infantry Wedding Hall, Bangalore – 560001. The addresses of the respondents for the same purpose are as stated in the cause title.
2. The Petitioner is a civil society organisation that undertakes research and activities to promote accountability and better governance in India. The Petitioner organization is the Karnataka Chapter of the national-level organization People's Union for Civil liberties (PUCL), which was founded by Shri Jayaprakash Narayan in the late 1970s as an organization for the defence of civil liberties and human rights. It was originally known as People's Union for Civil Liberties and Democratic Rights (PUCLDR). After the lifting of the emergency in 1977, it was re-christened as PUCL. The Petitioner organization has a state-level PUCL unit in Karnataka and district-level units across the State. The Petitioner organization is non-partisan and is not a member of any political party. The Petitioner organization is membership-based organization and has branches all over the country. The Petitioner organization is a non-funded organization and run entirely on the contributions of its members, office bearers and activists. The Petitioner organization has, as part of its activities taken up the cause of the workers employed in the cleaning of manholes and maintenance of sewage systems

all across the country. The Petitioner organization has authorized its President to represent them in this Public Interest Litigation. The Petitioner Union has been involved in taking steps in electoral reform including the *People's Union of Civil Liberties vs. Union of India* [AIR 2003 SC 2363], where the Hon'ble Supreme Court recognized the right of citizens to secure information on the basic details concerning the candidates contesting for elections to the Parliament or State Legislature as being part of the freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a).

3. The Karnataka Prohibition of Beggary Act, 1975 was brought into force in certain areas of the State w.e.f. 01.04.1976 through Notification No. SWD 5 SBR 76 dated. 26.3.1976 and in the rest of the areas w.e.f. 06.11.1997 through Notification No. SWD 15 SBR 97 (1) dated 28.8.1997.
4. It is submitted that this Public Interest Litigation is filed challenging provisions of the Karnataka Prohibition of Beggary Act, 1975 (hereinafter referred to as 'the Act') that criminalize begging as being violative of Articles 14, 19, 21 and 20(2) of the Constitution of India. More specifically, Sections 2(1),2(2),3,10,11,12,13,14,15,16,18,19,21,22, 23, 40 (f) and (g) of the Act are challenged as being ultra Vires to Articles 14, 19, 21 and 20(2) of the Constitution of India.
5. That in exercise of the powers conferred by sub-section (1) read with sub-section (5) of Section 40 of the Karnataka Prohibition of Beggary Act, 1975 (Karnataka Act 27 of 1975), the Government of Karnataka had notified the Rules for the Prohibition of Beggary, 1975 vide Notification No.SWD 17 SBR 75 Bangalore, dated 1/4/1976.
6. That this Public Interest Litigation also challenges Rules 37, 38, 46, 47 and 48 Rules for the Prohibition of Beggary, 1975, that criminalize begging as being violative of Articles 14, 19, 21 and 20(2) of the Constitution of India.
7. It is submitted that this petition seeks, *inter alia*, that Receiving Centers and Relief Centers constituted in terms of section 7 and section 8 (hereinafter referred to as "*Beggars Homes*") of the Act be retained as voluntary and people friendly institutions. This petition also seeks the improvement of living conditions in Beggary Homes after it loses its carceral character. Along various reliefs towards the upliftment of the most vulnerable and downtrodden sections of society in accordance with the directions issued by the Honorable Supreme court in PUCL v. Union of India (Writ Petition No 196/2001) for homeless shelters.
8. Pertinently, the subject of beggary is relatable to item 9 of List II of the

seventh Schedule of the Constitution i.e. 'relief of the disabled and unemployable'. The subject of beggary can also be relatable to item 15, i.e. 'Vagrancy; Nomadic and migratory tribes' and item 23 i.e. Social Security and social insurance; employment and unemployment' of List III of the seventh Schedule of the Constitution. Therefore, the enactment of statutes and implementation of programmes pertaining to the eradication of beggary lies within the jurisdiction of State Governments. However, the Union can legislate by virtue of above-said entries in List III, but has not yet done so.

9. That various States have enacted anti-beggary legislations that provide for the prevention of begging through the detention, training and employment of beggars and also for the custody, trial and punishment of beggars. Begging is a cognizable offence which has the effect of treating 'beggars' or those who ostensibly look like beggars as offenders under these Acts, thereby conflating begging and homelessness. That special police squads operate in areas where the anti-beggary legislation is in force. For the purpose of the instant case, the relevant statute to be considered is the Karnataka Prohibition of Beggary Act, 1975. A chronological list of the anti-beggary laws passed in various states is produced herewith and marked as **Annexure-A**.

10. This Public Interest Litigation is also concerned with the living conditions of destitutes in homeless shelters throughout Karnataka and the non-implementation of the Operational Guidelines for Urban Homeless Shelters issued by Government Order No: UDD 81 MNG 2010 (P), Bangalore, dated 29.05.2014. A copy of the aforesaid Operational Guidelines for Urban Homeless Shelters is produced herewith and marked as **Annexure-B**.

11. It is submitted that a brief overview of the relevant provisions of the Act is given below:

11.1. Per the Preamble to the Act, its purpose is 1) to prohibit persons from resorting to begging, 2) to provide for the detention, training and employment of beggars, 3) to provide for the custody, trial and punishment of beggar offenders and 4) for the relief and rehabilitation of such persons in the State of Karnataka. The Act itself must be understood in light of this preamble.

11.2. Section 1 defines the applicability of the act, which states that the act, extends to the whole of Karnataka, and shall come in force in different areas of the state through notification by the State government. The Proviso states that the act shall not be brought into force in any area unless state Government is satisfied that suitable facilities exist for the

relief of the beggars of that area.

- 11.3. The definition of the term 'beggar' under the Act is extremely broad, to include people other than children (where males below 16 years of age and females below 18 years of age are children) who solicit or receive alms in any public place or private premises, those who expose injuries or deformities with the object of obtaining or extorting alms, and those allow themselves to be used as an exhibit to solicit or receive alms. Shockingly, the definition also includes, in Section 2(2)(d), persons who "*having no visible means of subsistence, wanders about or remains in any public place in such condition or manner as makes it likely that he exists by soliciting or receiving alms*". This provision amounts to a criminalisation of ostensible poverty and has great scope for misuse.
- 11.4. It is submitted that the definition of 'beggar' excludes, *inter alia*, those who, 1) in the performance of any religious vow or obligation as sanctioned by custom or religion collect alms in a private or public place, without being a nuisance. Therefore, in an incongruous statement of the priorities of the law, begging for food is criminalised, whereas begging for God is not. 2) who is permitted or licensed by the Central Relief Committee for specific purposes stated therein 3) who is a student collecting alms for the prosecution of his studies.
- 11.5. Section 3 of the Act is the operative section, and lays down an unqualified prohibition of beggary. This is one of the provisions being challenged as unconstitutional in the instant writ petition.
- 11.6. The Act provides for the constitution of a Central Relief Committee ('CRC'), upon which vests the supervision, direction and control of all matters relating to the administration of relief [s. 4]. The CRC is also mandated to provide for the management of the Institutions, namely the Receiving Centres [s.7] and the Relief Centres [s.8]. Pertinently, every person detained in any of the institutions shall be subject to such rules of discipline as may be prescribed, and discipline is explained to include the enforcement of manual labour and hard labour as per section 10 of the act.
- 11.7. The prohibition of beggary is sought to be implemented through the powers of arrest and detention under section 11. Once any person is arrested by the police officer or authorized officer on grounds of begging; such persons will be taken to the receiving centre, where an enquiry will be held by the officer in charge. If such officer is satisfied that the arrested person will not engage in begging again, such officer can release the

person arrested, and if he is not so satisfied, he must produce the arrested person before the Magistrate within 24 hours, if not satisfied.

11.8. Thereafter, the Act provides for another enquiry to be held by the Magistrate, who shall release him on a bond if he is satisfied that such person has committed the offence of begging but undertakes not to commit such offence, shall release him on his furnishing a sum of rupees One thousand. Shockingly, the Act does not provide for what the consequences will be if no such satisfaction is recorded by the Magistrate, including the maximum period of detention that may be imposed in case of first offenders.

11.9. For repeated offenders, Section 11 (5) provides that if a person has been released, but is later again produced before a Magistrate, he may be released on a surety. In fact, a discrepancy appears to have arisen out of the Karnataka Prohibition of Beggary (Amendment) Act, 2002, whereby section 12(1) was amended. Whereas section 12(1) initially provided a maximum detention period of 12 months in case the said person was again produced before the Magistrate, who finds contravention of Section 3 to be made out, the Amendment changes this maximum detention period of 12 months to a *minimum* detention period of one year, which might extend to a period of three years. As a result, while section 11(5) provides that if a person is produced before a Magistrate for the second time, then he may be released on surety, section 12(1) imposes a minimum one year detention period for the same.

11.10. Section 12(2) provides that an order of detention passed by a magistrate under sub-section (1) may at any time be revoked or modified without qualifying the same in any way.

11.11. Shockingly, under section 13, first offenders who are "infirm, disabled, decrepit or suffering from any loathsome or incurable disease" and who have no relatives are liable to be detained for a minimum period of 1 year extendable to 3 years.

11.12. Under Sections 14, detainee of unsound mind or suffering leprosy *may* be removed to a mental hospital or leper asylum. If he ceases to be of unsound mind or is cured of leprosy, he *shall* be sent back to the institution if he is still liable to remain in custody.

11.13. The nature of detention, namely mandatory, forcible and coercive confinement is made clear in sections 15 to 18 of the Act. Under s. 15, detainee may not leave without an order of discharge or written permission. Section 16 penalises absconding beggars, and a second

offence of absconding is punishable with imprisonment. Pertinently, under section 18, refusal to be taken to an institution or refusal to accompany a police officer or authorised officer is also punishable with imprisonment.

11.14. That Section 19 empowers the chairman of the Central relief Committee to transfer a detainee from one institution (as per the act) to an Institution of a like nature in the State. Section 20 allows for the temporary release of beggars in a relief centre in case of any serious illness or death of any member of the beggar's family or any of his nearest relatives or for any other sufficient cause.

11.15. That Section 21 allows for the unconditional release of beggars if the officer-in-charge of such relief centre is satisfied from the conduct of such beggar after the expiration 3 months from date of remand, the said officer-in-charge may recommend to the Government his unconditional release and the Government may order the release of such person unconditionally

11.16. That Section 22 allows for the inter-state transfer of detainees in institutions of a like nature in other States. Section 23 holds that the all offences under the act are cognizable and section 24 holds that the fines recovered under act will be credited to the Central relief fund.

11.17. That Section 25 holds that notwithstanding anything in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), every court shall, as far as possible give precedence to any proceeding under this act for offences under the said impugned act.

11.18. That the rest of the provisions in the Act, are enabling provisions that provide for the functioning of the institutions and bodies under the act. These provisions are not impugned as they are necessary for the voluntary rehabilitation of beggars in Karnataka.

12. That Rule 37 of the Rules for the Karnataka Prohibition of Beggary, 1975, empowers the Officer-in-charge of the institution to punish inmates for breach of rules.

13. That Rule 38 provides for the procedure of discharge and permission for inmates of the institution.

14. That Part V titled, Arrest and Prosecutions the Rules for the Karnataka Prohibition of Beggary, 1975, gives the power to the officer in charge of the institution to instruct any police officer or such officer to arrest persons in accordance with the Karnataka Prohibition of Beggary, Act, 1975.

15. That the Operation of the act in Karnataka, is such that there are a total of 14 Rehabilitation/ relief centres in Karnataka. Namely, in Bengaluru, Bijapur,

Bellary, Belagavi, Chitradurga, Devanagere, Gulbarga, Hubballi-Dharwad, Kolar, Mysuru, Dakshina Kannada, Raichur, Shivamogga and Tumakuru.

16. It is submitted that the Central Relief Committee in an RTI response Vide No.: KeMPaSa/Admin-1/RTI/CR: 2019-20 dated 18.11.2019, furnished statistical data of how many beggars were detained, then released, and how many remained in the end of the year; between the year 2008 to 2018 in each of the 14 Rehabilitation centres under the Act in Karnataka. This data demonstrates that thousands of persons are detained every year, some are released and some continue to be in custody. A copy of the aforesaid RTI response containing the aforesaid data in a tabular format dated 18.11.2019 is produced herewith as **Annexure-C**.

17. It is submitted there are vast discrepancies between the number of detained persons and cases registered under the impugned act/ rules.

17.1. That a Perusal of (Annexure-xxx) along with the State Crime Records Bureau (**SCRB**) reports, for the years 2011-2018, and the RTI responses of the Central Relief Committee, reveals that there is a vast disparities between the Number of persons detained in actuality and the number of cases registered under the Act. This demonstrates abusive operation of the act on thousands of innocent destitute persons, which is direct consequence of the criminalisation of begging. A Copy of the relevant portion of the State Crime Records Bureau (**SCRB**) report from the years 2011-2018 is produced herewith as **Annexure D1 to 'D7'**. (Excluding 2016 SCRB Report as it does not have a mention of begging)

18. The operation of this patently anti-poor law is merciless and problematic. Teams of policemen and women with lay aides and armed with sticks, conduct periodic drives against homeless populations, rounding up men, women and children, whose only crime is that they are manifestly poor. They are beaten into waiting vehicles. They are then presented before specially designated magistrates of Beggars' Courts, who summarily enquire whether those rounded up are people who live by begging. So far as the functioning of these courts is concerned it is very rare for elementary procedures of law to be applied in these courts. A person should be deemed innocent unless proved otherwise, and the duty lies with the State to produce evidence of guilt. However, for those charged with the 'crime' of begging, usually little or no evidence is produced or even sought, and large numbers are sentenced by judges on whimsical considerations such as their obviously extremely impoverished appearance.

19. On the conditions of beggary homes, a Deccan Herald article titled, *'Death*

hangs in the air like the Fetid Stench' dated 19.08.2010 states that the beggars colony at Magadi Main Road, Kamakshipalya, Bengaluru, which is spread over a sprawling 150 acres, with verdant lawns and trees, is a concentration camp for the City's unwanted. It is stated that there, 2,533 wretched men and women lead subhuman lives: their skins are caked in dirt and filth, they get practically nothing to eat, they relieve themselves in the open for the toilets are choked with their excreta and overflowing with their urine, and they prefer eating and sleeping in the courtyards since the large halls are so full of stench. This Beggars' Relief and Rehabilitation Centre, also known as the Nirashrithara Parihara Kendra (NPK), is commonly known as the Beggars' colony, and is run by the Respondent No.5. It is further stated that the beggars and vagrants that the State Social Welfare department routinely rounds up on the City streets are herded into dark, dingy, cold and malodorous living quarters that are euphemistically described by officials as dormitories. Deaths occur almost every day. A copy of the aforesaid Article dated 19.08.2010 article titled, '*Death hangs in the air like the Fetid Stench'* is produced herewith as **Annexure-E**.

20. It is submitted that a number of deaths of inmates in the Beggars' Homes were exposed around the third week of August, 2010 and the same was reported by several news outlets. An Article dated 19.08.2010 titled, '*Mystery shrouds beggars'* published Deccan Herald reveals several deaths in the Beggary Home at Bangalore *death*. Further, an article dated 22.08.2010 published in Times of India titled, '*26 deaths in 5 days in Bangalore beggars' home'*, highlights the number of deaths that occurred between 18.08.2010 and 22.08.2010. A copy of the aforesaid Article titled, '*Mystery shrouds beggars'* dated 19.08.2010 is produced herewith as **Annexure- F**. A Copy of the aforesaid Article dated 22.08.2010 published in Times of India is produced herewith as **Annexure- G**.

21. It is submitted that the Karnataka State Human Rights Commission (hereinafter referred to as 'KSHRC') in Bangalore took up a *suo moto* investigation based on the aforesaid electronic media publications regarding these deaths in the relief centre and passed a detailed order dated 18.09.2010 in HRC No. 5978/SM-1242/2010 and connected cases, holding that the reason for the deaths were due to food poisoning, unhygienic conditions in the kitchen, toilets, dorms etc., this was further confirmed by the investigation wing too. The KSHRC came to several significant conclusions, including the following:

21.1. It was ascertained that 29 deaths of inmates of Beggars Relief Centre, at

Magadi Main Road took place in the four days between 17-08-2010 and 20-08-2010. The deaths were treated as natural deaths caused due to diarrhoea, vomiting, old age, etc., therefore no post-mortem was conducted on the bodies. Contrary to the law, no complaint was filed with the local police regarding the deaths. Further, 28 out of 29 bodies were cremated. The remaining single body was subjected to post-mortem after a complaint was filed at Kamakshipalya Police Station.

21.2. The order states that in the reports by the Medical Officer in-charge of the centre; the stated causes of deaths were prolonged illness, diarrhoea, vomiting, anorexia, epilepsy, etc. However, on the examination of some inmates, the reason for death ascertained was suspected food poisoning due to contaminated food served to the inmates. Further, it was revealed by the investigation team that no intimation of the illness and death was given to the family members/relatives of the inmates.

21.3. The Order includes the enquiry about the condition of the Centre undertaken by the investigation team. The Centre, which had a maximum capacity of 600 inmates sheltered 2,538 inmates as of 16-08-2010. It was revealed that the condition of the kitchen, dormitories and toilets was unhygienic and unsuitable for living. Further, the drinking water was contaminated and the food was cooked under filthy conditions in the kitchen. The Centre was reported to have an atmosphere of unbearable filth and stench. The Centre was also reported to have shortage of proper beds, mattresses and blankets for the inmates. Further, the personal clothing of the inmates was inadequate and the practice of giving of each inmate disinfectant bath and supplying clothing was not followed. Additionally, the report terms the facilities provided at the Centre as 'sub-human'.

21.4. The order observed that most of the medicines given to the inmates were expired. It was observed in the order that there was unbearable foul stench, no facilities to deal with medical emergencies, inmates suffering from contagious disease were not separated from others, and further that the deaths were shown as natural deaths and none of the bodies were subjected to post mortem, and there were several observations made regarding illegality, and dire pathetic conditions of the said Beggary home.

21.5. That on the operation of the Centre by the authorities, the order held that the operation/functioning was not in conformity with the provisions of the act The procedure for admission of the inmates as provided under the Act and Rules was not scrupulously followed. It was revealed that there were

no records of inmates being medically examined by the Medical Officer. Further, no classification of the inmates had been undertaken as able bodied, disabled, diseased, mentally deranged, infectiously affected, etc., which resulted in mixing of inmates suffering from epidemic infectious diseases and spread of infections to other inmates.

21.6. Additionally, it was reported by the inmates that they were being ill-treated by the staff. The inmates were being punished with assault, deprivation of food, etc. instead of being provided with Redressal for their grievances. Further, there were reports of sexual harassment by the staff and complaints of wardens taking away the belongings of inmates, however, these reports could not be confirmed by the investigation team during the course of investigation. It is submitted that under Section 32 of the Act a board of visitors has to be appointed which had not been appointed in any of the Centres.

21.7.A Certified Copy of the aforesaid order dated 18.09.2010 passed by Karnataka State Human Rights Commission in HRC No. 5978/SM-1242/2010 and connected matters is marked herein as **Annexure-H**.

22. That subsequent to the aforesaid order, a communication was made by the Respondent No. 5 (Central Relief Committee) to the KSHRC vide No. KeMPaSa:CR;35:2010-11 dated 28.12.2010, stating the improvement measures that have been taken after the aforesaid incident of deaths that occurred. Some of the measures highlighted include the installation of Personal Record Maintenance System in every Rehabilitation Centre, Addition of five additional doctors and medical staff, provisions for breakfast and lunch from Akshay Patra Foundation, repair and painting work in the dormitories, kitchen, etc., additional cleaners, installation of water purification system to water tanker in the Beggars rehabilitation centre in Bengaluru. The aforesaid Communication also states that about 1753 beggars had escaped from the Beggars Rehabilitation Centre in the month of August 2010. That with respect to the incident pertain to the death of beggars the Secretary, Central Relief Committee, Superintendent, Beggars Rehabilitation centre, Receiving officer and the Chief Warden have been alleged of dereliction of duty and have been suspended and Departmental inquiry had been ordered. A true and correct copy of the aforesaid communication dated 28.12.2010 made by the Respondent No. 5 (Central Relief Committee) to the KSHRC along with the Translated copy of the same is produced herewith and marked as **Annexure-J and J1**, Respectively.

23. It is submitted that the Karnataka Chapter of the Petitioner Union itself has

prepared a detailed investigation report entitled '**A PUCL(Bangalore) Memorandum on the Implementation of the Karnataka Prohibition of Beggary Act, 1975**' pertaining to the Beggars' Home, Magadi Main Road, on the basis of regular visits there and the functioning of the act in the state. On 27.05.2011, the Petitioner submitted its Investigation memorandum to the Chairperson of Karnataka State Human Rights Commission. The said report acts as an a implementation check mechanism to the aforesaid order of the KSHRC. Further, the observations, demands and recommendations in the fact finding report are pertinent to highlight the functioning of the Impugned act and the condition of the said Beggary Home.

- 23.1. The report highlights the trend of arbitrary arrests for the offence of begging which commonly took place in Majestic and City Railway Station areas. A major chunk of the arrested include those who have migrated to Bangalore in search of employment. They are arrested while drinking tea or waiting to bathe, etc. The report also points to violations of the guidelines by the Supreme Court on Arrests in *DK Basu v. State of West Bengal*, as accused persons are not told the reasons for their arrest, no memo is prepared and the relatives are uninformed. Rather than directing efforts towards release, they are kept in beggars' homes for a period of 1-2 years, beyond the period of detention.
- 23.2. The aforesaid Report stated that the accused persons were made to wait in a van and then taken to detention centres, Instead of being produced before a Magistrate. A majority of the inmates were first timers and as per Section 11 of the Beggary Act, which means that, if they undertake to not commit the offence of begging again, they shall be released on a personal bond. These inmates did not have any record of prior arrests. Even if produced before Magistrates, it was only for a brief period, without being allowed to defend themselves. No application of mind was made to the individual facts and circumstances while detaining inmates.
- 23.3. The aforesaid fact-finding team also laid down its observations on the condition of the beggary home they visited. The report holds that the male inmates are provided with uniforms that consist of a shirt with half-pants (shorts), and most of them are compelled to completely shave their heads. In most cases, female inmates are also required to completely shave their heads. This provision of uniforms in the form of half-pants, and the compelling of shaving of heads is treatment that degrades the person and life of the inmates.

23.4. The report further states that the Home fails to provide adequate facilities to take forth its objectives of relief and rehabilitation. That there is a need to take steps to provide skills training and take steps for the creation of employment of inmates in order to rehabilitate them. The lack of facilities discredits the reason these institutions were made. Another aspect the report highlighted was the payment made to inmates who perform hard labour at the home, that when inmates are employed to perform hard labour they are not paid adequate wages and are paid very low amounts. The report further recommends It is necessary that the inmates be provided adequate facilities to work and be paid at least minimum wages.

23.5. On issues concerning the health of Inmates, the report held that:-

"The health of inmates is an aspect that needs to be looked into carefully and protected. We were informed that there were three doctors, one of them full-time, one a lady and there were six nurses at the Home. Also a lab technician and a pharmacist. We also noticed that a number of inmates were suffering from some form of oral disease. This appears to have been taken up by the administration who have started visits by a dental physician and were trying to set up a regular weekly visit."

23.6. With regard to psychiatric and medical support, the report held that There are about 330 number of inmates in the Beggars Home of which 120 number are said to be in need of psychiatric help. However, for these persons, there is only one Psychiatrist who visits twice a month, on the first and third Thursdays.

23.7. The report suggested the revocation of the said Impugned act and laid down observation with regard to the function of the act. A True copy of the said report vide H.R.C. 3226/2011 with acknowledgment of State Human Rights Commission is herewith attached as **Annexure-K** dated 27.05.2011.

24. It is submitted that subsequently, a communication dated 14.07.2011 vide HRC:3226:2011 was made by the Respondent No. 5 to the KSHRC vide No. KemPaSa/Administration/CR/11:11-1, stating the various measures taken to make improvements in all beggars Rehabilitation centres in 14 districts of Karnataka.

24.1. That in the aforesaid communications the Respondent No.5 admits that no provision of legal assistance is given whatsoever to the destitutes under the act or Rules and that no measures have been taken till now to provide legal assistance. It is also admitted in this Communication that Senior citizens, Mentally ill and those that suffer from various diseases form the

majority of inmates in the Beggars Rehabilitation Centres.

24.2. That as per the aforesaid communication, the way the act operates, is that when beggars are detained and brought to the 'Receiving Unit' of the Beggars Rehabilitation centre; a preliminary inquiry will be conducted, and those beggars in the first instance will be warned and released, however, if they have repeatedly engaged in Begging then they are detained following Magistrates orders. An example stated in the communication dated 14.07.2011 reveals that in the period between April 2011 and June 2011 a total number of 346 persons were detained, out of which 181 persons were released and 165 beggars were detained in the Beggars Rehabilitation Centres following Magistrates orders

24.3.A Copy of the aforesaid communication dated 14.07.2011 with acknowledgment of State Human Rights Commission along with the Translated copy is produced herewith and marked as **Annexure-L and L1**, Respectively. .

25. Pertinently, after the publication of multiple reports in print and electronic media regarding a large number of deaths in the NPK on 22.08.2010, the Chief Minister of Karnataka visited the NPK and being unhappy with its administration ordered an inquiry into these deaths. Shri S. Selvakumar, IAS, Project Administrator, Karnataka Health System Development and Reforms Project and Mission Director, National Rural Health Mission, Bengaluru was appointed as the Inquiry Officer. The inquiry committee set up by the Chief Minister submitted its report, wherein it was stated that between January to August, 2010, 264 inmates of the NPK had died

26. That based on the above-said Inquiry Report, the Government, by an order dated 01.11.2011; directed the institution of an FIR against the then Officers and employees of the NPK vide Crime No. 7/2011 on 04.11.2011 for the offence under S. 304-A IPC at the Kamakshipalya Police Station.

27. Notably, at the same time, two deaths were reported at a beggars home in Mysuru. The same is reported in an article entitled '*Two deaths at Mysore rehabilitation centre*' published in the Deccan Herald, which is produced herewith as **Annexure-M** dated 15.09.2010.

28. It is submitted that in research paper by Authors K. Basha, Devaraiiah DB, titled, "rehabilitation centre of beggars; a case study of sumanahalli, centre, bangalore", published by Business Sciences International Research Journal Volume 1 Issue 2 (2013); a study has been carried out at the Beggars' Rehabilitation Centre near *Sumanahalli* on *Magadi* Road, outskirts of the Bangalore city. The study holds that :-

"The Central Relief Committee (CRC) and the Department of Social Welfare have sent 628 beggars to rehabilitation centre on Magadi road. Out of that have been caught, 433 are men and 195 are women. apparently they are being caught from worshipping places, railway station, bus terminal and market places. During the drive, on an average the Committee brings around 50 to 60 beggars to the rehabilitation centre per day. some days, the number crosses 100."

True and correct copy of the aforesaid research study is produced herewith as **Annexure-N**.

29. It is submitted that on 28.07.2015, this Hon'ble Court passed Order in Hanumanthrayappa v. State (Criminal Petition No. 2188/2012), taking cognizance of the fact that 264 deaths have occurred in the NPK from January to August, 2010 and dismissing the petition by the officers accused for quashing of FIR. True and correct copy of the aforesaid Judgment dated 28.07.2015 passed by this Hon'ble Court in Criminal Petition No. 2188/2012 is produced herewith as **Annexure-P**.

30. On 14.07.2016, the Hon'ble Temporary Chairperson of the Karnataka State Human Right Commission passed a detailed order in respect of the Beggary Home at Magadi Road, Bengaluru, eventually closing the case in this order itself. Several important aspects were discussed in the said order, such as :-

30.1. Several changes were noted to have been made by the Respondent No.5 to improve the Conditions in the Beggary rehabilitation centre in Bangalore, as previously stated in the communications made by the Central Relief Committee. The aforesaid improvements include; the installation of Personal Record Maintenance System in every Rehabilitation Centre, Addition of five additional doctors and medical staff, provisions for breakfast and lunch from Akshay Patra Foundation, repair and painting work in the dormitories, kitchen, etc., additional cleaners, installation of water purification system to water tanker in the Beggars rehabilitation centre in Bengaluru.

30.2. The aforesaid order also acknowledged that two persons at the Beggars Rehabilitation Centre in Mysuru had expired due to unhygienic of the conditions in the said Beggars Rehabilitation Centre, however, unlike the improvements noted in the Bangalore Centre, no such steps were noted in the Mysuru Centre.

30.3. The Order also Noted that following the Incidents of several deaths on Inmates of the Beggars Rehabilitation Centre in Bangalore, the then Chairman, Sri C.N. Manjegowda was replaced by Sri K.A. Ramalingappa

vide Government Order No.: SaKa:173:SDC:2010 dated 20.11.2010.

30.4. The Hon'ble Chairperson; finally directed the Principal Secretary, Social Welfare Department, to ensure that necessary measures are taken for proper maintenance of the Rehabilitation Centre and to follow up from time to time and to close this case.

30.5. A Copy of the aforesaid order dated 14.07.2016 by Karnataka State Human Rights Commission along with the Translated copy is marked herein as **Annexure-Q and Q1**, respectively.

31. It is submitted that the Hon'ble High Court of Delhi has, in Order dated 08.08.2018 in Harsh Mander and Ors. vs. UOI and Ors. (AIR 2018 Delhi 188), struck down a number of sections of the Bombay Prevention of Begging Act, 1959, as extended to Delhi, as unconstitutional, holding:-

"While most of the provisions contained therein directly deal with begging, treating it as an offence, or other provisions ancillary thereto, there are certain provisions which do not treat beggary *per se* as an offence and which therefore, may not be hit by the vice of unconstitutionality".

31.1. It is submitted that the Delhi High Court in the aforesaid judgment did not strike down the whole act, wholesale, it recognised all the provisions which treat beggary/ begging, as an offence, committed by the beggar, or are ancillary thereto. These included the substantive definition of the activity of begging, making the activity an offence, and the provisions that constitute the complete enforcement machinery. A copy of the aforesaid Judgment dated 08.08.2018 is produced herewith as **Annexure-R**.

31.2. It is submitted further that the Bombay Prevention of Begging Act, 1959 and the Karnataka Act are in pari materia. A copy of a table containing comparing both enactments side by side is produced herewith as **Annexure- S**.

32. It is submitted that there has been a significant evolution of the understanding of Article 21 amounting to a paradigm shift in the understanding of the right to live a dignified life. In the continuing mandamus of the Honorable Supreme court in **People's Union for Civil Liberties v. Union of India (W.P No. 196 of 2001)**, the State of Karnataka, as per its affidavit undertook the task to conduct a comprehensive survey to identify the urban homeless and as per the Direction of the Hon'ble Supreme Court furnished details regarding the Nigh Shelters present in Karnataka and had furnished certain suggestions regarding improving the conditions of nigh shelters which came out as a

result of the deliberations between the Special Commissioner in aforesaid matter and the officials of the Governments of Karnataka.

33. It is submitted that in a representation to the Commissioner of BBMP dated 20.04.2015, a fact finding team containing members of the Petitioners and other independent activists and researchers, presented their findings on status of homeless shelters to find out if there has been any change in conditions of shelters. A copy of the said representation to the Commissioner of BBMP along with the fact finding report dated 20.04.2015 is marked herein as **Annexure-T**.

33.1. The Report reviewed the conditions of 6 homeless shelters, namely those situated at Dasarahalli, Sanjay Gandhi Nagar, JC Nagar, Goods Shed Road, Murphy Town, and Mahadevapura. The report concluded that have not seen any significant improvement, based on certain some common problems that can be observed at all shelters. These are the lack of running water, absence of adequate medical care, unsanitary conditions, lack of proper toilets absence of contractual food caterers, a mosquito menace and a general lack of cleanliness.

33.2. The report held that the major obstacle faced at all shelters is either the shortage of staff due to non-payment of salaries, or absence of staff due to corrupt practices. Even when Governments are paying salaries for a workforce of over 30, only a handful are employed, and the rest of the money is pocketed.

33.3. The report holds that the bedding in most shelters is of abysmal quality, and this goes a long way in deteriorating the overall level of sanitation. Access to water only via tanks is also a common feature. There is a total absence of installation of fire protection equipment, pest control, counseling services, linkages to entitlements, or rehabilitation facilities. This lack of basic amenities has forced a lot of individuals to take refuge elsewhere.

33.4. The report further holds that most shelters have very low occupancy. Apart from the lack of amenities mentioned above, a contributing factor is the lack of awareness or advertisement of these shelters. Rarely are there any banners or posters encouraging people to use these services. At the Mahadevapura Shelter, an A4 size sheet has been put up indicating the presence of a shelter, but there are no other signs of ads. Only a few shelters (like Murphy Town) have sex segregated rooms, which may also be a reason for low occupancy. There are also few facilities to accommodate the aged or the vulnerable. A lot of willing occupants are

turned away because of red tape procedures, or lack of identity cards or other official documents. Further, occupants also find it extremely hard to store their belongings if they are to stay for extended periods of time since there are no locker facilities available.

34. It is clarified that sections 2(1), 2(2), 3, 10, 11,12,15,16,18,19,21,22 ,23 ,40 (f) and (g), of the Act and Rules 37, 38, 46, 47 and 48 of the Rules are being challenged as unconstitutional. It also sought that the Institutions established in Sections 7 and 8 of the Act be retained as voluntary receiving and rehabilitation centers for beggars and other destitute persons where the compulsory and punitive nature of these prison like institutions are done away with. Rather they must change their character completely and have a friendly and enabling atmosphere so that the destitute and other homeless will voluntarily enter to obtain counseling, medical assistance, legal aid, and basic facilities such as bathing facilities, food, and perhaps even shelter for those particularly vulnerable such as the aged, sick or infirmed. If such existing institutions become people friendly even street children and other destitute sections would avail the facilities and if the rehabilitation facilities are well managed many destitutes could possibly find their way back into the mainstream.

35. It is submitted that the Petitioners herein have approached the Respondent No. 3, 4 and 6 herein through a representation dated 06/03/2019, demanding the repeal of the unconstitutional provisions of the impugned statute. It was further demanded that the Beggary Homes that derive authority from the impugned statute be retained only as voluntary and people friendly rehabilitation centers and that a thorough audit of the expenditure of the Beggary Cess collected in terms of section 31 of the Karnataka Prohibition of Beggary Act, 1975 be conducted and the said report of the audit should be made public. True and correct copy of the aforesaid representation dated 06/03/2019 is produced herewith and marked as **Annexure-U.**

36. That after the aforesaid representation has been submitted on 06/03/2019, no steps have been taken by the Respondents in furtherance of the aforesaid demands, therefore the Petitioner had no option but to approach this Hon'ble Court.

37. The Petitioner has not presented any other Writ Petition before this Hon'ble Court or any other Forum on the same cause of action. The Petitioner having no other efficacious or alternate remedy has approached this Hon'ble Court by presenting this Writ Petition as a Public Interest Litigation under

Article 226 of the Constitution on the following among other grounds:

GROUND

38. That the impugned provisions of the Act criminalizing begging and poverty are void under Article 13(1) of the Constitution as violative of various fundamental rights, including Articles 14, Article 19(1)(a), Article 19(1)(d), Article 19(1)(g), Article 20(2), and Article 21.
39. That Article 14 of the Constitution is violated by the impugned sections of the Act on the following grounds:
- 39.1. Section 2(2)(d) criminalizes ostensible poverty, whereby wandering about without *visible* means of subsistence itself amounts to a criminal activity. The phrase 'makes it likely that he exists by soliciting or receiving alms' suffers from the vice of vagueness and manifest arbitrariness.
- 39.2. That the aforesaid section further denies equal treatment between those who 'have no visible means of subsistence' and those who have a visible means of subsistence but are likely to exist by receiving alms.
- 39.3. That the law as it stands arbitrarily discriminates against those who are ostensibly poor. It is a manifestation of the unconstitutional notion that though the poor and unemployed exist, they must not be seen in public or influence the perception of a city as beautiful or aesthetically-displeasing on the other. Such a provision has no nexus whatsoever with the object of the Act.
- 39.4. That the exceptions to the definition of the term 'beggar' under the proviso to Section 2(2), including those people who, "*in the performance of any religious vow or obligation as sanctioned by custom or religion collects alms in a private or public place, without being a nuisance*"; suffers from the vice of arbitrariness. That no intelligible differentia exists between the four exempted classes of beggars and the class of beggars that pursue begging for different reasons. The discretion given to the CRC to grant permission in writing to certain people to beg is utterly unbridled, arbitrary and without rational.
- 39.5. That the definition clause makes no distinction between "voluntary" and "involuntary" 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.
- 39.6. That the Act fails to treat equally those who beg and those who give alms despite the two being equal participants in the act of beggary. If begging, is, in fact, a criminal act, there is no justification for this distinction.

- 39.7. That while section 12(1) provides a minimum detention period of one year for second time offenders, section 13 provides for the same minimum detention period for first time offenders who are "infirm, disabled, decrepit or suffering from any loathsome or incurable disease" and who have no relatives. This is a blatant violation of Article 14.
- 39.8. That the Act creates an artificial distinction between begging in person and solicitation by institutions, which both amount to a request for financial assistance. Such a differentiation is arbitrary, and penalises the poor. Therefore, The provisions, in simple terms, treats differently those who 'look wealthy' as against those 'who look poor'.
- 39.9. All of the above arguments in relation to Article 14 are independent. That in view of the above the impugned provisions of the Act would become unconstitutional under Article 14.
40. That the impugned provisions of the Act are in violation of Article 19(1)(a) of the Constitution.
- 40.1. That begging is nothing but an expression of the impoverishment of the citizens of India, and the criminalisation of the same does not amount to a reasonable restriction.
- 40.2. The two steps test in determining whether begging is a constitutionally protected expression is, *first*, whether begging as defined in section 2(2)(a) - 2(2)(d) in the said impugned act is a speech or expression in terms of Article 19 (1)(a), and if so *second*, whether the restriction of this expression be way of criminalization of begging by the impugned provisions is a reasonable restrictions on the right.
- 40.3. That in the case of begging, there two kinds of expression. Either a beggar solicits alms directly, or he expresses poverty and vulnerability through various means like performances, displaying one's disability etc. in the hopes of receiving alms from the general public. Very often a request for alms will follow an express declaration of poverty or vulnerability. Even where there is not an express statement, there is implicitly, in the request for alms, an expression that one is impoverished. It is settled law that the right to speech and expression under Article 19(1)(a) is not confined to express statements and extends well beyond.
- 40.4. That the crime of appearing so poor that one is likely to 'exist by soliciting', is again an expression. It is clearly possible to express oneself through one's clothing. In a culturally and religiously diverse as India this point should be obvious. Just as the rich may express their wealth through their clothing so the poor express their poverty. That even if some of the

accused may not intend to make such an expression they nevertheless do. It seems clear that such an expression, as with other expressions, can be made unintentionally.

40.5. The exposing of hurts and disabilities for the purpose of obtaining alms by definition, is an expression of vulnerability and must, therefore, fall within the scope of Article 19(1)(a). That begging by communicating a request for assistance is nothing but constitutionally protected speech.

40.6. That further, the restriction of the fundamental right enshrined in Article 19(1)(a) is only permissible in terms of Article 19(2). More specifically, the criminalisation of begging is not a reasonable restriction on the freedom of expression in the interests of public order, decency or morality.

40.7. That the criminalisation of begging through the impugned provision is also disproportionate restriction and hence cannot be termed reasonable as per Article 19(2) of the Constitution.

40.8. Pertinently, for adjudging reasonableness of a restriction, the nature of right alleged to have been infringed, the underlying purpose of the restriction imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, and the prevailing conditions at the time, are factors that should be taken into consideration. That considering these factors, the impugned provisions cannot be seen as reasonable restrictions.

40.9. That there has been an international progression of law protecting beggary with the right to free speech, as detailed below, and our constitution mandates similar protection.

40.9.1. USA: It is now law settled by the Supreme Court and various High Courts in the USA that blanket ordinances prohibiting all forms of begging are a violation of the right to free speech. The USA Supreme Hon'ble Court in *Schaumburg v. Citizens for Better Environment* 444 US 620 (1980) held that charitable appeals for funds were constitutionally protected speech and found the ordinance in question to be constitutionally overbroad. In *Blair v Shanahan* (1991, ND Cal) 775 F Supp 1315, it was held that there is no constitutional distinction between soliciting funds for oneself and for charities. It found that a request for alms clearly conveys information regarding the speaker's plight and gives the speaker an opportunity to spread his views on, inter alia, the way a society treats its poor and disenfranchised. The Hon'ble Court found that the fact that the beggar may keep the money he receives does not strip a beggar's

protected speech of its constitutional protection. Importantly, the Hon'ble Court found that even if avoiding such activity could be considered a compelling state interest, the statute was not sufficiently narrowly drawn to serve that interest. The Hon'ble Court noted that other statutes served to protect the public from threatening conduct without prohibiting a form of political speech

40.9.2. In Canada, the Supreme Hon'ble Court of British Columbia held in *Federated Anti-Poverty Groups of British Columbia v. Vancouver (City)* [2002] B.C.J. No. 493 that begging is a protected form of speech as it is a tool used by the impoverished to engage with the rest of society about their plight.

40.9.3. In Ireland the High Hon'ble Court ruled in *Dillon v. DPP and AG* [2007] IEHC 480 that s. 3 of the Vagrancy (Ireland) Act 1847 which made begging in a public place an offence with a sentence of up to three months on conviction was a disproportionate interference with the right to freedom of expression and the right to communicate.

40.9.4. In the United Kingdom, the provisions of the Vagrancy Act 1824 which allow imprisonment for soliciting alms by begging are in the process of being repealed, the legislation for that having already been passed: Criminal Justice Act 2003 s304 Sch 34 para 145, Criminal Justice Act 2003 s332 Sch 37 Pt 9 and Criminal Justice Act 2003 s280 (1), Sch 25 para 1.

41. That the right of all citizens to move freely within the territory of India, protected under Article 19(1)(d) is violated by the impugned provisions.

41.1. That section 2(2)(d) read with section 3 of the impugned Act violates Article 19(1)(d) by criminalising the actions of a person who "having no visible means of subsistence, wanders about or remains in any public place in such condition or manner as makes it likely that he exists by soliciting or receiving alms".

41.2. That the right to move includes its negative aspect, i.e. the right to not move. As such, there is a constitutional right of citizens to remain in public areas, which can only be restricted in terms of Article 19(5) of the Constitution, That hence, the impugned provisions that make people with 'no visible means of subsistence' liable to arrest if they remain in the public environment is unconstitutional.

42. That the impugned provisions contravene Article 19(1)(g) of the Constitution as detailed below:

42.1. The inclusion of singing, dancing, fortune-telling, performing tricks or

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selling article into section 2(2) as a list of professions used as a pretence for begging is a careless disregard by the legislature of the right to practice any profession, or to carry on any business or trade. Such a statement in legislation irresponsibly gives a license to the police to carelessly disrespect those employed in such professions and to unconstitutionally interfere with their rights.

42.2. That the vagueness of the provision allows those legitimately performing their professions for their livelihoods to be targeted as beggars pretending to be employed. The provision as such allows a large number of people to be detained who have nothing to do with begging. This corner-cutting demonstrates poor legislation and completely contrary to the spirit and the express wording of the Constitution.

43. That section 2(2) (d) read with Sections 3, 11(5) and 12 of the impugned Act contravene Article 20(2) because it provides for repeat convictions for what is essentially a continuous single act; the act of looking poor in a public space. Most crimes begin and end with a single action, and require another effort to repeat. This is not true of the section 2(2) (d) read with Section 3 offence; as one looks poor continuously and without additional effort. Indeed, for many of those arrested, the effort and expense required to not look poor would be prohibitively arduous. Section 2(2) (d) in relation to repeat offences makes a criminal offence of an omission to look less poor. It can surely be no argument that the poor are making a criminal effort to repeat their offence by simply being in a public space.

43.1. That the impugned provisions contravene Article 21. That there has been a great development in the understanding of the right to life to include the right to live with dignity and the right to the basic necessities of life including adequate nutrition, clothing and shelter. The poor cannot be penalised for the failures of the government to provide them with the bare necessities of life. For those who are unable to work for a range of reasons including age, sickness or disability and with no other adequate means of earning a living, the only option and last resort available is to beg. Any interference with their engagement in non-harmful behaviour to ensure the bare necessities of life amounts to a violation of their rights under Article 21. That the right to life involves a corresponding positive obligation upon the State. The criminalization of begging, and through section 2(2)(d), ostensible poverty, amounts to penalisation for the failures of the state.

43.2. 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.

44. That Section 10 of the impugned act provides for the imposition of manual work which clearly violates of Article 23 prohibiting forced labour.

45. That Sections 13 and 14 violate Article 21 and has lost its validity due to the passage of time; both sections are outdated, anachronistic and has lost relevance in light of the Rights of Persons with Disabilities Act, 2016.

46. That Section 14 specifically targets persons with leprosy, and is in direct conflict with the directions of the Hon'ble Supreme Court in *Pankaj Sinha v. Union of India Writ Petition (Civil) No. 767 of 2014*.

47. That the impugned provisions are liable to be struck down as they are in pari materia with the provisions of the Bombay Prevention of Begging Act, 1959, Act that criminalized begging, which were struck down as unconstitutional by the Hon'ble Delhi High Court in *Harsh Mander and Ors. vs. UOI and Ors. (AIR 2018 Delhi 188)* (hereinafter referred to as 'Harsh Mander's case').

47.1. That Bombay Prevention of Begging Act, 1959, and The Karnataka Prohibition of Beggary Act, 1975 are statutes in *pari materia* as both enactments have the same object of criminalising begging, and the preamble and the various sections of both the statutes are almost identical. In Pith and Substance both statutes are practically identical. Both enactments are parallel state legislations having the same legislative Intent.

47.2. According to the eminent Jurist Sutherland:

"Statutes are considered to be in pari materia to pertain to the same subject-matter when they relate to the same person or things, or to the same class of persons or thing, or have the same purpose or object (Statutes and Statutory Construction, Vol. 2, p. 535, 3rd Edn.)"

47.3. That it has been held in *Talib Hussain and Anr. v. Addl District Judge (Civil Misc. Writ Petn. No. 7782 of 1982)* in the consideration of whether two statutes were in pari materia that :-

"While it may be legitimate to refer to the provisions of a previous statute repealed and replaced by another statute in pari materia with the former in construing the provisions of the subsequent legislation if the same is ambiguous, mere omission of a provision which existed in the previous

statute from the subsequent statute does not necessarily and by itself imply any substantive change in the legislative intent, Words in statutes need not be identical to find pari materia but substantially the same will be enough of a standard"

47.4. That in consideration of the aforesaid judgment that, although certain differences and new provisions have been introduced in the Karnataka Prohibition of Beggary Act, 1975, these do not imply any substantive change in the legislative intent, and hence, the statute is *Pari Materia* with the Bombay Prevention of Begging Act, 1959.

47.5. That in Harsh Mander's case, the Hon'ble Delhi High Court was pleased to hold as follows:-

"While most of the provisions contained therein directly deal with begging, treating it as an offence, or other provisions ancillary thereto, there are certain provisions which do not treat beggary *per se* as an offence and which therefore, may not be hit by the vice of unconstitutionality".

47.6. That the Delhi High Court in the aforesaid judgment did not strike down the whole act, wholesale, it recognised all the provisions which treat beggary/ begging, as an offence, committed by the beggar, or are ancillary thereto. These included the substantive definition of the activity of begging, making the activity an offence, and the provisions that constitute the complete enforcement machinery.

47.7. That similarly all the sections in the Karnataka Prohibition of beggary Act, 1975, which include the substantive definition of the activity of begging, making the activity an offence, and the provisions that constitute the complete enforcement machinery are liable to be struck down as unconstitutional.

48. That the Hon'ble Jammu and Kashmir High Court in *Suhail Rashid Bhat vs. State of Jammu & Kashmir (PIL 24/2018)* on 25.10.2019, declared that the provisions of the Jammu & Kashmir Prevention of Beggary Act, 1960 and the Jammu & Kashmir Prevention of Beggary Rules, 1964, are unconstitutional and hence struck them down in its entirety.

48.1. That Jammu & Kashmir Prevention of Beggary Act, 1960, and The Karnataka Prohibition of Beggary Act, 1975 are statutes in *pari materia* as both enactments have the same object of criminalising begging, and the preamble and the various sections of both the statutes are almost identical. In Pith and Substance both statutes are practically identical. Both enactments are parallel state legislations having the same legislative

Intent.

49. That poverty is a result of the failures of the government and is hugely prevalent in India as detailed below:

49.1. As per the data submitted by the Planning Commission, 2011-12 with regard to the poverty in India, in Karnataka itself there were 124.3 lakh persons below the poverty line and in total there were 2,697.8 lakh Indians (21.9% of all Indians) who were below poverty line.

49.2. That the determination of the poverty line itself is arbitrary and problematic and fails to take into consideration the present socio economic scenario and merely assures bare survival and very basic security and dignity. The present poverty line is based on the report published by the Rangarajan Committee, in the year 2014, which states that the poverty line in a city is Rs. 47 per day capita and Rs. 32 per day capita for villages. In a city, a person with a monthly wage above Rs. 1,410 per month would be Above Poverty Line. Such a sum is absurdly disparate to the actual existential needs of a person, including shelter, food, travel, school fees, medical bills, and such a determination of poverty, without taking into consideration the living conditions of the poor, is unreasonable and irrational. This normalization of poverty, by the Government itself, to subsist on cheap, rough food, and foul drinking water, live on streets or in sub human urban slum housing, defecate in open and have near zero access to public healthcare, has led the poor, forcing them to give up their dignity, to beg for alms.

49.3. Presently, our country ranks 103 out of 119 countries in the Global Hunger Index. India accounts for 25.5 million children who are wasted for being undernourished, out of whom the number children under the age of five are wasting, is reflected in low weights for their heights. Almost 39% of them are stunted meaning that their bodies are adjusting to chronic low nutrition by becoming shorter for their ages. 4.8% of the children die before reaching the age of five years because of the fatal cocktail of too little nutritious food and highly unhealthy environments.

49.4. The Periodic Labour Force Survey (PLFS) of the National Sample Survey Office (NSSO) released on Friday showed the unemployment rate in the country in FY18 was at 5.3% in rural India and 7.8% in urban India, resulting in overall unemployment rate of 6.1%.

49.5. It is this condition of the poor in our country, which has forced them to beg for alms, and criminalizing the compulsion of poor arising out of poverty, through the impugned act, due to the failure of the Governments

function as a welfare state, only makes them more vulnerable and the impugned act as unconstitutional.

50. That the Supreme Court has on several occasions recognised the defence of necessity. As per Broome's Legal Maxims, *Necessitas inducit Privilegium quoad Jura Privata* (necessity gives a privilege as to private rights) : The law chargeth no man with default where the act is compulsory and not voluntary. The criminalisation of beggary amounts to imprisoning a man for something he has no option to not do. The Act requires him to choose between committing a crime or starving. That the desperately poor, who have not been properly assisted by the State, realistically have little alternative but to disobey the law. That further, the Act provides that even those who are unable to comply with certain conditions are liable to be detained. As such, the impugned provisions violate the legal maxim that no man shall be punished for an Act he cannot avoid doing.
51. That the arbitrary procedure laid down in the impugned provisions result in them being liable to be struck down as unconstitutional and illegal.
- 51.1. Sections 2(1) and 2(2), which provide for the definition of alms and beggar, respectively; read with section 3 which makes begging an offence and Chapter VI titled 'procedure and Punishments' which contain sections 11 to 18 are unconstitutional with the exception of sections 13, 14 and 17.
- 51.2. That Section 11 of the Impugned Act fails to ensure that the principles of natural justice are applied to the summary enquiry procedure. It fails to uphold the right of the accused to a fair trial and breaches Article 14.
- 51.3. Sections 19-23 which discuss transfer, temporary release, and unconditional release of detainees and cognisable nature of offence are liable to be struck down as they are contingent and depend on the criminalization of Begging, and have no independent existence. That since the offences are cognizable, ostensible poverty or destitution is directly acted upon by police officials without warrant.
52. That the objectives of the Act are not secured by the provisions of the Act: The Act aims to prevent begging but fails to do so as it does not ensure the rehabilitation of beggars. The punishments provided by the Act do not prevent begging and do not fulfill the aims of the Act.
53. That the Act unjustly frames the offence of begging as a strict liability defence for which no mens rea is required, thereby severely limiting the ability of the beggar to defend the charge. Strict liability is an overly onerous burden to place on those accused of begging. Pertinently, the Act fails to distinguish between those who solicit and those who simply receive alms. It

criminalizes the behaviour of those persons who simply receive charitable donation without actively seeking it.

54. That the definition of Beggar under section 2(2) read with section 3 which holds the act of Begging as an offence is overbroad and vague and is an unlawful infringement of fundamental rights under the Constitution. It also abrogates the Rule of Law as it lacks clarity, specificity, and is arbitrarily enforced.

55. The Act does not distinguish between lawful and unlawful begging activities. That the Act fails to distinguish between the crimes of organized begging, where vulnerable people including children are threatened and forcibly coerced into begging, and between destitute people begging for the survival of themselves and their families. The Act fails to deal with anti-social coerced organization of begging. The Act is unnecessary because there are existing laws that can be used to address aggressive and exploitative begging.

55.1. In Hon'ble Delhi High Court's decision in Ram Lakhan v. State [137(2007) DLT 173], it was noted that "the way in which the Act defines begging is over inclusive and raises the possibility of a constitutional challenge to the Act." It was emphasised that "the Act should not apply to people who beg because they are addicted to alcohol or drugs, those exploited by 'beggary gangs', and those who beg because they are starving. Rather, addicts ought to be placed in rehabilitation programmes to help them overcome their addiction, beggars exploited by 'beggary gangs' should not be prosecuted under the Act, rather the ring-leaders of the gangs should be penalized under the Act." Finally, the judge recognized the application of the defence of necessity to these starving people who beg to survive.

55.2. That Section 363-A of the Indian Penal Code deals with the kidnapping or maiming of a minor for the purpose of begging. That this section has far more serious punishment of punishable with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. This goes further to establish that the Act is unnecessary.

56. That the impugned enactment is anachronistic, outdated and is invalid due to a passage of time, wherein rights of the economically poor and destitute have been reiterated by the Hon'ble Supreme Court on numerous occasions.

57. That the impugned enactment violates the principle of non-retrogression as upheld by the Hon'ble Supreme Court in Navtej Singh Johar v. Union of India [(2018) 1 SCC 791].

58. That the penalties under the Act are disproportionate and unduly harsh and violate Articles, 14, 19 and 21.

59. That the Act does not provide for any supervisory committee to oversee the activities of the authorities and ensure fairness and transparency.
60. That the Act does not provide any mechanism for providing legal aid to poor, helpless, aged and infirm people, thereby ignoring the philosophy of the Constitution.
61. That the Act does not address the socio-economic basis for begging but instead criminalizes begging in a manner, which is contrary to international human rights law as detailed below:
- 61.1. That the impugned act violates Article 19 of the Universal Declaration of Human Rights (hereafter UDHR) and Article 19 (2) of the International Covenant on Civil and Political Rights (hereafter ICCPR) which protects the right to freedom of expression. Further the Act violates Article 3 of the UDHR, which protects everybody's right to life, liberty and security of person is protected under the Declaration. Similarly, Article 25.1 protects everybody's right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- 61.2. That the impugned Act violates Article 1.1 of the International Covenant on Economic, Social and Cultural Rights, which protects the right of self-determination and by virtue of this right they freely determine their political status and freely pursue their economic, social and cultural development. Similarly, Article 11.1 of CESCR States that the parties to the present Covenant recognize the right of everybody to have an adequate standard of living for himself and for his family, including adequate food, clothing and housing, and to the continuous improvement of his and family members living conditions. The State Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.
62. That the Impugned Act contravenes the Indian Constitutional aim for a socialist welfare state: as per Articles 39 (b), (c) and (d). The aim of a welfare state is the social development of all citizens, rehabilitation and punishment should not be looked at as the primary way to prevent begging. The Act fails to ensure the rehabilitation of destitute people and fails to fulfill the aims of the welfare state.
63. That in jurisdictions where begging is prohibited by law, adequate social welfare systems are in place to cater for the needs of the sick, disabled, old

and unemployed. Our State does not provide such social support despite the Directive Principles of the Constitution and the "socialist" nature of the State. The State cannot avoid its duty to provide social welfare for the most vulnerable in society by criminalizing begging.

64. That factually, the beggary institutions established operate in a horrific manner that dehumanizes detainees and results in grievous mental illnesses in many.

65. In relation to the Directive Principles it is submitted that as an institution of National Life and the State under Articles 38(1) and 37 of the Constitution, the Hon'ble Court in its interpretation of the Constitution and of the Act:

a) Shall be informed by the principles of justice, social, economic and political.

b) Shall strive to minimize inequalities of income, status, facilities and opportunities.

c) Shall direct its interpretation towards ensuring that citizens have the right to an adequate means of livelihood according to the principles inherent in Article 39(a).

66. Therefore, using these interpretative techniques, keeping in mind the magnitude of the problem and also noting the fact that the problem is widespread and the beggars' situation is worsening, the prompt attention of this Hon'ble Court is required as the lives of the poor are at stake.

67. That the petitioner has not filed any other petition before this Hon'ble Hon'ble Court or other High Hon'ble Courts seeking the same relief.

PRAYERS

WHEREFORE, it is prayed that this Hon'ble Court may be pleased to grant the following reliefs:

- i. Issue a writ of mandamus or any other appropriate writ, order or direction declaring Section 2(1), 2(2), 3, 10, 11,12,13, 14 15,16,18,19,21,22, 23, 40 (f) and 40 (g) of Karnataka Prohibition of Beggary Act, 1975, ultra vires articles 14, 19 and 21 of the Constitution of India.
- ii. Issue a writ of mandamus or any other appropriate writ, order or direction declaring Rules 37, 38, 46, 47 and 48 of Rules for the Prohibition of Beggary, 1975, ultra vires articles 14, 19 and 21 of the Constitution of India.
- iii. Issue a writ of mandamus or any other appropriate writ, order or direction to the respondent(s) to convert the Receiving Centers and Certified Institutions into voluntary and people friendly relief and

rehabilitation centers for destitute persons particularly the vulnerable such as the young, the aged, the sick and the infirm.

- iv. Issue a writ of mandamus or any other appropriate writ, order or direction to the respondent(s) to grant pensions, open shelters, community kitchens, provide health services and livelihood support to the destitute in Karnataka.
- v. Issue a writ of mandamus or any other appropriate writ, order or direction to the respondent(s) to conduct an audit on the expenditure of the Beggary Cess collected as per section 31 of the Karnataka Prohibition of Beggary Act, 1975.
- vi. Issue a writ of mandamus or any other appropriate writ, order or direction to the respondent(s) to implement the Operational Guidelines for Urban Homeless Shelters issued by Government Order No: UDD 81 MNG 2010 (P), Bangalore, dated 29.05.2014 in its letter and spirit.
- vii. Grant such other order or orders as this Hon'ble Court may deem just and necessary to render justice.

Place: Bangalore

Date:

Advocate for the Petitioner

IN THE HON'BLE HIGH COURT OF KARNATAKA

AT BENGALURU

(Original Jurisdiction)

Writ Petition No. / 2019 (PIL)

Between:

People's Union of Civil Liberties

... Petitioner

And:

Union of India and Ors.

... Respondents

VERIFYING AFFIDAVIT

I, Professor Prof. Y.J Rajendra, President, Peoples Union of Civil Liberties, Karnataka, No. 15, 1st cross, Post office road, Sampangiram Nagar, Bengaluru-560027 , do hereby swear on oath and state as follows:

1. I am the President of the Petitioner Union and am conversant with the facts and circumstances of the case. I have been authorized to swear to this affidavit on behalf of the Union.
2. The averments made in Paras 1 to in the accompany petition are true and correct to the best of my knowledge, information and belief.
3. The Annexures A to are true copies of the originals while some are certified copies.

I do hereby state and verify that what is stated in the above paragraphs are true and correct to the best of my knowledge, information and belief and I believe the same to be true and correct.

Deponent

Identified by me:

(Advocate)

Place: Bangalore

Date: