

## Beggary in Law and Islam: A Call to amend the Law in Pakistan

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### Abstract

Begging in Pakistan is a complex issue with no easy solutions. However, the current approach of criminalizing begging is ineffective and counterproductive. This paper argues that the law on begging in Pakistan needs to be amended to take into account the socio-economic factors contributing to begging and to provide a more compassionate and holistic response to the problem. Poverty, unemployment, and crime rates are prevalent in Pakistan, with begging becoming a necessary option for survival, as five to twenty-five million beggars are found in the country. The laws on begging in Pakistan lack any criteria for distinguishing between professional beggars and those who beg for survival. These laws violate the fundamental rights to life, liberty, equality, and free speech. This paper calls for a deeper understanding of the social and economic factors contributing to begging and the need to amend the law, keeping in due regard to the injunctions of Islam. Rather than punishing beggars, we should focus on addressing the underlying causes of begging and providing beggars with the support they need to live dignified lives. It is high time to create laws that cater to the socio-economic circumstances of our society and to approach this issue with empathy and compassion.

**Keywords:** Begging, Vagrancy, Beggary, The Punjab Vagrancy Ordinance, 1958, Beggary in Islam

## **Introduction**

The first question is why do humans need laws? Many would answer that laws are the rules that regulate conduct and behavior within a society, believing that without laws, a society would be in chaos. Humans are social animals, and without laws, they may only be animals. What do laws do? Laws regulate the conduct of individuals and embody societal values. Society is dynamic and continuously evolves, so laws must be adaptable and responsive to changes in social reality. The majority of legal modifications in a society are a consequence of changes in social reality. Accordingly, when social reality changes, the law must also change to remain relevant and effective in regulating relationships between individuals and society's values. Therefore, the law should change to reflect the changing values and norms of society, to ensure that it remains fair, just and applicable<sup>1</sup>.

The second question is why do humans beg? The answer is that they beg when they do not have adequate economic resources to sustain their lives, either due to individual or social reasons. Begging may also occur when they want money or commodities from individuals who have the means to provide them, using certain discourse and behaviors. However, some people believe that begging is a curse, while others see it as a last resort for those who are struggling to survive<sup>2</sup>.

Begging is a complex issue with a variety of perspectives. Some people view it as a negative or undesirable thing<sup>3</sup>, while others see it as a necessary option for those who have exhausted all other means of survival. Nevertheless, according to the Asian Human Rights Commission (AHRC), five to twenty-five million people in Pakistan beg, which is approximately 2.5 to 11 percent of the total population<sup>4</sup>. This astonishing number highlights the urgent need to address the root causes of begging, such as poverty, unemployment, and social inequality<sup>5</sup>.

Basically, begging is a complex and multifaceted issue with both legal and socio-economic implications. This paper explores the legal status of begging in Pakistan, particularly in the context of the current socio-economic circumstances. It also examines the implications of criminalizing begging, particularly when basic necessities of life are not provided, and the potential impact on vulnerable individuals who may be forced to beg for survival. By examining the legal and socio-economic aspects of begging, this paper aims to

contribute to the ongoing discourse surrounding this issue and to advocate for a more humane and compassionate approach.

The laws governing begging in Pakistan are arbitrary, excessive, and violate fundamental rights. These laws are ineffective in addressing the root causes of begging, such as poverty, unemployment, and crime rates. Instead, they criminalize and marginalize beggars, making it more difficult for them to escape the cycle of poverty. And this paper proposes a more compassionate and holistic approach to addressing begging in Pakistan and India. This approach would focus on providing basic necessities of life, creating employment opportunities, and establishing rehabilitation and welfare centers for beggars. It would also involve reforming the laws governing begging to ensure that they are consistent with fundamental human rights and responsive to the needs of society's most vulnerable members.

This paper will use a qualitative approach to analyze the issue of begging in Pakistan, with a particular focus on the laws governing it. The study will draw on relevant case law, legal scholarship, constitutional and Islamic perspectives on the topic. The study will propose a more compassionate and holistic approach to addressing the issue. The data collected will be analyzed and synthesized to provide a comprehensive understanding of the issue of begging in Pakistan and the implications of the current laws governing it. The aim is to develop recommendations for legal reforms that are fair and compassionate.

### **What is Begging in the Law?**

The laws dealing with begging in India and Pakistan are quite similar, therefore, we will make its comparative analysis first. The Bombay Prevention of Begging Act, 1959, serves as a model law for most Indian states, while the West Pakistan (now Punjab) Vagrancy Ordinance, 1958, is the primary law in Pakistan. In Pakistani law, the substitute word for begging is vagrancy. In accordance with Section 2(g) of the Ordinance, 1958, a "vagrant" is an individual who: solicits or receives alms; displays a sore, wound, injury, deformity, or disease for the purpose of soliciting or receiving alms; allows oneself to be used as an exhibit for the purpose of soliciting or receiving alms in a public place; enters private premises without the invitation of the occupier for the purpose of soliciting or receiving alms<sup>6</sup>.

Whereas, India does not have a nationwide law that criminalizes begging; however, several states and union territories have implemented anti-begging legislation; the Bombay Prevention of Begging Act 1959 is regarded as the benchmark for anti-begging legislation across other states. There Begging refers to the act of soliciting or receiving alms in a public place, whether through singing, dancing, fortune-telling, performing, or offering any article for sale. It also includes entering private premises for the purpose of soliciting or receiving alms, exposing or exhibiting any sore, wound, injury, deformity, or disease of a human being or animal to obtain or extort alms, wandering in a public place without any visible means of subsistence, and existing by soliciting or receiving alms in a condition or manner that suggests a lack of means of subsistence. Additionally, allowing oneself to be used as an exhibit to solicit or receive alms also falls under the definition of "begging"<sup>7</sup>.

In England Vagrancy Act 1824 has been in place in the United Kingdom for almost 200 years, making it a criminal offence to rough sleep and beg. The Act 1824 does not explicitly define begging. However, Section 3 of the Act makes it an offence for any person to wander abroad, or place themselves in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do. This means that begging is defined in the Vagrancy Act as any act of soliciting or receiving alms in a public place. This includes asking for money or food, displaying a sign or placard asking for charity, or performing in a public place in the hope of receiving money<sup>8</sup>. Many people believe that this old law is outdated and discriminatory<sup>9</sup>, at the same time, many people argue that begging is a social issue and that we need a welfare approach to address it<sup>10</sup>. There are arguments that the criminalization of homelessness in England and Wales is rooted in negative social attitudes and has a long history, dating back to Tudor times and before. The Vagrancy Act 1824 is a key piece of legislation in this history, but it incorporated an approach from the Poor Law that sought to distinguish between the "deserving" poor and the "undeserving" poor<sup>11</sup>. The Vagrancy Act 1824 is an outdated and discriminatory law, so there were strong arguments for repealing it<sup>12</sup>. In February 2022, the UK government announced that it would be repealing the Act as part of the Police, Crime, Sentencing and Courts Bill 2021<sup>13</sup>.

In the United States (US), laws of vagrancy and begging vary from state to state. In general, begging is not a crime at the federal level in US, but many states and municipalities have anti-begging laws. These laws typically prohibit certain behaviors associated with begging, such as blocking sidewalks, soliciting money from drivers, or begging in certain areas, such as near schools or parks<sup>14</sup>. Furthermore, researchers have challenged the constitutionality of anti-begging laws on a number of grounds, including that they violate the First Amendment's right to free speech<sup>15</sup>, the Equal Protection Clause of the Fourteenth Amendment<sup>16</sup>, and the Eighth Amendment's prohibition on cruel and unusual punishment<sup>17</sup>. Researchers also argue that anti-begging laws are ineffective in addressing the root causes of begging, such as poverty, homelessness, and mental illness, and that they can actually harm the people they are designed to help<sup>18</sup>.

### **Constitutionality of Anti-Begging Laws in Pakistan**

The first law about people who have no home and beg for money in Pakistan was the Sind Vagrancy Act of 1947. This law was repealed in 1958 by the West Pakistan Vagrancy Ordinance. The West Pakistan Vagrancy Ordinance was made into a law in Baluchistan and Punjab in 1975 and 1974, respectively. The laws in all three provinces are similar, but the punishment for people who break the law is different<sup>19</sup>.

In a country where the constitution guarantees that every person has the right to live with dignity, can the government make begging a crime? When this question came before the Delhi High Court<sup>20</sup>, the court ruled that the law was unconstitutional and invalid. Therefore, the Punjab Vagrancy Ordinance of 1958, which makes begging a crime in Punjab, is also arbitrary and should be repealed. Here are the reasons why:

#### **Social Contract**

According to the constitution, citizens agree to give up some freedom in exchange for the government's promise to protect them and give them a dignified life. This promise is made in the Indian Constitution (Parts III and IV) and the Pakistani Constitution (Part III). The government is not only obligated to protect life, but also to promote it. This means that the government must use its resources to help everyone. The constitution envisions

a society that is just, fair, and humane, where the government is responsible for providing food and shelter so that no one has to beg.

### **Manifest Arbitrariness**

A law can be challenged in India and Pakistan under Articles 14<sup>21</sup> and 25<sup>22</sup> of their constitutions, respectively. The responsibility of the judiciary is to review the constitutionality of a law and determine whether it complies with the constitution<sup>23</sup>. Further, subordinate legislation is prone to be challenged on any of the grounds that are available for challenging plenary legislation against the constitution. One such ground is the presence of 'manifest arbitrariness', which refers to any legislative action taken in a whimsical, irrational, or unjustifiable manner. Moreover, legislation that is deemed excessive or disproportionate may also be considered manifestly arbitrary. Consequently, manifest arbitrariness can serve as a basis for invalidating legislation<sup>24</sup>.

In the case of Harsh Mandar, the court said that the law against begging that was being challenged does not distinguish between people who beg willingly and people who beg because they have to. The court said that this lack of distinction makes the law vulnerable to being challenged in court on the grounds that it is arbitrary. The court also said that the broad definition of begging in the law suggests that the legislature intended to include a wide range of behavior, including all forms of begging. The court said that it had also been shown in the case that the legislature and the state have equated homelessness with begging and have detained homeless people as if they were begging, and then applied the criminal provisions of the law to them. The court said that this conduct is also manifestly arbitrary<sup>25</sup>.

### **Arbitrary Arrest and Detention**

Since the law does not clearly distinguish between beggars and non-beggars, the state may end up detaining people who are not beggars, but are instead daily wage earners who support their families. If these breadwinners are detained, their entire families may suffer financial hardship and become impoverished. This outcome is not consistent with the purpose, essence, and intention of a welfare state, especially in the context of a law that is promoted as a social benefit legislation.

The power to arrest and detain people cannot be used in a random or unfair way. It must be based on real, believable, and reliable evidence<sup>26</sup>, and it must be used in good faith<sup>27</sup>. Especially during times of hardship, the state has

a duty to protect the constitutional rights and safeguards that are guaranteed to citizens by the constitution. The state must prevent these rights from being misused or applied incorrectly, especially in cases where individual liberty is at risk. Individual liberty is one of the most fundamental rights protected by the constitution. Without the vigilant protection of liberty and other fundamental rights, both the state and its citizens are left without any recourse. This can lead to chaos and authoritarianism<sup>28</sup>.

### **Right to Live with Dignity**

Articles 9 and 14 of the Constitution establish the inviolable right to life with dignity. The courts have progressively expanded this right to encompass various related entitlements, including but not limited to legal aid, a speedy trial, essential elements of life, protection against electro-magnetic fields, access to justice, livelihood, travel, and basic necessities such as food, water, education, and medical care<sup>29</sup>. The Supreme Court of Pakistan, in the case of *Ms. Shehla Zia's case*<sup>30</sup>, held that the term "life" in the Constitution encompasses all aspects of human existence and cannot be restricted to mere animal or vegetative existence or from conception to death. The Court emphasized that 'life' includes all amenities and facilities that a person is legally and constitutionally entitled to enjoy with dignity in a free country.

In the context of begging, it can be argued that individuals resort to begging on the streets as a means of last resort for subsistence, due to the lack of alternative means of survival. This phenomenon is a manifestation of the failure of the state of the implementation of right to live with dignity, especially of vulnerable individuals. The state bears the responsibility to provide right to live and social security to all its citizens, including basic necessities and facilities, above all the food and shelter, and the existence of begging indicates a failure of the state to fulfill this obligation.

### **Vague Law**

T Leigh Annenson and Goluboff, Risa L. have argued in their papers that in the United States, the vagrancy laws have been declared void due to their vague nature, under the doctrine of void for vagueness and the Fourth Amendment. While controlling crime is a noble effort, the state must find better ways to address the issues arising from beggars. The American Supreme Court also emphasized that even weighty concerns do not justify vague

legislation and laws that violate constitutional standards. Researchers have raised concerns that in the pursuit of eradicating crime, there is a risk of abuse of vagrancy laws by the authorities<sup>31</sup>. The anti-beggary laws in Pakistan are vague to their definitions: The laws define a beggar as someone who has no visible means of subsistence and is likely to exist by soliciting or receiving alms, and it gives broad powers to enforcement agencies to arrest and detain individuals found begging. This definition is arbitrary<sup>32</sup>, disproportional, and discriminatory, and criminalizing poverty violates due process rights and the rule of law<sup>33</sup>.

### **Freedom of Expression**

The fundamental principle underlying the Free Expression Right is that the expression of an idea cannot be prohibited by the government solely on the basis of society's perception of the idea as offensive or disagreeable<sup>34</sup>. Authors have also opined that beggary being a request for money may be considered a form of expression, as it involves individuals communicating their needs or requests for assistance to others<sup>35</sup>. For instance, in Canada, begging or panhandling is generally considered a form of expression protected by the Canadian Charter of Rights and Freedoms, which guarantees freedom of expression, peaceful assembly, and association. Further, Courts in Canada have also sometimes had to balance the rights of panhandlers to express themselves with the rights of others to be free from harassment or intimidation<sup>36</sup>.

### **Old Colonial Law**

In the fourteenth century, England enacted the Statute of Labourers, which required laboring populations to work at specified wages and confined them to specific locations. Being a vagrant was punishable under this statute, as it was considered desertion. This law limited and controlled the movement of poor people, and colonial independent countries adopted a similar law known as the vagrancy law, which also restricted the movement of poor people from town to town<sup>37</sup>.

The old Vagrancy Act 1824 was the basis of anti-beggary laws in England and had been regularly used against homeless beggars. However, researchers have critically evaluated the justifications for the criminalization of vagrancy and begging, both historically and in contemporary times, and argued that criminalizing homeless beggars has no normative justification in the 21st century and the historical rationale for the earlier laws is no longer relevant.

They conclude that the 750-year-old offence of begging is no longer an appropriate response to dealing with indigence and violates the beggar's fundamental right not to be criminalized, and there is no historical or normative justification for maintaining this offence in the 21st century<sup>38</sup>. The Law Commissions have also recommended for amendments in old age beggary laws<sup>39</sup>.

**Beggary: a socio-economic issue**

The issue of beggary in developing countries not only a legal problem but also a socio-economic problem<sup>40</sup> associated with poverty and unemployment. Beggars can be found in various public spaces, including rubbish dumps, road sides, and under flyovers, with the line between beggars and the casual poor becoming increasingly thin.

Statistics in Pakistan paint a bleak picture in terms of poverty, unemployment, and crime rates. The World Bank report predicts poverty to reach 37.2 percent and noted economist Hafiz A Pasha forecasts unemployment to rise by 2 to 8 million by 2022-23, bringing the unemployment rate to around 10 percent for the first time. According to the Asian Development Outlook, Pakistan's GDP growth is expected to slow to 0.6% in FY2023 from 6% last year. Resultantly, this situation can lead to an increase in crime rates as individuals may turn to criminal activities to survive or acquire resources, including the beggary.

Further, both India and Pakistan have laws targeting beggars, which are rooted in centuries-old European and Colonial Vagrancy Laws. These laws criminalize the poor rather than addressing the underlying socio-economic issues. The definition of a beggar in the law is overly broad and aims to remove the poor from public view. The long-term street-dwelling beggars struggle to adapt to life in confined spaces. To address this issue, Pakistan need to develop socio-economic measures to combat the root causes of beggary. A comprehensive program that reorients existing programs is required, replacing philanthropic approaches to the problem with therapeutic and rehabilitative work<sup>41</sup>.

**Beggary: a human rights issue**

Beggary is a human rights issue<sup>42</sup>. A recent judgement by European Courts of Human Rights titled the issue as a human right issue. The case was

of *Violeta-Sibianca Lăcătuș' case*<sup>43</sup>; it involves a challenge to section IIA of the Geneva Criminal Law Act, which made it a criminal offense to beg in public places. Violeta-Sibianca Lăcătuș, was a citizen of Romania, born in 1992 and was residing in Romania. In 2011, she started begging for money on the streets of Geneva after being unsuccessful in finding employment, the law indicted her. However, the Court found that the provision penalized begging in a blanket fashion and precluded a genuine balancing of the interests at stake, which violated the applicant's right to convey her plight and meet her basic needs by begging. The Court considered the penalty imposed on the applicant as an infringement of her human dignity and the essence of the rights protected by Article 8 of the Convention. Thus, the interference with the exercise of the applicant's Article 8 rights was not necessary in a democratic society, leading to a violation of Article 8 of the Convention<sup>44</sup>.

### **Beggary and Islam**

Pakistan is constitutionally an Islamic country with Islam as its religion. Charity, or "Sadaqah" in Islam, is an essential and integral part of the faith. It is considered as one of the five pillars of Islam and is regarded as a means of purification and growth for the soul and of the society. This can be gauged from the fact that the beginning of Surah Al-Baqarah declares those individuals rightly guided and successful "who believe in the unseen, establish prayer, and spend out of what have been provided to them". In Quran, Muslims are encouraged to give charity regularly, regardless of their financial status; Zakat is compulsory one. Likewise, in Sunnah, as narrated by Ibn al-Firasi: "Al-Firasi asked the Messenger of Allah (ﷺ): May I beg, Messenger of Allah? The Prophet (ﷺ) said: No, but if there is no escape from it, beg from the upright<sup>45</sup>". And it was narrated by Qabisa bin Mukhariq al-Hilali (RA): Allah's Messenger (ﷺ) said: "Begging is not lawful except to one of three (people): a man who has become a guarantor for a payment, for whom begging is lawful till he gets it, after which he must stop begging; a man whose wealth has been destroyed by a calamity which has befallen him, for whom begging is lawful till he gets what will support life; and a man who has been struck by poverty, the genuineness of which is confirmed by three intelligent members of his people, so it is lawful for him to beg<sup>46</sup>". So, lawful begging is not prohibited but the unlawful. The Quran's Sura al-Mā'ūn [107]:3 emphasizes the significance of providing aid to poor beggars, while al-Jāthiyah [45]:7 critiques individuals

who resort to deceitful means to gain sympathy. Islam encourages Muslims to give alms to the poor and needy, but it does not support begging<sup>47</sup>. Therefore, the primary challenge in addressing the issue of begging is the difficulty in distinguishing between genuine and professional beggars<sup>48</sup>.

### **Conclusion & Recommendations**

In conclusion, criminalizing begging would not solve the problem of poverty, which is the root cause of the issue. The underlying structural reasons, such as lack of access to education and social protection, discrimination, landlessness, and physical and mental challenges, need to be addressed. Criminalizing begging would only further marginalize the already vulnerable and violate their fundamental rights. Instead, efforts should be made to provide basic necessities and social security to all citizens, especially the poorest and marginalized, and to address the root causes of poverty to eliminate the need for begging. Therefore, it is high time that to encourage communities to address the root causes of beggary and homelessness and stop punishing those who experience it<sup>49</sup>.

Further, the vagrancy law in Pakistan, as above referred Indian law, also lacks any criteria for distinguishing between professional beggars and those who beg for survival. Therefore, it is prima facie evident that the (Punjab) Vagrancy Ordinance of 1958 is manifestly arbitrary. The legislation is capricious, irrational, and lacks adequate determining principles. Moreover, it is excessive and disproportionate. Therefore, this legislation should be declared as manifestly arbitrary<sup>50</sup>, and it may be repealed.

Beggary is a serious problem in Pakistan<sup>51</sup>, and it is often organized by criminals who exploit teenage beggars<sup>52</sup>. Research shows that begging is increasing in the country<sup>53</sup>. To address the issue of begging in Pakistan, it is important to address the root causes of begging, such as poverty<sup>54</sup>, unemployment, homelessness, old age, and lack of access to education<sup>55</sup>, healthcare, and mental health services<sup>56</sup>. Social and charity programs that provide food, shelter, job training, and other assistance to people who are begging should be supported<sup>57</sup>. Decriminalizing begging<sup>58</sup> can also help to reduce the stigma associated with it and make it easier for people to get the help they need. Public education campaigns can help to raise awareness about

the root causes of begging and the importance of supporting social programs that help people who are begging<sup>59</sup>.

Lastly, Zakat is an Islamic system of charitable giving that can help to address the issue of begging in Pakistan<sup>60</sup>. Zakat can help to reduce begging in Pakistan by providing people with the financial assistance they need to meet their basic needs<sup>61</sup>. This can help to reduce poverty, which is a root cause of begging. Zakat can also help to promote social justice and equality, and it can create a more compassionate and caring society<sup>62</sup>.

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