

Fourteenth Kerala Legislative Assembly

Bill No. 235

**THE KERALA FOREST (AMENDMENT)
BILL, 2019**

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further to amend the Kerala Forest Act, 1961.

Preamble.—WHEREAS, it is expedient further to amend the Kerala Forest Act, 1961, for the purposes hereinafter appearing;

BE it enacted in the Seventieth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Forest (Amendment) Act, 2019.

(2) It shall come into force at once.

2. *Amendment of section 2.*— In the Kerala Forest Act, 1961 (4 of 1962) (hereinafter referred to as the principal Act), in section 2,—

(i) the existing clause (a) shall be re-numbered as clause (aa) and before the clause (aa) as so re-numbered, the following clause shall be inserted, namely:—

“(a) “bark” means the hard outer covering of the woody stem or root;” ;

(ii) the existing clause (c) shall be re-numbered as clause (ca) and before the clause (ca) as so re-numbered, the following clause shall be inserted, namely:—

“(c) “fishing” includes catching of fish by poisoning waterbodies or any attempt to do so by any means;” ;

(iii) for clause (ca) as so re-numbered, the following clause shall be substituted, namely:—

“(ca) “ Forest- Officer” means any person appointed by name or as holding an office by or under the orders of the Government to be a Principal Chief

Conservator of Forests, Additional Principal Chief Conservator of Forests, Chief Conservator of Forests, Conservator of Forests, Deputy Conservator of Forests, Assistant Conservator of Forests, Divisional Forest Officer, Deputy Director (Wildlife), Range Forest Officer, Wildlife Assistant, Deputy Range Forest Officer, Section Forest Officer, Timber Depot Officer, Beat Forest Officer, Forest Driver, Forest Boat Driver, Tribal Watcher, Watcher or to discharge any function of a Forest Officer under this Act or any rules made thereunder;" ;

(iv) in clause (f) ,—

(a) for sub-clause (i), the following sub-clause shall be substituted, namely:—

" (i) the following whether found in, or brought from a forest or not, that is to say—

(a) ivory;

(b) timber, charcoal, wood-oil, gum, resin, natural varnish, bark, lac, fibres and roots of sandalwood, sandal oil and rosewood; and " ;

(b) in sub-clause (ii) in item (d), after the word and symbol " surface soil," the word and symbol " sand," shall be inserted;

(v) in clause (l), (a) after the word " bamboos" the words and symbol " excluding bamboos grown outside a forest, reeds" shall be inserted;

(b) after clause(l), the following clauses shall be inserted,namely:—

" (m) " waste material" includes solid, liquid or gaseous substances which are discarded after primary use, any poisonous materials, rubbish, junk, garbage, filth, excreta, toxic industrial rejection, unwanted or undesired or unusable material or any substances which causes injury or harm or damage or otherwise adversely affects the human beings or wildlife or forests or environment;

(n) " wild animal " means the "wild animal" as defined in clause 36 of section 2 of the Wildlife Protection Act, 1972 (Central Act 53 of 1972);".

3. *Amendment of section 27.*— In section 27 of the principal Act, in clause (e) of sub-section (1),—

(i) in item (ii), after the word ‘railing’, the words and symbols “or any structure, temporary or permanent in nature constructed for demarcation of boundary, including cairns and kayyalas” shall be inserted;

(ii) in item (v), for the word “stones” the words and symbol “stones or sand,” shall be inserted;

(iii) after item (vi), the following items shall be inserted, namely:—

“ (vii) litters or dumps plastic or any other waste material on the ground or poisons or dumps plastic and other waste material into the water bodies and streams within or flowing into them, or uses explosives;

(viii) enters with gun or explosives;

(ix) feeds, teases or molests any wild animals;

(x) enters for fishing, poisoning rivers or water bodies or collects fish from the rivers or any water bodies within or attempts to do so, except when such a right has been recognized under the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Central Act 2 of 2007).”

4. *Amendment of section 52.*—In section 52 of the principal Act, for sub-section (1) the following sub-section shall be substituted, namely:—

“(1) Notwithstanding anything contained in any other law for the time being in force, any Forest Officer or Police Officer may, if he has reasonable grounds to believe that any person has committed an offence punishable under this Act,—

(a) require such person to produce for inspection any timber or any other forest produce in his control, custody or possession or any permit or records or other documents granted to him or required to be kept by him under the provisions of this Act;

(b) stop any vehicle or conduct search or inquiry or enter upon and search any building premises, land, vehicles or vessels in occupation of such person, open and search any baggage or other containers in his possession;

(c) seize any timber or other forest produce along with any weapons, tools, ropes, chains, boats, vehicles and cattle used in committing any such offence in violation of provisions of the Act.

Explanation.— The terms “boats” and “vehicles” in this section, section 53 and section 55, section 61A and section 61B shall include all the articles and machinery kept in it whether fixed to the same or not.” .

5. Amendment of section 61A.—In section 61A of the principal Act,—

(i) in sub-section(1), after the word “ firewood” the words and symbols “ bark, sandalwood oil, sand” shall be inserted;

(ii) in sub-section (2), after the word “ firewood” the symbols and words “ ,bark, sandalwood oil, sand” shall be inserted;

6. Amendment of section 61B.—In section 61B of the principal Act,—

(i) in clause (a) of sub-section(1), after the word and symbol “ firewood,” occurring at both the places, the words and symbols “ bark, sandalwood oil, sand” shall be inserted;

(ii) in sub-section (2), after the word “firewood” the symbols and words ,“bark, sandalwood oil, sand” shall be inserted;

7. Amendment of section 63.—In section 63 of the principal Act, for sub-section (1) and (2) the following sub-sections shall be substituted, namely:—

“(1) Any Forest Officer or Police Officer may, without orders from a Magistrate or without a warrant, arrest and detain any person reasonably suspected of having been indulged in any forest offence, unless he is satisfied that such person will appear and answer any charge which may be preferred against him.

(2) A Forest Officer, not below the rank of Section Forest Officer may, without an order or without a warrant from a Magistrate, arrest and detain any

person who obstructs him or his subordinate while in execution of discharge of his duties or who has escaped from his lawful custody, if the situation so warrants.

(3) Any person arrested under any provision of this Act shall be informed as soon as may be, of the grounds of arrest and shall without delay be produced before the officer in charge of the nearest forest station or police station or before the investigating officer and such officer shall there upon act according to law.”.

8. *Amendment of section 69.*—In section 69 of the principal Act, the existing section shall be numbered as sub-section (1) of that section and after sub-section(1) as so numbered, the following sub-section shall be inserted , namely:—

“(2) When, in any prosecution of an offence punishable under this Act, it is established that a person is in possession, custody or control of any forest produce, it shall be presumed that such person is in unlawful possession, custody or control of any forest produce, until the contrary is proved.”.

9. *Amendment of section 72.*— In section 72 of the principal Act, the existing section shall be numbered as sub-section (1) of that section and after sub-section(1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) The Government may invest with any Forest Officer not below the rank of a Range Forest Officer, the power to issue a certificate on the identity in respect of any forest produce submitted before him for examination and report and such certificate may be used as evidence of the facts stated there in any proceedings under this Act. ”.

STATEMENT OF OBJECTS AND REASONS

It has come to the notice of the Government that the forest area in the State are often used by a section of people as a place for dumping waste materials such as plastics biodegradable and non degradable wastes there by polluting the forest areas. The aforesaid situation if left uncontrolled will endanger the very existence of various rare type of flora and fauna in forest areas. In remote forest areas the protective staff has to face severe resistance including attack from organized gang. Most forest offences takes place inside interior forest and waiting for orders from a Magistrate or Superior Officers to arrest and detain the person may lead to

escape of the culprit. It is also felt that clear demarcation of boundaries of forest from private land becomes necessary. Hence the Government have decided to amend the Kerala Forest Act, 1961 to include certain categories of officers under the definition of forest officers, to omit certain categories of officers which do not exist, to include certain items under the category of forest produce, to prohibit certain activities inside forest such as fishing; poisoning of water, dumping of waste materials, teasing or molesting of wild animals, to empower forest officer to arrest and detain any person who obstructs discharge of his official duty and to produce the arrested person directly before the officer having jurisdiction over the area and to insert sufficient provisions for the cultivation and sale of bamboos like other agriculture crops, in tune with the policy of Government of India. Hence the Government have decided to make necessary amendments in sections 2, 27, 52, 61A, 61B, 63, 69 and 72 of the Kerala Forest Act, 1961 (4 of 1962).

The Bill is intended to achieve the above objects.

FINANCIAL MEMORANDUM

The Bill, if enacted and brought into operation, would not involve any additional expenditure from the Consolidated Fund of the State.

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(l) " tree" includes palms, bamboos, stumps, brushwood and canes.

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27. *Penalties for trespass or damage in Reserved Forest and acts prohibited in such forests.*— (1) Any person who—

(a) does any act prohibited by section 7; or

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(e) in a Reserved Forest or in a land proposed to be constituted a Reserved Forest—

(i) cultivates or clears or breaks up any land for cultivation or for any other purpose or puts up any shed or other structures or plants trees; or

(ii) damages, alters or removes any wall, ditch, embankment, fence, hedge or railing; or

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(v) quarries stones, burns lime or charcoal or collects or subjects to any manufacturing process or removes any forest produce; or

(vi) causes any damage by negligence in felling any tree, reed or cutting or dragging any timber,

shall be punished with imprisonment for a term which shall not be less than one year but may extend to five years and with fine which shall not be less than one thousand rupees but may extend to five thousand rupees in addition to such compensation for damage done to the forest as the convicting court may direct to be paid."

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52. *Seizure of property liable to confiscation.*— (1) When there is reason to believe that a forest offence has been committed in respect of any timber or other forest produce, such timber or produce, together with all tools, ropes, chains, boats, vehicles and cattle used in committing any such offence may be seized by any Forest Officer or Police Officer.

Explanation.— The terms 'boats' and 'vehicles' in this section, section 53 and section 55, section 61A and section 61B, shall include all the articles and machinery kept in it whether fixed to the same or not.

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61A. *Confiscation by Forest Officers in certain cases*— (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, charcoal, firewood or ivory which is the property of the Government, the officer seizing the property under sub-section (1) of section 52 shall, without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorized by the Government in this behalf by notification in the Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where an authorized officer seizes under sub-section (1) of section 52 any timber, charcoal, firewood or ivory which is the property of the Government, or where any such property is produced before an authorized officer under sub-section (1) of this section and 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 the property so seized together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

61B. *Issue of show cause notice before confiscation under section 61A.*—(1) No order confiscating any timber, charcoal, firewood, ivory, tools, ropes, chains, boats, vehicles or cattle shall be made under section 61A unless the person from whom the same is seized—

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate such timber, charcoal, firewood, ivory, tools, ropes, chains, boats, vehicles or cattle;

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(2) Without prejudice to the provisions of sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made under section 61A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorized officer that it was used in carrying the timber, charcoal, firewood or ivory without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

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63. *Power to arrest without warrant.*—(1) Any Forest Officer or Police Officer may, without orders from a Magistrate and without a warrant, arrest any person reasonably suspected of having been concerned in any forest offence, if such person refuses to give his name and residence, or gives his name or residence which there is reason to believe to be false, or if there is reason to believe he will abscond.

(2) Any person arrested under this section shall be informed, as soon as maybe, of the grounds of arrest and shall forthwith be taken or send to the nearest Police Station and the Officer-in-charge of such Station shall thereupon act according to law.

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69. *Presumption that timber or forest produce belongs to Government.*—When, in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any forest produce is the property of the Central or State Government, such produce shall be presumed to the property of the Central or State Government, as the case maybe until the contrary is proved.

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72. *Investing Forest Officers with powers.*— The Government may invest any Forest Officer not below the rank of an Assistant Conservator of Forests with all or any of the following powers, and may withdraw the same:—

(a) power to enter upon any land to and to survey, demarcate and make a map of the same;

(b) powers of a Forest Settlement Officer;

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

(d) power to hold inquiries into forest offences and, in the course of such inquiries, to receive and record evidence and to issue search-warrants which may be executed in the manner provided by the Code of Criminal Procedure 1898;

(e) power to accept compensation for forest offences under section 68 of this Act.

Any evidence recorded under clause (d) of this section shall be admissible in any subsequent trial of the alleged offender before a Magistrate; provided that it has been taken in the presence of the accused person and recorded in the manner provided by the Code of Criminal Procedure, 1898.

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