

DRAFT ALL INDIA POLICY FOR CONTROLLING SANDALWOOD/RED SANDERS SMUGGLING

*SUBMITTED TO GOVERNMENT OF INDIA BY THE STATE GOVERNMENT IN
LETTER NO.AHFF92 FSW90 DATED 05.05.1990*

OBJECTS AND REASONS FOR A COMPREHENSIVE
SANDALWOOD AND RED SANDERS LEGISLATION IN THE COUNTRY

A. SCENARIO:

- 1) The smuggling of Sandalwood/Red Sanders has increased by leaps and bounds and has threatened the very existence of the crop, in addition to the social and economic evils it has generated in the country.
- 2) Sandalwood is mostly confined to the South Indian states of Tamilnadu, Kerala, Andhra Pradesh, Maharashtra and Karnataka. However even in these States, there is no uniformity regarding legal status of trees on private lands, extraction, transportation, possession and sale.
- 3) Sandalwood is in demand both within the country and outside for various products such as Sandal wood oil, Agarbathies, dust and chips, incense, carvings and other handicraft articles and medicine.
- 4) Sandalwood trees also grow in private lands and therefore any Legislation will have to be comprehensive, so as not to put the private growers under any kind of harassment or any kind of disincentives to grow and protect the Sandal wood trees in their private lands.
- 5) At present, there are Sandalwood oil distilleries in several states within the country which do not have Sandalwood trees and the bulk of the distillation of oils in these distilleries is being done by smuggled Sandalwood as Sandalwood purchased in open auction is too costly to be distilled which yields only 4% of oil. Similarly, the main trade in Sandalwood within the country is in the hands of private persons who engage themselves in obtaining smuggled Sandalwood in addition to the Sandalwood obtained from the Government depots. In some of the states, possession of sandalwood is not an offence and there are no rigid transit rules also. In some States, no license is required from the State Government in the Forest Department for the purpose of starting or renewing distilleries.
- 6) At present, export of Sandalwood is permitted in the form of chips whose average weight is 50 grams and less and there is no ban on export of other commodities like Handicrafts, carvings and Sandalwood oil.

- 7) The Sandalwood as a commodity is very handy for being smuggled in view of its high price and physical maneuverability to carry them in various forms. A few Kgs (pieces) of Sandalwood can be carried and it fetches a very good price. In spite of ceaseless efforts, there has been no significant curbing of the malpractice for want of suitable uniform Legislative measures covering the entire country.
- 8) Red Sanders which occurs gregariously in 3 to 4 districts of Andhra Pradesh and border Districts of Tamilnadu faces a similar situation as that of Sandalwood. Despite stringent measures adopted, Red Sanders wood continues to be smuggled in all forms and it is therefore, felt that the existing legislative measures required to be augmented. Therefore, a similar Legislation contemplated for Sandalwood will have to be made applicable to Red Sanders.
- 9) The subject of interstate smuggling of sandalwood was discussed at the Conference of the State Forest Ministers, Forest Secretaries and Chief Conservator of Forests on 11th, 12th May 1989 in Delhi and it was resolved that there should be uniform legislation throughout India so as to prevent interstate smuggling of this produce.
- 10) The subject was also discussed during the 21st and 22nd meeting held on 10-11-1991 and 20-08-1997 at Madras and Thiruvananthapuram of the Southern Zonal Council.
- 11) The necessity to have uniform legislation was also discussed at the forest regional meeting on forest protection held in Bangalore on 12th July 1989 and it was resolved that the concerned law regarding protection to forests and forest protection should be made uniform for all States.

B. POSSIBLE SOLUTIONS:

Forestry is a concurrent subject, and therefore, the Government of India in consultation with the States could enact an Act similar to the Forest Conservation Act 1980 in the interest of the protection of Sandalwood and Red Sanders trees and regulation of Sandalwood and Red Sanders trade in the country.

Such legislation could take into account the following aspects:

1. There should be a complete monopoly on the Sandalwood and Red Sanders trees by the Government, i.e., Sandalwood tree and Red Sanders could be declared as a tree belonging to the State Government wherever grown as in

vogue in Karnataka State. This of course does not mean that the Sandalwood trees and Red sanders grown in private lands would be without value to the grower of the land holder. There should be provision for payment of 100% compensation for the Sandalwood and Red Sanders, its transit to recognised sandalwood depots should be entirely with the Forest Department of the State Government concerned and no private agencies of any kind shall be involved in this operation.

2. Further disposals from the Government Sandalwood and Red Sanders Depot shall also be completely nationalized and this can be effected by a Legislation banning Sandalwood and Red Sanders trade including conversion of Sandalwood and Red Sanders in any form by private persons or agencies, except as handicraft articles. Even here, the artisans and dealers, who manufacture such handicraft articles shall be required to take license from the State Government who will have to maintain account as prescribed under Rules to be framed.

SANDALWOOD/RED SANDERS EXTRACTION, CONVERSION, TRANSIT, POSSESSION AND TRADECONTROL BILL

A bill to make provision for regulating in the public interest, extraction, conversion, transit, possession and trade of Sandalwood/Red Sanders tree and its products by creation of State monopoly.

Whereas Sandalwood and Red Sanders is one of the most valuable produces in this country and the value of which has increased manifold.

Whereas on account of its occurrence both in private and Government lands making it vulnerable for smuggling and the smuggling activity has increased enormously over the years thereby resulting in drastic reduction in its resources.

Whereas there are no common rules for regulating its extraction, conversion, transit, possession and trade throughout the country and wherever state rules are existing they are not sufficient to cope with the increased activities of smuggling.

Whereas the present private trade of Sandalwood/Red Sanders is greatly responsible for increased smuggling activities of Sandalwood/Red Sanders which affects equally the state as well as private growers.

It is therefore, considered essential to have legislation to provide for and to regulate the extraction, conversion, transit, possession and trade by creation of State monopoly in the public interest.

Be it enacted by the parliament in the ----- year of the Republic of India as follows:

I. **Preliminary:** Short title, extent and commencement:

- i. This bill may be called Sandalwood and Red Sanders extraction, conversion, transit, possession and trade control Act,.....,
- 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 Governments declare by Notification in the official Gazette.

II. **DEFINITIONS:** In this Act unless the context otherwise requires, "Sandalwood means any portion of a sandal (*Santalum album*) tree and includes bark, leaves and roots, thereof, whether containing heartwood or not, and whether in the form of roots, billets, pieces (sawn or otherwise), chips (whether coloured or not and whether mixed with other ingredients or not), oil, saw dust, spent wood flakes or pulp.

"Red Sanders" means the wood derived out of any part of the tree known by its botanical name as *Pterocarpus santalinus* and includes chips, dust or powder of such wood.

"Authorised Officer" means any officer who is appointed by the Central/State Government under section VIII of this Act.

"Wholesale Dealer" means any dealer who is appointed by the Central Government or the State Government under section IX of this Act.

"Advisory Committee" means the Committee appointed by the Central Government under section XIII of this Act.

“Manufacturer” means a person who utilises Sandalwood/Red Sanders as a raw material for carving or any other purpose or disintegrates the same, manually, mechanically, chemically or by any other process for producing any item with or without any other raw material.

“Offence” means any offence punishable under this Act or any other rule made thereunder.

III. **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 exception without the prior approval of the Central Government any legislation contrary to this Act.

IV. **Extraction of Sandalwood/Red Sanders from private lands:**

1. All private landholders and other person who by the terms of their pattas, grants, or by judicial decision or otherwise prior to the commencement of this Act, are legally entitled to the Sandal trees in their lands shall not fell or sell any such Sandal tree/Red Sander tree except in accordance with the provisions of this Act.
2. The concerned State Government may cause any Sandal tree/Red Sander tree growing in such lands to be cut and sold on behalf of the Private Land holders or other persons in accordance with such rules as may be prescribed by such State Government.

V. **Establishment of Sandalwood/Red Sanders Depots:** The concerned State Government may establish such number of Sandalwood/Red Sander depots to store the Sandalwood/Red Sander extracted from private lands as may be required.

VI. **Payment of full value to landholders:** The concerned State Governments may prescribe rules for the payment for the full value of Sandalwood and Red Sanders trees to the owners of such lands.

VII. **Bar on extraction, conversion, transit, possession and trade in Sandalwood/Red Sanders:**

1. No person shall possess, purchase, transport, store or sell or attempt to store or sell Sandalwood/Red Sander or carryout any trade in Sandalwood/Red Sander or disintegrate or attempt to disintegrate Sandalwood/Red Sander in mills or by any other contrivance manufacture or distil or attempt to manufacture or distil oil from sandal either by mechanically, manually, chemically or by any other process except by the State Government or Central Government or their undertakings;
 - i. Provided that the above restriction shall not apply to persons who possess upto 5 kgs. of Sandalwood/Red Sander for bonafide domestic use.
 - ii. Provided further that the above restriction shall not apply to bonafide carvers of Sandalwood/Red Sander who possess upto 15 kgs. of Sandalwood/Heartwood at a time and Agarbatti manufacturers who possess upto 25kgs of Sandalwood/heartwood at a time.
 - iii. Provided further that the above restriction shall not apply to Registered Agarbatti manufactures who can possess upto 500 kgs of Sandalwood sapwood at a time.

VIII. Declaration of Sandalwood/Red Sanders: Any person possessing any Sandalwood/Red Sander in excess of the quantity prescribed in proviso (i), (ii) and (iii) of section VII above prior to the commencement of this Act shall declare their stocks before the authorised officer within 60 days from the date of commencement of this Act.

IX. Appointment of Wholesale dealers:

- i) The Central Government and the concerned State Government may appoint one or more wholesale dealers for the purchase and trade of Sandalwood/Red Sanders.
- ii) The terms and conditions and the procedure for appointment of wholesale dealers shall be such as may be prescribed by the respective Government;

Provided that the wholesale dealers shall be the State Government or Central Government or their undertaking but shall not be private person/persons or agencies.

X. **Sandalwood/Red Sanders trade to be only through the wholesale dealers:** Purchase or trade of Sandalwood/Red Sander shall be only through the wholesale dealers appointed under section IX of this bill.

XI. **Restriction on sale of Sandalwood/Red Sanders:**
No State Government shall sell any Sandalwood/Red Sander to any person other than the wholesale dealer appointed by Central Government or the State Government.

XII. **Surrender of Sandalwood/Red Sanders to Wholesale dealers:**

Any person other than the State Government in possession of Sandalwood/Red Sander in excess of quantity exempted under proviso (i), (ii) and (iii) under section VII, within 30 days from the date of declaration under Section VIII shall sell the same to the wholesale dealers appointed by the Central Government and the State Government at the price to be specified by the concerned State Government.

XIII. **Constitution of the Advisory Committee:**

The Central Government in consultation with the State Government shall, constitute an advisory committee consisting of not more than 15 members including representatives from the State Government, manufacturers, growers for the purpose of advising in the matter of fixation of fair and reasonable prices at which Sandalwood/Red Sander may be sold to the wholesalers under the provisions of this bill.

XIV. **Government to fix prices in consultation with the committee:**

The Central Government on receipt of the recommendation of the Committee constituted under section XIII fix the price at which Sandalwood/Red Sanders shall be sold to the wholesaler and shall publish the same in the Gazette after 1st January by 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.

XV. **The wholesaler to purchase Sandalwood/Red Sander:**

The wholesaler shall be bound to purchase Sandalwood/Red sander offered for sale at the price fixed under section XIV.

XVI. Registration of Manufacturers:

1. Every manufacturer who use Sandalwood/Red Sander as a raw material shall get himself registered within such period on payment of such fee and in such manner as may be prescribed.
2. Every such manufacturer shall submit such declarations, account and returns in such forms and to such officer and at such intervals as may be prescribed.

XVII. Disposal of Sandalwood/Red Sander:

1. Sandalwood/Red Sander purchased by the wholesaler under this Act shall be sold or otherwise disposed of both within or outside the country in such manner as the Central or State Government may prescribe.
2. Provided that within the country it shall not be sold to any person other than the dealers of Central and State Government or their undertaking or other organisations wholly owned by Government and registered manufacturer under vide section-XVI.
3. Provided further that the export of Sandalwood/Red Sanders may be allowed only through the State Trading Corporations or any other Central or State Government undertaking.

XVIII. Retail sale of sandalwood/Red Sander:

1. No person other than the State Government undertaking or agency shall engage himself in retail sale of Sandalwood/Red Sanders. Any State Government undertaking or agency shall obtain a license under this section.
2. The State Government may for the purpose of facilitating retail sale of Sandalwood/Red Sanders within the State grant license to as many units as it may deem fit subject to such terms and conditions as may be prescribed.

XIX. 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.

XX Power to enter, search and seizure:

- 1 Any Forest officer or any Police Officer or any other officer authorised by the State Government may with a view to securing the compliance with the provisions of this act or the rules made there under or to satisfying himself that the said provisions have been complied with,
 - i) Stop and search any persons, boat, vehicle or receptacle intended to be used for the transport of Sandalwood/Red Sanders. .
 - ii) Enter and search any place.
 - iii) Seize the Sandalwood/Red Sanders in respect of which he suspects that any provision of the Act or the rules made there under has been or is being or is about to be contravened along with receptacle containing Sandalwood/Red Sanders or the vehicles or boats used in carrying such produce.

- 3 The provisions of sections 102 and 103 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.

XXI (A) Confiscation by authorised officers:

1. Where an offence is believed to have been committed under this Act in respect of Sandalwood/Red Sanders the officer seizing the property under section XX (1) (iii) shall without any unreasonable delay produce it together with all tools, ropes, chains, boats, vehicles, and machinery used in committing such offence, before an officer authorized by the State Government in this behalf by Notification in the official Gazette not being below the rank of a Deputy Conservator 9f Forest (herein after referred to as the Authorised Officer.)

2. Where an officer seizes under sub-section (1) (iii) of section XX any Sandalwood Red Sanders or where any such property is produced before an authorised officer under sub-section (I) and he is satisfied that, any 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 offence, order confiscation of the property so sized together with

all tools, ropes, chain, boats vehicles and machinery used in committing such offence.

XXI (B) Issue of show cause notice before confiscation under section XXI (A):

- (1) No order confiscating any Sandalwood/Red Sanders shall be made under section XXI(A) except after a 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 and machinery 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 objection if any.

- (2) Without prejudice to the provision of sub-section (I), no order confiscating any tool, rope, chain, boat, vehicle or machinery shall be made under section, XXI(A), if the owner of the tool, rope, chain, boat vehicle or machinery, proves to the satisfaction of the authorised officer that it was used in carrying or cutting the Sandalwood/Red Sander 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 machinery and that each of them had taken all reasonable and necessary precautions against such use.

XXI (C) 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, before the expiry of thirty days from the date of the order of the authorised officer under section XXI(A), sue-motto call for and examine the records of that order and may make such inquiry or cause such inquiry to be made, may pass such orders 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.

XXI (D) Appeal:

- 1) Any person aggrieved by any order passed under section XXI(A) for section XXI(C) 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 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 XXI(C), as the case may be, of being held, 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 (10 shall be final and shall not be questioned in any court of law.

XII (E) Award of confiscation not to interfere with other punishment

The award of any confiscation (under section XXI(A) or section XXI(C) or section XXI(D) shall not prevent the infliction of any punishment to which the person affected thereby is liable under this Act.

XXI (F) Property confiscated when to vest in Government:

When an order for confiscation of any property has been passed under section XXI(A) of section XXI(C) or section XXI(D) 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 (3) of section XXI(A), the sale proceeds thereof, as the case may be, shall vest in the State Government free from all encumbrances.

XXI (G) Bar of jurisdiction in certain cases:

Whenever any Sandalwood/Red Sander together with any tool, rope, chain, boat, vehicle, and machinery used in committing any offence is seized under sub-section (1) of section XX, the authorised officer under section XXI(A) or the officer specially empowered under section XXI(C) or the sessions Judge hearing an appeal under section XXI(D) shall have and, notwithstanding anything to the contrary contained in this Act or in this code of

Criminal procedure, 1973, (Central Act 2 of 1974) 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.

XXII Penalty:

If any person contravenes any provisions of this Act or the rules made there under:

- (a) Shall be punishable with imprisonment which may extend to 5 years or with fine which may extend to Rs.25,000/- or with both.
- (b) The Sandalwood/Red Sanders in respect of which such contravention has been made shall be liable to be forfeited to Government.

XXIII Attempt and Abetment:

Any person who attempts to contravene or abets the contravention of any provision of this Act or rules made there under shall be deemed to have contravened such provision.

XXIV Savings in respect of acts done in good faith:

- 1) No suit, prosecution or any other legal proceedings shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Act or the Rules made thereunder.
- 2) No suit or other legal proceedings shall lie against the Central Government and or the State Government for any damage caused or likely to be caused or any injuries to be suffered or likely to be suffered by virtue of the provision of this Act or by anything which is done in good faith or intended to be done in pursuance of this Act or the rules made thereunder.

XXV Certain offences to be non bailable:

Any offence in respect of Sandalwood/Red Sander shall be non/bailable and the provision of the code of Criminal procedure 1973 (Central Act 2.of 1974) with respect to non-bailable offences shall apply to these offences.

XXVI Presumption as to commission of an offence in-respect of Sandalwood Red Sander

Wherever any person is accused of any offence under this act in respect of Sandalwood/Red Sanders, it shall be presumed until the contrary is procured that such person has committed such offence.

XXVII Offences under the Act to be cognisable:

Notwithstanding anything contained in the, code of criminal procedure 1973, (Central Act 2 of 1974) any offence in respect of Sandalwood/Red Sanders shall be deemed to be a cognisable offence within the meaning of this Act.

XXVIII Powers to make rules:

- 1) The Central Government in consultation with State Government may by notification in the official Gazette, make rules for carrying out the provision of this Act.
- 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, be notification, make rules for carrying out the provisions of this Act in respect of matters which-do-not fall within the purview of sub-sections (1) of this Section.
 - (a) 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;

- i) The forms to be used for any application, certificate, claim, declaration, license, permit, registration, return or other document, made, granted or submitted under the provisions of this Act and the fees, if any therefor;
- ii) The conditions subject to which any license or permit may be granted under this Act;
- iii) Regulation of the possession, transfer and transport of the Sandalwood/Red Sanders;
- iv) Any other matter which has to be, or may be prescribed under this Act.

XXIX 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, should be repealed:

Provided that such repeal shall not-

- (i) affect the previous operation of the Act so acquired, accrued or incurred under the Act so repealed;
- (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:-

- (a) 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;
- (b) every license granted under any Act so repealed and in force immediately before the commencement of this Act shall be deemed to have been granted under the corresponding provision of this Act and shall, subject to the provisions of this Act, continue to be in force for the unexpired portion of the period for which such license had been granted.