

The Criminalization of Homelessness: Ethical and Legal Implications

1. Adeel Raheem

2. Asim Choudhry

1. PhD Scholar, Department of Criminology, University of Lahore.

2. Assistant Professor, Department of Criminology, University of Lahore.

3.

ABSTRACT

The criminalization of homelessness has become a pressing ethical and legal issue, as cities increasingly implement punitive measures to regulate public spaces. This study explores the impact of laws that penalize homelessness, focusing on their ethical implications, human rights concerns, and legal frameworks. It examines the historical and social factors contributing to homelessness and evaluates the role of constitutional protections in safeguarding the rights of homeless individuals. The findings highlight how criminalization exacerbates social exclusion, restricts access to essential services, and reinforces cycles of poverty. Ethical perspectives emphasize the need for a justice-oriented approach that prioritizes dignity, autonomy, and human rights over punitive enforcement. The study also critiques the legal inconsistencies in addressing homelessness and the failure of current policies to provide sustainable solutions. Alternative approaches, such as housing-first models and decriminalization strategies, are discussed as more effective means of addressing homelessness. The study concludes that systemic reforms are necessary to shift from punitive measures to supportive policies that uphold human dignity and foster social inclusion. Future research should explore the role of policy innovation, social services, and legal advocacy in addressing homelessness as a human rights issue.

Keywords: Criminalization of homelessness, Human rights, Legal frameworks, Social exclusion, Ethical considerations, Public policy, Housing-first approach

1. Introduction

As cities increasingly grapple with the decline of urban centers and the movement of wealth and political influence to the suburbs, homelessness has emerged as a significant contemporary social problem. The fight over the "undesirable" in our urban environments leads to difficult tensions between the messages of "cleanup" and a desire for the humane treatment of individuals who are experiencing homelessness. In the midst of these tensions, cities are increasingly turning to criminalization measures to rid their streets of those in most need. Currently, over 60% of American cities have laws restricting camping in public places. A third of British cities have introduced prohibitions on sitting and sleeping in public places. Developed countries in Europe and elsewhere have their own legislative measures in place (Smith, 1994). Until recently, homelessness was understood as an unfortunate but largely stable condition produced by personal vulnerabilities. In this essay, we will argue that issues of homelessness cannot be addressed within traditional criminal justice frameworks. Recognizing that people experiencing homelessness often cycle in and out of jails, we suggest understanding issues of criminalization as simply one among a panoply of other social problems in which homelessness is an "output." Reading the literature and recognizing the values that define these discussions, the objectives of this essay are to explore recent trends in policy and legal restrictions against homeless

individuals in public settings, primarily the urban commons. Replication research is definitely needed, but existing studies suggest an upward trend in the passing of such laws and the robustness of their enforcement (Barak & Bohm, 1989).

1.1. Background and Context

The criminalization and punishment of homelessness negatively impact the individuals who are homeless and the cities that take part in such practices. The etiology of the homeless crisis is complex and multifactorial, unfolding historically and in relation to sociopolitical developments. Over time, the dynamics of poverty, mental illness, substance abuse, and public attitudes towards governmental responsibilities have shifted. National policy changes led to deinstitutionalization, increasing the visibility of the homeless and mentally ill on city streets. Over time, cities responded to increases in disorder and the visibility of the homeless with punitive measures. An interdisciplinary understanding of these issues is now emerging.

Being poor, mentally ill, or a substance user does not individually lead directly to homelessness; however, these factors are interrelated and, in large part, difficult to disentangle. The response of many cities to these challenges is through punitive measures against those who are homeless. A common response is to criminalize homelessness or at least nuisance behavior associated with homelessness, thereby creating a paper trail of arrest and continual punishment. Despite the perception, most people who are homeless are not mentally ill; only an estimated percentage of people living in shelters or on the streets have a diagnosable mental disorder. Likewise, people experiencing homelessness are more likely to have a substance use problem than those who are housed. That does not imply causality in either direction; rather, it is likely that both are associated with being homeless (Aykanian & Lee, 2016).

The criminalization of homelessness raises a number of ethical concerns that go beyond empirical or legal questions. In a deeply philosophical sense, one may wonder whether a society is just in penalizing people whose circumstances are beyond their control to ameliorate. Effectively, punitive policies morally blame people who have suffered from certain sets of socio-economic conditions. In addition, it is important to bear in mind the valuable role that shelters, churches, and faith-based organizations have in providing services to homeless people, moving from merely a "hand-out" to programs of dignified "hand-up." This is the point at which "respect" and "dignity" for homeless people come in. People in such precarious circumstances deserve special treatment and care as they cope with their personal crises, including moral support and encouragement. The plight of homeless people highlights the need to maintain the veneer of respect for autonomy. In the present circumstance, homeless people deserve respect for their autonomous personhood.

Like other vulnerable subpopulations, homeless people need to have their vulnerabilities recognized and respected by moral agents who affect their lives. Indeed, such policy approaches for solving the homeless problem effectively illustrate the theoretical dimensions of social justice, such as those that reflect social welfare, equality, and equal opportunities for all citizens. Utilitarian arguments, however, suggest that there are or can be conflicts between individualist and collective interests, between those of homeless individuals and the community. At a deeper level, these arguments are about the definition of community values and how to resolve the

conflicts between the needs of society regarding security and peace and the needs of homeless individuals to live a dignified life. The community orientation highlights that, to a certain extent, the social solidarity and social responsibility of homeless people can intimidate their claim to justice, particularly when social-provision policies, such as public housing, low-rent programs, and rental-housing assistance programs, are available for an adequate number of poor people. In this respect, it is reasonable to ask whether homeless people can be "held" responsible for the consequences of their situations. The larger problem, however, is that we also have to think of the responsibility of our society to sustain a social infrastructure policy designed to support social institutions that provide housing for low-income groups.

2. Human Rights and Dignity

The very notion of human rights is predicated on an understanding of what it means to be human. It is a troubling tautology, in other words, to speak of human rights in connection with homeless people, precisely in cases where the most basic needs of human life are unmet. One might observe that there is no need to invoke the language of human rights to highlight the fact that homeless people need food, shelter, and safety. However, all too often, the basic rights to food, shelter, and safety are precisely the rights that homeless people lack. Indeed, some states now extend a constitutional guarantee of some dimension of the right to an adequate standard of living, reflecting the consensus that states bear legal responsibility for addressing the threats to life and dignity posed by destitution (Westbrook & Robinson, 2021).

The contemporary rise in homelessness in many states is considered by many social scientists to be the most profound humanitarian crisis of our time. In cases where homelessness continues – and worsens – it is increasingly recognized as a failure of the community to nurture that dignity of personhood. As communities falter in producing adequate adaptive responses to homelessness, it is argued that the homeless continue to be subjected to societal abandonment rather than care. A number of existential issues are raised through the criminalization of homelessness: for example, whether life choices can ever be completely autonomous from external circumstances, whether there is such a thing as free will in the absence of meaningful alternatives, and the effectiveness of legal norms versus the values of defensive medicine. The criminalization of homelessness also forces us to confront basic questions: about whether respect for human dignity requires respect for affirmative duties grounded in principles of justice; whether there is something inherently objectionable about disabling a person's ability to respect him or herself; and, ultimately, about what we mean by dignity – a term employed to churn through the human rights legal corpus, corporate mission statements, political speeches, and pop psychology en route to its inevitable banality. How, in short, are we willing to treat the human?

If we honestly believe that every person has a valid right to a dignified existence, then we must attend to the emotional and relational consequences of policing and penalizing existing within the narrow margins of acceptable conduct. Where else are those who live on the street expected both to maintain conformity with the social contract and be held to account for failing to do so? Modest experiments in decriminalization or turning point programs, which have been developed in consultation with homeless people, suggest that alternative approaches grounded in the bread and butter of social work – nurturing individual connections to homes, one

person at a time, tenancy support, outreach, advice, getting to know people and building on their strengths, setting achievable goals – make far more headway in improving the lives of homeless people than traditional enforcement-based strategies. One question I would just love to ask people... What's bad about rough sleeping? And... people think that's such a stupid question. They cannot answer it. No one can answer what would be the harm or what is the harm of rough sleeping?... And yet when you ask them, they don't want it in their community, and yet when they tell you why they don't want it in their community, it is just total misinformation.

3. Legal Frameworks

There are several key statutes and ordinances, both federal and local, that contribute to the criminalization of homelessness. Across the country, many local governments assert their right to regulate and manage homelessness, but it is exceedingly rare for jurisdictions to pass ordinances that actually help alleviate homelessness. The assumption seems to be that people experiencing homelessness set up permanent camps because they are "service resistant," meaning they refuse to avail themselves of available services; however, in other parts of the country, models of housing first, case management, and shelter designs that admit non-treatment-adherent individuals have demonstrated that this is not the case. Nonetheless, many government officials appear to believe that the laws they have passed are the correct course, and it is this belief—the imperative to "enforce the camping ordinance" as an overarching principle—that results in cities giving their police officers latitude but no direction when it comes to interactions with homeless individuals (Amster, 2003).

The characteristic and personalized nature of criminalization here permits abusive police misconduct as well. While law enforcement officers are given discretion over who and how to arrest, there is a shortage of guidelines to draw the line when exercising that discretion. Similarly, this is not simply a problem of homeless individuals, but a problem of people unilaterally criminalized for their presence. The overall effect on the social legitimacy of law enforcement and the legal system is meaningful. Officers need to have clear direction to prevent the abuse of powerless people by powerful police officers. Officers are mistaken if they have been instructed to just tell people on the street to move on, ensure that it goes somewhere else, and arrest if the action is not taken. No genuine advantage results from asking a homeless person to constantly or periodically travel unless sufficient suitable storage is provided to enable that person to go.

3.1. Constitutional Rights

Homeless individuals remain free to invoke a series of constitutional provisions as a kind of last line of law when targeted by harsh local laws that criminalize their condition. A number of basic rights appear to touch their status: the due process clauses, the equal protection clause, the right to travel, the protections against cruel and unusual punishment, the rights of assembly and petition, as well as others. Indeed, a series of high-profile cases established that homeless citizens possess the right not to be deprived of life, property, or liberty without due process of law. Charged with dozens of petty infractions, many homeless people have traveled to local courts in order to confront the charges as violations of their due process rights. Those making the argument have, however, faced judges who rule that living outdoors is not a 'liberty' protected by the due process clause. Such conflicting rulings leave the due

process argument 'in a state of disarray.' Courts also appear unable to decide whether the improper motivations on the part of legislators or simply their knowledge of homelessness is enough to make a criminalization law unconstitutional.

It is perhaps no wonder, then, that contemporary advocates for homeless families often worry that 'poverty has also been stripped of constitutional protection' or that a legal system 'committed to equality and racial justice would treat laws banning poverty as patently unworthy of respect.' That said, social justice scholars argue that when historically marginalized communities have been denied rights simply because of their status, the harm of leaving the laws on the books is real. Indeed, people living on the streets live without the benefits of laws passed without their participation. Constituted with public interest in mind, systemic reforms represent the compromise between public convenience, safety, order, and the concern of the judiciary in protecting individuals against unnecessary intrusions and hasty stereotypes. Homeless people of any place and setting shall hold onto the privilege of constitutional principles (Saelinger, 2006).

4. Impact on Homeless Individuals

In addition to violating the human rights of homeless individuals, criminalization has a broad range of impacts on those against whom it is directed. For homeless people, the multifaceted consequences of penal law are devastating. Many of the people affected are already poor and socially marginalized. Instead of supporting them, punishment can act as an additional burden and provide the individuals concerned with barely any incentives to change their situation for the better. The widespread stigmatization of homeless people also impacts the psyche and leads to a self-reinforcing cycle. For example, the activist informs about her attempts to receive her ID card from the Jobcenter in Cologne. The fourth attempt through the front entrance finally succeeds. When applying for social minimum security, homeless people led to isolation have a name – the people at the Jobcenter call them “mutants.” Discrimination in all areas of society and family represents additional reasons for this divide in the vulnerable road to recovery.

Homeless people who live in public spaces and are constantly searching for a place to lie down at night, who are always disturbed in their daily life, need rest, relaxation, and sleep to wake up sick and worn out. A listening conversation has one of the greatest mental influences because there is greater respect, trust, and understanding between all persons involved. No one is a criminal because of his or her social status or poverty. The money, time, and resources used in projects to prevent homelessness as a phenomenon and core problem in our society would do much more good in social and emotional issues if everyone could find sewage services that are affordable and adapted to their needs. In a society that bans homelessness, truly affordable housing is the most effective preventive health measure, and it is also the responsibility of society. A temporally adapted “emergency solution” that can be discussed before closing open accommodations should be coordinated with interest groups (Robinson, 2019).

4.1. Access to Services

There is ample evidence to suggest that criminalization can present significant barriers to the provision and receipt of already scarce services. Since criminalization punishes individuals not for breaking the law, but for who they are or what they

cannot help, it impairs necessary access to health care and can exacerbate already serious problems that contribute to both the symptoms and root causes of homelessness. Furthermore, social behavior that serves as an obstacle to incarceration, such as seeking and attending primary care, treatment, and services, can make crucial impressions on housing, legal employment, and custody decisions. Shedding criminal records of specter and actual arrests that stagnate housing and occupations not only assists homeless individuals, but also their children. Many homeless individuals would seek more comprehensive health care and apply for jobs if not for the fear of arrest and its onerous and often lifelong consequences (Gyöngyi, 2020).

Criminalized homeless participants indicated that they did not wish to use mental health and substance abuse services immediately. Instead, they asked for basic subsistence services like food, health care, showers, laundry, and day shelters. After coordinated services helped lay the groundwork for mental health and drug services, they turned them down as punitive law enforcement policies increased. Social service agency and advocacy reactions to police interference in service delivery are particularly critical. Many service providers also view homelessness as a societal problem that should be managed, not criminalized. At the same time, advocates argue that more should be done by local government service providers to prevent the police from breaking up programs and at least develop non-criminalizing options with crisis solutions on the street: homeless services that are both enforcement-oriented and support-oriented.

5. Conclusion

The criminalization of homelessness in the United States is ethically and legally suspect. If homelessness is a social problem, and its criminalization raises serious ethical concerns, which may indeed render the act of criminalizing as wrongful, immoral, and unjust. It also signals that American society continues to believe that desirable public spaces are meant only for those who can afford them and those who contribute to society in meaningful, determinate ways. And it reveals something about our willingness to address the root causes of homelessness. Its criminalization, therefore, signals an unwillingness to take homelessness and its root causes seriously and complicity in maintaining the systemic causes of homelessness. Understanding the issue in this way implicates issues wider than the criminalization of homelessness. Amidst these practical policy concerns, fundamental legal and philosophical problems arise by demanding that we interrogate the reasons why we have begun to treat homelessness as a criminal behavior in the first place. This text takes up that task, illuminating some of the ethical and legal implications of treating homelessness as a criminal issue, rather than as a social issue. Indeed, more must be done. This text concludes with the hope that advocates, lawmakers, and citizens will be moved to action and a mutual sense of solidarity on social questions concerning homelessness. By re-envisioning the practical responses we have to homelessness, we can begin to take steps to reform laws, policies, and administrative procedures to better reflect human rights and human dignity. We can endeavor to make space for a broader variety of individuals to inhabit the public sphere using tools of support, not punishment. We might even hope to integrate our responses to homelessness with our broader commitments to questions of environmental justice, fair distribution, and

human rights. We do so with a firm commitment to substantive, human rights-based innovation and justice.

References

- Amster, R. (2003). Patterns of exclusion: Sanitizing space, criminalizing homelessness. *Social justice*, 30(1 (91), 195-221.
- Aykanian, A., & Lee, W. (2016). Social work's role in ending the criminalization of homelessness: Opportunities for action. *Social work*, 61(2), 183-185.
- Barak, G., & Bohm, R. M. (1989). The crimes of the homeless or the crime of homelessness? On the dialectics of criminalization, decriminalization, and victimization. *Contemporary Crises*, 13, 275-288.
- Gyöngyi, P. (2020). The Obligation of Judges to Uphold Rules of Positive Law and Possibly Conflicting Ethical Values in Context: The Case of Criminalization of Homelessness in Hungary. *Netherlands Journal of Legal Philosophy*, 49(2).
- Robinson, T. (2019). No right to rest: Police enforcement patterns and quality of life consequences of the criminalization of homelessness. *Urban affairs review*, 55(1), 41-73.
- Saelinger, D. (2006). Nowhere to go: The impacts of city ordinances criminalizing homelessness. *Geo. J. on Poverty L. & Pol'y*, 13, 545.
- Smith, D. M. (1994). A theoretical and legal challenge to homeless criminalization as public policy. *Yale L. & Pol'y Rev.*, 12, 487.
- Westbrook, M., & Robinson, T. (2021). Unhealthy by design: health & safety consequences of the criminalization of homelessness. *Journal of Social Distress and Homelessness*, 30(2), 107-115.