

Jammu And Kashmir Forest Act, 1987

2 of 1987

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SCHEDULE 1 :- SCHEDULE I

Jammu And Kashmir Forest Act, 1987

2 of 1987

[Sanctioned by His Highness the Maharaja Bahadur under State Secretary's No. 5806, dated 19th October, 1930 and published in Government Gazette dated 10th Assuj, 1987.] An Act to amend and consolidate the law relating to forests and the transit of forest produce. . Preamble. - Whereas it is expedient to amend and consolidate the law relating to forests and the transit of forest produce; It is hereby enacted as follows:-

CHAPTER 1 PRELIMINARY

1. Short Title :-

- (i) This Act may be called the Jammu and Kashmir Forest Act, 1987.

(ii)Commencement. -It shall be deemed to have come into force with effect from 12th August, 1986.

(iii)Extent. - It shall extend to the whole of the State.

(iv) Repeal of enactment. - (iv) On and from the date on which this Act comes into force, the Regulation, Orders of His Highness the Maharaja Bahadur conveyed in Chief Ministers communication and the State Council Resolutions mentioned in the Schedule hereto annexed shall be repealed, but, all notifications published, declarations and rules made, places appointed, acts done or validated, agreements filed, scales prescribed, forms framed, appointments made, and powers conferred under the said Regulation or any of the said Orders of His Highness the Maharaja Bahadur or the said-State Council Resolutions and in force at the date of such repeal shall, so far as they are consistent with this Act, be deemed to have been respectively published, made, appointed, done or validated, filed, prescribed, framed and conferred under this Act and by the authority empowered thereby in such behalf.

2. Definition :-

In this Act unless the context otherwise requires: -

- a) "cattle" include elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, ram, ewes, sheep, lambs, goats and kids;
- b) "composition" means the cost of forest produce together with the compensation imposed under the provisions of this Act;
- c) "demarcated forest" means forest land or waste land under the control of the Forest Department, of which the boundaries have already been demarcated by means of pillars of stone or masonry or by, any other conspicuous mark, or, which hereafter be constituted a demarcated forest under section 3
- d) "forest based industry" means an industry or unit in which any forest produce is used as raw material or as a source of energy or fuelwood;
- e) "forest offence" means an offence punishable under this Act, or under any rule made under this Act.
- f) "Forest Officer" includes the Principal Chief Conservator, Chief Conservator, Conservator, Deputy and Assistant Conservators, Divisional Forest Officer, Range Officers, Junior Range Officers, Foresters, [Deputy Foresters], Forest Guards, Members of the Forest Protection Force and any person whom the Government or any officer empowered by the Government may, from time to time, appoint by name or as holding an office to carry out all or any of

the purposes of the Forest Act, or to do anything required by this Act or any rule made under this Act to be done by a Forest Officer;

g) "Forest produce" includes.-

(a) The following, when found in or brought from, a forest or not, that is to say; timber, cautchus, catechu, wood oil, resin, natural varnish, bark, lac, mahus flowers, myrabolams and krench lobidwoladioscoria, firewood, humus, charcoal, rasoant, carbon chips, rosin, turpentine and fungi (guchhies); and

(b) The following when found in, or brought from, a forest, that is to say: -

(i) Trees and leaves, flowers and fruits and all other parts or produce not here in before mentioned of such trees;

(ii) plants not being trees (including kuth, grass, creepers, reeds and moss) and all parts of produce of such plants;

(iii) wild animals and skins, tusks, horns, bones, silk cocoons, honey and wax and all other parts or produce of animals; and

(iv) Peat" I [surface soil], rock and minerals (including limestone, laterite, mineral oils and all. products of mines or quarries);

h) "river" includes streams, canals, creaks. and other channels, natural or artificial excepting such kuhls and channels as are constructed and maintained by the Zamindars at their own expenses for purpose of irrigation and in regard to which no settlement has been. arrived between the Forest and the Revenue Departments. to bring them within this. definition; "saw mill." means any device and machinery with which and the premises (including the precincts thereof) in which or in any part of which sawing is carried on with the aid of electrical and mechanical power;

(j) "timber" includes trees and bamboos when they have fallen or have been felled, and- all wood whether cut up or fashioned or hallowed out for any purpose or not;

(k) "transporter" includes a person, a private agency, a Government Department, Corporation or any other agency engaged in transport of forest produce whether on his own behalf or on behalf of any other person;

(l) "tree" includes palms, bamboos, stumps, brush-wood and cane;

(m) "undemarcated forest" means and includes all forest land (other than demarcated forest) which is the property of the Government and is not appropriated for any specific purpose and further includes all the undemarcated and berun line forest vested with the Forest Department under the provisions of section 48 of the Jammu and Kashmir Village Panchayat Act, 1958 or any other

law for the time being in force.

CHAPTER 2 DEMARCATED FORESTS

3. Demarcation Of Forests/Powers To Demarcate Forests :-

(1) The Government for purposes may, from time to time, make rules in accordance with which any forest land or waste land which is the property of Government or over which the Government has proprietary right, or to the whole or any part of the forest produce of which the Government is entitled, may be declared as demarcated forest and may, from time to time as the occasion may require, amend or cancel such rules:

Provided that nothing in this section shall be deemed to apply to such Government waste land or forest berun line as is under the management and control of the Revenue Department.

(2) All rules made under sub-section (1) shall be published in the Jammu and Kashmir Government Gazette.

(3) The revised rules for the demarcation of forests sanctioned by His Highness the Maharaja Bahadur in the ChiefMinisters No. 414, dated the 12th March, 1924, shall be deemed to have been made under sub-section (1).

(4) On the completion of the demarcation proceedings in accordance with the rules made under sub-section (1) the results of such proceedings for each such forest land or waste land shall be notified in the Jammu and Kashmir Government Gazette in accordance with such rules by the Conservator of the Circle and from the date of such publication such forest or waste land shall be deemed to be a demarcated forest.

4. Management And Control Of Demarcated Forests :-

The management of the demarcated forests (except where such forests have been placed authoritatively under the control and management of any other Department or local authority is vested in the forest Department. The control and management of demarcated forests not in charge of the Forest Department shall be vested. in such officer as the Government may, by notification, prescribe in this behalf and such officer may by like notification be vested with all or any of the powers and liabilities of a Forest officer under this Act.

5. Power To Regulate Concessions In Demarcated Forests :-

The Government may from time to time make rules to regulate the exercise of concessions in demarcated forests and may prescribe

the limits up to which closures to concessions may be permitted and the procedure to be adopted when closures are to be effected.

6. Acts Prohibited In Such Forests :-

Any person who

- (a) Sets fire to a demarcated forest, or kindles any fires, or leaves any fire burning in such manner as to endanger such a forest;
- (b) Kindles, keeps or carries any fire except at such seasons as the Conservator of the Circle may from time to time notify in this behalf;
- (c) causes any damage by negligence in felling any tree or cutting or dragging any timber;
- (d) fells, girdles, lops, taps, or burns any tree, or strips off the bark or leaves from, or otherwise damages, the same;
- (e) quarries stone, burns lime or charcoal or collects, subject to any manufacturing process, or removes, any forest produce; knowingly receives or is in possession of illicit forest produce.
- (f) clears or breaks up any land or erects a fence, enclosure or any structure for cultivation ³ [or cultivates or attempts to cultivate any land in any other manner in any demarcated forest or for any other purpose];
- (g) in contravention of any rules which the Government may from time to time in the Jammu and Kashmir Government Gazette be prescribed, hunts, shoots, fishes, poisons water or sets traps or snares;
- (h) in such forest or part thereof duly declared to be, closed by competent authority trespasses cattle or pastures cattle, or permits cattle to trespass; or
- (i) removes or damages the utensils, lips, nails or other articles fixed to trees for the collection of resin;
- (j) installs or establishes a saw mill or forest based industry within such limits outside the demarcated forest to be prescribed by the Government from time to time, shall be punished with imprisonment for a term which may extend to two years but shall not be less than three months and with fine which may extend to six thousand rupees but shall not be less than one thousand rupees. If the conviction relates to clause (f), the Judicial Magistrate shall order for the restoration of the land to the Forest Department. Nothing in this section shall be deemed to prohibit
 - (a) any act done by permission in writing of a Forest officer, or under any rule made by the Government; or
 - (b) the exercise of any right created by grant or contract in writing

or concession, made by or on behalf of the Government.

6A. Compensation For Loss Or Damage :- Any person who causes any loss or damage to any demarcated or undemarcated forest or encroaches upon such forest shall be liable to compensate the Government. The remedy available under this section shall be without prejudice and in addition to any remedy that the Government may have under any Law in this regard.

7. Power To Enforce Punitive Closures :-

Whenever, in a demarcated forest, fire is caused wilfully or by gross negligence, or trees are felled or killed repeatedly without permission, the Chief Conservator may (notwithstanding that any penalty has been inflicted under section 6) direct that in such forest or any portion thereof the exercise of all or any rights or concessions or privileges of pasture or to forest produce shall be suspended for a period 5[not exceeding five years: "Provided that when the period of suspension under this section is to exceed two years, the order of the Chief Conservator shall be subject to the previous approval of the Government."

8. Power To Inflict Collective Punishment :-

Whenever, during the period of suspension of any rights , concessions or privileges, under the last preceding section, fire or damage" to trees is proved to have been caused wilfully and persistently in any demarcated forest, the Chief Conservator shall have a written warning served through the zaildar and lambardars on all or any of the villages enjoying rights, concessions or privileges in such forest. Should such warning remain unheeded, the Chief Conservator may, with the concurrence of the Commissioner of the Province, inflict a collective fine on such village or villages, limited in amount to one Years land revenue of the village or villages concerned; provided that in the case of disagreement between the Commissioner and the Chief Conservator of Forests the fine shall be subject to confirmation by the Government. Any fines imposed under this section shall be recoverable as "arrears of land revenue.

9. Power To Declare Forest No Longer Demarcated :-

The Government] may by notification in the Jammu and Kashmir Government Gazette declare that from a date fixed by such notification any demarcated forest or any portion thereof shall

cease to be a demarcated forest, and from the date so fixed, such forest or a portion shall cease to be demarcated.

CHAPTER 3 UNDEMARCATED FORESTS

10. Management And Control Of Undemarcated Forests :-

The management of the undemarcated forests (except where such forests have been placed authoritatively under the control and management of any other Department or local authority) IS vested in the Forest Department. The control and management of undemarcated forests not in charge of the Forest Department shall be vested in such officer as I[the Government] may, by notification in the Jammu and Kashmir Government Gazette, prescribe in this behalf and such officer may by like notification be vested with all or any of the powers and liabilities of a Forest officer under this Act.

11. Power To Issue Notification :-

The Government may, from time to time, by notification in the Jammu and Kashmir Government Gazette

(a) declare any class of trees in an undemarcated forest or any trees in any such forest, to be reserved from a date fixed by such notification;

(b) prohibit, from a date fixed as aforesaid. the quarrying of stone, or the burning lime or charcoal, or the collection or subjection to any manufacturing process, or, removal of any forest produce, in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle, or for any other purpose, any land in any such forest; and

(c) alter or cancel such declaration or prohibition.

12. Power To Make Rules For Undemarcated Forests :-

The Government may from time to time make rules to regulate the following matters:

(a) the sale and removal of trees and forest produce from the undemarcated forests;

(b) the protection and management of the undemarcated forests; "and

(c) the exercise Of concessions in undemarcated forests.

13. Penalties For Acts Prohibited In Undemarcated Forests :-

Any person who commits any of the following offences: -

(a) fells, girdles, lops, taps or burns any tree reserved under section 11, or strips off the bark or leaves from, or otherwise

damages, any such tree;

(b) contrary to any prohibition under section 11 quarries any stone, burns any lime or charcoal, or collects, subject to any manufacturing process, or removes, any forest produce;

(c) contrary to any prohibition under section 11 breaks up or clears for cultivation or any other purpose any land in any undemarcated forest;

(d) sets fire to such forest or kindles any fires, or leaves any fire burning in such a manner as to endanger such forest;

(e) removes or damages the utensils, lips, nails or other articles fixed to trees for the collection of resin installs or establishes a saw mill or forest based industry within such limits outside the undemarcated forest to be prescribed by the Government from time to time; and

(f) infringes any rules made under section 12 shall be punished with imprisonment for a term which may extend to two years but shall not be less than three months and with fine which may extend to six thousand rupees but shall not be less than one thousand rupees.

14. Nothing In This Chapter To Prohibit Acts Done In Certain Cases :-

Nothing in this Chapter shall be deemed to prohibit any act done with the permission in writing of the Forest Officer, or in accordance with any rule made by the Government, or in the exercise of any right created by grant or contract, or concession made by or on behalf of the Government.

CHAPTER III-A OF VILLAGE FORESTS

14A. Formation Of Village Forests :-

The Government may from time to time assign to any village community the rights of Government to or over any land which has been entered in Settlement records as khalsa land and may cancel such assignment. All lands so assigned and to be turned into forests shall be called village forests. The Government may from time to time make rules for regulating management of village forests prescribing the conditions under which the village community to which any such assignment is made may be provided with timber or other forest produce or pasture and their duties for the protection and improvements of such forests. All provisions of this Act relating to demarcated forests shall (so far as they are consistent with the rules so made) apply to village forests.

CHAPTER 4 CONTROL OF TIMBER AND OTHER FOREST PRODUCE IN TRANSIT

15. Power To Make Rules To Regulate Transit Of Forest Produce :-

The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest produce in transit by land or water is vested in the Government who may from time to time make rules to regulate the transit of all timber and other forest produce. Such rules may (among other matters):

(a) prescribe the route by which alone timber or other forest produce may be imported, exported or moved into, from or within the State;

(b) prohibit the import and export or moving of such timber or other produce without a pass from an officer duly authorized to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees thereof.

(d) provide for the stoppage, reporting examination and marking of timber or other forest produce in transit in respect of which there is reason to believe that any money is payable to State on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon or to which it is desirable for the purposes of this Act to affix a mark;

(e) provide for the "establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the conditions under which such timber or other produce shall be brought to, stored at and removed from such depots;

(f) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest produce, and the throwing of grass, brush-wood, branches and leaves into any such river, or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention and removal of any obstruction of the channel or banks of any such river and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(h) prohibit absolutely or subject to conditions within specified local

limits the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering or effacing of any markson the same, and the possession or carrying of marking hammers or other implements used for marking timber;

(i) regulate the use of property-marks for timber and the registration of such marks, prescribe the time for which such registration shall hold good, limit the number of such marks that may be registered by anyone person, and provide for the levy of fees for such registration. The Government] may direct that any rule made under this section shall not apply to any specified class of timber or other forest produce of any specified local area.

16. Penalty For Breach Of Rules Made Under Section 15 :-

Any person, who infringes any of the rules made under section 15 may be punished with] imprisonment for a term which may extend to two years but shall not be less than three months and with fine which may extend to five thousand rupees but shall not be less than one thousand rupees: Provided that where the value of timber seized exceeds rupees five thousand the fine may extend up to the value of timber so seized.

17. Government And Forest Officer Not Responsible For Damage To Forest Produce At Depot :-

The Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest produce while at a depot established under a rule made under section 15, or while detained elsewhere for the purposes of this Act and no Forest Officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

18. All Persons Bound To Aid In Case Of Accident At Depot :-

In case of any accident or emergency involving danger to any property, at any such depot every person employed at such depot, whether by the Government or by any private person, shall render assistance to any Forest officer or public officer demanding his aid in averting such danger and securing such property from damage or loss.

CHAPTER 5 COLLECTION OF DRIFT AND STRANDED TIMBER

19. Certain Kinds Of Timber To Be Deemed Property Of Government Until Title Thereto Proved And May Be Collected Accordingly :-

(a) all timber found adrift, beached, stranded or sunk;
(b) all wood or timber bearing marks which have not been registered under section 15, or on which the marks have been obliterated, altered or defaced by fire or otherwise; and
(c) in such areas as the Government may direct all unmarked wood and timber, shall be deemed to be the property of Government unless and until any person establishes his right and title thereto as provided in this Chapter. Such timber may be collected by any Forest officer or other person entitled to collect the same by virtue of any rule made under section 25 and may be brought to such depots as the Forest officer may from time to time notify as depots for the reception of drift timber. The Government may, by notification in the Jammu and Kashmir Government Gazette, exempt any class of timber from the provisions of this section.

20. Notice To Claimants Of Drift Timber :-

Public notice shall from time to time be given, by the Forest Officer, of timber collected under section 19. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period not less than two months from the date of such notice, a written statement of such claim.

21. Procedure On Claim Preferred To Such Timber :-

When any such statement is presented as aforesaid, the Forest officer may, after making such enquiry as he thinks fit, either reject the claim after recording his reason for so doing, or deliver the timber to claimant. If such timber is claimed by more than one person, the Forest officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the claimants to the civil Courts, and retain the timber pending the receipt of an order from any such Court for its disposal. On rejection of claim to such timber, claimant may institute suit. - Any person whose claim has been rejected under this section, may, within three months from the date of such rejection, institute a suit to recover possession of the timber claimed by him, but no person shall recover any compensation or costs against the Government or against any Forest officer on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section. No such timber shall be subject to process of any civil, criminal, or revenue Court until it has been delivered or a suit has been brought, as provided in this section.

22. Disposal Of Unclaimed Timber :-

If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period prescribed by the notice issued under section 20 or, on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 21, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under section 21 in such other person, free from all incumbrances not created by him.

23. Government And Its Officers Not Responsible For Damage To Such Timber :-

The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 19 and no Forest officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently.

24. Payment To Be Made By Claimant Before Timber Is Delivered To Him :-

No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest officer or other person entitled to receive it, such sum on account thereof as may be due under any rule made in pursuance of section 25.

25. Power To Make Rules And Prescribe Penalties :-

The Government may from time to time make rules to regulate the following matters, namely:

- (a) the salving, collection and disposal of all timber mentioned in section 19;
- (b) the use and registration of boats used in salving and collecting timber;
- (C) the amounts to be paid for salving, collecting, moving, storing and disposing of such timber; (c) the use and registration of hammers and other instruments to be used for marking such timber.
- (d) The Government may from time to time prescribe, as penalties for the infringement of any rules made under this section, imprisonment for a term which may extend to 2 [two years but shall not be less than three months and with fine which may extend to six thousand rupees but shall not be less than one thousand

rupees.

CHAPTER 6 PENALTIES AND PROCEDURE

26. Seizure Of Property Liable To Confiscation :-

(1) When there is a reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other article used in committing any such offence may be seized by a Forest Officer or Police Officer.

(2) Any officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized and shall, as soon as may be, make a report of such seizure before an officer not below the rank of the Divisional Forest Officer (hereinafter referred to as authorised officer): Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of the Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

(3) Subject to sub-section (5), where the authorised officer upon receipt of report about seizure, is satisfied that a forest offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded, confiscate forest produce so seized together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles or any other articles used in committing such offence. Copy of the order of confiscation shall be forwarded without any undue delay to the person from whom the property is seized and to the Conservator of Forest Circle in which the timber or forest produce, as the case may be, has been seized.

(4) No order confiscating any property shall be made under Sub-section (3) unless the Authorised Officer,

(a) sends an intimation in writing about the proceedings for confiscation of the property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made but no order to be passed;

(b) issue a notice in writing to the person from whom the property is seized and to any other person who may appear to the authorised officer to have some interest in such property;

(c) gives to the officer effecting the seizure and the person or persons to whom notice issued under clause

(b) a hearing on date to be fixed for such purpose.

(5) No order of confiscation under sub-section (3) of any tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles or any other article (other than timber or forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against the use of objects aforesaid or commission of forest offence.

(6) Where the cattle are involved in the commission of a forest offence, the same after seizure by any officer, as the case may be, shall be entrusted to any responsible person under a proper receipt on an undertaking to produce the same when required in case there is no cattle pound within a radius of five kilometers from the place of such offence:

Provided that notwithstanding anything contained in section 30, in case of unclaimed cattle a Forest Officer not below the rank of Range Officer, after giving sufficient publicity in the vicinity of the place of offence for the owner to come forward to claim the cattle within seven days from the date when such publicity has been given, may dispose them of by public auction. The provisions of the Cattle Trespass Act, Samvat 1977, shall apply in respect of the charges to be levied for the upkeep and fee of the cattle.

COMMENTS

Discretionary powers cannot be exercised arbitrarily to defeat the preventive measures incorporated in the Act.-Divisional Forest Officer, PP Division v. Fayaz Ahmed Khan 2003 (2) JKJ 58(HC/J&K)

26A. Power Of Search And Seizure :- Any forest officer not below the rank of Range officer, having reasonable grounds to believe that forest produce is, in contravention of the provisions of this Act, in the possession of a person in any place, may enter such place with the object of carrying out a search for the forest produce and its confiscation: Provided that such search shall not be conducted otherwise than in accordance with the provisions of the Code of Criminal Procedure.

26B. Revision Before Court Of Sessions Against Order Of Confiscation :- Any party aggrieved by an order of confiscation under Section 26-A may within thirty days of the order or if facts of

the confiscation have not been communicated to him, within thirty days of knowledge of such order submit a petition for revision to the Court of Sessions Division whereof the headquarters of Authorised Officer are situated.

Explanation I. - In computing the period of thirty days under this sub-section, the time requisite for obtaining certified copy of the order of Authorised Officer shall be excluded.

Explanation II. - For the purposes of this sub-section a party shall be deemed to have knowledge of the order of confiscation under section 26 on publication of such order in two daily newspapers having circulation in the State.

The Court of Sessions may confirm, reverse or modify any final order of consequential nature passed by the Authorised Officer.

(1) Copies of the order passed in revision shall be sent to the Authorised Officer for compliance or passing such further order or for taking such further orders or for taking such further action as may be directed by such Court.

(2) For entertaining, hearing and deciding a revision under this section, the Court of Sessions shall, as far as may be, exercise the same powers and follow the same procedure as it exercises and follows while entertaining, hearing and deciding a revision under the Code of Criminal Procedure, Samvat 1989. Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, Samvat 1989, the order of Court of Sessions passed under this section shall be final and shall not be called in question before any Court.

26C. Bar To Jurisdiction Of Courts Etc. Under Certain Circumstances :-

(1) On receipt of report under sub-section (4) of Section 26 about intimation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property which is subject matter of confiscation, has been made, no Court, Tribunal or Authority (other than Authorised Officer and Court of Sessions referred to in Section 26 and (26-B) shall have jurisdiction to make orders with regard to possession, delivery, disposal or distribution of the property in regard to which proceedings for confiscation are initiated under section 26; notwithstanding anything to the contrary contained in this Act, or any other law for the time being in force.

Explanation. - Where under any law for the time being in force, two

or more Courts have jurisdiction to try the forest offences, then receipt of intimation under sub-section (4) of section 26 by one of the Courts shall operate as bar to exercise jurisdiction on all such other Courts.

(2) Nothing in sub-section (1) shall effect the power saved under section 34 of the Act.

26D. Penalty For Forcibly Opposing Seizure :- Any person who opposes the seizure of tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles or cattle liable to be seized under this Act or forcibly receives the same after seizure shall be punished with imprisonment for a term which may extend to two years but shall not be less than three months and with fine which may extend to six thousand rupees but shall not be less than one thousand rupees.

26E. Power To Keep Property :- seized on SapurdnamaAny officer, who or whose subordinate has. seized any tools, boats, carts, arms, vehicles, machines, equipment, implements, chains, ropes or cattle or any other articles used in committing any forest offence, including the forest produce, under section 26, may keep the same on the " Supardnama " of a respectable person on the execution of a bond thereof, by such person, for the production of the property so kept on "Supardnama" if and when required by the Magistrate having jurisdiction to try the offence or before the authorised officer empowered under sub-section (2) of section 26, on account of which he seizure has been made.

27. Upon The Receipt Of Any Report Under Sub-Section (4) Of Section 26 The Judicial Magistrate :-

shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law: Provided that before passing any order for disposal of property the Magistrate shall satisfy himself that no intimation under subsection (4) of section 26 has been received by this court or by any other court having jurisdiction to try the offence on account of which the seizure of property has been made. COMMENTSRelease of seized forest produce -Power of Judicial Magistrate is subject to condition that property sought to

be released has been seized or confiscated in respect of forest offence or offence in respect of forest produce and that the property/articles having been seized in respect of offence triable under the provision Of the forest Act Officer v. Hans Raj 2003 (Supp. 1) JKJ HC-450

28. Forest Produce, Tools, Etc., When Liable To Confiscation. All Timber Or Forest Produce :-

which in either case is not the property of the Government and in respect of which a forest offence has been committed and all tools, boats, carts, motor vehicles, machines, ropes, chains, equipments, arms, cattle or any other articles in each case used in committing any forest offence shall, subject to the provision of section 26, 26-B and 26-C, be liable to confiscation upon conviction of the offender for such offence.] Such confiscation may be in addition to any other punishment prescribed for such offence.

29. Disposal, On Conclusion Of Trial For Forest Offence Of Produce In Respect Of Which, It Was Committed :-

Without prejudice to the provisions of section 26-C when the trial of any forest offence is concluded, any forest produce in respect of which such offence has been committed shall, if it is the property of the Government or has been confiscated, be taken charge of by a Forest officer, and in any other case, may be disposed of in such manner as the Court may direct.

30. Procedure When The Offender Is Not Known Or Cannot Be Found :-

When the offender is not known or cannot be found the the Magistrate may if he finds that an offence has been committed, but subject to section 26-C order the property in respect of which offence has been committed, to be confiscated or forfeited together with all tools, boats, carts, motor vehicles, machines, ropes, chains, equipments, arms or cattle and other article used in committing the offence, and taken charge of by the Forest officer, or to be made over to the person whom the Judicial Magistrate deems to be entitled to the same: Provided that, no such order shall be made until the expiration of one month from the date of seizing such property or without hearing the person (if any) claiming any right thereto, and the evidence (if any) which he may produce in support of his claim.

31. Procedure As To Perishable Property Seized Under Section 26 :-

The Judicial Magistrate or subject to such rules as may be prescribed, the Authorised Officer under sub-section (2) of section 26 may, notwithstanding anything hereinbefore contained, direct the sale of any property seized under section 26 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold. Notwithstanding anything contained to the contrary in any other law for the time being in force, the Judicial Magistrate shall make an order under sub-section (1) within thirty days from the date of presentation by the Forest Officer or any other party having any interest in the property.

32. Appeal From Orders Under Section 28, 29 Or 30 :-

The officer who made the seizure under section 26 or any of his official superiors or any person claiming to be interested in the property so seized, may, within the period ordinarily allowed for appeals from the orders of such Judicial Magistrate appeal from any orders passed under section 28, 29 or 30 to the Court to which, orders made by such Judicial Magistrate are ordinarily appealable; and the order passed on such appeal shall or shall not be final according to law relating to criminal procedure for the time being in force in the State.

33. Property When To Vest In State :-

(1) Property ordered to be confiscated by an Authorised officer under section 26, subject to the result of revision before Court of session under section 26-B shall upon conclusion of proceedings in revision vest in the Government free from all encumbrances after the expiry of specified period of revision.

(2) when an order for the confiscation of any property has been passed under section 28 or 30, as the case may be, and the period limited by section 32 for an appeal from such order has elapsed and no such appeal has been preferred, or when on such an appeal being preferred the appellate Court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof, as the case may be, shall vest in the Government free from all encumbrances.

34. Saving Of Power To Release Property Seized :-

Nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the Government from directing at any time the immediate release of any property seized under

Sec.26.

35. Penalty For Counterfeiting Or Defacing Marks On Trees And Timber And Altering Boundary Marks :-

Whoever, with intent to cause damage or injury to the public or to any person or to cause wrongful gain as defined in the Ranbir Penal Code:-

(a) knowingly counterfeits upon any timber or standing tree a mark used by Forest Officer to indicate that such timber or tree is the property of the Government, or of some person or that it may lawfully be cut or removed by some person, or

(b) alters, defaces or obliterates any such mark placed of a tree or on timber by or under the authority of a Forest Officer; or alters, moves, destroys, or defaces, any boundary mark of any forest or waste land to which the provisions of Forest Act are applicable. Shall be punished with imprisonment for a term which may extend to two years but shall not be less than three months and with fine which may extend to two thousand rupees but shall not be less than five hundred rupees.

36. Power To Arrest Without Warrant :-

Any Forest officer or Police officer may without orders from a magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been concerned in any forest offence punishable with imprisonment. Every officer making an arrest under this section shall without unnecessary delay and subject to the provisions of this Act and to release on bond take or send the person arrested before Judicial Magistrate having jurisdiction in the case, or to the officer in charge of the nearest Police station.

36A. Offences Non-Bailable :- Notwithstanding anything contained in this Act or in any other law for the time being in force all offences under this Act other than those compoundable under section 38 shall be non-bailable, and nothing in section 497-A of the Code of Criminal Procedure Samvat 1989 shall apply to offences under this Act.

36B. Power To Release On Bond Person(S) Arrested :- Any Forest Officer of a rank not inferior to that of a Range Officer, who or whose subordinate has arrested any person or persons under the provisions of section 36 and subject to provisions of section 36-A

and 38 of this Act may release such person or persons, on executing a bond thereof by such person or persons to appear, if and when so required, before the magistrate or before the authorized officer under Sec. 26(2) having Jurisdiction in the case.

36C. Requisition For Police Assistance :- Any Forest Officer may requisition the services of any Police Officer to assist him for all or any of the purposes specified in section 26,35 and Section 36 of this Act and it shall be the duty of every such officer to comply with such requisition.

36D. Police Officers Bound To Seek Technical Clearance From Authorized Officer :-

Any Police Officer seizing any property under the provision of this Act or rules framed there under shall be bound to seek technical clearance of the authorized officer to lodge a complaint to the magistrate under section 26 of this Act.

37. Power To Prevent Commission Of Offences :-

Every Forest officer and Police officer shall prevent and may interfere for the purpose of preventing the commission of any Forest offence. 37 -A. Power to try offences summarily. Any Magistrate of the first class, specially empowered in this behalf by the Government in consultation with High Court, may try summarily, under the Code of Criminal Procedure, Samvat 1989 any such offence punishable with imprisonment for a term not exceeding two years or with fine not exceeding six thousand rupees, or with both, and the provision of the said Code shall, as far as may be, apply to such trial, but notwithstanding anything contained in the said Code, in the case of conviction for any offence in summary trial under this section, it shall be lawful for the Magistrate to pass sentence of imprisonment for any term for which such offences are punishable under this Act.

38. Power To Compound Offences :-

Any Forest officer not below the rank of Range Officer may] from time to time by notification in the Jammu and Kashmir Government Gazette 2[empower a Forest officer not below the rank of a Ranger (a) [accept] from any person against whom a reasonable suspicion exists, that he has committed any forest offence involving damage

not exceeding five thousand rupees other than an offence specified in section 35 or section 43, a sum of money by way of composition for the offence, which such person is suspected to have committed: Provided that the sum of money accepted by way of composition shall in no case be less than double the amount involved in the loss caused by such offence, and when any property has been seized as liable to confiscation, 4[release] the same on payment of the value thereof as estimated by such officer. On the payment of such sum of money, or such value, or both, as the case may be, to such officer, the suspected person if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

39. Presumption That The Possession Of Forest Produce Is Illicit :-

When in any proceedings taken under this Act or in consequence of anything done under this Act a question arises as to whether the possession of any forest produce of a person is illicit or not such possession shall be presumed to be illicit until contrary [is proved by the accused.

39A. Double Penalties For Offences :- The penalties which are double of those mentioned under the provisions of this Act or rules framed there under shall be inflicted in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence.

CHAPTER 7 CATTLE TRESPASS

40. Cattle Trespass :-

Cattle trespassing in any portion of a demarcated forest which has been lawfully closed to grazing shall be deemed to be cattle doing damage to a public plantation within the meaning of section 11 of the Cattle Trespass Act, 1977, and may be seized and impounded as such by any Forest or Police officer.

(1) Where a cattle pound does not exist within a range of ten kilometers from any demarcated or undemarcated forest or village forest, the Government may empower the Divisional Forest Officer to set up any cattle pound, temporarily or otherwise in any such demarcated, undemarcated or village forest or any other land that may be available for this purpose. The Divisional Forest Officer may

designate any Forest Officer to be incharge of the said cattle pound and the provisions of the Cattle Trespass Act, Samvat 1997 shall apply to the same.

CHAPTER 8 FOREST OFFICERS

41. Investment Of Powers To Forest Officers :-

(1) the Forest Officers are invested with the following powers, that is to say:- (a) powers to enter upon any land and to survey, demarcate and make a map of the same.

(b) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;

(c) Power to hold an inquiry into forest offences and in the course of such inquiry, to receive and record evidence; and

(d) power to issue search warrants under the provisions of the Code of Criminal Procedure, Samvat 1989: Provided that powers under clause (b) and (c) shall not be exercised by a Forest officer below the rank of a Range Officer Provided further that the powers under clause (d) shall not be exercised by a Forest Officer below the rank of a Divisional Forest Officer.

(2) Any evidence recorded under clause (c) of sub-section (1) shall be admissible in any subsequent trial before a Judicial Magistrate; provided that it has been taken in the presence of the accused person.

(3) Any Forest Officer not below the rank of a Range Officer may delegate his powers of inquiry to the Forester if the offence is compoundable under section 38 of this Act.

42. Forest Officers To Be Public Servants :-

(1) No suit or criminal proceeding or other legal proceeding shall be initiated against any public servant for anything done by him in good faith under this Act.

(2) No Court shall take cognizance of any offence alleged to have been committed by a Forest Officer while acting or purporting to act in the discharge of his official duty except with the previous sanction of the Government. Indemnity for act done in good faith. - No suit shall lie against any public servant for anything done by him in good faith under this Act.

43. Section 43 :-

Any Forest officer or Police officer who vexatiously and unnecessarily arrests any person or detains any person when

arrested or seizes any property on pretence of seizing property liable to confiscation under this Act, shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

44. Forest Officers Not To Trade :-

Except with the permission in writing of the Minister-in-charge of the Forest Department, no Forest officer shall, as principal or agent, trade in timber or other forest produce or be or become interested in any lease of any forest or in any contract for working any forest whether in the State or in foreign territory.

CHAPTER 9 SUBSIDIARY RULES

45. Additional Powers To Make Rules :-

The Government may from time to time make rules

- (a) to prescribe and limit the powers and duties of any officer under this Act;
- (b) to regulate the rewards to be paid to officers and informers out of the proceeds of fines and confiscations under this Act;
- (c) for the preservation, reproduction and disposal of trees and timber belonging to Government but grown on lands belonging to or in the occupation of private persons; and I[(cc) for registration, regulation and control of saw mills, timber and fuel wood depots] and prescribing fees for registration;
- (d) generally, to carry out the provisions of this Act.

45A. Power To Regulate, Manufacture And Preparation Of Articles Based On Forest Produce :- The Government may make rules

- (a) to provide for the establishment and regulation by licence, permit or otherwise and the payment of fees therefor, of units including the factories or industries engaged in the consumption of forest produce i.e. brick kilns and stone crushers or manufacture or preparation of the following articles:
 - (i) katha (catechu) or kutch out of khairwood;
 - (ii) resin, turpentine and other products out of resin;
 - (iii) plywood, veneer and wood panel products;
 - (iv) preparation of match boxes and match splints;
 - (v) boxes including packing cases made out of wood;
 - (vi) furniture items and cots made out of wood;
 - (vii) lime stone and gypsum;
 - (viii) such other articles based on forest produce as the Government may, by notification in the Government Gazette, from

time to time, specify;

(b) to provide for the regulation by licence, permit or otherwise of procurement of raw material for the preparation of articles mentioned in clause (a), the payment and deposit of fees therefor and for the compliance of the condition thereof, the forfeiture of the fees so deposited or any part thereof for contraventions of any such conditions and adjudication of such forfeiture by such authority as the Government may by notification, specify.

(c) The Government may prescribe as penalties for the contravention of any rules made under this section, imprisonment for a term which may extend to two years but shall not be less than three months and with fine which may extend to six thousand rupees but shall not be less than one thousand rupees.

46. Penalties For Breach Of Rules :-

Any person breaking any rule under this Act for the breach of which no special penalty is provided shall be punished with imprisonment for a term which may extend to 1 [two years but shall not be less than three months and with fine which may extend to six thousand rupees but shall not be less than one thousand rupees.

47. Rules When To Have Force Of Law :-

Any rules made by 2[the Government] under this Act shall be published in the Jammu and Kashmir Government Gazette and shall -thereupon so far as they are consistent with this Act have the force

CHAPTER 10 MISCELLANEOUS

48. Persons Bound To Assist Forest And Police Officers :-

Every person who exercises any right or enjoys any concession or privilege in a demarcated or undemarcated forest, or who is permitted to take any forest produce from, or to cut and remove timber or to pasture cattle in such forest, and every person who is employed by any such person in such . forest or within five miles of its boundary, and every person in any village l[within five miles radius of such forest] who is employed by the Government, or who receives emoluments from the Government for services to be performed to the community, shall be bound to furnish without unnecessary delay to the nearest Forest officer or Police officer any information he may possess respecting the commission of, or intention to commit, any forest offence, and shall assist any Forest

Officer or Police officer

- (a) in extinguishing any fire occurring in such forest;
- (b) in preventing any fire, which may occur in the vicinity of such forest from spreading to such forest; and shall assist any Forest officer or Police officer demanding his aid;
- (c) in preventing the commission in such forest of any forest offence; and
- (d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender.

48A. Penalty For Unauthorisedly Taking Possession Of Land Constituted As Demarcated Or Undemarcated Forest :-

(1) Any person who unauthorisedly takes or remains in, possession of any land in areas constituted as demarcated or un-demarcated forest under section 3 or section 11, as the case may be, may, without prejudice to any other provision of this Act, be summarily ejected by order of a Forest officer not below the rank of a Divisional Forest officer and any crop which may be standing on such land or any building or other work which he may have constructed thereon, if not removed by him within such time as such Forest officer may fix, shall be liable to forfeiture: Provided that no order of ejectment under this sub-section shall be passed unless the person proposed to be ejected is given a reasonable opportunity of showing cause why such an order should not be passed.

(2) Any property so forfeited shall be disposed of in such manner J;5 the Forest officer may direct and the cost of removal of any crop, building or other work and, of all works necessary to restore the land to its original condition shall be recoverable from such person in the manner provided in section 52.

(3) Any person aggrieved by an order of the Forest officer under sub-section (1) may, within such period and in such manner as may be prescribed appeal against such order to the Government or to such officer as may be authorised by the Government in this behalf and the order of the Forest officer, shall, subject to the decision in such appeal, be final.

(4) The provisions of this section shall apply to such areas and on such dates as the Government may, by notification, specify and different dates may be specified for different areas.]

COMMENTS

Section 48-A - An appeal arising under sec 48-A of the Act, cannot be heard :,. Chief conservator of Forest after coming into force J&K

49. Section 49 :-

Penalties for non-compliance Any person who wilfully neglects to give information or to render assistance, which he is bound to give or render under section 48 shall be liable, on conviction by I[Judicial Magistrate] of the 1st class to fine not exceeding Rs. 100 or in default of payment of such fine to simple imprisonment for a term not exceeding six months.

50. Summary Action By Deputy Commissioner In Fire Cases

:-

If in any case under clauses (a) and (b) of section 48 it appears to the 2[Deputy Commissioner] of the district within which the forest concerned is situated after local enquiry made in a summary and administrative manner, either by himself, or through a Tehsildar deputed by him for the purpose, that any such person or village or other community has neglected to give such information or to render such assistance as is required thereby, he may impose a fine not exceeding Rs. 100 on, as well as direct payment of compensation for damage to Government property by, such person, village or other community or such individual member of such village or other community as may be determined in consultation with the Divisional Forest Officer. All fines imposed under this section shall be recoverable as arrears of land revenue.

51. Appeal Against Order Of Deputy Commissioner :-

An appeal against every order passed under section 50 may be made to the Commissioner whose decision shall be final.

52. Recovery Of Money Due :-

All money payable to the Government under this Act or under any rule made under this Act or on account of the price of any forest produce, or of expenses incurred in the execution of this Act in respect of such produce, shall if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue.

52A. Recovery Of Penalties Due Under A Bond :- When in respect of any forest lease any person binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servant and agents will abstain from any act, the whole sum mentioned in such bond or

instrument as the amount to be paid in case of a breach of the conditions thereof 1 [shall] notwithstanding anything in section 74 of the Contract Act, Svt. 1977, be recovered from 4J.m in case of such breach as if it were an arrear of land revenue.

52B. Restoration Of Advantage Or Benefit Or Payment Of Compensation :- Notwithstanding anything contained in this Act or in the Con:-act Act Svt. 1977, or in any other law for the time being in force,

(a) where any transaction or lease relating to sale of forest produce or extraction of timber from any forest is or is discovered to be void only on the ground that the transaction or lease is not in conformity with the provisions of section 122 of the Constitution of Jammu and Kashmir or any order or direction issued there under, any person who has received any advantage or has enjoyed any benefit by virtue of such transaction or lease shall be bound to restore it or to make compensation for it, to the person or party from whom he received it,

(b) the extent of any advantage or benefit or the amount of compensation payable in lieu thereof, referred to in clause (a), shall be determined in accordance with the provisions hereinafter appearing and the value of the advantage or benefit or the amount of compensation so determined shall be recoverable as arrears of land revenue in accordance with the provisions of the Jammu and Kashmir Land Revenue Act, Samvat 1996.

52C. Constitution Of Authority :- For purposes of determining the extent of advantage or benefit or the value thereof or the amount of compensation under section 52-B, the Government shall, by notification in the Government Gazette, constitute, as and when necessary, an Authority consisting of one or more members and where the Authority consists of more than one member, one of them may be appointed as Chairman thereof.

52D. Powers Of The Authority :-

(1) The Authority shall, for purposes of holding inquiry for determining the extent of advantage or benefit or value thereof or the .amount of compensation, as the case may be, under section 52-B, have all the powers of a civil court while trying a suit under

the Code of Civil Procedure, Samvat 1977, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person or witness and examining him on oath or solemn affirmation;
- (b) requiring the discovery or production of any document relating to the subject matter of inquiry;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof relating to the subject matter of inquiry from any court or office; and
- (e) issuing commissions for examination of witnesses, documents or other books of accounts relating to the subject matter of inquiry.

(2) The Authority shall also have power to issue a commission to such person as it considers fit for local investigation which may be requisite or proper for the purpose of elucidating any matter which is the subject of inquiry or of ascertaining the market value of any property.

(3) The person directed to execute a commission for any purpose under this section shall have all the powers of a commissioner appointed by a Civil Court in pursuance of the provisions of Order XXVI of the Code of Civil Procedure, Samvat 1977.

(4) The Authority shall have the power to pass such orders as it thinks fit for the seizure, attachment, management, preservation, interim custody or sale of any forest produce or timber (wherever it may be in the State) which may be the subject matter of proceedings before it including the appointment of a receiver for any of the aforesaid purposes.

52E. Restriction On Alienation :-

(1) Notwithstanding anything contained in any law for the time being in force,

(a) where at any stage of the inquiry, the Authority is satisfied by affidavit or otherwise that a person liable to restore any advantage or benefit or to pay compensation in lieu thereof under any transaction or lease referred to in section 52-B, is likely to alienate his movable or immovable property with intent to evade payment or to defeat the recovery, of the advantage or benefit or the value thereof or the amount of compensation, that may be determined by him, it may by order in writing direct that such person shall not alienate his movable and immovable property or such portion thereof, as it may specify in the order, during the pendency of the inquiry;

(b) any alienation of property made in contravention of any order or direction issued under clause (a) shall be void, and no transferee of such property shall be deemed to have acquired any right, title or interest therein.

Explanation. - For purposes of this section "alienation" includes mortgage, sale, gift bequest, binami transaction, family settlement or any other mode of transfer of any right, title or interest in the property.

(2) For removal of doubts it is hereby declared that restrictions imposed under this section on the rights conferred by clause (1) of article 19 of the Constitution of India as applicable to the State shall be deemed to be reasonable restrictions.

52F. Procedure To Be Followed By The Authority :-

(1) The Authority shall, subject to any rules that may be made by the Government in this behalf, have power to regulate its own procedure in all matters arising out of or connected with the discharge of its functions, in consonance with the principles of natural justice.

(2) The parties shall have a right of being represented by counsel.

52G. Appeal :-

(1) Any person aggrieved by a final order of the Authority, determining the extent of advantage or benefit or value thereof or the amount of compensation under section 52-B, may, within thirty days of the date of the order, file an appeal against such order before the High Court and every such appeal shall be heard by a Division Bench of the High Court.

(2) No other order of the Authority shall be appealable.

(3) The order of the Authority shall, subject to the decision of the High Court under sub-section (1) and of the High Court in appeal be final and shall be deemed to be a certificate within the meaning of section 90 of the Jammu and Kashmir Land Revenue Act, 1996.

(4) No further appeal shall lie against the decision of the High Court.

52H. Exclusion Of Jurisdiction Of Civil Court :- No Civil Court shall have jurisdiction to entertain any suit or other proceeding in respect of any matter which the Authority has taken cognizance of

under section 52-B.

53. Lien On Forest Produce For Such Money :-

When any such money is payable for or in respect of any produce, the amount thereof shall be deemed to be a first charge on such produce and such produce may be taken possession of by a Forest officer until such amount has been paid.

54. Power To Sell Such Produce :-

If such amount is not paid when due, the Forest officer, in charge of the Division may sell such produce by public auction and the proceeds of the sale shall be applied first in discharging such amount. The surplus (if any) if not claimed within six months from the date of the sale by the person entitled thereto shall be forfeited to Government.

55. Restriction On Alienation :-

Notwithstanding anything contained in the Transfer of Property Act or In any other law for the time being in force,

(1) no property offered by a forest lessee or by any other person on behalf of a forest lessee, as security for payment of royalty, interest, compensation, penalty or any other amount chargeable from the forest lessee, under any lease deed, bond or instrument shall be alienated without the previous permission of the Government, till such time as the Chief Conservator of Forests certifies that such forest lessee has duly performed all the obligations devolving upon him under such lease deed, bond or instrument;

(2) any alienation of property made in contravention of sub-section (1) shall be void, and no transferee of such property shall be deemed to have acquired any right, title or interest therein;

(3) any amount of royalty, interest, compensation or penalty or any other sum falling due from a forest lessee under any lease deed, bond or instrument shall be recoverable as arrears of land revenue in accordance with the law for the time being in force, from the property offered by him or on his behalf as security and from any other movable or immovable property owned by the forest lessee.

Explanation. - For purposes of this section,

(a) "alienation" includes sale, gift, exchange, bequest, mortgage, benami transaction, family settlement or any other mode of transfer of any right, title or interest therein or creation of any encumbrance thereon.

(b) the expression "forest lessee" shall be construed to mean a person in whose favour a right to convert and remove forest produce from any forest has been granted under any lease deed, bond or instrument.

56. Declaration Regarding Reasonableness Of Restriction :-

For removal of doubts it is hereby declared that restriction imposed under section 55 on the rights conferred by clause (1) of article 19 of the Constitution of India as applicable to the State shall be deemed to be reasonable restrictions.

SCHEDULE 1

SCHEDULE I

[See Section (IV)]

ENACTMENT REPEALED

No. and year of Regulation or Resolutions	Title	Extent of repeal
Forest Regulation of 1970	A regulation to provide for preservation & management of demarcated, partially demarcated or un demarcated forest in the Jammu and Kashmir State.	The whole
Chief Ministers No. 547 /H. 27/98, dated: 17th May, 1914.	Amendment to Forest Regulation of 1970	The whole
Chief Ministers No. 6548, dated: 12th January, 1916.	Amendment to Forest Regulation of 1970	The whole
Chief Ministers No. 12439, dated: 18th March, 1919; 133/1918	Amendment to Forest Regulation of 1970	The whole
Chief Ministers No. 6431/F.M. dated: 17th August, 1920; 133/1918	Amendment to Forest Regulation of 1970	The whole
Chief Ministers No. 5972/C, XII-8, dated: 10th August, 1921	Amendment to Forest Regulation of 1970	The whole
State Council Resolution No. CLXIII dated: 30th June, 1942	Amendment to Forest Regulation of 1970	The whole