

Bengal Vagrancy Act, 1943

07 of 1943

[25 October 1943]

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PREAMBLE

An Act to provide for dealing with vagrancy in Bengal.

Whereas it is expedient to make provision for dealing with vagrancy in Bengal;

It is hereby enacted as follows:-

1. For Statement of Objects and Reasons see the Calcutta Gazette, dated the 18th February, 1943, part IVA. page 10; for the Proceedings of the Assembly, see the proceedings of the meetings of the Bengal Legislative Assembly held on the 2nd March and 15th September, 1943; for the Proceedings of the Bengal Legislative Council, see the proceedings of the meetings of the Bengal Legislative Council held on the 20th. 22nd, 27th and the 28th September, 1943.

2. This Act should be read with section 51 of the West Bengal Children Act, 1959 (West Ben. Act XXX of 1959) and notification (1) No. 1955 Section W./H-15/60, dated the 22nd June, 1961, (2) No. 284-S.W./L.H.-43/61, dated 8.2.63 and (3) No. 479-S.W./4A4/63, dated 15.3.63, which bring certain sections of the latter Act into force in Calcutta, Howrah, other places in the districts of Howrah and 24-Parganas and other areas.

CHAPTER 1 PRELIMINARY

1. Short title, extent and commencement :-

(1) This Act may be called the Bengal Vagrancy Act, 1943.

(2) It extends to the whole of ¹[West Bengal].

(3) It shall come into force in Calcutta at once and in such other areas on such other dates as the ²[State] Government may, by notification³ in the Official Gazette, direct.

1. These words were substituted for the word "Bengal" by para. (2) of Art. 3 of the Indian Independence (Adaptation of Bengal and

Punjab Acts) Order. 1948.

2. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

3. This Act came into force on the 25th October. 1943. in the Howrah and Bally police-stations in the district of Howrah. and in the Tollygunge. Behala. Matiabruz. Baranagar and Dum Dum police-stations in the district of 24-Parganas. vide notification No. 5666 A.R.P. dated the 23rd October, 1943. published in the Calcutta Gazette. Extraordinary, dated the 25th October. 1943. part 1. page 182; and on the 7th December, 1944, in the Golabari police-station in the district of Howrah, vide notification No. 3304 A.R.P.. dated the 24th/29th November, 1944. published in the Calcutta Gazette, dated the 7th December, 1944, part I. page 1409.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context,-

(1) "Board" means the Vagrancy Advisory Board established under sub-section (1) of section 3;

¹(1a) "Board of Visitors" means a Board of Visitors established under sub-section (1) of section 13A;

(2) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866(Ben. Act IV of 1866.), together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act. 1866(Ben. Act II of 1866.);

(3) "child" means a person under the age of fourteen years;

(4) "Controller" means the Controller of Vagrancy appointed under sub-section (1) of section 4;

² XXX XXX XXX

(6) "prescribed" means prescribed by rules made under this Act;

(7) "receiving centre" means a house or institution for the reception and temporary detention of vagrants, provided by the ³[State] Government or certified as such under sub-section (1) of section 12;

(8) "Special Magistrate" means a Magistrate empowered to act as such under section 5;

(9) "vagrant" means a person ⁴* * * found asking for alms in any public place, or wandering about or remaining in any public place in such condition or manner as makes it likely that such person exists by asking for alms but does not include a person collecting money or asking for food or gifts for a prescribed purpose;

(10) "vagrants home" means an institution provided by the 3[State] Government under sub-section (1) of section 13 for the permanent detention of vagrants.

1. This clause was inserted by Section 2 of the Bengal Vagrancy (Amendment) Act. 1970 (West Ben-Act V of 1970).

2. Clause (5) was omitted by para. 3 of, and the Eleventh Schedule to, the Adaptation of Laws Order. 1950.

3. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

4. The words "not being of European extraction" were omitted by para. 3 of. and the Eleventh Schedule to. the Adaptation of Laws Order, 1950.

3. Vagrancy Advisory Board :-

(1) The ¹[State] Government as soon as possible after the commencement of this Act shall establish a Board to be called the Vagrancy Advisory Board.

(2) The Board shall be constituted in the manner prescribed, subject to the condition that the number of members of the Board shall not be less than ten.

(3) The function of the Board shall be to advise the ¹[State] Government on all matters relating to the control of vagrancy and in particular on the administration of this Act and for the aforementioned purposes any member of the Board may enter and inspect at any time any receiving centre or vagrants home.

(4) The Board may, with the previous approval of the ¹[State] Government, make regulations to provide for,-

- (a) the times and places at which its meetings shall be held;
- (b) the issue of notices concerning such meetings and;
- (c) the conduct of business thereat.

1. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

4. Appointment of Controller of Vagrancy and his assistants :-

(1) For carrying out the purposes of this Act the ¹[State] Government may appoint a person to be Controller of Vagrancy together with such other persons to assist him as it thinks fit.

(2) Persons appointed under sub-section (1) shall exercise such powers as may be conferred and perform such functions as may be required by or under this Act.

1. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

5. Special Magistrates :-

For the purpose of Chapter II of this Act the ¹[State] Government may empower ²any Presidency Magistrate in Calcutta and any Magistrate of the first class elsewhere to act as a Special Magistrate.

1. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. For notification empowering the Police Magistrates of Howrah, 24-Parganas and Sealdah to act as Special Magistrates, ex-officio, see notification No. 435 G.A., dated 13.2.48, published in the Calcutta Gazette of 1948. part I, page 234.

CHAPTER 2 PROCEDURE

6. Power to require apparent vagrant to appear before Special Magistrate :-

Any police officer authorised in this behalf by the Commissioner of Police in Calcutta and by the District Magistrate elsewhere may require any person who is apparently a vagrant to accompany him or any other police officer to, and to appear before, a Special Magistrate.

7. Summary inquiry in respect of apparent vagrant and declaration of person to be vagrant by Special Magistrate :-

(1) When a person is brought before a Special Magistrate under section 6, such Special Magistrate shall make a summary inquiry in the prescribed manner into the circumstances and character of such person, and if, after hearing anything which such person may wish to say he is satisfied that such person is a vagrant, he shall record a declaration to this effect and the provisions of this Act relating to vagrants shall thereupon apply to such person.

(2) If on making the summary inquiry referred to in sub-section (1) the Special Magistrate is not satisfied that the person brought before him under section 6 is a vagrant such person shall forthwith

be released.

(3) A Special Magistrate recording a declaration under sub-section (1) that a person is a vagrant shall forthwith send a certified copy of such declaration to the Controller, and to the officer-in-charge of the receiving centre to which such vagrant is sent under sub-section (1) of section 8.

8. Detention in receiving centre and medical examination of vagrant :-

(1) When a person has been declared to be a vagrant under sub-section (1) of section 7 he shall forthwith be sent in the manner prescribed to the nearest receiving centre and there handed over to the custody of the officer-in-charge of such receiving centre, and such vagrant shall be detained in such receiving centre until he is sent therefrom to a vagrants home under sub-section (1) of section 9.

(2) As soon as possible after the commencement of the detention of a vagrant in a receiving centre the medical officer of such receiving centre shall with such medical help as may be necessary medically examine the vagrant in the manner prescribed as quickly as is consistent with the circumstances of the case and shall thereupon furnish the officer-in-charge of the receiving centre with a medical report regarding the health and bodily condition of the vagrant.

(3) The medical report referred to in sub-section (2) shall state inter alia.-

(a) the sex and age of the vagrant;

(b) whether the vagrant is a leper;

(c) from what, if any, communicable diseases other than leprosy the vagrant is suffering;

(d) whether the vagrant is insane or mentally deficient;

(e) what is the general state of health and bodily condition of the vagrant and for which, if any, of the prescribed types of work he is fit.

9. Procedure for sending vagrant to vagrants home :-

(1) On receipt of the medical report referred to in sub-section (2) of section 8 the officer-in-charge of a receiving centre shall, as soon as the necessary arrangements can be made, send the vagrant in the prescribed manner to such vagrants home as the Controller may by general or special order in this behalf direct, and the said

officer-in-charge shall along with such vagrant send to the Manager of the said vagrants home,-

(a) the certified copy of the declaration made under sub-section (1) of section 7 relating to such vagrant which is to be sent to such officer-in-charge under sub-section (3) of the said section, and

(b) the said medical report.

(2) When a vagrant is sent to a vagrants home under the provisions of sub-section (1) he shall be handed over to the custody of the Manager of such vagrants home and shall be detained therein, or in a vagrants home to which he may be transferred under section 16, until duly discharged therefrom under section 18.

(3) In issuing any order under sub-section (1) the Controller shall ensure that the following classes of vagrants, namely:-

(a) lepers,

(b) the insane or mentally deficient,

(c) those suffering from communicable diseases other than leprosy,

(d) children, are segregated from each other and from vagrants who do not belong to any of the aforementioned classes and shall also ensure that the male vagrants are segregated from the female vagrants:

Provided that the provisions of this sub-section in respect of children may be relaxed as prescribed.

10. Externment of vagrant from area in which the Act is in force :-

(1) If after an inquiry made under sub-section (1) of section 7 the Special Magistrate is satisfied that the person brought before him under section 6 is a vagrant but, in the course of such inquiry, it has appeared that the vagrant was not born in the area in which this Act is in force or has not been continuously resident therein for more than one year, the Special Magistrate, after making such further inquiry, if any, as he may deem necessary, may by order in writing direct the said vagrant to leave the said area within such time and by such route or routes as may be stated in the order and not to return thereto without the permission in writing of the Controller, and in such case, notwithstanding anything contained in sub-section (1) of section 7, the provisions of sections 8 and 9 shall not apply to such vagrant:

Provided that if the Special Magistrate deems it necessary to make any further inquiry as aforesaid in respect of such vagrant, the

vagrant shall be detained pending conclusion of the said inquiry in such receiving centre as the Controller may by general or special order in this behalf direct and for this purpose shall be sent thereto in the manner prescribed and there handed over to the custody of the officer-in-charge of such receiving centre, and shall, while he is so detained, be subject to the rules of management and discipline referred to in sub-section (1) of section 15.

(2) The Controller shall not give the permission referred to in sub-section (1) unless, if the vagrant had been detained in a vagrants' home, such vagrant would have been eligible to have been discharged therefrom under the provisions of sub-section (1) of section 18.

(3) When a vagrant against whom an order has been made under sub-section (1) fails to comply with such order within the time specified therein, or after complying with the said order returns without the permission in writing of the Controller to any place within the area referred to in the said order, such vagrant may be arrested without a warrant by any police officer, and shall be liable, on conviction before a Magistrate, to be punished with rigorous imprisonment for a term which may extend to six months.

11. Validity of custody and detention of vagrant :-

A declaration that a person is a vagrant recorded by a Special Magistrate under sub-section (1) of section 7 shall be sufficient authority to any person to retain such vagrant in his custody when such person is under the provisions of this Act or of any rule made thereunder conveying a vagrant from the Court of a Special Magistrate to a receiving centre or, from a receiving centre to a vagrants home or from one vagrants home to another and to the officer-in-charge of a receiving centre and to the Manager of a vagrants home for detaining such vagrant in accordance with the provisions of this Act in a receiving centre or vagrants home, as the case may be.

CHAPTER 3 RECEIVING CENTRES AND VAGRANTS' HOMES

12. Provisions of receiving centres :-

(1) The ¹[State] Government may provide and maintain together with the necessary furniture and establishment one or more receiving centres at such place or places as it thinks fit or may certify by notification in the Official Gazette any existing charitable

or other institution, subject to the prior consent of the controlling authority of such institution and on such conditions as may be mutually agreed upon between the ¹[State] Government and the said authority, to be a receiving centre for the purposes of this Act.

(2) For the purposes of this Act every receiving centre shall be under the immediate control of an officer-in-charge who shall be appointed by the ¹[State] Government and who shall perform his functions subject to the orders of the Controller.

(3) The ¹[State] Government shall also appoint for every receiving centre one or more suitably qualified persons as medical officers.

1. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

13. Provisions of vagrants homes :-

(1) The ¹[State] Government may provide and maintain together with the necessary furniture, equipment and establishment, one or more vagrants homes at such place or places as it thinks fit and such vagrants homes may include provision for the teaching of agricultural, industrial or other pursuits and for the general education and medical care of the inmates.

(2) Every such vagrants home shall be under the immediate charge of a Manager who shall be appointed by the ¹[State] Government and who shall perform his functions subject to the orders of the Controller.

(3) The ¹[State] Government may appoint in respect of a vagrants home a suitably qualified person as medical officer and one or more suitably qualified persons as teachers.

1. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

13A. Board of Visitors :-

¹[(1) For every receiving centre and every vagrants home, the State Government shall establish a Board of Visitors, constituted in such manner and consisting of such number of members as may be prescribed.

(2) A Board of Visitors may visit the receiving centre or the vagrants home for which it is established and record its comments on any matter it may think fit pertaining to the working of the receiving centre or the vagrants home for the consideration of the officer-in-charge of the receiving centre or the Manager of the

vagrants home and for this purpose, any member of the Board of Visitors shall have the right to visit such receiving centre or vagrants home at any time between the hours of sunrise and sunset.

(3) Copies of comments recorded by a Board of Visitors under sub-section (2) shall, as soon as may be after they are recorded, be forwarded by the officer-in-charge of the receiving centre or the Manager of the vagrants home, as the case may be, to the Board.]

1. Section 13A was inserted by Section 3 of the Bengal Vagrancy (Amendment) Act, 1970 (West Ben. Act V of 1970).

14. Search of vagrants :-

Every officer-in-charge of a receiving centre or Manager of a vagrants home may order that any vagrant detained in such receiving centre of vagrants home shall be searched and that the personal effects of such vagrant shall be inspected and any money then found with or on the vagrant shall be applied in the manner prescribed towards the welfare of vagrants and any of such effects other than money may be sold in auction and the proceeds of the sale shall be applied as aforesaid:

Provided that a female vagrant shall be searched by a female only and with due regard to decency.

15. Management and discipline :-

(1) Vagrants detained in receiving centres or vagrants homes under this Act shall be subject to such rules of management and discipline as may from time to time be prescribed.

Explanation.-Discipline includes the enforcement of the doing of manual or other work by a vagrant.

(2) If any vagrant wilfully disobeys or neglects to comply with any rule referred to in sub-section (1) he shall on conviction before a Magistrate be liable to be punished with rigorous imprisonment for a term which may extend to three months.

(3) The ¹[State] Government may authorise the Manager of a vagrants home to punish any vagrant detained in such vagrants home who wilfully disobeys or neglects to comply with any rule referred to in sub-section (1) with hard labour of the type prescribed for any period not exceeding seven days; and such punishment may be in lieu of or in addition to any punishment to which the vagrant may be liable under sub-section (2).

1. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

16. Transfer of vagrants from one vagrants home to another :-

The Controller may by order in writing direct the transfer of a vagrant from one vagrants home to another and a vagrant in respect of whom such an order is passed shall thereupon be sent in the manner prescribed to. and handed over to the custody of, the Manager of the vagrants home to which he has by such order been transferred.

17. Outside employment to be obtained for vagrants when possible :-

The Manager of a vagrants home shall use his best endeavors to obtain outside the vagrants home suitable employment for vagrants detained therein.

18. Discharge of vagrants from vagrants home :-

(1) A vagrant may be discharged from a vagrants home under orders of the Controller.-

(a) on the Manager of such vagrants home certifying in the prescribed manner that satisfactory employment has been obtained for such vagrant;

(b) on its being shown to the satisfaction of the Controller that such vagrant has become possessed of an income sufficient to enable him to support himself without resorting to vagrancy;

(c) on a relative of such vagrant, or a person who the Controller is satisfied is interested in the welfare of such vagrant, entering into a bond with or without sureties for a sum prescribed, to look after and maintain such vagrant and to prevent him from resorting to vagrancy;

(d) for other good and sufficient reasons to be recorded by the Controller in- writing.

(2) When the employment referred to in clause (a) of sub-section (1) has been obtained for a vagrant, any such vagrant refusing or neglecting to avail himself thereof shall be liable to be punished on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to one month.

CHAPTER 4 PENALTIES AND MISCELLANEOUS

19. Punishment for employing or causing persons to ask for alms :-

Whoever employs or causes any person to ask for alms, or abets the employment or the causing of a person to ask for alms, or whoever, having the custody, charge, or care of a child, connives at or encourages the employment or the causing of a child to ask for alms shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to two years or with fine or with both.

20. Punishment for refusing to go before a Special Magistrate :-

Any person refusing or failing to accompany a police officer to, or to appear before a Special Magistrate, when required by such officer under section 6 to do so, may be arrested without warrant, and shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to one month or with fine, or with both.

21. Punishment for refusing to submit to medical examination at receiving centre :-

Any vagrant who refuses to submit to a medical examination by the medical officer of a receiving centre or by any person assisting such medical officer under the provisions of sub-section (2) of section 8 shall be liable to be punished on conviction before a Magistrate with rigorous imprisonment for a term which may extend to one month.

22. Punishment for escape from receiving centre or vagrants home :-

Any vagrant who escapes from any custody to which he has been committed under this Act or any rule made thereunder or who leaves a receiving centre without the permission of the officer-in-charge thereof, or who leaves a vagrants home without the permission of the Manager thereof, or who, having with the permission of such officer-in-charge, or Manager, as the case may be, left a receiving centre or a vagrants home for a time specified under any rule referred to in sub-section (1) of section 15, wilfully fails to return on the expiration of such time, may be arrested without warrant and shall for every such offence, be liable to be

punished, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

23. Procedure at end of imprisonment :-

Every person imprisoned under the provisions of sub-section (2) of section 15, sub-section (2) of section 18, section 20, section 21 or section 22 shall at the end of his term of imprisonment be brought under police custody before the nearest Special Magistrate who shall forthwith deal with such person in the manner laid down in sections 7, 8 and 9 as if such person had been brought before such Special Magistrate under the provisions of section 6:

Provided that if the said Special Magistrate is of the opinion that such person would, if detained under this Act as a vagrant in a vagrants home, be eligible to be discharged therefrom under the provisions of sub-section (1) of section 18, he may, instead of dealing with such person as aforesaid, direct that such person be released and such person shall thereupon be set at liberty.

24. Prosecution and jurisdiction to try offenders :-

(1) No prosecution for an offence under this Act may be commenced except by, or with the permission of, such officer as may be prescribed in this behalf.

(2) No offence under this Act shall be triable by any Magistrate other than a Presidency Magistrate or a Magistrate of the first class.

25. Persons to be deemed public servants :-

All persons empowered to perform any function under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860.).

26. Indemnity :-

No suit, prosecution or other legal proceeding shall lie against any person empowered to perform any function under this Act for anything which is in good faith done or intended to be done under this Act.

27. [Repealed] :-

[Repeal.-Repealed by section 3 and the Second Schedule to West Bengal Act VII of 1948.]

28. Power to make rules :-

(1) The ¹[State] Government may make rules² for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the purposes for which a person may collect money or ask for food or gifts referred to in clause (9) of section 2;

(b) the constitution of the Board referred to in sub-section (2) of section 3;

(c) the manner in which the summary inquiry referred to in sub-section (1) of section 7 shall be made;

(d) the manner in which a vagrant is to be sent to a receiving centre under sub-section (1) of section 8 and the proviso to sub-section (1) of section 10;

(e) the manner in which a medical officer is medically to examine a vagrant under sub-section (2) of section 8;

(f) the types of works for which a vagrant may be reported fit under clause (e) of sub-section (3) of section 8;

(g) the manner in which a vagrant is to be sent to a vagrants home under sub-section (1) of section 9;

(h) the manner in and the extent to which the provisions of sub-section (3) of section 9 in respect of children may be relaxed;

³(hh) the manner in which a Board of Visitors may be constituted under sub-section (1) of section 13A and the number of members which a Board of Visitors may consist of;

(i) the manner in which the money found with or on, or the proceeds of the sale of other personal effects of. a vagrant may be applied to the welfare of vagrants under section 14;

(j) the management and discipline referred to in sub-section (1) of section 15 to which vagrants detained in receiving centres and vagrants homes shall be subject;

(k) the type of the hard labour which is to form the punishment which may be awarded under sub-section (3) of section 15;

(l) the manner in which a vagrant may be sent from one vagrants home to another under section 16;

(m) the manner in which the Manager of a vagrants home is to certify under clause (a) of sub-section (1) of section 18 that satisfactory employment has been obtained for a vagrant;

(n) the amount of the bond referred to in clause (c) of sub-section (1) of section 18;

(o) the officer referred to in sub-section (1) of section 24.

1. The words within square brackets were substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. For the Bengal Vagrancy Rules, 1945. see notification No. 2799P.H.. dated the 25th September, 1945. published in the Calcutta Gazette, of 1945. part I. page 160, as subsequently amended.

3. Clause (hh) was inserted by Section 4 of the Bengal Vagrancy (Amendment) Act. 1970 (West Ben. Act V of 1970).

29. Continuance of action taken under Bengal Ordinance II of 1941 :-

Any rules made or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the Bengal Vagrancy Ordinance, 1943, shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 30th day of July, 1943(Ben. Ord. II of 1943.).