

The Indian Forest (Maharashtra Amendment) Act, 1984

MAHARASHTRA

India

The Indian Forest (Maharashtra Amendment) Act, 1984

Act 7 of 1984

- Published on 1 January 1984
- Commenced on 1 January 1984
- [This is the version of this document from 1 January 1984.]
- [Note: The original publication document is not available and this content could not be verified.]

The Indian Forest (Maharashtra Amendment) Act, 1984(Maharashtra Act No. 7 of 1984)Statement of Objects and Reasons - Maharashtra Act No. VII of 1985. - The problem of illicit cutting of trees and removal of wood derived therefrom was since causing concern on account of its increasing incidence, the situation in many parts of the State was tending to be grave. It was also noticed that some of the anti-social elements were indulging in this nefarious practice almost with impunity. The existing provisions in the Indian Forest Act, 1927, in its application to the State of Maharashtra, were not sufficient to effectively deal with such offenders. It was, therefore, imperative that additional and more stringent measures were devised to curb effectively the vandalism of these elements and thereby to preserve the valuable forests from being decimated.

Chapter IX

(sections 52 and 69) of the Indian Forest Act, 1927, dealt with penalties and procedure in regard to forest offences including seizure and confiscation of property used in committing them. Section 52 of the Act provided for seizure of property by any Forest Officer or Police Officer when used in committing any forest offence in respect of any forest produce. Section 55 provided for confiscation of such property and power for such confiscation was vested in the Magistrate. Such property, when seized, was allowed to be released to the person involved in the forest offence or his execution of a bond. Consequently, there was a likelihood of such property being used in committing

forest offences repeatedly, pending the completion of the trial. Similarly, persons involved in forest offences were then released on bail in a routine manner, with the result that they developed a recidivist propensity towards forest offences.

Government had, therefore, set up a Committee consisting of the Minister for Forests, other Ministers and Ministers of State to consider measures for prevention of large scale illicit felling of trees in forest areas. On the basis of the recommendations of the Committee and with a view to arresting the destruction of the forests by those who indulge in commission of forest offences, it was felt necessary that the provisions as to penalties in respect of forest offences and offences relating to the forest produce which was the property of the State Government should be made more stringent and deterrent. It was therefore, proposed to increase the punishments prescribed for forest offences under sections 26, 33 and 42 of the Act and empower an officer not below the rank of an Assistant Conservator of Forests authorised by the State Government in that behalf by notification in the Official Gazette, to confiscate, and thereafter where necessary in the public interest, to sell timber, sandalwood, firewood, charcoal or any other notified forest produce which was the property of the State Government and in respect of which a forest offence had been committed, when he himself seized such property or when it was produced before him by an officer who has seized it under section 52(1). The usual safeguards such as issuing a show cause notice by the authorised officer before making an order of confiscation, revision of such order by a Forest-Officer not below the rank of Conservator of Forests specially empowered by the State Government in this behalf by notification in the Official Gazette, appeal to the Sessions Judge against the order of confiscation or the order passed in revision by the specially empowered officer were also proposed to be provided. It was also considered necessary to provide that confiscation of the property by an officer authorised by the State Government in that behalf was without prejudice to other punishments that the property, etc., confiscated, or as the case may be, its sale proceeds, vest in Government and that the jurisdiction of the Court and any other authority to making orders with regard to the custody, possession, delivery, disposal or distribution of such property, etc., was barred. Provisions for increase in the penalties and for making certain offences non-bailable were also considered necessary. For all these purposes it was proposed to amend suitably the Indian Forest Act, 1927, in its application to the State of Maharashtra. An Act further to amend the Indian Forest Act, 1927, in its application to the State of Maharashtra. Whereas it is expedient further to amend the Indian Forest Act, 1927, in its application to the State of Maharashtra, for the purposes hereinafter appearing; It is hereby enacted in the Thirty-fifth Year of the Republic of India as follows

1. Short title and commencement.

(1) This Act may be called the Indian Forest (Maharashtra Amendment) Act, 1984. (2) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Amendment of section 2 of Act XVI of 1927.

- In section 2 of the Indian Forest Act, 1927, in its application to the State of Maharashtra (hereinafter referred to as "the principal Act"), in clause (4C), for the words and figures "the Bombay Land Revenue Code, 1879, or, where that Code is not in force, as defined in a law corresponding to that Code;" the words and figures "the Maharashtra Land Revenue Code, 1966;" shall be substituted.

3. Amendment of section 26 of Act XVI of 1927.

- In section 26 of the principal Act, in sub-section (1) for the words "six months or with fine which may extend to five hundred rupees," the words "one year or with fine which may extend to two thousand rupees," shall be substituted.

4. Amendment of section 28 of Act XVI of 1927.

- In section 28 of the principal Act, -(a) for the words and figures "the Bombay Village Panchayats Act, 1933," the words the figures "the Bombay Village Panchayats Act, 1958," shall be substituted; (b) for the words and figures "the Bombay Co-operative Societies Act, 1925," the words and figures "the Maharashtra Co-operative Societies Act, 1960" shall be substituted.

5. Amendment of section 33 of Act XVI of 1927.

- In section 33 of the principal Act in sub-section (1), for the words "six months or with fine which may extend to five hundred rupees," the words "one year or with fine which may extend to two thousand rupees," shall be substituted.

6. Amendment of section 42 of Act XVI of 1927.

- In section 42 of the principal Act, in sub-section (1), for the words "six months or with fine which may extend to five hundred rupees," the words "one year or with the fine which may extend to two thousand rupees," shall be substituted.

7. Amendment of section 52 of Act XVI of 1927.

- In section 52 of the Principal Act, -(a) after sub-section (1), the following sub-section shall be inserted namely :- "(1A) Any Forest Officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is 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 be reasonably be necessary to examine the contents in the vehicle and inspect all records relating to the goods carried which are in the possession of such driver or other person in charge of the vehicle"; (b) in sub-section (2) -(i) after the words "on such property," the words and brackets "or the receptacle or vehicle (if any) in which it is contained," shall be inserted; (ii) after the proviso, the

following shall be added, namely :-"Provided further that, where the offence on account of which the seizure has been made in respect of timber, sandalwood, firewood, charcoal or such other forest produce as may be notified by the State Government, from time to time (hereinafter referred to as the "notified forest produce") and which is the property of the State Government, such officer shall make a report of such seizure also to the concerned authorised officer under section

61A.Explanation. - For the purposes of this Chapter, the expression "property of Government" and "property of the State Government" include the property belonging to the Forest Development Corporation of Maharashtra, Limited";(c)in the marginal note, for the word "confiscation" the words "confiscation and forfeiture" shall be substituted.

8. Amendment of section 53 of Act XVI of 1927.

- In section 53 of the principal Act, for the words and figures "under section 52, may release" the words, figures and letter "under section 52 may, subject to section 61G, release" shall be substituted.

9. Substitution of section 54 of Act XVI of 1927.

- For section 54 of the principal Act, the following section shall be substituted, namely :-"54. Procedure on receipt by Magistrate of report of seizure. - Upon the receipt of any report under sub-section (2) of section 52, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and, subject to sections 58 and 61G, for the disposal of the property according to law."

10. Amendment of section 55 of Act XVI of 1927.

- In section 55 of the principal Act, -(a)in sub-section (1), for the words "shall be liable to confiscation" the words, figures and letter "shall, subject to section 61G, be liable by order of the convicting Court to forfeiture" shall be substituted;(b)in sub-section (2), for the word "confiscation" the word "forfeiture" shall be substituted;(c)in the marginal note, for the word "confiscation" the word "forfeiture" shall be substituted.

11. Amendment of section 56 of Act XVI of 1927.

- In section 56 of the principal Act, -(a)for the word "confiscated" the word "forfeited" shall be substituted;(b)for the words "in any other case, may be disposed of" the words, figures and letter "in any other case may, subject to section 61G, be disposed of" shall be substituted.

12. Amendment of section 57 of Act XVI of 1927.

- In section 57 of the principal Act, for the portion beginning with the words "the Magistrate may" and ending with the words "to be confiscated" the following shall be substituted, namely : "the Magistrate may, if he finds that an offence has been committed, but subject to section 61G, order the property in respect of which the offence has been committed, to be forfeited together with tools,

boats, vehicles or cattle and other articles used in committing the offence."

13. Substitution of section 58 of Act XVI of 1927.

- For section 58 of the principal Act, the following section shall be substituted, namely :-"58. Procedure as to perishable property seized under section 52. - The Forest Officer who made the seizure under section 52 may, notwithstanding anything contained in this Act or any other law, sell any property seized under section 52 and subject to speedy and natural decay, and may deal with the proceeds as he would have dealt with such property if it had not been sold and shall report about every such sale to his official superior."

14. Amendment of section 60 of Act XVI of 1927.

- In section 60 of the principal Act, for the word "confiscation" the word "forfeiture" shall be substituted.

15. Amendment of section 61 of Act XVI of 1927.

- In section 61 of the principal Act, for the words and figures "seized under section 52" the following shall be substituted, namely :-"seized under section 52 which is not the property of Government and the withdrawal of any charge made in respect of such property."

16. Insertion of section 61-A to 61-G in Act XVI of 1927.

- After section 61 of the principal Act, the following sections shall be inserted namely :-"61A. Confiscation by Forest officer of forest produce where forest offence is believed to have been committed. - (1) Notwithstanding anything contained in the foregoing provisions of this Chapter or any other law, where a forest offence is believed to have been committed in respect of timber, sandalwood, firewood, charcoal or any other notified forest produce which is the property of State Government, the officer seizing the property under sub-section (1) of section 52 shall, without any unreasonable delay produce it, together with all tools, boats, vehicles and cattle used in committing such offence, before an officer authorised by the State Government in this behalf by notification in the Official Gazette, not being an officer below the rank of an Assistant Conservator of Forests (hereinafter referred to as "the authorised officer").(2)The State Government may authorize one or more officers for any local area under sub-section (1).(3)Where an authorised officer seizes under sub-section (1) of section 52 any timber, sandalwood, firewood, charcoal or any other notified forest produce which is the property of the State Government or any such property is produced before an authorised officer under sub-section (1) and he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, boats, vehicles and cattle used in committing such offence.(4)(a)Where the authorised officer, after passing an order of confiscation under sub-section (3), is of the opinion that it is expedient in the public interest so to do, he may order the confiscated property or any part thereof

and the tools, boats, vehicles and cattle to be sold by public auction.(b)Where any confiscated property or the tools, boats, vehicles and cattle are sold, aforesaid, the proceeds thereof, after deduction of the expenses of any such auction or other incidental expenses relating thereto shall, where the order of confiscation made under this section is set aside or annulled by an order under section 61C or 61D, be paid to the owner thereof or to the person from whom it was seized as may be specified in such order.

61B. Issue of show cause notice before confiscation under section 61A. - (1) No order confiscating any timber, sandalwood, firewood, charcoal or any other notified forest produce, tools, boats, vehicles or cattle shall be made under section 61A except after notice in writing to the person from whom it is seized and considering his objections, if any ;

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.(2)Without prejudice to the provisions of sub-section (1), no order confiscating a tool, boat, vehicle or cattle shall be made under section 61A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other notified forest produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

61C. Revision. - Any Forest Officer not below the rank of Conservator of Forests specially empowered by the State Government in this behalf by notification in the Official Gazette, may suo motu call for and examine the record of the order of the authorised officer under section 61A; and may make such inquiry or cause such inquiry to be made and may pass such orders as he deems fit :

Provided that no such record shall be called for after the expiry of 30 days from the date of such order, and no order under this section shall be passed if in the meanwhile, an appeal has been filed under section 61D against the order of the authorised officer :Provided further that no order prejudicial to a person shall be passed under this section without giving him an opportunity of being heard.

61D. Appeal. - (1) Any person aggrieved by any order passed under section 61A or section 61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property and the tools, boats, vehicles and cattle to which the order relates has been seized and the Sessions Judge shall, after giving

an opportunity to the appellant and the authorised officer or the officer specially empowered under section 61C, as the case may be, to be heard, pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(2)An order of the Session Judge under sub-section (1) shall be final and shall not be questioned in any Court.

61E. Award of confiscation not to interfere with other punishments. - The award of any confiscation under section 61A or section 61C or section 61D shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act or any other law for the time being in force.

61F. Property etc., confiscated when to vest in Government. - When an order for confiscation of any property or any tools, boats, vehicles or cattle is passed under section 61A or section 61C or Section 61D and such order has become final in respect of the whole or any portion of such property, or tool, boat, vehicle or cattle, such property or portion thereof or tool, boat vehicle or cattle or if it has been sold under clause (a) of sub-section (4) of section 61A, the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.

61G. Bar of jurisdiction in certain cases. - Whenever any timber, sandalwood, firewood, charcoal or any other notified forest produce which is the property of the State Government, together with any tool, boat, vehicle or cattle used in committing any offence is seized under sub-section (1) of section 52, the authorised officer under section 61A or the officer specially empowered under section 61C or the Sessions Judge hearing the appeal under section 61D shall have, and notwithstanding anything to the contrary contained in this Act or in the Code of Criminal Procedure, 1973, or in any other law for the time being in force, any other officer, Court, Tribunal or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property and any tool, boat, vehicle or cattle."

17. Amendment of section 62 of Act XVI of 1927.

- Section 62 of the principal Act shall be renumbered as sub-section (1) thereof and, -(a) in sub-section (1) as so renumbered, for the word "confiscation" the words "confiscation or forfeiture" shall be substituted ;(b) after sub-section (1) as so renumbered, the following shall be added, namely :- "(2) Any fine so imposed, or any portion thereof, shall, if the convicting Court so directs, be given as compensation to the person aggrieved by such seizure."

18. Amendment of section 65 of Act XVI of 1927.

- In section 65 of the principal Act, for the words "may release such person" the words, figures and letter "may, subject to and without prejudice to the provisions of section 65A, release such person" shall be substituted.

19. Insertion of section 65A in Act XVI of 1927.

- After section 65 of the principal Act, the following section shall be inserted namely: - "65A. Certain offences to be non-bailable. - 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 :- Section 26, clauses (a), (b), (f), (g), (h) and (i) of sub-section (1). Section 33, clauses (a), (b), (c), (d), (f) and (h) of sub-section (1). Section 42. Section 63. (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."

20. Amendment of section 67 of Act XVI of 1927.

- In section 67 of the principal Act, -(a) for the words and figures "the Code of Criminal Procedure, 1898", the words and figures "the Code of Criminal Procedure, 1973" shall be substituted; (b) for the words "not exceeding six months, or fine not exceeding five hundred rupees or both" the words "not exceeding one year, or fine not exceeding two thousand rupees, or both, and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial; but, notwithstanding anything contained in the said Code, in the case of conviction for any offence in a summary trial under this section, it shall be lawful for the Magistrate to pass sentence of imprisonment for any term for which such offence, is punishable under this Act" shall be substituted.

21. Amendment of section 72 of Act XVI of 1927.

- In section 72 of the principal Act, in sub-section (1), in clause (c), for the words and figures "the Code of Criminal Procedure, 1898" the words and figures "the Code of Criminal Procedure, 1973"

shall be substituted.