

BENGAL VAGRANCY ACT 1943- RECOMMENDED AMENDMENTS

Prepared by

PEOPLE'S PARTICIPATION

**a non political human rights organisation
by the people; for the people; pro people**

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Any unwilling mistake must be expected to be edited.

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This 'Draft Vagrancy Act' is dedicated to:

Beggars Community in India

Confidential

ANNEXURE:
BENGAL VAGRANCY ACT 1943- RECOMMENDED AMENDMENTS
STATEMENT OF OBJECTS AND REASONS

The Bengal Vagrancy Act has been found to be deficient in many ways. A review of the provisions of the Bengal Vagrancy Act 1943 indicates that there is a strong colonial hangover in the definition and understanding of 'vagrancy' that leads to poverty and begging being criminalized, when the need is for rehabilitation. Greater attention needs to be given to groups and sections of people who are apprehended and in danger of apprehension by authorities under the provision of the Act. Further, human rights principles need to be incorporated in the Act. A review will support the view that there is need for a paradigm shift to recognize the issue of right to dignity and other basic rights which are violated simply by the existence of the condition of vagrancy: remedies, especially that of rehabilitation thus should not be contingent on the any violation occurring. The fact that the condition of vagrancy exists should be a violation in itself.

In this context, the following are the objectives of the proposed amended Act—

- a) To recognize the Human Rights violations present in the Act and advocate for their removal
- b) To de-criminalize begging and vagrancy and adopt a more 'rehabilitation' based approach for gradual reduction of the problem
- c) To ensure that the rehabilitation process results in self sufficiency among erstwhile vagrants and facilitate them to contribute to the economy by providing them with vocational training.

An Act to provide for the social security based law relating to the conditions of vagrancy and penal aspects thereof, by providing for private participation along with the State government to improve the condition of vagrants, and to provide for rehabilitation mechanisms with active participation of the vagrant.

It is hereby enacted as follows:

CHAPTER I

Preliminary

S.1 stands as it is.

S.2 DEFINITIONS

S.2 in this Act, unless there is anything repugnant in the subject or context:

S.2(1) stands as it is.

S.2(1a) stands as it is

S.2(2) Calcutta means the city of Kolkata as defined under the Kolkata Municipal Corporation Act.

S.2(2A) “begging” means begging as defined under S.2(2) of the Juvenile justice (Care and Protection of Children) Act 2000

S.2(3) “child” means a person who has not attained the age of majority as prescribed under the Indian Majority Act

S.2(3A) “child in need of care and protection” means a child as defined under S.2(d) of the Juvenile Justice (Care and Protection of Children) Act 2001

S.2(4) stands as it is

S.2(5) “mentally ill persons” mean mentally ill persons as defined under S.2(l) of the Mental Health Act 1987

S.2(5A) “occupation” means any regular work, profession, job, principal activity, employment, business or a calling in which an individual is engaged including rag picking, rickshaw pulling, street hawking, and other similar and likewise activities

S.2(6) “prescribed” means prescribed by the Rules made under this Act in consultation with the Vagrancy Advisory Board

S.2(6A) “public place” means any place intended for use by, or accessible to, the public and includes any public conveyance

S.2(7) stands as it is

S.2(9) “vagrant” means a person

- a) who is a destitute and;
- b) without any occupation and;
- c) found begging or asking for alms in any public place;

but does not include a person asking for alms for any religious purpose or any other prescribed purpose or a person who has been temporarily displaced due to rioting, civil conflict, natural calamities, or any person who has been rendered destitute due to being abandoned, forcefully or otherwise, by their family or relatives on account of various socio-economic reasons which includes, *inter alia*, widowhood, inability

to pay dowry, loss of earning capacity, old age, being victims of rape, sexual assault, and other incidents which result in social stigma.

Explanation: the definition of a vagrant includes an adult man and woman, a child as defined under S.2(3), and mentally ill persons as defined under S.2(5) of this Act

Explanation: “public place” means any place as defined under S.2(6A) of this Act
S.2(9A) “person reported to be a vagrant” means any person(s) who has been approached by the authorities named in this Act for accompanying them to the Special Magistrate, on the grounds of being reasonably suspected to be a vagrant.

S.2(10) “vagrant home” means an institution under S.13 for the permanent residence or detainment of vagrants and—

- a) which meets the criteria set by the Vagrancy Advisory Board and;
- b) which is duly certified by the State Government on the advise and in consultation with the Vagrancy Advisory Board

Explanation: a vagrant home can be set up both the State Government and by Non-government organizations in participation with the State Government

S 2(11) “vagrancy advisory board panel” means a panel constituted under S 3A of this Act.

S 2(12) “Guidelines” means the guidelines framed by the Vagrancy Advisory Board panel from time to time.

S 2(13) “illegal immigrant” means a person who has violated the relevant provisions of the Passports Act, Foreigners Act, Citizenship Act, and any other law in force.

S.3 VAGRANCY ADVISORY BOARD

S.3(1) stands as it is

S.3(2) The Board shall be constituted in the manner prescribed under the Rules framed under this Act and; shall, at any given point of time, not be constituted with less than ten members

Explanation: the members of the Vagrancy Advisory Board shall include the following members:

- a) One third of the members of the Board being women
- b) Two members who are representatives or personnel from non-government organizations active and having sufficient knowledge and experience in the field of vagrancy.
- c) Two members from the Social Welfare Department of the State Government
- d) Controller of Vagrancy
- e) A trained psychologist or psychiatrist
- f) Other members deemed fit by the State Government

S.3(3) the functions of the Board shall be—

- a) To advise the State Government on all matters relating to the control of vagrancy in particular the administration of this Act
- b) To frame guidelines for setting criteria for vagrant home

- c) To frame guidelines for supervision and maintenance of discipline in receiving centres and vagrant homes
 - d) To inspect any receiving center or vagrant home to discover compliance with provisions prescribed under this Act
- S.3(4) stands as it is.

S.3A VAGRANCY ADVISORY BOARD PANEL

S.3A (1) The Vagrancy Advisory Board Panel shall be set after the establishment of the Vagrancy Advisory Board under S.3 of this Act and shall comprise of elected members from the Vagrancy Advisory Board.

S.3A(2) The Vagrancy Advisory Board Panel shall be a rotational panel, reconstituted at the end of every 3-month period, with all of the three members being re-elected from the members comprising the Vagrancy Advisory Board.

S.3A(3) The Vagrancy Advisory Board Panel shall have the following powers—

- a) Determine the status of a person as a vagrant under S.7
- a) Determine whether a child apprehended under S.2(9) of this Act should be kept with his family or sent to the care of Juvenile Justice authorities
- b) Suggest and determine a rehabilitation process once a person has been identified as a vagrant and supervise the implementation of the rehabilitation process
- c)

S.4 VAGRANCY CONTROLLER

S.4(1) stands as it is

S.4(2) stands as it is

S.4(3) the Vagrancy Controller shall have the following powers—

- a) Maintain register of “vagrant home(s)” as defined under S. 2(10)
- b) Maintain an accessible forum for registration of pleas by people with harassment (by beggars) complaints
- c) Maintain an accessible forum for registration of pleas by beggars in need of help
- d) Require an up to date record of statistics from every municipality regarding beggars in a particular locality
- e) Facilitate co-operation and creation of information network with non government organisations
- f) Facilitate free and public availability of information regarding the complaint mechanism, vagrant home(s) register as well as any other relevant advocacy issues related to the conditions of vagrancy

Explanation: information network would be setup to access information regarding the status of vagrants in certain parts of West Bengal where municipalities are lacking information.

S.5 stands as it is.

S 5A – Save as otherwise expressly provided in this Act any provision applicable to vagrants under any other Act or Rules shall cease to have any effect so far as it is contradictory to the provisions of this Act.

CHAPTER II

Procedure

S6. (1) When the Controller of vagrancy receives information about a vagrant from the municipal or police records of a locality or from its own sources or from any person reporting at the information counter set up at the office of the Controller of vagrancy including the vagrant himself or any other sources, he shall authorize an officer under him to accompany a member of a Non Governmental Organisation which is locally active to approach the person reported to be a vagrant to assess whether he is in need of the protection of this Act and if found to be so, to appraise and convince him of the benefits of the process prescribed under this Act.

(2) If the person reported to be a vagrant refuses to accompany the officer mentioned in sub-section (1) the assistance of the family and friends of the person reported to be a vagrant and that of a trained counsellor shall be availed of to convince the person reported to be a vagrant of the benefits of the process prescribed under this Act.

(3) If the person reported to be vagrant refuses to accompany the officer despite efforts described in sub-section (1) and (2) and it is the opinion of both the officer and the member of the NGO mentioned in sub-section (1) that the protection of this Act is beneficial for the person reported to be a vagrant, then the assistance of the police may be availed of to convince the person reported to be a vagrant of the benefits of the process prescribed under this Act.

(4) No person reported to be a vagrant shall be approached by any authority mentioned in this section between 9 p.m. and 8 a.m.

(5) All authorities mentioned under this section will make all possible efforts to obtain the consent of the person reported to be a vagrant to accompany the officer.

Provided that in case the person reported to be a vagrant is a woman, either the officer or the member of the NGO mentioned in sub-section (1) shall be a woman.

Provided further that in case the person reported to be a vagrant is mentally ill then the assistance of the trained counselor shall be mandatorily availed of.

S 6A (1) When the person reported to be a vagrant agrees to accompany the officer under sub-section (1) of section 6 or is otherwise taken under sub-section (3) of Section 6, the person reported to be vagrant shall 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 remain in such receiving centre until he is presented before the Vagrancy Advisory Board Panel under S 7.

(2) Within 24 hours of the arrival of the person reported to be vagrant in the receiving centre the medical officer of such receiving centre shall with such medical help as may be necessary medically examine the person reported to be vagrant in the manner prescribed and shall thereupon furnish the officer-in-charge of the receiving centre with a medical report regarding the health and bodily and mental condition of the vagrant as soon as possible who shall then furnish the said medical report to the Controller of Vagrancy and the Vagrancy Advisory Board Panel within 48 hours of him receiving the report.

Provided that in case the person reported to be vagrant is a woman the medical officer shall be a woman and in circumstances that a woman medical officer is unavailable the medical examination shall be done in the presence of another woman.

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

- (a) The sex and age of the person reported to be a vagrant
- (b) Whether the person reported to be a vagrant is a leper
- (c) Whether the person reported to be vagrant is suffering from any other communicable disease other than leprosy, if so which one.
- (d) Whether the person reported to be a vagrant is mentally ill
- (e) The general state of health and bodily conditions of the person reported to be a vagrant and what kind of work he is fit to do, if any.

(4) In case a person reported to be a vagrant refuses to undergo the medical examination prescribed under sub-section (2) on prescribed invalid grounds he may be dealt with as per the Guidelines prescribed by the Vagrancy Advisory Board.

(5) If in the opinion of the officer accompany the person reported to be vagrant or the officer in charge or the person reported to be vagrant himself the person brought to the receiving centre is in need of the assistance of a trained counsellor the assistance of such trained counsellor shall be extended to the person reported to be a vagrant as soon as possible who shall then make a report on the mental and psychological condition of the person reported to be a vagrant and such report shall be annexed to the medical report mentioned in sub-section (2) and shall be furnished to such authorities as mentioned in sub-section (2).

(6) The officer in charge shall appraise the person reported to be a vagrant of all his legal rights on his arrival at the receiving centre and shall make provision to provide the facilities of the State Legal Aid Services Authority to the person reported to be a vagrant if the person so requires.

(7) The officer in charge shall present the person reported to be a vagrant before the Vagrancy Advisory Board Panel as soon as possible after the reports under sub-section (2) and sub-section (5) are prepared.

S7. (1) The Vagrancy Advisory Board Panel shall, when the person reported to be a vagrant is presented before it, make a summary inquiry in the prescribed manner into the circumstances of such person after giving the person reported to be a vagrant a chance of hearing and if satisfied that such person is a vagrant and needs and/or wishes the protection of this Act, shall make a declaration to that effect and suggest an appropriate method of rehabilitation for the vagrant in its report and the provisions relating to vagrants shall thereupon apply to such person.

Explanation I – The inquiry should give prominence to the statements and wishes of the person brought before the Vagrancy Advisory Board Panel.

Explanation II – The Panel should give due regard to the medical and psychological conditions of the person presented before it while suggesting the appropriate process of rehabilitation.

(1A) The Panel may, while making its inquiry, refer to the following documents inter alia-

- (a) The medical report mentioned in S 6A sub section (2).
- (b) The information available with the office of the Controller of Vagrancy
- (c) Reports of local NGOs
- (d) Statements of the officer in charge of the receiving centre
- (e) Statements of the medical officer

(2) If on making the summary inquiry referred to in sub section (1) the Vagrancy Advisory Board Panel is

- (a) Not satisfied that the person brought before it is a vagrant or
- (b) Believes that such person is not likely to resort to asking for alms in the future

Then such person shall forthwith be released and in case of sub section (b) after taking such bond or undertaking as may be prescribed.

(2A) If on making the summary inquiry referred to in subsection (1) the Vagrancy Advisory Board Panel is satisfied that the person brought to it is a child, such child shall be handed over to the custody of the authorities under the Juvenile Justice Act 2000 with a report of the findings of the Vagrancy Advisory Board Panel and shall be dealt with under the Juvenile Justice Act.

(3)The Vagrancy Advisory Board Panel recording a declaration and making a report under sub-section (1) shall complete and furnish its report to the Controller of Vagrancy within 10 days of the person reported to be a vagrant being presented before it who shall then forward copies of the report to the Vagrancy Advisory Board and the Officer in charge of the receiving centre within 5 days of receiving it.

S7A. The person declared to be a vagrant under sub-section (1) of Section 7 may appeal to the Special Magistrate in the prescribed manner and the officer in charge of the receiving centre and the Controller of Vagrancy shall make all efforts to provide the assistance of the State Legal Services Authorities if the person so wishes to appeal under this section.

S 8 – Omitted

S 9 (1) On receipt of the declaration and the report made by the Vagrancy Advisory Board Panel under subsection (1) of section 7 the officer in charge of the 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 special order in this behalf direct and the said officer in charge shall along with such vagrant send to the Manager of the said Vagrant's home –

- (a) The certified copy of the declaration and the report made under sub-section (1) of section 7
- (b) The medical report under subsection (2) of section 6A with the annexed report of the counselor if any under subsection (5) of section 6A.

(1A) While directing the vagrant to the vagrants home by the special order under subsection (1) the Controller should make all efforts to keep member of the family together provided the members wish to do so.

(2) Where a vagrant is sent to a vagrants' home under sub section (1) he shall be handed over to the care of the Manager of such home and shall remain therein or in a vagrants' home to which he may be transferred under S 16 until duly discharged there from under S18.

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

- (a) lepers
- (b) mentally ill persons
- (c) those suffering from communicable diseases other than leprosy
- (d) men and women

are segregated from each other and from vagrants who do not belong to any of the abovementioned classes.

Provided that such segregation is for the benefit of the vagrant concerned.

S10. (1) Notwithstanding whether the Vagrancy Advisory Board Panel finds a person brought before it is a vagrant, if during the inquiry made by the Vagrancy Advisory Board Panel under subsection (1) of section 7, it appears to the panel that the person brought before it is an illegal immigrant from another country, the Panel shall after making such further inquiry as it may deem necessary direct in writing that the person be handed over to the concerned authorities under the Foreigners Act 1946 (Act No. 31 of 1946) and he shall be dealt with under such Act.

Provided that if the Vagrancy Advisory Board Panel deems it necessary to make any further inquiry as aforesaid in respect of such vagrant, the vagrant shall be detained pending the conclusion of the said inquiry in such receiving centre as the Controller may by general or specific order in this behalf direct 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.

(2) If it is brought to the notice of the Controller or to any member of the Vagrancy Advisory Board that a vagrant in a vagrants' home under this Act is an illegal immigrant, a report in this regard shall be made to the Vagrancy Advisory Board Panel which shall make such further inquiry as may be necessary direct in writing that the person be handed over to the concerned authorities under the Foreigners Act 1946 (Act No. 31 of 1946) and he shall be dealt with under such Act.

Provided that if the Vagrancy Advisory Board Panel deems it necessary to make any further inquiry as aforesaid in respect of such vagrant, the vagrant may be detained pending the conclusion of the said inquiry in such receiving centre as the Controller may by general or specific order in this behalf direct 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.

S11. A declaration that a person is a vagrant recorded by the Vagrancy Advisory Board Panel under subsection (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 there under conveying a vagrant from one place to another as required under this Act or any rules 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 III

Receiving Centers and Vagrants' Homes

S12. (1) The State Government shall provide and maintain together with the necessary furniture and establishment one or more receiving centres at such place or places as is thought fit by the Vagrancy Advisory Board 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 the consent of the Vagrancy Advisory Board on such conditions as may be mutually agreed upon between the 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 State Government and who shall perform his functions subject to the orders of the Controller.

(3) The State Government shall also appoint for every receiving centre one or more suitably qualified persons as medical officers and counselors one third of whom shall be women.

S 13 (1) The State Government shall provide and maintain together with the necessary furniture, equipment and establishment one or more vagrants' home at such place or places, as is thought fit by the Vagrancy Advisory Board where the vagrant shall remain and undergo the prescribed rehabilitation process till he is fit to be discharged under section 18.

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

(2A) The Manager of the vagrants' home shall ensure the administration of the prescribed rehabilitation process in the prescribed manner and the discipline of the home as provided in the Guidelines issued by the Vagrancy Advisory Board and shall be responsible for incorporating the wishes of the vagrant, the suggestions of the Vagrancy Advisory Board Panel and the counselors at the vagrants' home in the rehabilitation process.

Provided in case of homes housing male and female vagrants, provisions for female wardens shall be made.

Explanation – for the purposes of this sub section ensuring administration would include administration of the functioning of the home and administration of rehabilitation processes on individual vagrants.

(2AA) The Manager shall make appraisals of the progress of individual vagrants every three months and a report of the same should be furnished to the Controller and the Vagrancy Advisory Board within 10 days of preparation of such report.

(3) The State Government shall appoint in respect of the vagrants' home a suitably qualified person as a medical officer and one or more suitably qualified persons as counselors and one or more suitably qualified person as teachers one third of all of whom shall be women.

(4) The State Government shall ensure provision of vocational training facilities, imparting of education and literacy, counselling facilities, recreational facilities, and special facilities for the disabled and aged and medical and nutritional necessities inter alia.

(5) The Manager should ensure that the vagrant undergoing rehabilitation is allowed

- (a) Free movement in and out of the home within the stipulated period
- (b) Access to means of communication
- (c) To meet visitors in the home

Subject to the discretion of the Manager who may prohibit any of the above acts if it is a threat to the individual vagrant or the process of rehabilitation or for any other reason mentioned in the Guidelines issued in this regard by the Vagrancy Advisory Board.

(6) The Manager shall ensure that a bank account is opened in the name of each vagrant and any money earned by the individual during his stay at the vagrants' home or any funds provided for the individual vagrant by any person shall be credited to the said account through the Controller who shall have the authority to operate all the bank accounts.

Provided that the vagrant may request for withdrawal of such amounts and for such purposes in such manner as may be provided in the Guidelines made in this regard by the Vagrancy Advisory Board.

S13A. (1) The State Government shall establish a Board of Visitors for every receiving centre and vagrants' home, constituted in such manner and consisting of such number of members as may be prescribed.

(2) A Board of Visitors may visit and inspect the receiving centre or 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 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 and inspect such receiving centre or vagrants' home at any time.

(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.

S 14. Every officer in charge of a receiving centre or Manager of a vagrants' home may order that any vagrant detained in such receiving centre or vagrants' home to be searched in the prescribed manner and that the personal effects of such vagrant shall be inspected and any money or item then found which the Manager considers unsuitable to be kept with the vagrant shall be kept in safe custody with the office of the Controller till such time as the vagrant is discharged under S 18 and shall be returned to him thereon.

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

Provided further, that any perishable goods found may be sold in the prescribed manner and the money obtained thereof be deposited in the bank account of the vagrant created under subsection (6) of section 13.

S 15. Vagrants in the receiving centre and the vagrants' homes under this Act shall be subject to such rules of management and discipline as may from time to time be provided in the Guidelines made in this regard by the Vagrancy Advisory Board.

S 16. (1) 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 the vagrants' home to which he has by such order been transferred. Provided that the Controller shall keep in mind the interest and well being of the vagrant while making such order of transfer.

(2) Any grievance with the decision of the Controller shall lie with the Vagrancy Advisory Board.

S 17. The Manager of a vagrant's home shall use his best endeavours to obtain outside the vagrants' home suitable employment for vagrants and small credit facilities from Governmental and non-governmental organisations.

S 18 (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 it 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 with the intention of remaining an occupational beggar shall be liable to be punished on conviction before a Magistrate with simple imprisonment for a term which may extend to one month or fine up to a maximum of five hundred rupees, or both.

CHAPTER IV

Penalties and Miscellaneous

S 19. Subject to the provisions of the Indian Penal Code 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 employs or uses another person to ask for alms for the purposes of making illegal or unconscionable gains 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.

S 20. Any person refusing or failing to accompany the authorities under section 6 despite all efforts being made by such authorities, with the intention of continuing to ask for alms may be liable to be punished on conviction before a Magistrate with simple imprisonment for a term which may extend to one month or with fine up to Rs. 500 or with both.

S 21. Omitted

S 22. Any vagrant who escapes from any custody to which he has been committed to 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 the vagrants' home without the permission of the Manager thereof, or who, having left a receiving centre or a vagrants' home for a time specified under the Guidelines referred to in section 15, willfully fails to return on the expiration of such time, all with the intention of continuing to ask for alms, may be liable to be punished on conviction before a Magistrate with simple imprisonment for a term which may extend to six months or with fine or with both.

S 22A. Subject to the provisions of the Indian Penal Code all offences mentioned under this chapter and subsection (2) of section 18 shall be cognisable and bail able.

S 23. Every person imprisoned under the provisions of sub-section (2) of section 18, section 20 or section 22 shall at the end of his term of imprisonment be brought under police custody before the Vagrancy Advisory Board Panel who shall forthwith deal with such person in the manner laid down in sections 6A, 7 and 9 as if such person had been brought before it under section 6.

Provided that if the said Vagrancy Advisory Board Panel 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 there from under the provisions of subsection (1) of section 18 they may, instead of dealing with such person as aforesaid, direct that such person be released and such person shall thereupon be set at liberty.

Provided further the person imprisoned may be retained in police custody instead of the receiving centre pending the inquiry of the Vagrancy Advisory Board Panel if it is deemed necessary by such Panel.

S 24. (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 tried by any Magistrate other than a Presidency Magistrate or a Magistrate of the First Class.

S25. 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.

S26. No suit, prosecution, or other legal proceeding shall lie against any person empowered to perform any function under this Act for any action taken or intended to be taken in good faith.

S26A. Any official of an NGO who is empowered to perform any function under this Act shall be liable in such manner and for such penalty as may be prescribed.

Provided such liability and penalty is in parity with the liability and penalty prescribed for the Government officials under this Act.

S27 stands as it is

S27A. (1) In order to carry out the purposes of this Act, a fund called the Vagrancy Relief Fund shall be formed which shall consist of –

- (a) subscriptions and donations;
- (b) grants from the government;
- (c) the cess paid under section 27AA;
- (d) grants from local bodies and other private or public institutions;

- (e) fines recovered under this Act; and
- (f) receipts from other sources.

(2) The Vagrancy Relief Fund shall be administered by a Committee consisting of the Secretary of the Government, Social Welfare and Labour Department who shall be the Chairman and two members of the Vagrancy Advisory Board and the Director of Social Welfare and a representative of the Finance Department nominated by the Government who shall be members of the Committee.

(3) Subject to such rules as may be prescribed the Vagrancy Relief Fund shall be applied for such purposes and in such manner as may be decided by the Committee constituted under subsection (2) from time to time.

S27AA. (1) With effect from such date as the Government may by notification appoint, a beggary cess in the form of a surcharge on –

- (a) tax on lands and buildings;
- (b) tax on entry of goods into the local areas of consumption, use or sale therein;
- (c) tax on vehicles;
- (d) tax on professions, trades, callings and employments,

shall be levied in the area within the jurisdiction of every local authority under the relevant laws relating to the levy of such taxes at the prescribed rate.

(2) The cess levied under subsection (1) shall be collected by the local authority concerned as if the cess were a tax payable under the relevant laws for the time being in force and the provisions of the said laws relating to the levy and collection of the said tax shall apply in respect of the levy and collection of such cess subject to such modifications as may be prescribed.

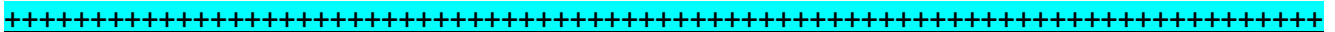
(3) The local authority shall be entitled to deduct as the cost of collection such percentage of the amount collected under subsection (2) as prescribed and the balance shall be paid by such local authority to the Committee constituted under subsection (2) of section 27A within such time and in such manner as the Government may direct.

S28. (1) The State Government may make rules 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 subsection (9) of section 2;
- (b) the constitution of the Board referred to in subsection (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 the vagrant is to be sent to a receiving centre under sub section (1) of section 6A ;
- (e) the manner in which a medical officer is medically to examine a vagrant under subsection (2) of section 6A;
- (f) the types of works for which a vagrant may be reported fit under clause (e) of subsection (3) of section 8.
- (g) The manner in which a vagrant is to be sent to a vagrants' home under subsection (1) of section 9.
- (h) Omitted
- (hh) the manner in which the board of visitors may be constituted under subsection (1) of section 13 A and the number of members which a Board of Visitors may consist of;
- (i) the manner in which search may be made under section 14;
- (j) omitted
- (k) omitted
- (l) the manner in which the 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 subsection (1) of section 18 that satisfactory employment has been obtained for a vagrant;
- (n) the amount of bond referred to in clause (c) of subsection (1) of section 18;
- (o) the officer referred to in subsection (1) of section 24.
- (p) The method of nomination of members to the Committee mentioned in subsection (1) of section 27;
- (q) The purposes for which the Vagrancy Relief Fund may be applied under Section 27A;
- (r) The manner in which appeal can be made to the Special Magistrate under section 7A;
- (s) The process of rehabilitation that should be followed in the vagrants' home under section 13.
- (t) The rates of tax under subsection (1) of section 27AA and the deductions allowed by the local authorities under subsection (3) of section 27AA.



The Present Vagrancy Act in West Bengal

Bengal Vagrancy Act-1943: BEGGAR LEGISLATION IN INDIA

APPENDIX - IV

PART – I

Bengal Vagrancy Act 1943

PART III Acts of the Bengal Legislature.

GOVERNMENT OF BENGAL LEGISLATIVE DEPARTMENT

NOTIFICATION

No. 986-L. 23rd October, 1943. The following Act of the Bengal Legislature, having been assented to in His Majesty's name by the Governor, thereby published for general information:

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4. Appointment of Controller of Vagrancy and his assistants.
5. Special Magistrates.

Chapter II

PROCEDURE

6. Power to require apparent vagrant to appear before Special Magistrate.
7. Summary inquiry in respect of apparent vagrant and declaration of person to be a vagrant by Special Magistrate.
8. Detention in receiving centre and medical examination of vagrant.
9. Procedure for sending vagrant to vagrants' home.

10. Internment of vagrant from area in which Act is in force.
11. Validity of custody and detention of vagrant.

Chapter III

RECEIVING CENTRES AND VAGRANTS* HOME

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19. Punishment for employing or causing person to ask for alms.
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23. Procedure at end of imprisonment.
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25. Persons to be deemed public servants.
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28. Power to make rules.
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BENGAL ACT VII OF 1943
The Bengal Vagrancy Act, 1943

(Passed by the Bengal Legislature)

[Assent of the Governor was first published in the Calcutta Gazette Extraordinary of the 25th October 1943.] 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:

CHAPTER- I
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 Bengal.
- (3) It shall come into force in Calcutta at once and in such other areas on such other dates as the Provincial Government may, by notification in the Official Gazette[^] direct.

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;
- (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 IV 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;
- (5) "Person of European extraction" has the same meaning as in the European Vagrancy Act, 1874 IX of 1874;
- (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 Provincial 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 not being of European extraction 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 gift for a prescribed purpose;

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

3. Vagrancy Advisory Board: (1) The Provincial 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 the members of the Board shall not be less than ten.

(3) The function of the Board shall be to advise the Provincial 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 Provincial 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.

4. Appointment of Controller of Vagrancy and his assistants:

(1) For carrying out the purposes of this Act the Provincial 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.

5. Special Magistrates: For the purposes of Chapter II of this Act the Provincial Government may empower any Presidency Magistrate in Calcutta and any Magistrate of the first class elsewhere to act as a Special Magistrate.

Procedure

6. Power to require apparent vagrant to appear before Special Magistrate: Any police officer authorized 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 a 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 of (!) 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 there from 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.

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

(a) the sex and age of the vagrant ;

(6) whether the vagrant is a leper ;

(?) flpom 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

(8) 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 there from 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. Internment 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 court 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 there from 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 there under 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 of vagrants' home, as the case may be.

Receiving centers' and vagrants' home

12. Provision of receiving centers':

(1) The Provincial Government may provide and maintain together with the necessary furniture and establishment one or more receiving centers' 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 Provincial 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 Provincial Government and who shall perform his functions subject to the orders of the Controller

(3) The Provincial Government shall also appoint for 1 every Deceiving centre one or more suitably qualified persons as medical officers, IS, Provision of vagrants' homes: (I) The Provincial 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 vagrant's home shall be under the immediate charge of a Manager who shall be appointed by the Provincial Government and who shall perform his functions subject to the orders of the Controller.

(3) The Provincial 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.

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 or 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 centers 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 willfully 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 Provincial Government may authorize the Manager of a vagrants' home to punish any vagrant detained in such vagrants' home who willfully 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).

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.

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 there under 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, willfully 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 there from 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 tri able by any Magistrate other than a Presidency Magistrate or a Magistrate of the first class.

25. Persons to be deemed public servants: (Act XLV of 1800) 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.

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. Repeal: (Ben. Act IV of 1866; Ben. Act. II of 1866). Section 70A of the Calcutta Police Act, 1866, and section 40A of the Calcutta Suburban Police Act, 1866, is hereby repealed.

28. Power to make rules: (1) The Provincial Government may make rules 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 8 ;

(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 ;

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

(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 centers 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 14. 29. Continuance of action taken under Bengal Ordinance II of 1943: 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.
