

SANDALWOOD PROTECTION BILL 2012

A bill to make provision for regulating in public interest protection, extraction, conversion, transit, possession and trade of Sandalwood trees and its products.

Whereas there is an urgent need to protect sandalwood trees in the country and prevent unauthorized felling, illicit removal and trade.

And whereas the Government feels it necessary to have legislation to provide for protection and to regulate extraction, conversion, transit, possession and trade by creation of State monopoly, in public interest to conserve sandalwood for posterity.

1. preliminary Short title, extent and commencement:

- i. This bill may be called Sandalwood (Protection) Act, 2012
- ii. It extends to the whole of India.
- iii. It shall come into force on such day, as the Central Government may in consultation with the State Governments declare by Notification in the official Gazette.

2. DEFINITIONS: In this Act unless the context otherwise requires,

- a. "Sandalwood" means any portion of trees of genera *Santalum* or *Osyris* including oil, saw dust, spent wood dust, flakes or pulp or converted into any other form.
- b. "Authorized Officer" means any officer who is authorized by the Central Government or State Government for the purposes of this Act.
- c. "Authorized Dealer" means a dealer so notified by the Central Government or the State Government under section(8) of this Act.

d. "Advisory Committee" means the Committee appointed by the Central Government under section (10) of this Act.

e. "Offence" means any offence punishable under this Act or any other rule made thereunder.

f. "Forest Division" means a territorial unit of administration in Forest administration governed under relevant Act or rules or other provisions.

g. "Cattle" includes cows, oxen, elephants, camels, buffaloes, horses, asses, pigs, sheep, goats and such other animals that Government may specify by notification in the official gazette.

3. Restriction on contrary legislation by State Government: Notwithstanding anything contained in any other law for the time being in force, in any State, no State Government or other authority shall make, except with the prior approval of the Central Government, any legislation contrary to this Act.

4. Removal of Sandalwood from private lands:

Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any Court, no owner or holder or occupant of any land including a plantation and no person claiming under him or any other person, shall fell or sell such sandal tree or convert or dress sandal wood obtained from such tree or possess, store transport or sell the sandal wood so obtained except in accordance with the provisions of this Act or rules made under this Act.

5. Responsibility of occupants and holders of land for the preservation of sandal trees etc. - Every occupant or holder of land or any other person referred to

in section(4) shall preserve all sandal trees growing in his land, and shall in the event of its theft at once report such fact to the nearest Forest Officer or Police Officer.

6(A). Prohibition of possession and transport of Sandalwood:-

(1) Notwithstanding anything contained in any law, for the time being in force no person shall:

(i) Possess any quantity of Sandalwood in excess of **five kilogram**, or

(ii) Possess any quantity of Sandalwood oil in excess of **one hundred grams**.

provided that the authorized officer may issue license for the possession or transport of Sandalwood in excess of five kilogram for their bona-fide purposes to the registered users, religious institutions, registered practitioners of indigenous medicines, on payment of such fees, and in such manner and subject to such restrictions and conditions as may be prescribed.

Provided further that the authorized officer may issue license for the possession or transport of Sandalwood oil in excess of one hundred grams to the manufacturers of cosmetics, drugs and other materials in which Sandalwood oil is an essential ingredient, for their bona-fide purposes, on payment of such fees in such manner and subject to such restrictions and conditions as may be prescribed.

(2) Notwithstanding anything contained in any law for the time being in force or in any judgment, decree or order of any court, no person except Government shall disintegrate Sandalwood in mills or by other contrivance, manufacture or distill, or attempt to manufacture or distill oil from Sandalwood or re-distill or sell oil extracted from Sandalwood.

(3) No licensee under this section shall keep in his control, custody or possession or acquire, receive, sell, or offer for sale or process or transport Sandalwood except in accordance with this Act, the rules made thereunder and the conditions of the license granted.

(4) The authorized officer may cancel or suspend any license granted under sub-section (1) if he is satisfied after giving an opportunity to the holder thereof of being heard, that the licensee has contravened, or failed to comply with any of the provisions of this chapter or the rules made there under or any of the terms and conditions of the license.

6 (B) Restriction on purchase, sale etc of Sandalwood:-

(1) No person shall purchase, receive or acquire Sandalwood otherwise than from government or the authorized dealer.

(2) No person other than the authorized dealer shall sell or offer for sale or by any other mode of consideration of commercial nature dispose Sandalwood.

7. Declaration of Sandalwood: Any person possessing any Sandalwood in excess of the quantity prescribed in section(6) prior to the commencement of this Act shall declare their stocks before the authorized officer within 60 days from the date of commencement of this Act, in such manner as may be prescribed by the Government.

8. Appointment of authorized dealers:

i. The Central Government or the State Government may appoint one or more authorized dealers for the purchase and trade of Sandalwood.

ii. The terms and conditions and the procedure for appointment of authorized dealers shall be such as may be prescribed by the respective Government.

9. Surrender of Sandalwood to authorized dealers:

Any person other than the State Government in possession of Sandalwood in excess of quantity exempted under section (6), within 30 days from the date of declaration under section (7) shall sell the same to such authorized dealers specified by the Central Government or the State government, at the price notified by the Central Government.

10. Constitution of the Advisory Committee:

The Central government in consultation with the state Governments shall, constitute an advisory committee consisting of not more than 10 members including representatives from the State Governments, Registered users, growers for the purpose of advising in the matter of fixation of fair and reasonable prices at which Sandalwood may be sold to the authorized dealers.

11. Government to fix prices in consultation with the committee:

The Central Government on receipt of the recommendation of the Committee constituted under section (10) fix the price at which Sandalwood shall be sold to the dealer and shall publish the same in the Gazette after 1st January but not later than 1st June of every calendar year and the prices fixed shall remain in force to the 31st December of such calendar year and shall not be altered during that year.

12. The authorized dealer to purchase Sandalwood: The authorized dealer shall be bound to purchase Sandalwood offered for sale at the price fixed under section (10).

13. Registration of Users:

1. Every user who uses sandalwood/Sandalwood oil as raw material including those mentioned in Section (6), shall get themselves registered with the forest department of the State where such use takes place, within such period on payment of such fee and in such manner as may be prescribed.

provided also that nothing in this section shall apply to any person, for possessing Sandalwood up to 5 Kilogram or Sandalwood oil up-to 100 grams, for bona-fide domestic use.

2. Every such user shall submit such declarations, account and returns in such forms and to such officer and at such intervals as may be prescribed.

14. Disposal of Sandalwood:

1. No authorized dealer shall sell or otherwise dispose Sandalwood, except in the following manner,

(i) within the Country it shall not be sold to any person other than the authorized dealers, Central and State Governments or their undertakings or other organisations wholly owned by Government or registered users under section 13, subject to the limits of possession specified under Section 6.

Provided also that nothing in this section shall apply to the sale to any person up to 5 Kilogram or Sandalwood oil upto 100 grams, for bona fide domestic use.

(ii) The export or import of Sandalwood shall be directly by those authorized dealers permitted to do so by the Government under Section 8.

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15. Delegation of powers:

The central Government may by an order delegate any of its powers or functions under this Act or the rules made there under to the State Government or any authority under the State Government who shall exercise or perform the same subject to such conditions and restrictions as the Central Government may specify in the said order.

16(1) Power to enter, search and seizure:

Notwithstanding anything contained in any other law for the time being in force, any forest officer or any police officer or any other Officer authorized by the Central or the State Government may, if he has reasonable grounds for believing that any person has committed an offence against this Act,

- (a) require any such person to produce for inspection any Sandalwood in his control, custody or possession, or any licence, accounts maintained, permit or any other document granted to him or required to be kept by him under the provisions of this Act;
- (b) stop any animal, vehicle, vessel or other conveyance in order to conduct search or inquiry or enter upon and search any premises, land, vehicle or vessel in the occupation of such person, and open and search any baggage or other things in his possession;
- (c) seize any Sandalwood in respect of which an offence against this Act or rules made thereunder, appears to have been committed, in the possession of any person together with all tools, boats, weapons, chains, machinery including

equipment for processing or converting or disintegrating or distilling of sandalwood, vehicles or cattle or any other-property used for committing such offence. provided further that if any such premises be found locked up and unoccupied or unattended by or on behalf of the owner or occupiers, the same may, in the presence of two respectable witnesses, be broken open and entered upon for any or all of the purposes.

(2) The provisions of the Code of the Criminal procedure 1973 (2 of 1979) relating to search and seizure shall, as far as may, apply to searches and seizures under this section.

(3) Notwithstanding anything contained in any other law, the officer seizing the Sandalwood under sub-section (1) shall, without any unreasonable delay produce it, together with all tools, boats, weapons, chains, machinery, vehicles or cattle or any other-property used for committing such offence, before an officer authorized by the Central or the State Government in this behalf by Notification in the Official "Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorized officer)

Provided further that when the Sandalwood with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

17. Power to arrest without warrant - (1) Any Forest officer or police Officer or any other officer authorized by the Central or State Government may, without orders from a Magistrate and without a warrant, arrest any person against whom a

reasonable suspicion of being involved in any offence against this Act or rules made thereunder exists, if, such person refuses to give his name and residence or gives a name or residence which there is reason to believe to be false, or if there is reason to believe that he will abscond.

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

18. Powers of Investigation by Forest Officers:

(1) Notwithstanding anything contained in any other law for the time being in force, for the purpose of making investigation into any offence against any provision of this Act

(a) any forest officer not below the rank of Range Officer shall have the powers,

(i) to enforce the attendance of witness

(ii) to compel the discovery and production of documents and material objects

(b) any forest officer not below the rank of an Asst. Conservator of Forests shall have the powers

(i) to issue a search warrant

(ii) to receive and record evidence.

(2) Any evidence recorded under clause (ii) of sub-section (1)(b) shall be admissible in any subsequent trial before a Magistrate.

19. Report of the investigating officer:

If on any investigation by a Forest Officer or a Police Officer, it appears that there is sufficient evidence to justify the prosecution of the accused person the investigating officer shall submit a report to a Magistrate having jurisdiction, who upon receipt of such report shall take such measures as may be necessary for the trial of the offender.

20. Confiscation by Authorized Officers:

(1) Where any sandalwood together with any tools, boats, weapons, chains, machinery, vehicles or cattle or any other-property used for committing any such offence is produced before the Authorized Officer under Section 16(3) and the authorized officer is satisfied that an offence against this Act has been committed in respect of such Sandalwood, he may, whether or not a prosecution is instituted for commission of the offence, order confiscation of the sandalwood together with tools, boats, weapons, chains, machinery, vehicles or cattle or any other-property used for committing such offence.

(a) provided that no order of confiscation in respect of any property other than sandalwood shall be made, except after giving a notice in writing to the owner thereof, or the person from whom the property has been seized, for showing cause as to why the same should not be confiscated and considering his objections, if any.

(b) Provided that no order confiscating any motor vehicle shall be made except after giving a notice to the registered owner thereof, if in the opinion of the authorized officer to do so, and considering his objections, if any.

Explanation: "Motor vehicle" shall have the same meaning as in Motor vehicles Act, 1939.

(2) Where the authorized officer, after passing an order of confiscation under sub-section

(1), 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 to be sold by public auction.

(3) Where the order of confiscation of any property is set aside or annulled under Section 20, the proceeds of sale by auction shall, after deduction of expenses of and other incidental expenses related thereto, if any, be paid to the owner of such property or from whom the same was seized as may be specified in the order under Section 21.

21. Appeal: (1) Any person aggrieved by any order passed under Section 20 (1) may, within thirty days from the date of communication to him of such order, prefer an appeal to the session judge having jurisdiction over the area in which the property to which the order relates has been seized and the session judge shall, after giving an opportunity to the appellant and the authorized officer or the officer specially empowered under Section 20, 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 Sessions Judge under sub-section (1) shall be final and shall not be called in question by any Court.

22. Award of confiscation not to interfere with other punishment:-

Not notwithstanding any order under Section 17, 18 or 20, nothing in any of the said sections shall be deemed to prevent the award to any person affected by such order, of any punishment to which such person is liable under this Act or any other law for the time being in force.

23. Property confiscated when to vest in Government:

When an order for confiscation of any property has been passed under Section 20 or Section 21 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, or if it has been sold under sub-section (2) of Section 20, the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.

24. Bar of jurisdiction in certain cases: Notwithstanding anything contained to the contrary contained in the Code of Criminal procedure (Central Act 2 of 1974) or any other law for the time being in force, the Officer authorized under Section 20 or the District Judge to whom an appeal may be preferred under Section 21 shall have and any other officer of Forest Officer or Court, Tribunal or authority shall not have jurisdiction to make orders with regard to custody, possession, delivery, disposal or distribution of any property seized under Section 16.

25. Attempts and abetment: Whoever attempts to contravene or abets the contravention of, any provisions of this Act or of any rule or order made under this Act shall be deemed to have contravened that provision or rule or order, as the case may be.

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26. Offences under the Act to be cognizable:

Notwithstanding anything contained in the code of criminal procedure 1973, (Central Act 2 of 1974) any offence in respect of Sandalwood shall be deemed to be a cognizable offence within the meaning of that Code.

27. Offences to be non-bailable:

(1) Notwithstanding anything contained in the Code of Criminal procedure, 1973

(Central Act 2 of 1974) all offences in respect of Sandalwood under this Act shall be non-bailable.

(2) No person accused of any offence aforesaid shall, if in custody, be released on application for bail or on his own bond unless the prosecution has been given an opportunity to oppose the application for such release.

28. Power to prevent commission of offence - Every Forest Officer and police Officer shall prevent, any may interfere for the purpose of preventing the commission of any forest offence.

provided that it shall be lawful for any forest officer to use as much force necessary to prevent the Commission of any offence under this Act or to apprehend any person who has committed or is engaged in commission of any offence under the said Acts or for seizure of any weapons, vehicles, cart, boat any other conveyance, tools or any other things used to commit offence under this Act or to carry, transport, conceal or keep sandalwood in respect of which the offence is committed

29. Punishment for wrongful seizure- (1) Any Forest Officer or Police Officer who vexatiously and unnecessarily seizes any property on pretense of seizing property liable to forfeiture under this Act shall, on conviction, be punishable with

imprisonment which may extend to six months, or with fine, which may extend to five hundred rupees or with both.

(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.

30. Presumption that Sandalwood belongs to Government;

(1) When in any proceedings taken under this Act nor in consequence of anything done under this Act or under any other law for the time being in force, a question arises as to whether any Sandalwood is the property of the State Government, such Sandalwood shall be presumed to be the property of the State Government until the contrary is proved, and in case of any prosecution the burden of proving the contrary shall lie on the accused.

31. Officer to be public Servants: All Officers exercising powers under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian penal Code.

32. Indemnity for acts done in good faith: No suit or criminal prosecution shall lie against any public servant for anything done or omitted in good faith under this Act.

33. Operation of other laws not barred. Nothing in this Act shall be deemed to prevent any person from being prosecuted under any other law for the time being in force, for any act or omission which constitutes an offence against this Act or from being liable under such other law to any higher punishment or penalty than that provided by this Act.

34. Offence by Companies- If the person committing an offence under this Act is a company, the company as well as every person in charge of, and responsible to the

company for the conduct of its business at the time of the commission of the offence shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such personal liable to any punishment if he proves that the offence was omitted without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Explanation - For the purpose of this section,

"Company" means anybody corporate and includes a firm or other association of individuals;

35. Penalty for offence in regard to sandalwood - Any person who contravenes any provision of this Act or any rule made thereunder shall upon conviction, be punishable with imprisonment for a term which may extend to ten years and with fine which may extend to one lakh;

Provided that,

- (i) in the case of first offence the term of imprisonment shall not be less than five years and the amount of fine shall not be less than fifty thousand rupees; and
- (ii) in the case of a second or subsequent offence the term of imprisonment shall not be less seven years and the amount of fine shall not be less than seventy five thousand rupees.

36. Regulation of transit or Sandalwood and its manufactured products:

- (1) The Central Government may prescribe the modalities of transportation of Sandalwood and such of its manufactured products across different States.

37. Powers to make rules:

- 1) The Central government may, by notification in the official gazette, make rules for any matter connected to sandalwood
- 2) Every rule made under this Section shall be laid, as soon as may be after it is made, before each House of Parliament, which it is in session, for a total period of thirty days which may be comprised in one session of two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; however that any such modification of annulment shall be without prejudice to the validity of anything previously done under that rule.
- 3) The State government may by a notification in the official gazette, make rules for carrying out the provisions of this Act.

38. Power to remove difficulty:

If any difficulty arises in giving effect to the provisions of this Act, the Government may, by notification in the official gazette, make such provisions, not inconsistent with the provisions of this Act as appear to them to be necessary or expedient for the purpose of removing difficulty.

39. Repeal and Savings:

- (1) As from the commencement of this Act, every other Act relating to any matter contained in this Act in force in a State shall, to the extent to which that Act or any

provision contained therein corresponds, or is repugnant to this Act or any provision contained in this Act, stand repealed:

Provided that such repeal shall not-

- (i) affect the previous operation of the Act so repealed, or anything duly done or suffered thereunder;
- (ii) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the Act so repealed; or
- (iii) affect any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture and punishment may be imposed, as if the aforesaid Act had not been repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the Act so repealed (including any notification, order, certificate, notice or receipt issued, application made, or permit granted which is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act as if this Act were in force at the time such thing was done or action was taken, and shall continue to be in force, unless and until superseded by anything done or any action taken under this Act.