

THE N.W.F.-P. HAZARA FOREST ACT, 1936

(ACT No. III OF 1936)

(Received the assent of the Governor of the 23rd December, 1936, and of the Governor General on the 5th February, 1937).

An act of consolidate and amend the law relating to reserved Forests and Waste lands in the Hazara District.

(2) It shall come into force at once.

Preamble—Whereas it is expedient to consolidate and amend the law relating to reserved forests and waste-lands in the Hazara District, and whereas the previous sanction of the Governor-General under sub-section (3) of section 80-A of the Government of India Act has been obtained :—

It is hereby enacted as follows :—

CHAPTER I

Short title, extent and commencement.—(1) This Act may be called the Hazara Forest Act, 1936.

(2) (i) It applied to the whole of the Hazara District and part of Mardan District ;

Provided that the Local Government may, by notification in Gazette exempt any specified area from the operation of its provisions.

(ii) A notification under the proviso to clause (i) exempting an area from the operation of this Act shall not protect any person committing, within the exempted area, an act in regard to forest produce of unexempted areas which, if committed within an area not so exempted, would be an offence.

(3) It shall come into force at once.

2. Definitions—In this Act, unless there is anything repugnant in the subject or context—

- (a) "Brushed" includes all woody plants with the exception of trees as defined below and of the following fruit trees when cultivated :—
Pears, Apples, Plums, Apricots, Peaches and Vines ;
- (b) "cattle" includes, besides Horned Cattle, Camels, Horses, Mules, Sheep, Goats and the young of such animals ;
- (c) "Deputy Commissioner" means the Deputy Commissioner of the Hazara District or any other officer who may be invested by the Local Government with all or any of the powers of a Deputy Commissioner under or for the purposes of this Act ;

Hazara Forest Act,

- (d) "estate", "village officer", "landowner" and "tenant" shall be deemed to have the meanings respectively attributed to them by the Punjab Tenancy Act, 1887, and the Punjab Land Revenue Act, 1887;
- (e) "forest offence" means an offence punishable under this Act or under any rule made under this Act ;
- (f) "Forest-Officer" means by person whom the Local Government or any officer empowered by the Local Government in this behalf may appoint to carry out all or any of the purposes of this 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 the following when found in or brought from a reserved forest or from waste-land, namely, minerals, surface-soil, trees, timber, charcoal, brushwood, grass, peat, canes, creepers, reeds, leaves, flowers, fruits roots, barks, honey, wax, lac, gum and resin ;
- (h) "Kaghan Ilaqa", means the land of the estates in the Mansehra Tehsil of the Hazara District specified in schedule. ff ;
- (i) "protected waste-land", means waste-land in respect of which an order has been passed under Section 14 ;
- (j) "reserved forests", means land which was demarcated as such at settlement" ;
- (k) "Revenue and Divisional Commissioner", means the Revenue and Divisional Commissioner of the North-West Frontier Province or any other officer who may be invested with the powers of Revenue and Divisional Commissioner for the purposes of this Act ;
- (l) "settlement" means the first and second regular settlements of the Hazara District including the Agror valley ;

Provided that in any case where the records of the two settlement do not agree the term shall be understood to refer to the second regular settlement ;

- (m) "timber", includes trees when they have fallen or have been felled and all wood of such trees whether cut up or fashioned or hollowed out for any purpose or not ;
- (n) "tree", means any tree of a kind specified in Schedule I or any other kind that the Local Government may add to that schedule ;
- (o) "village forest-officer", means any person entrusted by the Deputy Commissioner with any function or charge in the waste-land of villages ; and
- (p) "waste-land", includes all uncultivated land except reserved forests, graveyards, sacred places, land recorded at settlement as part of the village site and land shown as follows :—
("Khali" or "Banjar jadid") in annual records.

CHAPTER II**RESERVED FORESTS**

3. Management of reserved forest—The management of reserved forests is vested in the Forest-officers.

4. Reserved forests to be property of the Government—Subject only to the rights defined and recorded at settlement and to the Payment to the village-land-owners of seigniorage fees as provided in Section 27, the reserved forests shall be deemed to be the property of Government and the forest-income accruing from them shall be credited to Government as forest-revenue.

5. Alienation of right in or over reserve forest—No right or privilege in a reserved forest and no produce obtained by its exercise shall be alienation by sale, lease, or otherwise except to Government unless such alienation is expressly permitted in the order defining and recording such right or privilege ;

Provided that when any such right or privilege attaches to any land it may be sold or otherwise alienated along with such land.

6. Acquisition of right in or over reserved forest—No right of any description shall be acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of Government or by or on behalf of some person in whom such right was vested under Regulation II of 1873 or Regulation VI of 1893.

7. Demarcation—Whenever the limits of any reserved forest are not sufficiently indicated by natural marks of other existing boundaries, they shall be demarcated by permanent and conspicuous marks ; and the limit of the tracts assigned for the exercise of recorded rights (where such exist) within the reserved forest and also of the portion of the forest attaching to each village for seigniorage purposes shall, where necessary, be similarly demarcated.

8. Power to stop ways and water-courses—Any Forest-Officer may, with the previous sanction of the Local Government or of any officer duly authorised in that behalf, stop any public or private way or water-course in a reserved forest ;

Provided that a substitute for the way or water-course so stopped, which the Local Government deems to be reasonably convenient, already exists or has been provided or constructed by the Forest-Officer in lieu thereof.

9. Acts prohibited—(1) Whoever—

- (a) sets fire to a reserved forest or kindles any fire or leaves any fire burning in such way as to endanger such a forest, or who, in a reserved forest ;
- (b) kindlers, keeps or carries any fire ;
- (c) grazes or drives cattle or permits cattle to trespass ;
- (d) cuts, lops, taps, or burns any tree or brushwood or strips off the bark or leaves from or otherwise damages the same ;
- (e) causes any damage by negligence in felling any trees or cutting or removing any forest-produce. /
- (f) scoals or collects or removes
- (g) Cultivates any land or clears or breaks up any land for cultivation or any other purpose ;
- (h) erects any building or makes any enclosure ;
- (i) enters into a fenced enclosure ;
- (j) in contravention of any rules which the Local Government may prescribe, shoots or fishes ;
- (k) sets snares or traps, or poisons water ;

shall be punishable with imprisonment for terms which may extend to six months, or with fine not exceeding five hundred rupees, or with both, and shall, in addition thereto, be liable to pay such compensation for damage done to the forest as the convicting Magistrate may direct ;

Provided that if the offender be a woman, the Magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised by writing under the signature or thumb impression of the woman, attested by a lambarदार or some other respectable person.

(2) When the person who is in charge of cattle which have been permitted to trespass in contravention of clause (c) of sub-section (1) is a child under the age of sixteen years, the owner of the cattle shall be deemed to be a person who is guilty of an offence within the meaning of that clause.

(3) Nothing in this section shall be deemed to prohibit :—

- (a) any act done by permission in writing of the Forest-officer or under any rule made by the Local Government, or
- (b) the exercise of any right recorded at settlement or created by grant or contract made by or on behalf of the Local Government.

9-A Removal of encroachments, etc from reserved Forests. (i) (A).—A court convicting an accused of an offence under clause (g) or (h) of Sub-section (i) of Section 9 shall direct the accused, if he or any other person on his behalf, be in possession of the land in respect of which he is convicted, to deliver possession of the same within such period, not exceeding thirty days, as the court may fix in this behalf, to prescribed Forest Officer, and to remove within the said period any encroachments which the accused may have put up or erected on such land. [PLD 1964 Statute p. 187].

2. Any accused from directed by a court under the last proceeding Sub-section to deliver possession of land in a Reserved Forest to the prescribed Forest Officer to remove any encroachment, within the period specified by the court unless the said sub-section :—

- (a) may be order of the Court, be ejected from such land and any encroachment made by him, on such land, may be removed or demolished with such force as may be necessary and in such manner as may be prescribed ; and
- (b) shall also be liable to a fine which may extend to one hundred rupees for every day, after the period fixed by the Court under the provisions of sub-section (1) has expired, that he remains in possession or occupation of the land in respect of which he has been convicted or fails to demolished or remove the encroachment on such land.

10. Forfeiture of implements and conveyances.—The penalty provided in Section 9, may, in the discretion of the adjudicating Magistrate, and in the case of habitual offenders only, be accompanied by the forfeiture of all implements, or conveyances used in the commission or furtherance of the offence adjudicated; and all forest-produce illicitly obtained shall be restored to the Government Forest Department.

11. Power to declare forest no longer reserved.—(1) The Local Government may, with the previous sanction of the Governor-General-in-Council, by notification in the official Gazette, district that, from the date to be fixed by such notification any reserved forest or portion thereof shall cease to be reserved forest.

(2) From the date so fixed, such forest or portion shall cease to be reserved ; but the rights (if any) which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER III—Waste-Lands

12. Rights in waste-lands.—(1) Subject to the rights and powers of the Government in respect of seigniorage and forest conservancy as defined in this Act or in rule made thereunder, and subject also to the claims of right-holders not being owners of the soil, all waste-lands are the property, held jointly or severally, as the case may be, of the land owners are entitled to use free and forest-produce found in those waste-land. But they shall have no right or power to sell any trees or brushwood growing in such lands except with the permission of the Deputy Commissioner or other officer authorised by the Government and under such conditions as the Deputy Commissioner may impose ; and all such sales shall be subject to payment to the Government of seigniorage-fees as provided by section 17.

(2) The claims of right-holders other than land-owners of the village shall be recognised to the extent defined and recorded at settlement, or in case of doubt or dispute, to the extent which may hereafter to be defined by the Deputy Commissioner with the sanction of the Local Government, and the exercise of such rights shall be subject to the provisions of this Act and the rules made thereunder.

(3) All deodar trees in Kaghan Haqa shall be deemed to be the property of the Government, and nothing in this section shall be held to affect the right of the Government thereto.

13. Power to protect-waste-lands.—(1) Whenever it appears to be necessary to prohibit the breaking up for cultivation of waste-land or its occupation as site for sheds, buildings or enclosures in order to the better protection of :—

- (a) the crests and slopes immediately below the crests of hills within the limits of tree-vegetation.
- (b) catchment-basins of streams, torrents or rivines,
- (c) the banks and beds of rivers, streams, torrents, and rivines,
- (d) steep slopes,
- (e) waste-lands which, though not situated in any of the above positions, are nevertheless of such value of utility for the supply of forest produce or otherwise that their breaking up or occupation would in the judgment of the Deputy Commissioner be inadvisable, the Deputy Commissioner may issue order prohibiting the breaking up or occupation of such waste-land, and defining the area to which such prohibition shall extend, and may cause the limits of such area to be shown on the village map and to be demarcated on the ground with boundary-mark so far as may be necessary.

(2) All orders passed by the Settlement Officer under Section 11 of the Hazara Forest Regulation, 1893, at the second regular settlement of the Hazara District shall be deemed to be orders passed under this section.

(3) No such order as is referred to in sub-section (1) or sub-section (2) shall be cancelled by the Deputy Commissioner, without the sanction of the

Revenue and Divisional Commissioner, but the Deputy Commissioner may from time to time revise such orders by altering the boundary of the protected land so as to exclude any particular plot the protection of which may appear to be unnecessary.

14. Powers to set a part waste-land for growth of grass, trees or brush-wood.—(1) If the Deputy Commissioner is of opinion that in any estate the supply of grass, trees or brushwood is not adequate for the and prospective wants of the residents, he may direct that an area of waste-land not exceeding one-fifth of the total uncultivated area of the estate shall be set apart in a convenient and suitable position, and may record a proceedings providing :—

- (a) for the prohibition within this area of all or any of the acts detailed in sub-section (1) of Section 9 ;
- (b) for the enjoyment of its produce by the residents of the estate and any other right-holders and for the due regulation of that enjoyment ;
- (c) for the recovery of costs of mangament of the Area from the said residents and right-holders.

(2) No compensation shall be claimable by the owners or other right-holders of such land in respect of any orders passed under this section.

15. Power to set apart waste-land for growth of trees burshwood or gross on application of land-owner.—If a person holding an individual property of such proportion of the land owners of the estate as per not less than two thirds of the land revenue thereon, make an application to the Deputy Commissioner requesting that a stated area of waste land, owned individually or in common be set apart for the growth trees, brush-wood or gross, the Deputy Commissioner shall have power to proceed in respect of the area as approved in Section 14.

16. Power to protect waste-lands from erosion, etc.—(1) If the Deputy Commissioner is of opinion that it is necessary to guard more securely against erosion or the formation or extension of ravines or landships he may, issue special orders prohibiting with in the area likely to be affected or that adjacent thereto all or any of the acts detailed in sub-section (1) of Section 9, or permitting them on such conditions as he may see fit to impose.

(2) No compensation shall be claimable by the owners or other right-holders of such land in respect of any orders passed under this section.

17. Appointment of village forest-officer and issue of management orders.—(1) The Deputy Commissioner may appoint village forest-officers to manage the forestry of waste-lands and may issue general of special management orders to such officers for the prohibition of the barking, boring, girdling or otherwise injuring of trees or brush-wood and for the regulations of the felling or lopping of trees or brushwood in such waste-lands for village requirements.

(2) In case of any contravention of orders issued under sub-section (1), the Deputy Commissioner may direct that no trees be felled in the waste without the previous permission in writing of himself or of such officials as may be authorised by him in this behalf ; and if permission to sell brushwood has been accorded he may cancel such permission.

18. Firing of village waste-lands.—The Deputy Commissioner may issue special order in writing permitting the firing of any waste-land within such limits and subject to such conditions as he may think fit.

19. Village-officers and village forest officers bound to report acts contrary to the above prohibition.—Every village-officer and village forest-officer shall be bound to report any breaking of waste-land protected under section 13 and any breach of any order passed under the provisions of this Chapter as soon as the fact comes to his knowledge.

20. Treatment of illicit cultivation, etc.—The Deputy Commissioner may cause to be summarily ejected any person cultivating land or committing any other act in contravention of any order passed under Section 13, Section 14, Section 15 or Section 16, and may direct that any building or enclosures erected or crops grown on such land in contravention of such order shall be confiscated.

21. Treatment of encroachment on common land.—Where waste-land which has been recorded at a statement as “Shamailat” or common land or which has been specially reserved as a grazing ground or as a fuel or timber preserve of the village is broken into by cultivation, the Deputy Commissioner on application of any right-holder in the village or of his own motion, may eject the author of the encroachment and forbid its repetition by a proclamation published in like manner as proclamation under Section 22 of the Punjab Land Revenue Act, 1887.

22. Assessment of cultivation in protected waste.—Where the Deputy Commissioner permits the breaking up and cultivation of land in protected waste or where land has been broken up without his permission and he does not think it necessary or expedient to stop the cultivation thereof, he may impose on the land newly brought under cultivation an assessment at rates which shall not exceed double, the rate on land of similar quality in the same or adjacent villages, and in cases where application has been made for his sanction previous to the breaking up of the land, shall ordinarily not be higher than those rates.

23. Protection of cultivation by retaining wells.—(1) In the case of existing cultivation in dangerous position on hill-sides the Deputy Commissioner may require the owner or tenant of the land so cultivated to protect it by a retaining wall or take such other precaution to ensure the stability of the soil as he may deem necessary.

(2) Should the owner or tenant fail to comply with the requisition within a reasonable time and also persists in cultivating the land, the Deputy Commissioner may summarily eject him from so much of the land as may summarily eject him from so much of the land as may be in danger and deal with it in accordance with the provisions of Section 16.

(3) Similarly, the Deputy Commissioner may Direct that any extension of cultivation after the date of the introduction of the second regular settlement in dangerous positions on a hill-side shall be protected by retaining walls, and may summarily eject the cultivator of such land if he fails to comply with the orders.

(4) No compensation shall be claimable by the owner or tenant of such land in respect of any order passed under this section.

24. Treatment of cultivation in dangerous on hillsides.—(1) Where after the date of the introduction of the second regular settlement land is brought into cultivation in dangerous position or hill-sides and the slope is too steep to admit of the construction of retaining walls, the Deputy Commissioner may, if he is of opinion that the probations of such cultivation is in the general interest of the village, eject the person cultivating and direct that the land remain uncultivated in future.

(2) No compensation shall be claimable by the person ejected in respect of any order passed under this section.

25. Cost of management.—The cost of management of any waste-land of the demarcation of any waste-land directed by the Deputy Commissioner to be demarcated in accordance with the provision of this Chapter, may be recovered from all land-owners or from all land-owners and right holders concerned, as an addition to land-revenue.

26. Offence in waste-lands.—Whoever commits or abets the commission of any of the following offences, namely :—

- (1) breaks up or occupies or, being the owner of the land or a joint owner thereof, permits the breaking up or occupation of any waste-land protected under Section 13 ;
- (2) contravenes any order passed under Sections 14, 15, 16, 21, 23 or 24 ;
- (3) without permission knowingly sells or conveys for sale any tree, timber or brushwood produced on waste-land, or fellam, lops, barks, bores, girdles or otherwise injures any such tree or brushwood contrary to any general or special management orders issued under Section 17 ;
- (4) sets fire to any waste land otherwise than as permitted by an order passed under Section 18 or negligently permits any fire to extend thereto,

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees or with both ;

Provided that if the offender be a woman, the Magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit here to appearably an agent authorised by writing under the signature or thumb impression of the woman, attested by a lambardar or some other respectable person.

26-A. Power to Court to evict trespasser.—(1) A Court convicting an accused person of an offence under Clause (1) of Section 26 shall direct the accused if he or any other person on his behalf, be in possession of the waste land in respect of which he is convicted, to deliver possession of the same, within such period not exceeding 20 days, as the court may fix in this behalf, to the prescribed Forest Officer, and to remove within the said period any encroachment which the accused may have put up or reacted on such land.

(2) Any accused person directed by a court under the last preceding Sub-section to deliver possession of waste land to the prescribed Forest Officer or to remove therefrom any encroachment, made by him who fails so to deliver the land or to remove the encroachment made by him who fails so to deliver the land or to remove the encroachment, within the period specified by the Court under the said sub-section.

- (a) may, by order of the Court, be ejected from such land and any encroachment made by him on such land may be removed or demolished with

such force as may be necessary and in such manner as may be prescribed ; and

- (b) shall also be liable to fine which may extend to one hundred rupees for every day, after the period fixed by the Court under the provisions of sub-section (1) has expired that he remains in possession or occupation of the land in respect of which he has been convicted or fails to demolish or remove the encroachment on such land". [PLD 1964 W.P. 188].

CHAPTER IV—Duties and Fees.

27. **Seigniorage fee**—(1) In the case of :—

- (a) trees felled in reserved forests,
 (b) firewood supplied from the same, and
 (c) deodar trees felled in the waste-land of villages in Kaghan Ilaqa.

the Forest Officer shall credit to the Government as forest-revenue the price realized by the sale of such trees or firewood and on the other hand debit to the Government and pay to the right holders entitled there to in such manner as the Deputy Commissioner may direct the seigniorage-fees due according to the list of such fees that in force for the time being.

(2) Similarly, in the case of trees which are sold from waste-lands, the Deputy Commissioner shall credit to the Government as forest-revenue the seigniorage-fees, and the balance of the price realised shall be paid to the right holder entitled thereto. Provided that the trees referred to in this sub-section are of one or other of the kind entered in the seigniorage-list which is in force for the time being.

(3) The list of the seigniorage-fee in force at the commencement of this Act is hereby maintained.

(4) With the previous sanction of the Governor-General-in-Council the Local Government shall after every ten years with due reference to the average actual prices realisable, for timber or fuel, revise the rates of fees in such list and may add trees to it or exclude trees from it.

(5) The fees may be uniform throughout the district or varied, in different parts thereof, but shall not exceed in any case a fair estimate of half the average net profits realisable on the sales.

(6) Whenever the list of seigniorage-fees has been revised the Local Government shall publish a notification in the official Gazette, which shall set forth the rates of seigniorage fees payable, the circumstances under which any trees have been exempted from charge, and such other matters connected with seigniorage-payments as the Local Government may see fit to regulate.

COMMENTS

The *Wajib-ul-araz* is a part of the revenue record drawn up with special reference to each village and contains a record of admitted village usages. There is a presumption of correctness attached to the usages to prove the contrary. [PLD 1954 Pesh. 69 : PLD 1954 Lah. 359].

“Entries in the *Wajib-ul-araz* may be of two kinds. They may be statements of local custom or usage or they may be recitals of agreements. As

statements of custom or usage they are strong evidence of the existence of such custom or usage but they have only an evidentiary value. Agreements incorporated in the *Wajib-ul araz* are however binding but only on the parties to the agreements was entered into though the task would be different".

In the sub-section (2) of Section 27 "trees" *inter alia* means trees of kind specified, in Schedule 1 of the Act, Schedule 1 mentions a large of number of trees including Biar, Diar, Pludar and Sum. In Seigniorage-fee have been credited to the Government as forest revenue, the balance of price of trees from waste lands shall be paid to the "right holder". The terms right holder has not been defined in the Act, but with reference to Section 12 of the act, and this is only incidental, it evidently includes the land owners of the village. Section 27 of the Act does not come within the mischief of Section 47 of the Act and thereof any matter covered by the former falls within the jurisdiction of the Civil Court. And this is obviously so because Section 27 deals with the rights and entitlements of the parties mentioned therein. [PLJ 1975 S.C. 281].

28. Power to impose duty on timber—The local Government may direct the levy of duty in such manner, at such places and at such rates *ad valorem* or otherwise, as it may prescribe by notification in the official Gazette, on all timber produced in the Hazara District or brought into that district from beyond the frontier or else-where.

CHAPTER V.—Control of forest produce in transit

29. Power of Local Government to issue rules for floating timber and levying fees—The Local Government may make rules to regulate :—

- (a) the import of timber of any forest-produce into the Hazara District ;
- (b) the transport of timber of any forest-produce by land or by rivers and streams within the district, the custody thereof during transit, and the levy of fees in respect of timber or of any forest-produce transported ;
- (c) the collection and disposal of waif and unowned timber of any forest-produce ; and
- (d) the use of property marks for timber and the registration of such marks ;

and may prescribe as penalty for the infringement of such rules imprisonment which may extend to six months, or fine which may extend to five hundred rupees, or both, and by these rules make provision for the appearance of the woman offender on the lines of the proviso to Sub-clause (1) of Section 9.

COMMENTS

So for rule 3 in it is concerned, it appears to be unexceptional is to prohibit the transportation of timbers by land within the limits of Hazara District, between the hours of sunset and sunrise, is within the ambit of expression "regulate" used in the section of Act. But this would not mean that the contravention of this rule by and accused could be automatically visited by the confiscation of his conveyance under rule 11 of the Notification. It is clear that rule 11 of the Notification, in so far as it provides that in the event of contraven-

tion of rule No. 3 an accused would automatically forfeit his conveyance is *ultra vires* of the power of the Provincial Government, as by Sub-section (d) of Section 29 of the Act the only power given to it by the legislature was to frame rules to regulate the import of timber into Hazara District and to prescribe penalties for the infringement of such rules imprisonment which may extend to six months or which may extend to five hundred rupees, or both. By specifying these limits within which the Provincial Government could impose penalties upon an offender, the intention of the legislature is clear that whatever sub-making power if wished to confer upon the Provincial Government, was conferred on it under Sub-section (d) of Section 29 of the act and consequently it had no authority to provide in rule 11 that the offenders would automatically lose their conveyances. Rule 11 cannot be said to be even remotely within ambit of Section 29 of the Act and consequently that extend it would be devoid of force, not with standing Section 54 of the Act that once published in the official Gazette the rules in question shall have effect as if enacted in the Act itself the offending part of rule 11 was the result of impect drafting, because otherwise the legislature had made ample provision for the confiscation of Wagons in appropriate cases subject of course to the discretion of the adjudicating Magistrate. Section 10 of the Act with which Sub-section (3) of Section 39 of the Act is seemingly inconsistent, reveals the unmistakable intention of the legislature that if an offender is convicted, then in addition to the penalties provided in Section 9, the adjudicating Magistrate in his discretion and in the case of habitual offenders only, order the forfeiture of his conveyance in which the contraband goods were detected. In other words the legislature has not only made a distinction between the case of habitual and other offenders but has also directed that the forfeiture of conveyance could only be effected by the order of a Magistrate in the exercise of his proper discretion. Seen in this context Sub-section (3) of Section 39 of the Act, the language of which is not as precise as that of Section 10 cannot be construed to mean that once an offender is convicted under the provisions of the Act, he would automatically forfeit his conveyance without the order of a Magistrate. [PLD 1971 Pesh. 226].

29-(b). Read with Forest Transport Rules, 2.—Walnut trees already cut by a person from his agriculture land under a valid premises from Government subsequently issuing directive prohibiting cutting of Walnut trees and transportation of its timber—permission to transport timber refused on ground of prohibitory directives of Government. Timber trees already felled under valid permission could not be refused transport permit, directive of Government even otherwise had no legal force unless suitable amendments made in Hazara Forest Act and Rules made there under. [PLD 1975 Pesh. 238].

CHAPTER VI.—Drift and Strand Timber.

30. Certain kinds of the property of Government until title thereto proved.—

(1) All timber found a drift, breached, stranded or sunk, all timber bearing marks which have been registered in accordance with any rules which the Local Government may have issued, all timber on which the marks have been altered, defaced or obliterated, and, in such areas as the Local Government, may, by notification in the official Gazette, direct, all unmarked timber, shall be deemed to be the property of the Government unless and until some person establishes his right and title thereto.

(2) Such timber may be collected by any Forest officer and be brought to any depot appointed for its reception.

(3) Due public notice shall be given from time to time of such collection, and any person claiming such timber shall be required to present a written statement of his claim within two months from the date of such notice.

31. Procedure on claim preferred to such timber.—(1) When any such statement is presented as aforesaid a Forest Officer, not below the rank of a Divisional Forest Officer, after making necessary inquiry, either reject the claim after recording his reason for so doing, or deliver the timber to the claimant.

(2) 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.

(3) 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.

(4) 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.

32. 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 32, 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 33, the ownership of such timber shall vest in the Government, or, when such timber has been delivered to another person under Section 33, in such other person, free from all encumbrances not created by him.

33. Government and its officials not liable for damage to such timber.—The Government shall not be responsible for any loss or damage which may occur in respect of any forest produce while at a depot or while detained elsewhere for the purpose of this Act; and no Forest Officer shall be responsible for any such loss or damage unless he has caused such loss or damage negligently, maliciously or fraudulently.

CHAPTER VII—Penalties and Procedure

34. Liabilities to assist in preventing forest officers and fires, etc.—(1) Every person having rights in a reserved forest, or owing, occupying or having rights in waste-land or land adjacent to a reserved forest or to waste land and every person employed in a reserved forest by Government or in waste adjacent to reserved forest by any owner of the waste, shall be bound to furnish without unnecessary delay to the nearest Revenue officer, Forest Officer, village forest Officer or Police officer any information he may possess respecting the commission of, or intention to commit, any forest offence; and shall further be bound to use his best endeavours:—

- (a) to extinguish any fire occurring in any such reserved forest or in any such waste-land;
- (b) to prevent fire from spreading thereto;
- (c) to prevent the commission of any forest offence therein;

- (d) when there is reason to believe that a forest offence has been committed therein, to discover and arrest the offenders.

Provided that a minor or a woman or an infirm person shall not be subject to the above liabilities.

(2) All contractors and all persons employed by contractors in any reserved forest or waste land ; and all person holding any permit or lease therein, shall be bound in the same way or a regards the lands in which their employment or permit or lease subsist.

(3) Every person who neglects any duty imposed on him by this section shall, on conviction before a Magistrate, be punishable with fine which may amount to one hundred rupees, and in default of payment may be sentenced to simple imprisonment for a term not exceeding six months. In a case of second conviction simple imprisonment not exceeding six months may be awarded in addition to the abovepenalty.

Provided that if the offender be a woman, the Magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised by writing under the signature or thumb impression of the woman, attested by or Lambardar or some other respectable person.

35. **Power to close forests that have been burnt or otherwise damaged.**—In cases of illicit firing of any reserved forest or of repeated or serious damage thereto in contravention of any of the provisions of this Act or rules thereunder, the Deputy Commissioner (whether or not any punishment has been inflicted under Section 9 or Section 36) may direct that the area so burnt or damaged and also the whole or any part of the area of the forest attaching to the village to which the offender or offenders are proved or believed to belong shall be closed against all or any of the following acts, namely, cattle-grazing, grass-cutting, the felling and lopping of trees and the cutting and gathering of dead wood, for a period not exceeding one year or, with the sanction of Local Government, for any longer period that may be thought fit.

36. **Power to close waste-lands in cases of violation of the provisions of the Act.**—In cases of a flagrant or habitual violation of any of the provisions of this Act or rules made thereunder the Deputy Commissioner (whether or not any punishment has been inflicted under Section 26 of Section 34) may, with the previous sanction of the Revenue and Divisional Commissioner, direct that within the limits of the whole of the waste land affected or of a specified portion thereof all or any of the following acts, namely, cattle grazing, grass cutting, tree-felling and the cutting and gathering of brushwood or any other kind of wood shall be totally prohibited, for a period not exceeding one year or, with the sanction of the Local Government, for any longer period that may be thought fit.

37. **Punishment for act in contravention of order passed under Section 36.**—Whoever contravenes an order passed, under Section 36 shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both ;

Provided that if the offender be a woman, the Magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised by writing under the signature or thumb impression of the Woman, attested by a lambardar or some other respectable person.

38. Power to close land illicitly cultivated.—In all cases of illicit cultivation in any reserved forest or protected waste land (whether or not any punishment has been inflicted under Section 9 or Section 26) the Deputy Commissioner may demarcate the land so cultivated, and may suspend the exercise in such land of all rights therein for two years or for such longer time as may be necessary for the reproduction of any trees, brushwood or turf that may have been destroyed in order to its cultivation.

39. Power to seizure of forest produce unlawfully removed.—Any Revenue, Police or Forest Officer may seize :—

(a) any forest-produce which he has reason to believe has been obtained or is being transported contrary to any provision of this Act, or of any rules or orders made there under ; and

(b) any tools or carriage, wagon, cart, truck or other vehicle used in the commission of any offence against such Act, rules or orders ;

(2) Such seizure shall be reported forthwith to the nearest Magistrate having jurisdiction in respect of such offence.

(3) All forest-produce in respect of which an offence under this Act or any rule made there under has been committed, any tools or carriage, wagon, cart or other vehicle used in committing any such offence, shall offence, shall be liable to confiscation.

(4) When the offender is not known or cannot be found, the Magistrate may, if finds that an offence has been committed, direct that any thing seized under sub-section (1) shall be confiscated.

COMMENTS

Conveyance of offender cannot automatically be forfeited without order of Magistrate Forest Act 1927 and North West Frontier Province Forest produce Transport Rule 1975. Section 41 of the Forest Act is para mention with Section 29 of the North West Frontier Province Hazara Forest Act, 1946 in giving power to the Local Government to make rules to regulate the control of timbers and other forest Produce in transit. [PLD 1976 Pesh. 144].

In the Notification No. 13938 T.P. it is clear that it was published under Section 29(b) of the Act. So far as rule 3 in it is concerned, it appears to be un-exceptional as to prohibit the transportation of timber by land within the limits of Hazara District, between the hours of sunset and sunrise, is within the ambit of expression "regulate" used in Section 29 of the Act. But this would not mean that the contravention of this rule 3 an accused would automatically forfeit his conveyance is *ultra vires* of the power of the Province Government, as by Sub-section (d) of Section 29 of the Act the only power given to it by the legislature was to frame rules to regulate the import of timber into the Hazara District and to prescribed penalties for the infringement of such rules imprisonment which may extend to six months, or fine which may extend to five hundred rupees, or both.

Section (d) of Section 29 of the Act and consequently it had no authority to provide in rule 11 that the offender would automatically lose their conveyance.

40. Power to release property seized under Section 39.—Any Revenue officer or any Forest officer of a rank not inferior to that of a Ranger who, or whose subordinate has seized wagon, cart, truck or other vehicle under the provisions

of Section 39, may release the same on the execution by the owner thereof of a bond for the production of the property so released if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

41. Punishment for wrongful seizure.—Any Forest Officer or Police officer who vexatiously and unnecessarily seizes any property on presence of seizing property liable to confiscation under this Act shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

42. Penalty for counterfeiting or defacing marks on trees and timber or altered 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 Indian Penal Code :—

- (a) knowingly counterfeits upon any timber of standing tree a mark used by Forest Officers or other person to indicate that such timber or tree is the property of the Government or of such other person, or that it may lawfully be cut or removed by some person ; or
- (b) alters, defaces or obliterates any such mark placed on a tree or on timber by or under the authority of a Forest Officer ; or
- (c) alters, moves, destroys or defaces any boundary mark of any forest or waste-land to which the provisions of this Act are applied :—

shall be punishable with imprisonment for a term which may extend to two years, or with fine or with both :

Provided that if the offender be a woman, the Magistrate, shall except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised by writing under the signature or thumb impression of the woman, attested by a lambardar or some other respectable person.

43. Power of arrest.—(1) Any Revenue, Officer, Police, Forest or village forest officer may arrest without a warrant any person committing within his sight an offence punishable under this Act.

(2) Every officer making an arrest under this section shall without unnecessary delay, and subject to the provisions of this Act as to release on a bond, take or send the person so arrested to the nearest Magistrate or Police station, there to be released on bail or personal recognizance pending the trial of the case.

44. Power to release on bond a person arrested.—Any Revenue officer or any Forest officer of a rank not inferior to that of a Range officer who or whose subordinate, has arrested any person under the provisions of Section 43 may release such person on his executing a bond to appear, if and when so required, before the Magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station.

45. Power to compound offences.—(1) The Government may, by notification in the official Gazette empower any Forest Officer :—

- (a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specifi-

ed in Section 41 or Section 42, a sum of money by way of compensation for the offence which such person is suspected to have committed ; and

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) 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.

(3) No Forest officer shall be empowered under this section unless he is of a rank not inferior to that of Ranger, and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under sub-section (1), Clause (a) shall in no case exceed the sum of fifty rupees.

46. **Procedure.**—All proceedings relating to offences and criminal liabilities under this Act shall be governed by the Code of Criminal Procedure 1898.

47. **Jurisdiction.**—(1) No Civil Court shall exercise jurisdiction over any of the following matters, namely :—

(a) any matter provided for in Sections 3 to 25 both inclusive ;

(b) any matter provided for in Sections 35, 36 and 38.

(2) In the matters referred to in sub-section (1) jurisdiction shall rest with the Revenue officer only and all proceedings shall be governed by the procedure prescribed by law for the time being in force for the regulation of such proceedings.

(3) Every order passed by a Revenue officer in exercise of the above jurisdiction shall be subject to such rights of appeal and powers of review and revision as are provided in Sections 80 to 84 of the Punjab Tenancy Act 1887.

CHAPTER VIII—Cattle Trespass

48. **Cattle Trespass Act to apply.**—(1) Cattle trespassing in a reserved forest or in any waste-land set apart or protected under Section 14, Section 15 or Section 16, or in any area which has been closed to grazing under Section 35, shall be deemed to be cattle doing damage to a public plantation within the meaning of Section 11 of the Cattle Trespass Act 1871, and may be seized and impounded as such by any Forest or village Forest Police officer.

(2) The Local Government may, by notification in the Official Gazette, direct that the lieu of the fines imposed by Section 12 of the said Act there shall be levied for each head of cattle impounded under sub-section (1) such fines as it may think fit not exceeding the following, that is to say :—

	Rs.	Rs.
For each buffalo or camel	2	00
For each horse, mare, gelding, pony, colt filly, mule, bull, bullock, cow or heifer.	1	00
For each calf, ass, pig, ram, sheep, lamb, goat or kid.	0	50

Provided that :—

- (a) when cultivation closely adjoins the boundary of a Forest, no cattle straying from such cultivation or its neighbourhood shall be liable to seizure under this section unless the forest in that part adjoining the said cultivation has been clearly demarcated, and ;
- (b) no cattle shall be liable to seizure which are being lawfully driven along a road or track on which a right of way exists even though they stray from such road or track ;

so long as driver has used reasonable care and diligence to prevent his cattle from so straying and to drive back such astray.

CHAPTER IX—Forest-Officers

49. Conferment on forest officer of powers of Deputy Commissioner or Assistant Collector.—The Local Government may invest any gazetted Forest-officer with all or any of the powers of a Deputy Commissioner under this Act and with all or any of the powers with which an Assistant-Collector may be invested under the provisions of the Punjab Land Revenue Act, 1877.

Provided that any Forest officer invested with any powers under this section shall exercise such powers subject to the control of the Deputy Commissioner of the Hazara District.

50. Conferment on Forest officer of certain other powers.—(1) The Local Government may invest any Forest officer with all or any of the following powers, that is to say :—

- (a) power to enter upon any land to survey, demarcate and make a map of the same ;
- (b) powers of a Civil Court to compel the attendance of witness and the production of documents ;
- (c) power to issue a search warrant under the Code of Criminal Procedure, 1898 ;
- (d) power to hold inquiry into forest-offences, and in the course of such inquiry, to receive and record statement.

(2) Any statement recorded under clause (d) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate to the same extent as statements recorded by the Police during the investigation.

51. Forest officers, Public servants.—All Forest-officers shall be deemed to be public servants within the meaning of the Penal Code.

52. Forest officers, not to trade.—Except with their permission in writing of the Local Government, no Forest-officer shall, as principal or agent, trade in timber or any forest-produce or be or become interested in any lease of any forest or in any contract for working any forest, whether in British or foreign territory.

CHAPTER X—Supplemental Provisions

53. Additional powers to make rules.—(1) The Local Government may make rules to carry out the objects and purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may :—

- (a) prescribe and limit the powers and duties of any Forest-officer under this Act ;
- (b) provided for the disposal of the proceeds of fine, confiscation and other sums received under this Act and the regulations of rewards to be paid therefrom to officers, informers and others.
- (c) provide for the preservation, reproduction and disposal of trees, brushwood and timber produce on waste-lands.

54. Publication of rules in official Gazette.—All rules made under this Act shall be published in the official Gazette, and on such publication shall have effect as if enacted in this Act.

55. Indemnity for acts done in good faith.—Subject to the provisions of Section 41, no suit, prosecution or other proceeding shall be entertained in any Court against any public servant for anything done in pursuance of execution of this Act or done in good faith and in intended execution of this Act.

56. Recovery of money due to the Government.—All money payable to the Government under this Act, or any rule made thereunder or on account of the price of any forest-produce or of expenses connected with any act done in accordance with the provisions of this Act or the rules made under it in respect of such produce, may, if not paid when due, be recovered under the law for the time being in force, as if were an arrear of land-revenue.

COMMENTS

S. 82 and Hazara Forest Act (VI of 1936), S. 56—Arreas of duty on timber—Recoverable as land revenue—Amount deposited on account of demands of duty—Claim for refund—Limitation Act (IX of 1908), Art. 16 [(Muhammad Gul Muhammad Afzal Cheema, JJ.) Muhammad Gul v. Govt. of N.W.F.P., 1975 S. M. R. 207].

57. Recovery of penalties due under bond.—When any person in accordance with any provision of this Act or in complicity with any rule made thereunder binds himself by any bound or instrument to perform any duty or act, or covenants by any bound or instrument that he, or that he and his servants and agents, will abstain from any act, the sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in Section 74 of the Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land revenue.

58. Repeal of Regulation III of 1911.—The Hazara Forest Regulation (III of 1911) is hereby repealed.

Hazara Forest Act 1946

SCHEDULE I

LIST OF PROTECTED TREES

(See Section 2 (n))

Scientiff name	Local Name	English Name
<i>Abies Webbiana.</i>	Paludar acha*	Himalayan Silver fir.
<i>Acer Caesium</i>	} Trikan. Tarkan.	} Maple.
<i>Acer-cultratum</i>		
<i>Acaia Catecha.</i>	Khair.	Cutch.
<i>Modesta.</i>	} Phula. Phulah.	} Acacia
<i>Aesculus Indica</i>		
<i>Ainus Nitida</i>	Shorol.	Alder.
<i>Albizzia Lebbek.</i>	Sirin.	Siris.
<i>Baninia Variegata.</i>	Kachnar.	...
<i>Betula Utilis.</i>	Bhurj	Brich
<i>Bambax Malabaricum.</i>	Simbal.	Silk Cotton tree.
<i>Cassia Fistula.</i>	Amaltas.	Indian Laburnum.
<i>Cedrus Libani.</i>	Diodiar**	Deodar.
	} Batakar. Baktara.	} Nettle-tree.
<i>Cedrela Toona.</i>		
<i>Cedrela Serrata.</i>	Drawa.	Hill Toon.
<i>Cornus Macrophylla.</i>	Kandar.	...
<i>Dalbergia Sissoo.</i>	Tali.	Shisham.
<i>Diospos Lotus.</i>	Amlok.	European date palm.
<i>Eguenia Jambolana.</i>	Jamman.	Black plum.
<i>Ehretia Scuminata.</i>	Punah	...
<i>Eucalyptus Sp.</i>	Gund.	...
<i>Ficus Bengalensis.</i>	Bor.	Banyan.
<i>Ficus Roxburghii.</i>	Barh or Hurmul.	...
<i>Ficus Religalensis.</i>	Pipal	Pipal.
<i>Fraxinus Flori- benunda.</i>	Sum	Ash.

<i>Fraxinus Xantoxo-</i> <i>ides.</i>	Hanza	...
<i>Govewia Opposifolia.</i>	Dhamman.	...
<i>Juglans Regia.</i>	{ Akhrot. Akhor.	Walnut.
<i>Melia Azedarach.</i>	Dhrek.	Persian Lilac or Bastard Cedar.
<i>Morus Alba.</i>	Tut. Tutli.	White Mulberry.
<i>Olea Ferruginea.</i>	Kao.	Indian Olive.
<i>Olea Glandulifera.</i>	Bankao.	...
<i>Phoebe Lancealta.</i>	Chan.	...
<i>Phyllanthus Emblica.</i>	Amla.	...
<i>Picea Morinda.</i>	Kachal.	Himalayan Spruce.
<i>Pinus Cogifolia.</i>	Chir	Long-leaved pine.
<i>Pinus Evcelsa.</i>	Bar.	Blue pine.
<i>Pieris Ovalifolia.</i>	Rattankath.	...
<i>Pistacia Integerrimd.</i>	Kanger.	Pistachio.
<i>Plantanus Orientalis.</i>	Chenar.	Plane.
<i>Populus alba.</i>	Sofada.	White Poplar.
<i>Populus ciliate.</i>	Palach.	Himalayan poplar.
<i>Pronus Padus.</i>	Kala Kat.	Bird Cherry.
<i>Pyrus Pashia.</i>	Batangi.	Wild pear.
<i>Quercus Semearpifolia</i>	Banchar.	Brown oak.
<i>Quercus Dilatata.</i>	Barungi.	White Oak.
<i>Quercus Ilex.</i>	Rhin.	Holm Oak.
<i>Quercus Incana.</i>	Thin.	White Oak.
<i>Quercus Glacua.</i>	Barim.	Oak.
<i>Rhododendron Arboreum</i>	Renatol. Chhan.	Rhodendron.
<i>Salix Tetrasperma.</i>	Bis, bins.	Willow.
<i>Tamarisk articulata.</i>	Rukh.	Tamarisk.
<i>Taxus Baccata.</i>	Barmi, thuni.	Yew.
<i>Ulmus, Wallichiana.</i>	Kain.	Large leaved elm.
<i>Ulmus, Villosa.</i>	Mannu.	Small leaved elm.

SCHEDULE II

(See Section 2 (h))

Kaghan, Jared, Bhunia, Manur, Phagal, Bhutandes, Kambal-ban, Khawai, Suhan, Bela, Sacha, Chushal, Paras Sangar, Chenul, Hingrai, Balakot, Khas Bambigar, Bibhara, Patlang, Jigga, Mitti kot, Ghabela, Khet, Sarash, Sathanni, Kanshian, Kumbi, Khangiri, Bhangia, Josach.