

THE SIKKIM FORESTS AND WATER COURSES (PRESERVATION AND
PROTECTION) BILL, 2007.

A BILL

To consolidate the law relating to forests, forest produce and water courses and for matters connected therewith or incidental thereto.

Be it enacted by the Legislature of Sikkim in the Fifty-eighth Year of the Republic of India as follows:-

CHAPTER – I
PRELIMINARY

Short title, extent and commencement.

1. (1) This Act may be called the Sikkim Forests and Water Courses (Preservation and Protection) Act, 2007.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force from the date of its publication in the official gazette.

Definitions.

2. In this Act, unless the context otherwise requires,-

- (a) “cattle” includes asses, buffaloes, cows, colts, ewes, fillies, geldings, goats, horses, kids, lambs, mules, ponies, pigs, rams, sheep, yak and zoe, elephant and such other kinds of animals as the Government, by notification, specify;
- (b) “forest” means an extensive tract of land covered with trees and undergrowth, sometime intermingled with pastures, alpine scrubs;
- (c) “forest land” means the land shown as forest land in the record of rights including areas under perpetual snow, alpine, scrubs or alpine pasture or the land as declared as forest land by the Government, by notification;
- (d) “forest officers” includes the Principal Chief Conservator of Forests, Chief Conservator of Forests, Conservator of Forests, Director, Additional Director, Joint Director, Deputy Conservator of Forests, Divisional Forest Officer, Assistant Conservator of Forests, Range Officer, Deputy Range Officer, Block Officer, Head Forest Guard, Forest Guard or any other officers appointed by the Government to perform any function of a forest officer under this Act;

(e) “forest offence” means an offence punishable under this Act or any rule made there under;

(f) “forest produce” includes-

(a) the following whether found in, or brought from, a forest or not, that is to say:- bark, charcoal, firewood, myrobalance, natural varnish, resin, shellac, timber, wood, and

(b) the following when found in or brought from a forest, that is to say:- trees and leaves, flowers and fruits and all other parts or produce of trees not hereinbefore mentioned;

(i) Wild animals and skins, tusks, horns, bones, silk cocoons, honey and wax, and all other parts or produce of animals,

(ii) plants not being trees including agave, creeper, dioscores, daphne, edgeworthia, ferns, grass, lycopodium, lichens, mushroom, moss and reeds, bamboo, nettle, polygonum, thysonalea, and all categories of medicinal herbs and shrubs, any agricultural crops, bulbs, rhizomes, tubers, and all parts or produce of such plants,

(iii) peat, dolomite, graphite, rock, surface soil, sand, stones, slates, and other minerals including laterite, mineral oils and all other products of mines and quarries, and

(iv) such other product as the Government may, by notification, declare to be forest produce.

(g) “Government” means the State Government of Sikkim;

(h) “Gorucharan forest” means any forest land settled and set aside by the State Government for the purpose of grazing of cattle of the adjoining villages;

(i) “khasmal forest” means any forest land settled and set aside by the Government for meeting the bonafide domestic need of timber, firewood and fodder of the adjoining villages;

(j) “land” includes channel, creeks and other water channel, reservoir, rivers, lakes and streams, whether artificial or natural and also includes boulders and rocks;

(k) “notification” means a notification published in the Official Gazette;

(l) “reserved forest” means any forest land settled and notified by the Government as reserved forest;

(m) “record” includes khasra, khatian and maps of the Government of Sikkim and the Government of India;

(n) “river” includes any stream, channel, jhora, creak or other channel, natural or artificial;

(o) “timber” includes trees when they have fallen or have been felled and all wood cut up or sawn or fashioned or hollowed out for any purpose whatsoever;

(p) “trees” includes bamboos, brushwood, cane, banana, kernels, stumps, trees and palms;

- (q) “waste land” means an uncultivated land which is not the property of any individual person;
- (r) “weapon” includes ammunition, bows, arrows, explosive, firearms, hooks, bills, khukuries, axe, saw, knives, nets, poison, snares, traps and any instrument or apparatus capable of destroying damaging and injuring forest produce.

CHAPTER-II RESERVED FORESTS

Power to Reserve Forests.

3. The Government may declare any land as a reserved forest in the manner hereinafter provided.

Notification by Government.

4. Whenever it is proposed to declare any land as a reserved forest, the Government shall issue a notification specifying therein-

- (a) that it has been decided to declare such land as a reserved forest;
- (b) as nearly as possible, the situation and limits of such land; and
- (c) the appointment of an officer (hereinafter referred to as the Forest Settlement Officer) to enquire into the matter and determine the existence, nature and extent of any rights relating to collection of dry sticks and grazing alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any land comprised within such limit or in or over any forest produce, and to deal with the same as provided in this Chapter.

Bar of accrual of forest rights.

5. After the issue of a notification under section 4, no right shall be acquired in or over the land comprised in such notification except by succession or under a grant or contract in writing made or entered into or by or on behalf of the Government or some person in whom such right was vested when the notification was issued.

Proclamation by Forest Settlement Officer.

6. When a notification has been issued under section 4, the Forest Settlement Officer shall publish in the language commonly spoken in every town and villages in the neighbourhood of the land comprised therein, a proclamation-

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(c) fixing a period of not less than one month from the date of such proclamation, and requiring every person claiming any right mentioned in section 4 or section 5 within such period either to present to the Forest Settlement Officer a written statement specifying or to appear before him and state the nature of such right and the amount and particulars of the compensation, if any, claimed in respect thereof.

Inquiry by Forest Settlement Officer.

7. The Forest Settlement Officer shall record all statements made under section 6 and shall at some convenient place inquire into all claims preferred under that section, and the existence of any rights mentioned in section 4 or section 5 and not claimed under section 6 so far as the same may be ascertainable from the records of the Government and evidence of any persons likely to be acquainted with the same.

Powers of Forest Settlement Officer.

8. For the purpose of such inquiry, the Forest Settlement Officer may exercise the following powers, namely;

- (a) the power to enter, by himself or any officer authorized by him for the purpose, upon land and to survey, demarcate and make a map of the same; and
- (b) the powers of a Civil Court in the trial of suits.

Extinction of Rights.

9. Rights in respect of which no claim has been preferred under section 6 and of the existence of which no knowledge has been acquired by enquiry under section 7, be extinguished, unless before the notification under section 17 is published, the person claiming those rights satisfies the Forest Settlement Officer that he has sufficient cause for not preferring such claim within the period fixed under section 6.

Treatment of claims relating to shifting.

10. (1) In the case of a claim relating to the practice of shifting cultivation, the Forest Settlement Officer shall record a statement setting forth the particulars of the claim and of any local rule or order under which the practice is allowed or regularized, and submit the statement to the Government, together with his opinion as to whether the practice should be permitted or prohibited wholly or in part.

(2) On receipt of the statement and opinion, the Government may make an order permitting or prohibiting the practice wholly or in part

(3) If such practice is permitted wholly or in part, the Forest Settlement Officer may arrange for its exercise-

- (a) By altering the limits of the land under settlement so as to exclude land of sufficient extent of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants, or
- (b) By causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as he may prescribe;

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of the Government.

(5) The practice of shifting cultivation shall in all cases be deemed a privilege subject to control, restriction and abolition by the Government.

Power to acquire land over which right is claimed.

11. (1) In the case of a claim to a right in or over any land other than a right of way or right of pasture or a right to forest produce or a water-course, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

(2) If such claim is admitted in whole or in part, the Forest Settlement Officer shall either-

(i) exclude such land from the limits of the proposed forest;

(ii) come to an agreement with the owner thereof for the surrender of his right and proceed to acquire such land in the manner provided in the Sikkim Land (Requisition and Acquisition) Act, 1977.

(3) For the purpose of acquiring such land-

(a) the Forest Settlement Officer shall be deemed to be a Collector under the Sikkim Land (Requisition and Acquisition) Act, 1977; (Act of 1978)

(b) the claimant shall be deemed to be a person interested and appearing before him in pursuance of a notice given under section 5 of the Sikkim Land (Requisition and Acquisition) Act, 1977;

(c) the provisions of the preceding sections of the Sikkim Land (Requisition and Acquisition) Act 1977 shall be deemed to have been complied with;

(d) the Forest Settlement Officer, with the consent of the claimant or with the consent of both parties, may award an amount for such acquisition.

Order on claim to right of pasture or to forest produce.

12. In case of a claim to right of pasture or to forest produce, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part.

Record to be made by Forest Settlement Officer.

13. (1) The Forest Settlement Officer, when passing any order under section 12, shall record, so far as may be practicable-

(a) the name, father's name, caste, residence and occupation of the person claiming the right; and

(b) the classification, position and area of all field or groups of fields, if any, and the classification and position of all buildings, if any, in respect of which the exercise of such right is claimed.

(2) If the Forest Settlement Officer admits in whole or in part any claim under section 12, he shall also record the extent to which the claim is so admitted, specifying the number and the description of the cattle which the claimant is, from time to time, entitled to graze in the forest, the season during which such pasture is permitted.

Appeal from order passed under section 11 and section 12.

14. Any person who has made a claim under this Act or any forest officer or other person generally or specially empowered by the Government in this behalf may, within one month from the date of the order passed under sections 11 and 12 prefer an appeal from such order to such Appellate Authority as the Government may by notification, appoint.

Appeal under section 14.

15. (1) every appeal under section 14 shall be made by petition in writing giving the ground for appeal and may be delivered to the Forest Settlement Officer who shall forward it without delay to the Appellate Authority.

(2) No appeal shall be disposed of unless the parties thereto have been given the opportunity of being heard.

(3) The Appellate Authority appointed under section 14 may confirm, set aside or modify the order of the Forest Settlement Officer, as the case may be, and the order of the Appellate Authority shall be final.

Appointing of Pleaders.

16. The Government or any person who has made a claim under this Act, may appoint any person to appear, plead and act on its or his behalf before the Forest Settlement Officer, or the Appellate Authority in any proceedings under this Act.

Notification declaring forest reserved.

17. (1) When the following events have occurred, namely:-

(a) the period fixed under section 6 for preferring claim has elapsed, and all claims, if any, made under that section or section 9 have been disposed of by the Forest Settlement Officer;

(b) if any such claims has been made, the period specified in section 14 for appeal from the order passed on such claims has elapsed, and all appeals if any, presented within such period have been disposed of by the Appellate Authority, and

(c) all lands, if any, to be included in the proposed forest, which the Forest Settlement Officer has, under section 11 acquired under the Sikkim Land (Requisition and Acquisition) Act, 1977 has become vested in the Government.

The Government shall publish a notification specifying therein the definite boundary marks erected or otherwise the limits of the forest which is to be reserved and declaring the same to be reserved forest from a date fixed in the said notification.

- (2) The notification issued under subsection (1) shall be published in the villages and town in the neighbourhood of the reserved forest in the language commonly understood in the area.

Power to stop ways and water courses in reserved forests.

18. The Forest Officer may, with the previous sanction of the Government or any officer duly authorized by it in this 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 Government deems to be reasonably convenient, already exists, or has been provided or constructed by the Forest Officer in lieu thereof.

Reserved forests declared as such before the commencement of this Act.

19. (1) Any forest which has been declared or set aside as reserved forest on or before the commencement of this Act under any law or rule or notification in force in the State of Sikkim, shall be deemed to be reserved forest.

(2) All question decided, orders made or records prepared in connection with the declaration of such forest a reserved forest shall be deemed to have been decided, made and prepared under the corresponding provisions of this Act.

Acts prohibited in reserved forest and penalties thereof

20. Any person who,-

(a) makes any fresh clearing prohibited by section 5;

(b) converts a reserved forest or part thereof to any use other than forestry;

- (c) uses reserved forest for growing commercial crops;
- (d) leases forest areas to private parties for raising captive plantations or food crops;
- (e) sets fire to a reserved forests;
- (f) in contravention of any rules made under this Act, kindles any fire or leaves
any fire burning in such manner as to endanger such forest;
- (g) in contravention of the rules made under this Act kindles, keeps or carries any fire during
such season other than the season specified by the forest officer;
- (h) trespasses or pastures cattle or permits cattle to trespass without a permission in writing;
- (i) causes, by negligence, any damage, by felling any trees or cutting or dragging any timber;
- (j) fells, cuts, girdles, lops, taps or burns any tree or strips off the bark or leaves of any
tree or otherwise damages the same;
- (k) quarries stone, burns lime or charcoal or collects or removes any forest produce;
- (l) damages, alters or removes any cairn, wall, ditch, embankment, fence, hedge or railing shall,
on conviction, be punishable with imprisonment for a term which may extend to one year or
with fine which may extend to forty thousand rupees or with both and in addition be liable to
pay such compensation for the damage done to the forest as the convicting court may direct.

Where an offender has been previously convicted for an offence under this section, the Magistrate having jurisdiction shall inflict a penalty of imprisonment for a term which shall not be less than three years but may extend up to seven years.

Penalties for offences committed by person having rights in reserved forests.

21. Whenever fire is caused willfully or by gross negligence in a reserved forest by a person having rights in such forest or by a person in his employment, the Government may, without prejudice to any other punishment that may be imposed under this Act, direct that in such forest or any specified portion thereof, the exercise of all or any of the rights of pasture, grazing or collection of forest produce by any such person shall be suspended for such period as it thinks fit or be extinguished.

CHAPTER III

KHASMAL AND GOUCHARAN

Power of Government to declare Khasmal and Gorucharan Forests.

22. (1) The State Government may, by notification in the Official Gazette declare the provisions of this Chapter applicable to any Khasmal or Gorucharan forest which is not included in a reserved forest but which is the property of Government, or over which the Government has propriety rights, or to the whole or any part of the forest produce to which the Government is entitled.

(2) Any forest which has been declared as Khasmal forest and gorucharan forest before the commencement of this Act which has been specified in the record of rights of 1952 cadastral survey, shall be deemed to be Khasmal forest and gorucharan forest.

(3) Any waste land or banjo land which is not the property of any person shall be deemed to be a Khasmal forest for the purpose of this Act.

Limitation on exercise of powers under section 22.

23. No such notification referred to in sub-section (1) of section 22 shall be issued unless the nature and extent of the rights of the Government and of private persons in or over the khasmal and gorucharan forests is inquired into and recorded in a survey and settlement record, or in such other manner as the Government thinks sufficient. Every such record shall be presumed to be correct until proved otherwise;

Provided that in the case of any khasmal or gorucharan forests, if the Government thinks that such inquiry and record are necessary but that the completion thereof will occupy such length of time as may endanger the rights of Government, the Government may, pending such inquiry and record, declare such land to be khasmal or gorucharan forest, as the case may be, but in so, however shall ensure that the existing rights of individuals or communities are affected as little as possible.

Acts prohibited in Khasmal and gorucharan forest and penalty thereof:

24. (1) Any person who-

(a) makes any fresh clearing or converts khasmal forests or gorucharan forest or part thereof to any use other than forestry;

(b) sets fire to a khasmal forest or gorucharan forest or part thereof;

(c) in contravention of any rules made under this Act kindles any fire or leaves any fire burning in such manner as to endanger such a forest;

(d) kindles, keeps or carries any fire during season other than the season specified by the forest officer;

(e) causes, by negligence, any damage, by felling any tree or cutting or dragging any timber;

(f) cuts, pollards, girdles, lops, taps or burns any tree or strips off the bark or otherwise damages the same;

(g) quarries stone, burns lime or charcoal or collects any forest produce;

(h) damages, alters, removes any cairn, wall, ditch, embankment, fence, hedge or railing, boundary marks, shall, on conviction, be punishable with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both and in addition be liable to any such compensation for the damage done to the forest as the convicting court may direct.

Where an offender has been previously convicted for an offence under this section, the Magistrate having jurisdiction shall inflict a penalty of imprisonment for a term which shall not be less than three years but may extend up to seven years

(2) Notwithstanding anything contained in sub-section (1), the following acts shall not render the person liable to punishment under that sub-section for-

(a) any act done with the permission, in writing, of the forest officer not below the rank of a Range Officer;

(b) grazing of cattle and collection of such quantity of fodder from khasmal forest for bonafide use of the resident of the adjoining locality;

(c) grazing of cattle, collection of such quantity of dry fallen sticks and grass or fodder in a gorucharan forest.

Power of Government to order closure of forest.

25. The Government may, by notification,-

(a) declare that any portion of khasmal or gorucharan forest shall be closed for such period not exceeding thirty years and that the rights of any private persons over such forest or portion thereof shall be suspended during that period; and

(b) declare any tree or class of trees in khasmal or gorucharan forest to be reserved from the date fixed in that notification.

Suspension of rights in case of fire

26. Whenever fire is caused willfully or by gross negligence in khasmal or gorucharan forest, the Government may, notwithstanding any other penalty which has been imposed under this

Act, direct that in such forest or any portion thereof the exercise of all rights provided in subsection (2) of section 24 shall be suspended for such period as may be specified.

Power to make rules for khasmal and gorucharan forest

27. (1) The Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the cutting, sawing, conversion and removal of trees and timber and the collection, manufacture and removal of forest produce;
- (b) the granting of permits to the inhabitants of neighbouring villages to take trees, timber or other forest produce for their bonafide use, and the production and return of such permits by such villagers;
- (c) the payment, if any, to be made for the permission to cut trees or to collect and remove such timber or other forest produce;
- (d) the examination of forest produce passing out of such forests;
- (e) the cutting of grass and grazing of cattle in such forests and payment thereof, if any;
- (f) the protection and management of any portion of forest closed under section 25; and
- (g) the exercise of rights referred to in section 25.

Penalties for acts in contravention of section 27.

28. Whoever contravenes the provisions of the rules made under section 27 shall, on conviction, be punishable with imprisonment for a term which may extend to two years or with a fine which may extend to twenty thousand rupees, or with both.

CHAPTER – IV

PROTECTION OF RIVER BANKS AND SLIP RESERVES

29. For the purpose of this Chapter river banks in relation to all rivers includes an area of sixty metres on either side of any river or area within high flood level mark, whichever is less.

(2) Slip reserve means and includes,-

(i) all lands which are denuded or are in the process of denudation declared as slip reserve before the commencement of this Act; and

(ii) all areas which are denuded or are in the process of denudation and required to be conserved or preserved for stabilization that may be notified as slip reserve by the Government.

(3) No notification referred to in clause (ii) of sub-section (2) shall be made unless the nature and extent of the right of the Government and of the private persons in or over such land is enquired into and recorded in the record of rights and such record shall be presumed to be correct until proved otherwise;

Provided that in the case of any slip area, if the Government thinks that such enquiry and record are necessary but that the completion thereof will occupy such length of time as may endanger the life of the community due to occurrence of slips, the Government may, pending such enquiry and record, declare such area to be a slip reserve, but in doing so, however shall ensure that the existing rights of individuals or communities are affected as little as possible.

(4) The river bank referred to in sub-section (1) shall be under the administrative control of the Forest Department as if it were a forest constituted under this Act.

Penalty

30. (1) Any person who -

(a) is in unauthorized occupation of any land in a slip reserve or a river bank;

(b) removes any forest produce from a slip reserve;

(c) removes any forest produce from a river bank without permission;

(d) dumps soil, muck or wastes on a slip reserve or a river bank without permission;

shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to forty thousand rupees or with both.

Where an offender has been previously convicted for an offence under this section, the Magistrate having jurisdiction shall inflict a penalty of imprisonment for a term which shall not be less than three years but may extend up to seven years

(2) Notwithstanding anything contained in a sub-section (1), the person in unauthorized occupation shall be evicted in accordance with the provisions contained in the Sikkim Public Premises (Eviction of Unauthorised Occupants and Rent Recovery) Act, 1980.

Use of water resources/glaciers etc. by industrial establishment.

31. The Government may regulate the use of natural waters, ice and glaciers by industrial establishments within the territory of Sikkim and levy such taxes and duties as may be deemed appropriate in the manner prescribed.

Power of Government to close slip reserve or river banks.

32. The Government may, by notification, declare that any slip reserve or river bank shall be closed for such period as may be specified in that notification and that the rights of any person over such slip reserve or river banks shall remain suspended during that period.

CHAPTER – V

CONTROL AND MANAGEMENT OF PRIVATE FORESTS AND REGULATION OF FELLING OF TREES ON OTHER LANDS

Control over forests not being the property of the Government and regulation of felling of trees on other lands

33. For the purpose of this Chapter-

- (a) “forest” includes any land containing trees and shrubs, pasture land and any land not being a reserve forest, a gorucharan or khasmal forest or slip reserve which the Government may, by notification under this section declare to be a forest;
- (b) “land” means any land which is not the property of the Government and not declared as forest under subsection (a);
- (c) “owner” in relation to a forest or land includes a mortgagee, leasee or other person having rights to possession and enjoyment of a forest or land.

Preservation of private forest and power to reserve trees.

34. (1) No owner of any forest and no person claiming to be under him whether by virtue of a contract, licence or any other transaction entered into before or after the commencement of this Act or any other person shall, without the previous permission of the forest officer authorized in this behalf, cut or girdle trees or do any act to denude the forest or diminish its utility as a forest.

Provided that nothing contained in this subsection shall apply to-

- (a) the removal of fallen trees: and
- (b) the making of agricultural implements for bonafide use of the owner.

(2) Notwithstanding anything contained in sub-section (1) the Government may, by notification, and for reasons to be specified in such notification, exempt any class of forest or class of tress or any forest produce found therein from all or any of the provisions of this section.

(3) The Government may, by notification, declare any tree or species of trees to be reserved from the date fixed in such notification in such forest or other land.

Power to make rules

35. For the purpose of section 34, the Government may make rules prescribing,-

- (a) class or kinds or species of trees which may be permitted to be cut and girdled and girth of such trees;
- (b) the conditions subject to which permission of removal of trees may be granted;
- (c) the procedure to be followed by the forest officer before granting permission;
- (d) the procedure regarding granting of permission to fell trees specified under section 3.

Protection of forest for special purposes.

36. (1) The Government may, by notification,-

- (a) regulate or prohibit in any forest-
 - (i) the breaking up or clearing of any land;
 - (ii) the pasturing of cattle;
 - (iii) the firing or clearing of vegetation;
 - (iv) the girdling, tapping or burning of any trees or stripping off or leaves of any trees;
 - (v) the lopping or pollarding of any trees;
 - (vi) cutting, sawing, conversion and removal of trees and timber;
 - (vii) the quarrying of stones or the burning of lime or charcoal or the collection or removal of any forest produce or its subjection to any manufacturing processes;
- (b) regulate in any forest its regeneration and protection from fire;

(2) When protection of forest referred to in sub-section (1) of section 34 or land appears to be necessary, the Government may, by notification, provide—

- (a) for conservation of trees and forests;
- (b) for the preservation, improvement of soil or the reclamation of saline or water logged area and, the prevention of land slips or formation of rills or torrents or the protection of land against erosion or the deposit therein of sand, stones, gravels or mineral;
- (c) for the improvement of grazing;
- (d) for the maintenance of water supply and springs rivers and tracks;
- (e) for the protection against storms, winds, rolling stones, floods and avalanches;
- (f) for the protection of roads, bridges, and other lines of communications.

(3) No notification shall be made under sub-section (1) nor shall any work be commenced under sub-section (2), until after the issue of a notice to the owner of such forest or land calling on him to show cause, within a reasonable period to be specified in such notice, why such notification should not be issued or work commenced, as the case may be, and until his support of the same, have been heard by any officer duly appointed on that behalf by the Government.

Penalty.

37. Whoever contravenes the provision of sub-section (1) of section 34 or the rules made under section 35, or of the terms of a notification issued under section 36 shall, without prejudice to any other action that may be taken against him under this Act, on conviction, be punishable with imprisonment which may extend to six months or with fine which may extend to ten thousand rupees or with both.

Government management of forest at the request of owner.

38. (1) Any owner of any land or, if there be more than one owner thereof, the owners of all the shares therein may, with a view to the formation or preservation of forest thereon, apply in writing to the Government to take over the management of such land and the Government may, on such application, where it is of opinion that it is expedient in public interest to form or preserve the forest by notification, assume the management of such land.

(2). When the management of any land is assumed under sub-section (1) save as otherwise agreed to between the Government and the applicants, the net profit, if any, arising from the management of the forest shall be paid to the owners.

(3). The period of management shall be such as may be agreed to between the Government and the applicants.

Responsibilities of occupants and holders of land for preservation of trees.

39. (1) Every occupant or holder of land shall be responsible for the due preservation of all trees growing thereon and shall in the event of any injury to any tree from whatever cause or its theft, at once report such fact to the nearest forest officer.

(2) Any occupant or holder who fails to report any such case of injury or theft as aforesaid or to prove to the satisfaction of such officer of the rank not below to that of a Range Officer that such injury or theft has not been caused either by his own act or by neglect or default on his part by any other person at his instigation or with his connivance shall, notwithstanding any other penalty to which he may be liable, pay such compensation on account of such injury or theft as the Range Officer may deem reasonable:

Provided that the Range Officer may, in cases in which he is satisfied that the person responsible for the act, neglect, default, instigation or connivance resulting in the injury or theft, is the tenant of the occupant or holder or any other person holding under or through a tenant or occupant or holder, direct that such tenant or occupant or holder or other persons shall be liable for compensation or, be proceeded against in the first instance for recovery thereof.

Application for permits for felling tree.

40 (1) Every person or authority who whether as holder, occupant, tenant, sub-tenant or leasee or in any other capacity having right over trees growing or existing or found on any land including that under the control of local authority or institution, who is desirous of felling such trees for bonafide domestic use, shall apply to the forest officer not below the rank of Block Officer in the prescribed form and shall obtain permit.

(2) No person shall remove any trees, wood, timber or other forest produce from his land without obtaining permit in this behalf in the manner provided in sub-section (1):

Provided that no fees or duties shall be imposed on removal of such produce by any person from his land.

(3) Every person who having right over trees growing or existing or found on any land including that under the control of local authority or institution, is desirous of felling such trees for commercial use shall apply to the forest officer not below the rank of Assistant Conservator of Forests and shall obtain a permit on payment, if any, as may be prescribed.

CHAPTER –VI

TRANSIT OF FOREST PRODUCE

41. (1)The control of all rivers and their banks as regards 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 and it may make rules to regulate the transit of all timbers and other forest produce.

Explanation.-For the purpose of this Chapter, forest produce shall be deemed to include semi-finished forest produce for commercial purposes.

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

- (a) specify the routes by which timber or other forest produce may be transported or moved into or from or within the State and the fee thereof;
- (b) in the case of timber formed into a raft or fastened to the shore, prohibit the loosening or setting adrift of such timber by any person not being the owner thereof or not acting on behalf of such owner or the Government;
- (c) 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 the Government on account of the price thereof or any duty, fee, royalty or charge due thereon or to which it is desirable for the purpose of this Act to affix a mark;
- (d) provide for the establishment of check posts or the erection of barriers at such places as the Government may direct with a view to prevent or check commission of forest offences in respect of forest produce and for stoppage, reporting and examination of goods carried by any vehicle or vessel at such check posts or barriers;
- (e) provide for establishment and regulation of depots and stations to which such timber or other forests 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 forest produce shall be brought to, stored at and removed from such depots or stations and for regulating the appointment and duties of persons employed therein.
- (f) authorize the transport of such timber or other forest produce across any land and provide for payment of compensation for any damage done by the transport of such timber or other forest produce.

- (g) prohibit the closing up or obstructing of the bank of any river used for the transit of timber or other forest produce and throwing of grass, brushwood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;
- (h) provide for the prevention or 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 act or negligence caused such obstruction;
- (i) prohibit absolutely or subject to conditions, within the whole of the State of Sikkim or specified local limits, the establishment of saw pits, saw mills or any other sawing machines for covering, cutting, processing, distilling, storing, burying, concealing or marking of timber or other forest produce, the altering or defacing of any marks on the same or the possession or carrying of marking hammer or other implements used for marking timber;
- (j) Regulate the existing sawpits, saw mills or any other sawing contrivance:

Provided that no existing sawpits, sawmills or any other sawing contrivance shall be closed unless the owner thereof has been given an opportunity of being heard.

- (3) In making the rule under this section, the Government may provide that any person guilty of contravention thereof shall, on conviction, be punishable with imprisonment which may extend to ten thousand rupees or with both, and where the offence is committed after sunset or before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted for a like offence, the Magistrate having jurisdiction shall inflict double the penalty prescribed for such offence.

The Government and forest officer not liable for damage to forest produce at depots and station.

42. 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 or station established under rules made under section 41 or detained elsewhere for the purpose of this Act and no such forest officer shall be responsible for any such loss or damage unless he causes loss or damage willfully, negligently, maliciously or fraudulently.

All persons employed at depots and stations bound to aid in case of accident.

43. In case of any accident or emergency involving danger to any property at any depot or station, every person employed at such depot or station shall render assistance to any forest officer or police officer demanding his aid in preventing the damage or loss to such property.

CHAPTER-VII

COLLECTION OF DRIFT AND STRANDED TIMBER

Certain kinds of timber property of Government

44. (1) All timber-

- (a) found adrift, beached, stranded or sunk;
- (b) bearing marks which have not been registered in accordance with the rule made under section 41;
- (c) which have been super marked or on which the marks have been obliterated, altered or defaced by fire or otherwise;
- (d) which are not marked but found in such areas as the Government may specify;

shall be deemed to be the property of the Government unless and until any person establishes his right and title thereon as provided in this Chapter.

(2) The timber referred to in sub-section (1) may be collected by any forest officer or by any other person authorized to collect the same by virtue of any rule and may be brought to any forest depot.

Notice to claimants of drift timber.

45. Public notice shall, from time to time, be given by the forest officer regarding timber collected under section 44. Such notice shall contain a description of the timber and shall require any person claiming the same to present a written application for such claim to such officer within a period of not less than thirty days from the date of such notice.

Procedure for disposal of application for claim.

46. (1) When any application is presented under section 45, the forest officer may, after making such enquiry as he thinks fit, either reject the claim, after recording his reason thereof or accept the claim and 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 such person whom he finds to be entitled thereto after recording the reason thereof or may refer the claimants to the Civil Court, and retain the timber pending the receipt of an order from such court for its disposal.

(3) Any person whose claim has been rejected under this section may, within thirty days from the date of intimation of the order of such rejection, institute a suit to recovery of the possession

of the timber claimed by him but no such person shall be entitled to 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.

(4) Unless there are adequate arrangements for storage of timber detained or kept by the forest officer under this section the Court may order that the timber so detained or kept shall remain in the custody of the forest officer until the disposal of the suit.

Disposal of unclaimed timber.

47. If no application is presented under section 45, or on such claim having been preferred and rejected an applicant fails to institute a suit for recovery of the possession of such timber within thirty days from the date of rejection of his claim, the ownership of such timber shall vest with the Government free from all encumbrances.

Government and its officers not liable for damage.

48. The Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 44 and no forest officer shall be responsible for any such loss or damage unless he causes such loss or damage willfully, negligently, maliciously or fraudulently.

Payment to be made by claimant before timber is delivered to him.

49. No person shall be entitled to recover possession of any timber collected under section 44 or delivered under section 46 until he pays to the forest officer or other person entitled to receive such sum on account thereof as may be due under any rule made under section 50.

Power to make rules

50. (1) The Government may, by notification, make rules to carry out the purposes of this Chapter.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made to regulate the following matters, namely:-

- (a) the salvaging, collection and disposal of all timber mentioned in this Chapter.
- (b) the use and registration of boats or any other conveyance used in salvaging and collecting timber;
- (c) the amount to be paid for salvaging, collecting, moving, storing or disposing of such timber;
- (d) The use and registration of hammers and other instruments to be used for marking such timber.

(3) In making the rules under this section, the Government may provide that a person guilty of contravention thereof shall, on conviction, be punishable with imprisonment which may extend to three years or with fine which may extend to ten thousand rupees or with both.

CHAPTER-VIII

CATTLE-TRESPASS

Power to seize and impound cattle.

51. Any cattle trespassing in a reserved forest or in any portion of a khasmal or Gorucharan forest or slip reserve or river banks which has been closed by the Government for grazing or in any plantation area shall be seized and impounded by any forest officer.

Power to levy fine

52.(1) The Government may, from time to time, by notification, direct that in all or any part of the areas which have been closed under section 25 or section 32, there shall be levied for each head of cattle or other animal impounded under section 51, such fine not exceeding five hundred rupees as may be specified in such notification.

(2) Any expenditure incurred by the Government during the period of impounding of such cattle for feeding shall be realized from the owner of the cattle at the time of release.

(3) The officer impounding such cattle shall take all precaution for the safety of the cattle during the period such cattle or other animals remain impounded.

Explanation:-The burden of proof that the cattle or other animal has not been physically injured or diseased before the impounding lies with the owner of the cattle or other animals.

(4) The cattle or other animal which remains unclaimed for such period as may be prescribed shall be disposed of in such manner as may be prescribed.

Power to make rules

53. The Government may, by notification, make rules to regulate the following matters, namely:-

- (a) establishment of cattle pound;
- (b) conditions of release of cattle and other animals from the pound;
- (c) maximum period of impounding; and
- (d) the manner of disposal of unclaimed cattle and other animal and disposal of sale proceeds.

CHAPTER – IX
PENALTIES AND PROCEDURE

The seizure of property liable to confiscation

54.(1) Any forest officer may, if there is reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is a reason to believe a forest offence has been or is being committed require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary to examine the contents in the vehicle and inspect all documents relating to the goods carried which are in possession of such driver or other person in charge of the vehicle.

(2) Where there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all implements, tools, receptacle or vehicle used in committing any such offence may be seized by any forest officer.

(3) Every officer seizing any property under this section shall place on such property or the receptacle or vehicle, if any, in which it is contained a mark indicating that the same has been seized and shall, as soon as may be, make report of such seizure to the Magistrate having jurisdiction to try offence on account of which the seizure has been made:

Provided that where the forest produce in respect of which such offence is believed to have been committed is the property of the Government and if the offence is unknown, it shall be sufficient if the officer makes, as soon as may be, report of the circumstances of the seizure to his superior officer.

Power to release property seized under section 54

55 Any forest officer not below the rank of Range Officer who, or whose sub-ordinate has seized any cattle or other forest produce, animal, vehicle or any other thing referred to in section 54, 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 had been made.

Penalty for unauthorisedly taking possession of land constituted as reserved forests, Khasmal or Gorucharan forests

56.(1) Any person who is in unauthorized occupation of forest land may without prejudice to any other action that may be taken against him under any other provisions of the Act or any other law for the time being in force, be summarily evicted, by a forest officer not below the rank of a Divisional Forest Officer having jurisdiction over the said forest land and any building or other construction erected thereon shall, if not removed by such person within such time as the Divisional Forest Officer, may fix, be liable to forfeiture:

Provided that before evicting a person under this sub-section he shall be given a reasonable opportunity of being heard.

(2) Any property forfeited under sub-section (1) shall be disposed of in such manner as the Divisional Forest Officer may direct and the cost of removal of any crop, building or other work and all works necessary to restore the land to its original condition shall be recoverable from the persons evicted in the manner as if it were an arrear of land revenue.

(3) Any person aggrieved by an order of the Divisional Forest Officer under sub-section (1) and (2) may, within a period of one month and in such manner as may be prescribed, appeal against such order to the Conservator of Forest.

Forest produce, implements, tools, etc. when liable for forfeiture.

57. (1) The forest produce which is not the property of the Government and in respect of which a forest offence has been committed and all implements, vehicles, or other conveyance or any other vehicle used in committing such offence, shall be liable by order of the convicting court to be forfeited to the Government.

(2) Such forfeiture may be in addition to any other punishment provided in this Act or rules made thereunder for such offence.

Disposal for forest produce etc. on conclusion of trial

58. 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 forfeited, be taken possession of by the forest officer, and in any other case may be disposed of in such manner as the court may, by order, direct.

Procedure when offender is not known or cannot be found

59. When the offender is not known or cannot be found, the Magistrate may if he finds that an offence has been committed, order to be forfeited to the Government any forest produce together with tools, vehicles or cattle and other articles used in committing the offence and taken charge of by the forest officer or to be made over to the person whom the Magistrate deems to be entitled to the same:

Provided that no such order shall be made until the expiration of thirty days from the date of seizing the 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.

Procedure as to perishable property seized.

60. Notwithstanding anything hereinbefore contained, the Divisional Forest Officer may direct sale of the property seized under section 54 which is subject to speedy and natural decay and deposit the sale proceeds with Government.

Appeal from order under sections 57, 58 or 59

61. Officer who made the seizure under section 54 or any officer superior or any person claiming to be interested in the property so seized may, within thirty days from the date of any order passed under section 57, section 58 or section 59, appeal to the Court having jurisdiction.

Vesting of forfeited property in the Government

62. When an order for the forfeiture of any property has been passed under section 57 or section 59 thereof, as the case may be, and the period specified by section 61 for an appeal from such orders has lapsed, and no such appeal has been preferred, and the court confirms such order in respect of the whole or a portion of such property or such portion thereof, as the case may be, the forfeited property shall vest in the Government free from all encumbrances.

Confiscation by forest officers in certain cases

63. (1) Notwithstanding anything contained in the foregoing provisions of this Chapter, where a forest offence is believed to have been committed in respect of timber, firewood, charcoal and other forest produce which is the property of the Government, the officers seizing the property shall, without any unreasonable delay produce it together with all implements, ropes, chains, vehicles and cattle and other animal used in committing such offence before a superior forest officer authorized by the Government in this behalf not being below the rank of the Deputy Conservator of Forests (hereinafter referred to as the authorized officer).

(2) Where an authorized officer seizes any timber, charcoal, firewood and other forest produce which is the property of Government, or where such property is produced before an authorized officer under sub-section (1) and if he is satisfied that a forest offence has been committed in respect of such property, such authorized officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of property so seized together with all ropes chains, implements, vehicles, cattle and other animal used in committing such offence.

Issue of show cause notice

64. No order confiscating any property under section 63 shall be made except after serving a notice in writing to the person from whom it is seized and considering his objection, if any.

Revision

65. Any forest officer not below the rank of a Chief Conservator of Forests, before the expiry of thirty days from the date of the order of the Conservator of Forests under section 56, may on his own motion call for and examine the proceedings of that order and may make such enquiry or cause such enquiry to be made and may pass such order as he deems fit.

Provided that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

Appeal

66. Any person aggrieved by an order passed under section 63 or section 65 may, within thirty days from the date of issue of order to him appeal to the Magistrate having jurisdiction over the area of seizure of such property and the Magistrate after giving an opportunity to be heard shall pass an order either confirming or rejecting or modifying the order appealed against.

Vexatious search, etc. by forest officer.

67. (1) Any Forest Officer exercising powers under this Act or any rule made thereunder who-

- (a) without reasonable ground of suspicion, searches or causes to be searched any place, premises, vehicle or vessel ; or
- (b) vexatiously detains or searches or arrests any person;

shall, for every such offence, upon conviction by the court, be punishable with imprisonment which may extend to six months or with fine which may extend to ten thousand rupees, or with both.

(2) Any person wilfully and maliciously giving false information and so causing an arrest or a search to be made under this Act shall upon conviction by the court, be punishable with imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees or with both.

Central Act 45 of 1860

Penalty for counter-feiting or defacing marks on trees or timbers and for altering boundary marks.

68. 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, 1860-

- (a) knowingly counterfeits upon any timber or standing tree a mark used by forest officer to indicate that such timber or such 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) unlawfully affixes to any timber or standing tree a mark used by forest officers; or
- (c) alters, defaces or obliterates any such marks placed on any timber or standing tree by or under the authority of a forest officer; or
- (d) alters, moves, destroys or defaces any boundary marks of any forest to which the provisions of this Act are applicable shall be punishable with imprisonment for a term which may extend to two years or with fine which may extend to twenty five thousand rupees or with both.

Where an offender has been previously convicted for an offence under this section, the Magistrate having jurisdiction shall inflict a penalty of imprisonment for a term which shall not be less than three years but may extend up to five years

Power to arrest without warrant.

69. (1) A forest officer or police officer may, without an order from a Magistrate and without a warrant, arrest any person-

- (a) who has been concerned in any forest offence punishable with imprisonment for not less than one month; or
- (b) who on demand of such forest officer, refuses to give his name or residence or gives a name or residence which such officer has reason to believe to be false; or
- (c) if there is reason to believe that he will abscond.

(2) Any person arrested under sub-section (1) shall be informed, as soon as may be, of the grounds for such arrest and shall be produced before the nearest Magistrate having jurisdiction within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the order of a Magistrate.

Power to release on bond

70. Any forest officer of the rank not below that of a Range Officer who, or whose subordinate, has arrested any person under the provisions of section 69 may, release such person on his executing a bond with or without surety to appear before the Magistrate if so required.

Certain Offences to be non-bailable

71. Notwithstanding anything contained in this Act or in the Code of Criminal Procedure, 1973-

- (a) The offences under sections or clauses of sections mentioned in clause (b) shall be non-bailable.
- (b) The sections and clauses of sections of this Act referred to in clause (a) are the following, namely:-
 - (i) section 20 clauses (a), (b), (c), (d), (e) and (k);
 - (ii) section 24 clause (a), (b) and (h) of sub-section 1;
 - (iii) section 41, sub-section (3) and
 - (iv) section 68

(c) No person accused of any offence referred to in clause (b), shall if in custody, be released on bail or on his own bond unless-

(i) the prosecution has been given an opportunity to oppose the application for such release, and,

(ii) where the prosecution opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence.

Power to try offence summarily.

72. The Chief Judicial Magistrate or any other Judicial Magistrate of the first class specially empowered in this behalf by the State Government in consultation with the High Court may, try summarily under the Code of Criminal Procedure, 1973 (2 of 1974), any forest offence punishable with imprisonment for a term not exceeding one year or with fine not exceeding two thousand rupees, or with both.

Power to prevent commission of offence.

73. Every forest and police officer and member of joint forest management committee or eco-development committee shall prevent, and may interfere for the purpose of preventing commission of any forest offence.

Power to compound offences.

74. (1) The Government may by notification, empower a forest officer not below that of Range Officer-

(a) to accept from any person against whom reasonable suspicion exists that he has committed any forest offence, other than offence referred to in section 67 and section 68, a sum of money which shall be four times the value of the property involved by way of compensation for the offence which such person is suspected to have committed;

Provided that if the offence relates to land not belonging to the Government, the sum of money shall be twice the value of the property involved, and

(b) When any property that has been seized is 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 with and the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

Forest produce presumed to be Government property.

75. When in any proceedings taken under the provisions of this Act or in consequence of anything done under this Act or under any law for the time being in force, a question arises as to whether any forest produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved and in case of any prosecution the burden of proving the contrary shall lie on the accused.

Compensation for damage

76. (1) When any person is convicted of felling, cutting, girdling, marking, lopping or tapping trees, or of injuring them by fire or otherwise in contravention of provisions of this Act or of any rule made thereunder, the convicting court may, in addition to any other punishment which it may impose, order that person to pay to the Government such compensation for each tree with respect to which the offence was committed, as it deems just.

(2) Where the person convicted of commission of an offence is an agent or servant of another person, the court may, after holding such enquiry as it deems fit or giving him reasonable opportunity of being heard, order such person to pay the compensation if it is of the opinion that the offence was committed due to neglect or default of such other person.

Forfeiture of leases.

77. When the holder of any lease, licence or contract whatsoever granted or continued by or on behalf of the Government for any of the purposes of this Act commits an offence under this Act or when any such offence is committed by any agent or servant of the holder of any such lease, licence or contract and the Government is satisfied that the commission of the offence was a consequence of the instigation of such holder or of any wilful neglect or default on his part, the Government or a forest officer duly empowered by the Government in this behalf may, by order in writing declare the lease, licence, or contract to be forfeited in whole or in part with effect on and from the date to be specified in the order.

Act not in derogation of other laws.

78. This Act shall be, in addition to, and not in derogation of any other law for the time being in force.

CHAPTER-X MISCELLANEOUS

Power of forest officer

79. (1) Without prejudice to the powers conferred upon a forest officer under this Act Government may, by notification, invest any forest officer with all or any of the following powers, that is to say:-

- (a) to enter upon any land and survey, demarcate and make a map of the same;
- (b) to compel the attendance of witness, production of documents and the materials of objection;

- (c) to hold investigation into forest offence, and in the course of such investigation to receive and record evidence;
- (d) to notify the seasons and manner in which fire may be kindled, kept or carried in a reserved forest or forest;
- (e) to grant permits referred to in the provisions of this Act;
- (f) to give public notice of timber collected under section 44;
- (g) to notify stations, depots for the reception and sale of timber and forest produce;
- (h) to take possession of property under this Act;
- (i) to stop and check any vehicle suspected of being involved in a forest offence;
- (j) to compound cases and charge compensation for damages caused by commission of forest offence.
- (k) to declare any tree or group of trees or other forest produce on any land to be reserved from any date if they are of ecological, silvicultural or of heritage importance.

Any evidence recorded under clause (c) of sub-section (1) shall be admissible in any subsequent trial before a Magistrate provided that it has been taken in the presence of the accused person and recorded in the manner as provided under sections 355, 356 or 357 of the Code of Criminal Procedure, 1898.

Forest officer deemed to be public servant

Central Act 45 of 1860

80. Every forest officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code, 1860.

Indemnity for acts done in good faith.

81.(1) No suit, prosecution or other legal proceedings shall lie against any forest officer for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made there under.

(2) No suit or other legal proceedings shall lie against the Government for any damage caused or likely to be caused for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made there under.

82. No forest officer shall, either as principal or an agent or in any other capacity, trade in timber or other forest produce or become interested in any lease or mortgage any forest within or outside the State of Sikkim.

General power to make rules.

83. (1) The Government may, by notification, make rules to carry out all or any of the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) to confer or limit the power and duties of any forest officer or joint forest management committee or eco-development committee under this Act;

- (b) to regulate the procedure of working by the forest officer under this Act;
- (c) for the preservation, reproduction and disposal of trees, timber and other forest produce belonging to Government or otherwise grown on land belonging to or in the occupation of private persons;
- (d) to regulate the rewards to be paid to officers and informers;
- (e) to regulate the cuttings, felling, sale and disposal of trees in private holdings, or Gorucharan or khasmal forest;
- (f) the fees to be levied in respect of licences, permits, passes or permissions issued under this Act or rules made there under;
- (g) to allow quarrying of sand and stone from rivers or their banks or any other area
- (h) any other matter which is required to be or may be prescribed.

Penalties

84. Any person who contravenes any provision of this Act or any rule made under this Act for contravention of which no separate penalty is provided, shall on conviction, be punishable with imprisonment for a term which may extend to one year or with a fine which may extend to twenty five thousand rupees or with both.

Where the offender has been previously convicted for an offence under this section, the Magistrate having jurisdiction shall inflict a penalty of imprisonment for a term which shall not be less than three years but may extend upto seven years.

Persons bound to assist forest officer

85. (1) Every person who-
- (i) exercises any right in a reserve forest, khasmal forest or Gorucharan forest or any other forest land; or
 - (ii) is permitted to take any forest produce from such forest or forest land; or
 - (iii) cuts and removes timber; or
 - (iv) pastures cattle in any forest; or
 - (v) is employed by any of the persons hereinbefore mentioned in a village contiguous to such a forest; or
 - (vi) is employed by the Government; or
 - (vii) receives the emoluments from the Government for services performed to the community;

shall be bound to furnish without unnecessary delay to the nearest forest officer any information that he may possess regarding the occurrence of fire in or near such forest or commission of any forest offence and shall forthwith take steps,-

- (a) to extinguish any forest fire in such forest of which he has knowledge or information;
- (b) to prevent by any lawful means in his power, any fire in the vicinity of such forest of which he has knowledge of or information from spreading to such forest and shall assist any forest officer demanding his aid;
- (c) in preventing the commission 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.

(2) Any person who is required to act in accordance with sub-section (1) and without lawful excuse fails-

- (a) to furnish information to the nearest forest officer;
- (b) to take steps to extinguish any forest fire;
- (c) to prevent spreading of fire;
- (d) to assist any forest officer demanding his aid in preventing the commission of forest offence;

shall on conviction, be punishable with imprisonment for a term which may extend to six months or with a fine which shall not be less than twenty thousand rupees or with both.

Where the offender has been previously convicted for an offence under this section, the Magistrate having jurisdiction shall inflict a penalty of imprisonment for a term of one year.

Recovery of money due to government

86. All monies payable to the Government under this Act or under any rule made there under on account of the price of any forest produce or of expenses incurred in the execution of this Act may, if not paid when due, be recovered as if it were an arrear of land revenue.

Lien on forest produce

87. (1) When any money referred to in section 86 is payable for in respect of any forest produce, the amount thereof shall be deemed to be the first charge on such produce and such produce may be taken possession of by a forest officer duly empowered and may be retained by him until such amount has been paid.

(2) If such amount is not paid within the period of one month from the date of receipt of a notice for such amount, the forest officer may sell such produce by public auction and the proceeds of sale shall be applied first in discharging such amount.

(3) The surplus of sale proceeds of such public auction, if any, if not claimed within sixty days from the date of sale by the person entitled thereto, shall be forfeited to the Government.

Provided that the Government may, for reasons to be recorded in writing, order the refund of such surplus sale proceeds to the person entitled thereto within the period of three years from the date of sale.

Recovery of penalties due under bond.

88. When any person in accordance with any provision of this Act, or in compliance with any rule made there under, 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 breach of the conditions thereof, may notwithstanding anything in section 74 of the Indian Contract Act, 1872, be recovered from him in case of such breach as if it were an arrear of land revenue.

Power to remove difficulties

89. If any difficulty arises in giving effect to the provisions of this Act, the Government may by order not inconsistent with the provisions of this Act, remove such difficulties:

Provided that no such order shall be made after the expiration of a period of three years from the date of commencement of this Act.

Cognizance of offence

90. No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by any forest officer not below the rank of a Range Officer.

Repeal and Saving.

91. (1) On and from the date of commencement of this Act, The Sikkim Forests, Water Courses and Road Reserve (Preservation and Protection) Act, 1988 (6 of 1988) shall be repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of the powers conferred by or under that Act or rules made there under shall be deemed to have been done or taken in exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such thing was done or such action was taken.

(3) All existing orders, notifications, rules, regulations, byelaws, proclamations and other instrument having the force of law shall be deemed to have been made under this Act and they shall remain in force till the rules under the provisions of this Act are made.

STATEMENT OF OBJECTS AND REASONS

Whereas it is expedient to prescribe a law for the preservation and protection of forests and other natural resources dependent on it keeping in view the need to maintain ecological equilibrium in the State for prevention of natural catastrophe and for economic development and sustainability of livelihoods.

It is found necessary to confer executive powers upon government officials to check the perpetration of offences as well as to the judiciary to take up trials as also to provide for meeting the genuine demands of the villagers for the use of forest produce.

The Bill has been framed with the above object in view.

S.B.SUBEDI

Minister-in-charge