

# **The Criminalisation of Homelessness**

**Homelessness**, while widely understood in social terms, does not have a **universal legal definition** across all jurisdictions. However, different countries, including India, define or interpret homelessness within the scope of housing rights, urban policies, and welfare laws.

## **Homelessness in Legal Terms:**

Legally, **homelessness** refers to a condition where a person:

1. **Lacks a fixed, regular, and adequate nighttime residence**, or
2. **Lives in a place not meant for human habitation**, such as on the streets, in vehicles, abandoned buildings, or public spaces, or
3. **Lives in temporary shelters or institutions** not meant for long-term accommodation (e.g., emergency shelters, hostels).

## **Homelessness in Indian Legal and Policy Context**

India does **not have a singular, codified legal definition** of homelessness in its Constitution or central laws. However, key government agencies and judicial interpretations offer working definitions:

### **Census of India (2011 definition):**

"Houseless population are those who are not living in census houses. They may live in the open on roadside, pavements, in hume-pipes, under flyovers and staircases, or in the open in places of worship, railway platforms, etc."

This is an **administrative definition**, used for enumeration.

### **National Urban Livelihoods Mission (NULM):**

Recognizes homeless individuals as:

"Those who do not have a roof over their head and live on streets, pavements, in temporary structures, under flyovers, and other open spaces."

## Judicial Recognition of Homelessness (India)

The **Supreme Court of India** has linked homelessness to violations of **Article 21** of the Constitution (Right to Life and Dignity). In several judgments, the Court has emphasized that:

- **Right to shelter** is a fundamental right under Article 21.
- States have a duty to provide **night shelters** and **rehabilitative support** to homeless persons.
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## International Legal Standards

### United Nations:

The **UN-Habitat** and **UN Human Rights Council** define homelessness broadly as:  
"Lacking stable, safe, and adequate housing."

They promote **housing as a human right**, and encourage states to develop laws to address both **visible and hidden homelessness** (e.g., people couch-surfing or in insecure housing).

Homelessness, legally, is the **absence of safe, permanent, and adequate housing**, and often includes people living on the streets, in shelters, or in precarious housing conditions. In India, the issue is addressed through a **combination of census definitions, judicial interpretation, and policy frameworks**, though a **comprehensive legal definition in statutory law is still lacking**.

Homelessness is **not explicitly criminalized** in most countries, but in several places, **laws indirectly criminalize homelessness** by penalizing activities essential for survival in public spaces—such as **sleeping, camping, begging, or loitering**. These laws often amount to **de facto criminalization** of homelessness.

## 1. United States

- **How criminalized:** Local ordinances ban sleeping/camping in public, panhandling, and loitering.
- **Supreme Court (2024)** upheld cities' right to fine/arrest homeless individuals for sleeping outdoors.
- Widespread across cities like Los Angeles, San Francisco, and Denver.

## 2. Hungary

- **Constitutionally criminalized (2018):** Living in public spaces is illegal.
- Repeat offenders may be detained; shelters are required, but not always sufficient.
- Criticized by EU and human rights bodies.

## 3. United Kingdom

- The **Vagrancy Act 1824** (repealed in England and Wales in 2022) criminalized rough sleeping and begging.
- Still, **Public Space Protection Orders (PSPOs)** are used by local councils to fine or remove rough sleepers.

## 4. Australia

- **State and city laws** in places like Melbourne and Sydney ban sleeping in public, begging, or erecting tents.
- While homelessness is not a crime federally, local by-laws can result in arrests or fines.

## 5. Canada

- Homeless individuals are often penalized under municipal laws banning sleeping in parks or public areas.
- For example, in Toronto and Vancouver, police dismantle homeless encampments and issue fines.

## 6. Philippines

- While the **Anti-Vagrancy Law** was repealed in 2012, local police still enforce **public order and nuisance laws** that target homeless people, especially in urban areas like Manila.

## 7. South Africa

- Cities like Cape Town criminalize public sleeping, washing, or storing belongings in public.
- Encampments are often cleared forcibly under **municipal by-laws**.

## 8. United Arab Emirates

- **Sleeping in public, begging, or homelessness** is not tolerated, and people found doing so can be arrested or deported (especially migrant workers).
- Social welfare support is limited, and public charity is highly regulated.

## 9. Saudi Arabia

- Homelessness is treated as a **public order issue**.
- Police may detain individuals found sleeping in public; shelter is not a legal right.

## 10. Singapore

- No specific law criminalizing homelessness, but **public order laws** allow police to detain people found sleeping in public spaces.
- Homeless individuals may be forcibly removed or referred to shelters.

### Homelessness Binding Laws in India –

Homelessness in India represents a complex social challenge shaped by urbanization, poverty, migration, and systemic inequalities. While the Indian Constitution does not explicitly define or criminalize homelessness, various laws, judicial interpretations, and policies provide indirect legal frameworks that address or attempt to alleviate the condition of homelessness. However, there is no comprehensive binding law that singularly and uniformly governs homelessness across the country.

The Indian legal system approaches homelessness primarily through the lens of constitutional rights and welfare-based schemes. Article 21 of the Constitution guarantees the Right to Life and Personal Liberty, which has been expansively interpreted by the Supreme Court to include the right to live with dignity, shelter, food, and a clean environment. In *Chameli Singh v. State of Uttar Pradesh* (1996), the Supreme Court clearly held that the right to shelter is a fundamental component of Article 21. This judicial position has served as a legal backbone for advocating the rights of the homeless population.

In terms of policy, the most prominent program targeting urban homelessness is the Deendayal Antyodaya Yojana – National Urban Livelihoods Mission (DAY-NULM). Under this mission, a specific component called Scheme for Shelters for Urban Homeless (SUH) mandates urban local bodies to create permanent shelters equipped with basic services such as food, sanitation, health care, and safety. While this scheme does not have the enforceability of a statute, it serves as a central government directive with funding incentives. Despite its existence, implementation has been inconsistent across states and cities.

The Census of India (2011) defines a homeless person as someone not living in a census house, but in open spaces such as pavements, railway platforms, or under flyovers. This definition, although useful for enumeration, does not

translate into any enforceable rights. Moreover, homelessness is often addressed under public nuisance or anti-begging laws at the state level, which can sometimes criminalize acts associated with being homeless. For instance, some states have laws allowing detention of individuals found begging, without distinguishing between poverty and criminal intent.

The judiciary has repeatedly intervened in public interest litigations to compel state governments to establish night shelters and prevent arbitrary eviction of slum dwellers or pavement dwellers. A notable example is the Supreme Court's intervention in *PUCL v. Union of India*, which directed all states to set up functional night shelters. However, these judicial directives are ad hoc, issue-specific, and not codified into a comprehensive statutory framework.

India also lacks a central law that makes housing a legal right, unlike countries such as South Africa or Scotland. The Real Estate (Regulation and Development) Act, 2016 deals with regulated housing markets but does not address the needs of the homeless. Similarly, the Street Vendors Act, 2014 provides some safeguards to the urban poor but does not include housing.

While India does not criminalize homelessness outright, the absence of a unified, legally binding national law specifically addressing homelessness limits the effectiveness of existing judicial and policy interventions. The reliance on fragmented schemes and judicial activism underscores the urgent need for a rights-based statutory framework that recognizes the homeless not as subjects of welfare, but as holders of enforceable rights.

### **Implications of the Criminalisation of Homelessness on a Country's Social Construct**

The criminalisation of homelessness has far-reaching implications on a country's social construct, influencing not only how society perceives and treats its most vulnerable members but also how systems of governance, law, and public morality operate. Criminalising homelessness refers to the use of legal mechanisms such as anti-loitering laws, bans on sleeping in public, and public nuisance ordinances that directly or indirectly penalise people for living in conditions without adequate shelter. This practice is evident in several developed and developing nations and shapes the social, psychological, and legal landscapes of communities in significant ways.

At the core of the issue lies the tension between public order and human dignity. Governments often justify the criminalisation of homelessness on grounds of maintaining urban aesthetics, public safety, or tourism interests. However, this approach tends to marginalise homeless populations further and intensifies social exclusion. In terms of societal implications, the criminalisation of homelessness reinforces stigmas and negative stereotypes. When laws treat homelessness as a public offense rather than a humanitarian crisis, it positions homeless individuals as threats or burdens rather than victims of systemic failure. This perception filters into public attitudes, resulting in reduced empathy, increased discrimination, and often open hostility toward the homeless. The dehumanisation that results from criminalisation perpetuates a vicious cycle where the homeless are seen not as individuals with rights and stories, but as obstacles to urban development and cleanliness.

Moreover, criminalisation diverts public discourse away from structural causes such as poverty, unemployment, mental illness, and lack of affordable housing. It reframes homelessness as an individual moral failure rather than a consequence of policy inadequacies or social inequity. In doing so, it absolves governments and societies from addressing root causes and instead places the burden on the homeless to self-correct. This shift has profound implications for social justice, as it undermines efforts to build inclusive cities and equitable welfare systems. The practice also fosters an adversarial relationship between the state and its marginalised populations. Instead of providing support and rehabilitation, the state becomes an instrument of punishment. Law enforcement agencies are often tasked with removing homeless people from public spaces, a function that stretches their intended role and often results in abuses of power, harassment, or violence. The frequent policing of homelessness criminalises survival behaviours such as sleeping, resting, or eating in public, thus infringing on basic human rights and liberties. It also leads to overpopulation in detention facilities and misallocation of public resources, which could otherwise be used for shelters, mental health services, or housing projects.

Another significant social implication is the erosion of trust in institutions. When the legal system punishes people for being homeless rather than protecting them, it signals a failure of governance. Citizens begin to view the law as biased

toward property-owning classes and indifferent to the struggles of the poor. This perception can widen class divisions and fuel social unrest, particularly when homelessness becomes visible amid urban wealth and affluence. The inequity on display not only fractures the social fabric but also undermines the legitimacy of democratic institutions meant to serve all citizens equally. Additionally, criminalising homelessness impacts public health. Homeless individuals who face criminal penalties often avoid seeking medical help for fear of legal consequences. They may also be forced into hiding or unsafe environments to avoid arrest, exposing them to further health risks including violence, disease, and substance abuse. The social cost of neglecting these issues is immense. Communities bear the burden of increased emergency room visits, mental health crises, and higher mortality rates among the homeless. This creates a public health loop where unresolved trauma and illness in homeless populations escalate into broader community health challenges.

Education and employment are also affected. Criminal records associated with homelessness-related offenses make it harder for individuals to find jobs or secure housing in the future. This leads to long-term cycles of poverty and social immobility. Society ends up reinforcing the very condition it sought to eliminate, perpetuating inequality through structural barriers rather than breaking them down. On the other hand, proponents of criminalisation argue that it preserves public order and enhances security in shared spaces. In some cities, visible homelessness is associated with increased petty crime or decline in property values. Regulations that restrict street living or panhandling are seen as tools to ensure that public places remain safe and accessible to all. From this viewpoint, such policies can be considered socially beneficial in maintaining discipline and protecting the rights of the majority.

However, even from this standpoint, it is essential to evaluate whether such benefits are short-term and superficial. Policing the symptoms of homelessness without addressing the causes offers no sustainable solution. In fact, it may result in merely displacing the homeless from one area to another, without resolving their predicament. Such cosmetic approaches may offer a temporary sense of order but often result in long-term social instability as poverty and exclusion intensify under the surface. There are also psychological consequences on the broader society. Criminalising visible poverty normalises indifference and



erodes collective compassion. When laws punish the homeless for being in public, they send an implicit message that some lives are less worthy of dignity and safety. This desensitises the public to suffering and reduces social solidarity. Over time, a society that turns away from its vulnerable members may lose its ethical foundation and sense of communal responsibility.

Moreover, criminalisation of homelessness undermines civic participation. People experiencing homelessness are often unable to vote, access public benefits, or participate in local decision-making due to their transient living conditions and criminal records. This exclusion diminishes democratic engagement and further distances the affected population from processes that might influence policies meant for their welfare. It effectively silences a section of society that most needs representation. Some countries have adopted rights-based approaches instead of punitive ones. For instance, nations like Finland have significantly reduced homelessness through the Housing First model, which offers permanent housing without preconditions and then provides supportive services. Such models show that positive social constructs are possible when homelessness is treated as a policy and human rights issue rather than a legal violation. These approaches promote inclusion, reduce public costs, and strengthen societal values of equality and care.

In conclusion, the criminalisation of homelessness has overwhelmingly negative implications for a country's social construct. While it may temporarily satisfy calls for order and cleanliness, it deepens social inequality, erodes human rights, and weakens public institutions. It damages social cohesion by perpetuating stigma, discrimination, and exclusion. For any society striving toward justice and equity, criminalising homelessness represents a moral and strategic failure. Instead, states should focus on comprehensive housing policies, mental health care, job creation, and inclusive urban planning. Only then can they construct a society where every individual, regardless of economic status, can live with dignity and hope.