

THE BALOCHISTAN VAGRANCY ORDINANCE, 1958

(W.P. Ordinance XX of 1958)

CONTENTS

SECTIONS

Preamble.

1. Short title, extent and commencement.
2. Definitions.
3. Welfare homes.
4. Manager.
5. Duties of the manager.
6. Voluntary admission to welfare homes.
7. Powers of police officer to arrest and search vagrants and to seize things liable to confiscation.
8. Trial.
9. Sentence for vagrancy.
10. Punishment for employing or causing persons to ask for alms.
11. Presumption.
12. Detention of dependents.
13. Compulsory contribution by persons bound to maintain vagrants.
14. Place of detection or imprisonment.
15. Transfer of vagrants from welfare homes.
16. Release on probation or short leave.
17. Powers of discharge of vagrants from welfare homes
18. Effect of other laws and enactments.
19. Cognizance and bail.
20. Jurisdiction.

21. Appeal.
22. Persons to be deemed to be public servants.
23. Indemnity.
24. Articles liable to confiscation.
25. Power to make rules.
26. Repeal.

¹THE ²[BALOCHISTAN³] VAGRANCY ORDINANCE, 1958

(W.P. Ord. XX of 1958)

[1st October, 1958]

An Ordinance to amend and consolidate the law relating to vagrancy in the Province of ²[Balochistan].

Preamble.

WHEREAS it is expedient to amend and consolidate the law relating to vagrancy in the Province of ²[Balochistan] in the manner hereinafter appearing;

AND, WHEREAS, the Provincial Assembly of West Pakistan is not in session and the Governor of West Pakistan is satisfied that circumstances exist which render immediate action necessary;

NOW, THEREFORE, in exercise of the powers conferred by Article 102 of the Constitution, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance:—

Short title, extent and commencement.

1. (1) This Ordinance may be called the ²[Balochistan] Vagrancy Ordinance, 1958.

⁴[(2) It extends to the whole of the Province of ²[Balochistan] except the Tribal Areas.]

(3) It shall come into force in such area or areas and on such date or dates as Government may, by notification, direct.

Definitions.

2. In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

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

(b) "Controller" means the Controller of Vagrancy, ⁵[Balochistan];

¹ This Ordinance was promulgated by the Governor of W.P. on 1st October, 1958; published in the W.P. Gazette (Extraordinary), dated 1st October, 1958; pages 1343-1350; saved and given permanent effect by Article 225 of the Constitution of the Islamic Republic of Pakistan (1962).

² Subs. by Baln. A.O. 1975, for "West Pakistan".

³ Spelling of the word "Baluchistan", wherever it appears in this Ordinance, is corrected by insertion of letter "o" instead of "u", as per Government of Balochistan, S&GAD's Notification No. SORI (4) 6/ S&GAD-89, dated 18th June, 1989.

⁴ Subs. by W.P. Ord. VII of 1964.

⁵ Subs. by Baln. A.O. 1975, for "West Pakistan".

- (c) "Government" means the Government of ¹[Balochistan];
- (d) "guardian" in relation to a child, includes any person who in the opinion of the court having cognizance of any case in which a child is concerned, has for the time being the charge of or control over such child;
- (e) "prescribed" means prescribed by rules made under this Ordinance;
- (f) "public place" includes any public park, garden, railway station, ground or vehicle to which the public for the time being have access, whether on payment or otherwise;
- (g) "vagrant" means a person who—
 - (i) solicits or receives alms in a public place;
 - (ii) exposes or exhibits any sore, wound, injury, deformity or disease in a public place for the purpose of soliciting or receiving alms;
 - (iii) allows himself to be used as an exhibit for the purpose of soliciting or receiving alms;
 - (iv) enters on any private premises without the invitation of the occupier for the purpose of soliciting or receiving alms; but does not include a person who solicits or receives money, food or gift for a purpose authorised by rules under a prescribed certificate;
- (h) "welfare home" means an institution established and maintained by Government for the detention, training, employ-ment and maintenance of vagrants and their dependents other than

those who are lepers, lunatics or suffering from contagious diseases and includes an institution notified by Government as such for the purposes of this Ordinance.

Welfare homes.

3. (1) Government shall establish and maintain one or more welfare homes at such place or places as it thinks fit for the custody and detention of vagrants.

(2) Government may, by notification, declare any existing charitable or other institution with previous consent of the controlling authority of such institution and on such conditions as may be mutually agreed upon between Government and the said authority, to be a welfare home for the purposes of this Ordinance.

Manager.

4. Every welfare home shall be under the immediate charge of a manager appointed by Government and such manager shall be assisted by such medical and educational staff as Government may appoint.

Duties of the manager.

5. (1) The manager of a welfare home shall, as soon as may be, get every vagrant medically examined and the report of the examination shall state, *inter alia*—

- (a) the sex and the age of the vagrant;
- (b) whether the vagrant is a leper?
- (c) whether he is suffering from any other contagious disease?
- (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 such vagrant is fit?

(2) The manager of a welfare home shall keep the following classes of vagrants separately from each other—

- (a) children;
- (b) females;
- (c) lepers or persons suffering from contagious diseases;
- (d) lunatics;
- (e) infirm, old or incapacitated;
- (f) able bodied:

Provided that children less than seven years of age or females may be allowed to take up residence in the same apartment in which any male member of their family is confined.

(3) The manager shall arrange—

- (a) for the education of the children detained in the welfare home;
- (b) for such instruction of the vagrants, as may rehabilitate them in useful trades and make them self-supporting.

Voluntary admission to welfare homes.

6. Any old, infirm or disabled person or a child may present himself before the District Magistrate for being admitted to a welfare home and if the District Magistrate is satisfied that such person has no source of livelihood, he may be detained in a welfare home till such time as such person becomes possessed of means of livelihood or applies for his release from custody.

Powers of police officer to arrest and search vagrants and to seize things liable to confiscation.

7. (1) Any police officer may without an order from a magistrate and without a warrant, arrest and search any person who appears to him to be a vagrant and may seize anything found on or about such person which he has reason to believe to be liable to confiscation under this Ordinance.

(2) A person arrested under the last preceding subsection, shall be released if he furnishes bail to the satisfaction of the police officer making arrest for his appearance before the

magistrate having jurisdiction in the area where the arrest is made.

(3) If the person arrested is not able to furnish bail to the satisfaction of the police officer making arrest, such person shall be detained in custody and shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the magistrate and no such person shall be detained in custody beyond the said period without an authority of the magistrate.

Trial.

8. When the person arrested under the last preceding section appears or is brought before the magistrate, he shall be tried in accordance with the procedure prescribed for the trial of summons cases under Chapter XX of the ¹Code of Criminal Procedure, 1898:

Provided that whenever any magistrate, after having heard and recorded the whole or any part of the evidence in a trial, ceases to exercise jurisdiction therein, and is succeeded by another magistrate, who has and who exercises such jurisdiction, the magistrate so succeeding may act on the evidence so recorded by his predecessor or partly recorded by his predecessor and partly recorded by himself, or he may re-summon the witnesses and recommence the enquiry or trial.

Sentence for
vagrancy.

²[9. If the Magistrate finds that a person is a vagrant, such person who is not suffering from any physical incapacity, shall be punished with imprisonment of either description for a period not exceeding five years:

Provided that in any case in which a person who has not been previously convicted of an offence under this Ordinance, is convicted of an offence under this Ordinance, the Magistrate may instead of sentencing him to a term of imprisonment, release him after due admonition on his, or in case such vagrant is a child, on his guardian entering into a bond with or without sureties to appear and receive the sentence when called upon during such period (not exceeding five years) as the Magistrate

¹ i.e. Act V of 1898.

² Sec. 9 subs. by Baln. Ord. II of 1983.

may direct and in the meantime to refrain from conducting himself as a vagrant.)

Punishment for
employing or
causing
persons to ask
for alms.

10. Whoever employs or causes any person to solicit or receive alms or uses a person as an exhibit for the purpose of soliciting or receiving alms or being the guardian of a child connives at or encourages the employment or the causing of the child to solicit or receive alms shall be punished with imprisonment of either description for a term which may extend to ¹[five years or with whipping not exceeding thirty stripes, or with both].

Presumption.

11. If a person has no ostensible source of subsistence and wanders about or remains in a public place in such condition or manner as raises a reasonable suspicion that he is there to solicit or receive alms, it shall be presumed, unless the contrary is proved that such person is a vagrant.

Detention of
dependents.

12. (1) If any vagrant sentenced under section 9 to a term of imprisonment has a child below seven years of age or any other person wholly dependent upon him, the magistrate may, after making such inquiry as he thinks fit and after giving such person an opportunity of being heard, direct that such child or person shall be detained, in the welfare home so long as the vagrant remains in custody:

Provided that a child of the vagrant who is below the age of seven years shall be detained along with the vagrant until he attains the age of seven years.

(2) Where the dependent is a child above seven years of age, or when the child detained under the last preceding sub-section, attains the age of seven years, the magistrate or any other officer empowered by Government in this behalf may direct that such child be detained in any other institution approved by Government.

Compulsory
contribution by
persons bound
to maintain

13. (1) If the magistrate is satisfied that a vagrant or a person bound to maintain a vagrant has sufficient means, he shall make an order directing such vagrant or the person bound to maintain such vagrant, as the case may be, to contribute in

¹ Subs. for "one year or with fine or with both" by Baln. Ord. II of 1983.

vagrants.	the prescribed manner towards the maintenance of such vagrant in a welfare home: Provided that no order under this sub-section shall be made without giving the person from whom contribution is required the opportunity of being heard. (2) If any contribution directed by the magistrate under the last preceding sub-section remains unpaid, the same may be recovered as arrears of land revenue.
Place of detection or imprisonment.	14. A vagrant arrested under this Ordinance shall remain in custody, or, if convicted serve his term of imprisonment in the prescribed manner, as the case may be, in the nearest welfare home or such other place as Government may by general or special order, direct.
Transfer of vagrants from welfare homes.	15. The Controller or any other officer specially empowered by Government in this behalf may by an order in writing direct the transfer of a vagrant from one welfare home to another or to any other place appointed by Government in this behalf.
Release on probation or short leave.	16. The Controller or other officer specially empowered by Government in this behalf may, subject to such conditions as may be prescribed,— (a) release any vagrant on probation after he has served imprisonment for a period not less than one year; (b) release a vagrant detained in a welfare home by granting him a licence and, after the expiration of three months from the commencement of the release on licence, recommend to Government the unconditional release of such vagrant if he considers that there is probability of such vagrant's abstaining from vagrancy; (c) grant short leave of absence to any vagrant detained in a welfare home ¹[and the District of Karachi]:

Provided that a vagrant contravening any condition relating to his release on licence may be re-arrested under the orders of the Controller and sent to the welfare home for completing the sentence awarded to him under section 9.

¹ Ins. by W.P. Ord. VII of 1964.

Powers of discharge of vagrants from welfare homes	17. The Controller or any other officer specially empowered by Government in this behalf may discharge a vagrant from a welfare home— (a) if he is satisfied that a vagrant has become possessed of an income sufficient to enable him to support himself without resorting to vagrancy; (b) if a relative of such vagrant, or a person interested in the welfare of the vagrant, enters into a bond with or without sureties to look after and maintain such vagrant and to prevent him from resorting to vagrancy; (c) on the certificate of the manager of the welfare home that satisfactory employment has been obtained for such vagrant: (d) for any other good and sufficient reason to be recorded in writing.
Effect of other laws and enactments.	18. The provisions of this Ordinance, and any order made or action taken under this Ordinance, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Ordinance, for the time being in force, and any instrument having its effect by virtue of any such enactment other than this Ordinance.
Cognizance and bail.	19. All offences under this Ordinance shall be cognizable and bailable.
Jurisdiction.	20. No offence under this Ordinance shall be triable by any magistrate other than a magistrate of the first class.
Appeal.	21. Any person aggrieved by an order of a magistrate under this Ordinance may within thirty days of such order appeal to the District Magistrate and if such order is made by the District Magistrate, to the Sessions Court.
Persons to be deemed to be public servants.	22. All persons empowered to perform any function under this Ordinance shall be deemed to be public servants within the meaning of section 21 of the ¹Pakistan Penal Code, 1860.
Indemnity.	23. No suit, prosecution, or other legal proceeding shall lie

¹ i.e. Act XLV of 1860.

against any person for anything in good faith done or intended to be done under this Ordinance.

Articles liable to
confiscation.

24. All things and money found on or about a vagrant except the necessary wearing apparel shall be liable to confiscation to Government under this Ordinance.

Power to make
rules.

25. (1) Government may make rules for carrying out the purposes of this Ordinance.

(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 solicit or receive money or ask for food or gift referred to in clause (g) of section 2 and the form of the certificate;
- (b) the manner in which Controller shall discharge his functions;
- (c) the manner in which a medical officer may examine a vagrant;
- (d) the types of works for which a vagrant may be reported fit;
- (e) the types of the hard labour which is to form the punishment;
- (f) the manner in which an imprisonment under this Ordinance may be served;
- (g) the manner in which a vagrant may be transferred from one welfare home to another or to any other place of detention;
- (h) the manner in which the manager of a welfare home is to certify that satisfactory employment has been obtained for a vagrant;
- (i) the place or institutions where children detained under this Ordinance are to be confined;
- (j) the places or institutions where lepers, lunatics and persons suffering from

contagious diseases may be confined.

(3) Every rule under this Ordinance shall be laid before the ¹[Balochistan] Assembly and may be amended or repealed by a resolution of the said Assembly.

Repeal.

26. The ²Sind Vagrancy Act. 1947, is hereby repealed.

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¹ Subs. by Baln. A.O. 1975, for "West Pakistan".

² i.e. Sind Act XVII of 1947.