**Draft guidance on Decriminalization of homelessness and extreme poverty**

**SUB: Input for joint guidance WHO-OHCHR**

**Submitted by**

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**Dear Sir/Ma’am,**

After having navigated the draft of the “Decriminalization of homelessness and extreme poverty” the following are some observation and suggestions—

**Introduction**

In this pivotal project we are aimed at shedding light on a critical issue at the nexus of lodging, hardship, and rights for humans. This undertaking seeks to inform a report written jointly by the rapporteurs on extreme poverty and human rights and the right to appropriate housing. The report will delve into the comprehensive examination of numerous initiatives taken to decriminalize crimes typically linked to being homeless or poor. These offenses encompass a range of survival activities such as engaging in life-sustaining activities in public places, such as selling goods on the street, solicitation, staying, falling asleep, and feeding. By exploring the complex dynamics surrounding these issues, this project endeavors to contribute to a more nuanced understanding of the challenges faced by vulnerable populations and promote human rights-based solutions to address them.

**Suggestions**

Let us delve into the issues raised and aimed to be highlighted in this project, starting with the-

**1. Laws that are related to activities prohibited in public places including begging, eating, sleeping, personal hygienic acts-**

In the Indian context, there are several laws and regulations that govern the above mentioned activities. These laws vary from state to state and are primarily aimed at maintaining public order and cleanliness. Here are some of the key laws and regulations pertaining to these activities:

***The Bombay Prevention of Begging Act, 1959***: This act, applicable in the state of Maharashtra, criminalizes begging and provides for the detention of beggars in certified institutions. It prohibits begging in public places and aims to rehabilitate beggars. Although, Central Indian law does not criminalize begging. There are twenty two states that prohibit begging and the Preventions of Beggings Act, 1959, of Bombay serves as a model law for all states. In the case of ***Harsh Mander & Anr vs. UOI and Ors[[1]](#footnote-1)***, the Delhi High Court ruled that punishing begging infringes fundamental rights. People beg on the streets because they must, not because they want to, according to the 23-page order written by the honorable Chief Justice Gita Mittal and Justice Hari Shankar. They are left with no choice but to beg for food.

***The Prevention of Begging Act, 1975 (Delhi):*** This act, applicable in the National Capital Territory of Delhi, prohibits begging and empowers law enforcement agencies to take action against beggars. It focuses on rehabilitation and the prevention of begging.

***Municipal Laws:*** Municipalities across India often have by-laws and laws that forbid conducting personal hygiene tasks like eating, sleeping, or using the restroom in particular public areas. These regulations are enforced to maintain hygiene and cleanliness in public spaces.

***Traffic Rules and Regulations:*** Various states have traffic rules that prohibit eating or sleeping in vehicles while they are parked in public places. These rules are enforced to ensure road safety and prevent obstructions.

***Public Nuisance Laws:*** Public nuisance laws are applied to maintain order in public places. Activities like urinating or defecating in public spaces are considered offenses under these laws. Offenders can be fined or penalized.

***Anti-Spitting Laws:*** Several states have laws that prohibit spitting in public places. Spitting is considered unhygienic and can spread diseases. These laws are enforced with fines and penalties.

***Anti-Littering Laws:*** Littering in public places is prohibited under various state laws. These laws are aimed at maintaining cleanliness and hygiene in public areas.

While some of these laws may still be in force and actively enforced, their implementation can vary widely.

**2. Laws or regulations that allow for petty offences the detention or imprisonment of individuals who are unable to pay the respective fine.**

These laws typically pertain to violations of various statutes and are intended to ensure compliance with the law. Here are some key aspects related to such laws:

***Contempt of Court***: In cases of contempt of court, where an individual disobeys a court order or shows disrespect to the court, the court may impose fines. If the individual is unable to pay the fine, they can be detained or imprisoned as a means of ensuring compliance.

***Traffic Violations***: Many states have laws and regulations related to traffic violations, such as over speeding or not wearing a seatbelt. A fine has to be paid by people facing these allegations, they may face detention or imprisonment as an alternative to fine payment.

***Municipal and Local Laws***: Municipalities and local authorities often have regulations related to petty offenses like littering, illegal parking, or not paying taxes or fees. If a person is found guilty of such offenses and cannot pay the imposed fine, they may be subject to detention or imprisonment.

***Consumer Protection Laws:*** In certain cases, consumer protection laws may impose fines or penalties on businesses or individuals for unfair trade practices or violations of consumer rights. If the offender is unable to pay the fine, they may face detention or imprisonment.

***Environmental Regulations:*** Violations of environmental regulations, such as illegal dumping of waste, may result in fines. If the individual responsible is unable to pay the fine, they may be detained or imprisoned.

It's important to note that the specific provisions and enforcement practices regarding detention or imprisonment for non-payment of fines can vary by state and by the nature of the offense. Additionally, in many cases, there may be provisions for appealing fines or seeking alternate means of compliance, such as community service, in lieu of detention or imprisonment.

**3. Comments whether any of these laws and regulations may violate international human rights law.**

The above mentioned question piercing the violation of international human rights include the specific provisions of the laws, their implementation, and how they are applied in reality. International human rights law provides a framework for the protection of fundamental rights and freedoms, and it sets standards that governments should adhere to. Here are some considerations:

***Proportionality and Non-Discrimination***: International human rights law requires that any restrictions on individual rights and freedoms be proportionate and non-discriminatory. Laws that allow for detention or imprisonment of individuals unable to pay fines for petty offenses should ensure that such penalties are proportionate to the offense and are not applied in a discriminatory manner.

***Right to Liberty and Security:*** The right to liberty and security of person is a fundamental human right protected under international law. Any deprivation of liberty, including detention or imprisonment, must be carried out in accordance with established legal procedures and should not be arbitrary.

***Right to a Fair Trial:*** Individuals subject to legal penalties, including detention or imprisonment, have the right to a fair trial under international human rights standards. This includes the right to legal representation and the right to challenge the charges and the penalties imposed.

***Rights of Vulnerable Groups***: International human rights law recognizes the rights of vulnerable and marginalized groups, such as the poor and homeless. Laws that disproportionately affect such groups and result in their detention or imprisonment for non-payment of fines may raise concerns about discrimination and the protection of these groups' rights.

***Rehabilitation and Alternatives to Detention:*** International human rights principles encourage the use of alternatives to detention, especially for minor offenses. Governments should consider rehabilitation and social support measures rather than incarceration for individuals unable to pay fines.

Additionally, international human rights bodies and courts may review cases to assess compliance with international standards. Individuals who believe their rights have been violated under these laws may seek legal remedies, including appealing decisions or challenging the constitutionality of the laws in domestic courts or through international human rights mechanisms. Legal experts and human rights organizations can provide guidance and support in such cases.

**4. Information about attempts made or planned to decriminalize street vending, informal business activities, sex work, begging, eating, sleeping or performing personal hygienic activities in public places.**

In the Indian context, there have been various attempts and discussions at different levels of government and civil society to address the issues related to the decriminalization and regulation of street vending, informal business activities, sex work, begging, eating, sleeping, and performing personal hygienic activities in public places. These efforts have aimed to balance social and economic considerations while upholding the rights and dignity of individuals engaged in these activities. Here is some information about these attempts:

***Street Vending***: The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, commonly known as the Street Vendors Act, was enacted to protect the rights of street vendors and regulate their activities. It decriminalizes street vending to a certain extent and mandates the formation of Town Vending Committees to regulate and plan street vending zones.

***Informal Business Activities:*** Informal businesses and small-scale enterprises have received attention from various government initiatives, such as the 'Make in India' campaign, which seeks to promote entrepreneurship and self-employment. While these initiatives may not decriminalize informal businesses directly, they aim to provide support and a conducive environment for their growth.

***Sex Work:*** Sex work remains a complex and sensitive issue in India. It is important to note that sex work is not legalized but exists in a legal gray area. Various advocacy groups and NGOs have called for the decriminalization of sex work, arguing that it could help protect the rights and well-being of sex workers. However, there is no national consensus on this issue, and the legal status of sex work varies by state.

***Begging:*** The question of whether to decriminalize begging has been debated in various forums. Some states have implemented measures to rehabilitate beggars and address the root causes of begging rather than criminalizing it. However, there is no uniform national law on the decriminalization of begging.

***Eating, Sleeping, and Personal Hygienic Activities in Public Places:*** Municipal laws and regulations vary across states and cities regarding activities like eating, sleeping, and personal hygienic activities in public places. Some cities have taken steps to provide facilities like public toilets and shelters for homeless individuals, while others may have regulations that restrict such activities.

**5. Information concerning initiatives to change the response of law enforcement officials and of the criminal justice system from penalization, punishment or detention, towards facilitating social inclusion of persons living in poverty or experiencing homelessness.**

These initiatives recognize the need to address the root causes of poverty and homelessness while upholding the rights and dignity of individuals. Here is some information about these efforts:

***Legal Aid and Awareness Programs:*** Various legal aid and awareness programs have been launched by the government and non-governmental organizations (NGOs) to provide legal assistance and education to marginalized communities, including those living in poverty or experiencing homelessness. These programs aim to empower individuals with knowledge about their rights and the legal system.

***Rehabilitation and Welfare Schemes:*** Several states in India have implemented rehabilitation and welfare schemes targeted at homeless individuals. These schemes often include provisions for shelter, food, healthcare, and vocational training to help reintegrate homeless individuals into society.

***Community Policing Initiatives:*** Some police departments have adopted community policing approaches that focus on building positive relationships between law enforcement and the community. This approach involves engaging with marginalized populations, understanding their needs, and working collaboratively to address social issues.

***Diversion Programs:*** Diversion programs are designed to divert individuals away from the criminal justice system and into rehabilitation or social inclusion programs. These programs are particularly relevant for persons involved in minor offenses. In some cases, diversion programs have been piloted to help homeless individuals access shelter and support services instead of facing punitive measures.

***Advocacy and Research:*** Human rights organizations and advocacy groups in India have conducted research and advocacy to raise awareness about the challenges faced by persons living in poverty or experiencing homelessness. They engage with policymakers to promote changes in policies and practices that prioritize social inclusion over punishment.

***Land Rights and Housing Initiatives:*** Efforts to secure land rights and affordable housing for marginalized communities, including homeless individuals, are ongoing. Initiatives focus on providing secure tenure and access to basic amenities.

***Mental Health and Rehabilitation Services:*** Recognizing that mental health issues are often linked to homelessness, some regions have established mental health facilities and rehabilitation services to address the specific needs of homeless individuals suffering from mental health conditions.

***Awareness and Sensitization Training:*** Law enforcement agencies have undertaken training programs to sensitize officers to the challenges faced by individuals in poverty or experiencing homelessness. This training aims to foster a more empathetic and understanding response.

These initiatives may vary from state to state and city to city in India. Progress in shifting the response from penalization to social inclusion is an ongoing effort, and challenges remain. However, there is a growing recognition of the need to address the complex issue of poverty and homelessness through a more holistic and humane approach that prioritizes rehabilitation and social inclusion.

**6. Measures and services available at national, regional or municipal level to support people living in poverty or in situations of vulnerability from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places, because they lack access to employment, social assistance, adequate housing, public showers and toilets.**

These measures and services are crucial for promoting the well-being and dignity of vulnerable populations. Here are some examples:

***Employment Programs:*** National Rural Employment Guarantee Act (NREGA): This national program assures each household in rural areas a hundred days of paid work, providing a source of income to impoverished individuals and families.

**Social Assistance Programs:**

***Public Distribution System (PDS):*** PDS provides subsidized food grains to eligible beneficiaries, ensuring access to essential food items for those living in poverty.

Pradhan Mantri Jan Dhan Yojana (PMJDY): This financial inclusion program aims to provide banking services and insurance to marginalized communities.

Old Age Pensions: Many states offer pensions for elderly individuals in need, providing a financial safety net.

***Widow and Disabled Pensions:*** Similar to old age pensions, these programs offer financial support to widows and persons with disabilities.

***Adequate Housing Initiatives:*** Pradhan Mantri Awas Yojana (PMAY): PMAY aims to provide affordable housing to urban and rural households, reducing homelessness and improving living conditions.

***Slum Rehabilitation Programs:*** In urban areas, slum rehabilitation initiatives aim to relocate slum dwellers to improved housing.

***Public Shower and Toilet Facilities:*** Swachh Bharat Abhiyan (Clean India Campaign): This nationwide initiative focuses on improving sanitation and hygiene, including the construction of public toilets and community bathing facilities.

Community Toilets: Many municipalities have constructed community toilets in areas with high population density to ensure access to sanitation facilities.

***Soup Kitchens and Food Distribution Centers:*** NGOs and community organizations often run soup kitchens and food distribution centers to provide meals to the homeless and those in need.

***Legal Aid and Advocacy:*** Legal aid organizations offer assistance to individuals facing legal issues related to housing, employment, and social benefits.Advocacy groups work to raise awareness about the rights and needs of marginalized populations and push for policy changes.

***Shelters for the Homeless:*** Shelter homes are established by governments and NGOs to provide temporary accommodation for homeless individuals, protecting them from exposure to harsh weather conditions.

***Skill Development and Training Programs:*** Skill development programs help marginalized individuals acquire employable skills, improving their chances of finding stable employment.

***Healthcare Services:*** Government health centers and clinics offer healthcare services, including free or subsidized medical treatment, to economically disadvantaged individuals.

***Crisis Intervention Programs:*** Mobile outreach teams and crisis intervention programs provide immediate support to individuals in distress, including those facing homelessness or acute poverty.

These measures and services, while essential, require ongoing efforts to expand their reach and effectiveness, ensuring that individuals living in poverty or vulnerable situations have the support they need to lead more stable and dignified lives.

**Conclusion**

Thus, in the current draft paper, we have analysed into the significance of this invitation, examining the roles and responsibilities of each invited stakeholder group and the potential impact of their contributions. It has explored how such collaborative efforts can inform evidence-based policymaking, advance human rights agendas, and foster a more equitable and compassionate approach to addressing homelessness and poverty on a global scale. Moreover, it will emphasize the critical role of this call for information in aligning with international human rights principles and guidelines, such as those outlined in the Guidelines for the Implementation of the Right to Adequate Housing and the resolutions of the Human Rights Council. Ultimately, these suggestions have underscored the urgency of collective action in addressing these pressing issues and the potential for this call to catalyse meaningful change in the way societies approach homelessness and poverty from a human rights perspective.

Regards,

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1. MANU/SCOR/34398/2018 [↑](#footnote-ref-1)