

Sikkim Prohibition of Beggary Act, 2004

SIKKIM

India

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Act 4 of 2004

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Sikkim Prohibition of Beggary Act, 2004(Act No. 4 of 2004)Last Updated 10th June, 2020[Dated 4.10.2004.]An Act to prohibit persons from resorting to begging and to provide for the detention, training and employment of beggar and offenders, their custody, trial and punishment of beggar and offenders and for the relief and rehabilitation of such persons in the State of Sikkim.Whereas it is deemed necessary and expedient to prohibit persons from resorting to begging and to provide for the detention, training and employment of beggars and offenders their custody, trial and punishment of beggar and offenders and for the relief and rehabilitation of such persons in the State of Sikkim.Be it enacted by the Legislature of Sikkim in the Fifty-fifth Year of the Republic of India as follows: -

Chapter I Preliminary

1. Short title, extent and commencement.

(1)This Act may be called the Sikkim Prohibition of Beggary Act, 2004.(2)It extends to the whole of Sikkim.(3)It shall come into force on such date as the State Government may, by Notification in the Official Gazette, appoint.

Chapter II 2. Definition.

(1)In this Act, unless the context otherwise requires;(a)"alms" means anything given gratuitously to a beggar such as money, cooked or uncooked food, grains or clothing or any other things of value.(b)"beggar" means any person other than a child who-(i)solicits or receives alms in a public place, whether or not under any pretence such as singing, dancing, fortune-telling, performing or offering any article for sale;(ii)enters on any private premises for the purpose of soliciting or

receiving alms;(iii)exposes or/exhibits, with the object of obtaining or extorting alms, ally sore, wound, injury, deformity or disease whether of a human being or animal;(iv)having no visible means of subsistence and wandering about or remaining in any public place in such condition or manner, as makes it likely that the person doing so exists by soliciting or receiving alms;(v)allows oneself to be used as an exhibit for the purpose of soliciting or receiving alms:Provided that a person shall not be deemed to be a beggar if he:-(i)is a religious mendicant licensed by the competent authority as may be designated by the State Government to solicit alms in the prescribed manner; or(ii)in the performance of any religious vow or obligations as sanctioned by custom or religion collects alms in a private or public place, without being a nuisance; or(iii)is permitted in writing by the competent authority as may be designated by the State Government to collect contribution in cash or kind from the public for any public institution, whether religious or secular or for the furtherance of any object for the good of the public; or(iv)is a student collecting alms for the prosecution of his studies.(c)"Certified Institution" means any institution which the State Government provides and maintains for the detention. training and employment of beggar and offenders and their dependants, and includes an institution certified to be such under sub-section (1) of Section 13:(d)"child" means the child depend under the Juvenile Justice (Care and Protection) Act, 2000;(e)"Court" means the Court of a Judicial Magistrate of 1st and II nd class, or any other Court exercising criminal jurisdiction in the State of Sikkim;(f)"Juvenile Justice Board" means the Board constitute under the Juvenile Justice (Care & Protection) Act, 2000;(g)"prescribed" means prescribed by rules made under this Act;(h)"Probation Officer" means an officer appointed to be a Probation Officer under sub-section (1) of Section 16;(i)"public place" means any place intended for use of or accessible to the public and includes any public conveyance;(j)"Superintendent" means the person appointed to be the Superintendent of Certified Institution under sub-section (1) of Section16;(k)"Receiving Centre" means an institution for the reception and temporary detention of beggar and offenders provided by the State Government or certified to be such under sub-section (1) of Section 12.

Chapter III

Procedure For Dealing With Beggars and Beggar Offenders

3. Powers of Courts.

(1)The powers conferred on Courts by this Act shall be exercised only by a Court of Magistrate of the First Class, a Juvenile Court or any other Court exercising criminal Jurisdiction- In-the area and may be exercised by such Courts whether the case comes before them originally or on appeal or revision.

4. Powers to require person found begging to appear before Court.

(1)Any police officer or other person authorized in this behalf in accordance with rules made by the State Government, may arrest without a warrant any person who is found begging:Provided that, no person entering on any private premises for the purpose of soliciting or receiving alms shall be so arrested or shall be liable to any proceedings under this Acts except upon a complaint by the

occupier of the premises.(2)Such police officer or other person shall take or send the person so arrested to a Court.(3)The provisions of Section 57 of the Code of Criminal Procedure, 1973, shall apply to every arrest under this sections and the officer in charge of the police station or section shall cause the arrested person to be kept in the prescribed manner until he can be brought before a Court.

5. Summary inquiry in respect of persons found begging.

(1)Where a person who is brought before the Court under the last preceding section is not proved to have previously been detained in a Certified Institution under the provisions of this Act, the Court shall make a summary inquiry in the prescribed manner as regards the allegation that he was found begging.(2)If the inquiry referred to in sub-section (1) cannot be completed forthwith, the Court may adjourn it from time to time and order the person to be remanded to such place and custody as may be convenient.(3)If, on making the inquiry referred to in sub-section (1), the Court is not satisfied that the person was found begging, it shall order that such person be released forthwith.(4)If, on making the inquiry referred to in sub-section (1), the Court is satisfied that such person was found begging, it shall record a finding that the person is a beggar and offenders.(5)The Court shall order the person found to be a beggar and offenders under the last preceding sub-section to be detained in a Certified Institution for a period of not less than one year but not more than three years:Provided that, if the Court is satisfied from the circumstances of the case that the person found to be a beggar and offenders as aforesaid is not likely to beg again, it may after due admonition release the beggar and offenders on a bond for the beggar and offenders abstaining from begging and being of good behaviour being executed with or without sureties as the Court may require by the beggar and offenders or any other person whom the Court considers suitable.(6)In passing any order under the provisions of this Act, the Court shall have regard to the following considerations, that is to say -(a)the age and character of the beggar and offenders,(b)the circumstances and conditions in which the beggar and offenders was living,(c)reports made by the Probation Officer, and(d)such other matters as may, in the opinion of the Court, required to be taken into consideration in the interest of the beggar and offenders.(7)The report of the Probation Officer or any other report considered by the Court under clause (c) of sub-section (6) of Section 5 immediately preceding, shall be treated as confidential:Provided that if such report relates to the character, health or conduct of or the circumstances and conditions in which the beggar and offenders is living, the Court may, if it thinks expedient, communicate the substance thereof to the beggar and offenders or in case of dependants to the guardian concerned and may give the beggar and offenders or the guardian, as the case may be, an opportunity of producing evidence which may be relevant to the matters stated in the report.(8)A copy of the order made under sub-section (5) of Section 5 shall be sent forthwith to the Superintendent.(9)Notwithstanding anything in this section, when the person found to be a beggar and offenders as aforesaid is a child, being a child who is not under the age of five years, the Court shall forward him to a Juvenile Court and shall not make any order under sub-section (5). The Juvenile Court shall deal with the child as per Juvenile Justice (Care & Protection) Act, 2000. For the purpose of ascertaining the age of the person, the Court may, if necessary, cause the beggar and offenders to be examined by a Medical officer.

6. Penalty for begging.

(1)Whoever, having been previously detained in a Certified Institution under this Act is found begging shall on conviction be punished as hereinafter provided.(2)When a person is convicted for the first time under sub-section (1), the Court shall order him to be detained in a Certified Institution for a period of not less than two years and not more than three years.(3)When a person is convicted for the second or subsequent time under sub-section (1), the Court shall order him to be detained for a period of ten years in a Certified Institution and may convert any period of such detention (not exceeding two years) into a sentence of imprisonment extending to a like period.

7. Offences to be tried summarily.

- All offences under this Act except those Under Section 11 shall be tried in a summary way.

8. Contribution of parents.

(1)The Court, which makes an order for the detention of any person in a Certified Institution under Section 5 or section 6, may make an order on the parent or other person liable to maintain him, to contribute to his maintenance, if able to do so, in the manner prescribed.(2)Before making any such order, the Court shall inquire into the circumstances of the parent or other person liable to maintain him and shall record evidence, if any, in the presence of the parent or such other person, as the case may be.(3)Any order made under this section may on an application, made by the party liable, or otherwise, be varied by the Court.(4)Any order made under this section may be enforced in the same manner as an order under Section 125 of the Code of Criminal Procedure, 1973.

9. Court may order detention of persons wholly dependent on beggar.

(1)When the Court has ordered the detention of person in a Certified Institution under section 5 or section 6, it may, after making such inquiry as it thinks fit, order any other person who is wholly dependent on such person to be detained in a Certified Institution for a like period:Provided that before such order is made, such dependent person shall be given an opportunity of show cause as to why such order should not be made.(2)Where the dependent person is a child the Court shall forward him to a Juvenile Court which shall deal with him according to the Juvenile Justice (Care and Protection) Act, 2000:Provided that where the dependent person is the beggar and offenders own child, being a child who is under the age of five years and the beggar and offenders is an able bodied mother, not being a contagious leper or a lunatic, the child may be ordered to be detained in a Certified Institution without being separated from the mother as regards the place of detention, until it attains the age of five years and thereafter dealt with as provided in this sub-section.(3)For the purpose of this section, the Court may if necessary, cause the dependent person to be arrested and brought before itself and caused to be examined by a Medical Officer. The provisions of section 57 of the Code of Criminal Procedure, 1973 shall apply to every arrest under this sub-section and the Officer- in- Charge of the Police Station or section shall cause .the arrested person to be kept in the prescribed manner until he can be brought before a Court.

10. Power of state government to order further detention of incurably helpless beggars.

- When any person who is detained in a Certified Institution under Section 5 or Section 6 or Section 9, is considered, whether on an application made by him to the State Government or otherwise by the State Government to be blind, a cripple, or otherwise incurably helpless. the State Government may order that he shall, after the expiry of the period of his detention, be further detained indefinitely in a Certified Institution: Provided that the State Government may release any such inmate if any person whom the State Government considers suitable executes a bond, with or without sureties as the State Government may require, making himself responsible for the housing and maintenance of such inmates and for preventing him from begging or being used for the purpose of begging.

11. Penalty for employing or causing persons to beg or using them purpose of begging.

- Whoever, employs or causes, any person to solicit or receive 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 solicit or receive alms or whoever uses another person as an exhibit for the purpose of begging shall on conviction, be punished with imprisonment for a term to which may or extend to three years but which shall not be less than one year.

Chapter IV

Receiving Centres and Certified Institutions

12. Receiving centres.

(1) The State Government may provide and maintain one or more Receiving Centres at such place or places as it thinks fit and may certify any institution to be a Receiving Centre for the purposes of this Act. (2) Every such Receiving Centre shall be under the control of a Superintendent.

13. Certified Institutions.

(1) The State Government may provide and maintain one or more Certified Institutions at such place or places as it thinks fit and may certify any institution to be a Certified Institution for the purposes of this Act. Any such Certified Institution may include provision for the teaching of agricultural, industrial and other pursuits and for the general education and medical care of the inmates. (2) Every such Certified Institution shall be under the charge of a Superintendent.

14. Visiting committees.

- For every Receiving Centre and every Certified Institution, the State Government shall appoint a Visiting Committee in such manner as may be prescribed.

15. Advisory committees.

(1)The State Government may constitute for any area in which this Act was brought into force in the manner provided in sub-section (3) of Section 1, an Advisory Committee consisting of such persons not exceeding 6 (six) in number.(2)Penalty for Beggging. - The Advisory Committee constituted under sub-section (1) or any member thereof, may visit at all reasonable times and after due notice to the Superintendent any Certified Institution in which beggar and offenders are detained.(3)The Advisory Committee may also -(a)lender advice as regards management to any Certified Institution through Superintendent or such other officer as the State Government may specify;(b)Offences to be tried summarilly. - advise the State Government through the Superintendent as regards the certification of any Institution as a Certified Institution or the de-certification of any Certified Institution;(c)Contribution of Parents. - advise the State Government generally on the working of this Act in that area and particularly on any point referred to it by the Superintendent or any other officer specified by the State Government.

16. Appointment of Superintendent, Inspectors and Probation Officers.

(1)For carrying out the purposes of this Act, the State Government may appoint a Superintendent of a receiving centre and an Inspector and a Probation Officer as it thinks advisable to assist the Superintendent and every person so appointed to assist the Superintendent shall have such powers and perform such of the duties of the Superintendent as the State Government directs but shall act under the direction of the Superintendent.(2)Every Receiving Centre and Certified Institution shall, at least once in every six months, be inspected by the Visiting Committee.

17. Search in receiving Centres and Certified Institutions.

- The Superintendent of a Receiving Centre or a Certified Institution may order that any person received in the Receiving Centre or Certified Institution shall be searched, that he shall be cleansed, that his personal effects shall be inspected and that any money or valuables found with or on the person shall be kept in the custody of the Superintendent, and that any effects other than money or valuables so found shall be disposed of in the prescribed manner. Where an order of detention is passed by the Court against any such person, the Superintendent may order that any money or valuables found with or on the person shall be disposed of in the prescribed manner. Where the Court passes an order other than an order of detention with regard to any such person, his money and valuables shall be returned to him, and if his clothing has been destroyed, he shall be provided with fresh clothing. The expenses of providing such clothing shall be paid out of moneys provided by the concerned Department:Provided that a female shall be searched only by a female and with due regard to decency.

18. Management and discipline.

- The persons remanded to, or detained in, Receiving Centres and Certified Institutions under this Act shall be subject to such rules of management and discipline, including the imposition of manual or other work and the awarding of punishment for breach of any such rules, as may, from time to time, be prescribed.

19. Disciplinary imprisonment.

(1) Without prejudice to any disciplinary action that may be taken under this section immediately preceding, the Superintendent or the Inspector may report to the Court the case of any person detained in a Certified Institution who habitually and wilfully disobeys or neglects to comply with any rule referred to in that section and the Court may thereupon, if satisfied that the person has wilfully disobeyed or neglected to comply with any such rule, convert the balance of the period of his detention in a Certified Institution or part thereof into a term of imprisonment. (2) The sentence of imprisonment ordered as aforesaid shall be executed in the same manner as a sentence passed under Section 6.

20. Transfer from one Receiving centre of certified institution to another.

(1) Subject to the conditions prescribed, the Superintendent may direct any person detained in a Receiving Centre or Certified Institution to be transferred therefrom to another Receiving Centre or Certified Institution in the State: Provided that the total period of detention of such person shall in no case be increased by such transfer. (2) In directing such transfer, the Superintendent shall have regard to the medical certificate and the directions, if any, made by the State Government or Court under Section 25

21. Release on licence.

- Subject to such conditions as are prescribed - (a) the Superintendent of the Certified Institution may at any time grant permission to a person detained in a Certified Institution to absent himself for short periods and. (b) the Superintendent may at any time release such person conditionally and issue him a licence therefor. (2) Any such licence shall be in force until the expiry of the term for which the person was ordered to be detained in a Certified Institution unless sooner revoked. (3) The period during which such person is absent from a Certified Institution by permission or by licence as aforesaid shall for the purpose of computing his term of detention in a Certified Institution, be deemed to be part of his detention.

22. Revocation of licence.

(1) Subject to such conditions as are prescribed, the Superintendent may, at any time revoke a licence issued under Section 21 and thereupon the released person shall be detained in a Certified Institution until the expiry of the date for which he had been ordered to be detained. (2) For the

purpose of this section, the Superintendent may, if necessary, cause the released person to be arrested and sent to the nearest Receiving centre together with a copy of the order of detention, and thereupon the provisions of sub-section (1) of Section 24 shall as far as may be practicable apply.

23. Unconditional release.

- At any time after the expiration of three months from the commencement of the release on licence of any person under section 21, the Superintendent may, if he is satisfied that there is a probability that such person will abstain from begging and collecting donation recommend to the State Government his unconditional release. The State Government may, on such recommendation, release such person unconditionally, and thereupon the term for which such person had been ordered to be detained in a Certified Institution shall be deemed to have expired.

Chapter V

Miscellaneous

24. Procedure on order of detention or sentence of imprisonment.

(1) Subject to the provisions of sub-section (2), when a person has been ordered to be detained in a Certified Institution under Section 5 or Section 6 or Section 9, the Court which ordered the detention shall forthwith forward him to the nearest Receiving Centre with a copy of the order of detention. The person shall thereupon be handed over into the custody of the Superintendent of the Receiving Centre and shall be detained in the Receiving Centre until he is sent therefrom to a Certified Institution. (2) When any such person has also been sentenced to imprisonment, the Court passing the sentence of imprisonment shall forthwith forward a warrant to a jail in which he is to be confined and shall forward him to such jail with the warrant together with a copy of the order of detention. After the sentence of imprisonment is fully executed, the Officer executing it shall, if detention in a Certified Institution for any period remains to be undergone by such person, forward him forthwith together with the copy of the order of detention to the nearest Receiving Centre and thereupon the provisions of sub-section (1) shall as far as may be practicable, apply. (3) In computing the period for which a person is ordered to be detained in a Certified Institution, there shall be included the period for which he is detained in a Receiving Centre under this section.

25. [Medical examination and detention of mentally retarded person. [Substituted by Act No. 3 of 2019, dated 20.03.2019.]

(1) Where it appears to the State Government that any beggar and offenders detained in a Certified Institution under any order of a Court is of unsound mind, the State Government may by an order setting forth the grounds of belief that the beggar and offenders is of unsound mind, order his removal to a mental hospital or other place of safe custody, to be kept and treated as the State Government may direct during the remainder of the term for which he has been ordered to be detained or, if on the expiration of that term it is certified by a Medical Officer that it is necessary for

the safety of the Beggar and Offenders or of others that he should be further detained under medical care or treatment, then until he is discharged according to law.(2)Where it appears to the State Government that the beggar and offenders has ceased to be of unsound mind, the State Government shall, by an order directed to the person having charge of the beggar and offenders if still liable to be kept in custody and send him to the Certified Institution from which he was removed or if the beggar and offender is no longer liable to be kept in custody, order him to be discharged.(3)The provisions of section 40 of the Mental Health Act, 1987, shall apply to every beggar and offenders confined in mental hospital under sub-section (1) after the expiration of the period for which he was ordered to be detained and the time during which a beggar and offenders is confined in a mental hospital under that sub-section shall be reckoned as part of the period for which he may have been ordered by the Court to be detained:Provided that where the removal of a beggar and offenders due to unsoundness of mind is immediately necessary, it shall be open to the authorities of the Institution in which the beggar and offenders is detained to apply to a Court having jurisdiction under the Mental Health Act, 1987, for as immediate order of committal to a mental hospital until such time and the orders of the State Government can be obtained in the matter.]

26. Arrest of person escaping from Receiving Centre or Certified Institution.

- Any person who leaves a Receiving Centre or a Certified Institution without the permission of the Superintendent thereof or fails to return thereto after the expiry of the period of absence permitted under sub-section (1) of Section 21, may be arrested by any police officer without warrant or by an officer of the Receiving Centre or Certified Institution authorized in this behalf by the State Government and sent back to the Receiving Centre or Certified Institution, as the case may be.

27. Transfers between Certified Institution and Institution of like nature in different parts of India.

(1)The State Government may direct any person detained in a Certified Institution to be transferred therefrom to any Institution of a like nature in any other part of India:Provided that no person shall be transferred under this section to any other State without the consent of the Government of that other State.(2)The State Government may, in consultation with the Superintendent of any Certified Institution, consent to the transfer to that Institution of any person in respect of whom an order of detention has been made by a competent authority in any other part of India of the nature of an order under this Act directing him to be detained in a Certified Institution or institution of a like nature and upon such transfer, the provisions of this Act shall apply to such person.

28. Power to take finger prints.

(1)Every person ordered to be detained in a Certified Institution under this Act shall at any time allow his finger prints to be taken by the Superintendent of Police or any officer empowered by him in this behalf in any area for which a Superintendent of Police has been appointed and by the District Magistrate or any Officer empowered by him in this behalf elsewhere.(2)Whoever refuses to allow his finger prints to be taken under sub-Section (1) shall on conviction be liable to have his

period of detention in a Certified Institution not exceeding three months converted to a term of imprisonment extending to a like period.(3)The sentence of imprisonment ordered under sub-section (2) of section 28 shall be executed in the same manner as a sentence passed under Section 6.

29. Seizure and disposal of animals exposed or exhibited for obtaining or extorting alms.

(1)Any police officer or other person effecting arrest under sub-section (1) of Section 4,the arrest of a person who was found begging may seize any animal with the sore,wound, injury, deformity or disease of which was exposed or exhibited by such person with the object of obtaining or extorting alms.(2)The police officer or other person affecting the arrest may remove such animal to any infirmary for detention therein pending its production before a Court,(3)The Court before which the person found begging is brought may direct that the animal shall be treated and cared for in such infirmary until it is fit for discharge or that it shall be sent to a pinjrapole, or, if the veterinary officer in charge of the area in which the animal is found or such other veterinary officer as has been authorised by the rules made under Section 15 of the Prevention of Cruelty to Animal Act, 1960, certifies that it is incurable or cannot be removed without cruelty, that it shall be destroyed and the Court may also order that after release from the infirmary, the animal may be confiscated.(4)An animal sent for care and treatment to an infirmary shall not. unless the Court directs that it shall be sent to a pinjrapole or that it shall be destroyed, be released from such place except upon a certificate of its fitness for discharge issued by the veterinary officer in charge of the area in which the infirmary is situated or such other veterinary officer as has been authorized by the Government.

30. Offences to be cognizable and non-bailable.

- The offences under Sections 6 and 11 of this Act shall be cognizable and non-bailable,

31. Persons deemed to be public servants.

- All persons empowered to perform any function by this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code,(45 of 1860).

32. Bonds.

- The provisions of Chapter XXXIII of the Code of Criminal Procedure. 1973. shall so far as may be, apply to bonds taken under this Act. (2 of 1974).

33. Appeal.

- For the purpose of appeal and revision under the Code of Criminal Procedure, 1973. an order of detention under this Act including an order of detention under Section 4. shall be deemed to be a sentence of imprisonment for the same period.

34. Power to make Rules.

(1)The State Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying out the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing powers, such. rules may provide for all or any of the following matters, namely: -(a)the manner of authorizing a purpose under clause (a) of Section 2:(b)the manner of keeping persons arrested under sub-section (3) of section 4 or Section 9;(c)the manner of making summary inquiry under sub-section (1) of section 5;(d)the manner in which contribution for the maintenance of a person detained in a Certified Institution may be ordered to be paid under sub-section (1) of Section 8;(e)the manner of appointing a visiting Committee under Section 14;(f)the conduct of business by Advisory Committees: 11(g)the manner in which the effects and the money and valuables referred to in Section 17 shall be disposed of;(h)the management and discipline of persons detained in a Receiving Centre or Certified Institution including the imposition of manual or other work and the awarding of punishment for breach of any rule made under this clause;(i)the conditions subject to which Superintendent may direct transfers under Section 20;(j)the conditions subject to which a person may be released on licence under Section 21;(k)the conditions subject to which a licence may be revoked under Section 22;(l)the manner of medical examination of beggar and offenders; (m) any other matter which is required to be, or may be prescribed.(3)Every rule made under this section shall, immediately after it is made be laid before the State Legislature if it is in session and if it is not in session. in the session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the House agrees in making any modification in the rule or in the annulment of the rule, the rule shall, thereafter, have effect only in such modified form or shall stand annulled as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of any thing previously done under that rule.

35. Removal of difficulties.

- If any difficulty arises in giving effect to the provisions of this Act, the State Government may by order published in the Official Gazette make such provision or give such direction as appears to it to be necessary for removing the difficulty.