Environmental Law in Pakistan 02

Governing Natural Resources and the Processes and Institutions that Affect Them

North-West Frontier Province

Volume 2
Legislation

IUCN
The World Conservation Union

Environmental Law in Pakistan

02

Governing Natural Resources and the Processes and Institutions that Affect Them

N.W.F.P

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01 Introduction to the series

Under the Pakistan Environmental Protection Act 1997, the term "environment" is defined to mean air, water, land and layers of the atmosphere; living organisms and inorganic matter; the ecosystem and ecological relationships; buildings, structures, roads, facilities and works; all social and economic conditions affecting community life; and the interrelationship between any of these elements (Section 2(x)).

In Pakistan, environmental law is thus defined in the broadest sense to include management of biological and other natural resources as well as the control of pollution and hazardous materials. The environmental legal regime in force in the country today comprises a substantial number of laws covering subjects ranging from species to sectors to activities, and enacted over a period of more than 125 years.

Environmental Law in Pakistan is a six-part series, organised as follows:
Part 1: Federal
Part 2: Balochistan
Part 3: North-West Frontier Province
Part 4: Punjab
Part 5: Sindh
Part 6: Northern Areas

Each part of the series is divided into two volumes. The first volume reviews and analyses the law governing natural resources, as well as the processes and activities that impact natural resource management. The second volume contains the full text of all legal instruments discussed. Each two-volume set is available on CD-ROM, while the full text of legal instruments surveyed can also be found at www.iucnp.org. For a fuller understanding of environmental legislation at the sub-national level, the provincial and regional surveys should be read together with the volume on federal law. These reviews, individually and together, do not pretend to be exhaustive compilations of the entire body of law related to a specific subject. They are rather a selection and overview of legal instruments with greatest actual or potential impact on natural resources and the environment.

The process of compiling, writing and editing this series will have taken more than three years by the time it is complete. The authors are legal practitioners and academics belonging to all provinces and territories of Pakistan. They searched for and reviewed hundreds of federal and provincial legal instruments to identify statutes that directly govern natural resources, as well as those that actually or potentially affect natural resource management in the country.

Environmental Law in Pakistan is intended to serve as a reference resource for law students and teachers, practising lawyers, lawmakers, judges, administrators, corporate officers, and others who require information on the subject. Every effort has been made to keep the text of the analysis jargon-free so that it is accessible to the widest possible audience.

02 Foreword

Nature has adorned the unique landscape of the North West Frontier Province with precious natural resources like thick whispering green forests, clear and clean blue waters, vast fertile lands, rich flora and fauna and a charming variety of wild life.

What is painfully lacking at all levels, is the sense of conservation leading to ruthless exploitation of abundantly spread bounties of nature. Such ignorance and indifference have posed a serious threat to the ecological balance. Framing of laws, Rules and Regulations for preservation of natural resources is essentially needed for us and for the generations to come.

It is a fact undeniable that the existing laws in the province are too scanty to meet the standard requirements of providing protection to environment and sustainable development. Knowledge of the existence of environment related laws and rules can help provide a useful basis for advancement of the cause of conservation.

The review of existing environment related laws and rules tends to serve a dual purpose; one, of creating awareness about the relevant laws, as such, which indeed is crucial for the cause of conservation and sustainable development and, the other, of highlighting specific areas requiring retread in the wake of developments taking place subsequent to the promulgation of these laws.

This effort has to visualize the changes in laws necessitated by changes in society. The task in hand, probably first of its kind, pioneering in nature, indeed deserves commendation. All environment related Provincial Statutes in one Volume, besides satisfying the quest of research scholars, would provide necessary and useful tool to Judges and Lawyers alike for resolving environmental issues in the light of upto to date enactments.

Justice Sardar Raza
Supreme Court of Pakistan

03 Executive Summary

The subject of ecology is mentioned in the constitutional Concurrent Legislative List, allowing both federal and provincial governments to legislate on most natural resources. In practice, this has meant that the Federal Government has for the most part abstained from legislating natural resource conservation and use except in cases that affect international trade or national security. Lawmaking to regulate natural resource use is primarily left up to the relevant Provincial Government.

North-West Frontier Province (NWFP) laws governing natural resources were all promulgated post-Independence, beginning in 1948. A few pre-Independence laws also remain in force. Almost half of the legal instruments in force today were adopted in the 1970s, mostly in the form of ordinances, rules and regulations. Not surprisingly, the majority of NWFP statutes on natural resources deals with forests. Legislation adopted prior to the 1990s focuses largely on regulating natural resource exploitation. It is only in the late 1990s that NWFP legislation begins to include references to sustainable development. The term itself is first defined in a 2002 Ordinance for the forest sector.

Executive authority in a number of areas—including many sectors related to natural resource management—has undergone significant changes in recent years. Administrative and enforcement powers in a wide range of areas were reallocated under the NWFP Local Government Ordinance (LGO) 2001 (see section 4.3.2.1). However, a number of pre-2001 acts, ordinances and regulations have not been amended to reflect the new administrative structure, and must therefore be read together with the LGO.

Laws relating to land tenure are fundamental for the management and conservation of natural resources. The most far-reaching legal instruments governing land use and tenure are related to agriculture and irrigation. The basic law on land acquisition for public purposes is a federal one that dates back to 1894 and makes no mention of natural resource conservation. However, the language of the 1894 law and others is vague enough to permit interpretation favouring conservation and sustainable use until legal reform affirmatively provides for such matters.

When Pakistan attained independence from British rule in 1947, the Forest Act 1927 was in force in most of the country, including the NWFP. The NWFP Hazara Act 1936 was enacted specifically for the Hazara division, while in 1974 the 1927 Act was extended to the Provincially

Administered Tribal Areas (PATA) of Chitral, Dir, Kalam, Swat and Malakand. The 1927 Act does not apply to the Federally Administered Tribal Areas (FATA) which cover 2.76 million hectares along the country's border with Afghanistan.

Since the subject of forests is not mentioned in either of the constitutional legislative lists, the residuary rule applies, making forestry an exclusively provincial subject. Provincial assemblies may amend the Forest Act 1927 or enact new forest laws for their respective provinces. In 2002, the NWFP became the first province to reform its forest law. The NWFP Forest Ordinance 2002 repealed the 1927 Forest Act in its application to the NWFP, along with the Hazara Forest Act 1936, Kohat Mazri Control Act 1953 and North-West Frontier Province (Sale and Sawing of Timber) Act 1996. All rules and notifications issued under the repealed laws remain in force to the extent that they are consistent with the 2002 Ordinance.

The two legal instruments governing fisheries in the NWFP are both exploitation-oriented, dealing primarily with fishing licenses and leases. These instruments are more than 25 years old and do not provide for conservation or sustainable management of the province's fisheries resources.

One modern and one pre-Independence law regulate wild non-fish fauna in the province. Like the fisheries regime, the law for wildlife is also exploitation-oriented. The 1975 NWFP Wildlife Act does not specify the office or authority responsible for the management, protection or conservation of wildlife, providing only for the establishment of the NWFP Wildlife Management Board whose functions are merely advisory. The 1975 Act regulates hunting but contains no provisions to ensure the protection or sustainable use of wild animal resources, or the conservation of ecosystems that support their habitat. The law allows for the designation of protected areas, including "national" parks, all of which are the responsibility of provincial governments. There is no national system of protected areas in Pakistan.

The Water and Power Development Authority, created in 1958, has sweeping cross-sectoral powers to administer most aspects of freshwater resource use, including the conservation of forests and catchment areas. Only two recent legal instruments, the LGO 2001 and the River Protection Ordinance 2002, deal with the dumping of human waste and other pollutants into freshwater sources. Existing law provides for drinking water supply—but not purification—in rural areas, but does not cover urban areas.

NWFP legislation governing processes and institutions that affect natural resources is on the whole relatively modern. Nevertheless, with few exceptions, contemporary concepts of sustainable management have not been integrated into legislation for sectors that substantially impact natural resources, such as agriculture and mining.

Rural and urban development in the NWFP is governed by a significant number of legal instruments covering issues as diverse as river management and housing schemes. Existing legislation creates institutional authorities to administer development schemes but provides few criteria or guidelines for administration.

Considering that agriculture is not included in either the Federal or Concurrent Legislative List, there is little NWFP-specific legislation for the sector. The NWFPAgriculture Authority Ordinance was purely administrative and the Authority it established was in any case dissolved by the NWFP Agriculture Development Authority (Dissolution) Ordinance. Except for these two legal instruments, one repealing the other, laws governing the agriculture sector have been framed by the Federal Government or adopted from the British colonial administration, and operate as provincial laws.

Mineral oil and natural gas are included in the Federal Legislative List. Other types of minerals, and mining itself, are not mentioned in either list, although the Concurrent List mentions the

regulation of labour and safety in mines and oilfields. Exploitation of minerals other than oil and natural gas, therefore, is a provincial subject. Laws that pre-date the 1973 Constitution provide that radioactive minerals, oil and gas are regulated by the Federal Government, and all other mines by the relevant Provincial Government. Existing legislation governing extractive industry in the NWFP provides limited, discretionary protection for trees but does not require or provide guidelines for managing the effects of mining operations on natural resources.

Legislation for the non-extractive industry sector in the NWFP focuses on licensing, pricing and other administrative matters. It includes no substantive provisions to regulate the impacts of the sector's processes and activities on natural resources.

The provinces do not have broad powers of taxation and are for the most part financially dependent on the Federal Government. However, provincial governments may impose taxes in areas specified in the Constitution, the limits of which are prescribed by federal law. Items taxable at the provincial level in the NWFP include land and agricultural produce, vehicles and the transfer of immovable property. The Provincial Government has the power to grant tax exemptions.

The few NWFP laws that regulate investment are more than a quarter century old and contain no provisions for investment incentives that would encourage natural resource conservation and sustainable development. Legal instruments governing transport deal solely with truck and bus stands, and traffic control in the city of Peshawar. Here again, no mention is made of environmental impacts such as congestion or pollution.

Although NWFP legislation governing the energy and hydel sector is relatively recent, the law deals purely with administrative matters. No criteria are provided for siting, constructing and operating hydel schemes in the province.

Some of the country's most popular tourist areas are located in the NWFP. Yet the tourism industry remains unregulated, with no legally-binding guidelines or criteria established for developing projects in this sector.

Decisions of the Peshawar High Court related to natural resources deal with forest resources and specifically the application of the Hazara Forest Act 1936, which has now been repealed by the NWFP Forest Ordinance 2002.

04 Governance

4.1 Constitution of Pakistan

Refer to the Federal Review

4.3.2.1 NWFP Local Government Ordinance 2001

GOVERNMENT OF N.W.F.P.
GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE,
LOCAL GOVERNMENT ORDINANCE, 2001.
N.W.F.P. ORDINANCE NO. XIV OF 2001.
EXTRAORDINARY REGISTERED NO. P. III
GOVERNMENT GAZETTE

North-West Frontier Province
Published by Authority
PESHAWAR, MONDAY, 13TH AUGUST, 2001.
GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE,
LAW DEPARTMENT.
NOTIFICATION.
13th August, 2001.

No. Legis:1(18)70/IX/415-55.-The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:-

THE NORTH-WEST FRONTIER PROVINCE

LOCAL GOVERNMENT ORDINANCE, 2001.
N.W.F.P. ORDINANCE NO. XIV OF 2001

AN
ORDINANCE

to reconstruct and regulate the local governments.

WHEREAS it is expedient to devolve political power and decentralize administrative and financial authority to accountable local governments for good governance, effective delivery of services and transparent decision making through institutionalized participation of the people at grass-roots level;

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999 as amended uptodate, and the Provisional Constitution Order No. 1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

CHAPTER I
PRELIMINARY

1. Short title, extent and commencement. —

(1) This Ordinance may be called the North-West Frontier Province Local Government Ordinance, 2001.

(2) It extends to the whole of the North-West Frontier Province, other than the areas notified as cantonments under the Cantonments Act, 1924 (II of 1924), in relation to the matters covered under the said Act.

(3) It shall come into force at once, and shall be deemed to have taken effect on the fourteenth day of August, 2001.

2. Definitions.—

In this Ordinance, unless there is anything repugnant in the subject or context,

(i) 'body corporate' means a body having perpetual succession and a common seal, with power to acquire and hold movable and immovable property, and transfer any property held by it, and enter into any contract and may sue and be sued in its name,

(ii) 'Budget' means an official statement of income and expenditure for a financial year;

(iii) 'Building' includes any shop, house, hut, out-house, shed; stable or enclosure built of any material and used for any purpose, and also includes wall, well, veranda, platform, plinth, ramp and steps;

(iv) 'Building line' means a line beyond which the outer face or any part of an external wall of a building may not project in the direction of any street, existing or proposed;

(v) 'Bye-laws' means the bye-laws made under this Ordinance;

(vi) 'Council' means a Zilla Council, Tehsil Council, Town Council, Union Council, Village Council or, as the case may be, Neighbourhood Council;

(vii) 'Decentralize' or 'decentralized' means conferment by the Government under this Ordinance of its administrative and financial authority for the management of specified offices of the Provincial Government to the local governments;

(viii) 'Dependent' means wholly or partially dependent parents, spouse, guardians, children, step and adopted children;

(ix) 'disaster' includes famine, flood, cyclone, fire, earthquake, drought, and damages caused by force majeure;

(x) 'district' means a district notified under the North-West Frontier Province Land Revenue Act, 1967 (W.P. XVII of 1967), and includes a largely urban district or districts declared to be City District under this Ordinance;

(xi) 'drain' includes a sewer, a house drain or a drain of any other description, used for carrying sullage or rain water;

(xii) 'elector' means a person whose name appears on the electoral rolls prepared under the North-West Frontier Province Local Government Election Ordinance, 2000 (N.-W. F .P. Ord No. VI of 2000);

(xiii) 'Government' means the Government of the North-West Frontier Province;

(xiv) 'land' includes vacant land or on which any structure has been raised or is being raised or is covered with water or is under cultivation or is fallow or is barren and, in relation to a town improvement scheme, includes land as defined in clause (a) of section 3 of the Land Acquisition Act, 1894 (IV of 1894);

(xv) 'local area' means an area specified in Chapter II;

(xvi) 'local government' includes-

(a) a District Government or a City District Government and Zilla Council;

(b) a Tehsil Municipal Administration and Tehsil Council;

(c) a Town Municipal Administration and Town Council; and

(d) a Union Administration and Union Council

(xvii) 'mal-administration' means-

(a) a decision, process, recommendation, act of omission or commission which is-

(i) contrary to the law, rules or regulations or is a departure from established practice or procedure; or

(ii) perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or

(iii) based on irrelevant grounds,

(b) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities or delivery of civic and municipal services under this Ordinance or any other law for the time being in force;

(xviii) 'market' means a place notified as market under this Ordinance or any other law for the time being in force;

(xix) 'member' means an elected member of a Council;

(xx) 'mauza' means a revenue estate declared under the North-West Frontier Province Land Revenue Act, 1967 (W.P. Act XVII of 1967);

(xxi) 'municipal offences' means the offences specified in the Fourth Schedule or any other law for the time being in force;

(xxii) 'municipal services' include, but not limited to intra-city or intra or inter-town or tehsil network of water supply, sanitation, conservancy, removal and disposal of sullage, refuse, garbage, sewer or storm water, solid or liquid waste, drainage, public toilets, express ways bridges, flyovers, public roads, streets, foot paths, traffic signals, pavements and lighting thereof, public parks, gardens, arboriculture, landscaping, bill boards, hoardings, fire fighting, land use control, zoning, master planning, classification declassification or reclassification of commercial or residential areas, markets, housing, urban or rural infrastructure, environment and construction, maintenance or development thereof and enforcement of any law or rule relating thereto;

(xxiii) 'Naib Nazim' means Naib Zilla Nazim, Naib Tehsil Nazim, Naib

Town Nazim, or, as the case may be, Naib Union Nazim;

(xxiv) 'Nazim' denotes Zilla Nazim, Tehsil Nazim, Town Nazim or, as the case may be, Union Nazim;

(xxv) "Neighbourhood" means a Mohallah, a group of streets, lanes or roads, designated by Tehsil Municipal Administration, Town Municipal Administration to be the Neighbourhood;

(xxvi) 'peasant' means a person who is a landless farm worker or, one who during the period of five years preceding the year in which election is held, has been the owner of not more than five acres of land and depends directly on it for subsistence living;

(xxvii) 'prescribed' means prescribed by rules made under this Ordinance;

(xxviii) 'Provincial Director General Audit' means an officer of the Auditor General of Pakistan nominated for the purpose;

(xxix) 'public place' means any building, premise or place to which the public have access;

(xxx) 'rent' means whatever is lawfully payable in money or kind by a tenant or lessee on account of the occupation of any building or land;

(xxxi) 'street line' means a line dividing the land and forming part of a street from adjoining land;

(xxxii) 'tax' includes any cess, fee, rate, toll or other impost leviable under this Ordinance;

(xxxiii) 'tehsil' means a tehsil notified under the North-West Frontier Province Land Revenue Act, 1967 (W.P. Ad XVII of 1967);

(xxxiv) 'Tehsil Municipal Administration includes the Tehsil Nazim and the officials and employees of the Tehsil Municipal Administration specified in section 49;

(xxxv) 'town' means an area notified by the Government under section 9 to be a town in a City District;

(xxxvi) 'Town Municipal Administration' includes the Town Nazim and the officials and employees of the Town Municipal administration specified in section 50;

(xxxvii) 'Union' means a local area notified under section 6 to be a union under this Ordinance;

(xxxviii) 'Union Administration' includes the Union Nazim, Union Naib Nazim, the Union Secretaries, and other Union employees;

(xxxix) 'Village' means an integrated and contiguous human habitation commonly identified by a name and includes a dhok, chak, killi, goth, gaown, basti or any other comparable habitation;

(xl) 'water reservoir' includes a spring, well, tube well, pond, tank, water course, culvert, and any channel used for supplying water other than canal, river, lake or stream;

(xli) 'work' includes a survey, whether incidental to any other work or not; and

(xlii) 'worker means a person directly engaged in work, or is dependent on personal labour, for subsistence living and includes a worker as defined in the Industrial Relations Ordinance, 1969 (XXIII of 1969).

3. Ordinance to over-ride other laws.—

The provisions of this Ordinance shall have effect notwithstanding anything contained in any other law for the time being in force.

4. Local Governments to work within provincial framework,-

(1) The local governments established under this Ordinance shall function within the provincial framework and adhere to the Federal and Provincial laws.

(2) In performance of their functions, the local governments shall not impede or prejudice the exercise of the executive authority of the Government.

CHAPTER II

LOCAL AREAS AND LOCAL GOVERNMENTS

5. Composition of local areas.—

For the purpose of this Ordinance, the following shall be the local areas, namely:

(i) Union;

(ii) Tehsil;

(iii) Town; and

(iv) District /City District.

6. Delimitation of Unions.—

A Union shall be an area comprising one or more muaziaat or, in the case of an area where revision of settlement under the law has not been taken, one or more census villages or, in the case of an area with urban characteristics, a whole number of population census blocks as delimited for the purpose of last preceding census or a combination of whole number of census blocks and a whole number of muaziaat, notified as such by the Government:

Provided that, as far as may be,-

(a) the area of a Union shall be a territorial unity;

(b) the boundaries of a Union shall not cross the limits of a tehsil, or a town in a city district;

(c) the area of a Union in a tehsil shall comprise a whole number of patwar circles, or a patwar circle may contain a number of whole Unions;

(d) the area of a Union in a City District, or a Union with urban characteristics shall comprise a whole number of census blocks as delimited for the purpose of the preceding population census or a whole number of muaziaat or a combination of a whole number of census blocks and muaziaat; and

(e) the population of Unions within a district shall, more or less, be uniform.

Provided further that in a specific case, the Government may, for the reasons to be recorded, waive the aforesaid conditions.

7. Delimitation of tehsils and districts.—

The Government shall, by notification in the Official Gazelle, declare tehsils and districts notified under the North-West Frontier Province Land Revenue Act, 1967 (W.P. Act XVII of 1967), to be tehsils or, as the case may be, districts under this Ordinance.

8. Creation of a City District—

In addition to the Provincial headquarters notified by the Government as City District of Peshawar, the Government may, by notification in the Official Gazelle, declare a tehsil or tehsils within one or more adjoining districts as a City District if-

(a) the population of urban settlement therein or of proximate settlement exceeds one million people;

(b) the economy thereof is largely oriented to commercial, industrial, and services sectors, and, according to the last preceding census, the labour force employed in such sectors or in non-agricultural sectors is more than sixty six per cent; and

(c) the existing administrative and municipal infrastructure therein have become inadequate for efficient service delivery and require integrated development and management.

9. Setting up of a town.—

(1) The Government may, by notification in the Official Gazette, declare a whole number of contiguous Unions to be a town in the City District under this Ordinance.

(2) On notification referred to in sub-section (1), the Government may, by notification in the Official Gazette, declare every town referred to in that sub-section to be a tehsil or sub-division for the purpose of this Ordinance.

10. Local areas under previous law to continue.—

Unless varied under this Ordinance, any local area declared or notified by the Government under the North-West Frontier Province Local Government Election Ordinance, 2000 (N.-W.F.P. Ord. No. VI of 2000), as union, tehsil, town, district or City District shall continue to retain such status and shall be deemed to have been notified as such under this Ordinance.

11. Alteration of local areas.—

(l) Any two or more adjoining Unions within a tehsil or adjoining tehsils within a district may, after having invited public objections through a resolution, during the third year of their being in office, passed by two-third majority of the total membership of each of the relevant Union Councils, or as the case may be, Tehsil Councils, make a proposal to the Government for a change in their respective boundaries subject to the conditions that no revenue estate shall be divided and the size of population in the Unions shall, as far as possible, be close to the average population of Unions within a district.

(2) The Government may, subject to previous publication, notify the change in the boundaries of the Unions, tehsils or towns:

Provided that such change shall come into force on the announcement of next local governments elections.

12. Local governments for local areas.—

(l) For each local area, there shall be a local government comprising-

(a) District Government and Zilla Council in a district or a City District;

(b) Tehsil Municipal Administration and Tehsil Council in a tehsil;

(c) Town Municipal Administration and Town Council in a town; and

(d) Union Administration and Union Council in a Union.

(2) In case of a district consisting of a single tehsil, the Government may dispense with selling up of Tehsil Council and holding of election of Tehsil Nazim and Naib Tehsil Nazim in such tehsil and in that case the Tehsil Municipal Administration shall function directly under Zilla Nazim and the functions of Tehsil Council shall be performed by the Zilla Council.

(3) In case of a tehsil consisting of a single Union, the Government may dispense with setting up of Tehsil Council and holding of election of Tehsil Nazim and Tehsil Naib Nazim in such tehsil and in that case the functions of the Tehsil Municipal Administration shall be performed by the Union Administration.

CHAPTER -III

DISTRICT GOVERNMENT

13. Composition of District Government.—

(1) The District Government shall consist of Zilla Nazim and District Administration.

(2) The District Government shall be competent to acquire, hold or transfer any property, movable and immovable, to enter into contract and to sue or be sued in its name, through District Coordination Officer.

14. Decentralized offices and grouping of offices.—

(1) On the commencement of this Ordinance, the administrative and financial authority for the management of the offices of the Government specified in Part-A

of the First Schedule set up in a district shall stand decentralized to the District Government of that district:

Provided that where there is no office of the Government in a district specified in Part-A of the First Schedule and the Government sets up an office on a subsequent date, such office shall be decentralized to the District Government from that date:

(2) Where in a district, there is no office specified in Part-B of the First Schedule, the Government shall set up such offices and post officers and staff in such offices.

(3) The offices decentralized to the District Governments and offices set up by the Government shall be grouped in various groups specified in Part-C of the First Schedule.

Provided that the Government may, for the reason of non-Existence of any office or offices specified in the First Schedule in a district, in consultation with the District Government of such district, vary or amalgamate the grouping of offices for efficiency and effectiveness by notification in the Official Gazette:

Provided further that the number of groups of offices shall not exceed the number of groups specified in Part-C of the First Schedule.

15. Entrustment of certain decentralized offices to Tehsil Municipal Administration.—

Subject to section 14 and section 52, on commencement of this Ordinance, the administrative and financial management of the offices of Local Government and Rural Development Department, Public Health Engineering Department and Housing and Physical Planning Department which were providing services at the regional, zonal, circle, divisional, district and tehsil levels shall stand entrusted to respective Tehsil Municipal Administration or Town Municipal Administration, as the case may be, alongwith the employees working in such offices:

Provided that the Government may direct for retention of certain components of Housing and Physical Planning Department with the District Government alongwith the officers and members of staff working therein.

16. Authority and responsibility of District Government.-—

(1) The authority of the District Government shall comprise the management and control of offices of the departments which are decentralized to it or may be set-up under this Ordinance; provided that the District Government shall exercise such authority within the district in accordance with the general policy of the Government.

(2) Every order in the District Government shall be expressed to be made in the name of the District Government and shall be executed by an officer or authority of the District Government duly authorized.

(3) The District Government shall be responsible to the people and the Government for improvement of governance and delivery of services within the ambit of the authority decentralized to it under this Ordinance.

17. The Zilla Nazim.—

(1) Zilla Nazim shall head the District Government and perform such functions and exercise such powers as have been assigned to him under this Ordinance and shall be assisted by the District Coordination Officer

(2) The Zilla Nazim shall ensure that the business of the District Government is carried out in accordance with the provisions of this Ordinance and other laws for the time being in force.

18. Functions and powers of the Zilla Nazim.—

(1) The functions and powers of the Zilla Nazim shall be to-

(a) provide vision for the district-wide development, leadership and direction for efficient functioning of the District Government;

(b) develop with the assistance of the District Administration strategies and timeframe for accomplishment of the relevant goals approved by the Zilla Council;

(c) ensure implementation of the functions decentralized to the District Government;

(d) oversee formulation and execution of the annual development plan delivery of services and functioning of the District Government;

(e) present proposal to the Zilla Council for approval of budget for District Government, Zilla Council and intra-district fiscal transfers;

(f) maintain administrative and financial discipline in the District Government;

(g) present tax proposals to the Zilla Council;

(h) present report on the performance of the District Government in person to the Zilla Council at least twice a year;

(i) preside over the meetings of the Zilla Mushawarat Committee;

(j) take charge, organise and prepare for relief activities in disasters or natural calamities;

(k) authorise officers of the District Government to sign documents on its behalf.

(l) initiate inspections of Tehsil Municipal Administration, Town Municipal Administration and Union Administration in the district pursuant to section 135;

(m) establish and supervise the working of the Internal Audit Office;

(n) issue executive orders to the District Coordination Officer and Executive District Officers for discharge of the functions decentralized to the 'District Government;

(o) represent District Government on public and ceremonial occasions; and

(p) perform any other function as may be assigned to him by the Government.

(2) The Zilla Nazim shall not employ any advisor, special assistant or a political secretary other than support staff allocated to his office from amongst the officials available in the district.

19. Right of the Zilla Nazim to take part in Council's meetings.—

The Zilla Nazim shall have the right to speak and otherwise take part in the proceedings of the Zilla Council, but shall not be entitled to vote.

20. Personal responsibility of Zilla Nazim.—

(1) The Zilla Nazim shall be personally responsible for any loss, financial or otherwise, flowing from the decisions made by him personally or under his directions in violation of any provisions of this Ordinance or any other law for the time being in force and for any expenditure incurred without lawful authority.

21. Resignation of Zilla Nazim.—

The Zilla Nazim may resign from office by tendering resignation in writing addressed to the Chief Executive of the Province.

22. Vacancy in the Office of Zilla Nazim.—

(1) In case the office of Zilla Nazim falls vacant for reason of his death, resignation, removal or suspension or, where in the opinion of the Zilla Council, he has become incapable to perform his functions on account of mental or physical incapacity, the Naib Zilla Nazim shall act as Zilla Nazim till an officiating Nazim is appointed under sub-section (6) of section 156 or a new Zilla Nazim is elected under sub-section (5) of that section:

Provided that the officiating Zilla Nazim shall not be a candidate in the election for Zilla Nazim.

(2) Where a Zilla Nazim is unable to perform his functions for reason of his temporary absence, he may authorize Naib Zilla Nazim, in writing, to act on his behalf till he resumes his duties.

23. External recall of Zilla Nazim.—

(1) If in the opinion of the Chief Executive of the Province, the continuance in office of a Zilla Nazim is against the public policy or interest of the people or he is guilty of misconduct, the Chief Executive of the Province may move a motion in the Provincial Assembly stating the grounds for the recall of Zilla Nazim.

(2) Where the motion referred to in sub-section (1) is approved through a resolution passed by a simple majority of total membership of the Provincial Assembly, the Zilla Nazim shall cease to hold office immediately on passing of such resolution:

Provided that the Zilla Nazim shall be provided an opportunity of being heard by the Provincial Assembly.

(3) The result of the approval of the resolution of the Provincial Assembly referred to in sub-section (1) shall be notified by the Government in the official Gazette.

(4) Nothing contained in sub-sections (1) and (2) shalt affect the provisions of section 161 in respect of removal of Zilla Nazim by the Chief Election Commissioner.

24. Internal recall of a Zilla Nazim.—

(1) If in the opinion of a member of the Zilla Council, there is a reason to believe that the Zilla Nazim is acting against the public policy or the interest of the people or is negligent or is responsible for loss of opportunity for improvement in governance and service delivery to the people within the ambit of his responsibilities, he may, seconded by another member of the Council, give notice to move a motion in the Zilla Council through Naib Zilla Nazim for recall of the Zilla Nazim.

(2) On receipt of notice referred to in sub-section (1), the Naib Zilla Nazim shall summon a session of Zilla Council not earlier than three days but not later than seven days, if the Zilla Council is not already in session.

(3) Where the Zilla Council is already in session, the motion referred to in sub-section (1) shall be taken up for deliberations on the next day from its receipt by the Naib Zilla Nazim.

(4) If the motion referred to in sub-section (1) is approved by majority of the votes of its total membership through a secret ballot, the Election Authority shall cause a vote to be cast by the members of Union Councils in the district.

(5) Where the motion is approved by simple majority of the total number of members of the Union Councils in the district, the Zilla Nazim shalt cease to hold office from the date of notification issued in this behalf by the Election Authority.

(6) The Zilla Nazim shalt have the right to appear before the Zilla Council and address it in his defence before approval or rejection of motion referred to in sub-section (5).

(7) Neither motion for recall of Zilla Nazim shalt be moved during the first six months of assumption of office of Zilla Nazim nor shall such motion be repeated before the expiry of twelve months from the rejection of previous motion.

"Explanation.-For the purpose of this section and other provisions of the Ordinance, the expression "Election Authority" shall mean the authority nominated by Government for causing voting of the members of Union Councils, Village Councils, Neighbourhood Councils, whenever so required for recall of Zilla Nazim, Tehsil Nazim, Town Nazim or, as the case may be, Union Nazim.".

25. Setting aside an order of Zilla Nazim by Chief Executive of the Province.—

(1) The Local Government Commission may, on its own accord or on receipt of an information or on an application, take notice of an order or decision of general application passed by a Zilla Nazim and recommend to the Chief Executive of the Province for its quashment, if in the opinion of the Commission such order or decision of the Zilla Nazim is against the public policy or interest of the people:

Provided that the Zilla Nazim may be given an opportunity of being heard before making recommendation to the Chief Executive of the Province.

(2) The quashment of the order or decision referred to in sub-section (1) shall be notified by the Local Government Commission in the official Gazette.

26. Structure of District Administration.—

The District Administration shall comprise the district offices, including sub-offices of the Departments of the Government decentralized to the District Government and other offices set up by the Government and grouped under the Executive District Officers and coordinated by the District Coordination Officer.

27. Heads of offices and groups.—

(1) The District Coordination Group of Offices shall be headed by the District Coordination Officer.

(2) A group of offices, other than the District Coordination Group of Offices, shall be headed by an Executive District Officer.

(3) The District Officers shalt head the district offices.

(4) The Government shall setup sub-offices of the offices decentralized to district government in every tehsil or town in a city district depending upon the needs of such tehsil or, as the case may be, town for such sub-office:

Provided that where any sub-office exists or is set up in a tehsil or town in a City District the Deputy District Officer shall head such sub-office.

28. District Coordination Officer.—

(1) In every district, the Government shall appoint a District Coordination Officer who shall be a civil servant of the Federation or of the Province, as far as possible in Basic Scale 20:

Provided that in a City District, the District Coordination Officer may be a civil servant of the Federation or Province, as far as possible, in Basic Scale 21.

(2) The District Coordination Officer shall be coordinating head of the District Administration and shall-

(a) ensure that the business of the District Coordination Group of Offices is carried out in accordance with the laws for the time being in force;

(b) co-ordinate the activities of the groups of offices for coherent planning, synergistic development, effective and efficient functioning of the District Administration;

(c) exercise general supervision over programmes, projects, services, and activities of the District Administration;

(d) coordinate flow of information required by the Zilla Council for performance of its functions under this Ordinance;

(e) act as Principal Accounting Officer of the District Government and be responsible to the Public Accounts Committee of the Provincial Assembly;

(f) act and perform functions of Collector under sections 54, 68, 70(2), 71, 72, 92, 93, rule 18 of Order XXI, Order XL and for similar other provisions of the Code of Civil Procedure, 1908(Act V of 1908);

(g) assist the Zilla Nazim in accomplishment of administrative and financial discipline and efficiency in the discharge of the functions assigned to District Administration;

(h) prepare a report on the implementation of development plans of the District Government for presentation to the Zilla Council in its annual budget session; and

(i) initiate the performance evaluation reports of the Executive District Officers and shall be countersigning officer of such reports of the District Officers initiated by the Executive District Officers.

Explanation.- For the purpose of this section, the expression 'coordinating head, means the authority to call for review and assess the performance of the groups of offices, individually or collectively, and give directions for taking actions or measures for improving efficiency, service delivery and achievement of goals assigned in the approved plans of the District Government.

29. Functions and powers of Executive District Officer.—

The functions and powers of the Executive District Officer shall be to-

(a) ensure that the business of the group of offices under his administrative control is carried out in accordance with law and the rules and the human and material resources placed at his disposal are optimally utilized to improve governance;

(b) co-ordinate and supervise the activities of the offices and ensure efficient service delivery by the functionaries under his administrative control;

(c) supply information to the Monitoring Committees of the Zilla Council and Union Councils;

(d) take appropriate corrective actions based on the information received from Monitoring Committees;

(e) enforce relevant Federal and Provincial laws and rules, including tax laws, according to the directions of the Government;

(f) prepare development plans and propose budgetary allocations for their execution;

(g) implement approved plans and policies;

(h) authorize disbursement of performance bonuses to the employees;

(i) prepare proposals for expenditures necessary for the proper conduct of programmes, projects, services, and other activities;

(j) propose relevant bye laws on service delivery to the District Coordination Officer; and

(k) act as Departmental Accounting Officer for his respective group of offices and be responsible to the District Accounts Committee of the Zilla Council.

30. District administration working.—

(1) In matters of policy and important decisions, the District Coordination Officer shall obtain approval of Zilla Nazim before communicating such matters and decisions to the Government.

(2) The Government shall appoint all officers and officials to the district offices, groups of offices or other offices in the district specified in the First Schedule.

(3) The tenure of posting of an officer or official of the Government to a District Government shall, at the maximum, be three years, but he may be transferred earlier due to exigency of service or in the public interest.

(4) Where the performance of a District Co-ordination Officer is not satisfactory, the Zilla Nazim may request the Government for his transfer in writing, with a copy to the District Coordination Officer, stating reasons therefor and the Government shall accede to the request of the Zilla Nazim within seven days and the Government may refer the matter to the Local Government Commission.

(5) The Local Government Commission shall inquire into the matter referred to in sub-section (4) and place the findings and recommendations before the Chief Executive of the Province for such action as he may deem necessary.

(6) Where the performance of an Executive District Officer is not satisfactory, the Zilla Nazim may, in consultation with the District Coordination Officer, request the Government to transfer such officer from the district stating reasons therefor.

31. Rules of Business for disposal of work.—

For smooth and efficient disposal of official work, the Government shall make District Government Rules of Business.

32. Assignment of work to Tehsil Municipal Administration.—

A District Government may assign any of its functions to a Tehsil Municipal Administration or Union Administration, on such terms and conditions as may mutually be agreed upon:

Provided that responsibility for discharge of such function shall continue to vest with the District Municipal Administration:

Provided further that no function or responsibility shall be transferred without allocation of corresponding resources and funds.

33. Disposal of Government's work.—

The District Government may, subject to provision of funds by the Government, but without recourse to additional or enhanced taxation, charge, fees or any other source of public funds and without incurring any debt undertake any of the functions of the Government as may be mutually agreed upon.

34. Performance evaluation.—

The annual performance reports of the officers posted in the district shall be initiated by-

(a) the Zilla Nazim in respect of the District Co-ordination Officer:

Provided that the first countersigning officer shall be the Chief Secretary, and the Chief Executive of the Province shall be the second countersigning authority;

(b) Subject to the provisions in the North-West Frontier Province Police Ordinance, 2001, the Zilla Nazim in respect of the Head of district police concerning the maintenance of law and order in the district:

Provided that the first countersigning officer shall be the Inspector General of Police and Chief Executive of the Province shall be the second countersigning officer;

(d) the District Co-ordination Officer in respect of the Executive District Officers and Zilla Nazim shall be the countersigning officer;

(e) the Executive District Officer in respect of the District Officers:

Provided that the District Coordination Officer shall be the countersigning Officer and head of the concerned department of the Government shall be the Technical Reporting Officer; and

(f) the District Officer in respect of the Deputy District Officers and the Executive District Officers shall be the countersigning officer.

35. Offices of the City District—

Subject to any variation, the Government may, in addition to the offices specified in section 14, set up other offices and groups of offices specified in Part-D of the First Schedule in a City District.

36. Integrated management of services in City District—

On creation of a City District under section 8, the organizations and authorities providing municipal services and facilities and the offices decentralized or set up in a tehsil or tehsils or districts notified to be City District shall come under the administrative and financial control of the City District Government.

CHAPTER IV

ZILLA COUNCIL

37. Composition of Zilla Council.—

(1) A Zilla Council shall consist of all Union Nazimeen in the district and following members elected on the reserved seats namely:

(i) such number of women so as to represent thirty-three percent of the total number of the Unions in the district;

(ii) such number of peasants and workers so as to represent five percent of the total number of the Unions in the district, subject to a minimum of one seat; and

(iii) such number of persons from minority communities so as to represent five percent of the total number of the Unions in the district, subject to a minimum of one seat.

(2) If, in calculating a percentage for the purposes of sub-section (1), the number of reserved seats does not come out to be a whole number and such number is-

(a) less than one-halt the number shall be rounded down to the next lower number; or

(b) one-half or more, the number shall be rounded up to the next higher number.

38. Secretariat of the Council.—

The Zilla Council shall have its Secretariat under the Naib Zilla Nazim and shall have a separate budget allocation.

39. Functions and powers of Zilla Council.—

The functions and powers of a Zilla Council shall be to-

(a) approve bye-laws proposed by the District Government under this Ordinance;

(b) approve taxes proposed by the District Government on the subjects specified in Part-I of the Second Schedule;

(c) approve long term and short term development plans, annual and supplementary budgetary proposals of the District Government and, where required, intra-district fiscal transfers;

(d) approve annual budget of the Zilla Council;

(e) elect committees of the Zilla Council for monitoring the performance of the District Government;

(f) ensure the Monitoring Committees of the Zilla Council perform their functions in a non-intrusive manner without interfering in the day to day working of the relevant offices of the District Government and do not assume a command and control role;

(g) review the Monitoring Committees, quarterly reports on the performance of the District Government;

(h) elect a Code of Conduct Committee (Code of Conduct Committee) which shall be responsible for enforcing the code of ethics for regulating the conduct of the members of the Zilla Council;

(i) elect an lnsaf Committee which shall facilitate access of the people to the Member Inspection Team of the High Court for redressing their grievances;

(j) elect a Sports and Culture Committee which shall promote sports and cultural events in the district and youth participation in healthy pursuits;

(k) elect the members of the Zilla Council for representation in the District Public Safety Commission;

(l) elect a Zilla Accounts Committee;

(m) constitute Farm Produce Market Committee under the relevant law;

(n) approve the proposals of the District Government for changes in the number of posts of officials and employees of the decentralized offices of District Administration, Tehsil Municipal Administration, or, as the case may be, Town Municipal Administration, as part of the budget statement;

(o) except during the first two years after election of the Zilla Council, approve posts for the office staff of Zilla Nazim and staff of Zilla Council subject to the restriction imposed under sub-section (11) of section 109;

(p) make recommendations to the District Government for enhancement of the care of disabled persons, paupers, aged, sick, persons of unsound mind, abandoned minors, juvenile delinquents, drug dependants, abused children, needy and disadvantaged persons;

(q) authorise Zilla Nazim, Naib Zilla Nazim, Tehsil Nazim, Naib Tehsil Nazim, Town Nazim, Naib Town Nazim, Union Nazim, Naib Union, Nazim and members of the Councils to receive honorarium, travelling and daily allowances from respective local funds.

Provided that the honorarium and rates of travelling and daily allowances shall be fixed with the approval of the Government, and any change thereof authorized by the Zilla Council with the approval of the Government, shall be applicable to the succeeding Nazimeen, Naib Nazimeen and members of the Councils:

Provided further that the claims for travelling and daily allowances of Naib Zilla Nazimeen shall be sanctioned by the Zilla Nazim;

(r) review the performance reports of the District Government presented by Zilla Nazim;

(s) review the audit reports of the Zilla Accounts Committee;

(t) review measures for flood relief, and storm water drainage; and

(u) require the District Government to undertake measures for good governance and improvement in the delivery of services.

40. Functions of Zilla Council in a City District—

In addition to the functions specified in section 39, the Zilla Council in a City District shall perform the following functions, namely:-

(a) approve master plans, zoning, land use plans, including classification and reclassification of land, environment control, urban design, urban renewal and ecological balances;

(b) review implementation of rules and bye-laws governing land use, housing; markets, zoning, environment, roads, traffic, tax, infrastructure and public utilities;

(c) approve proposals of the District Government for public transport and mass transit systems, construction of express ways, fly-overs, bridges, roads, under passes, and inter-town-streets;

(d) approve development schemes for beautification of areas along rivers, beaches and sea sides; and

(e) review development of integrated system of water reservoirs, water sources, treatment plants, drainage, liquid and solid waste disposal, sanitation and other municipal services.

41. Zilla Council to approve certain plans for towns.—

In the case of a town in a City District, the Zilla Council shall perform the functions of approval of such macro municipal plans as may be notified by the City District Government.

42. Conduct of the business of Zilla Council.—

(1) The Zilla Council shall regulate its business in accordance with the by-laws made by it.

(2) The Zilla Council shall meet at least once in every month and shall be in session for at least fifty accumulated days in a year.

(3) Save as otherwise provided, decisions of the Zilla Council shall be taken by resolutions passed by a simple majority of the members present and voting and a copy of each resolution shall be transmitted to the Local Government Commission.

(4) The Naib Zilla Nazim shall be the Convener of the Zilla Council and shall preside at its meetings.

(5) In its first session, the Zilla Council shall elect a panel of presiding officers in order of precedence, of not less than three members who shall, in the absence of, or in the case where a motion for recall of Naib Zilla Nazim has been moved, preside over the meetings of the Zilla Council.

(6) The quorum of the meetings Of the Zilla Council shall be fifty-one percent of its total membership.

(7) The meetings of the Zilla Council shall be open to public, unless the Council, by a resolution, decides to hold any meeting in camera.

(8) The minutes of the meetings of Zilla Council shall be recorded and maintained by the Secretariat of the Zilla Council.

43. Address of Zilla Nazim.—

(1) At the commencement of first session of the Zilla Council after its election and on commencement of first session of every year, the Zilla Nazim shall address the Zilla Council and shall inform the Council of his plans and programmes for the said year and, as the case may be, the performance of the District Government during the preceding year.

(2) Notwithstanding anything contained in sub-section (1), the Zilla Nazim may address the Zilla Council, whenever he may deem necessary, to associate the Zilla Council in the functioning of the District Government.

44. Joint committee of Councils.—

The Zilla Council may, with the consent of Tehsil Councils or Union Councils set up joint committees of the councils for deliberation of matters in which such Councils may be jointly interested and may delegate to such joint committees any power which may be exercised by them including the power to make bye-laws for their functioning.

45. Setting aside a resolution of Zilla Council.—

(1) On a motion initiated by the Government, the Provincial Assembly may, by a resolution stating the grounds thereof, passed by simple majority of its total membership, set aside a resolution of the Zilla Council, if it considers the same to be against the interest of the people or public policy.

(2) The result of the resolution of the Provincial Assembly referred to in subsection (1) shall be notified by the Government in the Official Gazette.

46. Resignation of Naib Zilla Nazim.—

The Naib Zilla Nazim may resign from office by tendering resignation in writing addressed to the Zilla Nazim.

47. Recall of a Naib Zilla Nazim.—

(1) If in the opinion of a member of Zilla Council, there is a reason to believe that the Naib Zilla Nazim is acting against the public policy or the interest of the people, or for any other reason, he may, seconded by another member of the Council, give a notice to move a motion in the Zilla Council through its senior-most presiding officer for recall of Naib Zilla Nazim.

(2) On receipt of notice referred to in sub-section (1), the senior-most presiding officer in the panel referred to in sub-section (5) of section 42 shall summon a session of Zilla Council not earlier than three days or not later than seven days, if the Zilla Council is not already in session.

(3) Where the Zilla Council is already in session, the motion referred to in sub-section (1) shall be taken up for deliberations on the next day from its receipts in the Zilla Council Secretariat.

(4) If the motion referred to in sub-section (1) is approved by majority of the votes of its total membership through a secret ballot, the Election Authority shall cause a vote to be cast by the members of Union Councils in the district.

(5) Where the motion is approved by simple majority of the members of the Union Councils in the district present and voting, the Naib Zilla Nazim shall cease to hold office from the date of notification to be issued in this behalf by the Election Authority.

(6) The Naib Zilla Nazim shall have the right to appear before the Zilla Council and address it in his defence.

(7) No motion for recall of Naib Nazim shall be moved during the first six months of assumption of office of Naib Zilla Nazim nor shall such motion be repeated before the expiry of one year from the rejection of previous motion.

48. Power of Zilla Council to elect officiating Zilla Nazim.—-

(1) In case the office of Zilla Nazim falls vacant by reason of his death, resignation or removal, the Zilla Council shall elect one of its members to be the officiating Zilla Nazim till a new Zilla Nazim is elected under the provisions of section 156:

Provided that Naib Zilla Nazim shall convene a meeting of the Zilla Council for, the election of officiating Zilla Nazim within ten days from the death, resignation or removal of Zilla Nazim, as the case may be:

Provided further that the officiating Nazim shall not be a candidate for the office of Zilla Nazim in the election for Zilla Nazim.

CHAPTER V

TEHSIL AND TOWN MUNICIPAL ADMINISTRATION

49. Composition of Tehsil Municipal Administration.—

In every tehsil there shall be a Tehsil Municipal Administration which shall be a body corporate and shall consist of a Tehsil Nazim, Tehsil Municipal Officer, Tehsil Officers, Chief Officers and other officials of the Local Council Service and officials of the offices entrusted to the Tehsil Municipal Administration.

50. Town Municipal Administration.–

(1) In every town in a City District there shall be a Town Municipal Administration which shall be a body corporate and shall consist of the Town Nazim, Town Municipal Officer, Town Officers, Chief Officers and other officials of the Local Council Service and officials of the offices entrusted to the Tehsil Municipal Administration.

Explanation.— For the purpose of sections 49 and 50, the expression 'Chief Officers' refers' to Chief Officers of the dissolved Local Councils established under North-West Frontier Province Local Government Ordinance, 1979 (N.-W F P. Ord. No. IV of 1979).

51. Provisions relating to tehsils apply to towns.—

The provisions relating to Tehsil Municipal Administration shall, *mutatis mutandis,* apply to Town Municipal Administration and, in their application to the town in a City District, shall have effect as if references therein to the Tehsil Municipal Administration, Tehsil Nazim, Tehsil Council, Village Council and Village were references, respectively, to the

Town Municipal Administration, Town Nazim, Town Council, Neighbourhood Council and Neighbourhood under this Ordinance.

52. Entrustment of certain decentralized offices to Tehsil Municipal Administration.—

On commencement of this Ordinance, the functions, administration and financial management of the offices of Local Government and Rural Development Department, Public Health Engineering Department and Housing and Physical Planning Department at the regional, zonal, circle, divisional, district, tehsil and lower levels shall stand entrusted to the Tehsil Municipal Administration, alongwith the employees working in these offices:

Provided that the Government may direct for retention of a nucleus office of Housing and Physical Planning Department with the District Government for intra-district coordination of tehsil spatial plan:

Provided further that Water and Sanitation Agencies coming under control of the district government under sub-section (3) of section 182 functioning in a Tehsil shall further be decentralized to the concerned Tehsil Municipal Administration

Provided also that Water and Sanitation Agency or similar agencies functioning in a City District and coming under the control of City District under sub-section (3) of section 182 may further be decentralized to the City District Administration or, according to requirements of service delivery, may be decentralized to towns in a City District.

53. Structure of the Tehsil Municipal Administration.—

(1) The Tehsil Nazim shall head the Tehsil Municipal Administration office.

(2) The Tehsil Municipal Administration shall include the offices and sub-of the Urban Local Councils established under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979), offices and sub-offices of Local Government and Rural Development Department, Public Health Engineering Department and Housing and Physical Planning Department entrusted to it under section 52 for administrative and financial management thereof and sub-offices and other offices set-up by it under this Ordinance and grouped under the Tehsil Municipal Officer.

(3) The Tehsil Municipal Officer shall act as co-ordinating and administrative officer in-charge of the following Tehsil Officers, namely:-

(I) Tehsil Officer (Municipal Regulations) who shall be responsible for licensing, management of municipal lands, estates, properties, facilities and enterprises and enforcement of relevant municipal laws, rules and bye-laws:

(ii) Tehsil. Officer (Infrastructure and Services) who shall be responsible for water, sewerage, drainage, sanitation, roads, other than Provincial and district roads, streets and street lighting, fire fighting and park services;

(iii) Tehsil Officer (Planning) who shall be responsible for spatial planning and land use control, building control, and coordination of development plans and projects with Union Administration, Village Councils and other local governments; and

(iv) Tehsil Officer (Finance) who shall be responsible for budget, revenue and accounts.

(4) The staff of the Tehsil Officers referred to in sub-section (3) shall be appointed from amongst the officials of the decentralized offices entrusted to Tehsil Municipal Administration, Local Council Service and servants of Local Councils established under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979), by the Government, keeping in view the requirements of every Tehsil Municipal Administration.

(5) Notwithstanding the dissolution of Town Committees, Municipal Committees and Municipal Corporations under this Ordinance, and until any contrary order is made by the Government or the service structure of the members of Local Council Service or the servants of Local Councils is altered, the administrative set-up of such Committees and Corporations shall remain in tact and continue providing municipal services and the officers and staff working therein shall come under the executive control of the Tehsil Nazim through the Tehsil Municipal Officer.

(6) The officers and staff working in the dissolved Zilla Councils and Union Councils shall be posted in the offices of such local governments as may be determined by the Government.

54. Functions and powers of the Tehsil Municipal Administration.—

(1) The functions and powers of the Tehsil Municipal Administration shall be to-

(a) prepare spatial plans for the tehsil in collaboration with Union Councils, including plans for land use, zoning and functions for which the Tehsil Municipal Administration is responsible;

(b) seek approval of the Tehsil Council to the spatial plans prepared by It after due process of dissemination and public enquiry, incorporating modifications on the basis of such inquiry;

(c) execute and manage development plans;

(d) exercise control over land-use, land-subdivision, land development and zoning by public and private sectors for any purpose, including for agriculture, industry, commerce markets, shopping and other employment centers, residential, recreation, parks, entertainment, passenger and freight transport and transit stations;

(e) enforce all municipal laws, rules and bye-laws governing its functioning:

Provided that the Tehsil Municipal Administration may, with the approval of Tehsil Council, exempt any Union from application of any specific provision of the bye-laws made by the Tehsil Council under this Ordinance:

Provided further that the Government may, on the recommendations of Tehsil Municipal Administration through District Government, exempt any Union or a part thereof from the application of rules relating to land use, building control, tax on property or in any other matter dealing with municipal services:

Provided also that such exemption shall not extend to any organized housing schemes, zoning of industrial and commercial areas, and matters concerning environmental protection;

(f) prevent encroachments;

(g) regulate affixing of sign-boards and advertisements;

(h) provide, manage, operate, maintain and improve the municipal infrastructure and services, including-

(i) water supply and control and development of water sources, other than, systems maintained by the Union and Village Councils;

(ii) sewerage, sewage and sewage treatment and disposal;

(iii) storm water drainage;

(iv) sanitation and solid waste collection and sanitary disposal of solid, liquid, industrial and hospital wastes;

(v) roads and streets, other than roads falling under the jurisdiction of, and maintained by, the District Government or Government and streets maintained by the Union Administration or Village Council;

(vi) traffic planning, engineering and management including traffic signaling systems, signs on roads, street markings, parking places, transport stations, stops, stands and terminals;

(vii) street lighting;

(viii) fire fighting;

(ix) parks, playgrounds, open spaces and arboriculture; and

(x) slaughter houses;

(i) compile information provided by Union and Village Councils of prioritized projects in the tehsils;

(j) prepare budget, long term and annual municipal development programmes in collaboration with the Union Councils, under the directions of Tehsil Nazim;

(k) maintain, with the assistance of the District Government, Union and Village Councils, a comprehensive data base and information system for Tehsil Municipal Administration and provide public access to it on nominal charges;

(l) propose taxes, cess, user fees, rates, rents, tolls, charges, levies fines and penalties under Part II of the Second Schedule for approval of the Tehsil Council and notify the same after such approval;

(m) collect approved taxes, cess, user fees, rates, rents, tolls, charges fines and penalties;

(n) organize sports, cultural, recreational events, fairs and shows;

(o) organize cattle fairs and cattle markets;

(p) co-ordinate and support municipal functions amongst Unions and Villages;

(q) regulate markets and services and issue licenses, permits, grant permissions and impose penalties for violation thereof as and where applicable;

(r) manage properties, assets and funds vested in the Tehsil Municipal Administration and Tehsil Council;

(s) develop and manage schemes, including site development in collaboration with District Government and Union Administration;

(t) authorize an officer or officers to issue notice to a person committing any municipal offence and initiate legal proceedings for continuance of commission of such offence or for failure to comply with the directions contained in such notice;

(u) prosecute, sue and follow up criminal, civil and recovery proceedings against violators of municipal laws in the courts of competent jurisdiction;

(v) maintain municipal records and archives; and

(w) prepare financial statements and present them for internal and external audit in the manner as may be prescribed.

(2) The Tehsil Municipal Administration may,-

(a) assign or contract out, on such terms and conditions as are approved by the Tehsil Council and after inviting public objections, any of its functions to any public-private, public or private organization:

Provided that responsibility for discharge of such functions shall continue to vest with the Tehsil Municipal Administration;

(b) on such terms and conditions as are mutually agreed, transfer its functions or responsibilities with regard to providing municipal services to the Union Administration or Village Council:

Provided that no function or responsibility shall be transferred without allocation of corresponding resources and funds:

Provided further that the responsibility to regulate and monitor such functions and services shall remain with the Tehsil Municipal Administration;

(c) by an agreement and on such terms and conditions as may be mutually agreed, perform any function of the District Government;

(d) with funds raised through voluntary contributions or external grant, but without recourse to additional enhanced taxation, user charges or fees or recourse to any other sources of public funds and without incurring debt of any nature, undertake any development project;

(e) with the approval of the Government and concerned regulatory authorities of the Federal Government and Provincial Government, set-up, acquire, manage and operate any commercial activity on a self-financing basis with no liability to the public exchequer; and

(f) set-up a corporate body to perform any of its functions, singly or jointly with other public or private bodies:

Provided that responsibility for discharge of such functions shall continue to vest with the Tehsil Municipal Administration.

55. Fiscal transfers to Tehsil Municipal Administration.—

The Tehsil Municipal Administration shall receive fiscal transfers from the District Government in the manner as may be prescribed.

56. Tehsil Nazim.—

(1) The Tehsil Nazim shall head the Tehsil Municipal Administration and shall exercise such function and powers as have been assigned to him under this Ordinance.

(2) The Tehsil Nazim shall be assisted by Tehsil Municipal Officer.

(3) The Tehsil Nazim shall be responsible to ensure that the business of the Tehsil Municipal Administration is carried out in accordance with the provisions of this Ordinance and the laws relating to the municipal services for the time being in force.

57. Functions of Tehsil Nazim.—

The functions of Tehsil Nazim shall be—

(a) to provide vision and direction for efficient functioning of the municipal administration;

(b) to formulate strategies for development of municipal infrastructure and improvement of delivery of the municipal services of the tehsil;

(c) to oversee formulation and implementation of long term and annual municipal development programmes;

(d) to oversee the delivery of services by the Tehsil Municipal Administration and implementation of the laws governing the municipal services;

(e) to present the budget proposal to the Tehsil, Council for approval;

(f) to present a report in person on the performance to the Tehsil Council at least once in six months;

(g) to supervise the utilization of the funds allocated to the Tehsil Municipal Administration and to ensure their proper accounting;

(h) to establish and supervise the working of the Internal Audit Office; and

(i) to represent Tehsil Municipal Administration on public and ceremonial occasions.

58. Tehsil Municipal Officer.-

(1) The Government shall appoint the Tehsil Municipal Officer who shall be the Principal Accounting Officer of the Tehsil Municipal Administration and shall be the focal person-

(a) for redressing public complaints relating to Tehsil Municipal Administration; and

(b) for liaising with the District Government and the Local Government Commission, through the District Government, for resolution of disputes relating to Tehsil Municipal Administration

(2) The Tehsil Municipal Officer shall-

(a) ensure that the business of the Tehsil Municipal Administration is carried out in accordance with this Ordinance and any other law relating to municipal services for the time being in force;

(b) co-ordinate the municipal activities of the Tehsil Municipal Administration and Union Administrations within the Tehsil for coherent planning and development of municipal infrastructure and for effective and efficient functioning of the Tehsil Municipal Administration;

(c) exercise general supervision over programmes, projects, services, and activities of the Tehsil Municipal Administration; and

(d) provide information required by the Tehsil Council for the performance of their functions:

Provided that while dealing with the Government, District Government and Local Government Commission, the Tehsil Municipal Officer shall not bypass the Tehsil Nazim.

59. Personal responsibility of Tehsil Nazim.—

The Tehsil Nazim shall be personally responsible for any loss, financial or otherwise, flowing from the decisions made by him personally or under his directions in violation of any provisions of this Ordinance or any other law for the time being in force and for any expenditure incurred without lawful authority.

60. Resignation of Tehsil Nazim.—

The Tehsil Nazim may resign from office by tendering resignation in writing addressed to the Chief Executive of the Province.

61. Vacancy of the Office of Tehsil Nazim.—

(1) In case the office of Tehsil Nazim falls vacant for reason of his death, resignation or removal or, where in the opinion of the Tehsil Council, he has become incapable to perform his functions on account of mental or physical incapacity, the Naib Tehsil Nazim shall act as Tehsil Nazim till an officiating Nazim is appointed under sub-section (6) of section 156 or a new Tehsil Nazim is elected under sub-section (5) of that section:

Provided that the officiating Tehsil Nazim shall not be a candidate in the election for Tehsil Nazim.

(2) Where a Tehsil Nazim is unable to perform his functions for reason of his temporary absence, he may authorize Naib Tehsil Nazim, in writing, to act on his behalf till he resumes his duties.

62. External recall of Tehsil Nazim.—

(1) If in the opinion of the Zilla Nazim, the continuance in office of a Tehsil Nazim is against the public policy or interest of the people or he is guilty of misconduct, the Zilla Nazim may move a motion in the Zilla Council stating the grounds for the recall of Tehsil Nazim.

(2) Where the motion referred to in sub-section (1) is approved through a resolution passed by a simple majority of the total membership of the Zilla Council, the Election Authority shall cause such resolution to be voted upon by the members of the Union Councils in the Tehsil.

(3) Where the motion referred to in sub-section (1) is approved by a simple majority of the total membership of the Union Councils in the Tehsil, the Tehsil Nazim shall cease to hold office from' the date of the notification issued by the District Government under sub-section (4).

(4) The result of the approval of the resolution of the Zilla Council referred to in sub-section (2) and approval of motion referred to in sub-section (3) by the members of the Union Councils in the Tehsil shall immediately be notified by the District Government in the Official Gazette.

(5) Nothing contained in sub-sections (1) and (2) shall affect the provisions of section 161 in respect of removal of Tehsil Nazim by the Chief Election Commissioner.

63. Internal recall of a Tehsil Nazim.—

(1) If in the opinion of a member of the Tehsil Council, there is a reason to believe that the Tehsil Nazim is acting against the public policy or the interest of the people or is negligent or is responsible for loss of opportunity to improve governance and the delivery of services, he may, seconded by another member of the Council, give a notice to move a motion in the Tehsil Council through Naib Tehsil Nazim for recall of Tehsil Nazim.

(2) On receipt of notice referred to in sub-section (1), the Naib Tehsil Nazim shall summon a session of the Tehsil Council not earlier than three days but not later than seven days, if the Tehsil Council is not already in session.

(3) Where the Tehsil Council is already in session, the motion referred to in sub-section (1) shall be taken up far deliberations on the next day from its receipt by the Naib Tehsil Nazim.

(4) If the motion referred to in sub-Section (1) is approved by majority of the votes of its total membership through a secret ballot, the Election Authority shall cause a vote to be cast by the members of Union Councils in the Tehsil.

(5) Where the motion is approved by a simple majority of the total members of Union Councils of the tehsil, the Tehsil Nazim, shall cease to hold office from the date of notification to be issued in this behalf by the Election Authority.

(6) The Tehsil Nazim shall have the right to appear before the Tehsil Council and address it in his defence.

(7) No motion for recall of Tehsil Nazim shall be moved during the first six months of assumption of office of Tehsil Nazim nor shall such motion be repeated before the expiry of one year from the rejection of previous motion.

64. Setting aside an order of Tehsil Nazim.—

(1) On a motion initiated by the District Government, the Zilla Council may, by a resolution stating the grounds thereof, passed by a simple majority of its total membership, set aside an order or decision of general application taken by Tehsil Nazim, if it considers the same to be against the interest of the people or public policy.

(2) The result of the approval of the resolution of the Zilla Council referred to in sub-section (1) shall be notified by the District Government.

CHAPTER VI

TEHSIL AND TOWN COUNCILS

65. Composition of Tehsil and Town Councils.—

(1) There shall be a Tehsil Council in a tehsil and a Town Council in a town in a City District and shall consist of Naib Nazimeen of all Union Councils in the tehsil or town, as the case may be, and the following members elected on reserved seats, namely:-

(a) such number of women as represents thirty-three percent of the total number of the Unions in the tehsil or, as the case may be the town;

(b) Such number of peasants and workers as represent five percent of the total number of the Unions in the tehsil or, as the case may be, the town subject to a minimum of one seat; and

(c) such number of persons from minority communities as represent five percent of the total number of the Unions in the tehsil or, as the case may be, the town, subject to a minimum of one seat.

(2) If, in calculating a percentage for the purposes of sub-section (1), the number of reserved seats does not come out to be a whole number and such number is-

(a) less than a half the number shall be rounded down to the next lower number; or

(b) a half or more the number shall be rounded up to the next higher number.

(3) The Naib Tehsil Nazim or Naib Town Nazim shall be the Convener of the Tehsil Council or, the Town Council, as the case may be.

(4) The Tehsil Council and Town Council shall have their offices under the Naib Tehsil Nazim or Naib Town Nazim, as the case may be, and shall have separate budget allocations.

66. Provisions of Tehsil Council apply to Town Council.—

The provisions relating to Tehsil Council shall, mutatis mutandis, apply to Town Council and any reference in these provisions to Tehsil Nazim, Naib Tehsil Nazim or Tehsil

Municipal Administration shall, respectively, be read as reference to Town Nazim, Naib Town Nazim and Town Municipal Administration.

67. Functions and powers of the Tehsil Council.—

The functions and powers of the Tehsil Council shall be -

(i) to approve taxes, cess, rates, rents, fees, user-charges, tolls, levies, fines and penalties proposed by Tehsil Municipal Administration specified in Part-II of the Second Schedule;

(ii) to approve bye-laws for delivery of municipal services;

(iii) to approve annual budget and appropriations for the Tehsil Municipal Administration;

(iv) to approve long and short term development plans.

(v) to approve posts of personal staff for the office of Tehsil Nazim and the terms and conditions of their service;

Provided that no post of advisor, special assistant, press or political secretary to the Tehsil Nazim shall be sanctioned or approved.

(vi) to approve land use, zoning and master plan of the tehsil development and maintenance programmes or projects proposed by the Tehsil Municipal Administration;

(vii) to elect Monitoring Committees of the Tehsil Council to monitor the working of the Tehsil Municipal Administration and the provision of municipal services;

(viii) to ensure that the Monitoring Committees perform their functions in a non-intrusive manner without interfering in the day to day working of the relevant offices of the Tehsil Municipal Administration and do not assume a command and control role;

(ix) to review the reports of the Monitoring Committees and make appropriate recommendations to the Tehsil Nazim.

(x) to elect an Code of Conduct Committee which shall be responsible for enforcing the code of ethics for regulating the conduct of the members of the Tehsil Council;

(xi) to elect an lnsaaf Committee for interacting with the lnsaaf Committee of the Zilla Council.

(xii) to elect Tehsil Accounts Committee to review the audit reports of the accounts of Tehsil Municipal Administration;

(xiii) to review the performance of Tehsil Municipal Administration presented by the Tehsil Nazim;

(xiv) to authorize the Tehsil Municipal Administration, subject to applicable laws and with the prior permission of the Government through District Government, for floating municipal bonds for raising funds for financing municipal projects; and

(xv) to require, by resolution, the Tehsil Municipal Administration to undertake measures for improvement in the delivery of municipal services.

68. Power to appoint officiating Tehsil Nazim.—

Where the office of Tehsil Nazim falls vacant by reason of his death, resignation or removal, the Tehsil Council shall, from amongst its members, elect an officiating Tehsil Nazim, till a new Tehsil Nazim is elected under the provisions of sub-section (5) of section 156:

Provided that Naib Tehsil Nazim shall convene the meeting of the Tehsil Council for the election of officiating Tehsil Nazim within ten days from the death, resignation or removal of Tehsil Nazim, as the case may be:

Provided further that the officiating Tehsil Nazim Shall not be a candidate for the office of Tehsil Nazim in election for Tehsil Nazim.

69. Conduct of the business of Tehsil Council.—

(1) The Tehsil Council shall regulate its business in accordance with the bye-laws made by it.

(2) The Tehsil Council shall meet at least once in every month.

(3) Save as otherwise provided, decisions of the Tehsil Council shall be taken by resolutions passed by a simple majority of the members present and voting and a copy of each resolution shall be transmitted to the Local Government Commission.

(4) All meetings of the Tehsil Council shall be presided over by the Naib Tehsil Nazim.

(5) In its first session, the Tehsil Council shall elect a panel of presiding officers, in order of precedence, of not less than three members who shall, in the absence, of or in the case where a motion for recall of Naib Tehsil Nazim has been moved, preside over the meetings of the Tehsil Council.

(6) The quorum of the meetings of the Tehsil Council shall be fifty-one percent of its total membership.

(7) The meetings of the Tehsil Council shall be open to public, unless the Council, by a resolution, decides to hold any meeting in camera.

(8) The minutes of the meetings of Tehsil Council shall be recorded and maintained by an officer authorized by the Tehsil Council.

70. Address of Tehsil Nazim.—

(1) At the commencement of first session of the Tehsil Council after its election and on commencement of first session of every year the Tehsil Nazim shall address the Tehsil Council and shall inform the Council of his plans and programmes for the said year and the performance of the Tehsil Administration during the preceding year.

(2) Notwithstanding anything contained in sub-section (1), the Tehsil Nazim may address the Tehsil Council whenever he deems necessary to associate the Tehsil Council in functioning of the Tehsil Municipal Administration.

71. Resignation of Naib Tehsil Nazim.—

The Naib Tehsil Nazim may resign from office by tendering resignation in writing addressed to the Tehsil Nazim.

72. Recall of a Naib Tehsil Nazim.—

(1) If in the opinion of a member of Tehsil Council, there is a reason to believe that the Naib Tehsil Nazim is acting against the public policy or the interest of the people or for any other reason, he may, seconded by another member of the Council, give a notice to the Tehsil Council for moving a motion for recall of Naib Tehsil Nazim.

(2) On receipt of notice referred to in sub-section (1), the senior-most presiding officer in the panel referred to in sub-section (5) of section 69 shall summon a

session of Tehsil Council not earlier than three days but not later than seven days, if the Tehsil Council is not already in session.

(3) Where the Tehsil Council is already in session, the motion referred to in, sub-section (1) shall be taken up for deliberations on the next day from its receipt in the Tehsil Council.

(4) If the motion referred to in sub-section (1) is approved by majority of the votes of its total membership through a secret ballot, the Election Authority shall cause a vote to be cast by the members of Union Councils in the tehsil.

(5) Where the motion is approved by a simple majority of the members of the Union Councils of the tehsil present and voting, the Naib Tehsil Nazim shall cease to hold office from the date of notification to be issued in this behalf by the Election Authority.

(6) The Naib Tehsil Nazim shall have the right to appear before the Tehsil Council and address it in his defence.

(7) No motion for recall of Naib Tehsil Nazim shall be moved during the first six months of assumption of office of Naib Tehsil Nazim nor shall such motion be repeated before the expiry of one year from the rejection of previous motion.

73. Joint committees of Councils.—

The Tehsil Council may, with the consent of the Zilla Council or adjoining Tehsil Councils or Union Councils, set up joint committees of the Councils for any purpose in which such Councils may be jointly interested and may delegate to such joint committees any power which may be exercised by them, including the power to make bye-laws for their functioning.

CHAPTER VII

UNION ADMINISTRATION

74. Composition of Union Administration.—

There shall be constituted a Union Administration for every Union which shall be a body corporate and consist of Union Nazim, Naib Union Nazim and not more than three Union Secretaries and, where required, the members of ancillary staff.

75. Structure of Union Administration.—

(1) The Union Nazim shall be the head of the Union Administration.

(2) The Naib Union Nazim shall deputize the Union Nazim during his temporary absence.

(3) The Union Secretaries shall coordinate and facilitate in community development, functioning of the Union Committees and delivery of municipal services under the supervision of Union Nazim:

Provided that functions of the Union may be assigned to one or more Secretaries.

76. Functions of the Union Administration.—

The functions of Union Administration shall be-

(a) to collect and maintain statistical information for socio-economic surveys;

(b) to consolidate village and neighbourhood development needs and prioritize them into union-wide development proposals with the approval of the Union Council and make recommendations thereof to the District Government or Tehsil Municipal Administration, as the case may be;

(c) to identify deficiencies in the delivery of services and make recommendations for improvement thereof to the Tehsil Municipal Administration.

(d) to register births, deaths and marriages and issue certificates thereof;

(e) to make proposals to the Union Council for levy of rates and fees specified in the Second Schedule and to collect such rates and fees within the Union;

(f) to establish and maintain libraries.

(g) to organize inter-Village or Neighbourhood sports tournaments, fairs, shows and other cultural and recreational activities.

(h) to disseminate information on matters of public interest;

(i) to improve and maintain public open spaces, public gardens and playgrounds;

(j) to provide and maintain public sources of drinking water, including wells, water pumps, tanks, ponds and other works for the supply of water.

(k) to maintain the lighting of streets, public ways and public places through mutual agreement with the Tehsil Municipal Administration;

(l) to arrange facilities for the handicapped, destitute and poor;

(m) to provide protection against stray animals and animal trespass, and to establish cattle pounds;

(n) to regulate grazing areas;

(o) to assist the relevant authorities in disasters and natural calamities, and assist in relief activities, including de-silting of canals;

(p) to cooperate with the public, private or voluntary organizations, engaged in activities similar to those of the Union;

(q) to execute the projects of the approved Union Annual Development Plan by contracting out to the private sector in the manner as may be prescribed and to obtain support of the Tehsil Municipal Administration or District Government for such execution; and

(r) to assist the Village Councils or, as the case may be, Neighbourhood Councils in the Union to execute development projects.

77. Assignment of functions to Village Council.—

The Union Administration may, subject to such terms and conditions as may be mutually agreed, assign any of its functions to Village Council:

Provided that responsibility for discharge of such functions shall continue to vest with the Union Administration:

Provided further that no function or responsibility shall be transferred without allocation of corresponding resources and funds.

78. Entrustment of functions by District Government, etc.—

(1) Government or, as the case may be, the Tehsil Municipal Administration may interest any of its functions to the Union Administration with mutual agreement:

Provided that resources required for carrying out such functions shall be made available to the Union Administration.

(2) The Union Administration may, with the mutual agreement and the funds raised by it through voluntary contributions, undertake development projects or functions of the Tehsil Municipal Administration or the District Government:

Provided that no additional user charges or fees shall be collected from the population benefiting from such projects and functions:

Provided further that for carrying out such functions or completion of such projects, the Union Administration shall not have recourse to public funds or incur any debt.

79. Government to prescribe powers of Union Administration.—

The administrative, financial and regulatory powers of the Union Administration shall be prescribed by the Government.

80. Functions of Union Nazim.—

A Union Nazim shall-

(a) provide leadership for Union-wide development and preparation of budget and the annual development plan;

(b) organize the management of inter-villages municipal infrastructure;

(c) assist the Tehsil Municipal Administration in spatial planning process;

(d) constitute Musalihati Jarga;

(e) dispose of the business of Union Administration; and

(f) report to the concerned authorities in respect of-

(i) encroachment on State and local government property and violation of land use and building laws, rules and bye-laws.

(ii) sale and trade of dangerous and offensive articles;

(iii) environmental and health hazards;

(iv) adulteration of articles of food; and

(v) breach of public watercourses,

within the area of the union.

81. Personal responsibility of Union Nazim.—

The Union Nazim shall be personally responsible for any loss, financial or otherwise, flowing from the decisions made by him personally or under his directions in violation of any provisions of this Ordinance or any other law for the time being in force and for any expenditure incurred without lawful authority.

82. Setting aside decisions of Union Nazim.—

(1) On a motion initiated by the Tehsil Nazim or Town Nazim, Tehsil Council or, as the case may be, Town Council may, by a resolution stating the grounds thereof, passed by a simple majority of its total membership, set aside an order or decision taken by Union Nazim, if it considers the same to be against the interest of the people or public policy.

(2) The result of the resolution referred to in sub-section (1) shall be notified by the Tehsil Council or Town Council, as the case maybe.

83. Resignation by Union Nazim.—

The Union Nazim may resign from his office by tendering resignation in writing addressed to Naib Zilla Nazim.

84. External Recall of Union Nazim.—

(1) If there is reason to believe that a Union Nazim is working against the public policy or the interest of the people, the Zilla Nazim may move a resolution in the Zilla Council to recall the Union Nazim.

(2) If a resolution is passed by a majority of the total membership of the Zilla Council, the Election Authority shall cause the resolution referred to in sub-section (1) to be voted upon by the members of the Union Council, Village Councils and Neighbourhood Councils in the Union.

(3) Where the Union Council, Village Councils and Neighbourhood Council approve the resolution referred to in subsection (2) by a simple majority of their membership, the Union Nazim against whom the resolution is approved shall cease to hold office from the date of approval of such resolution.

(4) Nothing contained in sub-sections (1) and (2) shall affect the provisions of section 161 in respect of recall of Union Nazim. -

85. Internal recall of Union Nazim.—

(1) If in the opinion of a member of Union Council, there is a reason to believe that the Union Nazim is acting against the public policy or the interest of the people or on the ground of inaction or neglect to serve the needs of the people, he may, seconded by another member of the Council, give a notice to move a motion in the Union Council for recall of Union Nazim.

(2) On receipt of notice referred to in sub-section (1), the Naib Union Nazim shall summon a session of Union Council within three days if the Union Council is not already in session.

(3) Where the Union Council is already in session, the motion referred to in sub-section (1) shall be taken up for deliberations on the next day from its receipts in the Union Council.

(4) If the motion referred to in sub-section (1) is approved by majority of the votes of the total membership of the Union Council through a secret ballot, such motion shall be caused by the Election Authority to be voted upon by the members of the Village Councils and Neighbourhood Councils in the Union and if such motion is approved by the simple majority of the total members of the Village Councils and Neighbourhood Councils, the Union Nazim shall cease to hold office from the date of notification to be issued by the District Government under sub-section (6).

(5) The District Government shall notify the result of the approval of the motion.

(6) The Union Nazim shall have the right to appear before the Union Council and address it in his defence.

(7) No motion for recall of Union Nazim shall be moved during the first six months of assumption of office of Union Nazim nor shall such motion be repeated before the expiry of one year from the rejection of previous motion.

86. Joint committees of Councils.—

The Union Council may, with the consent of the Zilla Council or a Tehsil Council or Town Council or adjoining Union Councils set up joint committees of the Councils for any purpose in which such Councils may be jointly interested and may delegate to such joint committee any power which may be exercised by them, including the power to make bye-laws for their functioning.

CHAPTER VIII

UNION COUNCIL

87. Composition of the Union Council.—

(1) There shall a Union Council in each Union comprising twenty-one following members elected directly in accordance with section 148-

(a) twelve Muslim members, elected to general seats, including four reserved for women;

(b) six members, elected to seats reserved for peasants and workers, including two reserved for women;

(c) one member elected to a seat reserved for minority communities; and

(d) Union Nazim and Naib Union Nazim elected as joint candidates:

Provided that in a Union where the population of minorities is in excess of ten percent of the total population of the union, reserved seats for minorities communities mentioned in clause (c) shall be allocated in the manner prescribed by the Government.

88. Functions of the Union Council—

(1) The functions of the Union Council shall be to-

(a) approve the annual development plan and budgetary proposals of the Union Administration;

(b) approve rates and fees for services specified in Part-Ill of the Second Schedule proposed by the Union Administration;

(c) facilitate the formation and functioning of Citizen Community Boards;

(d) assist the Tehsil Council and Town Council in creation of Village and Neighbourhood Councils;

(e) facilitate the formation of cooperatives for improving economic returns and reduction of interstitial poverty;

(f) mobilize the community involvement in maintenance of public ways, public streets, culverts, bridges and public buildings, de-silting of canals and other development pursuits;

(g) promote plantation of trees, landscaping and beautification of public places in the Union;

(h) assist Tehsil Municipal Administration in establishment and maintenance of burial and cremation places;

(i) approve the terms and conditions of the employment of Village or Neighbourhood guards and oversee their functioning;

(j) adopt appropriate measures and provide support to the District Government, Tehsil Municipal Administration and Town Municipal Administration for achievement of socio-economic development and improvement of services;

(k) elect Monitoring Committees of the Union, each for municipal services, finance, public safety, health, education, literacy, works and services;

(l) elect an Code of Conduct Committee of the Union Council which shall be responsible for enforcing the code of ethics to regulate the conduct of the members of the Council;

(m) elect a Union Accounts Committee which shall be responsible for examination of the audit reports;

(n) elect an Insaaf Committee which shall be responsible for the selection of the panel of Conciliators of Musalihati Jarga for out of court amicable settlement of disputes;

(o) review the performance of Union Administration and Union Monitoring Committees; and

(p) review the annual statement of accounts and external or special audit reports in respect of the Union Administration.

89. Conduct of the business of Union Council.—

(1) The Union Council shall regulate its business in accordance with the by-laws made by it.

(2) The Union Council shall meet at least once in every month.

(3) All decisions of the Union Council shall be taken by resolutions passed by a simple majority of its total membership.

(4) All meetings of the Union Council shall be presided over by Union Nazim and, in his absence, by the Naib Union Nazim or, in absence of both Union Nazim and Naib Union Nazim or where a motion for recall of Union Nazim or Naib Union Nazim has been moved, by a member elected by the Union Council from amongst its members present in the meeting.

(5) The quorum of the meetings of the Union Council shall be fifty-one percent of its total membership.

(6) The meetings of the Union Council shall be open to public, unless the Union Council, by a resolution, decides to hold any meeting in camera.

(7) The minutes of the meetings of Union Council shall be recorded and maintained by an officer authorized by the Union Council.

90. Address of Union Nazim.—

(1) At the commencement of first session of the Union Council after its election and a commencement of first session of every year the Union Nazim shall address the Union Council and shall inform the Council his plans and programmes for the said year and the performance of the Union Administration during the preceding year.

(2) Notwithstanding anything contained in sub-section (1), the Union Nazim may address the Union Council whenever he deems necessary to associate or consult the Union Council in functioning of the Union Administration.

91. Resignation by Naib Union Nazim.—

The Naib Union Nazim may resign from his office by tendering resignation in writing addressed to Zilla Nazim.

92. Recall of Naib Union Nazim.—

(1) If in the opinion of a member of Union Council, there is a reason to believe that the Naib Union Nazim is acting against the public policy or the interest of the people or for any other reason, he may, seconded by another member of the Council, move a motion in the Union Council for recall of Naib Union Nazim.

(2) On receipt of notice referred to in sub-section (1), the Union Nazim shall summon a session of Union Council within three days, if the Union Council is not already in session.

(3) Where the Union Council is already in session, the motion referred to in sub-section (1) shall be taken up for deliberations immediately on its receipt in the Union Council.

(4) If the motion referred to in sub-section (1) is approved by a majority of the votes of its total membership through a secret ballot, the Naib Union Nazim shall cease, to hold office on approval of the motion by the Union Council.

(5) The District Government shall notify the result of the approval of the motion by the Union Council.

(6) The Naib Union Nazim shall have the right to appear before the Union Council and address it in his defence.

(7) No motion for recall of Naib Union Nazim shall be moved during the first year of assumption of office of Naib Union Nazim nor shall such motion be repeated before the expiry of one year from the rejection of previous motion.

CHAPTER IX

VILLAGE AND NEIGHBOURHOOD COUNCILS

93. Declaration of Village and Neighbourhood Councils.—

Within ninety days of the assumption of office, upon a proposal of the Tehsil Municipal Administration or Town Municipal Administration, as the case may be-

(i) the Tehsil Council may determine and declare by notification a Village or a Neighbourhood in urban areas in the tehsil, to have a Village Council or, as the case may be, Neighbourhood Council, and number of members to be elected for such Councils; and

(ii) the Town Council may determine and declare by notification a Neighbourhood or a Village in the rural areas in the town, to have a Neighbourhood Council or, as the case may be, Village Council, and number of members to be elected for such Councils;

94. Composition of Village Council and Neighbourhood Council.—

(1) The number of members of Village Council and Neighbourhood Council shall be five to eleven members each:

Provided that for each Council one seat shall be reserved for women and one seat for peasants and workers.

(2) The Village Council and Neighbourhood Council shall each be headed by a Chairman who shall be the person securing highest number of votes in the election of Village Council or, as the case may be, Neighbourhood Council.

(3) The Union Nazim shall allocate the work relating to the Village Councils and Neighbourhood Councils in the Union amongst the secretaries posted in the Union Administration.

(4) Every Village Council and Neighbourhood Council shall be a body corporate.

95. Election of Village Council and Neighbourhood Council.—

(1) The Tehsil Municipal Administration and Town Municipal Administration shall, within ninety days after declaration of Villages and Neighbourhoods conduct the elections of Village Councils and Neighbourhood Councils as may be prescribed.

(2) District Government shall facilitate and provide necessary support to the Tehsil Municipal Administration and Town Municipal Administration in the elections of Village and Neighbourhood Councils.

(3) Where a Tehsil Council or Town Council does not make declaration referred to in section 93 or where a Tehsil Municipal Administration or, as the case may be, Town Municipal Administration fails to conduct elections of Village Councils or Neighbourhood Councils within ninety days referred to in sub-section (1), the District Government shall make such declaration or, as the case may be, conduct the elections of the Village Councils and Neighbourhood Councils within thirty days from the declaration made by it.

(4) The vacancies of the members of the Village Council or, as the case may be, Neighbourhood Council referred to in section 93 shall be filled in by the persons securing highest number of votes.

(5) The term of office of the Village Council and Neighbourhood Council shall correspond to the term of office of the Union Council concerned; provided that the Village Council and Neighbourhood Council shall continue in office until replaced by a new Village Council or a Neighbourhood Council, as the case may be.

96. Functions of Village Council and Neighbourhood Council.—

(1) The functions of the Village and Neighbourhood Councils shall be to-

(a) develop and improve water supply sources;

(b) make arrangements for sanitation, cleanliness and disposal of garbage and carcasses;

(c) develop sites for drinking arid bathing of cattle;

(d) take measures to prevent contamination of water;

(e) prevent and abate nuisances in public ways, public streets and public places;

(f) organize watch and ward in the Village and Neighbourhood through unarmed Village or Neighbourhood guards;

(g) organize Village and Neighbourhood sports teams, cultural, and recreational activities;

(h) mobilize voluntary resources, including physical labour, property and cash contributions for municipal activities in the Village and Neighbourhood;

(i) facilitate the formation of co-operatives for improving economic returns and reduction of interstitial poverty and consumer protection;

(j) report cases of handicapped, destitute, and of extreme poverty to the Union Administration;

(k) mobilize the community involvement in of public streets, play grounds, parks, culverts and public buildings, de-silting of canals and watercourses; and;

(l) promote plantation of trees, landscaping and beautification of the Village and Neighbourhood.

(2) The Village Council and Neighbourhood Council shall assist Union Administration in-

(a) conducting surveys in the Village and Neighbourhood and collecting socio-economic data;

(b) selecting sites for providing municipal facilities and services to the Village or Neighbourhood;

(c) identifying encroachments;

(d) managing burial places and cremation grounds of the village;

(e) managing and lighting of Village or Neighbourhood roads, streets, and paths; and

(f) collecting land revenue and other taxes.

(3) A Village Council or Neighbourhood Council may, subject to such terms and conditions as may be mutually agreed, entrust any of its functions to the Union Administration:

Provided that responsibility for discharge of such functions shall continue to vest with the Village Council or, as the case may be, Neighbourhood Council:

Provided further that no function or responsibility shall be transferred without allocation of corresponding resources and funds.

97. Village Council and Neighborhood Council to develop facilities.—

(1) The Village Council and Neighbourhood Council may, with funds raised through voluntary contributions or on self help basis, develop and maintain municipal and community welfare facilities.

(2) Village Council and Neighbourhood Council shall facilitate creation of the Citizen Community Boards for development and maintenance of municipal and community welfare facilities.

CHAPTER X

CITIZEN COMMUNITY BOARD

98. Composition of Citizen Community Board.—

(1) In every local area, a group of non-elected citizens may, after approval of, and registration by, Government, for energizing the community for development and improvement in service delivery, set up a Citizen Community Board and through voluntary, proactive and self help initiatives take up -

(a) improvement of delivery of service by a public facility;

(b) development and management of a new public facility;

(c) welfare of the handicapped, destitute, widows and families in extreme poverty;

(d) establishment of farming, marketing and consumers' cooperatives;

(e) identification of development and municipal needs and mobilization of resources;

(f) formation of stakeholder associations for community involvement in the improvement and maintenance of specific facilities; and

(g) reinforcing the capacity of a specific Monitoring Committee at the behest of the concerned Council.

Explanation. - For the purpose of this section, the expression stakeholder association', means voluntary association, such as parent-teacher association, patient-hospital management association, school management association or farm water associations or citizen-police liaison association.

(2) In carrying out its purposes, a Citizen Community Board may interact with voluntary organisations for community welfare.

(3) The Citizen Community Board shall be registered with the registration authority as may be prescribed.

(4) The Citizen Community Board shall have a general body of its members who shall elect a Chairman, Executive Committee and a Secretary of the Board for carrying out its functions.

(5) The term of office of the Chairman, members of the Executive Committee and Secretary of the Citizen Community Board shall be one year extendable through election for a similar term or terms by the general body.

99. Conduct of Business.—

(1) All business of the Citizen Community Board shall be disposed of in its meetings which shall be presided over by the Chairman.

(2) The Executive Committee of the Citizen Community Board shall hold its meetings at least once in every three months.

(3) The quorum of the meetings of the Executive Committee of the Citizen Community Board shall be forty per centum of the total membership of the Executive Committee.

(4) The quorum of the meetings of the general body of the Citizen Community Board shall be one fourth of its total membership.

(5) The Secretary of the Citizen Community Board shall be responsible for recording the proceedings of the meetings and maintaining financial and accounting record.

(6) The Secretary shall present the annual statement of accounts in the annual meeting of the Citizen Community Board and after its approval the statement shall be submitted to the registration authority within thirty days.

(7) The Citizen Community Board may, in its general meeting, remove any office bearer or member by a resolution on account of unsatisfactory performance or misconduct.

(8) The Chairman and Secretary shall be responsible for safe custody and management of property and assets of the Citizen Community Board.

(9) All funds of the Citizen Community Board shall be kept in a bank or post office and all transactions shall be made through cheques.

(10) The accounts of the Citizen Community Board shall be operated jointly by the Chairman and the Secretary.

(11) The accounts of the Citizen Community Board shall be maintained by the Secretary.

100. Raising of funds by Citizen Community Board.—

(1) Citizen Community Board may raise funds through voluntary contributions, gifts, donations, grants and endowments for its declared purposes without compromising the larger interest of the community.

(2) A Citizen Community Board may also receive project-based cost sharing support from any local government in accordance with the provisions of this Ordinance.

101. Citizen Community Board to be a non-profit organization.—

(1) The Citizen Community Board shall be a non-profit organization and its income and assets shall be used solely for the attainment Of its objectives, and no portion of the income shall be paid by way of dividend, profit or bonus to any of its members or contributors:

(2) In case of dissolution or de-registration of a Citizen Community Board, its assets shall, where a local government has contributed towards creation of any assets or funds, pass on to such local government and the assets shall continue to be used for community welfare by the local government through any of its agency or any other Citizen Community Board.

(3) The accounts of the Citizen Community Board shall be subject to audit as may be prescribed.

CHAPTER XI

MUSALIHATI JIRGA

102. Constitution of Musalihati Jarga—

(1) In each Union, a Musalihati, Jarga shall be constituted consisting of a panel of three Musleheen (Conciliators) one of whom shall be its Convener, to be selected by the lnsaf Committee of the Union Council, within thirty days after its election, from amongst the residents of the Union who are publicly known to be persons of integrity, good judgment and command respect:

Provided that the Union Nazim, Naib Union Nazim or the members of the Union Council may not be appointed as Musleheen (Conciliators).

(2) Any casual vacancy/in the panel of Musleheen (Conciliators) shall be filled by the Insaf Committee, as soon as practicable after occurrence thereof.

(3) The Musleheen (Conciliators) shall be selected for the term of the Union Council or until replaced earlier:

Provided that Musleheen (Conciliators) shall be eligible for re-selection.

(4) Where in the opinion of the lnsaf Committee, a Musleh (Conciliator) is accused of consistent partiality and malpractices in performance of his functions, the lnsaf Committee may, subject to notice to show cause, remove such Musleh (Conciliator) and select another Musleh (Conciliator) in his place.

103. Encouragement for amicable settlement of disputes.—

(1) The Union Nazim, members of the lnsaf Committee and Musleheen (Conciliators) shall use their good offices to achieve the amicable settlement of disputes amongst the people in the Union through mediation, conciliation and arbitration, whether or not any proceedings have been instituted in a court of law in respect of such disputes:

Provided that such settlement shall be carried out in such case where all parties to the dispute agree thereto and no fee shall be charged for such settlement.

Explanation.– For the purpose of this section, the expression ‘dispute’ relates to disputes amongst the individuals, whether of civil or criminal nature.

104. Courts may refer cases to Musalihati Jarga.—

(1) Any court of competent jurisdiction may, in a case where it deems appropriate, refer a matter to the Musalihati Jarga through the Union Nazim for settlement.

(2) The court making a reference to Musalihati Jarga for settlement of a dispute under subsection (1) may lay down the procedure for summoning the parties to the dispute, the terms of reference, the period during which settlement is to be made, the manner in which report of the settlement is to be submitted and such other matters as it may deem appropriate for resolution of the dispute:

Provided that no matter in the cases:

(i) falling within the purview of Hudood Laws, including Hudood Ordinances and Order;

(ii) by or against the Federal Government or a Provincial Government or any statuary body or a body which is controlled by any such Government, or in which any of such Government has a controlling share or interest; or

(iii) by or against persons under legal disabilities

shall be referred for sulh (conciliation).

(3) Where on a reference made by the court under subsection (1), the dispute is settled between the parties, the court may make such settlement as rule of the court.

(4) The Musalihati Jarga shall inform the court if the dispute is not settled within the time fixed by the court or, may ask for extension in time for settlement of the dispute.

105. Appointment of Musleh (Conciliator) for individual cases.—

Where in a dispute the parties request for appointment of a person other than the Musleheen (Conciliators) in the panel referred to in section 102 in a particular case as a Musleh (Conciliator), the Union Nazim may, in consultation with the lnsaf Committee, appoint such person as Musleh (Conciliator) for that case.

106. Procedure of settlement of disputes.—

(1) The Convener of the Musalihati Jarga selected under section 102 shall-

(a) convene meetings of the Musalihti Jarga as necessary and at such place or places in the Union as he considers appropriate; and

(b) conduct the proceedings in an informal manner as he considers with the object to bring an amicable settlement between the parties.

(2) No legal practitioners shall be permitted to take part in the proceedings on behalf of any party.

(3) The report of the Musleheen (Conciliators) shall be recorded in writing, copies thereof shall be provided to the parties attested by the Secretary of the Union, and the original shall be submitted to the Court for making the settlement as rule of the Court.

CHAPTER XII

LOCAL GOVERNMENT FINANCE

107. Establishment of Local Funds and District Provincial Account etc.—

(1) There shall be established-

(a) a local fund for every District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration;

(b) a District Provincial Account for every District Government;

(c) a Tehsil Provincial Account for every Tehsil Municipal Administration; and

(d) a Town Provincial Account for every Town Municipal Administration.

(2) On the commencement of this Ordinance, the following sums shall be placed at the credit of the Local Fund of a local government-

(a) the funds of a Metropolitan Corporation, Municipal Corporation, District Council, Municipal Committee, Town Committee and Union Council transferred to a local government as its successor under section 180;

(b) monies transferred by another local government under this Ordinance;

(c) grants made or monies received by a local government from Government or other authorities;

(d) the proceeds of taxes or charges levied by a local government under this Ordinance;

(e) rents and profits payable or accruing to a local government from immovable property vested in or managed by it;

(f) receipts accruing from trusts administered or managed by a local government;

(g) interest or profits from bank accounts, investments or commercial enterprises of a local government;

(h) gifts, grants or contributions to a local government by individuals or institutions;

(i) income accruing from markets regulated by a local government;

(j) fines paid with respect to offences under this Ordinance or by-laws or under any other law for the time being in force in which provision is made for the fines to be credited to the Local Funds established under this Ordinance, committed in the local area of a local government;

(k) refundable deposits received by a local government in respect of a local fund;

(l) proceeds from other sources of income which are placed at the disposal of a local government under directions of the Government; and

(m) any other sum received by or on behalf of a local government under this Ordinance or any other law for the time being in force.

(3) There shall be placed-

(a) to the credit of District Provincial Account of a District Government through authorization, funds budgeted for offices and functions decentralized to District Government from the Provincial Consolidated Fund, apportioned on the basis of revenue inflows other than the sums for the payment of establishment cost of the employees of the Government offices decentralized to District Government but including all Octroi and Zilla grant from the government; and

(b) to the credit of the Tehsil Provincial Account or the Town Provincial Account, monies transferred to the concerned Tehsil Municipal Administration or, as the case may be, Town Municipal Administration by the District Government from the District Provincial Account, except Octroi grants.

108. Custody of Local Funds and Provincial Accounts.—

(1) Monies credited to a Local Fund shall be kept in the Government treasury, a post office or a bank in such manner as shall be specified by the Government from time to time.

(2) Monies credited to a District Provincial Account shall be kept in the State Bank of Pakistan or treasury and shall be operated through the concerned District Accounts Office.

(3) Monies credited to a Tehsil Provincial Account or Town Provincial Account, shall be kept in the State Bank of Pakistan or treasury and shall be operated in the prescribed manner through the concerned District Accounts Office as notified by the Government.

109. Application of Local Funds and Provincial Accounts—

(1) The funds credited to a Local Fund or a Provincial Account shall be expended by a local government in accordance with the budget approved by the concerned Council.

(2) A District Government shall transfer from its District Provincial Account, by monthly installments, to the Local Fund of Tehsil Municipal Administrations or Town Municipal Administrations, as the case may be, monies equivalent to the total of the annual Octroi grants made to the Urban Local Councils within the local area of the Tehsil Municipal Administrations or Town Municipal Administrations as existed, immediately before the commencement of this Ordinance.

(3) A District Government may transfer to a Tehsil Municipal Administration or Town Municipal Administration monies additional to those referred to in subsection (2) as given in the approved budget of the District Government:

Provided that-

(a) such monies transferred from its District Provincial Account shall be transferred to the Tehsil Provincial Account or the Town Provincial Account, as the case may be;

(b) such monies transferred from the Local Fund of the District Government shall be transferred to the Local Fund of the Tehsil Municipal Administration or Town Municipal Administration.

(4) The District Government shall transfer, by monthly installments, from its District Provincial Account to the Local Fund of each Union Administration in its local area, an equivalent amount of the total Zilla Tax grant for that district to each Union Local Fund.

(5) A local government may subject to sub-section (3) and sub-section (12), transfer approved budgeted amounts to any local government, Village Council or Neighbourhood Council or Citizen Community Board, within its local area, for expenditure for carrying out a project, service or activity transferred to, or managed by, the recipient local government, Village Council, Neighbourhood Council or Citizen Community Board.

(6) No local government shall transfer monies to a higher level of local government except by way of repayment of debts.

(7) Monies credited to a District Provincial Account or a Tehsil Provincial Account or a Town Provincial Account shall not be used for payment of salaries.

(8) The monies transferred under sub-section (2) and (4) shall be charged on the District Provincial Account.

(9) Where a new local government is to take over during a financial year as a result of fresh elections, the outgoing local government shall not spend funds or make commitments for any expenditure, under any budget head, in excess of eight percent per mensum of the budgeted funds for the remainder of its term in office in that financial year.

(10) The application of a Local Fund shall as provided in the budget approved by a Council, shall be subject to budgetary constraints by ratio to be prescribed for development works and expenditure on establishment.

(11) Where expenditure from a Local Fund on development is less than fifty percent of the Local Fund, the development component shall increase, in equal successive increments over three years, from its current level so as to ensure a fifty percent development expenditure by the end of the said three years.

(12) The development budget shall be prioritized in accordance with the bottom-up planning system as laid down in section 119:

Provided that-

(a) not less than fifty percent of the development budget shall be set apart for utilization in accordance with the provisions of section 119; and

(b) the amount referred to in clause (a) which remains unspent shall be credited under the same head in the following year's budget in addition to the fresh allocation under the said clause for that year.

(13) In every budget a provision shall be made for payment of performance incentive bonuses.

110. Budget of Zilla Council.—

The Zilla Council budget will be charged on the District Local Fund.

111. Budget preparation.—

(1) The budget for each District Government, Tehsil Municipal Administration or Town Municipal Administration shall contain-

(a) amounts credited to the District Provincial Account, Tehsil Provincial Account or Town Provincial Account, as the case may be; and

(b) amounts available in the respective Local Funds.

(2) To facilitate the budget preparation by the District Government, Tehsil Municipal Administration and Town Municipal Administration, the Government shall, before the beginning of each financial year, notify the provisional amounts which may be credited to the District Provincial Accounts or Tehsil and Town Provincial Accounts other than salaries specified in sub-section (3) of section 107.

(3) The Government shall provide details of the amounts in the prescribed chart of classifications to be credited to the District Provincial Account, Tehsil Provincial Account and Town Provincial Account.

(4) The District Government and Tehsil Municipal Administration or Town Municipal Administration may, re-appropriate expenditures inter and intra departmentally as may be prescribed:

Provided that every re-appropriation shall be approved by the respective Council:

Provided further that the District Government, Tehsil Municipal Administration or Town Municipal Administration shall forward a copy of every re-appropriation to the Finance Department, Accountant General and respective District Accounts Office.

(5) Upon notification of the budget estimates for the year by the Government for the District Provincial Accounts, the District Government shall notify the estimates to be transferred to-

(a) the Tehsil Municipal Administration or Town Municipal Administration for the Tehsil Local Fund or, as the case may be, Town Local Fund; and

(b) the Union Administration for the Union Local Fund

(6) Before the beginning of the financial year, every Zilla Nazim, Tehsil Nazim or Town Nazim shall present a statement of re-appropriations of the respective Provincial Accounts to the respective Councils, for approval of the expenditure:

Provided that such statement shall be prepared in accordance with the budget format showing the existing and re-appropriated amounts:

Provided further that any re-appropriation during the year shall be approved by the respective Council.

(7) Before the commencement of each financial year, the District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration shall, for respective Local Funds, prepare in the prescribed manner, a budget for that year, in conformity with the provisions of section 119.

112. Approval of budgets.-

(1) Before the commencement of the next financial year, every Nazim shall, after the laying of the budget by the Provincial Government, within the prescribed period, present the budget for approval by the respective Council before the beginning of such financial year:

Provided that the charged expenditure may be discussed but shall not be voted upon by the Councils.

(2) When a local government assumes office for the first time, it may within ten weeks present to the concerned Council, a revised budget for remaining part of the financial year for approval.

(3) The budget of a District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration shall be approved by simple majority of the total membership of the respective Councils.

(4) No other business shall be taken up by a Council during the budget session.

(5) In case a budget is not approved by a Council before the commencement of the financial year to which it relates, the concerned local government shall spend money under various heads on pro rata basis in accordance with the budgetary provisions of the preceding financial year for a period not exceeding fourteen days.

(6) At any time before the expiry of the financial year to which a budget relates, a revised budget for the year may, if necessary, be prepared by the District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration and approved by the respective Council.

(7) A budget shall not be approved if-

(a) the sums required to meet expenditures exceed the estimated receipts; and

(b) the constraints specified in sub-sections (10) and (11) of section 109, and section 119 have not been complied with.

113. Honoraria and allowances.—

The District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration shall make budgetary provisions for honoraria and allowances of the Nazimeen, and Naib Nazimeen and allowances for members of the concerned Council.

114. Accounts.—

(1) The accounts of the receipts and expenditure of District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration shall be kept in such manner and on such forms and registers as may be prescribed:

Provided that until a new procedure for keeping the accounts is provided-

(a) the District Accounts Office shall maintain the accounts of each District Provincial Account;

(b) the Accounts Officer notified for maintaining the Tehsil Provincial Accounts or Town Provincial Account shall keep the accounts of the Tehsil Provincial Accounts or, as the case may be, Town Provincial Accounts; and

(c) the accounts of Local Funds shall be maintained as may be prescribed.

(2) The District Accounts Office shall provide information, necessary to compile the Provincial Consolidated Accounts.

(3) A statement of the accounts shall include such statement for the respective District Provincial Account, Tehsil Provincial Account and Town Provincial Account, and such statement from the respective Local Fund accounts for each Local Fund and a copy thereof and other statements as may be prescribed, shall be placed at a conspicuous place for public information.

(4) The statement referred to in sub-section (3) shall be affixed at a conspicuous place for information of the public.

(5) The respective Accounts Committees of the Councils shall hold public hearings in which objections for review of statement of accounts referred to in subsection (3).

(6) The respective Council may, on presentation of statement of accounts, discuss such statement and forward the same to the Director of Local Fund Audit and Director-General Audit of the Province alongwith its observations and recommendations.

115. Audit.—

(1) The Director Local Fund Audit shall conduct regular annual audit of the Local Funds and the Director-General Audit of the Province shall undertake audit of the District, Tehsil and Town Provincial Accounts during a financial year.

(2) Upon request of a Nazim, the Provincial Director, Local Fund Audit, shall cause to be conducted an audit of the respective Local Fund.

(3) Upon request of a Zilla Nazim, Tehsil Nazim or Town Nazim the Director-General Audit of the Province shall cause special audit of District Provincial Account, Tehsil Provincial Account or, as the case may be, Town Provincial Account and shall forward his report to the concerned Nazim and Council.

(4) The report of the Local Fund Audit shall be placed before the concerned Nazimeen and the Accounts Committee of the respective Councils for necessary action.

(5) The Provincial. Director-General Audit shall conduct the external audit of each District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration, in the prescribed manner, once in a financial year and place the report before the Public Accounts Committee of the Provincial Assembly and the Accounts Committee of the respective Council.

(6) The Local Government Commission of a Province may cause for a special audit of the accounts of a local government as provided for in section 132.

(7) The Provincial Director-General Audit or an officer appointed by him, or Director, Local Fund Audit for conducting an audit of a local government and shall have access to all the books and documents pertaining to the accounts and may also examine any member, servant or premises of the local government concerned.

116. Taxes to be levied.—

(1) A Zilla Council, Tehsil Council, Town Council or Union Council may levy taxes, cess, fees, rates, rents, tolls, charges, surcharges and levies specified in the Second Schedule by notification in the Official Gazette.

(2) No tax shall be levied without previous publication of the tax proposal and after inviting public objections.

(3) The Council may, levying a tax, increase, reduce, suspend, abolish or exempt the levy of any tax for such period as may be specified.

117. Rating areas and property tax.—

(1) On commencement of this Ordinance, all the areas of every tehsil and town shall be rating areas within the meaning of the North-West Frontier Province Urban Immovable Property Tax Act, 1958 (W.P. Act V of 1958).

(2) The Tehsil Council and Town Council shall, subject to the approval of the Zilla Council, determine the rate of property tax in an area within the tehsil or, as the case may be, town, in consultation with the Government:

Provided that in the areas within a tehsil or town where rate has not been determined, the rate shall remain as zero.

(3) Unless varied under sub-section (2), the existing rates in the areas within a tehsil and town shall remain in force.

Explanation.—For the purpose of this section the 'rate' shall mean the tax leviable under the North-West Frontier Province Urban Immovable Property Tax Act 1958 (W.P. Act V of 1958).

118. Collection of taxes.—

(1) All taxes, levied under this Ordinance shall be assessed, regulated and collected in the prescribed manner.

(2) Failure to pay any tax and other money claimable under this Ordinance shall be an offence and the arrears shall be recovered as arrears of land revenue.

119. Bottom up planning and the ownership incentive system.-.—

(1) The respective local government shall prescribe the classification of schemes to be under taken exclusively under the provisions of this section.

(2) The Citizen Community Boards may receive from a local government matching grants upto eighty per cent of the budgeted amounts of an approved development scheme in the manner prescribed:

Provided that a schemes shall be considered an approved scheme if-

(i) the prescribed departmental procedure for estimating the cost of the scheme has been followed;

(ii) the Citizen Community Board has deposited its share of the cost of the development scheme in the account prescribed for the purpose; and

(iii) the complete departmental estimates and the proof of deposit of the Citizen Community Board's contribution are attached.

(3) The matching grants referred to in sub-section (2) shall be spent from the reserved fifty per cent of the development budget as provided in section 119.

(4) A cut off date before the presentation of the budget, shall be announced by each local government for registration of all schemes proposed by Citizen Community Boards.

(5) The authorized officer of the respective level of local government shall draw up a statement specifying the schemes in sub-section (3) by classification including the total amount of contributions for a particular classification of schemes.

(6) A second statement shall determine contribution amounts for a particular classification of schemes as a ratio of the total contributions for all schemes registered with a particular local government for that year and the statement shall be used to determine amounts of allocations for a classification of schemes from the budget reserved for the purpose.

(7) A third statement shall be drawn up which shall identify the number of schemes registered in a particular classification, beginning with the scheme containing the highest contribution by the Citizens Community Board in a classification until all the schemes in the classification are selected or the funds allocated for that particular classification in the amount determined in sub-section (6) are exhausted

(8) The statement referred to in sub-section (7) shall be approved to the budget of the District Government, Tehsil Municipal Administration, Town Municipal Administration or Union Administration, as the case may be, for approval as part of the budget by the respective Council.

(9) The schemes approved by the respective Councils shall be carried out as prescribed by Government.

(10) The District Accounts Officer of the concerned district shall release funds from the District and Tehsil or Town Provincial Accounts according to the schedule of expenditure as passed by the respective Council under sub-section (8), subject to subsection (12) of section 109.

120. Local Governments not to incur debts.—

(1) No local government shall incur any debt except in the manner provided in this Ordinance.

(2) No moneys of the local government shall be invested in securities other than those floated by the Federal Government or Provincial Government.

CHAPTER XIII

LOCAL GOVERNMENT PROPERTY

121. Ownership of immovable property.—

(1) Subject to any reservations made, or any conditions imposed by the Government, the property specified hereunder shall vest in the respective local government it is-

(a) vested in a local government through succession as provided in section 180;

(b) transferred to the local government by the Government or any other authority, organization or an individual; and

(c) constructed or acquired by a local government with its title.

(2) The properties of the Government in possession of the local councils established under North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979), shall pass on to their successors as provided in section 180 till varied by the Government.

(3) The successor local governments shall, subject to policy of the Government or contractual obligations, make bye-laws for the use, development and management of the local government properties.

122. Transfer of Property by the Government-

Subject to such conditions as may be prescribed, the Government may, on its own accord or on a request by a District Government, transfer the management of 'nazul land', 'auqaf land' or any other Government or public property to it for administration as a trustee.

123. Stock taking by the Nazim.—

(1) Every Zilla Nazim, Tehsil Nazim, Town Nazim and Union Nazim shall, on assumption of his office and thereafter, once in every year on a date fixed by him, take the physical stock of movable and immovable properties of the concerned local government and submit a report to the concerned Council.

(2) The report referred to in sub-section (1) shall contain-

(a) particulars of the properties held during the preceding year;

(b) total value of the property, annual return therefrom and change in its value, if any;

(c) particulars of unserviceable articles;

(d) particulars of losses, if any; and

(e) proposals for utilization, development and improvement during the following year.

124. Use and disposal of properties of local governments.—

(1) Properties of local governments shall be used only for public purposes.

(2) Immovable properties of local governments shall, subject to section 125, not be sold or permanently alienated:

Provided that such properties may be given on lease through competitive bidding by public auction for periods not exceeding five years at a time.

(3) The movable property of a local government which is required to be disposed of, shall be sold through competitive bidding by public auction.

(4) All articles declared unserviceable shall be disposed of through competitive bidding by public auction.

125. Acquisition of immovable property.—

Whenever any local government considers it necessary or expedient it may acquire or purchase any immovable property for public purposes:

Provided that in case of purchase of property, the agreement of purchase shall be in writing:

Provided further that until the development authorities are merged with any other department or authority of a local government, the development authority decentralized to District Government, Tehsil Municipal Administration and Town Municipal Administration may acquire land for development purposes and may sell or dispose of thereafter in accordance with the existing laws and the rules made thereunder.

126. Loss of property of local government.—

In case of any loss of property the local government, the responsibility for such loss shall be fixed by the concerned local government and the amount of the loss shall be recovered for the defaulting person and a report to this effect shall forthwith be submitted to the concerned council in the meeting next following.

CHAPTER XIV

GOVERNMENT - LOCAL GOVERNMENTS RELATIONS

127. Relations of Government with the District Government—

(1) The District Government shall carry out its decentralized functions in accordance with the provisions of this Ordinance and the rules made thereunder.

(2) The District Government shall collect such Provincial tax or taxes within its local area as the Government may direct, excluding those being collected by the Government through its own agencies and the District Government shall after the collection of such tax or taxes, deposit the same in the relevant Government account.

(3) The Government may provide guidelines and render advice to the District Government through the concerned Zilla Nazim for achieving the ends of Government policy and for promoting economic, social and environmental security of the Province.

128. Directions by Chief Executive of the Province.—

(1) The Chief Executive of the Province may, by himself or through any officer specifically authorized by him, issue directions to the District Government through the concerned Zilla Nazim for the purpose of, inter alia-

(a) preventing any grave threat to public peace and order;

(b) handling emergencies and providing relief therefore, and

(c) protection and security of the people and the security and integrity of the State or any part thereof.

(2) Where the situation demands immediate action and the Zilla Nazim fails to comply with the directions given to him under sub-section (1), the Chief Executive of the Province may require the Chief Secretary to direct the Inspector General Police and the District Coordination Officer concerned to take such actions as the situation may necessitate.

129. Suspension of Zilla Nazim.—

(1) Where in the opinion of the Chief Executive of the Province the Zilla Nazim is deliberately avoiding or failing to comply with the directions given by the Chief Executive of the Province, the Chief Executive of the Province may suspend the Zilla Nazim.

(2) The suspension of the Zilla Nazim under sub-section (1), shall be subject to ratification by the Provincial Assembly within thirty days.

(3) If the Provincial Assembly by a simple majority of its total membership ratifies the suspension of the Zilla Nazim, he shall stand removed from his office:

Provided that the Zilla Nazim shall be provided with an opportunity of being heard by the Provincial Assembly.

(4) If the Provincial Assembly does not ratify the suspension of the Zilla Nazim, the orders of the Chief Executive of the Province shall cease to have effect.

(5) During the period of suspension of a Zilla Nazim, the Naib Zilla Nazim shall act as Zilla Nazim in accordance with the provisions of section 22.

130. Entrustment of certain functions to District Government.—

(1) The Government may require the District Government to perform any specific task which requires funds beyond its budgetary provisions, the Government shall provide necessary resources.

(2) The District Government may, with the consent of the Government, entrust any of its function to the Government.

(3) The Government may, with the agreement of the District Government, decentralize any of its office other than the offices decentralized to the District Government under section 15 or entrust any of its functions to the District Government.

(4) The Government shall provide technical and administrative support and fiscal resources as may be determined by the Government.

131. Provincial Local Government Commission.—

(1) The Government shall appoint a Provincial Local Government Commission which shall consist of-

(a) the Minister for Local Government as Chairman;

(b) two members from the civil society, one each nominated by the leader of the House and leader of the Opposition of the Provincial Assembly;

(c) two eminently qualified and experienced technocrat members selected by the Government; and

(d) Secretary, Local Government and Rural Development Department, shall be ex-officio member and secretary of the Commission:

Provided that the members mentioned in clauses (b) and (c) shall be persons of integrity and good track record of public service:

Provided further that in case of equality of vote, the Chairman shall have a casting vote.

(2) The Provincial Local Government Commission may, for the performance of its functions, co-opt any official of the Government for any specific assignment.

(3) The tenure of the members of the Provincial Local Government Commission, other than Secretary, Local Government Department, shall be four years.

(4) The Local Government Department shall provide secretarial support to the Local Government Commission and the Department shall render assistance in the functioning of the Commission.

(5) No act or proceedings of the Provincial Local Government Commission shall be invalid by reason or existence of any vacancy in, or defect in, the constitution of the Commission.

(6) The Government shall provide funds for the Provincial Local Government Commission in the annual budget.

132. Functions of the Provincial Local Government Commission.—

The functions of the Provincial Local Government Commission shall be as, otherwise, provided in this Ordinance and, in particular, it shall-

(a) conduct annual and special inspections of the local governments and submit reports to the Chief Executive of the Province;

(b) conduct, on its own initiative or, whenever, so directed by the Chief Executive of the Province, an inquiry by itself or through District Government into any matter concerning a local government;

(c) cause, on its own initiative or, whenever, so directed by the Chief Executive of the Province, a special audit by itself or direct a District Government to arrange a special audit, of any local governmet;

(d) resolve disputes between any Department of the Government and District Government or between two District Governments:

Provided that if the Local Government Commission fails to settle the dispute, the aggrieved party may move the Chief Executive of the Province for resolution thereof;

(e) enquire into the matters referred to it by the District Coordination Officer under the provisions of sub-section (3) of section 28 and by the Government under sub-section (4) of section 30 and give its decision thereon or, as the case may be, make report to the competent authority; and

(f) submit to the Chief Executive of the Province an annual report on the over-all performance of the district and tehsil level local governments.

133. Responsibility of the Provincial Local Government Commission.—

The Provincial Local Government Commission shall be responsible to the Chief Executive of the Province.

134. Zilla Mohtasib.—

(1) Without prejudice to the provisions as contained in the North-West Frontier Province enactment regarding Provincial Mohtasib in every district there shall be a Zilla Mohtasib.

(2) The Zilla Mohtasib shall redress citizens complain against maladministration of the holders of public offices in the local government within the district.

Explanation.—For the purpose of this section, the expression 'holders of public office' includes all functionaries of the District Government, Tehsil Municipal Administration, Union Administration, Nazimeen, Naib Nazimeen District Police Officers and officials, members of the Councils and all officials of the Council.

(3) All holders of public offices shall aid and assist the Zilla Mohtasib in exercise of his functions.

(4) The Zilla Mohtasib shall hold office for a term of four years and shall be eligible for reappointment for a similar term.

(5) The Zilla Mohtasib may resign his office by writing under his hand addressed to the Zilla Council through Naib Zilla Nazim.

(6) The manner of selection, appointment, removal, terms and conditions of service, functions, and powers of the Zilla Mohtasib and procedures relating thereto shall be as given in the Third Schedule.

CHAPTER XV

INTERNAL CONTROLS

135. Inspection and supervision.—

(1) The Zilla Nazim may designate inspecting officers to objectively examine the performance of a Tehsil Municipal Administration Town Municipal Administration, and Union Administration in relation to service delivery as may be prescribed.

(2) The inspection reports shall be prepared on the specified format and forwarded to the Zilla Nazim within the time fixed by him.

(3) Zilla Nazim shall advise the concerned Nazim to take appropriate action on the report and inform the respective Council about the action taken thereon within thirty days.

(4) If any action is required to be taken against the concerned Nazim, the Zilla Nazim may initiate proceedings for recall against such Nazim as provided in sections 62 and 84.

136. Enquiries.—

(1) The Zilla Nazim may require any Tehsil Nazim, Town Nazim, Union Nazim in the district to conduct an enquiry into any matter concerning respective local government and submit the report alongwith the proceedings of the enquiry to the Zilla Nazim.

(2) On the basis of the findings of the enquiry, the Zilla Nazim shall advise the concerned Nazim to take appropriate action on the report within thirty days and place it before the respective Council for information.

137. Transparency.—

(1) Every citizen shall have the right to information about any office of the District Government, Tehsil Municipal Administration and Union Administration.

(2) Every office shall provide requisite information, if not restricted under any law for the time being in force, on the prescribed forms and on payment of such fee as may be prescribed.

(3) Information about the staffing and the performance of the office of a local government during the preceding month shall, as far as possible, be displayed at a prominent place within the premises of the office for access by the citizens.

138. Monitoring by committees.—

(1) The Monitoring Committees elected by the Zilla Council shall be responsible for monitoring the functioning of the offices of the District Government and preparing quarterly evaluation reports on the prescribed format.

(2) The Monitoring Committees of Tehsil Council and Town Council shall be responsible for monitoring the functioning of the offices of the Tehsil Municipal Administration or Town Municipal Administration and preparing quarterly evaluation reports on the prescribed format.

(3) The Monitoring Committees of Union Council shall be responsible for monitoring the functioning of all offices of the District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration for delivery of services within its area and preparing quarterly evaluation reports on the prescribed format.

(4) The reports referred to in sub-sections (1) to (3) shall, in particular, contain evaluation of the performance of each office in relation to -

(a) achievement of its targets;

(b) responsiveness to citizen's difficulties;

(c) efficiency in the delivery of services; and

(d) transparent functioning.

(5) The Monitoring Committees shall submit their quarterly reports to the respective Councils which may through a resolution require the respective Nazim to take necessary action.

(6) The Monitoring Committees shalt function without intruding and interfering in the day to day working of the offices of the local governments and shall not cause any harassment to the functionaries thereof, nor shall assume command and control of such offices.

(7) Notwithstanding any punishment provided in any law for the time being in force, any member of the Monitoring Committee violating the provisions of sub-sections (5) and sub-section (6) shall be removed from the Monitoring Committee by the respective Council.

(8) Any functionary being aggrieved of any misbehaviour, undue interference, harassment or misconduct by a member or members of a Monitoring Committee may report to the Code of Conduct Committee of the concerned Council and may invoke disqualification proceedings against such member or members.

(9) The concerned Monitoring Committee may recommend to the competent authority the payment of bonuses or performance pay to the functionaries of the local governments in recognition of their efficient performance, subject to availability of funds for this purpose.

(10) The Monitoring Committee may identify inefficiency or corruption of functionaries of local governments and report to the concerned Nazim for appropriate action and remedial measures and the Nazim shall inform the concerned Council within thirty days of the action taken by him.

139. Code of Conduct Committees (Code of Conduct Committees) of the Councils.—

(1) There shall be an Code of Conduct Committee in each Council consisting of such number of members as the Council may determine.

(2) The Code of Conduct Committee shall ensure adherence of all members of the Councils, Nazimeen and Naib Nazimeen to the prescribed code of ethics for promoting their honest, responsible and efficient functioning and behaviour;

(3) The Code of Conduct Committee shall monitor the conduct of the elected representatives and report to the concerned Council the incidents of inefficiency and corruption.

(4) On receipt of a report under sub-section (3), a Council may, by resolution of the majority of its members, invoke proceedings of disqualification against such member.

140. District Mushavirat Committee.—

(1) There shall be constituted a Zilla Mushavirat Committee consisting of the Zilla Nazim, Naib Zilla Nazim and all Tehsil Nazimeen and Town Nazimeen in the district.

(2) The Zilla Nazim shall be the Chairman of the Zilla Mushavirat Committee and the District Co-ordination Officer shall act as its Secretary.

(3) The Zilla Mushavirat Committee shall meet at least once in every three months or as and when called into meeting by the Zilla Nazim or on the request of any two members of the Committee.

(4) The functions of the Zilla Mushavirat Committee shall be-

(a) to crystallise vision for integrated development of the district;

(b) to prioritise and co-ordinate inter-tehsil development plans:

(c) to resolve intra-district disputes;

(d) to muster resources for crisis management: and

(e) to set directions for realizing economic potential of the district.

CHAPTER XVI

PENALTIES AND LEGAL PROCEEDINGS

141. Offences.—

An act or omission specified in the Fourth Schedule shall be an offence liable to punishment by way of imprisonment or penalty under this Ordinance.

142. Notices and authorisation.—

Each Nazim shall authorise an officer or officers under his administrative control-

(a) to issue legal notices on behalf of the respective Administrative for violation or commission of any offence under this Ordinance, rules or bye-laws;

(b) to take such measures and actions for compliance of directions contained in the notices issued restraining violations or commission of any offence under this Ordinance, rules or bye-laws; and

(c) to initiate legal proceedings, defend any legal proceedings initiated against the local government, attend court proceedings and represent the concerned local government.

143. Cognizance of offences.—

(1) No Court shall take cognizance of any offence under this Ordinance except on a complaint in writing received from the Nazim, or an officer or a person generally or specially authorised by the local government or on a complaint made by an affected citizen if no action is taken on the complaint made by him under sub-section (2).

(2) The Nazim or an officer or any other person generally or specially authorised by him may, on his own motion, or on the complaint of any affected citizen, institute any suit or initiate prosecution or any other legal action against a person committing an offence under this Ordinance.

144. Summary disposal of cases.—

Except the offences specified in Part-I of the Fourth Schedule, a court taking cognisance of the offences punishable under this Ordinance shall try such offences in a summary manner in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

145. Punishments and Penalties.—

(1) Whoever commits any of the offences specified in Part-I of the Fourth Schedule shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to fifteen thousand rupees, or with both and,

if the offence is continued, with a further fine which may extend to one thousand rupees for every day after the date of the first commission during which period the offender has persisted in the offence.

(2) Whoever commits any of the offence specified in Part-II of the Fourth Schedule shall be punishable with imprisonment which may extend to six months and with fine which may extend to five thousand rupees and, if the offence is continued, with a further fine which may extend to two hundred rupees for every day after the date of first commission during which period the offender has persisted in the offence.

(3) Whoever commits any of the offence specified in Part-Ill of the Fourth Schedule shall be punishable with imprisonment which may extend to one month, or with fine which may extend up to five thousand rupees, or with both and, if the offence is continued, with a further fine which may extend up to one hundred rupees for every day after the date of first commission during which period the offender has persisted in the offence.

146. Compounding of offences.—

Subject to provision of section 345 of the Code of Criminal Procedure, 1898 (Act V of 1898), except as otherwise provided, the Nazim or an officer or any other person generally or specially authorised by the local government in this behalf, may, at any time or after the commission of the offence but before the conclusion of proceedings in the court, compound any offence under this Ordinance.

147. Rights of Citizen not affected.—

Nothing contained in section 143 shall restrict or limit the rights of the citizens or residents of a local area to bring any suit or other legal proceedings against any local government, its officers or other functionaries violating his rights available to him under any law for the time being in force.

CHAPTER XVII

LOCAL GOVERNMENT ELECTIONS

148. Franchise.—

(1) Members of a Union Council including Union Nazim and Naib Union Nazim shall be elected through elections based on adult franchise and on the basis of separate electorate.

(2) The Electoral College for the election of Zilla Nazim and Naib Zilla Nazim, and reserved seats of women, peasants and workers, and minorities in the Zilla Council shall be all the members of Union Councils in the district, including Union Nazimeen and Naib Union Nazimeen.

(3) The electoral college for the election of a Tehsil Nazim, Town Nazim, Tehsil Naib Nazim, Town Naib Nazim and reserved seats of women, peasants and workers, and minorities in the Tehsil Council and Town Council shall be all the members of the all the notified returned candidates for the seats of Union Councils in the elections held under this Ordinance. Union Councils in the Tehsil or, as the case may be, town, including Union Nazimeen and Naib Union Nazimeen:

Provided that for the election for reserved seats for women in Zilla Council proportionately divided among tehsils or towns shall be all members of the Union Councils in a tehsil or, as the case may be, town.

Explanation.— For the purpose of this section, all members of Union Councils notified as returned candidates in the elections held under this Ordinance shall be deemed to be members of the electoral college.

149. Manifesto.—

(1) The candidates for the seat of a Zilla Nazim, Tehsil Nazim and Town Nazim shall, before the election to such office, make public a manifesto containing the policies and programmes they propose to pursue and implement, if elected.

(2) The manifesto prepared under sub-section (1) shall be attached to the nomination papers.

150. Authority for local government elections.—

(1) The local government elections under this Ordinance shall be conducted by the Chief Election Commissioner in pursuance of the Local Government Elections Order, 2000 (Order No.8 of 2000).

(2) The Chief Election Commissioner may require any person or authority to perform such functions or, render such assistance for the purpose of elections, including preparation of electoral rolls under this Ordinance as deemed fit.

(3) The Chief Election Commissioner may authorise any of his officers to exercise any of his powers and to perform any of his functions under this Ordinance.

(4) The elections to the local governments shall be held every three year so as to enable their installation on the 14th day of August of the year in which elections are held.

151. Delimitation of electoral wards.—

(1) The electoral ward for the election of a Zilla Nazim and Naib Zilla Nazim shall be a district; for a Tehsil Nazim and Naib Tehsil Nazim, a tehsil; for a Town Nazim and Naib Town Nazim, a town; and for a Union Nazim and Naib Union Nazim, a Union.

(2) The Union shall be a multi-member ward for election of members of a Union Council.

152. Qualifications for candidates and elected members.—

(1) A person shall qualify to be elected or to hold an elective office or membership of a local government, if he-

(a) is a citizen of Pakistan;

(b) is at least twenty five years of age;

(c) is enrolled as a voter in the electoral rolls of the relevant ward;

(d) is of good character and is not commonly known as one who violates Islamic injunctions; has adequate knowledge of Islamic teachings and practices, obligatory duties prescribed by Islam as well as abstains from major sins; provided that these qualifications shall not apply to a person who is a non-Muslim, but such a person shall have a good reputation;

(e) has academic qualifications of not less than matriculation or Secondary School Certificate or equivalent from a recognized institution, for contesting the election of a Nazim or a Naib Nazim;

(f) has not been declared by a competent court to be of unsound mind;

(g) is not in the service of the Federal, a Provincial or a local government or, any statutory body or a body which is controlled by any such Government or, in

which any of such Government has a controlling share or interest, except the holders of elected public office and part-time officials remunerated either by salary or fee; provided that in case of a person who has resigned or retired from such service, a period of not less than six months has elapsed since his retirement;

(h) has not been dismissed, removed or compulsorily retired from public service on the grounds of moral turpitude;

(i) does not possess assets which are inconsistent with his declaration of assets or justifiable means, whether held in his own name or of the dependents or any other person or corporate body in whose name assets are held in trust or under any other formal or informal arrangement whereby the de-facto control of such assets including their sale, transfer or pecuniary interest, is retained by him;

(j) has not been adjudged a willful defaulter of any tax or other financial dues owed to the federal, a provincial, or any local government or any financial institution, including utility bills outstanding for six months or more;

(k) has not been convicted by a court of competent jurisdiction on a charge of corrupt practice involving moral turpitude or misuse of power or authority under any law for the time being in force;

(l) has not been sentenced to imprisonment for more than three months for an offence under any law and, a period of not less than five years has elapsed since his release; and in case of a member or a holder of a public office, has not been sentenced to imprisonment;

(m) has not failed to file the required return of election expenses or is not convicted for exceeding the limits of election expenses prescribed under the electoral laws;

(n) has not been declared an un-discharged insolvent by any court;

(o) does not engage in any transaction involving pecuniary interest with the local government of which he is a member;

(p) does not absent himself without reasonable cause from three consecutive meetings of the council of which he is a member; provided that a member shall not be disqualified if the absence was necessitated by a national emergency or force majeure;

(q) does not fail to attend a training course as required under section 189 of this Ordinance;

(r) has not been and is not involved, in activities prejudicial to the ideology, interest, security, unity, solidarity, peace and integrity of Pakistan and its people, and the good order and harmony of society; and

(s) has not used, directly or indirectly, for his election the platform, flag, symbol, affiliation and financial or material resources or support of a political, religious, ethnic or sectarian party, formation or organization.

(2) Whoever-

(a) is found by the Chief Election Commissioner to have contravened the provisions of sub-section (1) shall stand disqualified from being a candidate for election to any office of the local governments for a period of four years; or

(b) having been elected as a member of a local government or is a holder of an elective office of the local government is found by the Chief Election

Commissioner to have contravened the provisions of sub-section (1) shall cease forthwith to be an elected member or to hold the office of such member and stand disqualified from being a candidate for election to a local government for a period of four years.

153. Non-party elections.—

Local government elections shall be held on non-party basis.

154. Joint candidacy and elections.—

(1) A Zilla Nazim and Naib Zilla Nazim, a Tehsil Nazim and Naib Tehsil Nazim, a Town Nazim and Naib Town Nazim and a Union Nazim and Naib Union Nazim shall contest election in their respective electoral wards as joint candidates:

Provided that, on occurrence of a casual vacancy, a candidate for the office of a Nazim or Naib Nazim shall contest the election for such office in his individual capacity.

(2) Union Nazim and Naib Union Nazim securing the highest number of votes as joint candidates shall be declared elected.

(3) The Zilla Nazim and Naib Zilla Nazim, a Tehsil Nazim and Naib Tehsil Nazim, and a Town Nazim and Naib Town Nazim securing as joint candidates more than fifty percent of votes shall be declared elected.

(4) In case a Zilla Nazim or Naib Zilla Nazim, or a Tehsil Nazim and Naib Tehsil Nazirn, or a Town Nazim and Naib Town Nazim do not secure more than fifty percent of the total votes of the members of the Union Councils in the respective district tehsil or, as the case may be, town there shall be held a fresh election within one week of the first election for which the joint candidates securing the highest and the second highest number votes in the first election shall be contestants, and the joint candidate securing the highest number of votes in the fresh elections shall be declared elected.

155. Allocation of reserved seats.—

(1) Reserved seats for women in the Zilla Council shall be divided among the tehsils and towns in the City District in proportion to the number of Unions in such tehsils or, as the case may be, towns.

(2) A tehsil and town in the City District shall be a multi-member ward reserved seats for women in the Zilla Council, Tehsil Council and Town Council.

(3) A district shall be a multi-member ward for the reserved seats for peasants and workers, and minority population in the Zilla Council.

156. Election to vacant seats.—

(1) If a seat of a member remains unfilled or becomes vacant during the term of office of a Council, a new member shall be elected through by-election and the member elected in by-election shall hold office for the remaining portion of the term of the Council.

(2) If any seat reserved for women remains vacant, the same shall be filled through by-elections and the elected women member shall hold office for the remaining portion of the term of the Council.

(3) All by-elections shall be held once a year on a date or dates fixed by the Chief Election Commissioner.

(4) A vacancy of Union Nazim or Naib Union Nazim shall be filler through by-election within sixty days of the occurrence of vacancy.

(5) A vacancy of Zilla Nazim or Naib Zilla Nazim, Tehsil Nazim or Naib Tehsil Nazim, Town Nazim or Naib Town Nazim shall be filled through by-election within thirty days of the occurrence of vacancy.

(6) When the office of a Zilla Nazim or Naib Zilla Nazim, Tehsil Nazim or Naib Tehsil Nazim, Town Nazim or Naib Town Nazim, Union Nazim or Naib Union Nazim remains unfilled or falls vacant, the members of the concerned Council shall by a majority vote elect an officiating Nazim or Naib Nazim as the case may be from amongst its members and the person so elected shall continue to retain his office as a member also:

Provided that the officiating Nazim or Naib Nazim shall not be a candidate in the by-election held for election of the Nazim or Naib Nazim respectively.

(7) When the office of a Union Nazim, falls vacant, the members of the concerned Council shall by a majority vote elect an officiating Union Nazim from amongst its members and the person so elected shall continue to retain his office as a member also:

Provided that the officiating Nazim shall not be a candidate in the by-election held for election of the Union Nazim.

157. Electoral rolls.—

(1) A person shall be entitled to be enrolled as a voter if he-

(a) is a citizen of Pakistan;

(b) is not less than eighteen years of age on the first day of January of the year in which an election is to be held; and

(c) fulfills such other conditions as the Chief Election Commissioner may specify.

(2) The electoral rolls for the local government elections shall be prepared by the Chief Election Commissioner in the manner he may deem appropriate and the electoral rolls shall not be invalid by reason of any erroneous description therein of any person listed or of an omission of the name of any person entitled to be enrolled or of inclusion of the name of any person not so entitled.

158. Bar against dual membership.—

The holder of an elective office may contest election for any other political office; provided that he resigns before filing his nomination papers for election to the new office.

Explanation.— For the purpose of this section, a holder of an "elective office" means a person who has taken oath in accordance with the rules made under this Ordinance.

159. Term of office.—

(1) The term of office of a local government shall be three years commencing on the 14th day of August of the year in which the elections are held:

Provided that a local government, notwithstanding the expiry of its term of office shall continue to hold office until the successor local government assumes office.

(2) The Government shall notify the assumption of officers by Nazimeen, Naib Nazimeen and members of the local governments.

(3) A Zilla Nazim, Naib Zilla Nazim, Tehsil Nazim, Naib Tehsil Nazim, Town Nazim, Naib Town Nazim, Union Nazim or a Naib Union Nazim shall not hold the same office for more than two terms.

160. Oath of office.—

(1) The elected Nazimeen, Naib Nazimeen and members shall take oath before assuming the charge of their respective offices.

(2) A Zilla Nazim, Naib Zilla Nazim and the members of Zilla Council shall be administered oath of office by the concerned District and Sessions Judge.

(3) A Tehsil Nazim, Naib Tehsil Nazim, Town Nazim, Naib Town Nazim and members of the Tehsil Council and Town Council shall be administered oath of office by an Additional District and Sessions Judge designated by the District and Sessions Judge of the concerned district.

(4) A Union Nazim, Union Naib Nazim and members of a Union Council shall be administered oath of office by a judicial officer designated by the District and Sessions Judge of the concerned district.

161. Removals.—

(1) Where proceedings of disqualification under section 152 have been initiated on an application made by any person or by the Chief Election Commissioner on his own motion against a member, Nazim or Naib Nazim, the Election Commission or any authority authorised by it may issue a notice to show cause to a member, Nazim or, as the case may be, Naib Nazim, within a specified period as to why proceedings against him may not be taken for his removal for breach of any of the provisions of section 152.

(2) Where the Election Commission or an authority authorised by it is not satisfied with the reply to the notice to show cause referred to in subsection (1) or any reply to the said notice is not filed within the period fixed by him, he may order for an enquiry in the matter and for that purpose appoint an enquiry officer.

(3) On the basis of enquiry held under sub-section (2), the Election Commission or an authority authorised by it may order the removal of a member, Nazim or, as the case may be, Naib Nazim:

Provided that before an order of removal is passed, the member, Nazim or, as the case may be, Naib Nazim against whom enquiry proceedings are carried out shall be afforded a reasonable opportunity of being heard, including personal hearing if so requested.

162. Resignations.—

(1) A member of the Council may resign from his office by writing under his hand addressed to the Naib Nazim of the concerned Council, whereupon the resignation shall deem to be accepted and effective forthwith.

(2) Copies of all resignations shall be forwarded to the Election Commission and the Government.

(3) Notwithstanding the resignation of a member any proceeding for removal under section 16.1, if already initiated, shall not abate.

163. Ineligibility for re-election.—

Where a member or a Nazim or a Naib Nazim has been removed or recalled he shall not be eligible for re-election to any office of local government for a period of four years.

164. Notifications to be issued.—

The Chief Election Commissioner shall notify every election, by-election and result of such elections and resignation, removal or recall of a member, Nazim or Naib Nazim, as the case may be.

165. Corrupt practice.—

A person guilty of bribery, personating, or undue influence shall be punishable for an offence of corrupt practice with imprisonment for a term which may extend to three years, or with fine which may extend to fifteen thousand rupees, or with both.

166. Bribery.—

A person is guilty of bribery, if he, directly or indirectly, by himself or by any other person on his behalf-

(a) receives, agrees or contracts for any gratification for voting or refraining from voting or for being or refraining from being a candidate at, or withdrawing or retiring from, an election; or

(b) gives, offers or promises any .gratification to any person for the purpose of -

(i) inducing a person, to be or to refrain from being a candidate at an election; or

(ii) inducing a voter to vote or refrain from voting at any election; or

(iii) inducing a candidate to withdraw or retire from an election; or

(iv) rewarding a person for having been or for having refrained from being a candidate at an election; or

(v) rewarding a voter for having voted or refrained from voting at an election; or

(vi) rewarding a candidate for having withdrawn or retried from an election.

Explanation.— In this section, 'gratification' includes a gratification in money or estimable in money and all forms of entertainment or employment for reward.

167. Personating.—

A person is guilty of personating, if he votes or applies for a ballot paper for voting as some other person whether that other person is living or dead or fictitious.

168. Undue influence.—

A person is guilty of undue influence, if he-

(a) in order to compel any person to vote, refrain from voting, or to induce or compel any person to withdraw his candidature at an election, directly or indirectly, by himself or by any other person on his behalf-

(i) makes or threatens to make use of any force, violence or restraint;

(ii) inflicts or threatens to inflict any injury, damage, harm or loss; or

(iii) uses any official influence or Governmental patronage; or

(b) on account of any person having voted or refrained from voting, or having withdrawn his candidature, does any of the- acts specified in clause (a); or

(c) by abduction, duress or any fraudulent device or contrivance-

(i) impedes or prevents the free exercise of the franchise by a voter; or

(ii) compels, induces or prevails upon any voter to refrain from voting or compels any voter to vote.

Explanation.— In this section, 'harm' includes social ostracism or ex-communication or expulsion from any caste or community.

169. Illegal practice.—

A person is guilty of illegal practice punishable with fine which may extend to two thousand rupees, if he-

(a) obtains or procures, or attempts to obtain or procure, the assistance of any officer or official of the Federal Government, a Provincial Government or a local government or authority to further or hinder the election of a candidate:

(b) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for voting or is disqualified from voting.;

(c) votes or applies for a ballot paper for voting more than once at any polling station;

(d) removes a ballot paper or a ballot box from a polling station or destroys, damages or tampers with the ballot-box used at a polling station;

(e) knowingly induces or procures any person to do any of the aforesaid acts;

(f) fails to provide statement of election expenses as required under this Ordinance.

(g) makes or publishes a false statement-

(i) concerning the personal character of a candidate or his relation calculated to adversely affect the election of such candidate or, for the purpose of promoting or procuring the election of another candidate, unless he proves that he had reasonable ground for believing, and did believe, the statement to be true;

(ii) relating to the symbol of a candidate whether or not such symbol has been allocated to such candidate; or

(iii) regarding the withdrawal of a candidate;

(h) knowingly, in order to support or oppose a candidate, lets, lends, employs, hires, borrows or uses any vehicle or vessel for the purpose of conveying voters to or from the polling station, except when a person conveys himself or any member of the household to which he belongs, to or from the polling station; or

(i) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting.

170. Prohibition of canvassing.—

A person is guilty of an offence punishable with fine which may extend to two thousand rupees, if he, on the polling day in connection with the election-

(a) convenes, calls or arginases within a ward any meeting; or

(b) within a radius of two hundred meters of the polling station-

(i) canvasses for votes;

(ii) solicits vote of any voter;

(iii) persuades any voter not to vote at the election or for a particular candidate; or

(iv) exhibits, except with the permission of the returning officer and at a place reserved for the candidate or his polling agent beyond the radius of one hundred meters of the polling station, any notice, sign, banner or flag designed to encourage the voters to vote, or discourage the voters from voting, for any contesting candidate.

171. Disorderly conduct near polling station.—

A person is guilty of an offence punishable with imprisonment for a term which may extend to three months, or with fine which may extend to three thousand rupees, or with both, if he-

(a) uses, in such manner as to be audible within the polling station any gramophone, megaphone, loudspeaker or other apparatus for reproducing or amplifying sounds; or

(b) persistently shouts in such manner as to be audible within the polling station;

(c) does any act which-

(i) disturbs or causes annoyance to any voter visiting a polling station for the purpose of voting; or

(ii) interferes with the performance of the duty of a presiding officer, polling officer or any other person performing any duty at a polling station; or

(d) abets the doing of any of the aforesaid acts.

172. Tampering with papers.—

A person is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both, if he-

(a) fraudulently defaces or destroys any nomination paper or ballot paper;

(b) fraudulently takes out of the polling station any ballot paper or puts into any ballot box any ballot paper other than the ballot paper he is authorized under the rules to put in;

(c) without due authority-

(i) supplies any ballot paper to any person;

(ii) destroys, takes, opens or otherwise interferes with any ballot box or packet or ballot papers in use for the purpose or election; or

(iii) breaks any seal affixed in accordance with the provisions of the rules;

(d) causes any delay or interruption in the beginning, conduct or completion of the procedure required to be immediately carried out on the close of the poll; or

(e) fraudulently or without due authority attempts to do any of the aforesaid acts.

173. Interference with the secrecy of voting.—

A person is guilty of an offence punishable with imprisonment which may extend to six months, or with fine which may extended to two thousand rupees, or with both, if he—

(a) interferes or attempt to interfere with voter when he records his Vote;

(b) in any manner obtains or attempts to obtain, in a polling station, information as to the candidate for whom a voter in that station is about to vote or has voted, or

(c) communicates at any time any information obtained in a polling station as to the candidate for whom a voter in that station is about to vote or has voted.

174. Failure to maintain secrecy.—

Any candidate or polling agent attending a polling station, or any person attending the counting of votes, is guilty of an offence punishable with imprisonment which may extend to six months, or with fine which may extend to two thousand rupees, or with both, if he-

(a) fails to maintain or aid in maintaining the secrecy of voting; or

(b) communicates any information obtained at the counting of votes as to the candidate for whom any vote is given by any particular ballot paper.

175. Conduct of officials.—

A presiding officer, polling officer or any other officer or clerk performing a duty in connection with an election, or any member of a police force, is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, if he, during the conduct or management of an election or maintenance of order at the polling station—

(a) persuades any person to give his vote;

(b) dissuades any person from giving his vote;

(c) influences in any manner the voting of any person;

(d) does any other act calculated to further or hinder the election of a candidate;

(e) fails to maintain or aid in maintaining the secrecy of voting;

(f) communicates, except for any purpose authorised by any law, to any person before the poll is closed any information as to the name or number on the electoral roll of any voter who has or has not applied for a ballot paper, or has or has not voted at a polling station; and

(g) communicates any information obtained at the counting of votes as to the candidate for whom any vote is given by any particular ballot paper.

176. Breach of official duty.—

A presiding officer or any other person employed by any such officer in connection with his official duties imposed by or under this Ordinance, is guilty of an offence punishable with fine which may extend to five thousand rupees, if he, without reasonable cause, does or omits to do an act in breach of any official duty.

177. Assistance by government servants.—

A person in the service of the Federal Government, a Provincial Government, a local government, or a body owned or controlled by the Federal or a Provincial Government is guilty of an offence punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both if he, in any manner, gives any assistance calculated to further or hinder the election of a candidate.

178. Summary trial.—

All offences under this Ordinance except the offences under sections 165 to 168 shall be tried summarily under the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898).

179. Cognizance.—

No court shall take cognisance of the sections under sections 175 and 176 except on the complaint in writing of the returning officer concerned.

CHAPTER XVIII

MANAGING TRANSITION

180. Succession of the properties, assets and liabilities.—

Subject to section 123, on commencement of this Ordinance, the properties, assets and liabilities of the Local Councils, namely, Metropolitan Corporations, Municipal

Corporations, District Councils, Municipal Committees, Town Committees, Union Councils under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of1979), shall be succeeded by the following local governments under this Ordinance: -

(a) City District Government in the case of Metropolitan Corporation or Municipal Corporation in the concerned City District, as the case may be;

(b) District Government in the case of District Council;

(c) Tehsil Municipal Administration in the case of Municipal Corporations, Municipal Committees and Town Committees in the tehsil, as the case may be; and

(d) Union Administration in the case of Union Councils:

Provided that the liabilities of the predecessor local governments shall be discharged in accordance with the existing arrangements:

Provided further that the discharge of liabilities of the decentralized offices shall remain with the Government.

181. First Nazimeen and Council. —

(1) The first local governments under this Ordinance shall be established on the 14th day of August, 2001.

(2) The Zilla Nazimeen shall assume the office of the head of respective District Governments under this Ordinance on the 14th day of August, 2001, and the Government shall issue notification of the assumption of their office.

(3) The Tehsil Nazimeen arid Town Nazimeen shall assume the office of the head of Tehsil Municipal Administration and Town Municipal Administration, as, the case may be, under this Ordinance on the 14th day of August, 2001, and the Government shall issue notification of the assumption of their offices.

(4) The. Union Nazimeen shall assume the office of the head of the Union Administration under this Ordinance on the 14th day of August, 2001, and the Government shall issue notification of the assumption of their offices.

(5) The Government shall make arrangements of accommodation for the offices of the local governments and, as far as possible, for that purpose the existing infrastructure shall be utilized.

182. Administrative Transition.—

(1) On coming into force of this Ordinance, any office, authority or municipal body set up or controlled by the Government shall continue providing services without any interruption during the decentralization process or its entrustment to any local government under this Ordinance.

(2) All functionnaires of the Metropolitan Corporations, Municipal Corporations, Zilla Councils, Municipal Committees, Town Committees and Union Councils set up under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979). shall continue to perform their respective duties responsibilities with the successor local government under this Ordinance, until transferred to any other local government.

(3) Subject to the provisions of sub-sections (1) and (2), the control of the development authorities, water and sanitation agencies and solid waste management bodies shall vest in the following governments:

Authority/Agency	Local Government
(a) Development Authorities, Water and Sanitation Agencies or Boards, and Solid Waste Management Bodies;	City District Government
(b) Development Authorities	District Government
(c) Water and Sanitation Agencies /Boards and Solid Waste and Management Bodies.	District Government

(4) The Government shall commence closing down the operations of divisional Offices and, where applicable, regional, circle and tonal offices on coming into force this Ordinance, provided that such offices shall cease to function on 31st day of December, 2001.

(5) The Government shall, on the commencement of this Ordinance decentralize administrative, financial and appellate powers of the divisional, regional and zonal officers to the Deputy District Officers, District Officers, Executive District Officers and District Coordination Officers, as the case may be.

(6) The District Governments shall appropriately. re-organize the authorities agencies and bodies referred to in sub-section (3) and decentralize such authorities agencies and bodies to the Tehsil Municipal Administration or, as the case may be, Town Municipal Administration in accordance with section 52.

183. Employees salaries not to be reduced on transfer. etc.—

(1) On allocation, re-allocation or transfer of the employees of the Government, Metropolitan, Corporations Municipal Corporations, District Councils, Municipal Committees, Town Committees and Union Councils or any other authority, agency or body to any local government established under this Ordinance, the salaries, emoluments and pensions of such employee shall not be reduced on such allocation, re-allocation or transfer.

(2) The Government shall ensure the payment of salaries, emoluments and pensions of the employees referred to in sub-section (1), including the employees of the Local Council Service and the servants of Local Councils set up under the Local Government Ordinance, 1979 (N.-W.F P. Ord No. IV.ef1979) during the financial year 2001 -2002 or till such time as Government may deem appropriate.

184. Bar on recruitments.—

(1) During the transition period specified in section 187 and till the adjustment for optional utilization of all employees of the Government, Local Council Service and Servants of Local Councils, no fresh recruitment shall be made to fill any vacancy in the local government set up under this Ordinance, except with the express sanction of the Government;

(2) The Government shall make available the services of the employees placed in its surplus pool for utilization in the offices decentralized to the District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration.

(3) The local governments shall utilize the services of the employees of the Local Councils set up under the repealed North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979) for meeting the shortfall in the offices of the Zilla Councils, Zilla Nazimeen, Tehsil Councils, Tehsil

Municipal Administrations, Town Councils, Town Municipal Administrations, Tehsil Nazimeen, Town Nazimeen and Union Administrations.

185. Financial transition.—

(1) All taxes, cess, fees, rates, rents, tolls and charges which were being charged, levied and collected by any office of the Government, development authority, water and sanitation agency, board or solid waste management body or any Local Council, shall continue to be charged, levied and collected under this Ordinance by the successor local governments and every person liable to pay such taxes, cess, fees, rates, rents, tolls, charges and accumulated arrears and receivables shall continue to make payment thereof until revised, withdrawn or varied under this Ordinance.

(2) Where any Local Council established under the repealed Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979), was receiving any grant or any compensation in lieu of octroi, toll tax, export tax, or any other tax, the successor local government under this Ordinance shall continue to receive such grant or compensation.

186. Electoral Transition.—

(1) Notwithstanding anything contained herein before the first Zilla Councils, Tehsil Councils, Town Councils and Union Councils constituted under this Ordinance shall be deemed to be validly constituted if sixty percent seats thereof are filled in the elections held under the North-West Frontier Province Local Government Elections Ordinance, 2000 (N.-W.F.P. Ord. No. VI of 2000).

(2) Where local council has been validly constituted under sub-section (1), but seats of Nazim and Naib Nazim of the corresponding level have not been field, the concerned council shall elect officiating Nazim and Naib Nazim from members until their seats are filled through by election.

(3) In any local area in which this Ordinance is in force but a relevant local government is not validly constituted due to a natural calamity or conditions beyond human control, the Government, may empower any person or persons to perform any of the functions of that local government under this Ordinance till the elected government assumes the charge of the office.

187. Transitional time frame.—

All actions required for giving effect to the provision of this Ordinance and transition to the local government systems set up thereunder shall be completed by the 30th day of June, 2002.

CHAPTER XIX

MISCELLANEOUS

188. Complaint Cell.—

Every District Government, Tehsil Municipal Administration, Town Municipal Administration and Union Administration shall set up a complaint cell for redressal of grievances within the ambit of their responsibilities under this Ordinance.

189. Training.—

The Nazimeen, Naib Nazimeen and members of the Councils shall attend training courses for such periods and in such manner and at such places as may be prescribed by the Government from time to time.

190. Appeals.—

Any person aggrieved by any order passed by a local government or its functionaries, in pursuance of this Ordinance or the rules or bye-laws made thereunder may appeal to such authority, in such manner and within such period as may be prescribed.

191. Rules.—

(1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the fore-going power, such rules may provide for all or any of the matters specified in Part-I of Fifth schedule.

(3) The rules made under sub-section (1) shall be subject to previous publication in the Official Gazette and shall meet the following considerations:-

(a) consistency with democratic decentralisation and subsidiarity;

(b) enhancement of welfare of the people;

(c) fairness and clarity; and

(d) natural justice and due process of law.

192. Bye-laws.—

(1) A Zilla Council, Tehsil Council, Town Council and Union Council may, in their ambit of responsibilities, make bye-laws to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the fore-going power, such bye-laws may provide for all or any of the matters specified in Part-II of the Fifth Schedule:

Provided that the Government may make model Bye-Laws on any, some or all of relevant subjects for the sake of uniformity.

193. Members and servants to be public servants.—

All Nazimeen, Naib Nazimeen, members of the Councils, functionaries of the local government and every other person duly authorised to act on behalf of the local governments shall be public servants within the meanings of section 21 of the Pakistan Penal Code, 1860 (Act XIV of 1860).

194. Action taken in good faith.—

No suit, prosecution, or other legal proceedings shall lie against any public servant serving in local governments for anything done in good faith under this Ordinance.

195. General powers of local governments.—

(1) Notwithstanding any specific provisions, every local government, the Village Council and Neighbourhood Council shall perform functions conferred by or under this Ordinance and in performance of such functions shall exercise such powers which are ancillary and incidental thereto.

(2) Until different provisions, rules or bye-laws are made, the respective local governments shall exercise such powers as are specified in the Sixth Schedule.

196. Repeal and Savings.—

(1) On commencement of this Ordinance,

(i) the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979), shall be repealed;

(ii) the North-West Frontier Province Local Government Elections Ordinance, 2000 (N.-W.F.P. Ord. No. VI of 2000), shall be repealed; and

(iii) all "Metropolitan Corporation" Municipal Corporations, District Councils, Municipal Committees, Town Committees and Union Councils created under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979), shall stand dissolved.

(2) Notwithstanding the repeal of the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979), and dissolution of all Metropolitan Corporations, Municipal Corporations, District Councils, Municipal Committees, Town Committees and Union Councils created under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979). under subsection (1), subject to sections 4 and 23 of the North-West Frontier Province General Clauses Act, 1956 (W.P. Act VI of 1956), all rules, regulations and bye-laws made under the repealed North-West Frontier Province Local Government Ordinance 1979, (N.-W.F.P Ord. No. IV of 1979), so far those are not inconsistent with the provisions of this Ordinance shall continue to be in force until amended or varied by competent authority:

Provided that, until otherwise decided by the Government, the Local Government Boards established under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ord. No. IV of 1979), for the administration of officers and officials of the Local Council Service shall continue to function.

(3) Notwithstanding the repeal of North-West Frontier Province Local Government Elections Ordinance, 2000 (N.-W.F.P. Ord. No. VI of 2000), all Nazimeen, Naib Nazimeen, and members of the local governments elected under the said Ordinance shall deemed to be have been elected under this Ordinance and shall continue to hold their respective offices till the completion of their terms, unless earlier removed, resigned or recalled under this Ordinance.

197. Removal of difficulty.—

The Government may, by order, provide for the removal of any difficulty which may arise in giving effect to the provisions of this Ordinance.

FIRST SCHEDULE

[See sections 14 and 35]

Part-A

Decentralized Offices

(i) Civil Defence

(ii) Agriculture (Extension)

(iii) Livestock

(iv) On-Farm Water Management

(v) Soil Conservation

(vi) Soil Fertility

(vii) Fisheries

(viii) Farm-forestry

(ix) Labour

(x) Social Welfare

(xi) Sports and Culture

(xii). Cooperatives

(xiii) Boys Schools

(xiv) Girls Schools

(xv) Technical Education

(xvi) Colleges, (other than professional)

(xvii) Sports

(xviii) Special Education

(xix) Accounts, (excluding District Accounts Offices)

(xx) Basic & Rural Health

(xxi) Child & Woman Health

(xxii) Population Welfare

(xxiii) Hospitals

(xxiv) Environment

(xxv) Land Revenue, Estate,

(xxvi) Excise and Taxation

(xxvii) Housing Urban and Physical Planning and Public Health Engineering

(xxviii) Local Government & Rural Development

(xxix) District Roads and Buildings

(xxx) Transport.

Part-B

Other Offices

(i) Coordination

(ii) Human Resource Management

(iii) Community Organization

(iv) Registration Office

(v) Enterprise and Investment Promotion.

(vi) Legal advice and drafting of Bye-laws.

(vii) Planning & Development

(viii) Public Health

(ix) Information Technology Development

(x) Information Technology Promotion

(xi) Database

(xii) Literacy Campaigns

(xiii) Continuing Education

(xiv) Vocational Education

(xv) Energy (Micro energy development / generation projects for use at local community level)

(xvi) Finance & Budget

Part-C

Groups of Offices

(i) District Coordination: Coordination, Human Resource Management and Civil Defence.

(ii) Agriculture: Agriculture (Extension), Livestock, Farm Water Management, Soil Conservation, Soil Fertility, Fisheries and Farm-forestry.

(iii) Community Development: Community Organization, Labour, Social Welfare, Sports and Culture, Cooperatives and Registration office.

(iv) Education: Boys Schools, Girls Schools, Technical Education, Colleges, (other than professional) Sports (Education) and Special Education.

(v) Finance and Planning: Finance & Budget, Planning & Development, Accounts, Enterprise and Investment Promotion.

(vi) Health: Public Health, Basic & Rural Health, Child & Woman Health, Population Welfare, District and Tehsil (Hqrs.) hospitals.

(vii) Information Technology: Information Technology Development, Information Technology Promotion, and Database.

(viii) Legal: legal aid, drafting of Bye-laws, and environment.

(ix) Literacy: Literacy Campaigns, Continuing Education, and Vocational Education.

(x) Revenue: Land Revenue and Estate and Excise and Taxation.

(xi) Works and Services: Spatial Planning and Development, District Roads and Buildings, Energy and Transport.

Part-D

Group of Offices Offices

(i) Public Transport	Public transportation and mass transit
	Passenger and freight transit terminals
	Traffic planning, engineering and parking
Enterprise and Investment	Industrial estates and technological parks
(ii) Promotion	
	Cottage, small and medium sized enterprise promotion
	Investment promotion and protection

(iii) Depending upon the economies of scale and nature of infrastructure the City District Government may vary grouping of offices contained in Part-C and set up district municipal offices for integrated development and management of the following services:

a. Water source development and management, storage, treatment plants, and macro-distribution.

b. Sewage tertiary and secondary network, treatment plants, and disposal.

c. Storm water drainage network and disposal.

d. Flood control protection and rapid response contingency plans.

e. Natural disaster and civil defence planning.

f. Solid waste management, treatment and disposal, including land fill cities and recycling plants.

g. Industrial and hospital hazardous and toxic waste treatment and disposal.

h. Environmental control, including control of air, water, and soil pollution in accordance with federal and provincial laws and standards.

i. Master planning, land use, zoning and classification, reclassification.

j. Urban design and urban renewal programme; promulgation of building rules and planning standards.

k. Parks, forests, play grounds, sporting, and other recreational facilities.

l. Museums, art galleries, libraries, community and cultural centres.

m. Conservation of historical and cultural assets

n. Landscape, monuments, and municipal ornamentation.

o. Urban and housing development, including urban improvement and upgrading, and urban renewal and redevelopment, with care being taken to preserve historical and cultural monuments.

p. Regional markets and city-wide commercial centres.

SECOND SCHEDULE

[See Sections 39(b), 54(l), 67(i) & 88(b)]

Part-I

Zilla Council

1. Education tax.

2. Health tax.

3. Tax on vehicles other than motor vehicles.

4. Any other tax authorised by the Government.

5. Local rate on lands assessable to land revenue.

6. Fees in respect of schools, colleges, and health facilities established or maintained by the District Government.

7. Fees for licences granted by the District Government.

8. Fees for specific services rendered by a District Government.

9. Collection charges for recovery of tax on behalf of the Government as prescribed.

10. Toll on new roads, bridges, within the limits of a district, other than national and provincial highways and roads.

Part-II

Tehsil and Town Councils

1. Local tax on services.

2. Tax on the transfer of immovable property.

3. Property tax on annual rental value of buildings and lands.

4. Fee on advertisement, other than on radio and television, and billboards.

5. Fee for fairs, agricultural shows, cattle fairs, industrial exhibitions, tournaments and other public events.

6. Fee for approval of building plans and erection and re-erection of buildings.

7. Fee for licenses or permits and penalties or fines for violation of the licensing rules.

8. Charges for execution and maintenance of works of public utility like lighting of public places, drainage, conservancy, and water supply.

9. Fee on cinemas, dramatical, theatrical shows and tickets thereof, and other entertainment.

10. Collection charges for recovery of any tax on behalf of the Government, District Government, Union Administration or any statutory authority as prescribed.

Part-III

Union Councils

1. Fees for licensing of professions and vocations.

2. Fee on sale of animals in cattle markets.

3. Market fees.

4. Fees for certification of births, marriages and deaths.

5. Charges for specific services rendered by the union council.

6. Rate for the remuneration of Village and Neighbourhood guards.

7 Rate for the execution or maintenance of any work of public utility like lighting of public places, drainage, conservancy and water supply.

THIRD SCHEDULE

[See section 134(6)]

ORGANISATION, DUTIES AND POWERS OF ZILLA MOHTASIB

1. Selection:

(1) The Government shall constitute a selection committee comprising the following three members

(i) a Judge of the High Court nominated by the Chief Justice of the High Court.

(ii) a member of Public Service Commission.

(iii) the provincial mohtasib.

(2) The selection committee shall advertise the position specifying the criteria of qualifications and experience for the appointment of Mohtasib.

(3) A person selected by the selection committee to be a Zilla Mohtasib shall be appointed through a notification by the Zilla Council.

(4) The Mohtasib shall take oath before the Zilla council.

2. Mohtasib not to hold any other office of profit etc.—

The Mohtasib shall not hold any other office of profit in the service of Pakistan; or, occupy any other position carrying the right to remuneration for rendering of services.

3. Terms and conditions of service.—

(1) The Mohtasib shall be entitled to such salary, allowances and privileges and other terms and conditions of service as the Government may determine.

(2) The Mohtasib shall not be governed by the Civil Servants (Efficiency & Discipline) Rules.

(3) The Mohtasib may be removed from office by the Zilla Council on ground of physical or mental incapacity only.

(4) A Mohtasib removed from office on the ground under sub-section (3) shall not be eligible to hold any office of profit in the service of local government' the district.

4. Jurisdiction, functions, and powers of the Mohtasib.—

(1) The Zilla Mohtasib shall, on a complaint by any aggrieved person or of his own motion, undertake any investigation into any allegation of maladministration on the part of any office or local government or any of its officers or employees.

(2) The Zilla Mohtasib shall, on a complaint by an official employed at any level of local government, under take investigation into allegation of an unlawful or motivated order passed by a Nazim, Naib Nazim or any superior or supervisory officer:

Provided that the Mohtasib shall not have any jurisdiction to investigate or inquire into any matter which:

(i) is sub-judice before a court of competent jurisdiction or tribunal or board in Pakistan on the date of the receipt of a complaint, reference or motion by him; or

(ii) relates to any matter outside the purview of the local government.

(3) Notwithstanding anything contained in sub-clause (1), the Mohtasib shall not accept for investigation any complaint by or on behalf of a public servant or functionary concerning any matters relating to the department in which he is, or has been, working in respect of any personal grievance relating to his service therein.

5. Procedure and Evidence.—

(1) A complaint shall be made on solemn affirmation in writing addressed to the Zilla Mohtasib by the person aggrieved or, in the case of his death, by his legal representative.

(2) No anonymous or pseudonymous complaints shall be entertained.

(3) A complaint shall be made not later than six months from the date on which the person aggrieved first had the notice of the matter alleged in the complaint, but the Mohtasib may conduct any investigation pursuant to a complaint which is not

within time if he considers that there are special circumstances which make it proper for him to do so.

(4) On acceptance of a complaint, the Mohtasib shall issue to the Executive District Officer of the office concerned, and any other person who is alleged in the complaint, a notice to rebut or redress the complaint:

Provided that the Mohtasib may proceed with the investigation if no response to the notice is received within thirty days of the receipt of the notice or, extension as may be allowed by the Mohtasib.

(5) The Mohtasib may adopt any lawful procedure he considers appropriate for investigation.

(6) A person shall be entitled to appear in person or be represented before the Mohtasib.

(7) The conduct of an investigation shall not affect any action taken by the department concerned, or any power or duty of that department to take further action with respect to any matter subject to the investigation.

(8) For the purposes of an investigation, the Mohtasib may require any officer or member of the office concerned to furnish any information or to produce any document, which is considered relevant and helpful in the investigation:

Provided that the Mohtasib may, in his discretion, on grounds of its being a secret, allow claim of privilege with respect to any information or document.

(9) In any case where the Mohtasib decides not to conduct an investigation, he shall send to the complainant a statement of his reasons for not conducting the investigation.

(10) The Mohtasib shall regulate the procedure for the conduct of business or the exercise of powers subject to this Ordinance.

6. Recommendations for implementation.—

(1) After having considered a matter, on his own motion, or on a complaint or on a reference by the Zilla Nazim, the Zilla council, or on a motion by the district judge, as the case may be, if the Mohtasib determines that it amounts to maladministration, he shall specify a corrective/ redressal measure and communicate his recommendation to the office concerned along with a copy to the complainant or the office making a reference to:

(a) consider the matter further,

(b) modify or cancel the decision, process or recommendation,

(c) explain more carefully the act or decision in question,

(d) take disciplinary action against any public servant of any office under the relevant laws applicable to him,

(e) dispose of the matter or case within a specified time,

(f) implement his recommendations to improve the working and efficiency of the office, within a specified time; or

(g) take any other step as deemed appropriate by the Mohtasib.

(2) The office concerned shall, within such time as may be specified by the Mohtasib, inform him about the implementation of his recommendations or the reasons for not complying with the same.

7. Non-compliance of recommendation.—

(1) In case of 'Non-compliance' of his recommendations, the Mohtasib may refer the matter to the Zilla Nazim who shall direct the office concerned to implement the Mohtasib's recommendations within the specified time limit and inform the Mohtasib accordingly.

(2) In case the Zilla Nazim believes that implementation of the Mohtasib's recommendation is not in the public interest, he shall refer the matter to the Mohtasib for reconsideration stating the reasons for non-implementation.

(3) If the Mohtasib reaffirms his earlier recommendation, the Zilla Nazim may refer the matter to the Chairman, Local Government Commission stating the grounds for not implementing the Mohtasib's recommendation in a particular case.

(4) The Chairman, Local Government Commission's decision on a reference by Zilla Nazim under sub-section (4), shall be dispositive.

8. Punitive action on reference by Mohtasib.—

(1) Where the Mohtasib is satisfied that any public servant is guilty of maladministration, he may also recommend initiation of disciplinary action against the concerned official.

(2) In case the Mohtasib has reason to believe that any public servant has committed an offence, he may ask the concerned authority to institute criminal proceedings against such official.

9. Powers of the Mohtasib.—

(1) The Mohtasib shall, for the purposes of this Ordinance, have the same powers as are vested in a Civil court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) compelling the production of documents;

(c) receiving evidence on affidavits; and

(d) issuing commission for the examination of witnesses.

(2) The Mohtasib shall have the power to require any person to furnish information on such points or matters as, in the opinion of the Mohtasib, may be useful for, or relevant to, the subject matter of any inspection or investigation.

(3) The powers referred to in sub-clause (1) may be exercised by the Mohtasib or any person authorised in writing by the Mohtasib.

(4) Where the Mohtasib finds a complaint or reference to be false, frivolous, vexatious or malafide, he may award reasonable compensation to the office, public servant or other functionary against whom the complaint was made; and the amount of such compensation shall be recoverable from the complainant as arrears of land revenue:

Provided that the award of compensation under this clause shall not debar the aggrieved person from seeking civil and criminal remedy.

(5) If any office, public servant or other functionary fails to comply with a direction of the Mohtasib, he may, in addition to taking other actions under this Ordinance, refer the matter to the appropriate authority for taking disciplinary action against the person who disregarded the direction of the Mohtasib.

10. Power to inspect.—

Subject to the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), the Mohtasib or any official authorised by him may:

(1) inspect any article, book of accounts or other documents;

(2) take extract or copies of such books of accounts and documents;

(3) impound or seal any articles, books of accounts and documents.

11. Award of costs, compensation and refunds of amounts.—

The Mohtasib may, where he deems necessary, call upon a public servant, or any office to show cause why compensation be not awarded to an aggrieved party for any loss or damage suffered by him on account of any maladministration committed by such public servant or office, and after hearing such public servant or office, may award reasonable costs or compensation to the aggrieved person from the public servant or office or may withdraw the show cause notice.

12. Assistance and advice to Mohtasib.—

(1) The local government and its officials shall provide assistance to the Mohtasib in the performance of his functions under this Ordinance.

(2) All officers of any office and any person whose assistance has been sought by the Mohtasib in the performance of his functions shall render such assistance to the extent it is within their power or capacity.

(3) No statement made by a person or authority in the course of giving evidence before the Mohtasib or his staff shall subject him to, or by used against him in any civil or criminal proceedings except for prosecution of such person for giving false evidence.

13. Conduct of business.—

(1) The Mohtasib shall be the executive head of his office.

(2) The district government shall provide budgetary allocation for the office of the Mohtasib.

(3) The Mohtasib shall be the Principal Accounting Officer of the office in respect of the expenditure incurred against budget grant or grants controlled by the Mohtasib and shall, for this purpose, exercise all the financial and administrative powers delegated to the District Co-ordination Officer.

14. Affidavits.—

The Mohtasib may require any complainant or any party connected or concerned with a complaint or with any inquiry or reference, to submit affidavit attested or notarised before any competent authority in that behalf within the time specified by the Mohtasib or his staff.

15. Mohtasib and staff to be public servants.—

The Mohtasib, the employees, officers and all other staff of the office shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

16. Annual and other reports:

(1) Within three months of conclusion of the calendar year to which the report pertains, the Mohtasib shall present an annual report to the Zilla Council stating the objectives achieved during a year including the relief provided to the complainants having grievance against mal-administration by the District

Government, and to the Tehsil/Town Council, in relation to redressal of grievances in respect of mal-administration by Tehsil/Town or Union Municipal Administration.

(2) Simultaneously, reports referred to in sub-section (1) shall be released for publication and copies thereof shall be provided to the public at reasonable cost.

(3) The Mohtasib may. also, from time to time, make public any of his studies, research, conclusions, recommendations, ideas or suggestions in respect of any matters being dealt with by the office.

17. Bar of jurisdiction.—

No court or other authority shall have jurisdiction to grant an injunction or stay or to make any interim order in relation to any proceeding sub-judice re the Mohtasib.

18. Limited immunity.—

No suit, prosecution or other legal proceeding shall lie against the Mohtasib, his staff, nominees, or any person authorised by the Mohtasib for any action or decision taken in good faith to carry out his duties and responsibilities.

19. Informal resolution of disputes.—

Notwithstanding any thing contained in the Ordinance, the Mohtasib and a member of the staff shall have the authority to informally Conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum and without the necessity of docketing any complaint or issuing any official notice.

FOURTH Schedule

[See sections 141,144 and 145]

Part-I

1. Immovable encroachment in or on or under any property or any open space or land vested in or managed, maintained or controlled by a local government.
2. Without license from relevant authority manufacturing, storing, trading or carrying fire crackers, fire balloons or detonators or any dangerous chemical, inflammable, hazardous or offensive article or material.
3. Discharging any dangerous chemical, inflammable, hazardous or offensive article in any drain, or public water course or public land in such manner as causes or is likely to cause danger to persons passing by or living or working in Neighbourhood, or risk or injury to property.
4. Overcharging or illegally charging any tax, fee, fine, charge or rate by an employee of a local government or a contractor or his staff without the authority of a local government.
5. Preparing or using counterfeit or prescribed forms of the local government for recovery of taxes.
6. Erection or re-erection of building over set back area or parking area or building line area required to be left open under the rules for using such space for any purpose which is not approved.
7. Changing or converting into any other use any portion of a commercial building or area specified or earmarked for public parking.
8. Failure to demolish or otherwise secure a building declared by the local government to be dangerous building.

9. Failure of industrial or commercial concerns to provide adequate and safe disposal of affluent or prevention of their mixing up with the water supply and sewerage system.

10. Establishing any parking stand on any property or on any open space and public park or land vested in or managed, maintained or controlled by a local government on or under a street, road, graveyard or a drain without the sanction of the relevant local government.

11. Supplying or marketing drinking water for human consumption in any form, any source which is contaminated or suspected to be dangerous to public health, or its use has been prohibited by a local government on the ground of being unsafe for human consumption, or whose quality and suitability for human consumption has not been ascertained and certified by a laboratory authorized by the Government.

12. Cultivation of agriculture produce or crop, for supply or sale to public using such manure, or irrigating it with sewer water or any such liquid as may be injurious to public health or offensive to the neighbourhood.

13. Quarrying, blasting, culling timber or carrying building operations in such manner as causes or is likely to cause danger to persons passing by or living or working in the Neighbourhood.

14. Erection or re-erection of a building without the sanction required under this Ordinance or using a building for a purpose which may endanger the security of people.

15. Dyeing or tanning skins within such distance of any commercial or residential areas as may be specified by the local government.

16. Violation of the prohibitions provided in the Master Plan, the sanctioned Site Development Schemes under this Ordinance, Cities Acts, or any other law for the time being in force including the plans and schemes sanctioned under the repealed enactments.

17. Adulteration of any eatable or drinkable or consumable item sold or supplied to the public.

18. Neglect in safe storage of eatable, drinkable and other consumable items sold or supplied to the public.

19. Manufacturing, trading, storing or supplying any eatable or drinkable item and other items unsafe for human consumption or public health.

20. Contravention of the prohibition or attempt or abetment of any of the offences in this part.

Part-II

21. Willfully obstructing any officer or servant of a local government or any person authorized the exercise of power conferred under this Ordinance.

22. Establishing any cattle market or bakar mandi without permission of the local government.

23. Failure to deliver back possession of property to the local government on cancellation and expiration of lease.

24. Establishing any bus, wagon, taxi or other commercial motorized or non-motorized vehicle stand for the purpose of plying them on different routes on any road, street, footpath, public place or any other property vested or managed or controlled or maintained by a local government without its permission.

25. Establishing or running any restaurant or vending stalls for eatables on any road, street, footpath, public place, over a drain, or any other property vesting in or managed or controlled or maintained by a local government without its permission.

26. Fixing of wooden khokhas, plying of handcarts for the sale of goods and temporary shops or extension thereof on footpaths or beyond the street line.

27. Establishing a brick kiln and lime kiln within such distance of a residential area as may be specified by the local government.

28. Failure by the owner or occupier of any land to clear away and remove any vegetation declared by a local government to be injurious to health or offensive to neighbourhoods.

29. Slaughtering of animals for the sale of meat at a place other than the place set apart for the purpose.

30. Culling down of any tree, or cutting of a branch of any tree, or erection or demolition of any building or part of a building where such action is declared under this Ordinance to be a cause of danger or annoyance to the public.

31. Stocking or collecting timber, wood, dry grass, straw or other inflammable material or fuels, adjacent to commercial buildings or residential houses.

32. Without the permission of the local governments causing or knowingly or negligently allowing the contents of any sink, sewer or cesspool or any other offensive matter to flow, or drain or to be put upon any street, or public place, or into irrigation channel or any sewer or drain not set apart for the purpose.

33. Doing an act without licence or permission when the doing of such act requires a licence or permission under any of the provisions of the Ordinance or the rules or bye-laws.

34. Manufacturing, keeping, storing or selling wire thread or any other material meant for kite flying or in the manner causing danger to the human life or the electric installations or disruption in electric supply.

35. Keeping or maintaining any cattle in any part of the prohibited zone or failure to remove the cattle from the prohibited zone within the specified time when an order to this effect has been made under section 65.

36. Keeping ferocious dogs or other animals in residential areas or taking such animals to public places without leash.

37. Obstructing or tampering with any road, street, drain or pavement.

38. Obstructing or tampering with any main pipe, meter or any apparatus or appliance for the supply of water or sewerage system.

39. Evasion of payment of tax or other impost lawfully levied by a local council

40. Preparation and sale of article or articles of food or drink by a person apparently suffering from any infectious or contagious disease that may endanger the health of people.

41. Attempts and abetments of any of the offences as aforesaid.

42. Contravention of the prohibition or attempt or abetment of any of the offences in this part.

PART -III

43. Laying out a drain or altering any drain in a street or road without the sanction required under this Ordinance.

44. Connecting any house drain with a drain in a public street without the permission required under this Ordinance.

45. Excavation of earth, stone or any other material within such distance of the residential area as specified by the local government.

46. Burying or burning a dead body at a place which is not a public or registered burial or burning place, except with the sanction of the local government.

47. Failure to furnish, on requisition, information in respect of any matter which a local government is authorized to call for under any of the provisions of the Ordinance, rules or bye-laws or furnishing Wrong information.

48. Obstructing lawful seizure of animals liable to be impounded on the ground of violations of rules or by-laws governing the picketing, tethering, keeping, milching or slaughter of animals or their trespass of private or public property.

49. Picketing, parking animals or collecting carts or vehicles on any street, using any street as a halting place for vehicle or animals or as a place encampment without the permission of the local council concerned.

50. Causing or permitting animals to stray or keeping, tethering, stalling, feeding or gazing any cattle on any road, street or thoroughfare or in any public place or damaging or causing or permitting to be damaged any road, street or thoroughfare by allowing cattle to move thereon.

51. Disposal of carcasses of animals within prohibited distance.

52. Failure to dispose of offal, fat or any organ or part of a dead animal in a place set apart for the purpose by the local government.

53. Throwing or placing any refuse, litter or garbage on any street, or in any place, not provided or appointed for the purpose by a local government.

54. Failure to provide for disposal of litter or garbage inside or outside a shop by its owner.

55. Failure to maintain clean premises of the area in front of a shop, office or factory up to the public street or road serving this facility.

56. Watering cattle or animals, or bathing or washing at or near a well or other source of drinking water for the public.

57. Steeping hemp, jute or any other plant in or near a pond or any other excavation within such distance of the residential area as may be specified by a local government.

58. Drawing off, diverting or taking any water except with the permission required under this Ordinance.

59. Failure to provide, close, remove, alter, repair, clean, disinfect or put in proper order any latrine, urinal drain, cesspool or other receptacle for filth, sullage, water or refuse by an owner of a house, shop, office, industry or premises.

60. Failure to clean the premises, houses, shops and cultivated lands of plastic bags and other non perishable materials.

61. Damaging or polluting physical environment, inside or outside private or public premises, in a manner to endanger public health.

62. Failure by the owner or occupier of any land to cut or trim the hedges growing thereon which overhang any well, tank or other source from which water is derived for public use.

63. Failure by the owner or occupier of any land or building to clean, repair, cover, fill up or drain off any private well, tank or other source of water supply, which is declared under this Ordinance to be injurious to health or offensive to the neighbourhood.

64. Failure to stop leakages of water pipes, faucets and sanitary fittings resulting in dirty water pools affecting physical environments and breeding of mosquitoes.

65. Failure of an owner or occupier of any building or land to put up and keep in good condition troughs and pipes for receiving or carrying water or sullage water.

66. Feeding or allowing to be fed an animal meant for dairy or meat purposes, on deleterious substance, filth or refuse of any kind which is dangerous to health of consumers.

67. Defacing or disturbing any direction-post, lamp post or lamp extinguishing or any light arranged by a local government without due authority.

68. Fixing any bill, notice, play card, poster or other paper or means of advertisement against or upon any private or public building or place other than the places fixed for the purpose by a local government.

69. Exhibiting any obscene advertisement.

70. Loud playing of music or radio, beating of drum or tom-tom, blowing a horn or beating or sounding any brass or other instruments or utensils in contravention of any general or special prohibition issued by a local government or a hospital or an educational institution.

71. Loud shouting in abusive language causing distress to the inhabitants of a neighbourhood or village or any other public place.

72. Using or allowing the use for human habitation of a building declared by a local government to be unfit for human habitation.

73. Failure to lime-wash or repair a building if so required by local government.

74. Begging importunately for alms by exposing any deformity or disease or any offensive sore or wound to solicit charity.

75. Failure of the head of family to report the birth or death to a local government or a person appoint in this behalf within a reasonable time.

76. Causing or permitting to be caused by any owner or keeper of an animal who through neglect or other wise damage of any land or crop or produce of land, or any public road, by allowing such animal to trespass thereon.

77. Selling cattle and animals in contravention of any law, rule or by-laws of a local government.

78. Kite flying in contravention of any general or specific prohibition issued by local governments.

79. Keeping pigeon or other birds in a manner causing danger to air traffic.

80. Contravention of the prohibition or attempt or abetment of any of the offences in this part.

FIFTH SCHEDULE

[See sections 191(2) and 192(2)]

Part - I (Rules)

1. Local government (Conduct of elections);
2. Local government (Conduct of business of the Local Councils);
3. Local government (Taxation);
4 Local government (Servants);
5. Local government (Budget and accounts);
6. Local government (Contracts);
7. Local government (Works);
8. Local government (Development authorities);
9. Local government (Regulation of site development schemes);
10. Local government (Forestry excluding guzara forests, protected forests and water shed management);
11. Local government (Monitoring);
12. Local government (Provision of information and transparency);
13. Local government (Internal Audit);
14. Local government (Employees Performance Bonuses and Incentive);
15. Local government (Public Private Partnership);
16. Local government (Conduct of Inspections).
17. Local government (Elected Officials Conduct);
18. Any other set of rules necessary for implementation of this Ordinance.

Part - II (Bye-laws)

1. Conduct of meetings.
2. Registration of births, death and marriages:
3. Zoning, master planning, and buildings.
4. Dangerous buildings and structures.
5. Prevention of encroachments.
6. Local government (Elective officials remuneration and allowances)
7. Local government (Agricultural development)
8. Local government (Community development).
9. Local government (Citizen Community Boards).
10. Registration of sale and control of cattle and animals.
11. Registration, management and regulation of orphanages, widow homes, senior citizens homes, homes for the mentally ill, and women in distress.
12. Regulation of burial and cremation places.

13. Slaughter of animals and maintenance of slaughterhouses.
14. Prevention of adulteration of foodstuffs.
15. Animal husbandry and milk supply.
16. Prevention and abatement of nuisances.
17. Dangerous and offensive trades and articles.
18. Regulation of traffic.
19. Organization and regulation of fairs, shows, tournaments and other public gatherings.
20. Prevention of beggary, juvenile delinquency and other social evils.
21. Licensing.
22. Markets.
23. Libraries.
24. Parks and open places.
25. Prevention of air, water, noise, and soil pollution.
26. Forests and plantations.
27. Local government property.
28. Farm produce markets.
29. Delegation of powers, duties, and functions of the sub-committees of farm produce market committees if any.
30. Encroachment on any public road, public street, or public place.
31. Picketing, parking animals or collecting carts or vehicles on any street.
32. Throwing or placing any refuse on any street, or in any place not provided or appointed for the purpose.
33. Dyeing or tanning animal skins.
34. Tampering with any main, pipe, or any apparatus or appliance for the supply of water.
35. Excavation of earth, stone or any other material.
36. Disposing of carcasses of animals.
37. Use of sewer water for farming.
38. Flow or drain to be put upon any street, or public place, or into an irrigation channel or any sewer or drain not set apart for the purpose.
39. Fixing any bill, notice, placard, or other paper or means of advertisement against or upon any building or place other than the places fixed for the purpose by the local government.
40. Fixing of wooden khokhas, plying of handcarts for the sale of goods, and temporary or permanent shops or extensions thereof on footpaths or beyond the street line.
41. Pollution of air, water or soil.
42. Watering cattle or animals, or bathing or washing at, or, near a well or other source of drinking water for the public.

43. Other matters as in the opinion of the Zilla council are necessary or expedient to be provided for in the by-laws.

SIXTH SCHEDULE

[See sections 195]

Animals

1. Prohibition of picketing or tethering in streets.—

No animal shall be picketed to tethered in such streets or places as may be specified by the concerned local government and any animal found picketed or tethered in any such street or place shall be liable to seizure and impounding.

2. Prohibition against keeping and maintaining cattle.—

(1) Notwithstanding anything to contrary contained in any other law or any agreement, instrument, custom or usage or decree, judgment or order of any court or other authority, a concerned local government may declare any part of its local area as a prohibited zone.

(2) At any time after declaration under sub-paragraph (1) has been made, the local government may, by general or special notice, prohibit the keeping and maintaining the cattle by any person in the prohibited zone.

(3) No person shall, after the expiry of the period fixed under sub-paragraph (2), keep or maintain cattle in any part of the prohibited zone:

Provided that the prohibition shall not apply to —

(i) cattle kept bona fide for sacrificial purpose;

(ii) cattle kept for drawing carts or use in mills, with the permission of the local government and subject to such conditions as it may impose;

(iii) cattle under treatment in any veterinary hospital;

(iv) cattle brought to a cattle market demarcated by the local government for the purpose of sale; and

(v) cattle brought to a slaughterhouse or kept by butchers for the purpose of slaughter within the area demarcated by the local government.

(4) Persons affected by the prohibition order under sub-paragraph (2) to meet their genuine needs may be allowed to keep and maintain their cattle at the places earmarked as "cattle colonies" by the local government on such terms and conditions as it may impose.

3. Dangerous animals.—

A concerned council may, by by-law, define the animals which shall be deemed to be dangerous animals and the circumstances under which animals not otherwise dangerous shall be deemed to be dangerous and such by-laws, among other matters, may provide for the detention, destruction or disposal otherwise of such animals.

4. Disposal of carcasses.—

Whenever an animal in the charge of a person dies, otherwise than by being slaughtered for sale or consumption or for some other religious purpose such person shall either-

(a) convey the carcasses within twenty-four hours to a place, if any, fixed by the concerned local government for the disposal of the dead bodies of animals or to a

place beyond the limits of its local area, not being a place within two kilometers of such limits; or

(b) give notice of the death to the local government whereupon the local government shall cause the carcass to be disposed of and charge such fees from the person concerned as the by-laws may provide.

5. Animal husbandry.-

(1) A concerned local government may provide for the establishment, maintenance and management of veterinary hospitals and dispensaries and by by-laws regulate their working and fix the fees to be charged for treatment in such hospitals and dispensaries.

(2) A council may, by by-laws, define contagious diseases among animals and provide for measures that shall be adopted for prevention of the spread of 'such diseases including the compulsory inoculation of animals, and the subjection to such treatment as may be necessary of such animals as may be suspected to have been infected with carriers of any such disease.

6. Animal farms.—

A concerned local government may establish, maintain and manage cattle farms and poultry farms, and such farms shall be managed and administered in such manner as the by-laws may provide.

7. Registration of the sale of cattle.—

A concerned local government may, by bylaws, require that sale of such of the animals as may be specified shall be registered with the concerned local government in such manner and subject to the payment such fees as the by-laws may provide.

8. Cattle shows, zoo, etc.—

(1) A concerned local government shall not hold cattle shows and fairs within the limits of its local area, but may hold bakar mandies for sale of cattle meant for slaughter and charge such fee per cattle head sold as the by laws may provide:

Provided that where urban local council was holding cattle shows and fairs before 17th January, 1980 within the limits of its local area the successor local government may continue holding such cattle shows and fairs and charge such fees from the people attending such shows or fairs, as the by-laws may provide.

(2) A local government may, with the previous approval of the Government, maintain or contribute towards the maintenance of zoological gardens.

9. Registration and control of dogs.—

(1) A local council may make bye-laws to provide for the registration of all dogs kept within such area or areas within its local area as may be specified.

(2) Such bye-laws shall-

(a) require the registration, by the concerned local government of all dogs kept within the area or areas specified or any part thereof;

(b) require that every registered dog shall wear a collar to which shall be attached a metal token to be issued by the registration authority of the concerned local government and fix the fee payable for the issue thereof;

(c) require that any dog which has not been registered or which is not wearing such token shall, if found in any public place, be detained at a place set apart for the purpose; and

(d) fix the fee which shall be charged for such detention and provide that any such dog shall be liable to be destroyed or otherwise disposed of unless it is claimed and the fee in respect thereof is paid within one week, and may provide for such other matters as the concerned local government thinks fit.

(3) A local government may.—

(a) cause to be destroyed, or to be confined for such period as it may direct, any dog or other animal which is, or is reasonably suspected to be, suffering from rabies, or which has been bitten by any dog or other animal suffering or suspected to be suffering from rabies;

(b) by public notice direct that, after such date as may be specified in the notice, dogs which are without collars or without marks distinguishing them as private property and are found straying on the streets or beyond the enclosures of the houses of their owners if any may be destroyed, and cause them to be destroyed accordingly.

(4) No damages shall be payable in respect of any dog or other animal destroyed or otherwise disposed of under this paragraph.

(5) Whoever, being the owner or person in charge of any dog, neglects to restraint it so that it shall not be at large in any street without being muzzled and without being secured by a chain lead in any case in which—

(a) he knows that the dog is likely to annoy or intimidate any person, or

(b) the concerned local government has, by public notice during the prevalence of rabies, directed that dogs shall not be at large without muzzles and chain leads.

(c) shall be punishable with fine as may be prescribed.

(6) Whoever.—

(a) allows any ferocious dog which belongs to him or is in his charge to be at large without being muzzled, or

(b) sets on or urges any dog or other animal to attack, worry or intimidate any person, or

(d) knowing or having reason to believe that any dog or animal belonging to him or in his charge has been bitten by an animal suffering or reasonably suspected to be suffering from rabies, neglects to give immediate information of the fact to the concerned local government or gives information which is false, shall be punishable with fine which may extend to two hundred rupees.

Animal Trespass

10. Power to seize.—

(1) A cultivator, tenant, occupier, vendee or mortgagee of any land or crop or produce or any part thereof or any person who has advanced cash for the cultivation of crop may seize or cause to be seized any animal trespassing on such land and doing damage thereto, or any crop or produce thereon, to send them or cause them to be sent within twenty-four hours to a pound established under this Ordinance.

(2) Persons in charge of public roads, pleasure grounds, plantations, canals, drainage works, embankments and the like, and the officers of police, may seize or cause to be seized any animals doing damage thereto, and shall send them or cause them to sent, within twenty-four hours of the seizure, to the nearest animal pound.

11. Pounds.—

A concerned local government may establish such number of animal pounds as may be necessary and may fix, from time to time, the location of the animal pounds, the rate of feeding, watering and accommodating the impounded animals.

12. Pound keepers.—

The local government may appoint pound-keepers on whole-time or part-time basis on such terms and conditions as may be fixed.

13. Registers and returns.—

(1) A pound-keeper shall keep such registers and furnish such returns as may be required by the concerned local government.

(2) When animals are brought to the pounds, the pound-keeper shall enter in the register the number and description of animals, the day and hour on which they were so brought, the name and residence of the seizure and that of the owner, if known, and shall give the seizurer or his agent a copy of such entry.

14. Possession and feeding.—

The pound-keeper shall take charge of, feed and .water the animals until they are disposed of as hereinafter provided.

15. Fines for impounded animals.—

For every animal impounded under this Ordinance, the pound-keeper shall levy a fine in accordance with the scale fixed by the concerned local government and the fines so charged shall form part of and be credited to the local fund.

16. Delivery or sale of animals.—

(1) If the owner of an impounded animal or his agent appears and claims the animal, the pound-keeper shall deliver it to him on payment of the fine and charges incurred in respect of such animal under proper receipt to be recorded by the owner or his agent in the register.

(2) If the animal is not claimed within seven days of impounding, the pound-keepers shall inform the officer in charge of the Police Station who shall thereupon display at a conspicuous place in his office a notice stating the number and description of animals and places of seizure and impounding. A similar notice shall be displayed at a conspicuous place in the office of the concerned local government.

(3) If the animal is not claimed within seven days of the notice it shall be sold by the local government by open auction after giving sufficient publicity in all the local area:

Provided that the person auctioning the animals or the pound-keeper or his relatives shall not bid for or purchase the impounded animals.

(4) The proceeds of the sale of the animal shall be paid to the owner if he appears within six months of the sale, after deduction of fines, feeding and other charges.

Aboriculture

17. Arboriculture.—

A concerned local government shall plant trees on public streets and other public places within its local area and take all such steps as may be necessary for the plantation and protection of trees on such streets and places.

18. Forests.—

A concerned local government may, in the manner prescribed, frame and enforce plans providing for the improvement, development and exploitation of forests and maintain, plan and work forests in accordance with such plans.

19. Nuisance pertaining to trees and plantations.—

(1) A council may, by laws, determine the pests of trees and plants and provide for their destruction.

(2) If any land or premised within the local area of a concerned local government is grown with rank or noxious vegetation, or under-growth, the local government may by notice require the owner or the occupier of such land or premises to clear such vegetation or under-growth within a specified time and if he fails to do so within such time, the local government may have such vegetation or under-growth cleared and the cost incurred shall be deemed to be a tax levied on the owner or occupier under this Ordinance.

(3) A concerned local government may, in the manner provided in the by laws, prohibit the cultivation of any crop which is considered dangerous to public health within such part of its local area as may be specified.

Boundaries and Trees

20. Boundary walls, hedges and fences.—

(1) No boundary wall, hedge or fence of any material or description shall be erected in such parts of a local area as are specified by a local government without the permission in writing of the concerned local government.

(2) A local government may, by notice in writing, require the owner or lessee of any land in its local area.—

(a) to remove from the land any boundary wall, hedge or fence which is, in its opinion unsuitable, unsightly or otherwise objectionable, or

(b) to construct on the land sufficient boundary walls, hedges or fences of such material, description or dimensions as may be specified in the notice; or

(c) to main the boundary walls, hedges or fences of such lands in good order:

Provided that, in the case of any such boundary wall, hedge or fence which was erected with the consent or under the orders of the concerned local government or which was in existence at the commencement of this Ordinance the concerned local government shall make compensation for any damage caused by the removal thereof.

(3) A local government may, by notice in writing, require the owner. lessee or occupier of any such land to cut or trim any hedge on the land in such manner and within such time as may be specified in the notice.

21. Felling, lopping and trimming of trees.—

(1) Where, in the opinion of a concerned local government the felling of any tree of mature growth standing in a private enclosure in its local area is necessary for any reason, the concerned local government may, by notice in writing, require the owner, lessee or occupier of the land to fell the tree within such time as may be specified in the notice.

(2) A local government may —

(a) cause to be lopped or trimmed any tree standing on land in its local area which belongs to the local government; or

(b) by public notice require all owners, lessees or occupiers of land in its local area or by notice in writing require the owner, lessee or occupier of any such land, to lop or trim, in such manner as may be specified in the notice, all or any trees standing on such land or to remove any dead trees from such land.

22. Digging of public land.—

Whoever, without the .permission in writing of a concerned local government digs up the surface of any open space in its local area, which is not private property, shall be punishable with fine as may be prescribed and, in the case of a continuing offence, with an additional fine for every day after the first during which the offence continues.

23. Improper use of land.—

(1) If in the opinion of a local government the working of a quarry in its local area or the removal of stone, sand, earth or other material from the soil in any place in its local area is dangerous, to persons residing in or frequenting the neighbourhood of such quarry or place, or creates, or is likely to create, a nuisance, the concerned local government may, by notice in writing, prohibit the owner, lessee or occupier of such quarry or place or the person responsible for such working or removal, from continuing or permitting the working of such quarry or the moving of such material, or require him to take such steps in the matter as the local government may direct for the purpose of preventing danger or abating the nuisance or likely to arise therefrom.

(2) If, in any case referred to in sub- paragraph (1), the concerned local government is of the opinion that such a course is necessary in order to prevent imminent danger, it may, by order in writing, require a proper hoarding or fence to be put up for the protection of passers-by.

Building and Land Use Control

24. Sanction for buildings.—

No person shall erect or re-erect a building or commence to erect or re-erect a building on any land in a local area except with the previous sanction of the concerned local government nor otherwise than in accordance with the provisions of this Ordinance and or the rules and bye-laws made under this Ordinance relating to the erection and re-erection of buildings:

Provided that a local government may, with the approval of the concerned local council, exempt any Union or a part thereof from application of any specific provisions of the building bye-laws or any matter provided for in paragraphs 25 to 34.

25. Notice of new buildings.—

(1) Whoever intends to erect or re-erect any building in a local area shall apply for sanction by giving notice in writing of his intention to the concerned local government.

(2) For the purposes of this Ordinance, person shall be deemed to erect or reerect a building who—-

(a) makes any material alteration of enlargement of any building; or

(b) converts into a place for human habitation any building not originally constructed for that purpose; or

(c) converts into more than one place for human habitation a building originally constructed as one such place; or

(d) converts two or more places of human habitation into one such place or into greater number of such places; or

(e) converts a building or a site or land meant for one particular use or in one particular zoning area into any other use or a use meant for another zoning area; Or

(f) converts into a stable, cattle-shed or cow-house any building originally constructed for human habitation; or

(g) makes any alteration which there is reason to believe is likely to affect prejudicially the stability or safety of any building or the condition of any building in respect of drainage, sanitation or hygiene, or

(h) makes any alteration to any building which increases or diminishes the height of, or area converted by, or the cubic capacity of, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under this Ordinance.

26. Conditions of valid notice.—

(1) A person giving the notice required by paragraph 25 shall specify the purpose for which it is intended to use the building to which such notice relates.

(2) Where a plan to re-lay a street has been approved by a concerned local government, a person who intends to erect or re-erect a building or commences to erect or re-erect a building shall adopt the approved building or street line and for this purpose any space required to be left vacant shall vest in the local government.

(3) No notice shall be valid until it is made in the manner prescribed in the bye-laws made under this Ordinance alongwith plans and other information which may be required therein have been furnished to the satisfaction of the concerned local government along with the notice.

27. Power of Board to sanction or refuse.-

(1) The concerned local government may for reasons to be recorded in writing, either refuse to sanction the erection or re-erection, as the case may be, of the building, or may sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters, namely:-

(a) the free passage or way to be left in front of the building;

(b) the space to be left about the building;

(c) the ventilation of the building, the minimum cubic area of the rooms and the number and height of the stories of which the building may consist;

(d) the provision and position of drains, latrines, urinals, cesspools or other receptacles for wastes;

(e) the level and width of the foundation, the level of the lowest floor and the stability of the structure;

(f) the line of frontage with neighbouring buildings if the building abuts on a street;

(g) the means to be provided for egress from the building in case of fire;

(h) the materials and method of construction to be used for external and party walls for rooms, floors fire-places and chimneys;

(i) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on; and

(j) any other mailer affecting the ventilation sanitation safety or environmental aspects of the buildings and its relationship to the surrounding buildings or areas;

(k) and the person erecting or re-erecting the building shall obey all such written directions in every particular.

(2) A concerned local government may refuse' to sanction the erection or reerection of any building, either on grounds sufficient in the opinion of the concerned local government affecting the particular building, or in pursuance of a notified general scheme or plan of the concerned local government, restricting the erection or re-erection of buildings within specified limits or for any other public purpose.

(3) The concerned local government before sanctioning the erection or re-erection of a building on land which is under the management of the Federal or Provincial Government or any agency thereof, shall ascertain in writing within thirty days of application whether there is any objection on the part of the concerned Government to such erection or re-erection.

(4) The concerned local government may refuse to sanction the erection or re-erection of any building-

(a) when the land on which it is proposed to erect or re-erect the building is held on a lease from the Federal or Provincial Government if, the erection or re-erection constitutes a breach of the terms of the lease, or

(b) when the land on which it is proposed to erect or re-erect the building is not held on a lease from the Government, if the right to build on such land is in dispute between the person applying for sanction and the Government.

(5) If the concerned local government decides to refuse to sanction the erection or re-erection of the building, it shall communicate in writing the reasons for such refusal to the person by whom notice was given.

(6) Where the concerned local government neglects or omits, for forty five days after the receipt of a valid notice, to make and to deliver to the person who has given the notice any order of any nature specified in this paragraph, and such person thereafter by a written communication sent by registered post to the concerned local government calls the attention of the concerned local government to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication the concerned local government shall be deemed to have given sanction to the erection or re-erection, as the case may be unconditionally to the extent that it does not contravene the provisions of the building bye-laws and any notified general scheme for the area:

Provided that, in any case to which the provisions of sub- paragraph (3) apply, the period of forty five days herein specified shall be reckoned from the date on which the concerned local government has received the report referred to in that sub paragraph.

(7) The concerned local government may, after notice and for reasons to be recorded, cancel, modify or withdraw the sanction of a site plan at any time before construction has been commenced or made.

(8) Noting in this paragraph shall apply to any work, addition or alteration which the concerned council may, by by-laws, declare to be exempt.

28. Compensation.—

(1) No compensation shall be claimable by any person for any damage or loss which he may sustain in consequence of the refusal of the local government of sanction to the erection of any building or in respect of any direction issued by it under sub-paragraph (1) of paragraph 27.

(2) The concerned local government shall make compensation to the owner of any building for any actual damage or loss sustained by him in consequence of the prohibition of the re-erection of any building or of its requiring any land belonging to him to be added to the street:

Provided that the concerned local government shall not be liable to make any compensation in respect of the prohibition of the re-erection of any building which for a period of three years or more immediately preceding such refusal has not been in existence or has been unfit for human habitation.

29. Lapse of sanction.—

Every sanction for the erection or re-erection of a building given or deemed to have been given by the concerned local government as herein before provided shall be available for one year from the date on which it is given, and, if the building so sanctioned is not begun by the person who has obtained the sanction or some one lawfully claiming under him within that period, it shall not thereafter be begun unless the concerned local government on application made therefor has allowed an extension of that period.

30. Period for completion of building.—

A concerned local government, when sanctioning the erection or re-erection of a building as herein before provided, shall specify a reasonable period after the work has commenced within which the erection or re-erection is to be completed, and, if the erection or re-erection is not completed within the period so fixed, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided, unless the concerned local government on application made therefor has allowed an extension of that period.

Provided that not more than two such extensions shall be allowed by the concerned local government in any case.

31. Illegal erection and re-erection.—

Whoever begins, continues or completes the erection or re-erection of a building—

(a) without having given a valid notice as required by paragraphs 25 and 26 or before the building has been sanctioned or is deemed to have been sanctioned, or

(b) without complying with any direction made under sub-paragraph (1) of paragraph 27, or

(c) when sanction has been refused, or has ceased to be available, or has been suspended by the concerned local government.

(d) shall be punishable with fine as prescribed.

32. Power to stop erection or re-erection or to demolish.-

(1) A local government may, at any time, notice in writing, direct the owner, lessee or occupier of any land in its local area to stop the erection or re-erection of a building in any case in which the concerned local government considers that such erection or re-erection is an offence under paragraph 31, and may in any such case or in any other case in which the concerned local government considers that the erection or re-erection of a building is an offence under paragraph 31 within

twelve months of the competition of such erection or re-erection in like manner direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected:

Provided that the concerned local government may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable.

33. Completion of building or alteration of buildings.-

(1) Every person who has erected or re-erected a building shall, within thirty days of the completion of the building, report such completion to the concerned local government.

(2) The concerned local government may cause to be inspected any building of which construction has begun or which has been erected or re-erected in violation or contravention of any provision of this Ordinance, rules or the by-laws or of the master plan or site development scheme, if any. The local government may require the alteration of the building so as to be in compliance therewith, and where such alteration is not possible, it may require the building or any part thereof to be demolished, or on the application of the owner of such building compound the offence on payment of such composition fee as may be deemed reasonable.

(3) If a building is required to be demolished under the provisions of sub-paragraph (2) and such requirement is not complied with, within the specified period, the local government may have the building demolished through its own agency and the cost so incurred shall be deemed to be a tax levied on the owner or occupier of the building under this Ordinance.

34. Regulation of'buildings.—

(l) Except with the prior sanction of concerned local .

(m) government, no building shall be put to a use other than shown in the building plan according to which it was erected or re-erected:

Provided that the local government shall not sanction any change in the use of a building which may be in violation or contravention of the master plan or site development scheme, if any.

(2) If any building or anything fixed thereon be deemed by the concerned local government to be in a ruinous state or likely to fall or in any way dangerous to any inhabitant of such building or of any neighbouring building or to any occupier thereof or to passers- by, the local government may, by notice, require the owner or occupier of such building to demolish it or to take such action in regard to the building as may be specified in the notice, and if there is default, the local government may take necessary action and the cost so incurred shall be deemed to be a tax levied on the owner or occupier of the building under this Ordinance.

(3) If a building is so ill constructed, or dilapidated or in dangerous condition or otherwise unfit for human habitation, the concerned local government may prohibit the occupation of such building till it has been suitably repaired to the satisfaction of the local government.

(4) If the building is in dangerous condition and declared unfit for human habitation, the concerned local government may for the purpose of demolition eject the owner or occupier from such building with such necessary force as may be required or in the manner laid down in paragraph 47.

(5) Where it appears to concerned local government that any block of buildings is in an unhealthy condition by reason of the manner in which the buildings are crowded together, or of the narrowness or closeness of the street, or of the want

of proper drainage or ventilation, or of the impracticability of cleansing the buildings or other similar cause, it may cause the block to be inspected by a committee consisting of such officials of the concerned local government as prescribed in the bye-laws.

The committee shall make a report in writing to the concerned local government on the sanitary condition of the block, and if it considers that the condition thereof is likely to cause risk of disease to the inhabitants of the building or of the Neighbourhood or otherwise to endanger the public health it shall clearly indicate on a plan verified by a senior technical professional of the concerned local government the buildings which should in its opinion wholly or in part be removed in order to abate the unhealthy condition of the block.

If, upon receipt of such report, the concerned local government is of opinion that all or any buildings indicated should be removed, it may, by notice in writing, require the owners, thereof to remove them:

Provided that the concerned local government shall make compensation to the owners for any buildings so removed which may have been erected under proper authority:

Provided further that the concerned local government may, if it considers it equitable in the circumstances so to do, pay to the owners such sum as it thinks fit as compensation for any buildings so removed which have not been erected under proper authority.

For the purposes of this sub-paragraph "buildings" includes enclosure walls and fences appertaining to buildings.

(6) Where it appears to a local government that any building or part of a building which is used as a dwelling house is so overcrowded as to endanger the health of the inmates thereof, it may, after such inquiry as it thinks fit, by notice in writing require the owner or occupier of the building or part thereof, as the case may be, within such time not being less than one month as may be specified in the notice, to abate the overcrowding of the same by reducing the number of lodgers, tenants, or other inmates to such number as may be specified in the notice. Any person who fails, without reasonable cause, to comply with a requisition made upon him under this paragraph shall be punishable with such fine as may be prescribed by the concerned local government and in the case of a continuing offence, to an additional fine for every day after the first during which the failure has continued.

35. Projections and obstructions.—

(1) No owner or occupier of any building in a local area shall, without the permission in writing of the concerned local government add to or place against or in front of the building any projection or structure overhanging, projecting into, or encroaching on, any street or any drain, sewer or aqueduct therein.

(2) The concerned local government may, by notice in writing, require the owner or occupier of any such building to alter or remove any such projection or encroachment as aforesaid:

Provided that, in the case of any projection or encroachment lawfully in existence at the commencement of this Ordinance the concerned local government shall make compensation for any damage caused by the removal or alteration.

36. Unauthorized buildings over drains, etc.—

A local government may, by notice in writing, require any person who has, without its permission in writing, newly erected or re-erected any structure over any public sewer,

drain, culvert, water-course or water pipe in its local area to pull down or otherwise deal with the same as it thinks fit.

37. Drainage and sewer connections.—

(1) A local government may, by notice in writing, require the owner or lessee of any building or land in any street, at his own expense and in such manner as the concerned local government thinks fit, to put up and keep in good condition proper troughs and pipes for receiving and carrying rain water from the building or land and for discharging the same or to establish and maintain any other connection or communication between such building or land and any drain or sewer.

(2) For the purpose of efficiently draining any building or land in its local area, the concerned local government may, by notice in writing, require the owner or lessee of the building or land.—

(a) to pave, with such materials and in such manner as it thinks fit, any courtyard, ally or passage between two or more buildings, or

(b) to keep any such paving in proper repair.

38. Power to attach brackets for lamps.—

A local government may attach to the outside of any building, or to any tree in its local area, brackets for lamps in such manner as not to occasion injury thereto or inconvenience.

39. Power to make bye-laws.—

A local council may make bye-laws prescribing.—

(a) the manner in which notice of the intention to erect or re-erect a building in its local area shall be given to the local government and the information and plans to be furnished with the notice;

(b) the type or description of buildings which may or may not and the purpose for which a building may or may not, be erected or re-erected in its local area or any part thereof;

(c) the minimum cubic capacity of any room or rooms in a building which is to be erected or re-erected;

(d) the fees payable on provision by the concerned local government of plans or specifications of the type of buildings which may be erected in the cantonment or any part thereof;

(e) the circumstances in which a mosque, temple or church or other sacred building may be erected or re-erected; and

(f) any other matters which the concerned local government may consider necessary including any specific exemption from the application of the bye-laws.

Burial Places and Cremation

40. Power to call for information regarding burial and burning grounds.-

(1) A concerned local government may, by notice in writing, require the owner or person in charge of any burial or burning ground within its area, to supply such information as may be specified in the notice concerning the condition, management or position of such ground.

(2) No place which has not been used as a burial or burning ground before the commencement of this Ordinance shall be so used without the permission in writing of the concerned local government.

(3) No new burial or burning place shall be established within the local area of a local government except under a licence granted by the local government and in conformity with the condition of such licence.

(4) A burial or burning place which is not administered by a local government shall be registered with the concerned local government and shall be subject to regulation, supervision and inspection by it in such manner as the by-laws may provide.

(5) The Government may, by notification in the Official Gazette, declare that any burial or burning place which is open to public for burial or burning shall vest in a local government and thereupon such burial or burning shall vest in the local government and it shall take all measures necessary for the proper maintenance and administration thereof.

(6) A concerned local government may provide suitable places for the burial or burning of the dead, and shall take necessary measures for the proper maintenance and administration of such burial and burning places.

(7) (a) Where a local government after making or causing to be made a local inquiry, is of opinion that any burial or burning ground in its local area has become offensive, to, or dangerous to, the health of, persons living in the neighbourhood, it may, by notice in writing, require the owner or person in charge of such ground to close the same from such as may be specified in the notice.

(b) Where such notice is issued, the concerned local government may provide at its the expense or, if the community concerned is willing to provide a new burial or burning ground, shall provide a grant to be made towards the cost of the same.

(8) No corpse shall be buried or burnt in any burial or burning ground in respect of which a notice issued under this paragraph is for the time being in force.

Culture

41. Culture.—

A concerned local government may-

(a) establish and maintain information centres for the furtherance of civic education and dissemination of information on such matters as community development and other matters of public interest;

(b) provide and maintain public halls and community centres,

(c) celebrate national occasions;

(d) encourage national and regional languages;

(e) promote physical culture and encourage public games and sports and organize rallies and tournaments.

(f) provide, promote or subsidize facilities for the recreation of the public.

42. Libraries.—

A concerned local government may establish and maintain such libraries, reading rooms and circulation libraries as may be necessary for the use of the public.

43. Fairs and shows.-

A concerned local government may make such arrangements on the occasion of any fairs, shows or public festivals within its local area as may be necessary for the public health, public safety and public convenience, and may levy fees on the persons attending such fairs, shows and festivals

Dangerous Articles and Offensive Trades

44. Dangerous and Offensive Articles and Trades.-

(1) The articles and trades specified in the Annex shall be deemed to be dangerous or offensive for the purpose of this paragraph.

(2) Except under and in conformity with the conditions of a licence granted by concerned local government-

(a) no person shall carry on any dangerous or offensive trade;

(b) no premises shall be used or suffered to be used for any dangerous or offensive trade; and

(c) no person shall store or keep in any premises

(i) any dangerous or offensive articles for domestic use; or

(ii) any dangerous or offensive articles in excess of such limits and quantity as may be fixed by by-laws.

(3) Notwithstanding the grant of a licence under sub-paragraph (2), the concerned local government may, for reasons to be recorded, and after notice to the person affected, pass an order for the prohibition, closure or removal of any offensive and dangerous trade or article if such action is deemed expedient or necessary to implement the order.

Drainage and Sewerage

45. Drainage.-

(1) The concerned local government shall provide an adequate system of public drains in its local area and all such drains shall be constructed, maintained, kept cleared and emptied with due regard to the health and convenience of the public.

(2) Every owner or occupier of any land or building within the local area of the concerned local government may, with its previous permission, and subject to such terms and conditions, including the payment of fees, as it may impose, cause his drains to be emptied into public drains.

(3) All private drains shall be subject to control, regulation and inspection by the concerned local government.

(4) Subject to the provisions of any other law for the time being in force, the concerned local government may by notice direct a commercial or industrial concern to provide for the disposal of its waste or effluent in the manner specified, and failure on the part of owner, tenant or occupier thereof to comply with such directions, shall be a municipal offence.

(5) The concerned local government may, by notice, require the owner of any building land or an industrial concern within its local area-

(a) to construct such drains within the building or land or the street adjoining such building or land and to take such other measures for treatment and disposal of effluent as may be specified in the notice;

(b) to remove, alter or improve any such drains; and

(c) to take other steps for the effective drainage of the building or land as may be specified.

(6) In case of failure of owner to comply with the requirements of notice under sub-paragraph(5), the concerned local government may itself cause such requirements such markets or slaughter-houses, and may provide and maintain in any such market buildings, places, machines, weights, scales and measures for the weighment or measurement of goods sold therein.

(2) The concerned local government may at any time, by public notice either close or relocate any public market or public slaughter-house or any part thereof.

46. Use of public markets.—

(1) No person shall, without the general or special permission for sale by such person, may be summarily removed from the market by or under the orders of the concerned local government by any officer or servant of the concerned local government authorized by it in this behalf.

(2) Any person contravening the provisions of this paragraph and any animal or article exposed for sale by such person, may be summarily removed from the market by or under the orders of the concerned local government by an officer or servant of the concerned local government authorized by it in this behalf.

47. Levy of stallages, rents and fees.—

A local council may, in respect of pubic market and public slaughter houses:

(a) charge for the occupation or use of any stall, shop standing, shed or pen in a public market, or public slaughter-house; or for the right to expose goods for sale in a public market; or for weighing or measuring goods sold therein; or for the right to bring in goods on vehicles or animals or for animals brought for sale or sold; or for the right to slaughter animals in any public slaughter-house; such stallages, rents and fees as it thinks fit; including that from brokers commission agents, and other practicing their calling therein;

(b) or direct the concerned local government to receive such approved rents and fees leviable as aforesaid or any portion thereof for any period not exceeding one year at a time; or

(c) put up to public auctions or dispose off by private sale, the privilege of occupying or using any stall, shops, standing, shed or pen in a public market or public slaughter house for such term and on such conditions as it may approve.

48. Stallages, rents, etc. to be published.—

A copy of the table of stallages, rents and fees, if any, leviable in any public market or public slaughter-house, and of the bye-laws made under this Ordinance for the purpose of regulating the use of such market or slaughter-house, printed in Urdu and in such other language or languages as the local council may direct, shall be affixed in some conspicuous place in the market or slaughter-house.

49. Private markets and slaughter-houses.—

(1) No place in a local area other than a public market shall be used as a market, and no place in a local area other than a public slaughter-house shall be used as

a slaughter-house, unless such places has to be carried out, and the cost so incurred shall be deemed to be a Tax recived on the owner of the building or land, as the case may be, under this Ordinance.

50. Drainage and sewerage schemes for commercial and industrial area.—

(1) The concerned local government may, by notice, require the owners, tenants and occupiers of commercial and industrial concerns in any area or areas within its local area to have at their own cost prepared a scheme for the adequate and safe drainage and disposal of their wastes and effluent of the quality permitted under the rule or the by-laws and submit it to the local government within the time specified in the notice:

Provided that the time limit may be extended by the local government for a maximum period of three months at the request of the owners, tenants or occupiers of the commercial and the industrial units concerned.

(2) The drainage, sewerage and disposal scheme as approved by the local government with modifications, if any, shall be executed and implemented by the owners, tenants or occupiers of the commercial or industrial units at their expense in such manner and within such time as may be specified by the local government.

(3) In case of the failure of the owners, tenants or occupiers of the commercial or industrial concerns to comply with the provisions of sub-paragraphs (1) and (2), the concerned local government may itself prepare the drainage, sewerage and disposal scheme and execute and implement it at its own expense, and the cost so incurred shall, under this Ordinance, be deemed to be a tax levied on the owners, tenants or occupiers of the industrial and commercial units concerned.

Encroachments

51. Encroachment and subsisting lease and licences.—

(1) No person shall make an encroachment movable or immovable on an open space or land vested in or managed, maintained or controlled by a local government, or on, over or under a street, road, graveyard, within its local area or a drain.

(2) The local government may, after such notice as may be considered reasonable, remove the encroachment mentioned in sub-paragraph (1) with such force as may be necessary.

(3) A person who trespasses into or is in wrongful occupation of a building or property which is vested in or is managed, maintained or controlled by a local government may, in addition to any other penalty to which he may be liable under the Ordinance or any other law for the time being in force, after such notice as may be considered reasonable by the local government, be ejected from such building or property by the local government with such force as may be necessary.

(4) Any person aggrieved by notice issued under sub-paragraph (3) may, within seven days, of the service of notice, appeal to such authority as may be prescribed in the bye-laws and its decision thereon shall be final.

(5) Notwithstanding anything contained in any other law, no compensation shall be payable for any encroachment removed or ejectment carried out under this' paragraph.

(6) The cost of removal of encroachment or ejectment under this paragraph shall be payable to the local government by the encroacher or wrongful occupier, and if the cost is not paid on demand the local government may cause it to be recovered as arrears of land revenue or cause the materials or articles used by the encroacher or the wrongful occupier for encroachment or wrongful occupation to be sold in auction and if the proceeds of the sale are not sufficient to cover the cost the balance shall be recoverable as arrears of land revenue but if such proceeds exceed the cost of the excess shall paid to the encroacher or the wrongful occupier.

(7) In this paragraph, "encroacher" or "wrongful occupier" shall include a person who owns the materials or articles used for encroachment or wrongful occupation at the time of removal of encroachment or ejectment and also any person in possession thereof on his behalf or with his permission or connivance.

Environmental Protection

52. Environmental pollution.—

(1) A concerned local government may prepare and implement schemes for the prevention of the pollution of air by gases, dust or other substances exhausted or emitted by automobile engine, factories, brick or lime kilns, crushing machines for grain, stone, salt or other materials and such other sources of air pollution as the by-laws may provide.

(2) A concerned local government may prepare and implement schemes for the prevention of the pollution of water or land from such sources and in such manner as the by-law may provide.

(3) A local government may, by notice in writing, require the owner or part-owner, or person claiming to be the owner or part-owner, of any building or land in the area of the concerned local government or the lessee or the person claiming to be the lessee of any such land, which, by reason of disuse or disputed ownership or other cause, has remained unoccupied and has if the opinion of the concerned local government has become a sanitary or environmental hazard or otherwise occasions or is likely to occasion a nuisance, to secure and enclose the same within such time as may be specified in the notice.

Food and Markets

53. Public markets and slaughter-houses.—

(1) A local government may provide and maintain within its own local area, public markets and public slaughter-houses, to such number as it thinks fit, together with stalls, shops, sheds, pens and other buildings or conveniences for the use of persons carrying on trade or business in or frequenting been licensed as a market or slaughter-house, as the case may be, by the concerned local government.

(2) Nothing in sub- paragraph (1) shall be deemed to restrict the slaughter of any animal in any place on the occasion of any festival or ceremony, subject to ‘such conditions as to prior or subsequent notice as the concerned local government with the previous sanction of the local council may, by public or special notice, impose in this behalf.

(3) Whoever omits to comply with any conditions imposed by the concerned local government under sub- paragraph (2) shall be punishable with fine as prescribed

and, in the case of a continuing offence, with an additional fine for every day after the first during which the offence is continued.

54. Conditions of grant of licence for private market or slaughter-house.—

(1) A local government may charge such fees as approved by its local council for the grant of a licence to any person to open a private market or private slaughter-house and may grant such licence subject to such conditions, consistent with this Ordinance and any bye-laws made thereunder, as it thinks fit to impose.

(2) The concerned local government may refuse to grant any such licence for reasons to be recorded.

55. Penalty for keeping market or slaughter-house open without licence, etc.-

(1) Any person who keeps open for public use any market or slaughter-house in respect of which a licence therefor is suspended, or after the same has been cancelled, shall be punishable with fine as prescribed and, in the case of a continuing offence, with an additional fine for every day after the first during which the offence is continued.

(2) When a licence to open a private market or private slaughter-house is granted or refused or is suspended or cancelled, the concerned local government shall cause a notice of the grant, refusal, suspension or cancellation to be posted in Urdu and in such other language or languages as it thinks necessary, in some conspicuous place near by the entrance to the place to which the notice relates.

56. Penalty for using unlicensed market or slaughter-houses.-

Whoever, knowing that any market or slaughter-house has been opened to the public without a licence having been obtained therefor when such licence is required by or under this Ordinance, or that the licence granted therefor is for the time being suspended or that it has been cancelled, sells or exposes for sale any article in such market, or slaughters any animal in such slaughter-house, shall be punishable with fine as prescribed and in the case Of a continuing offence, with an additional fine for every day after the first during which the offence is continued.

57. Prohibition and restriction of use of slaughter-houses.—

(1) Where, in the opinion of the concerned local government it is necessary on sanitary grounds so to do, it may, by public notice, prohibit for such period, not exceeding one month as may be specified in the notice, or for such further period, not exceeding one month, as it may specify by a like notice, the use of any private slaughter-house specified in the notice, or the slaughter therein of any animal of any description so specified.

(2) A copy of every notice issued under sub- paragraph (1) shall be conspicuously posted in the slaughter-house to which it relates.

58. Power to inspect slaughter-house.—

(1) Any servant of a local government authorized by order in writing in this behalf by the concerned local government it may, if he has reason to believe that any animal has been, is being, or is about to be slaughtered in any place in contravention of the provisions of the Ordinance enter into an inspect any such place at any time, whether by day or by night.

(2) Every such order shall specify the' place to be entered and the locality in which the same is situated and the period, which shall not exceed seven days, for which the order is to remain in force.

59. Power to make bye-laws.—

A local government may make bye-laws consistent with this Ordinance to provide for all or any of the following matters, namely:

(a) the days on, and the hours during, which any private market or private slaughter-houses may be kept open for use;

(b) the regulation of the design, ventilation and drainage of such markets and slaughter-houses, and the material to be used in the construction thereof;

(c) the keeping of such markets and slaughter-houses and lands and buildings appertaining thereto in a clean and sanitary condition, the removal of filth and refuse therefrom, and the supply therein of pure water and of a sufficient number of latrines and urinals for the use of persons using or frequenting the same;

(d) the manner in which animals shall be stalled at a slaughter-house;

(e) the manner in which animals may be slaughtered;

(f) the disposal or destruction of animals offered for slaughter which are, from disease or any other cause, unfit for human consumption;

(g) the destruction of carcasses which from disease or any other cause are found after slaughter to be unfit for human consumption; and

(h) any other matters which the concerned local government may consider necessary including any specific exemptions from the application of the bye-laws.

60. By-laws for articles of food and drink.—

A concerned council may, by by-laws-

(a) prohibit the manufacture, sale or preparation or the exposure for sale of any specified articles of food or drink in any place or premises not licensed by the concerned local government;

(b) prohibit the import into its local area for sale or hawking for sale, of any specified article of food of drink by person not so licensed;

(c) prohibit the hawkings of specified articles of food and drink in such parts of its local area as may be specified;

(d) regulate the time and manner of transport within its local area of any specified articles of food or drink;

(e) regulate the grant and withdrawal of a licence under this paragraph and the levying of fees therefor; or

(f) provide for the seizure and disposal of any animal, poultry or fish intended for food which is diseased, or any article of food or drink which is noxious.

61. Milk supply.—

(1) Except under a licence granted by the concerned local government and in conformity with the conditions of such licence, no person shall, unless exempted by the concerned local government, keep milch cattle for the sale of milk or sell milk or expose or import milk for sale or manufacture butter, ghee, or any other milk for sale or diary product, nor shall any premises be used for such purpose.

(2) A concerned local government may in the manner prescribed, may frame and enforce a milk supply scheme which may among other matters provide for the establishment of milkmen's colonies, the prohibition of the keeping of milch cattle in the local area or any part thereof, and the adoption of such other measures as may be necessary for ensuring an adequate supply of pure milk to the public.

62. Feeding animals on dirt, etc.—

Whoever feeds or allows to be fed on filthy or deleterious substances any animal, which is kept for the purpose of supplying milk to, or which is intended to be used for human consumption or allows it to graze in any place in which grazing has, for sanitary reasons, been prohibited by public notice by the local government, shall be punishable with fine as prescribed.

63. Powers of entry and seizure.—

An officer or servant of a local government authorized by it in writing in this behalf,—

(a) may at any time enter into any market, building, shop, stall or other place in the local area for the purpose of inspecting, and may inspect, any animals, article or thing intended for human food or drink or for medicine, whether exposed or hawked about for sale or deposited in or brought to any place for the purpose of sale, or of preparation for sale, or any utensil or vessel for preparing, manufacturing or containing any such article, or thing, and may enter into and inspect any place used as a slaughter-house and may examine any animal or article therein;

(b) may seize any such animal, article or thing which appears to him to be diseased, or unwholesome or unfit for human food or drink or medicine, as the case may be, or to be adulterated or to be not what it is represented to be, or any such utensil or vessel which is of such a kind or in such a sate as to render any article prepared, manufactured or contained therein unwholesome or unfit for human food or for medicine, as the case may be.

(2) Any article seized under sub- paragraph (1) which is of a perishable nature may forthwith be destroyed if, in his opinion, it is diseased, unwholesome or unfit for human food, drink or medicine, as the case may be.

(3) Every animal, article, utensil, vessel or other thing seized under subparagraph (1) shall, if it is not destroyed under sub- paragraph (2), be taken before a competent court who shall give orders as to its disposal.

(4) The owner or person in possession, at the time of seizure under subparagraph (1), of any animal or carcass which is diseased or of any article or thing which is unwholesome or unfit for human food, drink or medicine, as the case may be, or is adulterated or is not what it is represented to be, or of any utensil or vessel which is of such kind or in such state as is described in clause (b) of sub-paragraph (1), shall be punishable with fine as described and the animal, article, utensil vessel or other thin shall be liable to be forfeited to the concerned local government or to be destroyed or to so disposed of as to prevent its being exposed for sale or used for the preparation of food, drink or medicine, as the case may be.

Explanation I.— If any such article, having been exposed or stored in, or brought to, any place mentioned in sub- paragraph (1) for sale as asli (pure) ghee, contains any substance not exclusively derived from milk, it shall be deemed, for the purposes of this paragraph, to be an article which is not what it is represented to be.

Explanation II.— Meat subjected to the process of blowing shall be deemed to be unfit for human food.

Explanation III.— The article of food or drink shall not be deemed to be other than what it is represented to be merely by reason of the fact that there has been added to it some substance not injurious to health:

Provided that

(a) such substance has been added to the article because the same is required for the preparation or production thereof as an article of commerce in a state fit for carriage or consumption and not fraudulently to increase the bulk, weight of measure of the food or drink or conceal the inferior quality thereof, or

(b) in the process of production, preparation or conveyance of such article of food or drink, the extraneous substance has unavoidably become intermixed therewith, or

(c) the owner or person in possession of the article has given sufficient notice by means of a label distinctly and legibly written or printed thereon or therewith, or by other means of a public description, that such substance has been added, or

(d) such owner or person has purchased that article with a written warranty that it was of a certain nature, substance and quality and had no reason to believe that it was not of such nature, substance and quality, and has exposed it or hawked it about or brought it for sale in the same state and by the same description as that in and by which he purchased it.

Lease and Licences for Land and Buildings

64. Lease and licences for land and buildings.-

(1) A local government may grant a licence or lease in respect of any land, open space, building or property vested in it or managed, maintained or controlled by it on such terms and conditions as may be provided in by-laws.

(2) Notwithstanding anything contained in any other law or a subsisting lease or licence, the concerned local government may, after giving a reasonable notice to the person concerned, vary the terms and conditions of any lease or licence of land or buildings or any other property owned, managed, maintained or controlled by it, in such manner and to such extent, as it may deem fit, and may also cancel the lease or licence if the varied terms and conditions are not acceptable to the lessee or the licensee.

(3) If, on the cancellation of any lease or licence under sub-paragraph (2) or on the expiry of the period of any lease or licence or on the determination or cancellation Of a lease or licence on the breach of any of the terms and conditions thereof in respect of land or building or any property of which a local government is the lessor or licensor, any lessee or licensee holds on or continues in possession of such land, building or property or if in any case such land or building or property is required for any public purpose, the lessee or licensee on being required to hand over vacant possession within a specified time refuses or fails to vacate that land or building or property, the local government or an officer authorized by it in this behalf may enter upon and take possession of such land, building or other property, and may also demolish and remove the structures, if any, erected or built thereon.

(4) The cost of demolition and removal of structure under sub-paragraph (3) shall be payable to the local government by the lessee or licensee, as the case may be, and if the cost is not paid on demand, the local government may cause the material of the structures demolished and removed to be sold in auction, and if the proceeds of the sale are not sufficient to cover the cost, the balance shall be recoverable as arrears of land revenue, but if such proceeds exceed the cost, the excess shall be paid to the lessee or the licensee as the case may be.

(5) In sub-paragraphs (3) and (4) the lessee and the licensee shall be deemed to include a person who owns the structure at the time of removal or demolition and also any person in possession thereof on his account or with his permission or connivance.

(6) For the purpose of eviction of lessee or licensee under the provisions of this paragraph, an officer authorized by a local government in this behalf may use or cause to be used such force as may be necessary and may seek Magisterial or Police assistance.

(7) If any sum is payable by the lessee or licensee as rent or fee in respect of any land, building or other property on the day of recovery of possession thereof, the same shall be recoverable from him as arrears of land revenue.

Licensing: General Provisions

65. Power to vary licence.-

If a local government is satisfied that any place used under a licence granted by it under this Ordinance is a nuisance or is likely to be dangerous to life, health or property, the concerned local government may, by notice in writing, require the owner, lessee or occupier thereof to discontinue the use of such place or to effect such alterations, additions, or improvements as will, in the opinion of the concerned local government, render it no longer a nuisance or dangerous

66. Carrying on trade, etc., without licence or in contravention of paragraph 65.

Whoever carries on any trade, calling or occupation for which a licence is required without obtaining a licence therefor or while the licence therefor is suspended or after the same has been cancelled, and whoever, after receiving a notice under paragraph 65, uses or allow to be used any building or place in contravention thereof, shall be punishable with fine as prescribed and in the case of a continuing offence, with an additional fine for every day after the first during which the offence is continued.

Open Spaces

67. Gardens.—

(1) A concerned local government may lay-out and maintain within its local area such public gardens as may be necessary for the recreation and convenience of the public and such public gardens shall be maintained and administered in such manner as the by-laws, may provide.

(2) For every public garden there shall be framed and enforced, in the manner prescribed, a garden development plan, which shall provide for the development and improvement of the garden.

68. Open spaces.—

A concerned local government may provide and maintain within its local area such open spaces as may be necessary for the convenience of the public and such spaces shall be grasses, hedged, planted and equipped with such amenities and in such manner as the by-laws may provide.

Planning

69. Spatial plan.—

A concerned local government may shall draw up spatial (master) Plan for its local area which shall, among other matters, provide for-

(a) a survey of the its local area including its history, statistics, public service and other particulars;

(b) development, expansion and improvement of any area within the local area;

(c) restrictions, regulations and prohibitions to be imposed with regard to the development of sites, and the erection and re-erection of buildings within the local area; and

(d) such other matters as the concerned local government may require to be included in the plan.

70. Site development schemes.—

(1) Where a Plan has been drawn up under paragraph 69 and such Plan has been approved, no owner of land exceeding such areas as may be specified in this behalf in the Plan so approved shall develop the site or erect or re-erect a building on any plot of land covered by the Plan, except in conformity with the provisions of a site development scheme sanctioned for the area in the manner prescribed.

(2) Where a Plan has not been drawn up under paragraph 69, no owner of land shall develop the site or erect or re-erect any building on any plot or land except in conformity with the provisions of the site development scheme sanctioned by the concerned local government.

(3) An owner of land who desires to develop a plot or a piece of land belonging to him for which no sanctioned site development scheme exists, or where the proposed development is not in conformity with the existing development scheme, he may apply to the concerned local government for sanction of his development scheme and the local government may, on such terms and conditions and on payment of such fees or charges as may be laid down by it in its by-laws, sanction the same:

Provided further that the concerned local government may, after notice and for reasons to be recorded, cancel, modify or withdraw the sanction any time before construction in pursuance of the scheme has been commenced or made.

(4) Among other matters, the site development scheme shall provide for-

(a) the division of the site into plots;

(b) provision for streets, drains and open spaces;

(c) reservation of land for public utility services to be transferred to the concerned local government;

(d) provisions for acquisition of land by the local government, if any;

(e) the works that shall be executed at the cost of the owners of the site or sties; and

(f) the period during which the area shall be developed.

(5) The land reserved for public utility services in the Site Development Scheme shall be transferred, free of cost, by the owner or the owners to the local government before the sanction of the scheme. Such land shall not be converted or used for any purpose other than that shown in the same scheme.

71. Execution of site development schemes.—

(1) The execution of site development scheme shall be subject to the inspection and control of the concerned local government and the local government may from time to time give such directions with regard to the execution of the scheme as may be deemed necessary.

(2) If any area is developed or otherwise dealt with in contravention of the provisions of the sanctioned scheme, the local government may, by notice, require the owner of such area or the person who has contravened the provisions to make such alteration, in the site as may be specified in the notice, and where such alteration is not made or for any reason cannot be carried out, the local government may require and enforce the demolition of offending structure and notwithstanding anything to the contrary contained in any law, no compensation shall be payable for such demolition.

(3) If an area for which a scheme has been sanctioned is not developed within the period provided in the scheme and further extension is not allowed by the local government, or if the development is not in conformity with the terms of the site development scheme, the local government may take over the development of the scheme and execute the necessary works and the cost so incurred shall be deemed to be a tax levied on the owner or owners under this Ordinance.

Public Health and Sanitation

72. Insanitary buildings and lands.—

(1) A concerned local government may, by notice, require the owners or occupier of any building or land which is in insanitary or unwholesome state-

(a) to clean or otherwise put in it in a proper state;

(b) to make arrangements to the satisfaction of the local government for its proper sanitation; and

(c) to limewash the building and to make such essential repairs as may be specified in the notice.

(2) If in the opinion of a local government any well, tank, reservoir, pool, depression, or excavation, or any bank or tree, is in a ruinous state or for want of sufficient repairs, protection or enclosure a nuisance or dangerous to persons passing by or dwelling or working in the neighbourhood, the concerned local government may by notice in writing may, require the owner or part-owner or person claiming to be the owner or part-owner thereof, or, failing any of them, the occupier thereof to remove the same, or may require him to repair, or to protect or enclose the same in such manner as it thinks necessary; and, if the danger is, in the opinion of the concerned local government imminent, it shall forthwith take such steps as it thinks necessary to avert the same.

73. Removal, collection and disposal of refuse.—

(1) The concerned local government shall make adequate arrangements for the removal of refuse from all public roads and streets, public latrines, urinals, drains and all buildings and lands vested in the local government and for the collection and proper disposal of such refuse.

(2) The occupiers of all other buildings and lands within the local area of a local government shall be responsible for the removal of refuse from such buildings and land subject to the general control and supervision of the local government where relevant.

(3) The concerned local government shall cause public dustbins or other suitable receptacles to be provided at suitable places and where such dustbins or receptacles are provided, the concerned local government may, by public notice, require that all refuse accumulating in any premises or land shall be deposited by the owner or occupier of such premises or land in such dustbins or receptacles.

(4) All refuse removed and collected by the staff of a local government or under their control and supervision and all refuse deposited in the dustbins and other receptacles provided by the local government shall be property of the local government.

(5) The concerned local government may, by notice issue directions at which the manner in which and the conditions subject to which, any matter referred to in this paragraph may be carried out.

74. Latrines and urinals.—

(1) The concerned local government shall provide and maintain in sufficient number and in proper situations public latrines and urinals for the separate use of each sex, and shall cause the same to be kept in proper order and to be regularly and properly cleaned.

(2) A local government may, by notice in writing:-

(a) require any person having the control whether as owner, lessee or occupier of any land or building

(i) to close any cesspool appertaining to the land or building which is, in the opinion of the concerned local government a nuisance, or

(ii) to keep in a clean condition, in such manner as may be prescribed by the notice, any receptacle or filth or sewage accumulating on the land or in the building, or

(iii) to prevent the water of any private latrine, urinal, sink or bath-room or any other offensive matter, from soaking, draining or flowing, or being put, from the land or building upon any street or other public place or into any watercourse or other specified waterbody or into any drain not intended for the purpose; or

(iv) to collect and deposit for removal by the conservancy establishment of the concerned local government within such time and in such receptacle or place, situated at not more than thirty five meters from the nearest boundary of the premises, as may be specified in the notice, any offensive matter or rubbish which such person has allowed to accumulate or remain under, in or on such building or land; or

(b) require any person to desist from making or altering any drain leading into a public drain; or

(c) require any person having the control of a drain to cleanse, purify, repair or alter the same, or otherwise put it in good order, within such time as may be specified in the notice.

(3) Where any premises are without privy or urinal accommodation, or without adequate privy or urinal accommodation, or the privy or urinal is on any ground objectionable, the concerned local government may, by notice, require the owner or occupier of such premises-

(a) to provide such or such additional privy or urinal accommodation as may be specified in the notice;

(b) to make such structural or other alteration in the existing privy or urinal accommodation as may be so specified;

(c) to remove the privy or urinal; and

(d) where there is any underground sewerage system to substitute connected privy or connected urinal accommodation for any service privy or service-urinal accommodation.

(4) In case the owner or occupier of any building or land who has been served notice under sub-paragraph (3), fails to make arrangements to the satisfaction of the concerned local authority for the matter referred to in this paragraph, the concerned local government may undertake such roles and the cost so incurred shall be deemed to be a tax levied under this Ordinance on the owner or occupier.

75. Private latrines.—

A concerned local government may, by notice in writing,—

(a) require the owner or other person having the control of any private latrine or urinal not to put the same to public use; or

(b) where any plan for the construction of private latrines or urinals has been approved by the concerned local government and copies thereof may be obtained free of charge on application.—

(i) require any person repairing or constructing any private latrine or urinal not to allow the same to be used until it has been inspected by or under the direction of the concerned local government and approved by it as conforming with such plan; or

(ii) require any person having control of any private latrine or urinal to re-build or alter the same in accordance with such plan; or

(c) require the owner or other person having the control of any such private latrine or urinal which, in the opinion of the concerned local government constitutes a nuisance, to remove the latrine or urinal; or

(d) require any person having the control whether as owner, lessee or occupier of any land or building

(i) to have any latrines provided for the same out by a sufficient roof and wall or fence from the view of persons passing by or dwelling in the Neighbourhood, or

(ii) to keep such latrine or urinal in proper state to the satisfaction of the concerned local government and shall employ such staff for the purpose as may be necessary or as may be specified by the local government.

(e) require any person being the owner and having the control of any drain to provide, within ten days from the service of the notice, such covering as may be specified in the notice.

76. Infectious diseases.—

(1) The concerned local government shall adopt measures to prevent infectious diseases and to restrain infection within its local area.

(2) The concerned local government shall establish and maintain one or more hospitals for the reception and treatment of persons suffering from infectious diseases.

77. Medical aid and relief and medical education.—

A concerned local government may take such measures as may be necessary or as may be specified by the Government for-

(a) the provision, maintenance and management of First Aid Centres;

(b) the provision, maintenance and management of mobile medical aid units;

(c) the provision and encouragement of societies for the provisions of medical aid;

(d) the payment of grants to institutions for medical relief; and

(e) the medical inspection of school children.

78. Bathing and washing places.—

(1) A concerned local government may from time to time-

(a) set apart suitable places for use by the public for bathing;

(b) specify the time at which and the sex of persons by whom such places may be used; and

(c) prohibit by public notice, the use by the public for any of the said purposes of any place not so set apart.

(2) No person shall establish, maintain or run a hamam or a bath for public use except under a licence granted by the concerned local government, and in conformity with the conditions and terms of such licence.

Public Safety

79. Fire-fighting.—

(1) For the prevention and extinction of fires, the concerned local government shall maintain a fire brigade consisting of such staff and such number of fire stations and such implements, machinery, equipment and means of communicating, intelligence as may be necessary.

(2) The concerned local government shall prepare fire-fighting plan and revise it at least once a year.

80. Civil Defence.—

The concerned local government shall be responsible for the civil defence of its local area, and shall in this behalf, perform such functions as may be specified by Government.

81. Floods.—

For the fighting of floods, rescuing of people from the flood-affected areas, and affording relief to flood-stricken people, a concerned local government shall provide such boats, appliances and equipments as may be specified by Government.

Registration of Births and Deaths

82. Births and deaths.—

A Union Administration shall register all births and deaths within the limits of its local area and information of such births and deaths shall be given by such persons or authorities, and shall be registered in such manner, as the by-laws may provide.

Social Welfare and Community Development

83. Social welfare.—

A concerned local government may-

(a) establish, manage and maintain welfare homes, asylums, orphanages, widow homes and other institutions for the relief of the distressed;

(b) provide for the burial and burning of paupers found dead within its local area at its own expense;

(c) adopt such measures as may be specified by Government for the prevention of beggary, prostitution, gambling, taking of injurious drugs and consumption of alcoholic liquor, juvenile delinquency and other social evils;

(d) organize social service volunteers; and

(e) adopt such measures as may be prescribed for the promotion of the welfare of backward classes, families of the persons serving in armed forces and women and children.

Streets and Streets Lighting

84. Public streets.—

(1) A concerned local government shall provide and maintain such public streets and other means of public communications as may be necessary.

(2) A concerned local government shall, in the manner prescribed, prepare and execute a road maintenance and development programme.

85. Streets.—

(1) No new street shall be laid out except with the previous sanction of the concerned local government and in conformity with the terms and conditions of such sanction.

(2) All streets other than public streets shall be maintained in such manner as the by-laws may provide.

(3) The concerned local government may, by notice, require that any street may be paved, metalled, drained, channelled, approved or lighted in such manner as may be specified and in the event of default, the local government may have the necessary work done through its agency and the cost so incurred shall be deemed to be a tax levied on the person concerned under this Ordinance.

(4) Government may prescribe the manner in which a street other than a public street may be converted into a public street.

86. Street lighting and electrification.—

(1) The concerned local government shall take such measures as may be necessary for the proper lighting of the public streets and other public places vested in the local government by oil, gas electricity or such other iiluminant as the local government may determine.

(2) The local government shall also provide or cause to be provided electricity in coordination with the concerned department to its local area for public and private purposes.

(3) A concerned local government may frame and enforce a street lighting and electrification schemes.

87. Street watering.—

The concerned local government shall take such measures as may be necessary for the watering of public streets for the comfort and convenience of the public, and may, for this purpose, maintain such vehicles, staff and other apparatus as may be necessary.

Trades and Occupations

88. Provision of washing places.—

(1) A local government may provide suitable places for the exercise by washerman of their calling, an may require payment of such fees as may be prescribed by the local council.

(2) Where the concerned local government has provided such places as aforesaid it may, by public notice, prohibit the washing of clothes by washermen at any other place within that part of the local area:

Provided that such prohibition shall not be deemed to apply to the washing by a washerman of his own clothes or of the clothes of any other person who is an occupier of the place at which they are washed.

(3) Whoever contravenes any prohibition contained in a notice issued under sub-paragraph (2) shall be punishable with fine as prescribed.

89. Licences required for carrying on of certain occupation.—

(1) No person of any of the following classes, namely.—

(a) butchers and vendors of poultry, game or fish;

(b) persons keeping milch cattle or milch goats for profit;

(c) persons keeping for profit any animals other than milch cattle or much goats;

(d) dairymen, buttermen and makers and vendors of ghee;

(e) vendors of fruit or vegetables;

(f) manufacturers of ice or ice-cram, and vendors of the same;

(g) vendors of any medicines, drugs or articles of food or drink for human consumption (other than milk, butter, bread, biscuits, cake, fruit, vegetables, aerated or other potable water or ice or ice-cream) which are of a perishable nature;

(h) vendors of water to be used for drinking purposes;

(i) washermen;

(j) persons carrying on any trade or occupation from which offensive or unwholesome smells arise;

(k) vendors of wheat, rice and other grain or of flour;

(l) makers and vendors of sweetmeats;

(m) barbers and keepers of shaving saloons; and

(n) any other trades and occupations specified in the bye-laws, or through public notice by local council from time to time

(o) shall carry on his trade, calling or occupation in such part of a local area as may be designated by the local council unless he has applied for and obtained a licence in this behalf from the concerned local government.

(2) A licence granted under sub- paragraph (1) shall be valid until the end of the year in which it is issued and the grant of such licence shall not be withheld by the concerned local government unless it has reason to believe that the business which it is intended to established or maintain would be offensive or dangerous to the public.

(3) Notwithstanding anything contained in sub- paragraph (1)—-

(a) no person who was, at the commencement of this Ordinance carrying on his trade, calling or occupation in any part of a local area shall be bound to apply for a licence for carrying on such trade or occupation in that part until he has received from the concerned local government not less than 3 months' notice in writing of his obligation to do so, and if the concerned local government refuses to grant him a licence, it shall pay compensation for any loss incurred by reason of such refusal; and

(b) no person shall be required to take out a licence for the sale or storage of petroleum or for the sale or possession for sale for poisons or white arsenic in any case in which he is required to take out a licence or such sale, storage or possession under any Federal or Provincial statutes.

(4) A local council may charge fees for the grant of licences under this paragraph.

90. Conditions which may be attached to licences.—

A licence granted to any person under paragraph 89 shall specify the part of the local area in which the licensee may carry on his trade, calling or occupation, and may regulate the hours and manner of transport within the local area of any specified articles intended for human consumption and may contain any other conditions which concerned local government thinks fit to impose in accordance with bye-laws made under this ordinance.

Transport and Traffic

91. Traffic control.—

(1) The concerned local government shall, by by-laws, make such arrangements for the control and regulation of traffic as may be necessary to prevent danger to and ensure the safety, convenience and comfort of the public.

(2) A concerned local government may, provide for parking motors on such public places as may be determined by it.

92. Public vehicle.—

(1) No person shall keep or let for hire or drive or propel, within the limits of the local area of a concerned local government, any public vehicle, other than a motor vehicle, except under a licence granted by the local government, and in conformity with the conditions of such licence.

(2) No horse or other animal shall be used for drawing a public vehicle within the local area of a concerned local government except under the licence granted by the local government and in conformity with the conditions of such licence.

(3) The concerned local government shall, in such manner as by-laws may provide and with the previous approval of Government, fix the rate of fares for the use of public vehicles, and no person plying a public vehicle shall charge a rate in excess thereof.

(4) In this paragraph, a "public vehicle" means any vehicle which ordinarily plies for hire.

93. Public ferries.—

(1) A concerned local government may, by by-laws, provide for the licensing of boats and other vessels plying for hire in a public watercourse and may specify the terms and conditions for the grant of licences and the fees to be charged therefor.

(2) Government may declare any part of the public watercourse to be a public ferry and may entrust the management thereof to a concerned local government which shall manage and operate the public ferry in such manner and levy such toll as may be necessary.

Water Supply

94. Water supply.—

(1) The concerned local government shall provide or cause to be provided to its local area a supply of wholesome water sufficient for public and private purposes.

(2) Where a piped water supply is provided, the concerned local government shall supply water to private and public premises in such manner and on payment of such charges as the by-laws may provide.

95. Private source of water supply.—

(1) All private sources of water supply within the local area of a concerned local government shall be subject to control, regulation and inspection by the local government.

(2) No new well, water-pump or any other source of water for drinking purposes, shall be dug, constructed or provided except with the sanction of the concerned local government.

(3) A concerned local government may, by notice, require the owner or any person having the control of any private source of water supply used for drinking purposes-

(a) to keep the same in good order and to clean it from time to time of silt, refuse and decaying matter;

(b) to protect the same from contamination in such manner as the local government directs; and

(c) if the water therein is proved to satisfaction of the local government to be unfit for drinking purposes, to take such measures as may be specified in the notice to prevent the use of such water for drinking purposes.

96. Public watercourses.—

(1) A concerned local government may, with the previous sanction of the Government, declare any source of water, river, spring, tank, pond or public stream, or any part thereof within its local area, which is not private property, to be a public watercourse.

(2) A concerned local government may, in respect of any public watercourse, provide such amenities, make such arrangements for lifesaving, execute such works, and subject to the provisions of any law for the time being in force relating to irrigation, drainage and navigation, regulate the use thereof, as the by-laws may provide.

97. Tanks, ponds and low-lying areas.—

A concerned local government may take such steps with regard to the excavation or re-excavation of tanks and ponds and the reclamation of low-lying areas as it thinks fit or, as the case may be, Government directs.

ANNEX

[See paragraph 44]

DANGEROUS AND OFFENSIVE ARTICLES AND TRADES

1. The business of storing or selling timber, firewood, coal, charcoal and coke, hay, straw, grass and bamboo, jute, shrub, hemp, munj and their products, matches, explosives, petrol, oil and lubricants, paper, ghee and other dangerously inflammable materials.
2. Sugar refining and sugar refineries.
3. Preparation of aerated water.
4. Operating or running bake houses.
5. Electroplating.
6. Welding.
7. Storing packing, pressing, cleaning, preparing or manufacturing by any process whatever, blasting powder, ammunition, fireworks, gun-powder, sulphur, mercury, gases, gum, cotton, saltpeter, nitrocompounds, nitromixtures, phosphorous or dynamite.
8. Cleaning, dying, preparing or manufacturing by any process whatever, cloth or yarn in indigo and other colours.
9. Storing, processing, cleaning, crushing, melting, preparing or manufacturing by any process whatever or dealing in bones, tallow, offal, fatblood, soap, raw hides and skins, candles, manure, catgut and oil cloth.
10. Manufacturing oils.
11. Washings or drying wool or hair.
12. Making or manufacturing bricks, surkhi, tiles or earthenware pots, clay pipes or other earthenware by any process of baking or burning.
13. Burning or grinding of limestone or metal stone or storing of lime for sale.
14. Cleaning or grinding of grain or chillies by any kind of class of machinery.
15. Keeping animals likely to create nuisances.
16. Fellmongering.
17. Casting of heavy metals such as iron, lead, copper and brass.
18. Dealing in chemicals, liquid or otherwise.
19. Wholesale storing, cleaning, pounding and selling of tobacco except the storing of tobacco required for the preparation of biddies, cigars or cigarettes.
20. Operating or running tin factories.
21. Manufacture of safes, trunks and boxes.
22. Marble cutting and polishing.
23. Glass leveling and polishing.
24. Manufacture of cement and hume pipes.
25. Storing, packing, pressing, cleaning, preparing or manufacturing by any process whatever, rags, pitch, tar, turpentine demmar, coconut, fibre, flax, hemp, rosin or spirit.

26. Tanning, pressing or packing hide or skins raw or dry.

27. Trade or operation of ferries.

28. Working of power-looms, rice husking plants, steam whistle, steam trumpet or electric or hand operated sirens beyond hours fixed for their operation by a local council.

29. Discharging firearms and letting off fire-works, fire balloons or detonators or any game dangerous to life, dwelling and other property.

30. Any other article or trade declared by Government or the concerned local government to be dangerous to life, health, or property or likely to cause nuisance either from its nature or by reason of the manner in which or the conditions under which, the same may be processed or carried on.

Peshawar, LT. GEN. (RETD) IFTIKHAR HUSSAIN SHAH,

Dated 12 August, 2001. Governor of North-West Frontier Province.

SALIM KHAN
Secretary to Government of North-West Frontier province,
Law Department.

Printed by the controller,
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4.3.2.2 NWFP Amendment of laws Ordinance 2001

EXTRAORDINARY REGISTERED NO.P.111

GOVERNMENT GAZETTE

North-West Frontier Province

Published by Authority

PESHAWAR, MONDAY, 27TH AUGUST, 2001.

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE

LAW DEPARTMENT.

NOTIFICATION.

27th August, 2001.

No.Legis: I (4)/95/4325-30/4396.—The following Ordinance of the North-West Frontier Province is hereby published for general information.

THE NORTH-WEST FRONTIER PROVINCE
(AMENDMENT OF LAWS) ORDINANCE, 2001
N.-W.F.P. ORDINANCE NO.XVIII OF 2001

AN
ORDINANCE

to amend various provincial laws as a result of devolution of powers to District Governments.

WHEREAS establishment of District Governments and devolution of powers to the District Governments have necessitated the abolition of certain offices, such as the offices of the Commissioners, the Deputy Commissioners, the Collectors, District Magistrates, the Sub-Divisional Magistrates, etc;

AND WHEREAS due to abolition of the offices mentioned above, it has become necessary to amend all such provincial laws in which holders of the offices so abolished had some role to play;

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended uptodate, and the Provincial Constitution Order No.1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. Short title and commencement.—

(1) This Ordinance may be called the North-West Frontier Province (Amendment of Laws) Ordinance, 2001.

(2) It shall come into force at once.

2. Amendment of certain laws.—

The laws specified in column 3 of the Schedule to this Ordinance are hereby amended to the extent specified against each in column 4 of the said Schedule.

S.No.	No. and year of the enactment	Short title	Amendments
1	N.-W.F.P. Act No. VI of 1937.	The North-West Frontier Province Hazara Forest Act, 1936.	In sections 2(c), 2(o), 12(1), 12(2), 13(1), 13(3), 14(1), 15, 16(1), 17, 18, 20, 21, 22, 23(1), 23(2), 23(3), 24(1), 25, 27(1), 27(2), 35, 36, 38 and 49, for the words “Deputy Commissioner”, wherever occurring, the words “Judicial Magistrate” shall be substituted.
2	N.-W.F.P. Act No. IV of 1947.	The North-West Frontier Province Prevention of Hindus Bigamous Marriages Act, 1947.	In section 8, for the words “District Magistrate”, the words “Judicial Magistrate” shall be substituted.
3	N.-W.F.P. Act No. XXIII of 1948.	The North-West Frontier Province (Adolescent) Prisoner’s Release on Probation Act, 1948.	In section 6, in sub-section (1), for the words “District Magistrate”, the words “District Coordination Officer” shall be substituted.

S.No.	No. and year of the enactment	Short title	Amendments
4	W.P. Act No. VII of 1956.	The West Pakistan General Clauses Act, 1956.	In section 2,— (i) In clause (14), for the words "Chief Officer-in-Charge of the revenue administration of a District and shall include a Deputy Commissioner", the words "District Officer Revenue" shall be substituted; (ii) clause (17) and (19) shall be deleted; and (iii) in clause (35), for the words and commas "municipal corporation, municipal committee, district board", the words "Local Governments" shall be substituted, and the words "municipal or", occurring thereafter, shall be deleted.
5	W.P. Act No. XXV of 1958.	The West Pakistan Graveyards (Preservation and Maintenance) Act, 1958.	In section 10, for the words "District Magistrate", occurring twice, the words "Zilla Nazim" shall be substituted.
6	W.P. Act No. XXXI of 1958.	The West Pakistan Water and Power Development Authority Act, 1958.	In section 14, in sub-section (1), for the words "Deputy Commissioner", the words "Executive Engineer Irrigation" shall be substituted.
7	W.P. Act No. XXXVI of 1958.	The West Pakistan Epidemic Diseases Act, 1958.	In section 2, in sub-section (3), for the words "Deputy Commissioner", the words "District Officer Public Health" shall be substituted.
8	W.P. Ord. No. XX of 1958.	The West Pakistan Vagrancy Ordinance, 1958.	In sections 6 and 21, for the words "District Magistrate", wherever occurring, the words "District Officer Social Welfare" shall be substituted.
9	W.P. Ord. No. XXVII of 1958.	The 'West Pakistan Vaccination Ordinance, 1958.	In section 3, in sub-sections (2), (3) and (4), for the words "Deputy Commissioner", wherever occurring, the words "District Officer Public Health" shall be substituted.
10	W.P. Ord. No. XXXV of 1959.	The West Pakistan Control of Goondas Ordinance, 1959.	In section 2, in sub-section (2), for the words "Deputy Commissioner", the words "Judicial Magistrate" shall be substituted.

S.No.	No. and year of the enactment	Short title	Amendments
11	W.P. Ord. No. VII of 1960.	The West Pakistan Pure Food Ordinance, 1960.	In section 35, in sub-sections (1), (2) and (3), for the words “Deputy Commissioner”, wherever occurring the words “Tehsil/Town Nazim” shall be substituted.
12	W.P. Ord.. No. II of 1960.	The West Pakistan Prohibition of Opium Smoking Ordinance, 1960.	(i) In section 5, for the word “Collector”, the words “District Officer Excise” shall be substituted; and (ii) In section 9, for the words and comma “Collector, a District Magistrate”, the words “District Officer Excise” shall be substituted.
13	W.P. Ord. No. IV of 1960.	The West Pakistan Prohibition of’ Smoking in Cinema Houses, 1960.	In section 6, for the words “District Magistrate” the words “District Officer Public Health” shall be substituted.

05 Laws and Judicial Decisions Governing Natural Resources and Natural Resource Management

5.1.1 Land Tenure

5.1.1.1 NWFP Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance 2001

ORDINANCE XII OF 2001

NORTH-WEST FRONTIER PROVINCE GOMAL ZAM PROJECT
CONTROL AND PREVENTION OF SPECULATION IN LAND
ORDINANCE, 2001

An Ordinance to control the lands and their alienation in the Gomal Zam Project Area

[Gazette of N.-W.F.P., Extraordinary,
4th August, 2001]

No. Legis. 1(28)71/3983-89, dated 4-8-2001.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:-

Whereas Government contemplates to commence the execution of the Gomal Zam Project in order to conserve and utilize to the best advantage of the waters of the Gomal River;

And whereas considerable purchases of land which are of speculative character have been made or are likely to be made in the area which is to be irrigated when the project is-complete;

And whereas it is necessary that Government should control the areas as well as the alienations;

And whereas the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action:

Now, therefore, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended up to date, and the Provisional Constitution Order No.1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. Short title and commencement.—

(1) This Ordinance may be called the North-West frontier Province Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance, 2001.

(2) It shall extend to such area and villages in Dera Ismail Khan and Tank Districts, as Government may, from time to time, by Notification in the Official Gazette, specify.

(3) It shall come into force at once.

2. Definitions.—

In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—-

(a) "alienation" includes sale, mortgage, lease, gift, exchange but shall not include alienation of land in lieu of dower;

(b) "Government" means the Government of the North-West Frontier Province;

(c) "project area" or "area" means the area consisting of the villages or portion of villages or areas notified by Government under subsection (2) of section 1;

(d) "project land" or "land" means land in such area;

(e) "prescribed" means prescribed by rules made under this Ordinance.

3. Appointment of Collector, his status and duties.—

(l) Government may, by Notification in the Official Gazette, appoint, either by name or by designation, a Collector for the project area.

(2) The Collector so appointed shall, perform such duties and exercise such powers as may be prescribed.

(3) Every such Collector and every member of his staff appointed to assist him shall be deemed to be a 'public servant' within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

4. Bar on alienation of project land.—

No person shall alienate the project land from the commencement of this Ordinance until the expiry of ten years after such date as may be notified by Government or the date on which water from the Gomal Zam Project is made available for the irrigation of the land:

Provided that the Board of Revenue may on application, if satisfied that there are sufficient grounds for doing so, permit the land to be alienated before the expiry of the said period on such payment to Government and subject to such conditions as it may deem fit to impose.

5. Annulment of certain alienations.—

(1) No alienation of any land in the project area made by any owner, his agent, .assignee or attorney on or after the first of March, 2001 and until the commencement of this Ordinance, shall be effective so as to confer any right or remedies on the party to such transfer or any person claiming under him, unless such transfer is proved to the satisfaction of the Collector to be bona fide, for a reasonable price and not speculative in character.

(2) Every such alienation shall be speculative in character—

(a) if made in favour of a non-resident of the revenue estate concerned, irrespective of the area of the land involved; or

(b) if made in favour of a resident of the revenue estate concerned, when the total area involved is more than one hundred (100) kanals of irrigated land or more than two hundred (200) kanals of unirrigated land.

(3) Upon the commencement of the Ordinance or upon the determination of issues under subsection (1),. as the case may be, the alienated land shall immediately vest in Government.

(4) Government shall pay such consideration to the alienee as may be determined by the Collector.

(5) The Collector shall, after hearing the alienor and the alienee and after making such inquiry, as he may deem fit, determine the consideration, and while doing so shall also be guarded by the principles laid down in subsection (2) of section 6.

(6) Upon an application made to the Collector and upon deposit of such consideration in favour of Government or in favour of the alienee, as the case may be, within a period of two years from the date of the order passed under subsection (5), the Collector shall order and Government shall transfer the alienated land to the alienor.

Explanation I.—The expression “consideration” used in this section means- - -

(i) in case of sale, sale price;

(ii) in case of lease or mortgage, the lease or mortgage money;

(iii) in case of exchange, the price of such land.

Explanation II. —For the purpose of this section “alienor” means the person who was owner of the alienated land before the 1st day of March 2001,

6. Valuation of land in the project area.—

(1) The Collector shall value all lands in the project area at the average price of such land prevailing during five years commencing from 15th August, 1996, and ending with 14th August, 2001.

(2) For the purpose of determining the value, the Collector shall consider the following among other matters as evidence of such value:

(i) the price or value actually received by the vendors from the vendees in the sale of project lands during the said five years;

(ii) the estimated amount of the average annual net assets of the land;

(iii) the land revenue assessed upon the land; and

(iv) the value of land as shown in mortgages during the said five years.

(3) Subject to the provisions of the next succeeding sections, valuation fixed by the Collector shall be final and shall not be called in question in any civil, revenue or criminal Court.

7. Power of Government to revise valuation.—

Government may revise the value of any land fixed by the Collector under section 6 and fix any other valuation of such land, as it deems fit, in which case the value fixed by Government shall be final and shall not be questioned in any civil, revenue or criminal Court.

8. Power of Government to re-valuate lands.—

Government may, at any time, within ten years after such date, as may be notified in the Official Gazette or the date on which water from the Gomal Zam Project is made available for the irrigation of the land, re-value the lands in the project area, which valuation shall not in any case be less than 100 per cent above the valuation fixed under section 6 or section 7, as the case may be, and valuation so fixed shall be final and shall not be called in question in any civil, revenue or criminal Court.

9. Difference between the two valuations to be a debt payable by the owner.—

The difference which is found in re-valuation between the first valuation under section 6 or section 7, as the case may be, and the second valuation under section 8, shall be a debt which the owners of the land for the time being shall be deemed to owe to Government and on demand shall be liable to pay this debt to Government in five equal annual installments.

10. Debt to be recoverable as an arrear of land revenue.—

The debt or part of the debt due from the owner of the land shall be recovered as an arrear of land revenue.

11. Acquisition of land by Government—

(1) Any person owning any land in the project area shall, on demand made by Government by notice in writing within ten years from the commencement of this Ordinance, be bound to sell the land or part of the land, as the case may be, at the price mentioned in the notice.

(2) Government may dispose of any project land which it owns or which it acquires by purchase, in any manner it thinks fit.

12. Acquisition made in contravention of the Ordinance to be null and void.—

Any alienation of project land made by a person against the provisions of this Ordinance shall be null and void and shall not confer any right or remedy on the parties to such alienation or any person claiming under them.

13. Power of Government to call for and examine the records.—

Government or the officer appointed by it in that behalf may, at any time, either suo motu or on application, call for and examine the records relating to any order passed or proceeding taken under this Ordinance by any authority or officer, for the purpose of satisfying itself or himself as to the legality, regularity and propriety of such order or proceeding and may pass such order in regard thereto as it or he may think fit.

14. Finality of orders.—

No order passed by Government or any authority or, officer under this Ordinance shall be called in question in any, civil, revenue or criminal Court.

15. Bar of certain proceedings.—

(1) No suit or other proceeding shall lie against Government for anything done or purported to be done under this' Ordinance or any rule made thereunder.

(2) No suit, prosecution or other proceeding shall lie against any officer or servant of Government for any act done or purported to be done by such officer or servant under this Ordinance or any rule made thereunder without the previous sanction of Government.

(3) No suit, prosecution or legal proceeding shall lie against any officer or servant of Government for anything which is in good faith done or purported to be done in pursuance of this Ordinance or any rule made thereunder.

16. Power to make rules.—

(1) Government may make rules to carry out the purposes of this Ordinance.

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

(a) all matters expressly 'required or allowed by this Ordinance to be prescribed;

(b) the opening and maintenance of a common register for the project area, showing the ownership, and changes in the ownership of lands therein and any other particulars which may be deemed necessary;

(C) the penalties which may be imposed for contravention of any of the provisions of this Ordinance and the authority ..which may impose such penalties; provided that penalty shall not in any one case exceed twenty thousand rupees;

(d) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Ordinance and fixing the time within which such proceedings shall be initiated.

(3) All rules made under this section shall be published in the Official Gazette and upon such publication shall have effect as if enacted in this Ordinance.

17. Power to remove difficulties.—

If any difficulty arises in giving effect to the provisions of this Ordinance, Government may, as occasion may require, by order, do anything which appears to it to be necessary for the purpose of removing the difficulty.

18. Savings.—

Nothing in this Ordinance shall apply to the acquisition of land—

(a) at a sale held by any civil, revenue or criminal Court in execution of a decree, other than a consent decree, or order; or

(b) by Government or by an Agricultural Development Bank; or

(c) at a sale conducted under any law for the time being in force for recovery of any revenue due to Government or of any sum recoverable as an arrear of land revenue; or

(d) by exchange in accordance with any scheme made or approved by Government:

Provided that in cases falling under clause (c) and clause (d), the Court which, or the officer who, ordered the land, to be sold, may of its or his own motion or on the application of Government or any party to the proceedings, set aside the sale, if the Court or officer is satisfied that the sale was a collusive transaction or was made with a view to defeat or evade the provisions of this Ordinance.

19. Punishment for obstruction in the execution of the project.—

Any person who obstructs or abets obstruction to the execution of the project shall be liable to a term of imprisonment which may extend to one year or fine or both.

20. Effect on other enactments.—

The provisions of this Ordinance shall take effect notwithstanding anything contained to the contrary in any other enactment for the time being in force.

21. Repeal.—

(1) The North-West Frontier Province Gomal Zam Project (Control and Prevention of Speculation in Land) Ordinance, 1971 (N.-W.F.P. Ordinance No.VIII of 1971), is hereby repealed.

(2) Notwithstanding the repeal of the Ordinance under subsection (1), the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect;

(b) affect the previous operation of the law, instrument, custom or usage or anything duly done or suffered thereunder;

(c) affect any right, obligation or liability' acquired, accrued or, incurred under the law, instrument, custom or usage;

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against the law, instrument, custom or usage; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced, and any such penalty, for forfeiture or punishment may be imposed, as if the law, instrument, custom or usage had not been repealed or ceased to have effect as the case may be.

5.1.1.2 Land Reforms (NWFP Amendment) Act 1972

THE LAND REFORMS (NORTH-WEST FRONTIER PROVINCE AMENDMENT) ACT, 1972

[12th January 1973]

N.W.F.P. ACT, NO. VIII OF 1973.

(Received the assent of the Government of the North-West Frontier Province on 12th January, 1973).

AN
ACT

further to amend the Land Reforms Regulation, 1972 (MLR No. 115), in its application to the North-West Frontier Province.

Preamble

WHEREAS, it is expedient further to amend the Land Reforms Regulation. 1972 (MLR No. 115), in its application to the North-West Frontier Province;

It is hereby enacted as follows—

1. Short title and commencement.

(1) This Act may be called the Land Reforms (North-West Frontier Province Amendment) Act, 1972.

(2) It shall come into force at once.

2. Amendment of paragraph 7 of MLR No. 115

(1) In the Land Reforms Regulation 1972 (MLR No. 115), hereinafter referred to as the Regulation in paragraph 7, in sub paragraph (1).

(a) in clause (b) for the existing proviso the following shall be substituted and shall be deemed always to have been so substituted namely—

"Provided that any transfer of land or creation of any right or interest in or encumbrance on any land by way of gift by a person to whom this clause applies shall subject to next succeeding proviso no case be held by the Commission to bt a bona fide transaction.

Provided further that nothing in this clause shall apply to—

(i) any transfer of land or creation of any right or interest in or encumbrance on any land by way of gift or otherwise, made by a person in favour of his heir ; or

(ii) any transfer of land or right or interest therein, by way of gift made by person in favour of his widowed or unmarried sister, who has not received her due share of inheritance of ancestral land ; or

(iii) any transaction whereby any land was alienated in exchange for an area of land equivalent to the same or substantially same produce index units as the land alienated." ; and

(b) Explanation II shall be omitted and shall be deemed always to have been so omitted.

3. Amendment of paragraph 8 of MLR No. 115.

In paragraph 8 of the Regulation, after sub-paragraph (2), the following new sub-paragraph shall be added and shall be deemed always to have been so added, namely—

"(3) Any person, who, at any time before the commencement of this Regulation but not earlier than the twenty-first day of December, 1971, became the owner of an agricultural tractor certified as provided in clause (i) of sub-paragraph (2) or had installed on his land a tube-well of not less than ten horse powers, or at any time after the commencement of this Regulation becomes the owner of such a tractor or instals on his land such tube-well shall, notwithstanding the provisions of sub-paragraph (1) be entitled after becoming the owner of such tractor or having installed such a tube-well, to acquire, possess or own such additional area as would bring the total area possessed or owned by him to the equivalent of fourteen thousand index units:

Provided that a person who on the twentieth day of December, 1971, was in possession of an area of land equivalent to more than twelve thousand produce index units shall not be entitled to possess any additional area of land under this sub-paragraph until he has surrendered to Government land in excess of area equivalent to twelve thousand produce index, units,"

4. Amendment of paragraph 10 of MLR No. 115

In paragraph 10 of the Regulation—

(a) in sub-paragraph (1)—

(i) for the word "service" occurring for the first time, the words "civil service" shall be substituted and shall be deemed always to have been so substituted ; and

(ii) the following explanation shall be added at the end and shall be deemed always to have been so added, namely—

Explanation.—For the purposes of this sub-paragraph and clause (d) of sub-paragraph (1) of paragraph 12, "civil service of Pakistan' means any civil service post or office in connection with the affairs of the federation on or a Province and includes services as a Judge of the Supreme Court or a High Court Comptroller or Auditor-General, Chief Election Commissioner and Chairman or Member of the Federal or a Provincial Public Service Commission, but does not include service as President, Governor,

Minister, Minister of State or as a Speaker Deputy Speaker or other Member of the National or a Provincial Assembly."

(b) in sub-paragraph (2) for the words, brackets and figure "as is referred to in sub-paragraph (1)" the words, brackets and figure "to whom the provisions of sub-paragraph (1) apply" shall be substituted and shall be deemed always to have been so substituted ; and

(c) in sub-paragraph (3), for the words "any of the Defence Service' the words and comma "the Military, Naval or Air Forces" shall be substituted and shall be deemed always to have been so substituted.

5. Amendment of paragraph 12 of MLR No.115

In paragraph 12 of the Regulation, in sub-paragraph (1), in clause (d) for the word "service" the words "civil service" shall be substituted and shall be deemed always to have been so substituted.

6. Amendment of paragraph 13 of be MLR No. 115

In paragraph 13 of the Regulation, after sub-paragraph (2) the following new sub-paragraph shall be added and shall be deemed always to have been so added, namely—

"(3) Where any person is in possession of land in excess of the area permissible for retention under Part III, so much of such excess land as is in his possession as a lessee or mortgagee shall not vest in Government but shall, subject to the other provisions of this Regulation, revert to the lessor or mortgagor as the case may be.'

7. In paragraph 18 of the Regulation.

(a) in sub-paragraph (1) for the words, figures and commas "Rabi 1971-72, and if there be no such tenant, in respect of any such land, to the tenant who is shown in the Revenue Records to be in cultivating possession of it in "Kharif 1971 and Rabi 1971-72" shall be substituted and shall be deemed always to have been so substituted; and

(b) in sub-paragraph (3) for the words and figures "Rabi 1971-72 or Kharif 1971", the words and figures "Kharif 1971 and Rabi 1971-72" shall be substituted and shall be deemed always to have been so substituted ; and

(c) in sub-paragraph (4), after the word "orchards" the words "or to any State land granted on instalments where any instalment in respect of such land remains unpaid" shall be added and shall be deemed always to have been so added.

8. Amendment of paragraph 19 of MLR No. 115

In paragraph 19 of the Regulation, in the proviso, after the word "lease'' appearing at the end the words and commas of the whole or such part of area from such land as Government may deem fit" shall be added and shall be deemed always to have been so added.

9. Amendment of paragraph 21 of MLR No. 15

In paragraph 21 of the Regulation, in the proviso, after the word "lease appearing at the end the words and commas "of the whole or such part of or area from such land as Government may deem fit" shall be added and shall be deemed always to have been so added.

10. Amendment of paragraph 22 of MLR No. 115

In paragraph 22 of the Regulation,—

(a) for sub-paragraph (1), the following shall be substituted and shall be deemed always to have been so substituted, namely—

"(1) A joint holding with and area equal to or less than that of a subsistence holding shall not be partitioned, except where the joint holders own, individually or jointly, other land in the same deh or village, and the partition has the effect of every such holder owning whether individually or jointly , a holding with an area not less than that of a subsistence holding.";

(b) for sub-paragraph (3), the following shall be substituted and shall be deemed always to have been so submitted, namely—

"(3) A joint holding with an area equal to that of an economic holding shall not be partitioned, except where the joint holders own other land in the same deh or village, and the partition has the effect of such holder owning, whether individually or jointly, a holding with an area not less than that of an economic holding"; and

(c) for sub-paragraph (6), the following shall be substituted and shall be deemed always to have been so substituted, namely—

"(6) The provisions of this paragraph shall not apply to holdings jointly owned by—

(a) evacuees and non-evacuees, required to be partitioned in accordance with the procedure prescribed under any Rehabilitation Settlement Scheme ; or

(b) owners of land and occupancy tenants, required to be partitioned in accordance with the procedure prescribed by or under any law for the time being in force.

11. Amendment of paragraph 28 of MLR No. 115

In paragraph 28 of the Regulation, the following explanation shall be added at the end and shall be deemed always to have been so added, namely—

Explanation.—For the purposes of this paragraph, "grantee of land" means—

(a) a tenant to whom land was granted under the sale scheme prescribed under the repealed Regulation ; or

(b) a tenant or small land owner of the village concerned to whom land was granted under the up grading scheme prescribed under the repealed Regulation"-

12. Repeal

The land Reforms (North-West Frontier Province Amendment Ordinance, 1972 (N.-W.F.P. Ord. No XXI of 1972), is hereby repealed.

5.1.1.3 NWFP Land Reforms Rules 1972

THE N.W.F.P. LAND REFORMS RULES, 1972

[Gazette of N.-W.F.P., Extraordinary 19th April 1971]

No. 417/LR-II. In exercise of the powers conferred by paragraph 6 of the Land Reforms Regulation, 1972 (MLR No 115) the North-West Frontier Province, Land Commission is pleased to make the following Rules for carrying out the purposes of the Regulation:-

CHAPTER I—Preliminary

1. Short title, extent and commencement.—

(1) There Rules may be called the North-West Frontier Province Land Reform Rules, 1972.

(2) They extend to all the areas of the Province of North-West Frontier Province.

(3) They shall come into force at once.

2. Definitions.

(1) In these Rules, unless the context otherwise required, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:-

(a) ”Chief Land Commissioner” means the Chief Land Commissioner nominated by the Commission under paragraph (4) of the Regulation and shall include any person for the time being functioning as such;

(b) “Commission” means Land Commission of the N.-W.F.P., constituted under sub-para. (1) of para. 4 of the Regulation.

(c) “Days” include holidays.

(d) “Officer” means an officer appointed by or under the authority of the Commission and includes a Land Commissioner, a Deputy Land Commissioner, or Assistant Land Commissioner, a Sub-Assistant Land Commissioner or any other officer for the time being functioning such as ; and

(e) ”Regulation” means the Land Reforms Regulation, 1972 (MLR No 115), and all amending Regulations, Ordinances and Orders issued thereunder by the President.

(f) ”Rules” means the N-.W.F.P. Land Reforms Rules, 1972.

(2) Words expressions used but not defined in the Rules and defined in the Regulation shall have the same meaning as assigned to them in the Regulations, Ordinances and Orders of the President.

CHAPTER II-Powers

3. Powers of the Chief Land Commissioner.—

(1) Subject to the general superintendence and control of the commission, the Chief Land Commissioner may make such general or special orders, not inconsistent with the provisions of the Regulation and these Rules, as he may consider necessary or expedient for giving effect to the purposes of the Regulation and/or for the proper discharge of his functions by all the authorities and officers appointed under the Regulation, including himself.

(2) Subject to the provisions of the Regulation and these Rules, the general superintendence, control and direction the all officers and staff appointed for, or entrusted with the duty improvementing the provisions og the regulation, shall vest in the Chief Land Commissioner.

(3) The Chief Land Commissioner may, by special or general order, provide for the distribution and allocation of work to be done by all or any such officers and staff.

4. Powers to transfer cases.—

(1) The Chief Land Commissioner may, at any stage, for reasons to be recorded in writing, transfer any case pending before a Land commissioner, a Deputy, and Assistant or Sub Assistant Land Commissioner, as the case may be, to himself or any officer sub-ordinate to him, and the officer to whom the case is transferred may, subject to any special direction contained in the transfer order, proceed with it from the stage at which it was transferred to him.

(2) A land Commissioner specially empowered by the Chief Land Commissioner in this behalf, may, for reasons to be recorded in writing and subject to any order under sub-rule (1), transfer any case pending before a Deputy Land Commissioner, Assistant Land Commissioner or Sub-Assistant Land Commissioner, as the case may be, to himself or any other officer sub-ordinate to him, and the officer to whom any such case is so transferred may, subject to any special direction contained in the transfer order, proceed with it from the stage at which the case was transferred to him.

(3) Chief Land Commissioner, a Land Commissioner or a Deputy Land Commissioner, may refer any matter which he is empowered or is required to dispose of under the provisions of the Regulation to any authority subordinate to him for enquiry and report.

(4) When any matter mentioned in sub-rule (3) is referred by any superior Land Commission authority, the later shall have the power to summon person (persons) as witnesses and to receive their relevant, oral and documentary evidence as the case may be.

5. Powers of the Land Officers as a Civil Court.—

(1) Every officer appointed under the Regulation shall for the purpose of making an enquiry or hearing an appeal under these Rules, have the same powers as are

vested in a civil Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of following matters; namely :-

(a) summoning and enforcing the attendance of any person other than a pardanashin lady and examining him on oath or affirmation;

(b) requiring the discovery and production of any document or documents:

(c) requisitioning any public record from any Court or office;

(d) issuing commissions for the examination of witnesses:

(e) appointing guardians ad litem or next friendo or persons who are minors or of unsound mind;

(f) adding legal representatives of deceased applicants;

(g) restoration of case dismissed in default;

(h) consolidation of cases;

(I) any other matter connected with the holding of an inquiry or hearing of an annual.

(2) Every officer appointed under the Regulation shall be deemed to be a civil Court for the purpose of sections 480 and 482 of the Code of Criminal Procedure, 1898 and any proceeding before any such officer shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Pakistan Penal Code and for the purpose of sections of sections 196, 199 and 200 thereof.

6. Officers appointed under these Rules to be public servants.

Every officer appointed under the Regulation and in accordance with these Rules shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code.

CHAPTER III—Pleading and Appearances

7. Verification of application.

Every application or written statement filed by an applicant in any proceeding under the Regulation shall be drawn up and verified in the manner provided for the verification of application or written statements is the Code of Civil Procedure, 1908, in respect of civil Suits.

8. Persons who may appear before the Land Officers.

Appearance before an officer of the Commission and all application in that behalf may be made or done by—

(a) the applicant himself ;or

(b) his representative or agent, duly authorized by him in writing in that behalf ; or

(c) his counsel;

Provided that the employment of duly authorised representative, recognised agent or counsel shall not excuse the personal attendance of an applicant other than a pardanashin lady in any proceeding in which his personal appearance is specially required by an order of the officer before whom any such application is pending.

CHAPTER IV—Appeals, Review and Revision

9. Forum of appeal.

(1) Every appeal shall be preferred in the form of a memorandum and shall be authenticated by the signature of the appellant or his duly authorised representative, agent or counsel.

(2) The memorandum shall be accompanied by a certified copy of the order appealed against and of all the documents on which reliance has been placed in the Memorandum.

(3) The memorandum shall set forth concisely and under distinct head the grounds of objection to the order in respect of which an appeal is filed and shall not contain any arguments or narrative. All such grounds shall be numbered consecutively.

10. Form of appeal.

(1) Any person aggrieved by an order passed under the provisions of the Regulation may file an appeal to—

(a) the Deputy Land Commissioner, when the order has been passed by an Assistant Land Commissioner, or a Sub-Assistant Land Commissioner;

(b) the Land Commissioner, when the order has been passed by the Deputy Land Commissioner;

(c) the Chief Land Commissioner, when the order has been passed by the Land Commission:

Provided that-

(i) when any such order is modified or reversed on appeal by the Deputy Land Commissioner ; the order made by the Land Commissioner on further appeal to him shall be final ; and

(ii) when an original order is confirmed on first appeal, a further appeal shall not lie.

(2) All appeals shall be resented within twenty days (inclusive of holidays) from the date of the order appealed against.

11. Review.

(1) The Chief Land Commissioner, a Land Commissioner, a Deputy Land Commissioner, an Assistant Land Commissioner or a Sub-Assistant Land Commissioner, may at any time, of his own motion or within twenty days from the date of the impugned order, on an application made to him by any party interested in that behalf, review, and on to reviewing modify, reverse, or confirm, any order passed by himself or by any of his predecessors-in-office ;

Provided that—

(a) (i) a Land Commissioner shall not review an order passed by his predecessor-in-office without first obtaining the sanction of the Chief Land Commissioner ;

(ii) a Deputy Land Commissioner shall not review any order whether passed by himself or by any of his predecessors-in-office without first obtaining the sanction of the Land Commissioner of the area concerned ;

(iii) an Assistant Land Commissioner shall not review any order whether passed by himself or by any of his predecessors-in-office without first obtaining the sanction of the Deputy Land Commissioner of the District ;

(b) an order shall not be modified or reversed unless a reasonable notice has been given to the parties affected thereby to appear and be heard ; and

(c) an order against which an appeal or a petition for revision has been preferred shall not be reviewed.

(d) a Sub-Assistant Land Commissioner shall not review an order whether passed by himself or by any of his predecessors-in-office without first obtaining the sanction of the Deputy Land Commissioner.

(2) An appeal shall not lie from an order refusing to review or confirming on review a previous order.

(3) Clerical or arithmetical mistakes in any order passed by an officer in pursuance of the provisions of the Regulation and these Rules may, at any time, be corrected by such officer or his successor-in-office as soon as any such error has come to or been brought to his notice.

12. Revision.

(1) The Chief Land Commissioner may, at anytime, of his own motion or on an application made to him in that behalf, within thirty days of the passing of any order, call for the record of any case or proceeding under the Regulation which is pending or in which a Land Commissioner or a Deputy Land Commissioner has passed any order, for the purpose of satisfying himself about the correctness, legality or propriety of any such order, and may pass such fresh order in relation thereto as the thinks fit.

(2) A Land Commissioner specially empowered in this behalf by the Chief Land Commissioner may, either of his own motion or on an application made to him in

that behalf, within ten days of the passing of an order, call for the record of any case or proceeding under the Regulation, in which a Deputy Land Commissioner, Assistant Land Commissioner, or a Sub-Assistant Land Commissioner, under his jurisdiction, has passed an order, for the purpose of satisfying himself about the correctness, legality or propriety of such an order and may pass such order in relation thereto as he thinks fit.

(3) The Chief Land Commissioner or a Land Commissioner, as the case may be, shall not pass any order under this Rule revising or modifying an order affecting any person without affording such person an opportunity of being heard.

13. Exclusion of period spent in obtaining copies.

In computing the period prescribed under sub-rule 2 ofrule 10, sub-rule (1) of Rule 11 and sub-rules (1) and (2) of Rule 12, for the presentation of appeals and applications for review or revisions respectively, the period duly spent in obtaining certified copies of the orders against which appeal, review or revision, as the case may be, is preferred, shall be excluded.

15. Finality of orders.

Subject to the foregoing provisions of this Chapter, any order made under the Regulation shall be final and shall not be questioned in any Court.

5.1.1.4 West Pakistan Land Utilization Ordinance 1959

ORDINANCE XLVIII OF 1959

WEST PAKISTAN LAND UTILIZATION ORDINANCE, 1959

An Ordinance to provide for the utilization of proprietary waste and arable lands for growing food and other crops.

No. Leg. 3 (48)/59, 31st August 1959, (Gazette Extraordinary, 31st August 1959.)—The following Ordinance was made on 30th August 1959, by the Governor of West Pakistan and was published for general information in the Gazette.

Preamble.—

Whereas it is expedient in the public interest to provide for the utilization of proprietary waste and arable lands for growing food and other crops in the Province;

Now, therefore, in pursuance of the Presidential Proclamation of the seventh day of October 1958, and in exercise of all powers enabling him in that behalf, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance:—

1. Short title extent.—

(1) The Ordinance may be called the West Pakistan Land Utilization Ordinance, 1959.

(2) It extend to the whole of the province of West Pakistan, except the Federal Capital and the Special Areas:

Provided that the Board of revenue may by notification in the official Gazette exclude any Area from the purview of this Ordinance.

2. Definitions.—

In this Ordinance unless there is anything repugnant in the subject or context:-

(i) Board of Revenue 'means the Board of Revenue constituted under the West Pakistan Board of Revenue Act, 1957;

(ii) Commissioner' means the chief officer in charge of the revenue administration of a division and includes an Additional Commissioner or any other officer specially empowered by the Board of Revenue to perform the functions of a Commissioner under this Ordinance;

(iii) Government' means the Government of West Pakistan;

(iv) interest in land 'includes right of easement;

(v) 'land' means land which is not occupied as the site of any building in a town or village and includes proprietary waste and arable land ;

(vi) 'prescribed 'means prescribed by rules made under section 31 of this Ordinance ;and

(vii) 'tenant' means a person or a body of persons including a cooperative society to whom a lease is granted under subsection (1) of section 12.

Explanation.**—**all expressions, other than 'land' and 'tenant' defined in the Punjab Tenancy Act, 1887, and used in this Ordinance shall have the meanings assigned to them in the said Act.

3. Publication of preliminary notices by Collection.—

(1) Notwithstanding anything nominated in any law for the time being in force, whenever it appears to the Collector that any proprietary land shown in the revenue records as not having been cultivated for two consecutive years, is capable of being reclaimed for cultivation, he may by

order in writing, direct that such land shall be brought under cultivation within a period of two years from the date of the order.

(2) An order passed by the Collector under subsection (1) shall specify the village in which the land is situated, its approximate area and field numbers or, if the land does not beat any field numbers, its boundaries and such other particulars as the Collector thinks necessary.

(3) An order passed under subsection (1) shall be served on all persons showing the revenue records as owners, occupiers, occupancy tenants, mortgagees and such other persons as are known or believed to have any interest in the land.

(4) The service of the order on the persons mentioned in subsection (3) shall be made, at the discretion of the Collector ,in one or more of the following modes, namely:-

(a) by delivery of a copy of the order;

(b) by registered post at the last known address;

(c) such other manner as the Collector may think fit.

(5) The Collector shall also cause public notice of any such order to be given in the locality at convenient places by beat of drum or in such other manner as he deems fit.

4. Publication of preliminary notification.—

If that land in respect of which an order has been passed under section 3 is not brought under cultivation within the period specified in the order the commissioner may ;by notification in the Official Gazette, declare that the land is likely to be taken on lease for the purpose of reclamation according to the provisions of this Ordinance. The notification shall give such particulars of the land as are mentioned in subsection (2) of section 3 and shall state that any person having any interest in that land may , within thirty days of the issue of the notification, make an objection in writing to the Collector.

5. Objector to be heard.—

The Collector shall give the objector an opportunity of being heard either in person or through a legal practitioner or through an authorized agent.

6. Report by Collector to Commissioner.—

In every case, whether or not any objection has been made under section 4, the Collector shall submit report with his recommendation and the record of the proceedings under sections 3 4 and 5 to the Commissioner for decision.

7. Declaration that land is required for lease.—

(1) If after considering the report and examining the records submitted under section 6, the Commissioner is of the opinion that any particular land should be taken on lease for such period not exceeding twenty years from that date of taking possession of the land , as may be specified , he shall make a declaration to that effect.

(2) The declaration shall be published in the Official Gazette and it shall specify the district and the tahsil or the taluka where such land is situated and shall also give the particulars mentioned in subsection (2) of section 3, and where a plan of the land has been made ,shall state the place where such plan may be inspected.

8. Collector to take possession of the land.—

Whenever a declaration under section 7 has been made in respect of any land, the Commissioner shall direct the Collector to take possession of the land for the purpose os this Ordinance.

9. Land to be marked out, measured and planned.—

The Collector shall thereupon cause the land to be marked out, measured and planned -The Collector shall thereupon cause the land to be marked out, if it has not already been don and to

be measured , and if no plan of the land has been made he shall direct that a plan of the same be made.

10. Notice to persons interested.—

(1) The Collector shall thereafter cause a notice to be given as hereinafter mentioned that the Commissioner has declared that the land be taken for reclamations in accordance with the provisions of this Ordinance.

(2) The notice shall contain the particulars of the land as mentioned in subsection (2) of section 3 and shall be served on the persons mentioned in subsection (3) of that section.

(3) The service of the notice shall be made in accordance with the provision of subsection (4) of section 3 and such notice shall also be notified as provided in subsection (3) of that section.

(4) The notice shall call upon all persons interested in the land to submit to the Collector personally, or through a legal practitioner, or through an authorised agent at such place and time and on such date not being earlier than fifteen days from the date of procelamation of the notice in the locality as may be specified in the notice, their claims for respective interest in the land and for apportionment of the lease money. The notice shall also call upon all such person to make objections, if any, against the measurements made under section 9.

(5) Subject to the provisions hereinafter made for appeal, review and revision, the orders passed by the Collector in respect of such claims and objections shall be final.

11. Taking possession of the land.—

(1) After the publication of notice under section 10 the Collector shall take or cause to be taken possession of the land in respect of which a declaration under section 7 has been made and thereupon the land shall vest in Government as a lease, hold for the purposes of this Ordinance for such period as the Commissioner may determine under subsection (1) of section 7.

(2) After taking possession of the land the collector may utilize it in accordance with any general scheme that Government may approve in this behalf.

12. Grant of lease of the land by Collector.—

(1) The Collector may grant lease of the land which is not taken over by Government under subsection (2) of section 11 for such period as may be determined by the Commissioner to such person as he deems fit. The Collector may also direct that the land shall be irrigated by means of a tube-well or a percolation well to be sunk by the tenant in accordance with such terms and conditions as may be prescribed.

(2) The Collector shall determine the amount of rent to be paid by the tenant in respect of the lease granted under this section and the manner in which such rent shall be paid.

(3) The rent so determined shall, after deduction of the land revenue, rates and cesses and of an amount equal to 8 per centum of the total rent as administration charges, be paid to the person or persons having interest in the land according to the apportionment, if any, made by the Collector, under section 10.

13. Termination of lease.—

If the tenant fails to bring the land under cultivation, or to comply with any order made by the Collector in pursuance of the provisions of this Ordinance or of the rules made thereunder, of any of the terms and conditions of the lease, the Collector may pass and the tenant shall, subject to the provisions of section 27, be liable to ejectment as hereinafter provided.

14. Termination of lease by Commissioner.—

Subject to the provisions of section 17, with regard to payment of compensation, the Commissioner may subject to such terms and conditions as he may impose, terminate the lease, at any time, before the expiry of the period of lease:

Provided that the lease shall not be terminated except on reasonable grounds;

Provided further that three months' notice is given by the Collector before its termination.

15. Rent recoverable as land revenue.—

The rent fixed in respect of the lease or any penalty imposed under section 13 read with section 27 shall be recoverable from the tenant as arrears of land revenue.

16. Inconsistent agreements to be ineffective.—

All agreements entered into by any person having interest in the land which has become vested in government under section 11, with any other person in regard to such land , after the issue of notice by the Collector under section 10 shall, to the extent of their inconsistency with the operation of the provisions of this Ordinance, be void.

17. Compensation to tenants.—

Where a tube well or a percolation well has been sunk by the tenant, the owner or the person having an interest therein may, on the termination of the lease acquire the machinery and the well left in the land, after paying to the tenant such compensation, as may be determined by the Collector in such manner as may be prescribed.

18. Delivery of possession on termination of lease.—

(1) On termination of the lease by the expiry of the term of the lease or under section 13 or section 14 the Collector shall inquire from the owner whether he wishes to take possession of the land or whether he desires the Government to continue in possession . If the owner refuses to take possession, the Collector shall, after making such enquiry, if any as he as he considers necessary specify by and order in writing, the person to whom possession of the land shall be given.

(2) The delivery of possession of the land to the person specified in the order made under subsection (1) shall be a full discharge of Government from all claims in respect of such land, but shall not prejudice any rights which any other person may be entitled to enforce, against the person to whom possession of the land is so delivered.

(3) Where a person to whom possession of the land is to be given cannot be found and has no agent or other person empowered to accept delivery of possession on his behalf, the Collector shall cause delivery of possession to be given, by a public notice in the manner prescribed.

(4) After a notice as provided in subsection (3) has been given, possession of the land shall be deemed to have been delivered to the person to whom it was to be given and Government, or another person functioning under the provisions of this Ordinance, shall not be liable for any compensation or other claim, in respect of such delivery of possession.

19. Power of the Collector to eject lessee.—

(1) On the termination of the lease, the land shall be restored by the tenant to the person specified under subsection (1) of section 18 after payment to the tenant of such compensation, if any, as may be determined by the Collator under section 17.

(2) If the tenant fails to restore possession of the land after the aforesaid person has made a demand for the same, the Collector, shall, on application by such person to be put in possession .

20. Attornment to person taking possession of land .—

Any person who at the time of termination of the lease, holds land under the tenant and or is but for a special contract would be, liable to pay rent to the tenant for the land, shall, if he attorns to the person to whom be deemed within the meaning of the Punjab Tenancy Act, 1887, to so a tenant of the aforesaid person, for all purposes; but if he fails to so attorn, he shall, notwithstanding anything to the contrary contained in any law for the time being in force, be liable to ejectment forthwith.

21. Power to resume lease.—

If after restoration of possession to the owner or the person having an interest therein, on the expiry of the period of lease, or before that period as provided in section 13 or section 14, the Commissioner finds that the land or a portion thereof, has since been wilfully allowed to remain uncultivated for two consecutive years, the land or the aforesaid portion as the may be, again be taken on lease by Government without taking fresh proceeding under sections 3,4,5 and 6.

22. Delegation of functions.—

(1) The Collector may delegate his powers and function under this Ordinance other than those provided in sections 3,12,17,18 and 19 to any officer of the Revenue Department not below the rank of an Assistant Collector, first grade, either by name or by designation of office

(2) Government may delegate any of its powers and function under this Ordinance to the Board of Revenue or any officer not below the rank of Commissioner.

23. Stamp not necessary.—

Not withstanding anything to the country contained in any law for the time being in force, no instrument intended to give effect to a lease by the Collector under this Ordinance shall be required to be stamped or registered and no stamp duty or registration fee shall be required to be paid on it.

24. Appeal.—

An appeal against an order passed—

(1) by an officer of the Revenue Department in exercise of the power or function delegated to him under subsection (1) of section 22 shall lie to the Collector within a period of thirty days from the date of such order.

(2) by the Collector shall lie to the Commissioner within a period of sixty days from the date of such order.

25. Review.—

(1) The Commissioner, the Collector or the officer of the Revenue Department to whom powers and functions have been delegated under subsection (1) of section 22 may either of his own motion or on the application of any party interested,, review and on so reviewing modify, reverse or confirm, any order passed by himself or by any of his predecessors-in office:

Provided as follows:-

(a) an order passed by his predecessor-in -office shall not be reviewed by the

(i) Commissioners without first obtaining the sanction of the Board of Revenue,

(ii) collector without first obtaining the shall be reviewed by any other Revenue Officer without first obtaining the function of the Revenue Officer to whose control he is immediately subject ;

(b) an application for review of an order shall not be entertained unless it is made within ninety days from the passing of the order or unless the applicant statistics the Board of Revenue or the officer concerned that he has sufficient cause for not making the application within that period;

(c) an order shall not be modified or reversed unless reasonable notice has been given to the parties saffected thereby to appear and be heard in support of the order;

(d) an order against which an appeal has been preferred shall not be reviewed.

(2) An appeal shall not lie from an order refusing to review or confirming on review a pervious order.

26. Revision.—

(1) The Collector may call for the record of any proceedings pending before or disposed of by an officer of the Revenue department to whom powers have been delegated under subsection (1) of section 2.2.

(2) The Commissioner may call for the record of any proceedings pending before or disposed of by a Collector or an officer of the Revenue Department referred to in subsection (1)

(3) The Board of Revenue may, at any time, call for the record of any proceedings pending before or disposed of by a commissioner a Collector or an officer of the Revenue Department referred to in subsection (1)

(4) If in any case in which a Collector has called for a record, he is of the opinion that the proceedings taken or order made should be modified or reversed, he shall report the case, with his opinion, thereon, for the orders of the Commissioner.

(5) The Board of Revenue may in any case called for under subsection (3) and a Commissioner may in any case called for under subsection (2) or reported to him under subsection (4) pass such orders as it is he thinks fit:

Provided that no order shall be passed under this section reversing or modifying any proceedings or order of a subordinate Revenue Officer and affecting any question of right between private persons without giving those persons an opportunity of being heard.

27. Application of Colonization of Government Lands Punjab Act, 1912.—

Except as provided under this Ordinance, so long as any land vest in Government as a lease hold under section 11 Government and its officers shall, in respect of any such land, have all the powers vested in this under the Colonization of Government Lands (Punjab) Act 1912

28. Punishment for obstruction.—

Whoever wilfully obstructs the collector or any person acting on his behalf while causing possession of land to be taken under section 11 or while causing a person to be put in possession under subsection (2) of section 19, or whoever abets the commission if any such offence, shall on a complaint made by the Collector or the person obstructed, be punished with imprisonment of either description, which may extend to one year, or with fine, or with both.

29. Bar to civil suits.—

No civil Court shall have jurisdiction in any matter relating to the taking over of land for lease under this Ordinance or the terms and conditions on which such lease is granted or to question any order passed in the proceedings taken by any authority under this Ordinance.

30. Protection of acts done in good faith.—

No claim for damages and no prosection or other legal proceedings, shall lie against Government or against any of its officers, or against any person or officer authorised or empowered by the Board of Revenue in this behalf, for anything done in good faith in pursuance of this Ordinance or any rules made thereunder.

31. Rules.—

(1) Government may by notification in the Official Gazette frame rules to carry out the purposes of this ordinance.

(2) Without prejudice to the generality of the power conferred by subsection (1) such rules may provide for all or any of the following matters, namely:-

(a) the terms and conditions on which and the period for which the Collector may grant leases of the land under section 12;

(b) the form in which the lease deeds shall be executed:

(c) the manner in which and the procedure by which restoration of the land to its owner the expiry if the period of the lease shall be made;

(d) the method of determination of compensation under section 17;

(e) exclusion of the minimum area from the operation of this Ordinance for such purposes as grazing of cattle, pasture or recreation; and

(f) the forms and the modes of service of notice and orders under this Ordinance.

32. Repeal.—

The Punjab Land Utilization Act, 1954 is hereby repealed.

5.1.1.5 West Pakistan Land Reforms Rules 1959

WEST PAKISTAN LAND REFORMS RULES, 1959

18th April 1989

No.1936/59/567-LC.—In exercise of the powers conferred by paragraph 6 of the West Pakistan Land Reforms Regulation (Martial Law Regulation No.64), the West Pakistan Land Commission is pleased to make, with the previous sanction of the West Pakistan Government, the following Rules for carrying out the purposes of the Regulation;

CHAPTER I—PRELIMINARY

1. Short title, extent and commencement.—

(1) These Rules may be called the West Pakistan Land Reforms Rules, 1959.

(2) They extend to all the areas to which the west Pakistan Land Reforms Regulation extends, Except the Federal capital.

(3) They shall come into force at once.

2. Definitions-

(1) In these Rules, unless the context otherwise required the following expressions shall have the meanings hereby respectively assigned to them, that is to say:-

(a) "Chief Land Commissioner" means the chief Land Commissioner nominated by the Commission under clause (3) of paragraph 4 of the Regulation and shall include any person for the time being functioning as such:

(b) "Officer" means an officer appointed by or under the authority of the Commission and includes a Land Commissioner, a Deputy Land Commissioner, or Assistants Land Commissioner, a Sub-Assistant Land Commissioner of any other officer for the time being functioning as such, and

(c) "Regulation" means the west Pakistan Land Reforms Regulation (Martial Law Regulation No. 64)

(2) Any expression not defined in these Rules and defined in the Regulation shall have the meaning assigned to it in the Regulation.

CHAPTER II—POWERS

3. Powers of the Chief Land Commissioner—

(1) Subject to the General superintendence and control of the Commission the Chief Land Commissioner may make such general or special orders, not inconsistent with the provisions of the Regulation and these Rules as he may consider

necessary or expedient for giving effect to the purposes of the Regulation and or for the proper discharge of his functions as such.

(2) Subject to the provisions of the Regulation and these Rules, the general superintendence, control and direction of all officers and staff appointed for or entrusted with the duty of implementing the provisions of the Regulation, shall vest in the Chief Land Commissioner.

(3) The Chief Land commissioner may by special or general order, provide for the distribution and allocation of work to be done by all or any such officers and staff.

4. Powers to transfer cases.—

(1) The chief Land commissioner may, at any stage, for reasons to be recorded in writing transfer any case pending before a Land Commissioner, a Deputy, an Assistant or Sub-Assistant Land Commissioner, as the case may be, to himself or any officer subordinate to him; and the officer to whom the case is transferred may subject to any special directions contained in the transfer order, proceed with it from the stage at which it was transferred to him.

(2) A Land Commissioner specially empowered by the Chief Land commissioner in this behalf, may for reasons to be recorded in writing and subject to any order under sub rule (1) transfer any case pending before a Deputy Land Commissioner, Assistant Land Commissioner, as the case may be, to himself or any other officer subordinate to him and the officer to whom any such case is so transferred may, subject to any special direction contained in the transfer order, proceed with it from the stage at which the case transferred to him.

5. Powers of the Land officer as a Civil Court.—

(1) every officer appointed under the regulation shall, for the purpose of making an inquiry or hearing an appeal under these Rules, have the same powers as are vested in a civil Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters, namely:-

(a) Summoning and enforcing the attendance of any person other than a pardanashin lady and examining him on oath or affirmation:

(b) Requiring the discovery and production of any document or documents;

(c) Issuing commissions for the examination of witnesses;

(e) appointing guardians ad litem or next friends of persons who are minors or of unsound mind;

(f) adding legal representatives of deceased applicants;

(g) restoration of case dismissed in default;

(h) consolidation of cases ;

(i) any other matter connected with the holding of an inquiry or hearing of an appeal.

(2) Every officer appointed under the Regulation shall be deemed to be a Civil Court for the purpose of sections 480 and 482 of the Code of Criminal procedure, 1898 and any proceeding before any such officer shall be deemed to be a judicial proceeding within the meaning of sections 196, 199 and 200 thereof.

6. Officer appointed under these Rules to be public servant.—

Every officer appointed under the regulation and in accordance with these rules shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code.

7. Verification of applications.—

Every application or written statement filed by an applicant in any proceeding under the Regulation shall be drawn up and verified in the manner provided for the verification of applications or written statements in the Code of civil procedure, 1908, in respect of civil suits.

8. Persons who may appear before the Land Officers.—

Appearing before an officer of the Commission and all applications in that behalf may be made or done by-

(a) the applicant himself ; or

(b) his representative or agent, duly authorised by him in writing in that behalf; or

(c) his counsel :

Provided that the employment of duly authorised representative, recognised agent or counsel shall not excuse the personal attendance of an applicant other than a pardanashin lady in any proceeding in which his personal appearance is specially required by an order of the officer before whom any such application is pending.

CHAPTER IV—APPEALS, REVIEW AND REVISION

9. Form of Appeal—

Every appeal be preferred in the form of a memorandum and shall be authenticated by the signature of the appellant or his duly authorised representative, agent or counsel.

(2) The memorandum shall be accompanied by a certified copy of the order appealed against.

(3) The memorandum shall set forth concisely and under distinct heads the grounds of objection to the order in respect of which an appeal is filed and shall not contain any arguments or narrative. All such grounds shall be numbered consecutively.

10. Forum of appeal.—

Any person aggrieved by an order passed under the provisions of the Regulation may file an appeal to:-

(a) the Deputy Land Commissioner, or a Sub-Assistant Land commissioner;

(b) the Land Commissioner, when the order has been passed by the Deputy Land Commissioner;

(c) the Chief Land Commissioner, when the order has been passed by the Land Commissioner ;

Provided that

(i) When any such order is modified or reversed on appeal by the Deputy further appeal to him shall be final ; and

(ii) When an original order is confirmed on first appeal a further appeal shall not lie.

(2) All appeals shall be presented within ten days from the date of the order appealed against.

Delay-Condonation of - If an appeal is time barred under R. 10(2) provision of Sec. 5 Limitation Act is not applicable so as to condone the delay.[1] Appeal barred by time Delay cannot be condoned in view of the instruction contained in latter No. ASP.459-61/5679 LC dated 19-9-1961.[2] Likewise revision unaccompanied by attested copy of order and filed after expiry of time Petition dismissed as time barred.[3]

11. Review—

(1) The Chief Land Commissioner a Land commissioner or Deputy Land commissioner may of his own motion or on an application of any party interested made to him in that behalf within ten days from the date of the order, review, and on so reviewing modify, reverse or confirm any order passes by himself or by any of his predecessors in office;

Provided that :-

(i) Land Commissioner shall not review an order passed by his, predecessor in office without first obtaining the sanction of the Chief Land Commissioner;

(ii) a Deputy Land commissioner shall not review any order whether passed by himself or by any of his predecessors in office without first obtaining the sanction of the Land commissioner of the area concerned ;

(b) an order shall not be modified or reversed unless a reasonable notice has been given to the parties affected thereby to appear and be heard ; and.

(c) an order against which an appeal or a petition for revision has been preferred shall not be reviewed.

(2) An appeal shall not lie from an order refusing to review a previous order.

(3) Clerical or arithmetical mistakes in any order passed by an officer in pursuance of the provisions of the Regulation and these Rules may, at any time, be corrected by such officer or his successor in office as soon as any such error has come to or been brought to his notice.

Suo motu review-No limitations; The period of 10 days limitation as provided by rule 11 applies to the making of application by interested party and non when the Commissioner (this would include the Chief Land Commissioner, Land Commissioner and the Deputy Land Commissioner who are all mentioned in rule 11) acts upon its own motion. Period of limitation viz. "10 days" applies only to an application by and interested party and suo moto review.

Review by successor Court: In order to review order of predecessor's Court, permission of Chief Land Commissioner is necessary. In the absence of such permission order passed in review is defective.

Determination of area fresh: Determination of area amounting to review of previous order. Order passed without reasonable notice to parties, not proper hence not maintainably.

12. Revision.

(1) The Chief Land Commissioner may, at any time, of his own motion or on an application made to him in that behalf, within thirty days of the passing of any order, call for the record of any case or proceeding under the Regulation which is pending or in which a Land Commissioner or a Deputy Land Commissioner has passed any order, for the purposes of satisfying himself about the correctness, legality or propriety of any such order, and may pass such fresh order in relation thereto as he thinks fit.

(2) A Land Commissioner specially empowered in this behalf by he Chief Land Commissioner may either of his on motion or on an application made to him in that behalf, within 10 days of the passing of any order, call for the record of any case or proceeding under the Regulation in which a Deputy Land Commissioner, Assistant Land Commissioner or a Sub-Assistant Land Commissioner, under his jurisdiction, has passed an order, for the purpose of satisfying himself about the correctness, legality or propriety of such an order and may pass such order in relation thereto as he thinks fit.

(3) The Chief Land Commissioner or Land Commissioner, as the case may be shall not pass any order under this rule revising or modifying an order affecting any person without affording such person an opportunity of being heard.

Order passed against Rule --- A nullity: Where the impugned order of the Chief Land Commissioner, which was passed on the back of the petitioner, who was an interested party, and in violation of the express requirement of rule 13(3) of the West Pakistan Land Reforms Rules, 1959, was completely without jurisdiction and a nullity in law. In this view the order in question was not the type of order which could have been passed within the framework of Martial Law Regulation No.64 and the Rules made thereunder and consequently the High Court would not be debarred from examining its legality. After having examined the facts of this case and the legal provisions by which the jurisdiction of the High Court to question the legality of any order passed by the Chief Land Commissioner before the coming into force of the abrogated Constitution of 1962 is not barred, the Court was of the view that the impugned order being a nullity in law would be open to the security of the High Court.

13. Exclusive of period spent in obtaining order:—

In computing the period prescribed under sub rule (2) of rule 10 sub-rule (1) of rule 11 and sub-rules (1) and (2) of rule 12, for the representation of appeals and applications for review or revision respectively, the period duly spent obtaining certified copies of he orders, against which appeal, review or revision, as the case may be is referred, shall be excluded.

14. Finality of orders:

Subject to the foregoing provisions of this Chapter, any order made under the Regulation shall be final and shall not be questioned in any court.

LAND REFORMS (APPOINTMENT OF MANAGERS OF IMPARTIBLE JOINT HOLDINGS) RULES, 1975

[Gazette of Punjab, Extraordinary, Part I, 10 August 1977]

No. LH-III-40/76/1018-LC. In exercise of the powers conferred by paragraph 6 of the Land Reforms Regulation, 1972 (Martial Law Regulation No.115 of 1972) the Land Commotion of the Punjab is pleased to make the following amendments in the Punjab Land Reforms (Appointment of Manager of Impartible Joint Holdings) Rules, 1975, namely:—

1. The brackets and words "(Appointment of Managers of Impartible joint Holding)", occurring before rule 1 of the said Rules shall be substituted by the brackets and words "Appointment of Managers of Impartible Joint Holding and Acquisition of Impartible Joint Holdings)".

2. The brackets and words "Appointment of Managers of Impartible Joint Holdings)" occurring in sub-rule (1) of rule 1 of the said Rules shall be substituted by the brackets and words "(Appointment of Managers of Impartible Joint Holdings and Acquisition of Impartible Joint Holdings)".

3. After rule 7 of the said rules, the following new rules 8 and 9 shall be inserted and the numbers of existing rules 8, 9, 10 and 11 shall be changed to Nos.10, 11, 12 and 31 respectively:-

8. "Acquisition of an impartible joint holding and payment of compensation:

(1) If the Collector is of the opinion that joint management of an impartible joint holding is not possible under these rules he may, after giving an opportunity to the co-sharers to state their objections, if any, acquire the joint holding and determine the compensation payable to the co-sharers in accordance with the general principle to the acquisition of land for public purposes.

(2) The compensation determined under sub-rule (1) shall be paid out of the funds of the Commission.

9. Utilization of the joint holding after its acquisition:

(1) Acquisition under rule 8, the joint holding shall, in the first instance, the offered by the Collector for sale, in single lot, to tenant in cultivating possession of it, at a price equal to the amount of compensation paid to the co-sharers, and if there is no such tenant or the land is not purchased by the tenant, the Collector shall sell the land by open auction, subject to a reserve price equal to the amount of compensation paid to the co-sharers.

(2) The sale-proceeds realised under sub-rule (1) shall be deposited into the account of the Commission.

4. In rule 10 of the said rules as amended as aforesaid, the words, figures and comma "rule 4, 5 or 7" shall be substituted by the words, figures and commas "rule 4, 5, 7, 8 or 9".

5. In rule 11 of the said rules amended as aforesaid, the word and figure “rule 8” shall be substituted by the word and figure “rule 10”.

6. In rule 13 of the said rules amended as aforesaid, the words, figures and commas “rules 8, 9 and 10” shall be substituted by words, figures and commas “rules 10, 11 and 12”.

5.1.2 Forests/Timber

5.1.2.1 NWFP Forest Ordinance 2002

North-West Frontier Province Forest Ordinance, 2002.

AN
ORDINANCE
to consolidate and amend the laws relating to protection, conservation, management, and sustainable development of forests and natural resources in the North- West Frontier Province.

WHEREAS it is expedient to consolidate and amend the laws relating to protection, conservation, management and sustainable development of forests and other renewable natural resources, and matters ancillary or incidental thereto in the North-West Frontier Province;

AND WHEREAS the Governor is satisfied that circumstance exists which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended uptodate and the Provisional Constitution Order No. 1 of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

CHAPTER - I

PRELIMINARY

1. **Short title, extent and commencement.---**(1) This Ordinance may be called the North-West Frontier Province Forest Ordinance, 2002.

(2) It extends to the whole of the North-West Frontier Province.
(3) It shall come into force at once.

2. **Definitions.---**In this Ordinance, unless the context otherwise requires,-

(1) "accused" means any person, male or female, charged under this Ordinance or rules made thereunder, for any offence;

(2) "appellate court" means the Court of District and Sessions Judge concerned;

(3) "arrears of land revenue" shall have the same meaning as assigned to it by the West Pakistan Land Revenue Act, 1967 (W.P. Act XVII of 1967), and includes all moneys payable to Government under this Ordinance or any rules made thereunder;

(4) "Board of Revenue" means the Board of Revenue, North-West Frontier Province, established under the West Pakistan Board of Revenue Act, 1957 (W.P. Act XI of 1957);

(5) "brushwood" includes all woody plants, bushes, shrubs and small trees growing on waste lands, reserved forests and protected forests, with the exception of tress, that is pears, apples, plums, cherries, apricots, peaches, almonds, citruses, persimmons, pistachios, guavas, litchies and vines grown thereon;

(6) "cattle" includes horned cattle, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, donkeys, asses, yaks, pigs, rams, ewes, sheep, lambs, goats and their young ones;

(7) "Chief Conservator of Forests" means the Chief Conservator of Forests, North-West Frontier Province;

(8) "Collector" means a Collector appointed under the West Pakistan Land Revenue Act, 1967 (W.P. Act XVII of 1967);

(9) "Conservator of Forests" means the concerned Conservator of Forests, Government of the North-West Frontier Province;

(10) "conveyance" means any means of transport whether mechanically propelled or otherwise;

(11) "Department" means the Forestry Department of Government;

(12) "Divisional Forest Officer" means the Divisional Forest Officer of the concerned Forest Division;

(13) "ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit;

(14) "environment" means:
- (a) air, water and land;
- (b) all layers of the atmosphere;
- (c) all organic and inorganic matter and living organisms;
- (d) the ecosystem and ecological relationships;
- (e) buildings, structures, roads, facilities and works;
- (f) all social and economic conditions affecting community life; and
- (g) the inter-relationships between any of the factors in clauses (a) to (f);

(15) "Forest Magistrate" means a judicial Magistrate of the first class specially appointed for taking cognizance of the offences under this Ordinance or rules made thereunder;

(16) "forest" means a tract of land mostly or predominantly covered with trees and other woody vegetation, and declared as forest by Government through a notification issued under this Ordinance or rules made thereunder;

(17) "forest offence" means an offence punishable under this Ordinance or rules made thereunder;

(18) "Forest Officer" means any person appointed or empowered by Government in this behalf to carry out all or any of the purposes of this Ordinance, or to do anything required by this Ordinance or any rule made thereunder;

(19) "forest produce" includes:

(a) the following wherever found:

timber, bark, charcoal, gum, natural varnish, resin, rosin, lac, wax, wood-oil and derivatives thereof;

(b) the following when found in, or brought from, a forest:

(i) trees, leaves, flowers, fruits, seeds, roots and all other parts or produce of trees including fuelwood;

(ii) plants, not being trees, including grasses, creepers, reeds, mosses, mushrooms, medicinal plants and brushwood, and all parts or produce of such plants and other non-wood produce;

(iii) wildlife and all other parts or produce of wildlife including skins, horns, bones, silk, cocoons, honey and wax;

(iv) peat, surface soil, water, sand, stones, rocks and minerals, including minerals oil, limestone, latersite, marble and all products of mines and quarries; and

(v) standing or harvested crops or the grains thereof such as wheat, barley, maize, rice, pulses and produce thereof; and

(c) any other produce which may be notified as forest produce by the Department from time to time;

(20) "Forestry Commission" means the Forestry Commission established under section 3 of the North-West Frontier Province Forestry Commission Act, 1999 (N.W.F.P. Act No. XV of 1999);

(21) "Forest Force" mean the entire forest establishment of the Department employed for the purposes of this Ordinance, but does not include ministerial staff;

(22) "Government" means the Government of the North-West Frontier Province;

(23) "guzara forest" means protected wasteland of the villages set aside at the time of regular settlement for meeting the requirements of landowners and right holders, in the area comprising the Districts of Haripur, Abbottabad, Mansehra, Kohistan and Batagram or else where in the Province or which may be declared as such under this Ordinance or the rules made thereunder;

(24) "interested party" means any person having a bonafide interest in the sustainable development of the forest and natural resources and includes Forest Officers, landowners, right holders, local beneficiaries and users, and concerned community-based organizations, village-based organizations or Joint Forest Management Committees established under this Ordinance, or rules made thereunder;

(25) "land-owner" means person or persons owning land in a village as per revenue record or as per custom where revenue record is not available;

(26) "mazri" means the dwarf palm plant (*Nannorhops ritchieana*);

(27) "mazri produce" includes the mazri plant and its leaves, stems, fruits, roots and all articles made from mazri;

(28) "natural resources" include land, water, forests, wildlife, mineral deposits and fishes found in natural waters;

(29) "prescribed" means prescribed by rules made under this Ordinance;

(30) "protected forests" means all forests existing as such on the commencement of this Ordinance and any other forest that may be declared as protected forest under section 29;

(31) "Protected wasteland" means wasteland declared as such under section 36;

(32) "Province" means the North-West Frontier Province;

(33) "reserved forests" means all forests existing as such on the commencement of this Ordinance, and any other forests that may be declared as reserved forests under section 20;

(34) "right holder" means a person who does not have proprietary rights over forest but has rights or privileges over reserved forests, protected forests, wasteland as per record of rights admitted at the time of settlement or subsequently admitted as right holder by Government;

(35) "river" includes any stream, canal, creek, water channel and lake, natural or artificial;

(36) "rules" mean rules made under this Ordinance;

(37) "sale depot" means any building, place, premises or enclosure registered with Divisional Forest Officer concerned where timber or forest produce is brought and stored for sale;

(38) "sawing unit" means a saw mill or a saw machine registered with Divisional Forest Officer concerned where timber is cut, sawn or fashioned;

(39) "Schedule" means a Schedule appended to this Ordinance;

(40) "section" means a section of this Ordinance;

(41) "seigniorage fee" means a reciprocal fee payable by Government to right holders for trees harvested for sale from reserved forests, of one or other of the kind, entered in the seigniorage (fee) list and similar fee payable by right holders to Government for trees harvested from guzara forests and protected waste land for sale declared so under section 36 of this Ordinance and in areas wherever there are reserved forests;

(42) "settlement" means the first regular settlement or subsequent regular settlements of land; provided wherever the rights of Government or right holder have been alienated or wherever boundaries of forest have been altered during the subsequent settlements without written consent of Government and right holders, the right, privileges and boundaries of forests recorded during the first regular settlement shall have precedence over the subsequent settlements;

(43) "smuggle" means to bring into, or take out, of the Province any forest produce in breach of any prohibition or restriction for the time being in force, or take out from any reserved forest, protected forest or wasteland, any forest produce without lawful authority, or by evading payment of

price, forest duties, or taxes leviable on forest produce, or to transport, store or sell such forest produce in violation of this Ordinance or the rules made thereunder;

(44) "sustainable development" means development that meets the needs of the present generation without compromising the ability of future generations to meet their needs;

(45) "timber" includes trees when they have fallen, or have been felled, or uprooted, and all wood, whether cut up, sawn, split, or fashioned or hollowed out, or partially processed, for any purpose or not;

(46) "tree" includes stumps, bamboos, palms, reeds, canes, woody plants and brushwood specified in Schedule-I or any other kind which the Chief Conservator of Forests may add to, or delete from, the said Schedule;

(47) "urban area" means an area declare as such under any law for the time being in force;

(48) "vessel" denotes anything made for the conveyance by water of timber or forest produce or any property and human beings;

(49) "village forest officer" means any person entrusted by the Divisional Forest Officer with any function or charge with regard to forest protection, management, conservation or sustainable development of natural resources;

(50) "water bodies" means public water bodies and include:

(i) all natural bodies of water, such as rivers and their tributaries, creeks, brooks, lakes, channels, canals or lagoons or dug, dredged or blasted canals;

(ii) any water impounded by the construction of any lake or dam or other impounding device across the channel of a navigable stream; and

(iii) flowing water, which are not by law or customs property of any person;

(51) "wasteland" means all uncultivated or uncultivable land in the area comprising the Districts of Haripur, Abbottabad, Mansehra, Kohistan and Batagram and elsewhere in the Province, but in the latter case declared as such in relation to a specified locality under this Ordinance or the rules made thereunder, excluding reserved forests, protected forests, graveyards, sacred places, land recorded at settlement as part of the village site, land shown as 'khali' or 'banjar jadid' in annual records, land in urban areas and land under roads, railway tracks or water bodies.

3. <u>Objectives and guiding principles.</u>----(1) The objectives of this Ordinance are:

(a) protection, conservation, management and sustainable development of forests;

(b) promotion of the economic, social and ecological well-being of local people, of people of the Province, of Pakistan, and of international community in conformity with conservation needs, ecological significance and economic value of the natural resources;

(c) involvement of local communities and interested parties in the formulation and implementation of forest policies and forest management plans;

(d) definition of role and obligations of Government, and concessions, rights, duties and obligations of local communities; and

(e) consolidation and updating of existing forest laws, with a view to enacting a comprehensive law which adopts modern concepts and provides means to make forest protection and administration effective, promotes present-day objectives, and is in consonance with existing forest policy and environmental laws.

(2) The following shall be the guiding principles for the realisation of the objectives as set out in sub-section (1):

(a) the forests shall be effectively protected, conserved, managed and sustainably developed in due recognition of their ecological significance and economic value for the well-being of the present and future generations, and for this purpose forest protection, administration and management mechanisms shall be strengthened;

(b) appropriate production and security of goods and services shall be achieved at the level of local communities, concerned watersheds, as well as at the provincial level, while continually improving the productivity of forests and safeguarding the national and international interests regarding forests and forestry;

(c) forests and other natural resources shall be managed as an integral part of the ecological system of which these are a part;

(d) direct, strong and effective participation of local communities in the sustainable development and management of forests shall be secured and their concessions, rights, duties and obligations shall be clearly defined;

(e) the role of Government regarding sustainable development of forests shall, as far as possible, be confined to preparing management plans, setting out objectives and criteria, monitoring progress, promoting research and education, and providing advisory services, while interested parties shall be encouraged to undertake leading role in developmental activities where the forests are owned by the people or where the people are the major right holders; and

(f) the development of public awareness for proper appreciation of the environmental significance and economic value of forests shall be vigorously pursued.

CHAPTER – II
RESERVED FORESTS

4. **Power to declare reserved forest.---**Government may declare any forest land or wasteland which is the property of Government, or over which Government has proprietary rights, or to the whole, or any part of the forest produce, of which the Government is entitled, as a reserved forest in the manner hereinafter provided.

5. **Notification by Government.---**(1) Whenever it has been decided to constitute any land as a reserved forest, Government shall, by notification in the Official Gazette,-

(a) declare that it has been decided to constitute such land as a reserved forest;

(b) specify, as nearly as possible, the situation and limit of such land by roads, rivers, streams, ridges or other well known or readily intelligible boundaries; and

(c) appoint a Forest Settlement Board hereinafter referred to as "Board", to enquire into and determine the existence, nature and extent of any rights, alleged to exist in favour of any person in or over any land comprised within such limits or forest produce therefrom, and to deal with the same as provided in this Chapter.

(2) The Board shall consist of the following:-

(i)	a Revenue Officer not below the rank of a Collector;	Chairman
(ii)	the Divisional Forest Officer concerned; and	Member
(iii)	two representatives of the community based organisation or village based organization.	Member

(4) The representatives of the community shall be selected by the concerned community.

(4) All decisions of the Board shall be taken by majority of votes.

6. <u>Proclamation by Forest Settlement Board.</u>---(1) When a notification has been issued under section 5, the Board shall publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein, a proclamation-

(a) specifying, as nearly as possible, the situation and limits of the proposed forest;

(b) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest; and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right in respect thereof either to present to the Board within such period a written notice specifying, or to appear before it and state, the nature of such right and the amount and particulars of the compensation (if any) so claimed.

(2) After the issuance of notification under section 5, no right shall be acquired in or over the land comprised in such notification, except by succession, or under a grant, or contract in writing made or entered into by, or on behalf of Government, or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, except in accordance with such rules as may be made by Government in this behalf.

7. Inquiry by Forest Settlement Board.---The Board shall take down in writing all statements made under section 6, and shall at some convenient place inquire into all claims duly preferred under that section, and the existence of any rights referred to in section 6 so far as the same may be ascertainable from the records of Government and the evidence of any persons likely to be acquainted with the same.

8. Powers of Forest Settlement Board.---For the purpose of such inquiry, the Board may exercise the following powers, that is to say:

(a) power to enter or authorise any of its member or any officer to enter upon any land, and to survey, demarcate and make a map of the same; and

(b) the powers of a Civil Court in the trial of suits.

9. Extinction of rights.---Rights in respect of which no claim has been preferred under section 6, and of the existence of which no knowledge has been acquired by inquiry under section 7, shall be extinguished, unless, before the notification under section 20 is published, the person claiming them satisfies the Board that he had sufficient cause for not preferring such claim within the period fixed under section 6.

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

(2) On receipt of the statement and opinion, Government or any officer of the Department, duly authorised by it, may make an order permitting or prohibiting the practice wholly or in part.

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

(a) by altering the limits of the land under settlement so as to exclude land of sufficient extent, of a suitable kind, and in a locality reasonably convenient for the purposes of the claimants; or

(b) by causing certain portions of the land under settlement to be separately demarcated, and giving permission to the claimants to practice shifting cultivation therein under such conditions as the Board may prescribe.

(4) All arrangements made under sub-section (3) shall be subject to the previous sanction of Government or an officer of the Department duly authorised by it.

(5) The practice of shifting cultivation shall in all cases be deemed a privileges subject to control and restriction by Government and may be done away with at any time by it.

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

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

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

(ii) come to an agreement with the owner thereof for the surrender of his rights; or

(iii) proceed to acquire such land in the manner provided by the Land Acquisition Act, 1894 (I of 1894).

(3) For the purpose of so acquiring such land-

(a) the Board shall be deemed to be a Collector proceeding under the Land Acquisition Act, 1894 (I of 1894);

(b) the claimant shall be deemed to be a person interested and appearing before it in pursuance of a notice given under section 9 of the said Act;

(c) the provisions of the said Act in this behalf shall be deemed to have been complied with; and

(d) the Collector, with the consent of the parties, or the Court as mentioned in section 9 of the said Act with the consent of both parties, may award compensation in land, money or partly in land and partly in money.

12. Order on claims to rights of pasture or to forest produce.---In the case of a claim to rights of pasture or to forest produce, the Board shall pass an order admitting or rejecting the same in whole or in part.

13. Record to be made by Forest Settlement Board.---The Board, when passing any order under section 12, shall record, so far as may be practicable,-

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

(b) the designation, position, area and Khasra Number/Survey Number of all fields or groups of fields (if any) and all buildings (if any) in respect of which the exercise of such rights is claimed.

14. Record where the Forest Settlement Board admits claim.---If the Board admits, in whole or in part, any claim under section 12, it shall also record the extent to which the claim is so admitted, specifying the number and description of the cattle which the claimant is, from time to time, entitled to graze in the forest, the season during which such pasture is permitted, the quantity of timber and other forest produce which he is from time to time authorised to take or receive, and such other particulars as the case may require. It shall also record whether the timber or other forest produce obtained by the exercise of the rights claimed may be sold or bartered.

15. Exercise of rights admitted.---(1) After making such record the Board shall, to the best of its ability, and having due regard to the maintenance of the reserved forest in respect of which the claim is made, pass such orders as will ensure the continued exercise of the rights so admitted.

(2) For this purpose the Board may-

(a) set out some other forest tract of sufficient extent, and in a locality reasonably convenient, for the purposes of such claimants, and record an order conferring upon them a right of pasture or to forest produce, as the case may be, to the extent so admitted; or

(b) alter the limits of the proposed forest as to exclude forest land of sufficient extent, and in a locality reasonably convenient, for the purposes of the claimants; or

(c) record an order, continuing to such claimants a right of pasture or to forest produce, as the case may be, to the extent so admitted, at such seasons, within such portions of the proposed forest, and under such rules, as may be made in this behalf by Government.

16. Commutation of rights.---In case the Board finds it impossible, having due regard to the maintenance of the reserved forest, to make such settlement under section 15 as shall ensure the continued exercise of the said rights to the extent so admitted, it shall, subject to such rules as Government may make in this behalf, commute such rights, by the payment to such persons of a sum of money in lieu thereof, or by the grant of land, or in such other manner as it considers appropriate.

17. Appeal from order passed under section 11, section 12, section 15 or section 16.--- Any person who has made a claim under this Ordinance, or any Forest Officer, or other person generally or specially empowered by Government in this behalf, may, within three months from the date of the order passed on such claim by the Board under section 11, section 12, section 15 or section 16, present an appeal from such order to such officer of the Revenue Department, of the rank not lower than that of a Collector, as Government may, by notification in the Official Gazette, appoint to hear appeals from such orders: (hereinafter referred to as 'the appellate officer'):

Provided that Government may establish a Tribunal (hereinafter called the Forest Tribunal) composed of three persons to be appointed by Government, and, when the Forest Tribunal has been so established, all such appeals shall be presented to it.

18. Appeal under section 17.---(1) Every appeal under section 17 shall be made by petition in writing, and may be delivered to the Board, who shall forward it without delay to the authority competent to hear the same.

(2) If the appeal is made to an appellate officer appointed under section 17, it shall be heard in the manner prescribed for the time being for the hearing of appeals in matters relating to land revenue.

(3) If the appeal is made to the Forest Tribunal, the Tribunal shall fix a date, time and convenient place in the neighbourhood of the proposed forest for hearing the appeal, and shall give notice thereof to the parties, and shall hear such appeal accordingly.

(4) The order passed on the appeal by such appellate officer or the Forest Tribunal, as the case may be, shall, subject to revision by Government, be final.

19. Pleaders.---Government or any person, who has made a claim under this Ordinance, may appoint any person to appear, plead and act on its or his behalf before the Board, or the appellate officer or the Forest Tribunal, in the course of any inquiry or appeal under this Ordinance.

20. Notification declaring forest reserved.---(1) When the following events have occurred, namely-

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

(b) if any such claims have been made, the period limited by section 17 for appealing from the orders passed on such claims has elapsed, and all appeals (if any) presented within such period have been disposed of by the appellate officer or the Forest Tribunal; and

(c) all lands (if any) to be included in the proposed forest, which the Board has, under section 11, selected to acquire under the Land Acquisition Act, 1894 (I of 1894), have become vested in Government under section 16 of that Act;

Government shall publish a notification in the Official Gazette, specifying definitely, according to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved from a date fixed by the notification.

(2) From the date so fixed such forest shall be deemed to be a reserved forest.

(3) The management of reserved forests shall for all intents and purposes be vested in the Forest Officers.

21. Publication of translation of notification in neighbourhood of forest.---The Board shall, before the date fixed by notification issued under section 20, cause a translation thereof into the local vernacular to be published in every town and village in the neighbourhood of the forest.

22. Power to revise arrangements made under section 15 or section 18.---Government may, within five years from the publication of a notification under section 20, revise any arrangement made under section 15 or section 18(4), and may for this purpose rescind or modify any order made under section 15 or section 18(4), and direct that any one of the proceedings specified in section 15 be taken in lieu of any other of such proceedings, or that the rights admitted under section 12 be commuted under section 16.

23. No right acquired over reserved forest, except as provided.---No right of any description shall be acquired in or over a reserved forest, except by succession or under a grant or contract in writing made by or on behalf of Government or some person in whom such right was vested when the notification under section 20 was issued.

24. Rights not to be alienated without sanction.---(1) Notwithstanding anything contained in section 23, no right continued under clause (c) of sub-section (2) of section 15 shall be alienated by way of grant, sale, lease, mortgage or otherwise, without the written sanction of Government:

Provided that when any such right is appended to any land or house, it may be sold or otherwise alienated with such land or house.

(2) No timber or other forest produce obtained in exercise of any such right shall be sold or bartered, except to such extent as may have been admitted in the order recorded under section 14.

25. Power to stop ways and water-courses in reserved forests.---A Forest Officer may, with the previous sanction of Government or of any officer duly authorised by it in this behalf, stop any public or private way or water-course in a reserved forest; provided that a substitute for the way or water-course so stopped, which the Government or the officer duly authorised by it deems to be reasonably convenient, already exists or has been provided or constructed by the Forest Officer in lieu thereof.

26. Acts prohibited in reserved forests and penalty.---(1) No person after issuance of a notification under section 20 shall, in a reserved forest,-

(a) encroach upon any land, or cultivate any land or clear or break up, or occupy any land for cultivation, or for any other purpose;

(b) construct or cause to be constructed any building or shed, road or enclosure, or any infrastructure, or alter or enlarge any existing building, road, shed, or any enclosure, or infrastructure;

(c) exercise the right of trespass, graze, browse, pasture or drive cattle, or permit cattle to trespass, or cut grass, or enter into a fenced enclosure or have any other rights, except the rights admitted under section 15;

(d) set fire or abet in setting fire, to a reserved forest or, in contravention of any rules made in this behalf, kindle any fire or leave any fire burning in such manner as may endanger such forest;

(e) cause any damage by negligence in felling any tree or cutting or dragging any timber;

(f) cut, fell, uproot, girdle, lop, tap, burn any tree or brushwood listed in Schedule I, or strip off its bark or leaves or collect or extract torch wood and any forest produce from or otherwise damage the same;

(g) quarry stone, burn lime or charcoal, or collect, subject to any manufacturing process, or remove any forest produce;

(h) pollute soil or water by sewerage, sewage, domestic or industrial waste or through any other pollutants or means; or

(i) hunt, shoot, fish, or poison water, or set snares or traps in contravention of any rules made in this behalf by Government.

(2) No person shall abet in the commission or furtherance of any of the above acts.

(3) Whoever contravenes or fails to comply with any of the provisions of this section or abets in commission or furtherance of any such acts shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, in addition to such compensation as the convicting court may direct to be paid, which shall not be less than the value of the actual damage done to the forest as assessed by the Forest Officer:

Provided that—

(i) where the value of the forest damage as assessed by the Forest Officer is less than ten thousand rupees, the offence shall be punishable with imprisonment which shall not be less than one month, or with fine which shall not be less than five thousand rupees, or with both; or

(ii) where the value of the forest damage, as assessed by the Forest Officer, exceeds ten thousand rupees but does not exceed thirty thousand rupees, the offence shall be punishable with imprisonment which shall not be less than three months, or with fine, which shall not be less than ten thousand rupees, or with both; or

(iii) where the value of the forest damage, as assessed by the Forest Officer, exceeds thirty thousand rupees but does not exceed one hundred thousand rupees, the offence shall be punishable with imprisonment

which shall not be less than six months, or with fine, which shall not be less than twenty thousand rupees, or with both; or

(iv) where the value of the forest damage, as assessed by the Forest Officer, exceeds one hundred thousand rupees, the offence shall be punishable with imprisonment which shall not be less than one year, or with fine, which shall not be less than fifty thousand rupees, or with both.and

(v) In all cases the value of the forest produce shall be assessed at double the current market rates.

(4) When an offence is established then apart from fines and sentences awarded by the court, all forest produce, tools, implements, carriages, including mechanically propelled vehicles, pack animals, sawing unit, chain saw, arms, ammunitions and other equipments and conveyances used in the commission or furtherance of a forest offence shall stand confiscated in favour of Government, in addition to the punishment awarded under this section.

(5) If the offender be a woman, the Magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised in writing under the signature or thumb-impression of the woman, attested by a respectable person of the area concerned.

(6) When the person who is incharge of cattle which have trespassed in contravention of clause (c) of sub-section (1) is a child under the age of sixteen years, the owner of the cattle shall be deemed to be a person who is guilty of an offence within the meaning of that clause.

(7) Nothing in this section shall be deemed to prohibit-

(a) any act done by permission in writing of the Forest Officer or any rule made by Government; or

(c) the exercise of any right mentioned in section 15 or acquired under section 23 or admissible under section 24.

(8) Whenever fire is caused wilfully or by gross negligence to a reserved forest, or excessive damage is caused wilfully or by gross negligence to such forest through girdling, lopping, felling, torch wood extraction, or drying of trees through artificial means, the Forest Officer not below the rank of a Divisional Forest Officer may, notwithstanding that any punishment has been imposed or not for contravention of the provisions of this section, direct that in such forest or any portion thereof the exercise of all or any of the rights, concessions or privileges of the offender, in respect of pasture or forest-produce or seigniorage fee or timber permit shall be suspended for such period as he may deem appropriate.

27. Power to declare forest no longer reserved.---(1) Government may, by notification in the Official Gazette, direct that any forest or any portion thereof constituting a reserved forest, shall cease to be a reserved forest, with effect from a date specified in such notification.

(2) From the date so specified, such forest or portion thereof shall cease to be a reserved forest but the rights, if any, which have been extinguished therein shall not revive in consequence of such cessation.

CHAPTER – III
VILLAGE FORESTS

28. **Formation of village forests.---**(1) Government may assign to any village community the rights of Government to or over any land which has been declared a reserved forest, and may cancel such assignment. All such land shall be called village forests.

(2) The situation and limits of such forest or land shall be specified, as nearly as possible, by well-known and permanent boundary pillars and proper map shall be prepared and maintained .

(3) Government may, for the purposes of this Chapter, make rules-

(i) for regulating the management of village forests;

(ii) prescribing the conditions under which the community to which any assignment is made under this section may be provided with timber and other forest produce;

(iii) for grant of permission to pasture;

(iv) for assignment of duties and obligations in relation to protection, management and sustainable development of such forests; and

(v) prescribing joint responsibility and liability of the community for contravention of any of the provisions of this Chapter.

(4) In all other matters the provisions of this Ordinance relating to reserved forests shall apply to village forests.

CHAPTER - IV
PROTECTED FORESTS

29. **Power to declare protected forests.---**(1) Government may, by notification in the Official Gazette, declare any forest land or wasteland which is not included in a reserved forest, but which is the property of Government or over which Government has proprietary rights, or to the whole or any part of the forest produce of which Government is entitled, a protected forest.

(2) The situation and limits of such land or forest shall be specified in the notification, as nearly as possible, by roads, rivers, ridges or other well-known or readily intelligible boundaries.

(3) The management of the forest or wasteland comprised in the notification issued under sub-section (1) shall vest in the Forest Officers.

(4) No notification under sub-section(1) shall be made unless the nature and extent of rights of Government and of private persons, in or over the forest or wasteland comprised therein, have been inquired into and recorded at a survey or settlement, or in such other manner as Government may consider appropriate. Every such record shall be presumed to be correct unless the contrary is proved; and that rights recorded under this section cannot be interfered with at all, except in a closed forest or when rights are suspended on account of fire, excessive damage to forest or on account of any act prohibited under section 33:

Provided that if, in the case of any forest or wasteland, Government considers that such inquiry and record will occupy such length of time as in the meantime to endanger the rights of Government, it may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights of individuals or communities.

(5) Government may, in the interest of forest conservancy, conduct proper enquiry into the nature and extent of rights of Government and of private persons in or over protected forest, as soon as possible, after issuance of notification under sub-section (1) or declaration under the proviso to sub-section (4) and constitute any such forest or land, a protected forest, in accordance with the procedure laid down in respect of reserved forests as contained in sections 5 to section 21 of this Ordinance.

30. Power to reserve trees, close forests and prohibit certain acts.---(1) Government may by notification,-

(a) declare any trees or class of trees or brushwood listed in Schedule-I or any other forest produce in a protected forest to be reserved from a date fixed by notification;

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as Government considers fit and that the rights of private person, or village community, if any, over such portion shall be suspended during such term:

Provided that when any portion of the forest is closed, it shall be ensured that the remainder of such forests is sufficient and is reasonably convenient for the due exercise of the rights suspended in the portion so closed; or

(c) prohibit, from a date fixed as aforesaid, the quarrying of stones, or the burning of lime or charcoal, or their collection or subjection to any manufacturing process, or removal of any timber or forest produce in any such forests, and the breaking up or clearing of land for cultivation, or for construction of any building, or enclosure, or for herding cattle or the extension of any kind of encroachment over such land for any other purpose, or pasturing of cattle, or any other act or acts mentioned in sub-section (1) and sub-section (2) of section 33, in any such forest.

(2) All the trees on Government lands resumed by Government, or declared protected under this Ordinance, or any of the laws repealed by this Ordinance shall be deemed to be reserved under this section with effect from the commencement of this Ordinance.

31. Publication of translation of such notification in neighbourhood.---The Divisional Forest Officer shall cause a translation into local vernacular of every notification issued under section 29 or section 30 to be affixed in a conspicuous place in every town and village in the neighbourhood of the forest comprised in the notification.

32. Power to declare forest no longer protected.---(1) Government may, by notification in the Official Gazette, direct that any protected forest or any portion thereof, shall cease to be a protected forest with effect from a date specified in such notification.

(2) From the date so specified such forest or portion thereof shall cease to be a protected forest but the rights, if any, which have been extinguished therein shall not revive in consequence of such cessation.

33. Acts prohibited in protected forests and penalties.--- (1) No person shall set fire or abet in setting fire to a protected forest, or in contravention of any rules made in this behalf, kindle any fire or leave any fire burning in such manner as may endanger such forest, or keep, kindle or carry any fire, except during such seasons as the Forest Officer may notify in this behalf.

(2) No person shall, in contravention of any notification issued under section 30 or rules made under section 34, in a protected forest,-

(a) cultivate any land or clear or break up any land for cultivation or occupy or encroach upon any land for any other purpose;

(b) construct or cause to be constructed any building, or alter or enlarge any existing building, or make any enclosure or alter or enlarge any existing enclosure;

(c) trespass, graze, browse, pasture or drive cattle, or permit cattle to trespass, or cut grass, or enter into a fenced enclosure;

(d) cause any damage by negligence in felling any tree or cutting or dragging any timber;

(e) cut, fell, uproot, girdle, lop, tap, burn any tree, or brushwood listed in Schedule-I, or extract torch wood, or strip off its bark or leaves from or otherwise damage the same;

(f) quarry any stone, burn lime or charcoal, or collect, subject to any manufacturing process, or remove any forest produce;

(g) pollute soil or water by sewerage, sewage, domestic or industrial waste or through any other pollutants or means; [or]

(h) hunt, shoot, fish, or poison water, or set snares or traps; and

(i) abet in the commission or furtherance of any of the above acts.

(3) Whoever contravenes or fails to comply with any of the provisions of this section, or abets in commission or furtherance of any such acts, shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, in addition to such compensation as the convicting court may direct to be paid, which shall not be less than the value of the actual damage done to the forest as assessed by the Forest Officer:

Provided that—

(i) where the value of the forest damage as assessed by the Forest Officer is less than ten thousand rupees, the offence shall be punishable with imprisonment which shall not be less than one month, or with fine which shall not be less than five thousand rupees, or with both; or

(ii) where the value of the forest damage, as assessed by the Forest Officer, exceeds ten thousand rupees but does not exceed thirty thousand rupees, the offence shall be punishable with imprisonment which shall not be less than three months, or with fine, which shall not be less than ten thousand rupees, or with both; or

(iii) where the value of the forest damage, as assessed by the Forest Officer, exceeds thirty thousand rupees but does not exceed one hundred thousand rupees, the offence shall be punishable with imprisonment which shall not be less than six months, or with fine, which shall not be less than twenty thousand rupees, or with both; or

(iv) where the value of the forest damage, as assessed by the Forest Officer, exceeds one hundred thousand rupees, the offence shall be punishable with imprisonment which shall not be less than one year, or with fine, which shall not be less than fifty thousand rupees, or with both;

(v) In all cases the value of the forest produce shall be assessed at double the current market rates.

(4) When an offence is established then apart from fines and sentences awarded by the court, all the forest produce, tools, implements, carriages, including mechanically propelled vehicles, pack animals, sawing unit, chain saw, arms, ammunitions and other equipments and conveyances used in the commission or furtherance of the offence shall stand confiscated in favour of Government, in addition to the punishment awarded under this section.

(5) If the offender be a woman, the magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised in writing under the signature or thumb impression of the woman, attested by a respectable person of the area concerned.

(6) When the person who is incharge of cattle which have trespassed in contravention of clause (c) of sub-section (2) is a child under the age of sixteen years, the owner of the cattle shall be deemed to be a person who is guilty of the offence within the meaning of that clause.

(7) Nothing in sub-sections (1) and (2) shall be deemed to prohibit any act done with the permission in writing of the Forest Officer, or in accordance with rules made under section 34, or, except as regards any portion of a forest closed under section 30, or as regards any rights the exercise of which has been suspended under sub-section (8), or in the exercise of any right recorded under section 29.

(8) Whenever fire is caused wilfully or by gross negligance to a protected forest, or excessive damage is caused wilfully or by gross negligance to such forest through girdling, lopping, felling, torch wood extraction, or drying of trees through artificial means, the Forest Officer not bellow the rank of a Divisional Forest Officer may, notwithstanding that any punishment has been imposed or not for contravention of the provisions of this section, direct that in such forest or any portion thereof all or any of the rights, concessions or privileges of the offender, in respect of pasture or forest produce or timber permit shall be suspended for such period as he may deem appropriate.

34. Power to make rules for protected forests---Government may for the purposes of this Chapter, make rules to prohibit or regulate the following matters, namely,-

(a) cutting, felling, sawing, converting, obtaining, storing, selling, transporting, and removal of trees and timber and the collection, manufacture and removal of forest produce from protected forests, and the use of any tools, implements, carriages, boats, vehicles, pack-animals, conveyances, power saw, and sawing unit in protected forests;

(b) granting of licenses or permits to the inhabitants of towns and villages and the community-based organisation in the vicinity of protected forests to take trees, timber or other forest produce from forest for their own use, or for the purposes of trade, and the production and return of such licenses or permits by such persons or organisation;

(c) payments, if any, to be made in pursuance of grant of licence or permits under clause (b) and the manner in which such payment shall be made, including the manner to cut such trees, or to collect and remove such timber or other forest produce;

(d) other payments, if any, to be made in respect of such trees, timber and produce, and the manner in which such payments shall be made;

(e) examination of forest produce passing out of such forests by Forest Officers;

(f) protection from fire of timber lying in such forests and of trees reserved under section 30;

(g) cutting of grass and pasturing of cattle in such forests;

(h) hunting, shooting, fishing, poisoning water, polluting soil or water and setting traps or snares in such forests;

(i) protection, conservation, management and sustainable development of any portion of a forest closed under section 30;

(j) grant, sale, lease and mortgage of timber or any forest produce, or lease or grant of any such land for a specified time, for eco-tourism, mining, research, trade, sustainable development or any purpose not being inconsistent with the objectives of this Ordinance; and

(k) the exercise of rights, if any, determined under section 29.

CHAPTER – V
CONTROL OVER GUZARA FORESTS AND WASTELANDS

35. Rights in guzara forests and wastelands.---(1) Subject to the rights and powers of Government in respect of seigniorage, forest conservancy, sustainable development and management as defined in this Ordinance or in the rules made thereunder, and subject also to the claims of right-holders not being owners of the land, all guzara forests and wastelands are the property, held jointly or severally, as the case may be, of the land-owners of the village in whose boundaries these are included and such land-owners are entitled to use, free of charge, for their own domestic, and agricultural requirements any trees and forest produce found in those guzara forests and wastelands, but they shall have no right or power to sell any tree, timber, brushwood or any other forest produce growing on such lands, except with the permission of the Conservator of Forests and under such conditions as the Conservator of Forests may impose. All such sales shall be subject to payment to Government of timber surcharge, forest development charges, seigniorage-fees, and management charges, which shall be creditable to the Forest Development Fund.

(2) The claims of right holders other than land-owners of the village shall be recognised to the extent defined and recorded at settlement, or in case of doubt or dispute, to the extent which may hereafter be defined by the Collector with the sanction of the Board of Revenue, and exercise of such rights shall be subject to the provisions of this Ordinance and the rules made thereunder.

(3) All deodar trees in Kaghan Ilaqa, whether grown on Government or private lands, shall be deemed to be the property of the Government; Provided that in case of deodar trees

growing on private lands, the right holders shall be paid half the price of timber from the commercial sale of trees, after deducting at source the extraction costs, timber surcharge, other forest development charges and surcharges, and managerial charges.

36. Protection of wastelands.---(1) Subject to sub-section (6), Conservator of Forests may, by Order, with prior approval of the Government, declare any wasteland to be protected wasteland with effect from the date specified in the order, when, in his opinion, it becomes necessary to do so for any of the following purposes, namely:

(i) the protection against storms, winds, rolling stones, floods and avalanches, or any other natural calamities;

(ii) the conservation or preservation of soil on the ridges and slopes, and in the valleys of hilly tracts, the prevention of land-slips or land-slides, or of the formation of ravines and torrents, or the protection against erosion and floods, or the deposit thereon of sand, stones or gravel;

(iii) the protection of catchment basins, banks and beds of rivers, streams, torrents and ravines;

(vi) the protection, conservation and regeneration of particular types of trees, brushwood or grasses;

(v) the maintenance of water supply in springs, rivers, tanks and reservoirs; and

(vi) the protection of lines of communication including roads, bridges and railways, and other infrastructure.

(2) The order under sub-section (1) shall clearly define the area declared as protected wasteland and cause the same to be shown on the village map, besides demarcating on the ground with boundary marks so far as may be necessary.

(3) The following acts shall be prohibited in the protected wasteland, declared under sub-section (1), that is to say--

(a) the encroachment by breaking up or clearing of land for cultivation or construction of sheds, building, road, enclosure or any other infrastructure, or its occupation as sites for sheds, buildings or enclosures;

(b) pasturing of cattle;

(c) burning or clearing of vegetation;

(d) cutting of particular types of trees listed in Schedule-I or removal of forest produce;

(e) quarrying of stones, mining of minerals, burning of lime or charcoal;

(f) hunting, shooting, poisoning of water, or setting of traps and snares; or

(g) polluting of soil or water by sewerage, sewage, domestic or industrial waste or any other pollutants, or means.

(4) No order made under sub-section (1) shall be cancelled, or the boundary of the protected wasteland shall be altered without the approval of Conservator of Forests.

(5) Subject to sub-section (6), the Conservator of Forests may, with the approval and at the expense of Government, for any purpose mentioned in sub-section (1), construct or carry out in or upon such protected wasteland such engineering or cultural works as he deems fit.

(6) No order shall be made under sub-section (1) nor shall any work be begun under sub-section (5), until after the issue of a notice by the Conservator of Forests concerned to the owners of such wasteland calling on them to show cause, within a reasonable period of time which shall not be less than ninety days, as to why such order should not be made or construction work carried out, as the case may be, and the explanation or objections, if any, and any evidence they may produce in support of the same, have been heard, considered and disposed of by the Conservator of Forests.

(7) No compensation shall be claimable by the owners or other right holders of such protected wasteland in respect of any order passed under this section.

(8) The management of the protected wasteland shall vest in the Department.

37. **Management of guzara forests and wastelands. ---**(1) The management of guzara forests shall vest in the Department.

(2) In case of wastelands, if-

(a) the landowners neglect or wilfully disobey any order under section 36 or rules (or regulations) made under this Chapter; or

(b) the purpose of any work to be constructed or carried out under section 36 (5) so requires;

the Conservator of Forests may, by notification, after giving the land-owners an opportunity of being heard in accordance with the procedure as laid down in sub-section (6) of section 36, assume the management of such wasteland and place the same under the control of a Forest Officer, and may declare that all or any of the provisions of this Ordinance or the rules made thereunder relating to reserved forests or protected forests shall apply to such wasteland, as the Conservator of Forests may deem fit.

(3) The Divisional Forest Officer shall demarcate such wasteland and shall prepare a map thereof or construct boundary pillars around such land.

(4) The Conservator of Forests may transfer the management of such lands back to the land-owners for sustainable development or for any other reason as he deems fit in the circumstances.

38. **Management of wastelands at the request of owners.---**(1) If the owner of any wasteland other than guzara forests, or if there be more than one owner, the owners of shares therein amounting in the aggregate to at least two-third thereof, with a view to the formation, protection, conservation, management or sustainable development of forests thereon, request in writing to the Conservator of Forests-

(a) that such wasteland be set apart and managed on his or their behalf by the Forest Officer as a reserved or a protected forest, or by the community-based organization, or village- based organization as a village forest in the manner as provided in section 28 or by the Joint Forest

Management Committee as provided in section 102 on such terms as may be mutually agreed upon; or

(b) that all or any of the provisions of this Ordinance or rules made thereunder be applied to such wasteland .

(2) The Conservator of Forests may, by notification, apply to such wasteland such provisions of this Ordinance, with such modifications, as he deems suitable to the circumstances thereof.

(3) The management and protection of such wasteland shall be the responsibility of the Forest Officer, the community-based organisation, the village-based organisation or the Joint Forest Management Committee, as the case may be.

(4) The Coservator of Forests may transfer the management of such lands back to the land-owner for sustainable development or for any other reason as it deems fit in the circumstances.

39. Apportionment of net profit.---The net profit, if any, arising from the management of guzara forests or wastelands under section 37 or section 38 shall be paid to the said land-owners, after deducting at source, the harvesting or any other charges incurred in connection with management of such land, timber surcharges, other charges/surcharges, as well as 20% managerial charges on the profit. The deductions so made shall be credited to the Forest Development Fund.

40. Power to acquire guzara forest or wasteland.---(1) If Government considers that, in lieu of placing any guzara forest or wasteland under the control of a Forest Officer, the said land should be acquired for public purposes, it may acquire the same under the Land Acquisition Act, 1894, and place it under the management of Forest Officer.

(2) All or any of the provisions of this Ordinance, or the rules made thereunder relating to a reserved forest or a protected forest may be applied to such land or separate rules may be made to regulate such land.

41. Protection of cultivation by retaining walls and treatment of cultivation in dangerous position on hill slopes.---(1) In the case of cultivation in dangerous position on hill-slopes the Divisional Forest Officer may require the owner or tenant of the land so cultivated to protect it by a retaining wall or to take such other precautionary measures to ensure the stability of the soil as he may deem necessary.

(2) If the owner or tenant fails to comply with the requisition within a period of thirty days and also persists in cultivating the said land, the Divisional Forest Officer may summarily eject him from so much of the land as may be in danger and deal with it in accordance with the provisions of section 36.

(3) Where the cultivation on hill-slopes is in such a dangerous position and the slope is too steep to admit of the construction of retaining walls, the Divisional Forest Officer may, if he is of the opinion that the prohibition of such cultivation is in the general interest of the village or public, eject the person cultivating the same and direct that the land shall remain uncultivated in future.

(4) No compensation shall be admissible in respect of any order passed under this section.

42. Treatment of encroachment on common land.---(1) Where waste- land, which has been recorded at settlement as “shamilat” or common land, the Divisional Forest Officer may

declare or specially reserve such land as a grazing ground or as a fuel or timber preserve of the village or village community.

(2) Where such land is broken into by cultivation, or is encroached upon for any purpose other than a purpose under sub-section (1), the Divisional Forest Officer, on the application of any right holder in the village or of his own motion, may eject the author of the encroachment and forbid its repetition by an order issued in a like manner as an order under section 36 of this Ordinance.

(3) Violation of the order passed under sub-section (2) shall constitute a contravention of the provision of clause (b) of section 44.

43. Controlled burning of guzara forest and wasteland.---A Forest Officer, not below the rank of a Divisional Forest Officer, may issue special order in writing, permitting the controlled burning of any guzara forest and wasteland within such limits and subject to such conditions as he may think fit.

44. Acts prohibited in guzara forests and waste- lands.--- No person shall, in a guzara forest or wasteland-

(a) break up or cultivate or occupy or construct any building or enclosure, or make any other kind of encroachment, or being the owner of the land or a joint owner thereof, permit the breaking up, or cultivation or occupation, or construction of the shed, building or enclosure or any other kind of encroachment in any wasteland;

(b) contravene any general or special management order passed under this Chapter or contravene any rules made under this Chapter;

(c) sell or convey for sale any tree, timber or brushwood listed in Schedule-I or other forest produce without permission, or cut, fell, uproot, girdle, lop, or tap for resin or for any other purpose, or burn any tree, or brushwood, or extract torch wood, or strip off its bark or leaves from, or otherwise injure any such tree or brushwood contrary to any general or special management orders issued under or rules made under this Chapter;

(d) set fire to any wasteland otherwise than as permitted by the Forest Officer under section 43, or negligently permit any fire to extend thereto;

(e) cause any damage by negligence in felling any tree or cutting or dragging any timber;

(f) quarry stones, burn lime or charcoal, or collect subject to any manufacturing process, or remove any forest produce;

(g) pollute soil or water by sewerage, sewage, domestic or industrial waste or through any other pollutants or means;

(h) hunt, shoot, or poison water, or set snares or traps; or

(i) abet in the commission or furtherance of any of the above acts.

45. Penalties.---(1) Whoever contravenes or fails to comply with the provision of section 44, shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to fifty thousand rupees, or with both, in addition to such compensation for the damage done to the guzara forest or wasteland as the convicting court may direct to be paid, which shall not be less than the value of the actual damage done to the guzara forests or

wasteland as assessed by the Forest Officer and that all timber and forest produce illicitly obtained or removed and seized shall be restored to the Government:

Provided that—

(i) where the value of the forest damage as assessed by the Forest Officer is less than ten thousand rupees, the offence shall be punishable with imprisonment which shall not be less than one month, or with fine which shall not be less than five thousand rupees, or with both; or

(ii) where the value of the forest damage, as assessed by the Forest Officer, exceeds ten thousand rupees but does not exceed thirty thousand rupees, the offence shall be punishable with imprisonment which shall not be less than three months, or with fine, which shall not be less than ten thousand rupees, or with both; or

(iii) where the value of the forest damage, as assessed by the Forest Officer, exceeds thirty thousand rupees but does not exceed one hundred thousand rupees, the offence shall be punishable with imprisonment which shall not be less than six months, or with fine, which shall not be less than twenty thousand rupees, or with both; or

(iv) where the value of the forest damage, as assessed by the Forest Officer, exceeds one hundred thousand rupees, the offence shall be punishable with imprisonment which shall not be less than one year, or with fine, which shall not be less than fifty thousand rupees, or with both.and

(v) In all cases the value of the forest produce shall be assessed at double the current market rates.

(2) When an offence is established then apart from fines and sentences awarded by the court, all forest produce, tools, implements, carriages, including mechanically propelled vehicles, pack animals, sawing unit, chain saw, arms, ammunitions and other equipments and conveyances used in the commission or furtherance of a forest offence shall stand confiscated in favour of Government.

(3) If the offender be a woman, the Magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised by writing under the signature or thumb impression of the woman, attested by a respectable person of the village concerned.

(4) Whenever fire is caused wilfully or by gross negligence to a guzara forest or protected wasteland, or forest damage valuing fifty thousand rupees or more, as assessed by a Forest officer, is caused wilfully or by gross negligence to such guzara forest or protected wasteland through girdling, lopping, felling, torch wood extraction, or drying of trees through artificial means, the Forest Officer not below the rank of a Divisional Forest Officer may, notwithstanding that any punishment has been imposed or not for contravention of the provisions of this section, direct that in such forest or any portion thereof the exercise of all or any of the rights of the offender, concessions or privileges of the offender or offender community, in respect of pasture or forest produce or seigniorage fee or timber permit shall be suspended for such period as he may deem fit.

46. Power to make rules for guzara forests, protected wastelands and wastelands.--The Government may make rules for the protection, regulation, sustainable development and management of guzara forests, protected wastelands and wastelands and the Conservator of Forests may issue general or special management orders for prohibition of the barking, boring or

otherwise injuring of trees or brush wood and for regulating the felling or lopping of trees or brushwood in such land for meeting the domestic and agricultural requirements of the land owners, right holders or the village community.

CHAPTER – VI
THE CONTROL OVER MAZRI AND MAZRI PRODUCE

47. Protection, preservation, propagation and control of mazri and mazri produce.---(1) Whenever it appears desirable to provide for better protection, preservation, propagation and control of mazri and mazri produce in any area in Kohat and Hangu Districts in particular, or in any other area to be specified by Government in general, Government may, by notification in the Official Gazette,-

(a) fix the period during which mazri shall not be cut or transported, including the transportation of its produce;

(b) specify the route by which mazri or mazri produce shall be transported during the period not covered by clause (a); and

(c) determine the authority under whose order the means through which and the extent to which mazri or mazri produce may be transported.

(2) Except specifically permitted by such authority as determined by Government, no person shall possess mazri produce at one time in excess of the quantity fixed by general or special order of the Conservator of Forest.

48. Mazri to be a protected plant.-- (1) Mazri shall be a protected plant wherever it is so declared by the Conservator of Forests and except as provided by this Ordinance, or rules made thereunder, the cutting of its leaves, shoots, roots or stem shall be prohibited.

49. Management of mazri growing tracts.-- (1) The management of all mazri-growing tracts including tracts which have been denuded of mazri, shall vest in the Forest Department.

(2) For the purposes of protection, conservation, regeneration and sustainable development of mazri, the Department may, in the prescribed manner:

(a) prohibit the breaking up or clearing for cultivation of mazri-growing tract or its occupation as sites for sheds, buildings or enclosures in such land;

(b) specify the mode in which mazri and mazri produce may be transported; and

(c) control the export, import and sale of mazri and mazri produce.

(3) The Conservator of Forests may issue orders prohibiting such breaking up or occupation and defining the area to which such prohibition shall extend and may cause the limits of such area to be shown on the village map and to be demarcated on the ground with the boundary marks so far as may be necessary.

(4) The Conservator of Forests may, in a similar manner, revise such orders from time to time by altering the boundary of the protected land so as to exclude any particular plot which is not necessary to be protected any longer.

(5) The Conservator of Forests may cause to be summarily ejected any person cultivating land or committing any other act in contravention of an order passed under the foregoing sub-sections and may direct that any breaking up or occupation of land shall be removed or crop grown in contravention of such order shall be confiscated in favour of Government.

50. Control of the mazri produce.---(1) Subject to the overall control of the Department, the Divisional Forest Officer or any other Forest Officer authorised by Government shall have power to control and regulate the sale and export of any of the mazri produces within, from or through Kohat and Hangu Districts, and shall also have power to appoint and control markets for its sale within the Kohat and Hangu Districts, and to restrict such sale to such markets.

(2) No mazri or mazri produce shall be allowed to be brought into Kohat and Hangu Districts unless it is covered by a permit issued by the Political Agent concerned or any other officer authorised by Government and brought through the routes prescribed by the Department for the purpose.

(3) Subject to rights defined and recorded at the latest settlement, the mazri income accruing from Government owned land shall be credited to the Government as forest revenue.

(4) Subject to the rights defined and recorded at the latest settlement, the income from mazri and mazri produce accruing from the wastelands after deduction of such departmental expenditure incurred on harvesting at source and the managerial charges amounting to 20% of the net profit shall be paid to the right holders according to their shares through the Revenue Department of Government

51. Management orders.---Subject to the approval of Government, the Divisional Forest Officer, may by a general or special order prohibit the cutting or injuring of mazri and regulate the cutting and transporting of mazri for the domestic requirements of the right holders.

(2) In case of contravention of any order issued under sub-section (1) the Divisional Forest Officer may direct that no mazri shall be cut in any area to which the provisions of this Ordinance apply or are made applicable, without his previous permission in writing or of such officer as may be authorised by him in this behalf.

52. Power to search.---(1) Any Forest Officer or Police Officer, not below the rank of Range Forest Officer or Inspector of Police, may search any house, room, tent, enclosure, vehicles, vessels or place where he has reason to believe that mazri or mazri produce is placed in contravention of any provisions of this Ordinance or of any order, rule or direction made thereunder and may seize any such mazri or mazri produce.

(2) Search under this section shall be made in accordance with the provisions contained in sections 102 and 103 of the Criminal Procedure Code, 1898 (V of 1898).

53. Penalty.---(1) Any person who commits a breach of any of the provisions under this Chapter or orders or rules made thereunder shall, on conviction by the court, be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both, in addition to the confiscation of the mazri or the mazri produce in respect of which the offence has been committed and such compensation as the convicting court may direct to be paid, which shall not be less than the value of the damage done to the mazri as assessed by the Forest Officer:

Provided that--

(i) where the value of the damage done to the mazri, as assessed by the Forest Officer, exceeds fifteen thousand rupees, the sentence of imprisonment shall not be less than three months; and

(ii) if the offender is a woman, the court shall, except for reason to be recorded in writing, dispense with her presence and permit her to appear by an agent authorised in writing under the signature or the thumb impression of the women, attested by a respectable person of the village concerned.

54. Power to make rules.---(1) Government may make rules to carry out the purposes of this Chapter.

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

(a) provide for the preservation, cutting, re-production, collection, storage, sale, transportation, transit, checking or examination, levy of duty and disposal of mazri and mazri produce; and

(b) provide for the management, prohibition and regulation of the breaking of wastelands, control of illicit cultivation, closure, plantation, removal of encroachment and annual cutting programmes.

CHAPTER – VII
THE DUTY AND FEES ON TIMBER AND OTHER FOREST PRODUCE

55. Seigniorage fee.---(1) In the case of trees harvested from the reserved forest, Divisional Forest Officer shall credit to Government as forest revenue the sale proceeds of such trees after deducting the timber surcharge, forest development surcharge or any other charges for the time being invogue and creditable to Forest Development Fund, and on the other hand debit to Government and pay to the right holders entitled thereto, the seigniorage fees due, according to the list of such fees that is in force for the time being.

(2) Similarly, in the case of trees which are harvested for sale from guzara forests or wastelands, wherever there are counterpart reserved forests, Divisional Forest Officer shall credit to Forest Development Fund the seigniorage fees, and the balance of the net sale proceeds realised shall be paid to the right holders entitled thereto after deducting the prescribed timber and forest surcharges, managerial and other development charges; provided that the trees referred to in this sub-section are of one or other of the kind entered in the seigniorage-list which is in force for the time being.

(3) The list of the seigniorage fees in force at the commencement of this Ordinance given at Schedule-II is hereby maintained.

(4) Government shall after every ten years with due reference to the average actual sale prices realisable for timber or fuel wood, revise the rates of fees in such list and may add trees to it or exclude trees from it.

(5) The fees may vary in different parts of former Hazara Division comprising the Districts of Haripur, Abbottabad, Mansehra, Kohistan and Batagram, but shall not exceed in any case a fair estimate of half the average net profits realisable on the sales.

(6) Whenever the list of seigniorage fees has been revised, Government shall publish a notification in the Official Gazette, which shall set forth the rates of seigniorage fees payable, the circumstances under which any trees have been exempted from charge, and such other matters connected with seigniorage-payments as Government may deem fit to regulate.

(7) Notwithstanding anything contained anywhere else in this Ordinance, this section shall be applicable only to areas.

56. Duty and forest development charges on timber and other forest produce.--- (1) Government may, by notification, levy a duty or forest development charges, or both, in such manner, at such places and at such rates as may be prescribed on any timber or other forest produce, which is-

(a) produced in the Province, or

(b) brought from any place outside the Province, or is transported from or through any place within the Province, or from beyond the frontier or elsewhere.

(2) In every case in which such duty or forest development charges, or both, are directed to be levied ad valorem, Government may fix, by notification, the value on which such duty or forest development charges, or both, shall be assessed.

(3) All duties on timber or other forest produce listed in Schedule-I and all forest development charges, or both, which at the time when this Ordinance comes into force, are levied therein under the authority of Government, shall be deemed to have been duly levied under the provisions of this Ordinance:
provided that the fees and forest development charges so levied shall not exceed in any case a fair estimate of twenty five percent of the average market price realisable on the sales.

(4) The amount realised from duties and forest development charges shall be credited to the Forest Development Fund.

57. Permits fees and other cesses. ---(1) In addition to the forest duty and forest development charges, Government may levy permit fees and other cesses on timber coming from Federally Administered Tribal Areas or areas outside Pakistan into the settled part of Province.

(2) The amount realized from such cesses shall be charged to the Forest Development Fund.

CHAPTER – VIII
THE CONTROL OF TIMBER AND OTHER FOREST PRODUCE IN TRANSIT

58. Power to make rules to regulate transit of timber or other forest produce.---(1) The control of all rivers, streams and reservoirs and their banks as regards the floating of timber, as well as the control of all timber and other forest produce in transit by land or water, or air ways is vested in Government, and it may make rules to regulate the transit of all timber and other forest produce.

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

(a) prescribe the routes by which alone, timber or other forest produce may be imported, exported, transported or moved into, from or within the

Province, provided that in the case of imported and exported timber the routes shall be the designated Customs Entry or Exit Points under the Custom Act, 1969(IV of 1969);

(b) prohibit the import, export, transport or moving of such timber or other forest produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees thereof;

(d) provide for the stoppage, reporting, checking or examination and marking of timber or other forest produce in transit, in respect of which there is reason to believe that any money is payable to Government on account of the price thereof, or on account of any duty, fee, royalty or any other charge due thereon, or to which it is desirable for the purposes of this Ordinance to affix a mark;

(e) provide for the establishment and regulation of transit, road side, river side or other depots and for the establishment of forest check posts or barriers for checking or examination of timber or other forest produce;

(f) provide for the places and for the establishment and regulation of depots to which such timber or other forest produce shall be taken by those in charge of it for checking or examination, or for the payment of such money, or in order that such marks may be affixed to it and the conditions under which such timber or other forest produce shall be brought to store at and removed from such depots, barriers or check posts;

(g) prohibit the closing up or obstructing of the channel or banks of any river used for the transit of timber or other forest produce, and the throwing of grass, brush wood, branches or leaves into any such river or any act which may cause such river to be closed or obstructed;

(h) provide for the prevention or removal of any obstruction of the channel or banks of any such river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitate the same;

(i) prohibit absolutely or subject to conditions, within specified local limits, the establishment of saw-pits, the converting, cutting, burning, concealing or marking of timber, the altering, effacing or defacing of any marks of the same, or the possession or carrying of marking hammers or other implements used for marking timber; and

(j) regulate the use of property marks for timber, and the registration of such marks, prescribe the time for which such registration shall hold good, limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration .

(3) Government may direct that any rules made under this section shall not apply to any specified species or class of timber or other forest produce or to any specified area.

59. <u>Penalty for breach of rules made under section 58 .</u>---(1) Contravention of any of the provisions of the rules made under section 58 shall be punishable with imprisonment which may extend to six months, or with fine which may extend to thirty thousand rupees, or with both:

Provided that in cases where the offence is committed after sunset and before sunrise, or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence the offender shall render himself liable to double of the penalties mentioned above.

60. Government and Forest Officers not liable for damage to forest produce at depot.--- Government shall not be responsible for any loss or damage which may occur in respect of any timber or other forest produce while at a depot established under a rule made under section 58, or while detained elsewhere, for the purposes of this Ordinance, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage maliciously or fraudulently.

61. All persons bound to aid in case of accident at depot.---(1) In case of any accident or emergency involving danger to any property at any such depot, every person employed at such depot, whether by Government or by any private person, shall render assistance to any Forest Officer or Police Officer demanding his aid in averting such danger or securing such property from damage or loss.

(2) Any person who fails to provide the required aid or assistance, without lawful excuse, in contravention of sub-section (1) shall be punishable with imprisonment which may extend to six months, or with fine, which may extend to ten thousand rupees, or with both.

CHAPTER-IX
THE COLLECTION OF DRIFT AND STRANDED TIMBER

62. Certain kinds of wood and timber to be deemed the property of Government until the title thereto proved, and may be collected accordingly.---(1) All timber found adrift, beached, stranded or sunk; all wood and timber bearing marks which have not been registered in accordance with the rules made under section 58, or on which marks have been obliterated, altered, effaced or defaced by fire or otherwise, and all un marked wood and timber found in such areas as Government directs, shall be deemed to be the property of Government, unless and until any person establishes his right and title thereto; as provided in this Chapter.

(2) Such timber may be collected by any Forest Officer or other person entitled to collect the same by virtue of any rules made under section 68, and may be brought to any depot which the Forest Officer may notify as a depot for the reception of drift timber.

(3) Government may, by notification, exempt any class of timber from the provisions of this section.

63. Notice to claimaints of drift timber.---Public notice shall, from time to time, be given by the Forest Officer of timber collected under section 62. Such notice shall contain a description of the timber, and shall require any person claiming the same to present to such officer, within a period of not less than two months but not more than four months, from the date of such notice, a written statement of such claim.

64. Procedure on claim preferred to such timber.---(1) When any such statement is presented as aforesaid, the Forest Officer may, after making such inquiry as he thinks fit, either reject the claim after recording his reasons for so doing, or deliver the timber to the claimant.

(2) If such timber is claimed by more than one person, the Forest Officer may either deliver the same to any of such persons whom he deems entitled thereto, or may refer the

claimants to the Civil Court, and retain the timber pending the receipt of an order from any such Court for its disposal.

(3) Any person whose claim has been rejected under this section may, within three months from the date of such rejection, institute a suit to recover possession of timber claimed by him; but no person shall have right to claim any compensation or costs against Government, or against any Forest Officer, on account of such rejection, or the detention or removal of any timber, or the delivery thereof to any other person under this section.

(4) No such timber shall be subject to process of any Civil, Criminal or Revenue Court until it has been delivered, or a suit has been brought, as provided in this section.

65. Disposal of unclaimed timber.---If no such statement is presented as aforesaid, or if the claimant omits to prefer his claim in the manner and within the period fixed by the notice issued under section 63, or on such claim having been so preferred by him and having been rejected, omits to institute a suit to recover possession of such timber within the further period limited by section 64, the ownership of such timber shall vest in Government, or, when such timber has been delivered to another person under section 64, in such other person free from all encumbrances not created by him.

66. Government and its officers not liable for damage to such timber.---Government shall not be responsible for any loss or damage which may occur in respect of any timber collected under section 62, and no Forest Officer shall be responsible for any such loss or damage, unless he causes such loss or damage maliciously or fraudulently.

67. Payments to be made by claimant before timber is delivered to him.-- No person shall be entitled to recover possession of any timber collected or delivered as aforesaid until he has paid to the Forest Officer or other person entitled to receive it such sum on account thereof as may be due under any rule made under section 68.

68. Power to make rules and prescribe penalties.---(1) Government may make rules to regulate the following matters, namely :

(a) the salving, collection and disposal of all timber mentioned in section 62;

(b) the use and registration of boats or launches used in salving and collecting timber;

(c) the amounts to be paid for salving, collecting, moving, storing or disposing of such timber ; and

(d) the use and registration of hammers and other instruments to be used for marking such timber.

(2) Any person contravening any of the provision, or any of the rules made under this section, shall be punishable with imprisonment for a term which may extend to two years, or fine which may extend to fifty thousand rupees, or with both.

CHAPTER – X
THE SALE AND SAWING OF TIMBER

69. Restriction on establishment of a sale depot or a sawing unit.---(1) No sale depot or a sawing unit shall be established, unless the same is registered with Divisional Forest Officer in such manner and on payment of such fee as may be prescribed.

(2) A Divisional Forest Officer may, for reasons to be recorded in writing, refuse to register a sale depot or a sawing unit, between the forests and forest check post or forest barrier

of the Forest Department, or refuse to register a sale depot or a sawing unit elsewhere, or cancel the registration of an existing sale depot or a sawing unit:

Provided that no order under this sub-section shall be made without giving the owner of the sale depot or the sawing unit, as the case may be, an opportunity of being heard:

Provided further that the forest contractors, during the currency of their contract and the Government owned sale depots or sawing units may be exempted from the operation of sub-section (2) as may be considered fit by the registering officer in the circumstances.

(3) Where registration of a sale depot or a sawing unit is refused or cancelled under sub-section (2), or its validity period has expired, the sale depot or the sawing unit, as the case may be, shall cease to function or operate, except in the case of expiry of registration, if the owner of the sale depot or the sawing unit, as the case may be, has, in the prescribed manner, applied for renewal of the registration and his request for renewal has not been refused; provided that no request for renewal shall be refused without apprising the owner of the sale depot or the sawing unit concerned of the reasons for refusal and without giving him an opportunity of being heard.

70. Maintenance of record.---(1) Every owner of a sale depot or a sawing unit shall maintain such record or keep such register as may be prescribed.

(2) The record or register being maintained under sub-section (1) shall be open to inspection by the Forest Officer.

71. Appeal.---(1) Any person aggrieved by any order passed by Divisional Forest Officer under section 69 shall have right of appeal before the Conservator of Forests within thirty days of the issuance of such order.

(2) In computing the period of 30 days under sub-section (1) the day on which the order sought to be appealed against was made and the time requisite for obtaining a copy thereof, shall be excluded.

(3) The Conservator of Forests shall not confirm, modify, alter or set aside any order appealed against, except after giving the parties an opportunity of being heard.

(4) The decision of the Conservator of Forests on an appeal under sub-section (3) shall be final.

72. Offences and penalties.---(1) Contravention of any of the provisions of this Chapter or the rules made thereunder shall constitute an offence rendering the offender liable to imprisonment for a term which shall not be less than three months and may extend to two years, or to a fine which shall not be less than five thousand rupees and may extend to fifty thousand rupees, or with both, and may further entail seizure and confiscation of illicit timber as well as seizure, sealing, dismantling and confiscation of the apparatus, machinery, tools, equipment and the sawing unit to the Government:

Provided that where the value of the illicitly possessed timber and forest produce, as assessed by the Forest Officer exceeds thirty thousand rupees, the offence shall be punishable with imprisonment which shall not be less than six months, or with fine, which shall not be less than thirty thousand rupees, or with both, in addition to such compensation for the damage done to the forest as assessed by the Forest Officer which shall not be less than the value of the damage so assessed:

Provided further that where the offence is committed after the sunset and before the sunrise or when the offender causes hindrance in the performance of lawful duties of a Forest

Officer under this Chapter or rules made thereunder, or has been previously convicted of a like offence, he may be inflicted with double the penalties specified above.

73. Power to make rules.---(1) Government may make rules for control and regulation of the sale depots and sawing units providing for all or any of the following matters, namely:

(a) the classes of timber and the kind of timber to which the rules shall apply;

(b) establishment, registration, regulation and inspection of sale depots and sawing units;

(c) fee for registration, including the renewal fee and the period for which the registration shall hold good;

(d) conditions under which timber may be brought to, stored at, and removed from, sale depots, or cut, sawn or fashioned at a sawing unit;

(e) specification of timber, its sale, cutting, sawing or fashioning;

(f) form of registers to be maintained at the sale depots and sawing units;

(g) security to be pledged with the Divisional Forest Officer for the establishment of sale depots and sawing units; and

(h) seizure and sealing of un-registered sale depots and sawing units, including dismantling thereof and confiscation of timber, forest produce and all machinery, tools, equipment and appliances found therein.

CHAPTER - XI
THE FOREST PROTECTION, PENALTIES AND PROCEDURE.

74. Constitution of the Forest Force.---(1) The entire forest establishment under Government, excluding ministerial staff, for the purposes of this Ordinance, shall be deemed to be a Forest Force and shall be constituted in the prescribed manner.

(2) Members of the Forest Force shall wear such uniform as may be prescribed.

(3) The Forest Force shall be equipped with such arms and ammunition, vehicles, vessels, tools, equipment and communication system as may be deemed appropriate and necessary by Government.

(4) The Forest Officer may use such force as may be reasonable in the circumstances to arrest the offender, seize the case property, recover the forest produce, detain or take into custody any forest offender or case property, or prevent the escape of any person concerned or likely to be concerned in a forest offence or prevent the removal of any timber or forest produce in respect of which any such offence has occurred or is likely to occur:

Provided that where it becomes necessary to stop for checking, searching and apprehending any mechanically propelled vehicle, boat, launch, railway wagon, pack animal, cart and carriage or any kind of conveyance, the Forest Officer may use or cause to be used all force and means for stopping, checking, searching and apprehending it, or preventing its escape, but shall open fire only when it becomes absolutely necessary in self defence or on the specific order of a Forest Officer not below the rank of a Range Forest Officer, if opening of fire in his opinion was necessary for the stoppage of a vehicle/conveyance or apprehension of the offender.

(5) The Forest Officer may enter any depot, sawing unit, sale depot or any premises, any enclosure, or any building other than a dwelling house, to make a search and seizure of timber or forest produce and arrest offender, or break open the lock of any door, fixture or conveyance for the purpose of search and seizure of timber, any other forest produce or case property or arrest of offender.

(6) The Forest Officer shall have the powers to hold enquiry or investigation into forest offences, and in the course of such enquiry or investigation, to receive and record statements.

(7) The Forest Officer shall have the power of Civil Court to compel the attendance of witnesses and the production of documents and material objects for the purpose of enquiry or investigation.

(8) The Divisional Forest Officer having passed the prescribed departmental examination in forest laws shall, subject to the Code of Criminal Procedure, 1898(V of1898), have the power to issue a search warrant under the Code of Criminal Procedure, 1898, where deemed necessary.

(9) Any evidence recorded under sub-section (6) shall be admissible in any subsequent trial before a magistrate to the same extent as evidence recorded by the police officer during investigation; provided that it has been taken in the presence of the accused person.

(10) A Forest Officer is as good a witness as any one from public until and unless evidence is brought on record to disbelieve him or his ulterior motive is proved.

(11) No suit, prosecution or other legal proceedings shall be instituted except with the previous sanction in writing of Government, against any Forest Officer in respect of anything done or purported to be done in exercise of the powers conferred by sub-section (4) or sub-section (5) of this section.

75. Power of arrest without warrant.---(1) Any Forest Officer or a Police Officer may, without orders from a magistrate and without a warrant, arrest any person against whom a reasonable suspicion exists of his having been involved in any forest offence punishable with imprisonment for one month or more.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Ordinance as to release on bond, take or send the person arrested before the magistrate having jurisdiction or to the officer in charge of the nearest police station within twenty four hours of such arrest.

76. Power of release on a bond a Person arrested.---Any Forest Officer of a rank not inferior to that of a Forest Ranger or Police officer not inferior to that of an Inspector, who, or whose subordinate, has arrested any person under the provisions of section 75, may release such person on his executing a bond to appear, if and when so required, before the magistrate having jurisdiction in the case, or before the officer in charge of the nearest police station.

77. Power of seizure of property liable to confiscation.---(1) Any Forest Officer or a Police Officer may seize-

(a) timber or any other forest produce which he has reason to believe has been obtained, stored, possessed, or is being transported contrary to any provisions of this Ordinance, or of any rules or orders made thereunder ; and

(b) any implements, tools, equipment, carts, carriages, wagons, pick up, lorry, truck, boat or launch, van, motor car, bus, or any other

mechanically propelled vehicles, saw machine, sawing unit, chain saw, power saw, pack animals, arms and ammunition or any other kind of conveyances used in the commission, abetment or furtherance of the offence under this Ordinance, rules or orders.

(2) Every officer seizing any timber, forest produce or any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a report of such seizure to the magistrate having jurisdiction to try the offence on account of which the seizure has been made:

Provided that when the timber or forest produce with respect to which such offence is believed to have been committed is the property of Government, or the offender is not known, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to the Divisional Forest Officer who shall appropriate it in favour of Government:

Provided further that the Police Officer shall inform the Forest Officer about such seizure and deliver the case property to him, as soon as possible.

(3) The timber, forest produce or any case property seized under sub-section (1) may be placed in the custody or possession of a custodian and shall not be removed, transferred, damaged, altered, or disposed of in any manner except with the previous permission of the Forest Officer.

(4) When the offender is not known or cannot be found, the magistrate shall, if he is satisfied that an offence has been committed, direct that the case property seized under sub-section(1) shall be confiscated in favour of Government:

Provided that no such order shall be made until the expiration of one month from the date of seizing such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which he may produce in support of his claim.

78. Power to release property seized under section 77 and procedure thereupon.---(1) Any Forest Officer of a rank not inferior to that of a Range Forest Officer, or Police Officer not inferior to that of an Inspector, who, or whose subordinate, has seized any tools, equipments, conveyances, etc., mentioned in clause (b) of sub-section (1) of section 77, may release the same, on the execution by the owner thereof, of a bond for the production of the property so released, if and when so required, before the magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(2) Upon the receipt of any report or challan under section 77, the magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law.

79. Disposal on conclusion of trial for forest offence of produce in respect of which any offence was committed.---When the trial of any forest offence is concluded, timber or any other forest-produce in respect of which such offence has been committed shall, if it is the property of Government or has been confiscated, be taken charge of by a Forest Officer.

80. Procedure as to perishable properties seized under section 77.---(1) The magistrate may, notwithstanding anything herein before contained, direct the sale of any property seized under section 77 if he is of the opinion that its sale would be for the benefit of the owner or when the forest produce so seized is subject to speedy and natural decay, and may deal with the sale proceeds in accordance with the decision of the Court, as and when arrived.

(2) If the person entitled to prossession of any perishable property is unknown or cannot be found, the magistrate shall, if he is satisfied that an offence has been committed, direct

the sale of such property seized under section 77, and the sale proceeds so realised shall be credited to Government Treasury.

81. Appeal from orders under section 79 or section 80.---The officer who made the seizure under section 77, or any of his official superiors, or any person claiming to be interested in the property so seized, may, within one month from the date of any order passed under section 79 or section 80, appeal to the Court to which orders made by such magistrate are ordinarily appealable, and the orders passed on such appeal shall be final.

82. Property when to vest in Government.---When an order for the confiscation of any property has been passed under section 79 or section 80, as the case may be, and the period limited by section 81 from such order has elapsed, and no such appeal has been preferred, or when on such an appeal being preferred, the appellate court confirms such order in respect of the whole or a portion of such property, such property or such portion thereof as the case may be, shall vest in the Government free from all encumbrances.

83. Punishment for wrongful seizure.---Any Forest Officer or Police Officer who vexatiously seizes any property on pretence of seizing property liable to confiscation under this Ordinance shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both.

84. Counterfeiting or effacing or defacing marks on trees and timber and altering boundary marks.---(1) No person shall, with intent to cause damage or injury to the public or to any person, or to cause wrongful gain as defined in the Pakistan Penal Code,-

(a) knowingly counterfeit upon any timber or standing tree a mark used by Forest Officers to indicate that such timber or tree is the property of Government or of some person, or that it may lawfully be cut or removed by some person, or that it is designated for scientific, educational or other purposes; or

(b) alter, deface or obliterate any such mark placed on a tree, or on timber, by or under the authority of a Forest Officer; or

(c) alter, move, destroy or deface any boundary mark or boundary pillar of any reserved forest, protected forest, waste-lands, village forest or any other forest made by or under the authority of a Forest Officer.

(2) Whoever contravenes or fails to comply with any of the provisions of this section or abets in commission or furtherance of any such acts shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, in addition to such compensation as the convicting court may direct to be paid, which shall not be less than the value of the actual damage done to the forest as assessed by the Forest Officer:

Provided that—

(i) where the value of the forest damage as assessed by the Forest Officer is less than ten thousand rupees, the offence shall be punishable with imprisonment which shall not be less than one month, or with fine which shall not be less than five thousand rupees, or with both; or

(ii) where the value of the forest damage, as assessed by the Forest Officer, exceeds ten thousand rupees but does not exceed thirty thousand rupees, the offence shall be punishable with imprisonment which shall not be less than three months, or with fine, which shall not be less than ten thousand rupees, or with both; or

(iii) where the value of the forest damage, as assessed by the forest officer, exceeds thirty thousand rupees but does not exceed one hundred thousand rupees, the offence shall be punishable with imprisonment which shall not be less than six months, or with fine, which shall not be less than twenty thousand rupees, or with both; or

(iv) where the value of the forest damage, as assessed by the forest officer, exceeds one hundred thousand rupees, the offence shall be punishable with imprisonment which shall not be less than one year, or with fine, which shall not be less than fifty thousand rupees, or with both.

(3) If the offender be a woman, the magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised by writing under the signature or thumb impression of the woman attested by a respectable person of the area concerned.

(4) In cases where the offence is committed after sunset and before sunrise or after preparation for resistance to lawful authority, or where the offender has been previously convicted of a like offence, in such cases all the forest produce, tools, implements, carriages, including mechanically propelled vehicles, pack animals, sawing unit, chain saw, arms, ammunitions and other equipments and conveyances used in the commission or furtherance of the offence shall stand confiscated in favour of Government, in addition to the punishment awarded under this section.

85. Penalties and procedure.---(1) Notwithstanding anything contained in any law for the time being in force, the offences under section 26, section 33, section 44, Chapter VI, Chapter VIII, Chapter X and section 84 and section 86 shall be non-bailable:

(a) where the value of the forest damage, as assessed by the Forest Officer, exceeds one hundred thousand rupees;

(b) where an accused has been previously convicted of an offence valuing fifty thousand rupees or more; and

(c) where an accused puts a lawful authority in fear of any injury or causes hurt, or grievous hurt, or assaults, or threatens lawful authority or uses criminal force or commits criminal intimidation against any Forest Officer or Police Officer.

(2) The Forest Magistrate shall, in passing sentence thereunder,-

(a) take into account the extent and duration of the contravention or failure constituting the offence, and the attendant circumstances; provided that where the value of the forest damage, timber or forest produce in respect of which the offence has been committed exceeds ten thousand rupees, as assessed by the Forest Officer, the sentence imposed shall be imprisonment of not less than three months or fine of not less than ten thousand rupees, or both;

(b) order confiscation and restoration to the Government of all timber, or any other forest produce in respect of which the offence has been committed;

(c) order confiscation, in favour of the Government of all implements, tools, equipment, carts, carriages, wagons, mechanically propelled vehicles,

pack animals, sawing units, power saws, chain saws, arms and ammunition, or vessels, or any other kind of conveyances used in the commission, abetment or furtherance of the offence adjudicated and seized under section 77 where value of the forest damage, timber and forest produce as assessed by the Forest Officer exceeds thirty thousand rupees:

Provided that when the offender is not known or cannot be found, the Forest Magistrate may, if he finds that an offence has been committed, order the property in respect of which the offence has been committed to be confiscated and taken charge of by the Forest Officer;

Provided further that no such order shall be passed until the expiration of one month from the date of seizure of such property, or without hearing the person, if any, claiming any right thereto, and the evidence, if any, which such person may produce in support of the claim;

(d) where he is satisfied that as a result of the commission of the offence monetary benefits have accrued to the offender, order the offender to pay an additional fine, which shall not be less than the amount of the monetary benefits that have accrued to the offender;

(e) order the offender, where practicable to repair the damage to the reserved forest, protected forest, guzara forest, or wasteland or any other movable and immovable property of the Department caused by him by restoring it to the condition existing prior to the commission of the offence, or as close to such condition as may be reasonable in the circumstances, to the satisfaction of the Forest officer;

(f) order, where appropriate, that out of the fines paid by the offender, an amount by way of compensation be paid to any person who has suffered damages to his person or property as a result of the act of offender in commission of the offence, or an amount by way of reward not exceeding three-fourth of the amount of fine so realised by court to be paid to any person who has seized the case property or has in any way assisted in apprehending the offender, or property, or detecting the offence within the meaning of section 89 or has furnished information under section 90 leading to conviction of the offender;

(g) order an offender who has been convicted for clearing or breaking up for cultivation or any other purpose any land in a reserved forest or protected forest, to deliver the possession of the same to the Forest Officer and to remove any encroachment thereon within thirty days, failing which he may be ordered to be ejected therefrom and the encroachment removed or demolished with such force as may be necessary, and in such manner as may be prescribed or ordered; provided that if such forest is being managed by a community- based organization or a village- based organization under section 101 or a Joint Forest Management Committee under section 102, possession will be delivered to the said organization or Committee and encroachment removed and demolished with such force as may be necessary.

(3) Any offender under this section who is found to have been previously convicted under this Ordinance or rules made thereunder or the enactments repealed under this Ordinance shall be punished with imprisonment which may extend to three years and a fine which may

extend to fifty thousand rupees, or with both, in addition to any other punishment which may be awarded under this Ordinance.

(4) In all cases of illicit cultivation in any reserved forest, protected forest, guzara forest, protected waste land, and other protected areas irrespective of the fact whether any punishment has been awarded to the offender or not, the Forest Officer may demarcate the land so cultivated and may suspend the exercise of all rights in such land for a period as may be necessary for the reproduction of any tree or turf that may have been destroyed.

(5) Where the offence under this section is committed after the sunset and before the sun-rise or when the offender causes hindrance in the performance of lawful duties or to lawful authority or threatens lawful authority during enforcement of this Ordinance or rules made thereunder or has been previously convicted of a like offence, he may be inflicted with double the penalties specified above.

86. Removal of encroachments, etc., from reserved forests, protected forests and wastelands.---(1) A Court convicting an accused person of an offence under section 26, section 33 and section 45 shall direct the accused, if he or any other person on his behalf be in possession of the land in respect of which he is convicted, to deliver possession of the same within such period not exceeding thirty days, or as the Court may fix in this behalf, to the Forest Officer, and to remove within the said period any encroachments which the accused may have put up or erected on such land.

(2) Any accused person directed by a Court under sub-section (1) to deliver possession of land in a reserved forest, protected forest or a protected wasteland to the Forest Officer or to remove therefrom any encroachment made by him, who fails so to deliver the land or to remove the encroachment, within the period specified by the court,-

(a) may, by order of the Court, be ejected from such land, and any encroachment made by him on such land, may be removed or demolished with such force as may be necessary; or in such manner as may be prescribed, or ordered ; and

(b) shall also be liable to a fine which shall not be less than five hundred rupees and may extend to one thousand rupees per kanal, for every day, or imprisonment which shall not be less than five days, and may extend to ten days for every day of illegal occupation, or both, after the period fixed by the Court under the provisions of sub-section (1) has expired, that he remains in possession or occupation of the land in respect of which he has been convicted or fails to demolish or remove the encroachment on such land; and that the cost of demolition or removal of structure shall be recovered as arrears of land revenue from the person from whose possession the encroachment of the reserve forest has been vacated or in default shall be punishable with imprisonment which shall not be less than one month and may extend to six months.

87. Forest Officers and Police Officers who are authorised to demolish and remove any encroachment or unauthorised building or structure.---The Chief Conservators of Forests, Conservator of Forests, Divisional Forest Officers and Range Forest Officers in Province and all Police Officers of the rank of Inspector and above within their respective jurisdictions are authorised to enter upon Government land, reserved forest, or protected forest or any Government building in charge of, or under control of the Forest Department which the lessee, licensee, encroacher, or unauthorised occupant, as the case may be, has failed or refused to vacate, either by order of the court or by order of the Forest Officer competent to issue such order, and to recover the possession of such land or building by evicting the lessee, licensee, encroacher, or unauthorised occupant, as the case may be, and to demolish or remove any

structure un-authorisedly erected or built on such land by the lessee, licensee or un-authorised occupant by using such force as may be necessary in the circumstances.

88. Five or more persons conjointly committing or attempting to commit a forest offence by putting a lawful authority in fear of any injury or causing hurt.---(1) When five or more persons conjointly commit or attempt to commit a forest offence, valuing rupees thirty thousand or more, as assessed by Forest Officer, by putting a lawful authority in fear of any injury or during the commission of any offence, whoever causes hurt or grievous hurt or assaults or threatens lawful authority or wrongfully restrains or uses criminal force or commits criminal intimidation against any Forest Officer or Police Officer (these words shall be deemed to have the meaning respectively attributed to them by Pakistan Penal Code, Act No. XLV of 1860), or whoever abets in commission or furtherance of such offence, shall be punishable with imprisonment which shall not be less than six months and may extend to seven years, or with fine, which shall not be less than twenty thousand rupees and may extend to one hundred thousand rupees, or with both, and that all tools and implements, mechanically propelled vehicles, pack animals, equipment, sawing unit, power saw, arms and ammunition or any other kind of conveyances used in the commission, abetment or furtherance of the offence adjudicated shall be confiscated in favour of Government and that all forest produce illicitly obtained or removed shall be restored to the Government.

(2) All the offences mentioned in subsection (1) shall be non-bailable and non-compoundable.

89. Power to prevent commission of offence.---Every Forest Officer, Police Officer, or village forest officer shall prevent, and may interfere for the purpose of preventing the commission of any forest offence.

90. Persons bound to inform and assist Forest Officers, etc.---(1) Every person having any right in a reserved forest, protected forest, guzara forest, wasteland, or any forest land which have been placed under the management of a Forest Officer, every person employed by such person therein, and every person in any village contiguous thereto who is employed by Government, shall be bound-

(a) to furnish without unnecessary delay to the nearest Forest Officer, Police Officer or village Forest Officer, or concerned community- based organization, village- based organization or Joint Forest Management Committee, any information he may possess regarding the commission of, or intention to commit, any forest offence;

(b) to forthwith take steps,-

(i) to extinguish any fire occurring in such reserved forest, protected forest, guzara forest or wasteland;

(ii) to prevent any fire in the vicinity of such forest or wasteland from spreading thereto;

(c) to assist any Forest Officer, Police Officer, village Forest Officer, community- based organization, village- based organization or Joint Forest Management Committee,-

(i) in preventing the commission of any forest offence therein;

(ii) in discovering and arresting the offender when there is reason to believe that a forest offence has been committed and in apprehending the timber, forest produce or case property and in taking into possession the same under *superdnama.*

(2) Any person who, being bound so to do, without lawful excuse fails:

(a) to furnish without unnecessary delay any information as required by clause (a) of sub-section (1);

(b) to take steps as required by clause (b) of sub-section (1); or

(c) to assist as required by clause (c) of sub-section (1), shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to ten thousand rupees, or with both.

91. Seizure of cattle found trespassing.---(1) Any Forest Officer or Police Officer may seize and impound any cattle found trespassing in a reserved forest, or in any portion of a protected forest, or any protected wasteland, or any other forest area which has been lawfully closed to grazing.

(2) When a cattle under sub-section (1) is impounded, it shall, subject to sub-section (3), be governed by the provisions of the Cattle Trespass Act, 1871 (I of 1871).

(3) Government may, by notification, direct that in lieu of the fines fixed under section 12 of the Cattle Trespass Act, 1871 (I of 1871), there shall be levied for each head of cattle impounded under sub-section (1) such fines as it considers fit, but the fine shall not exceed one-tenth of the fair market average sale value of each head of cattle.

92. Bar of jurisdiction.—Except as provided in section 93, no Civil Court shall exercise jurisdiction over any of the matters relating to the implementation of this Ordinance or rules made thereunder.

93. Jurisdiction of Forest Magistrates.---(1) All offence cases punishable under this Ordinance and rules made thereunder shall be triable exclusively by the Forest Magistrate or in his absence by a Magistrate of First class duly empowered by the District and session Magistrate concerned.

(2) A Forest Magistrate shall not take cognizance of an offence triable under sub-section (1), except on a complaint in writing by the concerned Forest Officer, or by the concerned community- based organization, village- based organization or the Joint Forest Management Committee;

94. Powers to try offences summarily.---(1) All offences under this Ordinance or rules made thereunder shall be tried summarily in accordance with the provisions of the code of Criminal Procedure, 1998 (V of 1898)

(2) A Court taking cognisance of an offence under this Ordinance or rules made thereunder, may direct a Forest Officer of the area to serve summons on the accused person to appear before the Court on a given date. In case of refusal or non-compliance by the accused, the Court shall direct the police of the concerned police station to serve a warrant on the accused and produce him before the Court on the given date.

95. Burden of proof as to lawful authority, etc.---When any person is alleged to have committed an offence under this Ordinance and any question arises whether he did any act or was in possession of anything with lawful authority or under a permit, licence or other document prescribed by or under any law for the time being in force, the burden of proving that he had such authority, permit, licence or other documents shall lie on him.

96. Prosecution of forest offence cases.---When an accused does not request for compounding an offence or the Forest Officer refuses to compound an offence, the Range Forest Officer shall prepare a challan as prescribed and forward the same to the Divisional Forest Officer who after scrutiny, if considers fit, will forward the case to the court concerned for prosecution.

97. Appeals from orders of Forest Magistrates.---(1) Any person or the Forest Officer aggrieved by an acquittal order or sentence passed by the Forest Magistrate under this Ordinance or the rules made thereunder may, within thirty days of communication of such order or sentence, appeal to the Court of District and Session Judge concerned.

(2) The appeal against the decision of the District and Sessions Judge shall lie with the High Court having jurisdiction and final appeal shall be made before the Supreme Court of Pakistan.

CHAPTER-XII

THE FOREST MANAGEMENT

98. Forest management plans.---(1) All reserved forests, protected forests, guzara forests, wastelands, and other forests placed under the management of a Forest Officer, including village forests, areas under Joint Forest Management under section 38 and areas leased out under section 105, shall be managed in accordance with the provincial forest policy, strategic management plans/forest management plans, operational plans and village plans duly approved by the Department or an officer authorized by the Department for this purpose.

(2) Where such management plans do not already exist, they shall be prepared as expeditiously as possible and updated regularly under the direction of the Department and with such involvement of local communities and interested parties as may be possible.

(3) In the case of reserved forests, the forests management plan shall emphasize in particular the protection, conservation, management and sustainable development of forest and protection of watersheds, the promotion of eco-tourism, recreation, education and research, and consistent with these objectives, the commercial harvesting of timber and other forest produce.

(4) In the case of protected forests, guzara forests, waste-lands, and other forests placed under the management of Forest Officer, the forest management plan shall emphasise in particular the sustainable production of timber and other forest produce for meeting the domestic requirements of the village communities and commercial harvesting; provided that in case of wastelands, the domestic requirements of land-owners and right-holders shall be given priority.

(5) Every forest management plan shall-

(a) include a description of the forests and other natural resources in the areas covered thereunder, an analysis of the rate at which these resources can be sustainably used and harvested, a detailed listing of the measures proposed for their sustainable management, regeneration, development, and provide for conservation of biological diversity and estimates of the funds required for the effective implementation of the plan, showing expected contributions from beneficiaries for meeting the costs of management;

(b) provide for appropriate production and security of goods and services, at the optimum level, while continually improving the productivity of forest and safeguarding the national concerns regarding forests and forestry; and

(c) take into account, as far as possible, the village land use planning process.

(6) Government may prescribe procedure for preparation of management plans, including guidelines for sharing of the costs of preparation of management plans by interested parties.

99. Duties and responsibilities of Government.---(1) Government, assisted by the interested parties, shall be responsible for the protection, conservation, management and sustainable development of reserved forests, protected forests, guzara forests, wastelands and any other forests which may have been placed under the management of a Forest Officer.

(2) Government shall ensure that its laws, policies, orders, measures and actions promote the objectives outlined in sub-section (1).

(3) Government shall facilitate the participation of village communities and interested parties in the sustainable development of forests and wastelands, and will make efforts to encourage women to participate in the management process.

(4) In discharging its duties and responsibilities under sub-sections (1), (2) and (3), Government shall, as far as possible and practicable, act upon the advice and guidance of the Forestry Commission.

100. Restrictions on commercial harvesting of timber.---(1) No forest shall be subjected to commercial harvesting, except with permission in writing by Divisional the Forest Officer in accordance with approved management plan or regeneration scheme, and subject to such conditions, including payment of fees and duties as Government may, from time to time, notify in the Official Gazette.

(2) The management plan or regeneration scheme mentioned in sub-section (1) shall,

(a) be supported by proof of availability of adequate funds for implementation purposes from the Forest Development Fund or other sources;

(b) ensure the participation and assistance of communities in the regeneration of the cut over areas, particularly owners, right holders, users, and women as far as possible or practicable;

(c) include adequate measures and assistance of interested parties for protection against grazing and pasturing, or illicit removal of timber and forest produce;

(d) provide for mitigatory measures to alleviate hardship caused from closure of regeneration areas to particular segment of society like woman or nomads as a result of such closure.

(3) Where the progress of regeneration in the area set aside for the said purpose is considered unsatisfactory, the Forest Officer may, after giving the grantee of the permission an opportunity of being heard, withdraw the said permission, whereupon the grantee shall cease the harvesting operations forthwith.

101. Community forest.---(1) The Divisional Forest Officer may assign to any village forest community, village organization, Joint Forest Management Committee constituted in the prescribed manner all or any of its rights of management over any protected forest, guzara forests, and protected wasteland, and may cancel such assignment, or such agreement, as the

case may be, if he is of the opinion that such revocation is in the interest of forest conservancy. All forests so assigned shall be called community forest.

(2) The situation and limits of such forest or land shall be specified, as nearly as possible, by well-known and permanent boundary pillars and proper map shall be prepared and maintained of such forest.

(3) Government may, for the purpose of this section, make rules for regulating the management of community forests, prescribing the conditions under which the community to which any such assignment is made may be provided with timber or other forest produce or permission to pasture be granted, and their duties, liabilities and obligations for the protection, management and sustainable development of such forest be clearly defined.

(4) No assignment under sub-section (1) shall be cancelled or modified by Forest Officer unless the Village Forest Committee, or Joint Forest Management Committee concerned has been given an opportunity of being heard. In case there is a disagreement, the Forest Officer shall record his reasons for cancellation.

102. Joint forest management.---(1)Subject to the provisions of sections 98 and 99, the Forest Officer may, where he considers appropriate, manage protected forests, reserved forest, guzara forest, wastelands, mazri-growing tracts and other forests which have been placed under the management of a Divisional Forest Officer, with the help and participation of community-based organizations, village-based organizations, village development committees or any group of persons representing such organisations, constituted in a prescribed manner, in accordance with such procedure, and on such terms and conditions, as may be deemed fit.

(2) For purposes of sub-section (1), the Forest Officer may enter into agreements for joint management of the forests mentioned therein, which may provide, among other matters, for establishment of Joint Forest Management Committees comprising representatives of the concerned organisations and staff of the Forest Department.

(3) Forest Officer may revoke any such management or agreement, as the case may be, if he is of the opinion that such revocation is in the interest of forest conservancy.

(4) No revocation shall be ordered under sub-section (3), unless the concerned organisation is given an opportunity of being heard, and in case of disagreement the Forest Officer shall record his reasons for revocation.

103. Appointment of village forest officers and issue of management orders.---(1) The Divisional Forest Officer may appoint village forest officers for sustainable management of reserved forest, protected forest, village forest, or wasteland and may issue general or special management orders to such officers for the prohibition of the cutting, felling, removing of timber or forest produce, debarking, boring, girdling, or otherwise injuring of trees or brushwood, or clearing of land for cultivation, building or road construction, or any other infrastructure, or lopping of trees or brushwood in such lands, and for the regulation of any timber or forest produce for village requirements.

(2) In case of any contravention of orders issued under sub-section (1), the Divisional Forest Officer may direct that no trees be felled, or any forest produce be removed from such lands without his prior permission in writing or of such officials as may be authorised by him in this behalf, and if permission to sell forest produce or brushwood has been accorded, he may withdraw such permission.

104. Forest Development Fund.---(1) To ensure adequate and timely availability of funds for implementing the forest management plans with specific reference to ensuring forest regeneration, or forest development schemes, Government shall establish a Forest Development Fund.

(2) There shall be credited to the Fund-

(a) an initial amount of Rs. 50 million from the existing cash reserves of North- West Frontier Province Forest Development Corporation (FDC) plus 70% of its pre-taxed profit each year;

(b) timber surcharge on commercial timber harvesting and sale from reserved forests, protected forests, guzara forests, protected wastelands, and other forest areas as notified by Government at the following rates:

(i) Deodar timber = Rs. 10/- per cubic foot converted

(ii) Blue Pine timber = Rs. 8/- per cubic foot converted

(iii) Fir/Spruce timber = Rs. 6/- per cubic foot converted

(iv) Chir Pine timber = Rs. 4/- per cubic foot converted

(c) managerial charges levied by Government on the management of various types of forest;

(d) seigniorage fee recovered from landowners and right holders;

(e) all fines imposed by the Forest Magistrate in forest offence cases; and

(f) any other source notified by Government.

(3) The Fund shall be managed in the prescribed manner.

(4) The Fund shall be utilised in accordance with such procedure as may be prescribed, for-

(a) raising forest nurseries;

(b) forestation in the cut-over areas if warranted by silviculture principles and in the blank areas of forests;

(c) range management; and

(d) any other purpose which, will help realize the objectives set out in sub-section (1) above.

105. Power to lease out forests-- (1) The Forest Department may, where it considers appropriate, lease out the whole or any portion of a reserved forest, protected forest, wasteland, or other forest placed under the management of a Forest Officer, for the following purposes-

(a) to plant trees, and increase production of forest produce;

(b) to implement agro-forestry and social forestry schemes for the benefit of the local communities;

(c) to operate farms for breeding of wildlife and conservation of biodiversity and nature reserves subject to any law for the time being in force:

Provided that for the achievement of above purposes, no activities shall be allowed which are inconsistent with the principles of forest conservancy and sustainable management or prejudicial to the rights and concession of the local communities.

(2) Lease under sub-section (1) shall be granted in such manner and on such terms and conditions, as may be prescribed.

(3) Department may cancel or modify such leases, as the case may be, if it is of opinion that such cancellation or modification is in the interest of forest conservancy.

(4) No such cancellation or modification shall be ordered unless the leaseholder has been given an opportunity of being heard.

106. Strengthening of legal services.---(1) The Department may, in consultation with Law, Parliamentary Affairs and Human Rights Department, engage as many lawyers as forest standing counsels, as may be deemed fit for effective defence and pleading of the civil suits, criminal cases and appeals of civil/criminal cases filed by or against the Department or any Forest Officer.

(2) For the purpose of sub-section (1), the Department shall make appropriate budgetary provisions.

CHAPTER – XIII
THE FOREST OFFICERS, POWERS AND OBLIGATIONS

107. Conferment of certain powers on Forest Officers.---(1) Government may invest any Forest Officer, with all or any of the following powers-

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

(b) power to hold inquiry into forest offences, and in the course of such inquiry, to receive and record statements and put up challans;

(c) power of a civil court to compel the attendance of witnesses and the production of documents and material objects;

(d) power to issue a search-warrant under the Code of Criminal Procedure 1898; and

(e) power to use force as may be necessary in the circumstances to check and examine any timber or forest produce, to apprehend unlawfully obtained or removed timber or forest produce, or to apprehend any person, vessel or conveyance used in the commission or furtherance of forest offence, or to remove encroachments from Government property or demolish any unauthorised building erected on Government land.

(2) Any statement recorded under clause (b) of sub-section (1) shall be admissible in any subsequent trial before a Forest Magistrate or Court provided that it has been taken in the presence of the accused person.

108. Powers to arrest without warrant.---(1) A Forest Officer or Police Officer may without order from a magistrate and without a warrant, arrest any person who is committing an offence

within his sight or against whom a reasonable suspicion exists of his having been concerned in any forest offence, punishable with imprisonment for one month or more.

(2) Every officer making an arrest under this section shall, without unnecessary delay and subject to the provisions of this Ordinance as to release on bond, take or send the person arrested before the magistrate having jurisdiction in the case, or to the officer incharge of the nearest police station.

109. Forest Officers deemed public servants.---All Forest Officers shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

110. Compounding of offences and payment of compensation.---(1) A Forest Officer not below the rank of Divisional Forest Officer, on the application of the accused, may compound a forest offence in accordance with such procedure as may be prescribed.

(2) Subject to rules, a Forest Officer not below the rank of Range Forest Officer in this behalf may-

(a) accept from any person against whom a reasonable suspicion exists that he has committed a forest offence other than an offence specified in section 84, section 86 and section 88, a sum of money by way of compensation for the said offence; and

(b) release any property seized as liable to confiscation under clause (a) or (b) of sub-section (1) of section 77, on payment of the value thereof including compensation for timber or forest produce, notified by Government.

111. Indemnity for acts done in the good faith.--- No suit, prosecution or other legal proceedings shall lie against Government, the Forest Officers and other employees, experts, advisors, committees or consultants of the Department, the Forest Magistrate or any other person for anything which is done or intended to be done in good faith under this Ordinance or the rules made thereunder.

112. Forest Officers not to trade.---Except with the permission in writing of the Department, no Forest Officer shall, as principal or agent, trade in timber or other forest produce, or be or become interested in any lease of any forest or in any contract for management of any forest or wastelands, within or outside Province.

113. Penalties for breach of rules.---Any person contravening any rule made under this Ordinance, for the contravention of which no special penalty is provided shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty thousand rupees, or with both.

114. Rules when to have force of law.---All rules made by Government under this Ordinance shall be published in the Official Gazette, and shall there upon, so far as they are consistent with this Ordinance, have effect as if enacted therein.

CHAPTER - XIV
MISCELLANEOUS

115. Powers to make rules.---(1) Government may, make rules-

(a) to prescribe and limit the powers and duties of any Forest Officer under this Ordinance;

(b) to regulate the rewards not exceeding three-fourth of the amount recovered from offenders and realised from case property and out of the proceeds of fines, confiscation, appropriation, compensation and other

sums received to be paid to officers, officials, informers, helpers under this Ordinance;

(c) for the preservation, reproduction and disposal of trees and timber belonging to Government, or grown on lands belonging to or in the occupation of private persons;

(d) to prescribe procedures for issue of permits for cutting of trees or brushwood growing in reserved, protected and guzara forests or wastelands;

(e) to provide guidelines for preparation of management plans for any forest, guzara forest, wasteland, reserved forests, and protected forests;

(f) to prescribe procedures for disbursements from the Forest Development Fund;

(g) to prescribe procedures for constitution of community-based organizations, village- based organizations and their duties, powers and obligations;

(h) to regulate the management of village forests or community forests including provision of incentives to village communities, delegation of duties and obligations to them, and the imposition of fine as joint liability on villagers in case of their wilful gross negligence, mismanagement and forest damage;

(i) to prescribe procedures and terms and conditions for joint forest management;

(j) to prescribe the manner and terms and conditions for grant of leases of forests compatible with the principles and objectives set out in section 3 of this Ordinance;

(k) to prescribe procedures for eviction or ejectment of offenders, removal and demolition of encroachments, enclosures, buildings or other infrastructures;

(l) to prescribe procedure for compounding of forest offences;

(m) to provide for the compensation to be paid to the forest officers, officials, functionaries and helpers in case of death, injury or other physical and financial damages sustained by them in the course of duty; and

(n) generally to carry out the purposes of this Ordinance.

116. Dues recoverable as arrears of land revenue. -- All moneys payable to Government under this Ordinance or the rules made thereunder, or on account of the price of any timber or forest produce, or of expenses incurred in the execution of this Ordinance in respect of such timber or forest produce, or on any other account may, if not paid when due, shall be recoverable as arrears of land revenue.

117. Lien on forest produce for such money. -- (1) When any money is payable for or in respect of any forest produce, the amount thereof shall be deemed to be a first charge on such timber or forest produce, and such timber or forest produce may be taken possession of by a Forest Officer until such amount has been paid.

(2) If such amount is not paid when due, the Forest Officer may sell such timber or forest produce by public auction, and the proceeds of the sale shall be applied first in discharging such amount.

(3) The surplus, if any, not claimed within two months from the date of such sale, shall be forfeited to Government.

118. Acquisition of Land.-- Whenever it appears to Government that any land is required for any of the purposes of this Ordinance, such land shall be deemed to be needed for a public purpose within the meaning of section 4 of the Land Acquisition Act, 1894.

119. Recovery of penalties due under bond.---When any person, in accordance with any provision of this Ordinance, or in compliance with any rules made thereunder, binds himself by any bond or instrument to perform any duty or act, or covenants by any bond or instrument that he, or that he and his servants and agents will abstain from any act, the whole sum mentioned in such bond or instrument as the amount to be paid in case of a breach of the conditions thereof may, notwithstanding anything in section 74 of the Contract Act, 1872, be recovered from him in case of such breach as if it were an arrears of land revenue.

120. Repeals and savings.---(1) The following enactments are hereby repealed:

1. The Forest Act, 1927 (Act No. XVI of 1927), in its application to the North West Frontier Province.

2. The Hazara Forest Act, 1936 (Act VI of 1937).

3. The Kohat Mazri Control Act, 1953 (Act No. III of 1954).

4. The North-West Frontier Province (Sale and Sawing of Timber) Act, 1996 (N.W.F.P. Act XIX of 1996).

(2) Notwithstanding the repeal of the enactments mentioned above, any appointments made, orders passed, notifications issued, rules made, contracts entered into, proceedings commenced, rights acquired, liabilities incurred, penalties, rates, fees or charges levied, forfeitures made, things done or action taken under any of the provisions of the repealed enactments shall, so far as they are not inconsistent with the provisions of this Ordinance, be deemed to have been respectively made, passed, issued, entered into, commenced, acquired, incurred, done, taken or levied under this Ordinance.

121. Removal of difficulties, disposal of pending cases and constitution of Special Courts. – If any difficulty arises in giving effect to any of the provisions of this Ordinance, Government may make such orders, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing such difficulty disposal of pending cases and constitution of Special Courts.

SCHEDULE – I OF SECTIONS 2(46), 26(1)(f), 30(1)(a), 33(2)(e), 36(3)(d), 44(c), 56(3).

LIST OF PROTECTED TREES WHEN FOUND IN RESERVED FORESTS, PROTECTED FORESTS AND PROTECTED WASTELANDS AND FOR LEVY OF DUTY.

Scientific Name	Local Name	English Name
A		
Abies Pindrow	Paludar, achar	Himalayan silver fir.
Acacia modesta	Phula, Phulah or Phulai	Acacia
Acacia nilotica	Babul, Kikar	Acacia
Acer caesium, Acer cultratum	Trikan, Tarkana or Tarkan	Maple
Aesculus Indica	Bankhor	Indian horse chestnut.
Ailanthus altissima	Angraiza bakyanarha, Shajr-e-janat, Bakain	
Albizzia Lebbek	Sirin, Sirikh	Siris
Alnus nitida	Sharol	Alder
Azedrachta indica, Melia indica	Neem, Nim	
B		
Bauhinia variegata	Kachnar	
Betula utilis	Bhurj	Birch
Bombax malabaricum	Simbal, Sumbal	Silk cotton tree.
C		
Cassia Fistula	Amaltas	Indian Laburnum
Cedrela Serrata	Drawa	Hill toon
Cedrela Toona	Drawa	Tooa
Cedrus deodara, Cedrus labani	Diar	Deodar
Celtis Australus	Batkar, Baktara, Batkarar	Nettle-tree
Cornus macrophylla	Kandar	
D		
Dalbergia Sissoo	Tali, Shawa	Shisham
Diospyros lotus	Amlok	European date palm
Scientific Name	**Local Name**	**English Name**
E		
Euguenia Jambolana	Jaman	Black plum
Ehretia scuminata	Punah	
Eucalyptus spp.	Gund, Lachi	

F		
Ficus bengalensis	Bor, barh	Banyan
Ficus religiosa	Pipal	Pipal
Ficus Roxburghi	Barh or Hurmul	
Fraxinus floribunda, Fraxinus excellsior	Sum	Ash
Fraxinus xanthoxyloides	Hanzu,	Quetta Ash
G		
Grewia oppositiafolia	Dhaman	
Grewellia robusta		Silver Oak
J		
Juglans regia	Akhrot, Akhor	Walnut
M		
Melia azedarach	Dhrek	Persian lilac or bastard cedar
Morus alba	Tut, Tutli	White mulberry
O		
Olea ferruginea, Olea Cuspidata	Kao	Indian olive
Olea Glandulifera	Bankao	
P		
Picea smithiana, Picea morinda	Kachal	Himalayan spruce
Pinus excelsa, Pinus wallachiana	Biar, Nakhtar	Blue pine
Pinus Roxburghii	Chir	Long-leaved pine
Populus alba, Populus x-eur-Americana, Populus deltoides	Sofeda, Sofedar	White poplar, Hybrid poplar
Scientific Name	**Local Name**	**English Name**
Phoebe lancrealata	Chan	
Phyllanthus emblica	Amla	
Pistachia integerrima	Sheenai, Kangar	Wild Pistachio
Populus ciliata	Palach	Himalayan Poplar
Populus nigara	Sofeda, Sofedar	Black Poplar
Plantanus orientalis	Chenar	Plane
Prunus padus	Kalakat	Bird Cherry
Pyrus pashia	Batangi	Wild pear

Q		
Quercus dilatata	Barungi	White Oak
Quercus ilex	Rhin	Holm oak
Quercus incana	Rhin	White Oak
Quercus glauca	Barin	Oak
Quercus semicarpifolia	Barh barungi	Oak
R		
Rhododendron arboreum	Rantol, chhan	Rhododendron
S		
Salix tetrasperma, Salix Spp.	Bis, Bins, Valla	Willow, English Willow
T		
Tamarisk articulata	Rukh, Farash	Tamarisk
Taxus baccata	Barmi, thuni	Yew
U		
Ulmus wallichiana	Kain	Large leaved elm
Ulmus villosa	Mannu	Small leaved elm

SCHEDULE-II, OF SECTION 55(3).
LIST OF SEIGNIORAGE FEES FOR RESERVED FORESTS AND PROTECTED WASTELANDS IN HAZARA

1.	2.	3.	4.	5.	6.
Serial No.	English or Local Name	Scientific Name	Amount of seigniorage fees		
			Per green tree		Per dead sound tree
			24 inches DBH and above	16- 23 inches DBH	
1	Deodar	Cedrus deodara	Rs. 50	Rs. 25	One-quarter the rate fix for green trees in column 4 or 5.
2	Blue Pine (Biar)	Pinus wallichiana	Rs. 40	Rs. 20	
3	Chirpine	Pinus Roxburghii	Rs. 30	Rs. 15	
4	Silver Fir (Paludar)	Abies pindrow	Rs. 30	Rs. 15	
5	Spruce	Picea smithiana	Rs. 30	Rs. 15	
6	Walnut (Akhrot)	Juglans regia	Rs. 50	Rs. 25	
7	Ash (sum)	Fraxinus floribunda	Rs. 50	Rs. 25	

5.1.2.3 NWFP Forestry Commission Act 1999

NORTH-WEST FRONTIER PROVINCE
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NOTIFICATION
13th October, 1999.

No.PA/NWFP/Legis:I/99/24260.—The North-West Frontier Province Forestry Commission Bill, 1999, having been passed by the Provincial Assembly of North-West Frontier Province on the 24th September, 1999 and assented to by the Governor of the North-West Frontier Province on 7th October, 1999, is hereby published as an Act of the Provincial Legislature of North-West Frontier Province.

THE NORTH-WEST FRONTIER PROVINCE
FORESTRY COMMISSION ACT, 1999.

N.W.F.P. ACT NO.XV OF 1999

[First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette of the NWFP (Extraordinary), dated the 13th October, 1999.]

AN
ACT

to improve the protection, management and sustainable development of forests in the North-West Frontier Province;

WHEREAS it is expedient to provide for the protection, management and sustainable development of forests in the North-West Frontier Province;

It is hereby enacted as follows:-

1. Short title, extent and commencement.—

(1) This Act may be called the North-West Frontier Province Forestry Commission Act, 1999.

(2) It extends to whole of the North-West Frontier Province.

(3) It shall come into force at once.

2. Definitions.—

In this Act, unless the context otherwise requires,—

(i) "biodiversity" or "biological diversity" means the variability among living organisms from all sources including inter alia, terrestrial, marine and other aquatic

ecosystems and ecological complexes of which they are part, as well as diversity within or between species and of ecosystems;

(ii) "Chief Minister" means the Chief Minister of the North-West Frontier Province;

(iii) "Commission: means the North-West Frontier Province Forestry Commission constituted under section 3(1).

(iv) "Department" means the Department of Forestry, Fisheries and Wildlife, Government of the North-West Frontier Province;

(v) "ecosystem" means a dynamic complex of plant, animal and micro-organism communities and their non-living environment entering as a functional unit;

(vi) "environment" includes soil, water, air, natural vegetation, fish, wild animals and wild birds of an area;

(vii) "forest" means a plant community, predominantly of trees and other woody vegetation growing more or less closely together and includes the soil and water, and the trees, shrubs, herbs, grasses, medicinal plants and mushrooms, and the wild animals, birds and fish inhabiting it;

(viii) "forest-land" includes any land which is not cultivated and not under forest but is capable of supporting a forest;

(ix) "Forestry Round Table" means a body created under section 5;

(x) "Government" means the Government of the North-West Frontier Province;

(xi) "member" means a member of the Commission and includes its Chairman;

(xii) "prescribe" means prescribed by rules made under this Act:

(xiii) "Province" means the North - West Frontier Province;

(xiv) "Secretary" means the Secretary to Government, Forestry, Fisheries and Wildlife Department;

(xv) "stake-holders" means groups of persons with legitimate interest in the protection, management, sustainable development and utilization of renewable natural resources;

(xvi) "state of forestry report" means an annual report prepared by the Department objectively describing the endeavours made by it during the year to improve the protection, management and sustainable development of the forests of the Province, the outcomes of these endeavours or the factors responsible for their salient success or failure; and

(xvii) "sustainable" means a level of production or intensity of use which a forest, forest-land, grazing-land, water-body, or wild-life population can bear without a reduction in its capacity for future production.

3. Constitution of the Commission.—

(1) As soon as may be after the commencement of this Act, Government shall establish a Commission to be called the North-West Frontier Province Forestry Commission.

(2) The Commission shall comprise three whole-time members and shall be supported by a secretariat.

(3) A member shall be a person of impeccable repute associated with forestry and other renewable resources, which may include a retired government servant.

(4) The members shall be appointed by the Chief Minister from a panel of two names for each vacancy proposed by the Forestry Round Table.

4. Function of the Commission.—

(1) The Commission shall endeavour to further the cause of the protection, management, and sustainable development of the forests in the Province.

(2) For the purpose of sub-section (1), the Commission shall, subject to section 6, perform the following functions, namely:

(a) give vision and framework for the sustainable development of forests in the Province;

(b) guide and over-see the process of institutional and legislative reforms in the Department;

(c) review, develop and advocate policies for the sustainable development of forests in the Province and ensure their implementation through continuous monitoring;

(d) inform the Chief Minister and the Minister-in-charge about the state of forestry resources in the Province, and advocate appropriate policy, legislative and administrative action to promote the well-being of the resources and in particular, bring to their notice, instance where officers of the Department cannot be held accountable or evaluated for the positive contributions to the sustainable development of forestry due to too frequent postings and transfers;

(e) appraise the performance of the Department on the basis of the state of forestry report prepared annually by the Department;

(f) identify basic issues hampering the sustainability of forestry and strive to redress them with the help of the Forestry Round Table and Government;

(g) endeavour with the help of Forestry Round Table, to resolve major conflicts among stake-holders which may hamper the protection, management and sustainable development of forestry;

(h) study the impact of incentives and participatory approaches on the sustainability of forestry in other countries of the world and attempt to introduce them in the Province;

(i) devise ways and means to infuse professionalism in the functionaries of the forestry sector;

(j) increase transparency and accountability in the working of the Department; and

(k) perform such other functions as may contribute to enhancing the protection, management and sustainable development of forests of the Province.

5. Constitution of the Forestry Round Table.—

As soon as may be, after the commencement of this Act, Government shall constitute a Forestry Round Table to assist the Commission in the performance of its functions comprising representatives of the major stake-holders in the sector and make rules to prescribe the number of its members, the manner of their appointment, the procedure for its operation and such other details as it may deem appropriate.

Provided that till a Forestry Round Table is constituted under this Act, the Forestry Round Table constituted by Government vide its notification No.CPO/FFW/4062-80, dated the 1st April, 1998, shall be deemed to be the Forestry Round Table for the purpose of this Act.

6. Functions of the Forestry Round Table.—

The Forestry Round Table shall perform the following functions in relation to the Commission, namely:

(a) work as think-tank and resource pool for the Commission;

(b) advise the Commission on policy, legal and institutional issues either of its own volition or at the request of the Commission;

(c) resolve major conflicts among the stake-holders which may be hampering the protection, management and sustainable development of forestry in the Province; and

(d) such other functions as may be entrusted to it by Government.

7. Role of the Secretary.—

The Secretary shall endeavour to facilitate the performance of the Commission, inter alia, by ensuring the active participation of the functionaries of the Department in its studies and deliberations and the prompt supply of all information needed by it.

8. Term of officer of the members.—

(1) The term of office of each member shall be three years except that the term of office of the members of the first Commission shall be 3,2 and 1 years to provide continuity in the functioning of the Commission.

(2) The term of members shall not be renewable.

(3) A member may resign his office by tendering resignation to the Chief Minister.

(4) A member shall ordinarily hold office uninterrupted for his entire term, unless removed earlier by the Chief Minister on the charge of an offence involving moral turpitude.

(5) The members and employees of the Commission shall be eligible to such emoluments and other benefits as Government may determine.

9. Procedure for operation.—

(1) The Commission shall have its own budget and an administrative unit to support its operations.

(2) There shall be a chairperson of the Commission whose tenure shall rotate annually in succession amongst its members. The first chairperson shall be the member with the shortest tenure. The Commission may delegate any of tis functions and powers to any of its members.

(3) All decisions of the Commission shall preferably be taken by consensus, or in case where consensus cannot be attained, by majority of opinion.

(4) The Commission shall make its own rules and procedure for its operation.

10. Power and duties of the Commission.—

The Commission shall have the following powers.—

(a) sanction expenditure against its approved budget and according to the procedure evolved by it;

(b) commission studies, surveys and consultancies required in the discharge of its functions;

(c) correspond with the office of the Chief Minister through the Chief Secretary for non-developmental and the Additional Chief Secretary for development matters;

(d) submit state of forestry report prepared by the Department alongwith its observations to the Chief Minister and Provincial Assembly;

(e) inter with Government Departments, non-governmental organizations, private sector organizations, individuals, and donors for carrying out the purposes of this Act;

(f) require the functionaries of the Department to submit any information or report needed for the performance of its functions; and

(g) take suo moto action for investigating any matter of concern in the sector which comes to its knowledge, and send its findings to the Secretary for taking remedial action.

11. Power to make rules.—

Government may, on the recommendations of the Commission, make rules for carrying out the purpose of this Act.

12. Indemnity.—

No action shall be taken against any member for anything in good faith done or intended to be done under this Act.

13. Repeal.—

The North-West Frontier Province Forestry Commission Ordinance, 1999 (N.W.F.P. Ordinance No.X of 1999) is hereby repealed.

BY ORDER OF MR. SPEAKER,
PROVINCIAL ASSEMBLY OF
NORTH-WEST FRONTIER PROVINCE

ABDUL HAMEED KHATTAK,
SECRETARY
PROVINCIAL ASSEMBLY OF N.W.F.P.

5.1.2.4 Hazara Forest (Amendment) Ordinance 1997

ORDINANCE VI OF 1997
HAZARA FOREST (AMENDMENT|) ORDNANCE, 1997
An Ordinance further to amend the Hazara Forest Act, 1936
[Gazette of N.W.F.P., Extraordinary, 30th January, 1997]

No.Legis.1(17)71/630, dated 30-1-1997.—The following Ordinance by the Governor of the North West Frontier Province is hereby published for general information:-

Preamble.—

Whereas, it is expedient further to amend the Hazara Forest Act, 1936 (N.W.F.P. Act III of 1937), for the purpose hereinafter appearing.

And whereas the Provincial Assembly is not in session and the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic republic of Pakistan, the Governor of the North-West Frontier Province is pleased to make and promulgate the following ordinance.

1. **Short title, extent and commencement**.—

(1) This Ordinance may be called the Hazara Forest (Amendment) Ordinance, 1997.

(2) It shall come into force at once and shall be deemed to have taken effect on the 7th January, 1997.

2. **Amendment of section 3 of N.-W.F.P. Act III of 1937**.— In the Hazara Forest Act, 1936 (N.-W.F.P. Act III of 1937), hereinafter referred to as the said Act, the existing section 3 shall be renumbered as subsection (1) of section 3 and after subsection(1), as so renumbered, the following new subsection (2) shall be inserted, namely:-

> "(2) Notwithstanding the provisions of subsection (1), Government may, where it considers appropriate, manage the forests with the help and active participation of village community on such terms and conditions as may be prescribed."

3. **Amendment of section 53 of N.W.F.P. Act III of 1937**.— In the said Act, in section 53, in subsection (2), the full-stop appearing at the end of clause (c) shall be replaced by a semi-colon and thereafter the following new clause shall be added, namely:

> "(d) provide for the management of reserved forests through participation of village community."

5.1.2.5 NWFP (Conservation and Exploitation of Certain Forests in Hazara Division) Ordinance 1980

REGULATION NO. 1 OF 1980
PROV0INCIAL ADMINISTERED TRIBAL AREAS
(CONSERVATION AND EXPLOITATION OF CERTAIN FORESTS) REGULATION, 1980.

17TH June, 1980
A
Regulations

to provide for conservation, better exploitation and prohibition of unlawful cutting of forests in certain Provincially Administered Tribal Area of Hazara Division.

WHEREAS it is expedient to provide for conservation, better exploitation and prohibition of unlawful cutting of forests in certain Provincially Administered Tribal Areas of Hazara Division, and for matters connected therewith;

AND WHEREAS the Governor of a Province, with the prior approval of the President, may, with respect to any matter within the legislative competence of the Provincial Assembly, make regulation for a Provincially Administered Tribal Area or any part thereof:

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with he Laws (Continuance in Force) Order, 1977 C.M.L.A. Order No.1 of 1977), and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province, with the prior approval of the President, is pleased to make the following Regulation:-

1. (1) This Regulation may be called the Provincially Administered Tribal Areas (Conservation and Exploitation of Certain Forests) Regulation, 1980.

(2) It extends to the specified areas.

(3) It shall come into force at once.

2. In this Regulation, unless there is anything repugnant in the subject or context:-

(a) "forest produce"when brought from the specified areas, includes minerals, surface-soil, trees, timber, charcoal, brush wood, grass, peat, canes, creepers, reeds, leaves, flowers, fruits roots barks, honey, wax, lac, gum and resin;

(b) "Government" means the Government of the North-West Frontier Province;

(c) "Schedule" means the Schedule to this Regulation;

(d) "Specified areas" means the Provincially Administered Tribal Areas adjoining Mansehra District known as Black Mountain Range, in Hazara Division; and

(e) "timber" includes trees when they have fallen or have been felled and all wood of such trees whether cut up or fashioned or hollowed out for any purpose or not.

3. (1) For the purpose of conservation and better exploitation of forest there shall be no extraction of timer and other forest produce in the specified areas except by the Government or by a corporation or any agency set up or authorised by Government in this behalf.

(2) Notwithstanding anything contained in any other law, custom, usage or instruction for the time being in force or in any decree, order a judgment of any Court or other authority,-

(a) all contract, agreements or other instruments entered into or executed for the extraction of timber or other forest produce the specified areas, subsisting immediately before the commencement of this Regulation, shall upon such commencement stand terminated; and

(b) all timber and other forest produce produced in and extracted from the forest in the specified areas and brought into, and transported from, through or to, any place within Hazara Division shall, whether extracted before or after commencement of this Regulation, be liable to duty at the rate specified in the Schedule or at such other rate as Government may from time to time, notify in the official Gazette.

4. (1) If the timber or other produce, referred to include (b) of subsection (2) of section 3, lying in the specified areas or the depots is not collected by the owner, after payment of duty as fixed by this Regulation, within three months of the coming into force or this Regulation, the same may be put to sale by Government through public auction.

(2) The proceeds of sale under sub-section (1) shall, after deduction of duty leviable under this Regulation together with any other expenses, if any, incurred in connection with the holding of the auction, be refunded to the owner of such timber or other forest produce on an application made by him in that behalf.

(3) The person in whose favour such timber or other forest produce is auctioned shall be liable to pay duty at the usual rate as applicable in the Hazara Division for such sales from the depot.

5. If the sale proceeds payable to the owner under section 4 are in good faith paid to some other person not entitled to receive the same either himself or on behalf of the owner, the same shall not be recoverable from Government or the person authorised by Government to make payment in this behalf.

6. No suit, prosecution or other legal proceedings, shall be against Government or any other person for anything in good faith done or intended to be done or under this Regulation.

7. Government may make rules for carrying out the purposes of the Regulation.

5.1.2.6 NWFP Forest Development Corporation Ordinance 1980

THE NORTH-WEST FRONTIER PROVINCE FOREST DEVELOPMENT CORPORATION ORDINANCE, 1980.
N.-W.F.P. ORDINANCE No. II OF 1980.
Peshawar the 29th March, 1980.

AN
ORDINANCE

to amend and consolidate the Law relating to establishment of Forest Development Corporation in the North-West Frontier Province.

Preamble.—

WHEREAS it is expedient to amend and consolidate the law relating to establishment of Forest Development Corporation in the North-West Frontier Province;

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order 1977 (C.M.L.A. order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance.

Short title extent and commencement.—

1. (1) This Ordinance may be called the North-West Frontier Province Development Corporation Ordinance, 1980.

(2) It extends to whole of the North-West Frontier Province.

(3) It shall come into force at once.

Definitions.—

2. In this Ordinance, unless there is anything repugnant in the subject or context, -

(a) "Board" means the Board of Directors of the Corporation constituted under this Ordinance;

(b) "Chairman" means the Chairman of the Board;

(c) "Corporation" means the North-West Frontier Province Development Corporation established or deemed to have been established under this Ordinance;

(d) "Forest produce" means the Forest produce as defined in the Forest Act, 1927 (VI of 1927);

(e) "Government" means the Government of the North-West Frontier Province;

(f) "Governor" means the Governor of the North-West Frontier Province

(g) "Managing Director" means the Managing Director of a Corporation and includes any person for the time being discharging the function of the Managing Director;

(h) "General Manager" means the General Manager of the Corporation;

(i) "prescribed" means prescribed by rules made under this Ordinance; and

(j) "timber" means the timber as defined in the Forest Act, 1927 (VI of 1927).

Incorporation.—

3. (1) As soon as may be, after the commencement of this Ordinance government shall establish a Corporation to be called the North-West Frontier Province Forest Development Corporation.

(2) The Corporation shall be a body corporate having perpetual succession and common seal, with power, subject to the provisions of the Ordinance, to acquire and hold property, both movable and immovable and shall by the said name sue and be sued.

(3) The Head Office of Corporation shall be at Peshawar and Regional Offices at such other places as Government may direct.

Share Capital.—

4. The authorised share capital of the Corporation shall be Ten million rupees, to be subscribed by Government, or such other amount and Government may, from time to time, determine.

Admnistration and conduct of business.—

5. (1) The general direction, control and administration of the affairs of the Corporation shall vest in the board which may exercise all powers and do all act and things which may be exercised or done by the Corporation in accordance with the provisions of this ordinance.

(2) The Board in discharging its functions shall act on commercial considerations and shall be guided by such direction as may, from time to time be given by Government.

(3) All acts of the Corporation, whether executive or other-wise shall be expressed to be taken in the name of the Corporation and shall be authenticated in such manner as may be prescribed.

(4) All business of the Corporation shall be transacted in such a manner as may be prescribed.

Composition of the Board.—

6. (1) The Board shall consist of a Chairman and Director as hereinafter provided.

(2) The Minister for Forests or, in his absence. a nominee of the Governor shall be the Chairman of the Board.

(3) The following shall be the Directors of the Board:

(i) Additional Chief Secretary to Government, Planning and Development Department;

(ii) Secretary to Government, Finance Department;

(iii) Secretary to Government, Incharge of the forest Department;

(iv) Managing Director;

(v) one nominee of the principal loan giving agency, other than Government, if any;

(vi) a non-official nominee of the Governor having experience in an eminent capacity of business and administration, and having no financial interest directly or indirectly, in the Corporation;

(vii) Chief conservator of Forest, North-West Frontier Province.

(4) The Chairman and each Director shall perform such duties and receive such salary or allowances as may be prescribed.

Appointment of Managing Director.—

7. Government may appoint a Managing Director of the Corporation who shall be the Chief Executive of the Corporation and shall exercise such powers and perform such duties as Governor may, form time to time, specify, or the Board may under section 13 delegate,

Appointment of Officers, etc.—

8. (1) The Board may, subject to such general or special orders as Government may, from time to time give, appoint such officers, advisers and employees necessary for the efficient performance of the functions of the Corporation on such terms and conditions as may be prescribed.

(2) The Board shall employ such officers, experts, advisers, consultants and other persons as may be transferred to it by Government, on such terms and conditions as may be determined by Government.

(3) The Chairman, in case of urgency, may appoint such officers, advisers, consultants and other employees as may be necessary:

Provided that every appointment made under this subsection shall be reported to the Board without unnecessary delay, and shall not continue beyond six months unless approved by the Board.

Metting of the Board.—

9. (1) The meetings of the Board shall be held at such times and at such places as may be prescribed:

Provided that until rules are made in this behalf, such meetings shall be held at such times and at such places as may be determined by the Chairman.

(2) The quorum necessary for transacting business at a meeting of the Board shall be five.

(3) All decisions in the meeting shall be taken by majority of votes. In the event of an equality of votes, the Chairman shall have a second or casting vote.

(4) The meeting of the Board shall be presided over by the Chairman and in his absence by the person authorised by the Chairman in writing in that behalf, and in default of such authorisation by the person elected for the purpose by the Directors present from among themselves.

(5) The minutes of every meeting of the Board, stating among other things, the names of the Directors present, shall be drawn up and recorded in a book to be kept for the purpose, and shall be signed by the person presiding at the meeting. Such book shall at all reasonable times and without charge be open to inspection by the Directors.

(6) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in, or any defect in the constitution of the Board.

Functions.—

10. (1) The Corporation shall make suitable arrangements for the

(i) economic and scientific exploitation of forests;

(ii) sale of forest produce;

(iii) establishment of primary wood-processing units;

(iv) regeneration in areas to be specified by Government; and

(v) performance of such other functions as may be assigned to it by Government.

(2) For carrying out any of its functions, the Corporation may with the approval of the Board, sponsor limited or subsidiary companies incorporated under the Companies Act, 1913 (VII of 1913), on such terms and conditions relating to their capital structure, its subscription representation of the Corporation on their management, under writing of the share capital and sale or transfer of the Corporation's share therein, as the Board may deem proper; provided that before sponsoring any such company, the Corporation shall obtain the approval of Government to the Company's capital structure.

Contract.—

11. All contracts made by or on behalf of the Corporation shall be-

(a) in writing and expressed to be in the name of Corporation;and

(b) executed in such manner as may be prescribed.

12. (1) There shall be a fund to be known as the Corporation fund vested in the Corporation which shall be utilized by the Corporation to meet charges in connection with its functions under this Ordinance to including the payment of salaries and other remuneration to the Managing Director, officers and servants of the Corporation.

(2) The Corporation Fund shall consist of –

(a) capital subscribed by Government;

(b) grants made by Government;

(c) loans obtained from Government;

(d) sale proceeds of bonds issued under the authority of the Government;

(e) loans obtained from Banks and other financial institutions;

(f) foreign aids and loans obtained with the previous sanction of the Federal Government;

(g) sales proceeds of timber and other forest produce; and

(h) income accruing from operations of the Corporation for any of the limited or subsidiary companies sponsored by it.

Delegation of Powers.—

13. (1) The Board may, for the purpose of efficient functioning of the Corporation, by a resolution, delegate to the Chairman or Managing Director or any other officer of the Corporation, subject to such conditions and limitations as may be specified therein, such of its powers, duties or functions under this Ordinance as it may deem appropriate.

(2) The Managing Director may with the prior approval of the Chairman, delegate to officers of the Corporation such of the powers and duties assigned to him by or under this Ordinance, other than those delegated to him under sub-section (1), as he may deem appropriate.

Declaration of the Corporation as a local authority for certain purpose.—

14. [1](1) The corporation shall be deemed to be a local authority within the meaning of the Local Authorities Loans Act, 1914 (IX of 1914) for the purpose of borrowing money under that Act, and the making execution of any scheme under this Ordinance shall be deemed to be a work which such authority is legally authorised to carry out:

Provided that no foreign loan shall be obtained by the Corporation without the previous sanction of the Federal Government, and no other loan shall be obtained by it without the previous sanction of Government.

[2](2) The Corporation shall be a local authority as shall always be deemed so within the meaning of the Income Tax Ordinance, 1979, (XXXI of 1979), for the purpose of claiming exemption of its income from the tax chargeable under that Ordinance, under section 14 thereof, read with item (57) of the second schedule appended there to.

Act XVIII of 1891 to apply in the books of the corporation.—

15. The Corporation shall be deemed to be a bank for the purpose of the Bankers Books Evidence Act, 1891.

Custody and investment of funds.—

16. (1) The Corporation may keep money in any treasury, sub-treasurer or a bank as may be prescribed.

(2) Nothing in sub-section (1) shall be deemed to preclude the Corporation from investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Trusts Act, 1882 (II of 1882), or in such other manner as it may deem fit.

Budget and accouns.—

17. (1) The Corporation shall prepare its annual budget estimate and work plan and submit the same to Government by the prescribed date and Government may modify the said estimates or plan to such extent as it may consider necessary.

(2) Accounts of the receipts and expenditure of the Corporation shall be kept in such form as may be prescribed.

(3) The Corporation shall, within three months of the close of each financial year, place before Government the annual statement of accounts and audited balance sheet, profit and loss account and the auditor's report, for the preceding financial year both of the Corporation and the limited or subsidiary companies referred to in section 10(2).

Audit.—

18. (1) The accounts of the Corporation shall be audited by Chartered Accountants within the meaning of the Chartered Accountant Ordinance, 1961 (Ord. X of 1961), and appointed by the Board on such remuneration as, it may think fit.

(2) Not with standing the provisions of sub-section (1), the Auditor General may, on the request of Government, cause to be audited the accounts of the Corporation.

[1] Inserted by the N.-W.F.P. Ordinance No. XV of 1981, s.2

[2] Inserted by N.-W.F.P. Ordinance No. XV of 1981.

Annual Report.—

19. (1) The Corporation shall, as soon as possible after the end of every financial year, submit an annual report to Government of the conduct of its affairs for that year, and on its proposals of for the next ensuing financial year.

(2) The annual report referred to in sub-section (1) shall, as soon as possible, be laid by Government before the Provincial Assembly of the North-West Frontier Province.

Public Servant.—

20. Every person acting or purporting to act under this Ordinance shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (X.L.V. of 1860)

Bar to Proceedings.—

21. No suit, prosecution or other legal procedding shall lie against the Corporation or any person for anything in good faith done or intended to be done under this Ordinance.

Winding up of the corporation.—

22. No provision of law relating to the winding up of companies and corporations shall apply to the Corporation and the Corporation shall not be wound up except by order of Government and in such manner as it may direct.

Indemnity.—

23. Every Chairman, Director, Adviser, Officer or servant of the Corporation shall be indemnified by the Corporation against all losses and expenses incurred by him in the discharge of his duties, except as are caused by his own wilful act or default.

Powers to make ruels.—

24. The Corporation may, with the approval of Government, make rules for carrying out the purposes of this Ordinance.

Repale and savings.—

25. (1) The North-West Frontier Province Forest Development Corporation Act, 1977 (N.-W.F.P. Act XI of 1977), is hereby repealed.

(2) Notwithstanding the repeal of the said Act –

(i) everything done, action taken, Corporation established, obligaltion or liabilities incurred, assets or property acquired, person appointed or authorised, jurisdiction or powers conferred, notifications or orders issued or the rules made under any of the provisions of the said Act, if not inconsistent with the provisions of this Ordinance and the rules made thereunder, shall continue and so far as may be, deemed to have been respectively done, taken, established, incurred , acquired, or authorised, conferred, issued or made under this Ordinance, and any document referring to any of the provisions of the said Act or the rules made there-under shall so far as may be, be considered to refer to the corresponding provisions of this Ordinance and the rules made thereunder; and

(ii) any regulations made under the said Act shall, if not inconsistent with the provisions of this Ordinance or the rules made thereunder, be deemed to be rules validly made under this Ordinance.

5.1.2.7 Hazara Forest and Local Government Laws (Amendment) Ordinance 1978

HAZARA FOREST AND LOCAL GOVERNMENT LAWS (AMENDMENT) ORDINANCE, 1978 (ORDINANCE XVIII OF 1978).

15TH NOVEMBER, 1978.

An Ordinance further to amend the Hazara Forest Act, 1936 and the North West Frontier Province Local Government Ordinance 1972.

No.Legis,1(17)/71.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:

Preamble.—

Whereas it is expedient further to amend the Hazara Forest Act, 1936 (N-W.F.P, Act VI of 1937), and the North- West Frontier Province Local Government Ordinance, 1972 (N.W.F.P. Ordinance III of 1972), in the manner hereinafter appearing;

And whereas the Governor of the North- West Frontier Province is satisfied that circumstances exists which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of the fifth day of June, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No.1 of 1977), and in exercise of all powers enabling him in that before the Governor of the North- West Frontier Province is pleased to make promulgate the following Ordinance:

1. Short title and commencement.—

(1) This Ordinance may be the Hazara Forest and Local Government Laws (Amendment) Ordinance 1978.

(2) It shall come into force at once and shall.—

(a) in relation to section 6 of this Ordinance, in so far as it relates the power to impose duty, be deemed to have taken effect on and from the 17th day of March, 1971; and

(b) in relation to section 10 of this Ordinance, be deemed to have also effect on and from the 15th day of February, 1972.

2. Amendment of section 1 of N-W.F.P. Act VI of 1973.—

In the Hazara Forest Act, 1936 (N.W.F.P. Act VI of 1937), hereinafter referred to be as said Act, in section 1, in subsection (2), in clause (1), for the word “Distric” the word “Division” shall be substituted.

3. Amendment of section 2 of N-W.F.P. Act VI of 1973.—

In the said Act, in section 2-

(a) in clause (c) for the words "Hazara District", the words being concerned in which the forest is situate" shall be substituted;

(b) in clause (h), for the words "the Mansehra Tehsil of Hazara District" the words "Mansehra District of Hazara Division" shall be substituted;

(c) for clause (k), the following clause shall be subsituted, namely;-

"(k) "Commissioner" means the Commissioner of Hazara Division or any other officer who may be invested with the powers of Commissioner for the purposes of this Act"; and

(d) In clause (1), for the words "the Hazara District", the words "Hazara Division" shall be substituted.

4. Amendment of section 13 of N.W.F.P. Act VI of 1937.—

In the said Act, in section 13 in subsection (2), for the words "the Hazara District" the words "Hazara Division" shall be substituted.

5. Amendment of section 27 of N-W.F.P. Act VI of 1937.—

In the said Act, in section 27, in subsection (5), for the words "the district", the words "Hazara Division" shall be substituted.

6. Substitution of section 28 of N.W.F.P. Act VI of 1937.—

In the said Act, for section 28, the following section shall be substituted, namely:

"28. Power to impose duty on timber.—The Provincial Government may levy a duty in such manner, at such places and at such rates ad valorem or otherwise, as it may declare by notification in the Official Gazette, on all timber-

(a) which is produced in Hazara Division; or

(b) which is brought into Hazara Division from any place outside that Division: or

(c) which is transported from or through Hazara Division to place outside that Division."

7. Amendment of section 29 of N-W.F.P. Act VI of 1937.—

In the said Act, in section 29, in clause (a), for the words "Hazara District", the words "Hazara Division" shall be substituted.

8. Amendment of Section 29-A of N-W.F.P. Act VI of 1937.—

In the said Act, in section 29-A, for the words "the Hazara District", the words "Hazara Division" shall be substituted.

9. Amendment of section 49 of N-W.F.P. Act VI of 1937.—

In the said Act, in section 49, in the proviso, the words “of the Hazara District”, occurring at the end, shall be deleted,

10. Amendment of Fifth Schedule to N-W.F.P. Ordinance III of 1972.—

In the North-West Frontier Province Local Government Ordinance, 1972 (N.W.F.P. Ordinance III of 1972), hereinafter referred to as the said Ordinance, in the Fifth Schedule, in Part 1, for item 6, the following item shall be substituted, namely;

“6. Tax on goods exported from or transported through a local area.”

5.1.2.8 NWFP Establishment of Sale Depots and Sawing Units Rules 1975

NORTH-WEST FRONTIER PROVINCE
ESTABLISHMENT OF SALE DEPOTS AND SAWING UNITS RULES, 1975

[Gazette of N.W.F.P., Extraordinary, 17th February 1976]

No.SOFT(FAD)V-168/71(iv).—The following rules, which the government of the North-West Frontier Province propose to make in exercise of the powers conferred by section 3 of the Punjab Forest (Sale of Timber) Act, 1913 Punjab Act, III of 1913) and in supersession of all previous rules in this behalf, are published as required by subsection (2) of section 3 of the said Act, for information of the persons likely to be affected thereby and notice in hereby given that the draft, with any objection and suggestions, which may be received by the Secretary to government of North - West Frontier Province, Food and Agriculture Department, within a period of 30 days from the date of its publication in the official Gazette, shall be taken into consideration after the expiry of the said period:-

1. Short title:—

(1) These rules may be called the North-West Frontier province Establishment of Sale Depots and Sawing Units Rules, 1975.

(2) They shall come into force at once.

2. Definition.—

In these rules;

(i) "Timber" includes only the following kinds:-

Deodar (Cedrus deodara), Vernacular deodar, Diar: Value-pine (pinu seexcelsa), Vernacular Kail ander, Anander, Biar, Chir-pine (Pinus roxburghii) Vernacular Chil: Spruce (Picea Morinda), Vernacular tos, Partol: Silver (Abies pindrow), Vernacular rai, Partol;

(ii) "depot" means any building or place where timber is brought, cut, sawn or fashioned or stored for sale and includes a Saw Mill;

(iii) "Division" means Forest Division having jurisdiction over the area where timber depots or Sawing units are established under these rules:

(iv) "Government" means the Government of the North-West Frontier Province.

3. Tract to which these rules are applicable.— These rules are in addition to and not in derogation of River Rules made under the provision of section 41 of the Forest Act, 1927 (Act XVI of 1927), and section 29 of the Hazara Forest Act, 1936 (North-West Frontier Provision Act, VI of 1937).

4. No person shall establish or maintain a depot or a Saw Mill unless it is registered in accordance with these rules.

5. (1) Any person wishing to establish or maintain a depot or a Saw Mill shall register the same in the Office of the Forest Division in which the depot or the Saw Mill is situated, and shall give in respect of such depot or the Saw Mill such details in regard to origin of timber as may be required by the Conservator of Forests.

(2) Each depot or a Saw Mill registered under these rules shall be assigned a number by the registering officer.

6. A period of six months shall be allowed to the owners of depots or Saw Mills, which are in existence on the coming into force of these rules, to apply for the registration of their depots or Saw Mills:

Provided that no depot or Saw Mill in existence on the coming into force of these rules in the Municipal limits of Havelian, Dargai, Khairabad, Peshawar, Tall, Kohat, Bannu, Dera Ismail Khan, Mardan and Tank shall be refused registration.

7. (1) Saved as provided in rule 7, the Officer Incharge of a Forest Division may, for reasons to be recorded in writing, refuse to register;

(a) any existing depot or Saw Mill, the owner or other person incharge whereof has been found processing illicit timber on two or more cases; or

(b) any new depot or Saw Mill.

Provided that no such order shall be made unless the owner of the depot or the Saw Mill concerned has been given an opportunity of being heard.

(2) Any person aggrieved by an order made under sub-rule (1) may within 30 days of such order, prefer an appeal to the Deputy Commissioner of the District concerned.

Explanation.—

In computing the period of 30 days in sub-rule (2) the day on which the order sought to be appealed against was made, and the time requisite for obtaining a copy thereof, shall be excluded.

(3) The Deputy Commissioner shall not confirm, modify, alter or set aside any order appealed against, except after giving the parties an opportunity of being heard.

(4) The decision of the Deputy Commissioner on an appeal under the rule shall be final.

8. No depot or a Saw Mill shall be established, maintained, run or registered between the Forest and Check Posts/Barriers of the Forest Department.

Provided that the Forest Contractors, during the currency of the contract and Government owned depots/Saw Mills shall be exempted from the operation of this rule.

Provided further that industries recognised by government may, subject to such special arrangements as the Divisional Forest Officer considers necessary for the purpose of checking, also be exempted from the operation of this rule. The incidence of such special arrangements, if any, shall be bound by the industry concerned.

9. The fee for registration and for annual renewal shall be Rs.100.00

10. Every person having a registered depot shall register his hammer-mark in the Office of the Forest division in which the depot situated. No fee shall be charged for the registration of the Sale hammer mark.

11. No person shall be allowed to register a mark already registered in favour of another person, or a mark used by Government. The Officer Incharge of a Forest Division may refuse registration of any mark which in his judgment so closely resembles a mark used by Government or registered in favour of any other person as to be easily altered to countered such marked.

12. The registration of mark under rule 10 shall hold good for a period of three years from the date of such registration.

13. The owner or person incharge of a registered depot or a Saw Mill, may at the discretion of the Divisional Forest Officer, be required to maintain correctly either or both of the following forms:-

(i) A register of receipts of timber, showing-

1. Date of receipt.
2. Whence received.
3. Name of person from whom received.
4. Species.
5. Marks.
6. Number of logs or pieces with sizes.
7. Description
8. Remarks.

(ii) A register of sales and removals of timber, showing-

1. Date of sale.
2. Date of removal of timber, from depot-
3. Name of person to whom sold or made over.
4. Destination.
5. Species.
6. Marks.
7. Numbers, size and volume
8. Description.
9. Remarks

14. Every owner or person incharge of a registered depot or a Saw Mill shall produce the registers specified in rule 13 for scrutiny when called upon to do so by the Divisional Forest Officer or an Officer of the Forest Department authorised by him, or a Police Officer may at any time between sunrise and sunset enter a registered depot for such purpose.

15. No timber shall be removed from any registered depot until it has been marked with the registered sale hammer of the owner of the registered depot.

16. Sale-hammer marks shall be surrendered to the Divisional Forest Officer on the cancellation of any registration or on demise of the owner of the mark in whose name it has been registered.

17. No timber shall be removed from any registered depot or a Saw Mill unless accompanied by a form of transport approved by the Conservator of Forests.

18. Whoever infringes any of these rules shall be punishable with imprisonment for a term which may extend to five hundred rupees or with both. Double penalties may be inflicted where the offences is committed after sunset and before sunrise, or after preparation of resistance to lawful authority or if the offender has been previously convicted of any offence under these rules.

5.1.2.9 NWFP Forest Produce Transport Rules 1975

NORTH WEST FRONTIER PROVINCE

FOREST PRODUCE TRANSPORT RULES, 1975

[Gazette of N.W.F.P. Extraordinary, 17th February, 1976]

No.SOFT(FAD)V-168/71.— In exercise of the powers conferred in section 41 of the forest Act, 1927 (Act XVI of 1927), the Government of the North-West Frontier Province are pleased to make the following rules for regulating the transport of timber, firewood and other forest produce by land:-

1. Short title, extent and commencement.—

(1) These rules may called the North-West Frontier Province Forest Produce Transport Rules, 1975.

(2) They shall come into force at once.

(3) They shall apply to the whole of the North-West Frontier Province (including the Provincially Administered Tribal Areas), except Hazara District.

2. Definitions.—

(1) In these rules:

(a) Check Posts" mean any place fixed for checking of timber, firewood or other forest produce while in transit as determined by the Chief Conservator of Forests, from time to time.

(2) All words used in these rules and defined in the Forests Act, 1927 shall be deemed to have the meanings respectively attributed to them by the said Act.

3. Prescription of authority for transportation.—All timber, firewood or other forest produce sold or obtained from the reserved forests, protected forests, waste-lands and other places in the areas to which these rules are applicable or brought into the said areas from elsewhere shall be covered by a transport pass issued by a Divisional Forest Officer having jurisdiction in the area and be accompanied by a challan. The transport pass and challan shall be as prescribed and supplied by the Forest Department on payment of such price and in such manner as the Chief Conservator of Forests may determine from time to time.

Provided that the timber obtained from private wastelands, reserved forests or protected forests by right-holders or free grantees for their domestic requirements within the limits of the village in which such forest is situated, shall be exempted from the accompaniment of the transport pass and the challan and only the free grant permit granted originally shall suffice:

Provided further that the timber obtained or purchased from a registered sale depot shall be exempted from the accompaniment of the transport pass but shall be covered by an

invoice/challan issued by the depot-holders on the form approved by the Chief Conservator of Forests:

Provided further that in case of firewood or other forest produce, obtained by right-holders from waste-lands and other places and being transported for domestic purpose, from place other than the place of their residence, a transport pass shall be issued without payment of any fee:

Provided further that the transport of firewood and other forest produce, by head-loads and pack-loads by the right-holders for their domestic use shall be permitted at all times without any restriction:

Provided further that the timber, firewood and other forest produce brought from Federally Administered Tribal Area and covered by permit issued by Political Agent concerned may be considered as if transported with the permission of the Forest Department under this rule.

4. Prohibition of transport between sunset and sunrise.— No timber, firewood or other forest produce shall be transported by land between the hours of sunset and sunrise.

5. Form of transport pass.—

(1) The transport pass shall specify the kind and quantity of timber, firewood, or other forest produce, the owners or the person incharge of it, the places from where obtained and the places for which destined and shall authorise transport within a fixed period.

(2) All such timber, firewood, or other forest produce shall be transported only in accordance with the conditions of the transport pass.

6. Refusal of transport pass.—

The authority empowered to issue transport pass may refuse to issue the same if it has reason to believe that the timber, firewood or other forest produce has not been legally obtained by the applicant.

7. Fixation of property mark.—

Unless exempted by rule 8 or by special permission of the authority mentioned in rules 3, no timber shall be transported by land within the areas to which these rules are applicable unless it bears hammer marks-

(i) in case of timber belonging to the Forest Department or of other Government Department, the property mark of such Department;

(ii) in case of timber sold by or obtained from the Forest Department or from the forests worked under the supervision of the Forest Department, the Forest Department pass mark;

(iii) in case of other timber, the person wishing to so transport it by land shall apply to the appropriate authority mentioned in rule 3 who may either cause it to be marked with a hammer mark or if it is not possible to do so may exempt it from such markings; and

(iv) in case of timber brought from Federally Administered Tribal Area, with duty paid hammer mark of the Forest Department.

8. Exemption from fixation of property marks.—

(1) Rules 7 does not apply to wood pieces suited only for use as firewood, being split, or in the round and ballis of any length and under 2 feet girth at thick end.

(2) Without prejudice to any liability incurred under the provisions of section 52 of the Forest Act, 1927, rules 3 to 7 do not apply to articles of wooden furniture, carts, carriage, agricultural, domestic or other implementation or to pieces thereof.

9. Establishment of check post.—

The Chief Conservator of Forests may establish check posts and cause road barriers to be erected in appropriate places to control the transport of timber, firewood or other forest produce by land within the areas to which these rules are applicable.

10. Procedure for inspection and handling of forest produce being transported.—

(1) Any person incharge of timber, firewood or other forest produce shall produce the transport pass and the covering challan, if any, for the inspection of the Forest Officer incharge of the check post and shall provide facilities for examination of the consignment in question.

(2) If such Forest Officer finds that the timber, firewood or other forest produce is being transported in accordance with these rules, he shall allow to proceed to its destination. On the other hand, if the Forest Officer finds that the transport is not in conformity with these rules, he shall forbid such transport and seize such timber, firewood or other forest produce and proceed into the matter according to the provisions of the Forest Act, 1927.

11. Supplementary provisions for checking and inspection of forest produce in transit.—

(1) Any Forest Officer or Police Officer may stop and examine such timber or other forest produce in transit in respect of which there is reason to believe that any money is payable to Government on account of the price thereof or on account of any duty, fee, royalty or charge thereof, or for the purpose of check provided by these rules and may compare it with the transport pass and covering challan, if any.

(2) Any person engaged in the transport of such timber, firewood or other forest produce shall produce such transport pass and the covering challan, if any, and shall provid facilities for such examination.

(3) Any irregularity noticed shall be dealt with as provided in sub-rule (2) of rule 10.

12. Penalties for infringement.—

Any person who infringes any of the provisions of these rules shall without prejudice to any liability incurred under the provisions of section 52 of the Forest Act, 1927, relating to

seizure and confiscation, be liable to imprisonment of either description for a term which may extend to six months or to a fine which may extend to five hundred rupees or both.

The timber, firewood or other forest produce being transported in contravention of these rules and being seized during transportation within the area to which these rules are applicable shall be presumed to be Government owned and so shall be any conveyance used in the transport of such timber, firewood or other forest produce.

5.1.2.10 NWFP Management of Protected Forests Rules 1975

APPENDIX XVIII
NORTH WEST FRONTIER PROVINCE
MANAGEMENT OF THE PROTECTED RULES FOREST, 1975

(17th February, 1975).

1. Short title.—

These rules may be called the North-West Frontier Province Management of Protected Forests Rules 1975.

2. Definition.—

All words used in these rules and not defined shall have the meanings respectively as are assigned to them under section of the Forest Act, 1927.

3. Grant of trees.—

No trees shall be felled or removed from the forest to which these rules are applicable, except with the permission in writing of the Conservator of Forests, Malakand, or the Divisional Forest Officers having jurisdictions in the forests.

4. Free grant of trees for domestic needs may be made to the owners or right-holders and to other local inhabitants entitled to this privilege subject to silvicultural availability of trees and upto the limit given in the sanctioned working plans, except in the case of Swat and Kalam. Limit in the case of Swat and Kalam shall be such as is given in the Schedule appended to these rules.

5. Every request for free grant of trees shall be made to Rage Officer, having jurisdiction in the area, which in case of Dir, Swat and Kalam shall be made on white paper and in case of Chitral on the prescribed from obtainable from Forest Department on payment of a free of rupees ten for each form.

6. The entitlement to the free grant of trees shall be verified by the Tehsildar concerned. For the grant of trees to non-residents, the Tehsildar will first obtain the concurrence of the Jirga of the owners or right obtain holders of the respective village and record a certificate to this effect on the application. After verification of the entitlement, the application will be forwarded to the Range Officer concerned, who will verify the needs and record the timber requirements either personally or through the Block Officer. At least 20% of the verification made by the Block Officer shall be checked by the Range Officer himself.

7. The verification made in respect of grant of free trees needed for construction and re-construction of houses must state that the foundations of houses have been built upto plinth area level. In the absence of such certificate no application shall be considered.

8. (1) The Range Officer shall enter all applications for free grant of trees received by him in a register with the following columns:-

Year ———— Tehsil———— Ceiling (No. of trees).

Name and subject particular of applicant	Authority verifying entitlement	Authority verifying needs	Report of Range Officer or rejecting	Orders D.F.O. sanctioning	Balance from the ceiling

(2) The register will be put up by the Range Officer once a month, present during the first week when the Range Officer visits the office of the Divisional Forest Officer.

(3) After the orders for issue of timber have been made by the Divisional Forest Officer, the Range Officer will start a second register having the following column:

Name and particulars	Date of marking	Name of Forests	Date of hammer marking timber and issue of "Rahdari".	Certificates utilitization the Range Officer	Remarks

9. The trees will be granted in the diameter range of 24''-30''. The standing Deodar trees shall not be granted for domestic use, except in Kalam, upper Indus-Kohistan, Dir, Kohistan and Chirtal. Windfallen tree will be granted and counted against the quota. Trees will be marked strictly according to the silvicultural availability. No trees shall be marked within 300 feet of the outer boundaries of the forests.

10. Trees will be marked by the Range Officer himself or through Block Officer within two months from the receipt of the orders. The Range Officer will be responsible for the correctness of the marking and whether he does it himself or through the Block Officer,. The trees will be cut within two months of the date of marking and will be utilized for the purposes stated and for no longer within six months from the date of cutting.

11. The outtrun from the trees marked will only be removed after it has been branded with the right-holders hammer and its transport allowed through a Rohdari to be issued by the Range Officer concerned.

12. Timber granted for domestic needs shall neither be sold nor given free, nor taken out of the limits of the village. The Range Officer will verify the utilization of timber in a register to be maintained for the purpose.

13. Neither the person to whom trees have been granted for construction of a house in any year nor a member of his family shall be entitled to the grant of the following year unless proved to the satisfaction of the Divisional Forest Officer concerned that the timber is required for the construction of a separate house.

14. In case of Swat and Kalam, trees of central quota specified in the schedule shall be sanctioned by the Conservator of Forests, Malakand and the trees of local quota specified in the said schedule shall be sanctioned by the Divisional Forest Officer of the area concerned. The procedure followed for the grant of trees from local quota shall also be followed for the central quota grants. For this purpose two separate registers will be maintained by the Divisional Forest Officer. The form for both shall be as prescribed for local quota.

15. Every person to whom the trees have been granted under these rules shall plant five trees in a place or places designated by the Forest Officer during the plantation season and look after them for such time as may be directed by the forests authorities.

16. Concessional Grants.—

(1) These shall be granted on concessional rates in Madyan, Behrain, Fatehpur, Matta, Kabal, Babozai, Charbagh, Alpuri, Lilowni, Kana, Puran, and Chakesar Tehsils and Buner Sub-Division of Swat District in the following cases:-

(a) for the domestic requirements of the local inhabitants who either do not have the forest or the required timber trees therein; and

(b) for the construction of commercial buildings by the local inhabitants, such as shops, hotels and residential accommodations meant for rent.

Concessional rat are fixed as follow :-

Deodar Rs.	**Kail Rs.**	**Fir/Spruce Rs.**		**Chir Rs.**
Madyan, Behrain, Fatehpur and Matta Tehsils	700.00	500.00	450.00	—
Khabbal, Babuzai and Charbag	600.00	400.00	300.00	—
Alpuri, Kana, Lilowni Puran and Chakesar Tehsils	600	400	350	—
Buner Sub-Division	—	200.00	150.00	100.00

(3) These rates may be revised by the Chief Conservator of Forests from time to time.

17. Conservator of Forests may grant on concessional rates, upto a maximum of 500 tree annually. The trees shall not be marked unless price is realized in full. Trees of 28'' d.b.h. shall not be marked for grant of concessional rates. All other formalities, procedure and restrictions shall be the same as are prescribed for the grant of timber for domestic use to right holders.

18. Special Contract.—

Supply of timber will be permitted to persons residing in Swat District who are neither entitled to free grant of timber nor to the grant on concessional rates. This will be done through a special contract in the following manner :-

(i) On the recommendation of Conservator, the Chief Conservator of Forests will decide the volume of the special contracts to be given for this purpose. The Contractor to whom such a contract is given will be required to maintain a depot and issue timber from it on the rates specified by the Chief Conservator of Forests to the persons eligible on the authorization of the Divisional Forest Officer after due verification of the needs is carried out as prescribed in rule 5 of these rules for the free grant of timber. All other formalities, procedure and restriction shall be the same as prescribed in the said rule. The Chief

Conservator of Forests will fix the sizes into which such timber will be converted and will specify conditions for the operations of such contracts from time to time.

(ii) Special contracts will be granted subject to the availability of balance in the volume fixed for local use in the sanctioned working plans after the demands met with for free grants and on concessional rates.

19. Commercial Sales.—

(1) Regular commercial sale will be conducted in the forests in accordance with the sanctioned working plans. Fifteen per cent of the sale proceeds from commercial sales in Dir, Swat and Kalam and fifteen per cent sales proceeds on concessional rates and quomi contracts in Swat will be distributed amongst the right-holders.

(2) The Divisional Forest Officer will issue a cheque in the name of the Deputy Commissioner for the amount of share of the local inhabitants out of the sale proceeds. The amount will be distributed by the Deputy Commissioner or his representative amongst the right-holders, and the acquittance roll will be forwarded to the Conservator of Forests on each occasion the payment is made. The Conservator of Forests will maintain the accounts for audit purposes.

20. Punishment.—

Any breach of these rules shall be punishable with imprisonment or with a fine or with both as provided in section 33 of the Forest Act, 1927.

SCHEDULE

Annual quota of trees prescribed for the domestic needs of the local population in Swat District.

Serial No.	Name of Tehsil	Central Quota	Local Quota
1.	Babuzai-Manglawar area	50	150
2.	Babuzai-Jambil Area	50	150
3.	Charbagh Maturizai Area	20	180
4.	Azai Khel Area	30	270
5.	Janki Khel Area	20	180
6.	Madyan Area	230	270
7.	Behrain Area	40	360
8.	Shamizal (Bar Swat) Area	40	360
9.	Si-Boojnai 9bar Swat) Area	40	360
10.	Kabal Area	40	360

5.1.2.11 Hazara District Protected Forest Rules, 1973

APPENDIX XVI

HAZARA DISTRICT PROTECTED FOREST RULES, 1973.

No.Soft.(Fnd).V-168/71.—In exercise of the power conferred on him by Section 32,68,72 and 76 of the Forest Act, 1927 (Act XVI of 1927) the Governor, North West Frontier Province, is pleased to make the following rules, namely:-

1. These rules may be called the Hazara District protected Forest rules, 1973 (Sic). (PLD 1975 N.W.F.P. Statutes P.207.

2. They shall come into force at once.

3. They shall apply to Government lands along roads, Canals, Railways and Forest lands resumed by Government.

2. In these rules:—

   (a) ”Division Forest Officer” mean Divisional Forest Officer, incharge of the Division concerned; and

   (b) ”Conservator” means the Conservator of Forest, incharge of the conservancy Circle concerned.

3. (1) Cutting, Sawing, Conversion and removal of trees and timber and collection, manufacture and removal of other forest produce from the protected forest is prohibited, except as provided in these rules.

   (2) Cutting of the trees from protected Forest for Commercial purpose shall be done under approved working plans schemes and sale proceeds thereof shall be credited to Government account as revenue of the Forest Department.

   (3) Resin taping operation and collection of other Forest produce in the protected forest shall be organized by the Divisional Forest officer on the pattern in the vogue in reserved forest and the sale proceeds thereof shall be credited to the Government account as revenue of the Forest Department.

   (4) Subject to the following conditions, the grant of trees for bonafide domestic requirements of the residence of the villages within the boundaries aries of which the protected Forest is situated shall rest with Conservators:—

      (a) the removal of trees shall be subject to silvicultural availability;

      (b) request for grant of trees shall ordinarily be rejected if alternative for meeting such demands are available

(c) the grant of trees under this rule shall not be free but on concessional rates and subject to a maximum limit to be fixed by the Provincial Government on recommendations of the Conservator; and

(d) the rates and number of trees fixed under Clause (c) of this rule shall be reviewed periodically.

5. Collection of dry and fallen branches of trees by the local residents for bonafide domestic use as firewood may be permitted by the Conservator on the terms and conditions as he may impose from time to time.

6. Grazing and gross cutting in protected forest amy be permitted by the Conservator on the following conditioner:-

(a) Grazing and Gross cutting fee shall be charged at the rates fixed by reserved forests of the Forest Division concerned;

(b) type of grazing animals to be allowed, their number and season during which grazing may be done shall be determined by the Divisional Forest Officer;

(c) The Conservator may close any part of the protected forest to grazing and gross cutting for the purpose of regeneration of conservation to period not exceeding 30 years; provided in village where there are waste-lands the area closed for grazing shall not exceed one half of the total area of protected forest in village where there are waste lands maximum limit for closure to grazing shall be one half of the total area of the waste lands and the protected forest taken together.

7. The use of existing paths and springs shall be allowed in accordance with current practices; provided that the Conservator may close an existing path after giving a notice which shall not be less than one month; and provided further that such closure shall be made only when an alternative path exists or has been provided for in the vicinity of the path so closed.

8. Quarrying for sand and stone, and digging of soil may be permitted by the Divisional Forest Officer in terms and fees in vogue for similar activities in reserved forest of the Division concerned.

9. Burning of kilus for lime, surkhi or any other purpose is prohibited except for Government works or undertaking of general public utility, and for which a fee Rs.100/- per kiln shall be charged.

10. Rules made for regulation and control of hunting, shooting, fishing, poisoning of water and setting traps or snares in reserved forest of the Division concerned shall also be applicable to the protected forest of the Division.

11. Duties and the powers of the Forest Officer in relation to affairs of the protected forest not provided for specifically in these rules shall be the same or in case of the adjoining reserved forest.

12. Any person who infringe any of the provisions of these rules shall be punishable with imprisonment for a term which may extend to six month, or the fine which may extend to five hundred rupees or with both.

5.1.2.12 NWFP Forest Officers Powers, Duties and Rewards Rules 1973

APPENDIX XVII

N.W.F.P. FOREST OFFICERS POWERS, DUTIES AND REWARD RULES, 1973

(6th June 1975).

No. Soft (FAD)V.168/71.— In exercise of the powers conferred on him by Section 76 of the Forest Act 1927 (Act XVI of 1927), read with section 72 thereof and in Suppression of all previous ruled in this behalf the Governor of the North-West Frontier Province is pleased to make the following rules, previously.

1. Short title and commencement.—

(1) These rules shall be called the North West Frontier Province Forest Officers (Powers, Duties and Rewards) Rules 1973.

(2) They shall come into force at once.

2. Definitions.—

All words and expressions used in these rules, unless the context otherwise requires, shall have the same meanings as are assigned to them in section 2 of the Forest Act, 1927 (hereinafter referred to as the Act.)

3. Powers of Forest Officer.—

The Forest Officers mentioned in column 2 of the Schedule to these rules shall exercise powers in respect of the subjects under the section of the Act, specified against each in columns 3 and 4 of the said Schedule.

4. Special power of the Chief Conservator and Conservators.—

Notwithstanding the provisions of rule 3 the Chief Conservator of Forests, and conservator of Forests may exercise all, or any of the powers conferred on various categories of the Forest Officers under these rules.

5. Reward.—

(1) Upon conviction of the offender or on directing the conviction of property under section 56 of the Act, the Magistrate by whom the case has been decided, may order payment of reward not exceeding three-fourth in values of the property confiscated on penalty imposed, or five hundred rupees, whichever is less to the person or persons responsible for the detection of the case. The rewards shall be paid out of the proceeds of the property confiscated or the penalty imposed as the case may be:

Provided that no reward shall be admissible to Revenue Officers of and above the rank of Tehsildars, all police officers above the rank of Inspector and all Forest Officers of and above the rank of Extra Assistant Conservator.

Provided further that where the number of persons responsible for the detection of a case is more than one, the reward admissible under this rule shall be distributed amongst the persons concerned equally.

(2) If after payment of the reward the conviction is reversed in appeal, the amount paid away in reward shall not be recovered unless it shall appear the person or persons receiving the reward have acted fraudulently in the case.

(3) In case where, under section 68 of the Act, a Forest Officer has accepted a sum of money as compensation, for any damage which may have been committed, the Conservator of Forests, concerned or any other officer empowered on this behalf, amy authorise the payment of a portion of the amount realized (not exceeding three-fourths) as a reward to any person or persons who may be contributed to the discovery of the offender.

SCHEDULE

S.No.	Forest Officers empowered	Brief description of the power.
1.	All Deputy Conservator, Assistant Conservator, with incharge of Forest Division	To publish translation of notification of reserved forests.
2.	Chief Conservator of Forest and all Conservators of Forests.	To stop ways and water course in a reserved forest.
3.	All Deputy Conservators, Assistant Conservators and Extra Assistant Conservator when incharge of Forests Division	To notify season during which the kindling act of fire is not prohibited.
4.	All Deputy Conservators, Assistant Conservators, Extra Assistant Con. ervators. Forest Rangers, Deputy Rangers and Foresters when specially authorised in that behalf by the Chief Conservator of Forests, or Conservator of Forests.	To permit acts otherwise prohibited in reserved forest.
5.	All Deputy Conservators, Assistant Conservator, Extra Assistant Con-servator, Forest Ranger, Deputy Rangers, and Foresters when specially authorised in that behalf by the Chief Conservator of Forests, or Conservator of Forest.	To permit act otherwise prohibited in protected forest.

6.	All Deputy Conservator, Assistant Conservator and Extra Assistant Conservator when incharge of Forest Division.	To notify depots for drift timber etc.
7.	All Deputy Conservator, Assistant Conservator, and Extra Assistant Conservator.	To use notice to claimants of drift timber etc.
8.	All Deputy Conservators, Assistant conservator, and Extra Assistant Conservator.	To decide claims to drift timber etc.
9.	All Deputy Conservators, Assistant Conservator and Extra Conservator.	To deceive payment on account of drift timber, etc.
10.	All Deputy Conservators, Assistant conservator and Extra Assistant Conservator of Forest when incharge of Forest Division.	To direct release of property seized.
11.	All Forest Officers, not below the rank Assistant Conservator of Forests.	To accept compensation.
12.	Conservator of Forests and all Divisional Forest Officers provided that such jobs are held by officers not lower in Assistant Conservator of Forests, or Extra Assistant Conservator of Forest, and that they have passed prescribed departmental examinations in Forest Law.	Powers of Civil Court to compel attendance of witnesses and production of documents, etc.
13.	(a) Conservator of Forests. (b) Assistant Conservator of Forests and Extra-Assistant conservator of Forests, who have passed the departmental examination in Forest Law.	Power to issue search warrant under the Code of Criminal Procedure.
14.	Conservator of Forests and all Forest Officers above the rank of Assistant Conservator of Forests provided that they have passed the prescribed departmental examination in Forest Law.	Power to hold an enquiry into forest officers, and in the course of such inquiry to receive and record evidence.
15.	All Deputy Conservation, Assistant Conservator, and Extra Assistant conservator of Forest When incharge of Forest Division.	To take possession of, and sell ,forest produce For Government .

5.1.2.13 NWFP Timber Market (Peshawar) Ordinance 1972

N.-W.F.P. ORDINANCE NO. VIII OF 1972.

THE NORTH-WEST FRONTIER PROVINCE TIMBER MARKET

(PESHAWAR) ORDINANCE, 1972.

Peshawar, the 31st March 1972.

AN
ORDINANCE

to provide for the establishment of a timber market in the revenue estate of village Achar.

WHEREAS it is expedient to provide for the establishment of a timber market in the revenue estate of village Achar;

NOW, THEREFORE, in pursuance of the Material Law Proclamation of 25th March, 1969, read with the Proclamation of 20th December, 1971, and the Provincial Constitution Order, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance.-

1. (1) This Ordinance may be called the North-West Frontier Province Timber Market (Peshawar) Ordinance, 1972.

(2) It shall come into force at once.

2. In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

(a) "allot" in all grammatical variations includes to allot by drawing lots or by auction or by exchange of allotted sites, and "re-allot"shall be constructed accordingly;

(b) "Government"means the Government of the North-West Frontier Province;

(c) "land"means the land described in the Schedule to this Ordinance, required for establishment of the timber market; and

(d) "timber"includes bamboos.

3. Notwithstanding anything to the contrary contained in the Land Acquisition Act, 1894 (Act I of 1894), the Town Improvement Act, 1922 (Punjab Act IV of 1922), as amended by the Punjab Town Improvement (West Pakistan Amendment) Ordinance, 1962 (W.P. Ord. XVIII of 1962), the North-West Frontier Province People's Local Government Ordinance, 1972 (N.-W.F.P. Ord. III of 1972), or any other law for the time being in force or in any decree, judgement or order of any Court or authority-

(a) Government shall forthwith take possession of the land, summarily ejecting, if necessary, any person in occupation of any part thereof;

(b) The compensation for the land and crops, if any, standing thereon shall be assessed by the Collector, Peshawar, on the principles laid down in the Land Acquisition Act,

1894 (Act I of 1894), and the assessment, subject to the confirmation by the Commissioner, Peshawar Division, shall be final;

(c) The compensation awarded shall be paid by the Peshawar Improvement Trust, Peshawar;

(d) Government shall transfer the said land to the Peshawar Improvement Trust subject to the Provisions of Section 41 of the Land Acquisition Act, 1894(Act 1 of 1894), so far as applicable, as if the Peshawar Improvement Trust were a Company and shall put the Peshawar Improvement Trust in possession thereof and thereupon the said land shall be deemed to have been duly acquired by the Peshawar Improvement Trust free form all encumbrances.

4. (1) the Peshawar Improvement Trust shall forthwith layout the timber market on the land, frame rules and do all things necessary for the establishment of the timber market on the land.

(2) The Peshawar Improvement Trust, its Chairman or any other officer authorised by the Trust in that behalf, shall have the power to –

(a) allot sites to timber merchants;

(b) determine the price of the site allotted to each timber merchant and the terms and conditions of payment thereof, and the method of recovery in case of default; and

(c) require the allottee to erect on the allotted site such structure and within such period as the Chairman may determine.

(3) Subject to the approval of Government, the Peshawar Improvement Trust shall have power, at any stage, to modify, alter, amend or change the purpose or use for which any site has been earmarked in the original layout and to earmark it for any other purpose or use connected with the establishment of the timber market.

5. Any person who has been allotted a site in the timber market shall, when so required by the Commissioner, Peshawar Division, occupy the said site and carry on the business of timber market merchant there.

6. No person shall carry on the business of timber merchant within the limits of jurisdiction of Peshawar improvement Trust, or that of Municipal limits of Peshawar Municipality except at the timber market established under this Ordinance.

7. Any person who contravenes or attempts to contravene or abets the contravention of the provisions of section 5 or section 6 or any direction issued by the Commissioner, Peshawar Division, or the Peshawar Improvement Trust, shall be punishable with imprisonment which may extend to three years or with fine which may extend to ten thousand rupee, or with both.

8. No provision of this Ordinance shall be called in question in any Court including the High Court and Supreme Court.

9. No suit or prosecution or other legal proceedings shall lie against Government, the Commissioner, Peshawar Division, the Peshawar Improvement Trust or its Chairman or other officer, or any servant of Government or any other person to whom a site has been allotted in the timber market under section 4, in respect of anything done or intended to be done in good faith under this Ordinance.

5.1.2.15 Forest Transport Rules 1952

CHAPTER XIX

FOREST TRANSPORT RULES

NOTIFICATION.

13 August,1952

No.13938-T.D.-- In supersession of Notification No.1142-T.D 18/77,dated the 15 January, 1934 and No.1143-T.Dated 15th January 1934 and in exercise of the powers conferred by section 29(*b*)of the Hazara Forest Act,1936(Act VI of 1937) the Governor, North-West Frontier Province is pleased to make the following rules for regulating the transport of timber firewood and other forest produce by land within the limits of Hazara District and to direct that these rules shall come into force from the date of their publication .

1. All words used in these rules and defined in the Hazara Forest Act,1936,shall be deemed to have the meaning respectively attributed to them by the said Act:-

    (i) The term "D.F.O." means any Forest Officer, Incharge of a Forest Division in the Hazara District .

    (ii) The term "Conservator" means the Conservator of Forests, North West Frontier Province.

    (iii) "Check posts" means any of the places fixed for checking of timber, firewood or other forest produce while in transit as determined by the Conservator from time to time.

2. All timber, firewood or other forest produce sold or obtained from the Reserved Forests, waste land and other places in the Hazara District shall, during its transport in the Hazara District by land, be covered by a transport pass issued by a Divisional Forest Officer and accompanied by Challan. The transport pass and the challan shall be as prescribed and supplied by the Forest Department on payment of such price and in the manner as the Conservator may determine from time to time:

    Provided that the timber obtained from waste land or Reserved Forests by the right holders or free grantees for their domestic requirements shall be exempted from the accompaniment of the transport pass and the challan and only the free grant permit granted originally shall suffice:

    Provided further that the timber obtained or purchased from a registered sale depot shall be exempted from the accompaniment of the transport pass but shall be covered by a departmental challan issued by the depot holders:

    Provided further that in case of firewood or other forest produce, obtained by right holders from waste land and other places, and being transported for domestic purposes from places other than the places of their residence, a transport pass shall be issued without the payment of any fees.

Provided further that the transport of firewood. and other forest produce by head loads and pack loads by the right holders for their domestic use shall be permitted at all times without any restriction as provided in the Guzara Rules .

3. No timber, firewood or other forest produce shall be transported within the limits of the Hazara District by land between the hours of sunset and sunrise.

4. The transport pass shall specify the kind and quantity of timber, firewood or other forest produce, the owner or the person incharge of it, the places from where obtained and the places for which destined and shall authorise transport within a fixed period.

   All such timber, firewood or other forest produce shall be transported only in accordance with the conditions of the transport pass.

5. The authority empowered to issue transport pass may refuse to issue it if it has reason to believe that the timber, firewood or other forest produce has not been legally obtained by the applicant.

6. Unless exempted by rule 7 or special permission of the authority mentioned in rule 2, no timber shall be transported by land within the Hazara District, unless it bears hammer marks: -

   (i) In case of timber belonging to the Forest Department or of State Department, the property mark of such Department.

   (ii) In case of timber sold by or obtained from the Forest Department, the Forest Department pass mark.

   (iii) In case of timber sold or obtained from Guzaras, the Guzara Pass Mark.

   (iv) In case of other timber the person wishing to so transport it by land within Hazara District shall apply to the appropriate authorities mentioned in rule 2 who may either cause it to be marked with a hammer work or may exempt it from such markings.

7. Rule 6 does not apply to unsawn pieces suited only for use as firewood being under 5 feet length and less than 3 feet in girth.

   Without prejudice to any liability incurred under the provision of section 39,Hazara Forest Act,1936, Rules 2 to 6 do not apply to timber fashioned into articles of furniture, cart carriages, agricultural, domestic or other implements or to pieces thereof.

8. The Conservator may establish check posts in appropriate places to control the transport of timber, firewood or other forest produce by land within the Hazara District.

9. Any person incharge of timber, firewood or other forest produce shall produce the transport pass and the covering challan if any, for the inspection of any Forest Officer Incharge of the check post and shall provide facilities for examination of the consignment in question.

   If such Forest Officer finds that the timber, firewood are other forest produce his being transported in accordance with these rules, he shall allow it to proceed to its destination.

On the other hand, if the Forest Officer finds that the transport is not in conformity with these rules he shall forbid such transport and seize such timber, firewood or other forest produce and proceed into the matter according to the provisions of the Hazara Forest Act, 1936.

10. Any Forest Officer or Police Officer may stop and examine such timber, firewood or other forest produce in transit in respect of which there is reason to believe that any money is payable to Government on account of price thereof or on account of any duty, fee, royalty or charge thereof, or for the purpose of check provided by these rules and may compare it with the transport pass and covering challan, if any.

Any person engaged in the transport of such timber, firewood or other forest produce shall produce such transport pass and the covering challan, if any, and shall provide facilities for such examination.

Any irregularity noticed will be dealt with as provided in rule 9.

11. Any person who infringes any of the provision of these rules shall without prejudice to any liability incurred under the provisions of section 39 of the Hazara forest Act ,1936 relating to seizure and confiscation, be liable to imprisonment of either description for a term which may extend to 6 months or to a fine which may extend to five hundred rupees or to both. The timber, firewood or other forest produce so seized being transported within Hazara District in contravention of the provisions of these rules shall always be treated as the property of the Forest Department and so shall be any conveyance used in the transport of such timber, firewood or other forest produce.

5.1.2.16 River Rules 1952

CHAPTER XVIII

RIVER RULES

Notification.

5th September, 1952.

No. 15381-DD.—In supersession of Notification No. 324-G. I. D., dated the 9th January, 1932 and in exercise of the powers vested in him by section 41 of the Forest Act, XVI of 1927 and by section 29 of the Hazara Forest Act, 1936, (Act VI of 1937), the Governor, North-West Frontier Province, is pleased to make the following rules regulating the import, launching collection and rafting of timber and registration of timber property marks all the rivers and streams in the Hazara District and the areas lying within direct distance of five miles from left bank of the Indus River and its tributaries in Upper Tanawal, and on the Indus River and its tributaries, the Kabul and Swat Rivers so far as this River and its tributaries are situated in the Peshawar, Mardan and Kohat Districts.

(a) Definitions.—

1. All words used in these rules and defined in the Hazara Forest Act, 1936, (Act VI of 1937), in respect of areas comprised in the Hazara District or in the Forest Act, XVI of 1927, in respect of all areas in the Peshawar, Mardan and Kohat Districts, shall be deemed to have the meanings respectively to them in the said Act,

(b) Import of timber.—

2. (i) The import of timber from Trans-frontier Territory into the Hazara District is prohibited except (a) by the Indus River and under the conditions prescribed by these rules or (b) otherwise with the special sanction of Government and under such conditions as may be imposed by the Government or by the Conservator of Forests, North-West Frontier Province.

(ii) No timber shall be imported from Trans-frontier Territories into the Hazara , Peshawar, Mardan and Kohat districts by the rivers mentioned in the preamble, until a pass showing the kind and approximate quantity of such timber has been obtained from the Forest Officer Incharge of these rivers or his duly authorised subordinates. But no such pass hall be issued (a) until the person applying for the same has produced satisfactory evidence that the timber which it is desired to import has been purchased bona fide by him from the owner or owners of a specified area and (b) unless the applicant certifies that the timber which he desires to import bears a registered property mark and (c) until any duty or toll leviable upon the timber has been paid in full.

(c) Launching and collection of timber.—

3. No person having launched his timber or set it afloat on these rivers, shall collect the same within the limits of the Peshawar, Mardan, Kohat and Hazara, Districts, except:—

(a) with the permission, in writing, of the Forest Officer Incharge of these rivers.

(b) at the places which such officer may from time to time publicly notify as places at which such collection shall ordinarily be made.

The decision of the Conservator of Forest shall be final on the question of bona fides referred to above.

(d) Rafting of timber.—

4. No person shall raft or otherwise convey any timber which has been collected on these rivers without first obtaining a pass from the Forest Officer Incharge of these rivers or from his duly authorised subordinate. Such pass shall show the number of logs or pieces, the kind of timber , the marks indicative of the owner's property therein, the place of destination and the time for which it shall remain in force. It may specify that the timber may be stopped for examination at certain places to be named in the pass and the Forest Officer may require the measurements of the timber (when this is practicable), and its estimated value to be entered.

No pass shall be issued (i) for timber imported from the territories mentioned in rule 2, unless covered by a pass issued under that rule,or (2) for any unmarked timber, or (3) for such timber as bears a mark not registered as hereinafter provided.

Provided that a pass under this the rule may be granted for any timber which is covered by a pass which has been issued in the case of Peshawar, Mardan or Kohat and Hazara Districts, in accordance with rule 3.

Any Forest Officer may require any person rafting or otherwise conveying timber as aforesaid, to produce the pas for the same at any time. No person shall be entitled to raft, or otherwise covey timber by virtue of a pass which he does not himself hold, but which is or is stated to be, in the hands of some other person. In the event of the pass not being produced the timber may be detained until such time as it is produced.

In the event of the time mentioned on the pass as that for which it shall remain in force having expired before the arrival at its destination of the property covered by the said pass, the Forest Officer-in-charge of the river may extend the period for which the pass is valid up to such time as he may think proper at a charge not exceeding twenty five percent of the fees chargeable under rule 6.

5. No person is permitted to deposit any timber for which a pass has been applied for under rule 4, but not yet issued, so close to the water's edge as to endanger its being carried away by a rise in the river before the pass is issued.

6. For the issue of a pass a fee not exceeding two annas for each log or piece of timber may be levied on these rivers. These fees will be collected at such places

at the Conservator of Forests, North-West Frontier Province may, from time to time, direct.

Exception.— No fee will be charged under this rule for the issue of a pass for the rafting or conveyance on the rivers and streams of the Hazara District of timber obtained by resident and non-resident right-holders from their Guzara Forest for their bona fide domestic use and not for sale.

(e) Acts prohibited.—

7. (i) No person shall, without the written permission of Forest Officers Incharge of these rivers :—

(a) cut up, move, remove, sell, conceal, mark, alter or efface any mark of any timber while in transit or adrift on these rivers, or while stranded on any bank, or island of these rivers within the limits of Peshawar Mardan, Kohat and Hazara Districts ; or

(b) saw or cut up timber or burn timber for the manufacture of charcoal bricks, lime, surkhi or any other material on these rivers or at any place on either bank of the main stream of these rivers which is within a distance of five miles from such bank at its cold season level within the limits of Peshawar, Mardan, Kohat and Hazara Districts ;

Provided that rule 7 (1) (a) and (b) shall not apply (i) to any piece to unmarked timber, which can be carried by one man (provided that no log scantling or piece of wood may be cut or split in order to reduce its size so to bring it within the provisions of this proviso) or (ii) to any areas on the down stream side of Makhad.

(2) Every written permission granted under clause (I) shall specify the place at which it alone may be acted upon, and may contain such conditions as to the previous inspection of he timber and as to other matters as the Forest Officer may consider necessary.

(f) Registration of timber property marked.—

8. Every person wishing to import timber into the Hazara, Peshawar or Mardan District, or to float or otherwise convey timber on these rivers shall intimate to the Forest Officer Incharge of these rivers the mark or marks, indicating his proprietary right in such timber, which he desires to register.

9. On receipt of the information required by Rule 8, the Forest Officer shall, unless the required information is already in his possession, institute enquiries to discover whether the applicant is a bona fide and reputable dealer for the purchase and sale of timber and commands at the time a source of supply of trees or timber. If the result of such enquiries is not satisfactory, he shall such enquiries such marks for a period of one year on payment of a registration fee of two rupees for each separate mark so registered, but if the number of murks exceeds three, the fee shall be five rupees for each mark.

The Forest Officer may also cancel any property mark already registered if on account of a conviction for any formar offence or for any other reason which seems

to him to be sufficient, the holder is not considered to be a fit person to be entrusted with such mark.

No order of the Forest Officer refusion or cancelling such mark or marks shall be final, until and unless the Conservator or Forests has, after considering the objection of the aggrieved party if any, passed an order confirming or setting aside the same, as the case may be.

10. The period of one year laid down in Rule 9 may be extended, a year at a time, by successive periods of one year on payment of a further fee of one rupee per annum for every separate mark provided that the Forest Officer is satisfied that the conditions of Rule 9 continue to be met.

11. No person shall be allowed to register a mark already registered in favour of another person, nor any mark used by Government ; and the Forest Officer shall refuse registration of any work which in his judgment so closely resembles a mark used by Government or registered in favour or another person as to easily reproduceable by altering such mark.

12. A certificate showing the mark registered, the date of registration, the period for which it holds good and aknowledgement of the payment of the prescribed fees shall be given to every person whose mark is registered.

(g) Temporary property marks.—

13. Notwithstanding anything contained in the foregoing rules, temporary property marks for special consignments of timber to be transported by these rivers may be registered by the Forest Officer incharge of these rivers or with the written permission of that officer by any other Forest Officer.

Such registration shall be made, under such conditions as the Conservator of Forest, North-West Frontier Province may, from time to time, direct. It shall hold good for a period of three months and a fee of eight annas shall be payable of each mark so registered.

5.1.2.17 Hazara Management of Waste Land (Guzaras) Rules 1950

PART 'C'

Former N.-W.F.P. Province

CHAPTER XV

FOREST RULES FOR APPLICATION IN FORMER N.-W.F.P.

Notification

12th September, 1950

No.23370/18/116.DD.— In exercise of powers conferred on him ### section 53(1) of the North-West Frontier Province Hazara Forest Act, ### and in supersession of Notification No.1529-G, dated the 12th August, ### as amended from time to time, the Governor, North-West Frontier Province is pleased to make the following rules on the management of waste ### (Guzaras) in the Hazara District.

These Rules will have effect from 1st May, 1950:—

Rules Regarding the Management of Guzaras of the Villages in the Hazara District.

1. Short title.—

These Rules shall be Hazara Management of Waste Lands (Guzaras) Rules, 1950.

2. Definition. —

All words used in these Rules and defined in Section ### of the North-West Frontier Province Hazara Forest Act, 1936, shall be deemed to have the meanings respectively attributed to them the said Act.

3. Management of Guzaras.—

The management of waste lands (hem### after called Guzaras) in the Hazara district shall be in the hands of the Conservator of Forests, North-West Frontier Province, (hereinafter referred to the Conservator) who shall be invested with all the powers of Deputy Commissioner under the Hazara Forest Act, 1936.

4. Guzara Division.—

To assist the Conservator in the management of Guzaras, and Guzara Division shall be created and placed under the chair of the Divisional Forest Officer together with the requisite technical and subordinate staff.

5. Duties of the Conservator of Forest and his Staff.—

(a) Subject to the general control of the Deputy Commissioner, Hazara, the Conservator shall have full control of Guzara matters and shall have authority to issue the instructions as he may consider necessary on the administration and works of the Guzaras.

(b) If in any matter done or intended to be done by the Conservator, the Deputy Commissioner, Hazara and the Conservator disagree, a reference should be made to the Provincial Government through the Secretary, Development Departments.

6. (a) The duties of the Conservator and staff under him in respect of the management of Guzaras shall be as laid down in the Punjab Forest Manual Vol. II in respect of Reserved Forest.

(b) The administration of Guzaras shall be carried out on the same technical lines as regards the drawing up of working plans, preparation and submission of budget proposal and appropriation account, keeping of compartment history, files inspection notes and preparation of annual reports, etc., as that of any other Division of Reserved Forests.

(c) The Conservator shall allot a separate Chapter on the working of Guzara Division in his annual report on forests.

7. Utilisation of dry wood and brush wood by right-holder and other persons.—

In all Guzaras dry wood whether standing or fallen or brush wood may be utilised without restriction of domestic or agricultural purposes by resident right-holders within the limits of the village in which it is found and by non-resident holders in the limits of the village where they reside and also by persons whether resident or non-residents who are not right-holders so long as the right holders raise no objection to their doing so and where the Conservator does not think it necessary to interfere in the interest of the forest conservancy:

Provided that nothing in this clause shall be deemed to allow without previous sanction of the Conservator, the cutting or removal of any trees that have been killed by illicit methods or the utilisation of any brush wood or dry wood in a Guzara that has been burned without the permission of the Conservator.

8. Sale of dry wood and brush wood.—

(a) The sale of dry wood and brush wood from any Guzara shall be prohibited except with the sanction of the Conservator and under such conditions as he may think fit to impose.

(b) In villages to which permission as in clause (a) has been accorded, the only persons entitled to sell wood shall be the resident right-holders and such other persons as Conservator may specify. In the case of the latter persons, the Conservator may direct that each of them should obtain form him a licence for which a fee not more than Rs.5 per annum shall be charged.

(c) Sale of dead and dry wood shall be permitted, in head-loads by the right-holders within and without the limits of village, provided the majority of the right-holders in the Guzara do not object to it:

Provided that the sale of any dry wood has formed part of the structure of any building shall in any case be strictly prohibited.

9. Utilisation of green wood for agricultural implements, burial purposes or charpoys.—

The provisions of Rule shall apply so far as may be to green wood also required for the manufacturer or repair of agricultural implements, or for burial purposes and to the bark of felled or fallen trees, and that of Rule 8 to green wood converted into supports for charpoys.

10. Grant of trees.—

No tree should be felled or removed from the Guzara except with the permission of Conservator or the Divisional Forest Officer and in the manner provided below.

11. Trees of domestic use.—

(a) The grant of trees from Guzaras for domestic purposes shall rest with the Conservator.

(b) Application of such grants, previously certified by the village Patwari as regards the rights of the applicant in the Guzaras from which trees as required to be felled shall be made to the Range Officer concerned.

(c) No files shall be prepared of these applications, but the Range Officer shall enter them in a register to be maintained in the form below which he shall bring or submit to the Divisional Forest Officer along with the applications in original once a fortnight or if immediate orders are not required, once in month. The Divisional Forest Officer shall then write in the appropriate column of the register his own order on each application according sanction or rejecting it, and return the register in original to the Range Officer concerned together with the applications of necessary action in accordance with the

No.	Name and other particulars of the applicants	Date of application	Guzara affected	Nature of application	Person if any to whom sent by Range Officer with date	Report of Patwari with date	Report of the Range Officer	Order of D.F.O.	Additional report of final orders of D.F.O.	Other Intermediate or final orders of D.F.O.	No. of trees felled
1	2	3	4	5	6	7	8	9	10	11	12

procedure laid down for the cutting in or removal of trees from a reserved forest. The Range Officer after a period of 18 months shall destroy the applications and other papers connected with it and the entries in the register should be only record kept.

(d) No grant of trees shall be made to non-right-holders and no grant shall be made to the members of the individual family for whom trees have already been sanctioned unless other members can prove to the satisfaction of the Divisional Forest Officer that they require the timber for the construction of a separate house:

Provided that the grant of trees for construction or repair to a mosque in any village in the Hazara District, where there exists no Guzara for its own shall, subject to the provision of the rule 11(c) be permissible from any other Guzara, if the owner of the Guzara unanimously agree to give the trees for the purpose and silviculturally available trees in the Guzara so affected are more than the future prospective demand of the right-holders themselves.

(e) The grant shall be confined to the amount of timber actually required for the construction of a house and not the amount of money realisable from the sale of timber for the total cost of construction.

(f) The number of trees which a right-holder shall be allowed to fell for building purposes at any one time shall not exceed that laid in the Wajib-ul-Arz of the village in which the Guzara is situated:

Provide that the total number of trees granted in any one year from a particular Guzara shall not exceed such limits as the Conservator may fix from time to time keeping in view the prospective demand of that village in future years:

Provided also that if a non-resident right-holder has acquired rights in any Guzaras since the settlement of 1904-1905 otherwise than by means of succession, his request for grant of trees shall ordinarily be refused:

Provided also that the Divisional Forest Officer shall, in any case, refuse his consent to the grant of trees in favour of anon-resident-holder, if the trees in the Guzara affected are not more than sufficient to supply the want of the resident right-holders.

12. Commercial fellings.—

(a) All Guzaras shall be closed, for commercial exploitation, of trees and other forest produce, for the next 20 years, provided that sale of the Forest Department of trees, silviculturally available, and such other forest produce, as may be considered advantageous shall be permissible at all times.

(b) The proceeds of such sales minus shall departmental charges not exceeding 20 per cent of the sale proceeds as Government may fix from time to time by

Notification in addition to any seigniorage fees leviable under the Act, shall be payable to the right-holders.

13. Procedure for grant of trees for domestic use.—

The Range Officer shall mark in each Guzara a number of trees from time to time and list them serially n a register for grant of right-holders and when they apply. A note should be made in this register of the trees granted and also when the trees are felled and removed.

14. (a) All trees recorded in the register shall on grant be felled and their wood utilised for the purposes stated, and for no other, within one year from the date of entry in the register, otherwise the right therein of the person profession to require them shall lapse.

(b) No tree felled under rule 11 shall be removed by the resident right-holders from the limits of the village where the Guzara is situated, and by non-resident right-holders to a village other than where they normally permanently reside.

15. Where a right-holder commits a breach of the provisions of the Act or of the rules relating to the felling of trees and the utilisation of the wood obtained therefrom, the Conservator (regardless of the fact whether any other punishment has been inflicted or not) shall prohibit him from felling any trees in the waste land to which his right is attached for a period not exceeding three years.

16. Gift of trees.—

Gift of trees for purposes of sale shall be strictly forbidden.

17. Barking and lopping.—

No person shall bark a tree or cut out torch-wood from a standing tree.

18. No person shall lop trees in so drastic a manner as to kill them, and no person shall lop any coniterous trees.

19. Manufacture of charcoal and burning of kiln for sale.—

The manufacture of charcoal from the burning of brick kilns, lime kilns or surkhi kilns with wood cut or collected from a Guzara for the purposes of sale and the sale of charcoal, bricks, lime or surkhi so manufactured are prohibited unless the Conservator for special reasons shall see fit to grant permission for such manufacture or burning, in which case he shall charge such fees as may be prescribed from time to time by the Government in this behalf.

20. Manufacture of charcoal and burning of kiln for domestic.—

(a) Where a right-holder in a Guzara desires to burn a lime kiln or surkhi kiln or wants to manufacture charcoal to meet his own domestic requirements, the Conservator may on application to him after verifying the rights of the application and getting a report from the Divisional Forest Officer as to the availability of sufficient fuel for the purpose in the Guzara, grant him permission to do so on his paying a fee of Rs.10 per kiln in case of lime and surkhi. NO fee shall, however, be charged for the burning of charcoal.

(b) The kiln shall be constructed within the limits of the village when the applicant resides and from which the necessary fuel is obtained and the lime and surkhi as the case may be shall not be removed beyond the limits of that village.

(c) Only brush wood and dead wood not fit for building purposes may be used for such kilns.

(d) No kiln shall be worked for more than two months under any of permit.

(e) In case where lime or surkhi is required for a mosque or any other place of worship, Ziarat, sacred place or charitable institution no fee shall be charged.

21. Collection and removal of medicine herbs.—

The collection or removal of medicinal herbs from Guzara is prohibited. The Conservator may, however, allow the taking out of such herbs on such terms and such conditions as obtained in the case of Reserved Forests. The proceeds of such sales after appropriating a sum not exceeding 20 percent of the total as departmental charges shall be payable to the right-holders.

22. Miscellaneous.—

The exchange of private land with land comprising a Guzara is prohibited, except with the special sanction of the Provincial Government.

23. Any further breakage of pastures in the Kaghan Valley shall not be permitted.

24. Subject to the provision of Rule 5, the Deputy Commissioner shall, on the request of the Conservator, demarcate all wooded areas and such way in respect of which the Conservator deems it necessary to take action under sections 13, 14 and 16 of the Hazara Forest Act. Such areas should be cleaned shown on the village map and record of them should be kept at the Forest's Division Office and also at the Head Quarters of each Range in the form below:—

Serial No.	Name of Guzara	Field of No. Included in the demarcated areas	Area of each __ No and total the marcated areas	Additionas alteration	Authority with date sanctioning the change	Total demarcated area upto date
1	2	3	4	5	6	7

25. Any breach of these Rules shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to five hundred rupees or with both, and any wood or other produce with regard to which an offence has been committed shall be confiscated, and sold by orders of the Conservator subject to the provisions of section 517, Criminal Procedure Code. The proceeds of such sale shall be credited to Government as revenue of the Guzara Division.

5.1.2.18 Protection of Trees and Brushwood Act 1949

NORTH-WEST FRONTIER PROVINCE
[Act No. VII of 1949]

THE NORTH-WEST FRONTIER PROVINCE PROTECTION OF TREES AND BRUSHWOOD ACT, 1949

_____

AN

ACT

to protect the trees and brushwood belonging to the Government and Local Bodies

Preamble

WHEREAS it is expedient to provide for the protection of the trees and brushwood; It is hereby enacted as follows:-

Short title extnet and commencement.

1. (1) This Act may be called the North-West Frontier [1][Province] Protection of Trees and Brushwood Act, 1949

(2) It extends to the whole of the [2]North-West Frontier [1][Province].

(3) It shall come into force at once.

Definitions.

2. In this act unless there is anything repugnant in the subject or context, the following expressions shall have the meanings hereby respectively assigned to them, that is to say–

(b) "Local Bodies" means Municipal Committees, Notified Area Committees, Cantonments and District Boards, in the North-West Frontier [1][Province]

(c) "Trees" means trees of all kinds, belonging to the Government or Local Bodies.

(d) "Brushwood" includes all woody plants, fruit trees, bushes, shrubs and small trees belonging to the Government or Local Bodies.

(e) "An offence under this Act" means –

(1) felling or girdling a tree or a brushwood;

(2) lopping, tappling, stripping off the barks of leaves from, setting fire to, kindling any fire or leaving any fire burning in the vicinity of, keeping or carrying any fire in

[1] The word "Province" inserted by N.W.F.P. A. L. O. 1975 which was earlier omitted by W.P.A.L.O. 1964 Part-III.

[2] Now to be constructed as referring to the Districts of Bannu, D.I. Khan Hazara, Mardan, Kohat and Peshawar, *see* W.P. Act XVI of 1957, s. 3(1), Sch.

[1] The word "Province" inserted by N.W.F.P. A. L. O. 1975 which was earlier omitted by W.P.A.L.O. 1964 Part-III.

[1] The word "Province" inserted by N.W.F.P. A. L. O. 1975 which was earlier omitted by W.P.A.L.O. 1964 Part-III.

such a way as to endanger, permitting cattle to damage or otherwise in any way damaging any tree or brushwood whether, standing, fallen or felled;

(3) removing any felled or fallen tree or brushwood or any part thereof;

(4) infringing any rules made under this Act;

Provided that nothing shall be deemed to be an offence under this Act when done with the permission in writing of the prescribed authority or in accordance with rules framed under this Act.

Libaility to percent offence under this Act.

3. (1) Every person ordinarily residing in any village or occupying or owning any land, in the vicinity of any tree or brushwood and every land-owner or occupant of any land in the vicinity of any tree or brush-wood, shall be bound to furnish without unnecessary delay to the nearest Police Officer or Magistrate any information he may possess respecting the commission of, or in intention to commit an offence under this Act, shall further be bound to prevent the commission of such an offence.

(2) Every person who neglects any duty imposed on him by this Section shall be punishable with imprisonment which may extend to three years or fine or both.

Joint liablitiy of villages.

4. (1) Without prejudice to the other provisions of this Act and in addition to any other penalty provided for by this Act, the Provincial Government may impose a fine on all persons ordinarily residing in the villages as a whole or any particular village or any land owner or occupant of land, in the vicinity of any tree or brushwood in respect of which an offence under this Act has been committed irrespective of the fact whether the person committing the offence is known or not.

(2) The Provincial Government may in their discretion give an opportunity to show cause why the fine be not imposed before imposing a fine under sub-section (1) of this Section to the representatives of the villagers, land owners or occupants of land upon whom the fine is intended to be imposed.

(3) The fine when imposed shall be received as if it was an arrear of land revenue.

P unishment.

5. Any person who commits an offence under this Act shall be punished with imprisonment for a term which may extend to three years or fine or both.

Board of Juridiction.

6. No order passed under Section 4 of this Act shall be called in question in any Court.

P ower of the provincial Government to make rules.

7. (1) The Provincial Government may frame rules to carry out the purposes of this Act.
(2) In particular and with out prejudice to the generality of the foregoing powers, such rules may provide for any of the following matters:-

(a) Prescribing the authorities entitled to grant permission to any persons to do any act which is an offence under this Act.

(b) Providing for the preservation and disposal of any tree or brush-wood whether standing, fallen or felled.

(c) Prescribing the authority before whom the representatives of any village land-owners or occupants of land can show cause why the fine should not be imposed upon the villagers, landowners or occupants of land under this Act.

5.1.3 Fisheries

5.1.2.1 West Pakistan Fisheries Ordinance, 1961

THE WEST PAKISTAN FISHERIES ORDINANCE, 1961,

W.P. Ord. No. XXX of 1961
[13th December, 1961]

AN
ORDINANCE

to amend and consolidate the law relating to fisheries in the Province of West Pakistan

Preamble.—

WHEREAS it is expedient to amend and consolidate the law relating to fisheries in the Province of West Pakistan;

NOW, THEREFORE, in pursuance of the Presidential Proclamation of the seventh day of October, 1958, and having received the previous instructions of the President, the Governor of West Pakistan, is pleased in exercise of all powers enabling him in that behalf, to make and promulgate the following Ordinance-

1. Short title and extent.—

(1) This Ordinance may be called the West Pakistan Fisheries Ordinance, 1961.

(2) It extends to the whole of the [3][North-West Frontier Province except the Tribal Areas.]

2. Defintions.—

In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say –

(a) "Director of Fisheries"means the Director of Fisheries'[4][…….] and includes any person appointed by Government to discharge the functions of the Director of Fisheries under this Ordinance;

(b) "fish"includes shell-fish;

(c) "fixed engine" means any net, cage, trap, or other contrivance for taking fish, fixed in the soil or made stationery in any other way;

(d) "Government" means the Government of the [5][North-West Frontier Province];

[3] In section 1, sub-section (2), the word Province of West Pakistan, except the special Ares, the words North-West Frontier Province, except the Tribal areas substituted by N.-W.F.P. Adaptation of laws Order, 1975.

[4] Omitted by ……..ibid.

[5] In section 2, in clause (b) the words West Pakistan the words North-West Frontier Province subs. By N.-W.F.P. Adaptation of laws Order, 1975.

(e) "licence", "permit", "special licence" and "special permit" mean, respectively, a licence, permit, special licence and special permit, issued under this Ordinance or any rule made there under;

(f) "prescribed" means prescribed by rules made under this Ordinance;

(g) "private water" means water which is the exclusive property of any person, or in which any person has for the time being an exclusive right of fishery, whether as owner, lessee or in any other capacity,

(h) "water" includes the sea within a distance of one marine league of the sea coast.

3. Appointment of Inspectors of Fisheries.—

(1) Government may, by notification, appoint such person as it thinks fit to be Inspectors of Fisheries for the purposes of this Ordinance within such local limits as may be specified.

(2) Inspectors of Fisheries shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

4. Power of the Divector to lease out any water other than private water.—

(1) The Director of Fisheries, or such other officer as he may empower in this behalf by general or special order in writing, may for a period not exceeding three years, lease out, on such conditions as may be prescribed, the right to catch fish in any water other than private water.

(2) Any amount due to Government under the provisions of sub-section (1), and remaining unpaid one month after it has become so due, may be recovered as arrears of land revenue.

5. Power of the Lease to issue permit.—

(1) The person in whose favour a lease under section 4 is granted, may issue permits in such form. Subject to such conditions and on payment of such fees, as may be prescribed, for the taking of fish in the water the right of fish wherein has been leased to him.

(2) A permit issued under sub-section (1) shall cease to be valid upon the termination or cancellation of the lease in favour of the person issuing the permit.

6. Destruction of fish by explosive.—

No person shall use [6][any dynamite, electric shock or other explosive sub stance] in any water with intent there by to catch or destroy any of the fish that may be therein.

7. Destruction of fish by poisoning water.—

No person shall put any poison, lime or noxious material into any water with intent thereby to catch or destroy any fish that may be therein.

[6] Subs by N.-W.F.P. Act No. 1 of 1991.

8. Fish that shall not be taken.—

No person shall kill, capture, or possess any species of fish specified in the second column of the First Schedule, of a size less than that specified in the third column of the said Schedule against such species.

9. Net, fixed engine trab, etc. shall noe be employed without a permit or licence.—

(1) No person shall use or employ for the capture of any species of fish specified in the First Schedule, in any water other than private water, any net, cage, trap or other contrivance for taking fish or fixed engine, except during the period permitted in respect of such species under the fourth columns of the said Schedule and under a licence or permit issued under this Ordinance [7][:]

[8][Provided that in the case of trout, only such gear and in such number shall be used or employed as may be specified in the licence or permit.

(2) Licence under sub-section (1) shall be issued by such authorities, on payment of such fees and on such conditions as may be prescribed.

10. Duty ot produce licence or permit on demand made by employees of Fisheries Department.

Every person in possession of any fishing licence or permit shall produce his licence or permit, as the case may be, on a demand made by the Inspector of Fisheries or any other person authorised in this behalf by the Director of Fisheries.

11. Power to declare any water to be a sanctuary for fish.—

(1) Notwithstanding anything contained in this Ordinance, Government may, by notification, declare any water to be sanctuary for fish mentioned in the First Schedule for a period which may be specified, and during such period no person shall kill, capture or possess such fish without a special permit issued under this Ordinance by the Director of Fisheries.

(2) The water in respect of which a notification under this section is made shall be demarcated in such manner as may be prescribed.

12. Duty of Lambardar, village watchmen etc.

Every Lambardar, Village Watchman, Canal Patwari, P. W. D. Darogha, Zilladar, Revenue Patwari, Tapedar, Supervising Tapedar and Qanungo shall be bound in the absence of reasonable excuse to give to an Inspector of Fisheries or any other person authorised in this behalf by the Director of Fisheries, information in respect of any un-authorised netting, killing or other offence under this Ordinance committed within the limits of his village or circle, as the case may be, as soon as the commission of such offence come to his knowledge.

[7] In section-, in sub-section (1), at the end the full-stop, subs, by a colon N.-W.F.P. Ord. II of 1982.
[8] Ins. By …… ibid

13. Power of majestrate to issue search warrant.—

If a Magistrate has reason to believe that an offence under this Ordinance has been, is being, or is likely to be committed, he may issue a warrant for the search of any place in which any fish, net, trap, cage or other contrivance for taking fish, or fixed engine is kept or concealed.

14. Power to search without warrant.—

An Inspector of Fisheries may, without a warrant from Magistrate, search any person, vessel, rack, chicle, ship, boat, raft package, receptacle or covering so as to satisfy himself as to whether or not an offence under this Ordinance has been committed.

15. Arrest without warrant for others under this ordinance.—

6. (1) An Inspector of Fisheries may without a warrant arrest any person committing in his view any offence under section 6, 7, 8, 9 or 11 –

(a) if the name and address of such person are unknown to him; and

(b) if such person declines to give his name and address, or there is reason to doubt the accuracy of the name and address given.

(2) A person arrested under this section may be detained until his name and address have been correctly ascertained:

Provided that no person so arrested shall be detained longer than may be necessary for bringing him before a Magistrate, except under the order of a Magistrate.

16. Power Seizer.—

An Inspector of Fisheries, or any person authorised in this behalf by the Director of Fisheries, may take possession of any net, trap, cage or other contrivance for taking fish, or fixed engine used or suspected to have been used in the commission of an offence under this Ordinance.

17. Penalties.—

[9][Whoever -

(a) contravenes the provisions of section 6 or 7 shall be punished with rigorous imprisonment which may extend to six months and with a fine which may extend to five thousand rupees; provided that the minimum punishment for the contravention of the above provisions shall not be less than three months rigorous imprisonment and a fine of three thousand rupees;

(b) contravenes the provisions of section 8, 9, 10 or 12 shall be punished with imprisonment of either description which may extend to three months or with fine which may extend to one thousand rupees or with both; and

(c) contravenes the provisions of section 11 shall, be punished with imprisonment of either description which may extend to six months or with fine which may extend to five thousand rupees or with both.

[9] Subs by N.-W.F.P. Act No. 1 of 1991.

18. Police Assistance.—

Every police officer shall upon request made by a person employed under this Ordinance assist him in the due discharge of his duties under this Ordinance.

19. Person who may lodge compliements.—

No Court shall take cognizance of any offence under this Ordinance except on the complaint in writing of an Inspector of Fisheries.

20. Constitution of any net trap, cage etc.

The Court may order the confiscation of any net, trap, cage or other contrivance for taking fish or fixed engine employed in the commission of an offence under this Ordinance.

21. Jurisdiction as respect offence within one marine league of sea coast.—

If an offence in respect of this Ordinance is committed within distance of one marine league of the sea coast then such offence may be tried, punished and in all respects dealt with as if it had been committed on the land abutting such coast.

22. Protection taken under this ordinance.—

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any provisions of this Ordinance or the rules made there under.

23. Power of government to add or exclude from first schedule.—

Government may, by notification.-

(i) add to or exclude from the First Schedule any species of fish subject to such conditions as it may impose in each case;

(j) after the period during which any fish specified in the First Schedule may be killed or captured.

24. Power to compound certain offence.—

(1) Government may, by notification, empower an Inspector of Fisheries -

(a) to accept from any person concerning whom evidence exists which if unrebutted would prove that he has committed any offence as described in the first column of the Second Schedule a sum of money by way of composition for the offence with regard to which such evidence exists, and on the payment of such sum to such officer, such person if in custody shall be discharged and no further proceedings shall be taken against him;

(b) when any property has been seized as liable to confiscation, to release the same without further payment, or on payment of the value thereof as estimated by such officer and on the payment of such value, such property shall be released and no further proceedings shall be taken in respect thereof.

(2) The sum of money which may be accepted by way of composition under clause (a) of sub-section (1) for any offence shall in no case exceed the amount mentioned against such offence in the second column of the Second Schedule.

25. Delegation of Power.—

Government may, by notification, delegate all or any of the powers conferred upon it under the provisions of this Ordinance to any officer subordinate to it.

26. Power to make rules.—

(1) Government may make rules[10] for the purpose of carrying into effect the provision of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may prescribe –

(a) the form in which, and the terms and conditions on which, a licence or a permit or a special licence or a special permit may be granted;

(b) the authority by which licences under this Ordinance may be granted;

(c) the fees to be charged for any licence or permit or special licence or special permit;

(d) the conditions subject to which the Director of Fisheries may lease the right to catch fish under this Ordinance;

(e) in the case of any species of fish, the number and sex that may be killed under a licence;

(f) the rewards to persons who render help in detection of offences under this Ordinance;

(g) the utilization of receipts recovered under this Ordinance;

(h) prohibit or regulate all or any of the following matters –

(i) the erection and use of fixed engines;

(ii) the construction of weirs; and

(iii) the dimension and kind of nets, cages, traps or other contrivances for taking fish to be used and the modes of using them.

(3) Such rules may provide that a breach thereof shall be punished with a fine not exceeding fifty rupees

27. [11][…….]

———————

[10] For rules, see W.P. Gazette Part 1, dated 1st October 1965, P. 1205

[11] Section 27 omitted by N.W.F.P. Adaptation of laws Order, 1975

5.1.3.2 NWFP Fisheries Rules 1976

NORTH-WEST FRONTIER PROVINCE

FISHERIES RULES, 1976

GAZETTE of N.W.F.P., Part 1, 3rd September, 1976.

No.SOAE (AD) V-135/70.—In exercise of the powers conferred by section 26 of the West Pakistan Fisheries Ordinance, 1961 (W.P. Ord. XXX of 1961), the Governor of the North-West Frontier Province pleased to make the following Rules, namely;—

PART 1—PRELIMINARY

1. Short title and commencement.—

(1) These rules may be called the North-West Frontier Province Fisheries Rules, 1976.

(2) They shall come into force at once.

2. Definitions.—

In these rules, unless there is anything repugnant in the subject or context,—

(a) "Appendix" means an appendix to these rules;

(b) "Form" means a form appended to these rules;

(c) "Ordinance" means the West Pakistan Fisheries Ordinance, 1961 (W.P. Ord. No. XXX of 1961);

(d) "Licensee" means a person to whom a licence is granted under the Ordinance and these rules;

(e) "Public water" means water other than the private water and includes—

(i) all natural bodies of water, such as rivers and their tributaries, creeks, brooks, lakes, channels, canal or lagoons or dug, dredged or blasted canals;

(ii) any water impounded by the construction of any lake or dam or other impounding device across the channel of navigable stream;

(iii) flowing water within which fish are free to move across property limit and which are not by law or customs property of any person;

(f) "Section" means a section of the Ordinance;

(g) "Sanctuary" means an area declared under section 11 to be sanctuary for fish;

(h) "Schedule" means a Schedule to the Ordinance;

(i) "Inspector of Fisheries" means a person appointed as such by Governor under section 3 of the Ordinance;

(j) "Fisheries Wing" means the Fisheries Wing of the North-West Frontier Province, Animal Husbandry Department.

PART II—LICENCES

3. Authority to issue licence.—

All licences under these rules, including seasonal, monthly and daily licences, to fish in the waters by the Director of Fisheries or any other officers authorised by him in his behalf on payment of fee prescribed under these rules.

4. Duration of validity of a licence.—

(1) A seasonal licence shall be valid for one year, and irrespective of the date of issue, shall remain in force from the 1st day of September to 31st day of August in the following year:

Provided that the period from 1st June to 31st August each year shall be closed season during which no fishing except with rod and line and log shall be permissible.

(2) A monthly licence shall be valid for a calendar month from the date of issue.

(3) A daily licence shall be valid for the date mentioned in the licence from half and hour before sun rise to half an hour after sunset.

5. Area to which a licence extends.—

A licence shall entitle the holder to fish in any of the waters mentioned in Appendices I, II, III and IV:

Provided that a licence for one water shall not entitle the holder to fish another water:

Provided further that a licence to fish in the waters of a river in a District mentioned in Appendix I, shall entitle the holder to fish on both banks of the river up to a limits of that District unless the fishing rights in the District of the opposite bank have been leased out.

6. Kinds of fishing gears.—

(1) Subject to the provision of sub-rule (2), a licensee shall be entitled to fish with the following kinds of gears only—

(a) nets of all kinds; provided that no net shall have at any portion of its mesh of less than 1½ inch bar measured from knot to knot, or 6 inches all around.

(b) long line with a maximum of fifty hooks;

(c) rod and line (hand line);

(d) kurli (dip net); and

(e) dhongla (hand net).

(2) Notwithstanding anything contained in sub-rule(1)—

(a) a licensee may use a maximum of two gears out of the gears mentioned in sub-rule(1), which may be of the same or of different kinds: Provided that when the licence entitles its holder to the use of one gear only, the licensee may use only that gear and in addition may also use a net for catching 'Chaulawa' for baiting purposes only;

(b) No gear other than rod and line shall be used for catching fish in any water within a distance of 100 yards from any bridge, or in any waters specified in Appendices II, III and IV;

(c) a daily licence shall not entitle its holder to fish with more than one canal in waters mentioned in clause (b).

7. Fee for the licences.—

(1) The fees for various types of licences except licences specified in Parts IV, V and VI of these rules, shall be as follows:—

(i)	For all kind of nets except those mentioned in clauses(iii), (iv) and (v) below in all waters.	35.00 per season.
(ii)	For rod and line fishing only.	12.00 per season.
(iii)	For dip net (Kurli)	8.00 per season.
(iv)	For hand net (dhangla) fishing only.	10.00 per season
(v)	for casting nets fishing only.	20.00 per season.
(vi)	For long line with a maximum of fifty hooks (lang) only.	15.00 per season

(2) The licence fee for waters reserved for rod and line gear under clause (b) of sub-rule(2) of rule 6 and specified in Appendices II and III shall be as follows:

		Rs.
(i)	Seasonal licence	35.00
(ii)	Monthly licence	10.00
(iii)	Daily licence	2.00

(3) The licences fee for special water reserved for rod and line gear under clause(b) of sub-rule (2) of rule 5 and specified in Appendix IV, shall be a follows:—

		Rs.
(i)	Seasonal licence	150.00
(ii)	Daily licence	6.00

(4) Full fee shall be charged for any broken periods.

(5) Payment of fees under these rules shall be made in cash.

8. Duplicate licence.—

The authority empowered to grant licences may if the licence granted under these rules is lost or destroyed accidentally grant a duplicate copy of the original licence on payment of fee of one rupee.

9. Refund of licence fee.—

The licence fee paid under rule 7 may be refunded to licensee or his legal heirs on the presentation of a claim for refund within one week from the date of the issue of the licence if it is proved to the satisfaction of the officer issuing the licence that the licence was not availed or under special circumstances, such as change of residence of the licensee to a place where the licence could not be made use of, or the death of the licensee immediately after the licence was issued to him.

10. Licensee to report breach of rules.—

Every licensee shall be bound to report to any officer of the Fisheries Wing of Animal Husbandry Department, any breach of the Ordinance or these rules that come to his notice.

11. Licence not transferable and no adult to be engaged as helper.—

(1) A licence, unless otherwise provided in these rules, shall not be transferable.

(2) A licensee shall not employ or engage any person (other than his own children under the age of twelve) to help him with his nets unless the person so employed is also licensee.

12. No erection of fixed engine.—

No licensee shall—

(a) erect fixed engines, except stake nets temporarily fixed in conjunction with drag nets; or

(b) construct dams or weirs; or

(c) divert water or dewater any area for catching fish.

13. Seizure.—

Any apparatus erected or used for fishing in contravention of the Ordinance or these rules, when seized under section 16 of the Ordinance shall be taken in possession by the challenging authority and may be produced in Court in support of illegal fishing and the

fish so caught may be auctioned at once by the Extra Assistant Director of Fisheries or any person authorised by him to avoid decomposition.

14. Cancellation of licence.—

The Director of Fisheries may cancel any licence granted under these rules, if the holder contravenes or instigates the contravention of any of these rules or is convicted of an offence under the Ordinance or these rules.

15. Restriction on the size and number of fish to be caught.—

(1) If any fish of the species, other than trout, mentioned in the First Schedule which is less than 12 inches in length is caught, it shall be released in the water.

(2) A licensee shall not catch more than five fish of any species from the waters mentioned in Appendices II, III and IV, excepting those released in the water under sub-rule(1).

16. Punishment.—

Any breach of these rules shall be punishable with a fine which may extend to fifty rupees.

PART III—LEASES

17. Auction of fishing rights.—

(1) On or after first of August each year, the Director of Fisheries or any other officer empowered by him in accordance with the provisions of section 4, may after giving it sufficient publicity, put to auction the rights of fishing in any of the public waters mentioned in Appendix V or any other public waters and shall execute a lease deed with highest suitable bidder from whom no arrear of any previous years fishing leases is payable.

(2) Such lease shall be given on payment of the amount offered by the bidder in full or by instalments in accordance with these rules. Individuals shall not be permitted to give joint bids, but registered firms or joint stock companies may bid through their authorised agents.

(3) A lease granted under sub-rule(1) shall remain in force for one year or part thereof from the date of execution of the lease deed to the 1st day of August of the following year, the period to be specified in the lease deed.

Provided that no fishing except with rod and line, hand line and long line with hooks shall be allowed during the close season from 1st June to 31st August.

(4) The possession of the water areas for the purpose of fishing shall be deemed to have been taken over by the lessee from the date of execution of the lease deed. All disputes over the rights of fishing with unatuthorised individuals and damage done by such unauthorised persons shall be settled by the licensee himself under the law of the country. The department will, however, deal with illegal fishing in accordance with the provision of the Ordinance.

18. Departmental operation.—

In case the highest bid at the auction is low or the water is required for development purpose, the auctioning authority may reserve it for departmental operation.

19. Unit of auction.—

River waters may be leased out in small portions coinciding with the boundaries of the districts, while the lease dhands, lakes, reservoirs, tanks, canals or ponds may be auctioned as separate units.

20. Payment of lease money.—

(1) The lessee shall at his option, either pay in full the amount offered by him fishing rights at the time of auction, or three equal instalments to be paid as follows:—

(i) the first, on the date of the auction;
(ii) the second, two months after execution of the lease deed;
(iii) and the third, four months after execution of the lease deed.

(2) When the lease money is to be paid by instalments, the lessee shall be required to furnish within a week of the approval of auction, a guarantee from a scheduled bank for the amount remaining to be paid by him, or is so permitted, security equal to such amount to the satisfaction of the auction authority.

(3) The lease deed shall be executed by the lease within one week from the date of the approval of auction, unless the period for the execution of said deed is extended by the auctioning authority.

(4) If the lessee fails to furnish bank guarantee or security, as the case may be, or to execute the lease deed within the specified time, the Director of Fisheries, or any officer authorised by him in this behalf may cancel the lease after giving the lessee an opportunity of showing cause.

(5) If the lease fails to pay instalment within fifteen days after becoming due, he will be liable to pay interest at ten per cent per annum of the sum due.

(6) If the lessee fails to clear Government dues within thirty days after becoming due, the Director of Fisheries may do all or any of the following acts:-

(a) stop the netting operation; or

(b) confiscate the fish netted and the fishing apparatus together with the payment of previous instalments, if any; or

(c) cancel the lease.

21. Refund of lease money.—

The lease money or any instalment thereof paid under rule 20 may be refunded to the legal heirs of the lessee or presentation of the claim for refund if it is proved to the satisfaction of the officer executing the lease deed that the lessee died immediately after the execution of the lease deed.

22. Issue of permits.—

The Inspector of Fisheries may from time to time supply to the lessee sufficient blank permits duly signed by him to enable him to issue the same to his agents and nominees.

23. Conditions of licence.—

The following shall be the conditions of every licence granted under these rules—

(i) the licensee or his agents or nominees shall not interfere in the normal duties of the officials of Fisheries Department for taking out fish prohibited under the Ordinance or any fish required for bona fide purposes of research or development under the written authority of the Assistant Director of Fisheries;

(ii) the licensee or his agents or nominees shall report to the Inspector of Fisheries any breach of the Ordinance or rules relating to fishing that may come to their notice, with the least possible delay;

(iii) the licensee shall not sublet or lease out fishing rights of the water area or any part thereof to any other person on his own accord;

(iv) the licensee for the right to fish shall be for the fish that may be present in the water area and Government will not be responsible for any scarcity of fish due to fluctuations in the quantity and quality of water and inability of the licensee to catch fish, due to any reason whatsoever, and

(v) counterfoils of permits and unused blank permits shall be returned to the concerned Inspector of Fisheries after the expiry of the fishing lease.

24. Confiscation of Apparatus.—

(1) All apparatus erected or used for fishing in contravention of the Ordinance or these rules, may be seized by the Inspector of Fisheries or any person authorised by the Director of Fisheries and all such apparatus may be forfeited by the Court in addition to any other punishment that may be awarded under the Ordinance and these rules.

(2) Fish caught in contravention of the Ordinance or these rules may be deemed by the Inspector of Fisheries and may be disposed off to avoid, purification in the manner ordered by the Extra Assistant Director of Fisheries.

25. Cancellation of lease and re-auction of fishing rights.—

(1) If the lessee or any person holding a permit under section 5 of the Ordinance is convicted of an offence under the Ordinance or these rules, the Director of Fisheries may cancel the lease or permit of the person so convicted.

(2) On cancellation of a lease under sub-rule(1) or clause(c) of sub-rule(4) of rule 20, all permits issued by the lessee shall automatically stand cancelled, and the amount already paid by the lessee shall not be refunded to him.

(3) When a lease is cancelled, the Director of Fisheries may auction the fishing rights in that water in the manner herein provided and any deficiency in the lease money shall be recovered from the first lessee as if were an arrear of land revenue.

26. Appeal.—

An appeal shall lie to Government against the orders of the Director of Fisheries cancelling a lease or permits under rules 20 or rule 25, within one month form the date of communication of order of cancellation:

Provided that no order shall be passed in appeal except after giving the aggrieved person an opportunity of being heard.

PART IV—DEPARTMENTAL OPERATIONS

27. Licences for reserved water.—

Licences to fish in waters specified in Appendix V, if reserved for departmental operations under rule 18, shall be granted on payment of Rs.5.00 by the respective Extra Assistant Director of Fisheries or an officer authorised by government in this behalf under section 9.

28. Validity of licence.—

A licence issued under rule 27 shall remain in force from the 1st day of September to 31st day of August of the following year.

29. Sale of fish.—

(1) The holder of a licence under rule 27 shall, at his own cost bring all catches of fish to the landing centres specified by the Extra Assistant Director of Fisheries concerned issuing the receipt. Sale of catches, before these are brought to the landing centres, shall be unlawful.

(2) The fish brought to the places fixed under sub-rule(1) be disposed of in the manner, to be determined by the Director of Fisheries either by public auction or by sale at the rate to be fixed by him under the existing financial rules.

30. Share of licence.—

The licensee shall receive wages for catching fish in the manner to be specified by the Director of Fisheries either in the way of percentage of sales proceeds of his catches or at a fixed rate per maund of fish caught or on daily wages basis.

31. Confiscation of fish.—

All fish in possession of a licensee who has failed to deliver the same to a representative of the Fisheries Wing at a prescribed landing centre or is not in possession of a receipt issued under rule 29 shall be confiscated to Government in addition to a fine which may extend to Rs.50.00.

PART V—TROUT WATERS

32. Division of trout waters into reaches.—

(1) The water of the rivers and their tributaries, where trout is available, shall for the purposes of these rules, be divided into reaches as under :-

A- HAZARA DISTRICT

Reaches *River Kuhar and its tributaries*

(a) Reach No.1.—From the commencement of mile one to the end of mile 42 on the Kaghan Valley Road.

(b) Reach No.2.—From the end of mile 42 to the end of mile 48 on the kaghan Valley Road.

(c) Reach No.3.—From the end of mile 48 to the end of mile 54 on the Kaghan Valley Road.

(d) Reach No.4—From the end of mile 54 to the end of mile 84 on the Kaghan Valley Road and Lolusar Lake.

(e) Reach No.5.—Saiful Muluk Nullah and Saiful Muluk Lake.

(f) Reach No.6.—Porhinar Nullah and Dodiput Lake.

B- SWAT DISTRICT

Reaches *River Swat and it tributaries*

(a) Reach No.1.—From Madyan bridge to Pashmal bridge and Madyan stream.

(b) Reach No.—From Pashmal bridge to Bhone bridge.

(c) Reach No.3.—From Bhone bridge to Gabral and Utroor Stream tributaries.

(d) Reach No.4.—From Ushoo and Utroor stream confluence and Kalam to Ushoo.

(e) Reach No.5.—From Ushoo to Mahi Dhand.

(f) Reach No.6.—All lakes.

C- CHITRAL DISTRICT

Reaches *River Chitral and its tributaries*

(a) Reach No.1.—From Karini to Kahoor (Lutkoh River), and its tributaries.

(b) Reach No.2.—Ayun, Bombret, Ramboor and Barir stream.

(c) Reach No.3.—Shishi stream and its tributaries.

(d) Reach No.4.—Golain stream and its tributaries.

(e) Reach No.5 —Kalkatk stream and its tributaries

(f) Reach No.6.—All lakes.

D- DIR DISTRICT

Reaches *Panjkora River and its tributaries.*

(a) Reach No.1.—Barawal Bandi and Dhok stream.

(b) Reach No.2.—From Shringal to Patrak and its tributaries.

(c) Reach No.3.—From Patrak to Thall and its tributaries.

(d) Reach No.4.—From Thall to Source and its tributaries.

(e) Reach No.5.—All lakes.

(2) The Director of Fisheries may, at any time, by notification in the official Gazette revise the limits of the reaches mentioned in sub-rule(1) or divide the entire stretch of the said waters in any other number as he reaches to be may deem fit.

33. Licences for trout waters.—

(1) A licence to fish in any of the reaches specified in rule 32 may be granted by the Extra Assistant Director of Fisheries of the area concerned or any person authorised by him on payment of the prescribed fee and the licence so granted shall entitle the holder to fish only in the reach specified in the licence.

(2) A licence granted under this rule may after giving the licensee an opportunity of being heard, be cancelled by the Extra Assistant Director of Fisheries concerned for breach of any condition of the licence, these rules, or the provisions of the Ordinance.

34. Number of licences to be granted.—

(1) The Assistant Director of Fisheries shall fix the number of licences that may be granted by the respective Extra Assistant Director of Fisheries at any one time, for the reaches mentioned in rule 32.

(2) The Assistant Director of Fisheries may close any reach or part thereof for fishing for certain period to minimise the pressure of fishing.

35. Licence of fee.—

(1) A licence granted under this part shall be for single rod and line fishing only.

(2) The fee for the licence granted under this part shall be charged at the following rates:—

(i) Per day Ten rupees.

(ii)	Per week	Sixty rupees.
(iii)	Per month	Two hundred rupees.

36. Restriction on size of fish to be caught.—

Catching of trout less than 9 inches in length is prohibited. Such fish if caught shall be put back in the water forthwith.

37. Number of fish to be caught.—

No licensee shall catch more than five fish in a day on one licence.

38. No restriction on number of fish caught for scientific purposes or for thinning out.—

Nothing in these rules shall prevent the catching of any number of trout at any time of the year scientific purposes or for thinning out of over crowd population of fish.

39. Fee not to be refunded.—

The licence fee paid under rule 35 shall in no case be refunded or the reach for which the licence has been issued be changed.

40. Licence not to be transferred or shared.—

A licence granted under this part shall be non-transferable and shall not be shared with any person.

41. Duplicate licence.—

Where a licence granted under this part is lost or accidentally destroyed, the Extra Assistant Director of Fisheries of the area concerned may, on payment of a fee of one rupee, issue a duplicate copy of such licence.

42. Kinds of lures to be used.—

A licensee shall use either of the following lures only:—

(a) Artificial fly
(b) Artificial spinning bait, including Spoons, and
(c) Artificial worm.

43. No fish to be killed in the close season.—

No fish shall be killed in the waters to which this part applies during the period from the 10th day of October to the 9th day of March in the following year (both days inclusive) except under the authority of the Director of Fisheries.

44. Seizure.—

All apparatus erected or used for fishing in contravention of these rules may be seized and taken into possession by the person empowered under section 16 of the Ordinance by the challenging authority which may be produced in Court in support of illegal fishing and the fish so caught may be auctioned.

45. No licensee shall be allowed to sell trout caught by him.

46. (1) The Extra Assistant Director of Fisheries of the area concerned may issue identity card on payment of a fee of Rs.15.00 to a person who may act as fishery guide for providing assistance to the licensee.

(2) Without prejudice to any other penalty to which such person may be liable under the Ordinance or these rules, and identity card granted under this rule shall be cancelled by the Extra Assistant Director of Fisheries for breach of any condition of these rules, or any provision of the Ordinance.

PART V—PROVINCIAL ANGLING LICENCE

47. Grant of Angling Licence.—

Notwithstanding anything contained in these rules the Director of Fisheries or an officer authorised by him in this behalf may, on payment of a fee of Rs.30.00 grant a provincial angling licence which shall enable its holder to fish with rod and line in any of the waters mentioned in rule 48.

48. Application for Angling Licence.—

A licensee holding a licence granted under rule 47 may fish in waters of Rivers Swat (in District Peshawar, Indus, Kabul, Naguman, Shahalam Toi, Siran (Below Khaki and Kunhar (Below Pucca bridge at Balakot) and their tributaries, excluding leased area and their tributaries.

49. Validity of the licence.—

A licence granted under rule 47 shall be non-transferable, and shall remain in force from the 1st day of September in each year to the 31st day of August in the following year.

50. Refund of licence fee.—

The fee paid for a licence under rule 47 may be refunded to the legal heir of the licensee on the presentation of a claim for refund made within one week from the date of the issue of licence if it is proved to the satisfaction of the officer issuing the licence that the licensee could not be made use of on account of the death of license immediately after the licence was issued.

51. Condition for fishing.—

A licensee to whom a licence has been granted under this part shall be entitled to fish with road and line having two hooks only and shall not use more than two rods at any time.

52. Permission of owners of private waters necessary.—

A licence granted under rule 47 shall be subject to the permission of the riparian owners for fishing in waters-

(a) which have been or may hereafter be declared as “private” waters; or

(b) which though public waters required permission for fishing therein according to the entries in Wajibularz or Record-of-Rights of the village concerned.

53. Entrance to Headworks of Canals prohibited.—

A licence granted under this part shall not entitle its holder to enter on the headworks of canals without the prior permission of the Executive Engineer or any Officer authorised by the Irrigation Authorities in this behalf.

APPENDIX-I

LIST OF WATER WHICH FISHING LICENCE MAY BE ISSUED (VIDE RULE, 3)

1. Peshawar District.—

Rivers.—Kabul river with branches and Adezi der, Michni or Naguman River, Shahalam River, and Budni Stream, Swat River with branches as Abazai or Jundai and Khaiyali, Bara River and Indus River.

Nullahs.—Loe Khawar, Guddar Khawar, Ghunu Khawar, Ghaura Khawar, Takanta Beg Khawar, Palosai Khawar Zaindai Khawar, Aza Khel Khawar, Chela Khawar, Chinkas Khawar, Naki Khawar, Nataki Khawar, Arand Khawar, Dheri Khawar, Banda Khawar, Palosin Khawar, Nala Khawar Kakhan Khawar, Jundai khawar, Subhan Khawar, Uch——, Kalghi Nala, Najji Nala, Turpai Nala, Arandai Nala, Turpai Nala, Okaria Nala, Amar Kali Nala, Mursi Nala, Shahida Nala, Jurai Nala, Jina — Nal, Jabba Nala, Maged Nala, Balos Nala, Kalpani Nala.

2. Mardan District.—

River Indus, Badri Khawar and its tributaries as Kadi Khawar, Totai Nala, Tigrai Khawar.

Bada Khawar and tributaries and Kundai Khawar, Pola Khawar, Ameri Khawar, Wuch Khawar, Sargari Khawar, Jummu Khawar, Budga Khawar.

Kalpani Nulla and its tributaries Phagiari Khawar, Lundi Shah Khawar, Sulki Khawar, Guar Khawar, Bharyo Khawar and Khul Khawar.

Mamm Nala and its tributaries and Narai Khawar, Dagi Khawar, ___ Khawar, Jeo Khawar, Badami Khawar, Pacha Tangi Khawar and Trawar of Mandu Khawar.

3. Swat District.—

River Swat from the confluence of Madyan Stream Landaki with all its tributaries. River Indus and its tributaries in Shangal- Swat District. Budkhel Nullah and their tributaries.

4. Dir District.—

River Runjkora from Chukiatan to Kulandi and its tributaries. River Swat and its tributaries from Landakh to Thana and from Chela to Kulandi in Dir District and Malakand Agency.

5. Chitral District.—

River Chitral and its tributaries from the confluence of Lutkoh and Mastuj River to the boundary of the district down stream. River Mastuj and its tributaries. River Turkho and its tributaries. River Lutkoh and its tributaries from Karinj to the confluence of Lutkoh and Mastuj river.

6. Kohat District.—

Teri Toi and its branches as Largrai Toi, Narai — Algad, Fit Kirmar Algad, Mithan Algad and Lilian Algad.

Khakh Toi, Kohat Toi as Lachi Toi, Marmzai Toi, Summari Toi, Nazr __, Safi Algad, Jabi Toi and Sarai Toi.

Shkalai Nullah and Randokha Nullah, Inzar Nullah Khawar Algad Star—— Ugoa, Shugga Algad (Khawar).

Landa Toi, Shage Toi, Gaz Dera Toi, Khanki Toi, Kurmati Khawar, Akhtar Nullah Tarkhabi, Narai Algad, Roshu Algad, Nullah Launghar Algad, Tukha Algad, River Indus.

7. District Hazara.—

River Sind, River Kunhar below Pacca bridge (Balakot) Siran River, Daur River, Haro River, Ichrar Nullah, ——Nalla, Illayai Nallah, Darkan, Nallah Karpani, Beeran Gali Nala Nandi Sialkot Nallah, Tirair Nallah, Nallah Managal.

APPENDIX II

WATER RESERVED FOR ROD AND LINE GEAR (VIDE RULE 6(2)

River Indus from Ferry Rest House to toi Dhair in Districet Mardan, River Indus, Kabul from Attock Bridge to Public Works Department—— House, Near village Kurd in District Peshawar and River Kabul from village Pir Sabak to Colony Textile Mills in District Peshawar.

APPENDIX III

WATER RESERVED FOR ROD AND DAILY LICENCES (VIDE RULE 6 (2))

Government Fish Farms.

(i) Ghorakh Dibbi.
(ii) Kheshki Reservoir.
(iii) M.P.O. Warsak
(iv) Area ‘o’
(v) Jamrud Road Warsak.

APPENDIX IV

SPECIAL WATER RESERVED FOR ROD AND LINE FOR DAILY AND SEASONAL LICENCES

1. River Swat from Thana to Batkhela on both banks in Dir District and Malakand Agency**.**

2. Daggar Stream.

APPENDIX V

WATER RESERVED FOR LEASES
(VIDE RULE 17)

The public water (including Dhands, Dohras) and dams and reservoirs the Districts of Dera Ismail Khan, Bannu, Kohat, Peshwar and Hazara , other than reserved waters.

5.1.4 Wildlife/Fauna, Non-Timber, Flora

5.1.4.1 NWFP Wildlife (Protection, Preservation, Conservation and Management) Act 1975

THE NORTH WESTERN FRONTIER PROVINCE WILD-LIFE

(PROTECTION, PRESERVATION, CONSERVATION AND

MANAGEMENT) ACT, 1975.

1st August, 1975

N.-W.F.P. ACT No. V OF 1975

[First published after having received the assent of the Governor of the North-West Frontier Province, in the Gazette of North-West Frontier Province (Extraordinary), dated the 1st August, 1975)

AN
ACT

to amend an consolidated the law relating to protection, preservation, conservation and management of wild-life in the North-West Frontier Province.

WHEREAS it is expedient to amend and consolidate the law relating to protection, preservation, conservation and management of wildlife in the North-West Frontier Province, in the manner hereinafter appearing;

It is hereby enacted as follows:-

1. (1) This Act may be called the North-West Frontier Province, Wild-life (Protection, Preservation, Conservation and Management) Act, 1975.

(2) It extends to the whole of the North-West Frontier Province, except the Tribal Areas.

(3) It shall come into force at once.

(4) Nothing hereinafter provided shall be deemed to authorise any person to hunt in the reserved or protected forest or protected waste land as constituted and declared under the provisions of the Forest Act, 1927 (Act XVI of 1927), or the Hazara Forest Act, 1936 (N.-W. F. P. Act VI of 1937), or on any person's private property with out permission.

(5) The provisions of this Act shall not apply to Dhakani petgrey partridges.

2. On this Act, unless the context otherwise requires:-

(a) "Board" means the North-West Frontier Province Wild-life Management Board, constituted under section 4;

(b) "certificate", "licence", "special licence", "permit" or "special permit" means respectively a certificate, a licence, a special licence, a permit or a special permit granted or issued under this Act;

(c) "dealer", when used in relation to wild animals, trophies or meat, shall mean any person who, in the course of trade or business carried on by him whether on his own behalf or on behalf of any person, -

(i) sells, purchases or barters any wild animal, its meat or trophy;
(ii) cuts, carves, polishes, preserves, cleans, mounts or otherwise prepares any such wild animal, trophy or meat or manufactures any article therefrom;

(d) "game animal" means a wild animal specified in the First Schedule;

(e) "game reserve" means any area declared as such under section 17;

(f) "Government" means the Government of the North-West Frontier Province;

(g) "hunt" means any act directed immediately to the killing or capturing of a wild animal and shall include taking the nest or egg of a wild animal;

(h) "meat" means the fat, blood, flesh or any eatable part of wild animal, whether fresh or preserved;

(i) "national park" means an area declared as such under section 16;

(j) "offence" means an offence punishable under this Act or any rules made thereunder;

(k) "officer" means any person appointed as such under section 3 and includes every forest officer as defined in the Forest Act, 1927 (Act XVI of 1927), and the Hazara Forest Act, 1936 (N.-W. F. P. Act VI of 1937);

(l) "prescribed" means prescribed by rules;

(m) "private game reserve" means an area declared as such under section 19;

(n) "protected animals" means a wild animal specified in the Third Schedule;

(o) "province" means the North-West Frontier Province;

(p) "rules" means rules made under this Act;

(q) "Schedule" means Schedule appended to this Act;

(r) "section" means a section of this Act;

(s) "trophy" means any dead body or any horn, antler, tooth, tusk, bone, claw, hoof, skin, hair, feather, egg-shell or other durable part of game animal or protected animal whether or not included in manufactured or processed article;

(t) "wild animal" means wild birds or animals specified in the First and Third Schedules;

(u) "wild-life" includes organic resources, animals, birds, reptiles, vegetation, soil and water; and

(v) "wild-life sanctuary" means the area declared as such under section 15.

3. (1) Government may, for the purposes of this Act, appoint such officers, including honorary officers, on such terms and conditions as it may determine.

(2) Except as may otherwise be prescribed, as honorary officer shall have all powers conferred by this Act and shall hold office for such period and subject to such conditions as may be prescribed.

4. (1) As soon as may be after the commencement of this Act, Government shall establish a Board to be called the North-West Frontier Province Wild-life Management Board.

[1][(2) The Board shall perform the functions specified in section 5 and such other functions as Government may, from time to time, assign to it].

(3) The Board shall consist of
(i) a Chairman; and
(ii) such number of members as may be appointed by Government

(4) Chief Minister of the Province shall be the Chief Game Warden and ex-officio Chairman of the Board.

(5) A member shall, unless he sooner resigns or is removed by Government, hold office for such terms as may be prescribed.

(6) The Chairman may appoint any person as Secretary of the Board.

(7) The meeting of the Board shall be held at such times and at such places and in accordance with such procedure as may be prescribed.

[2][5. *Functions of the Board;* - The Board shall -

(a) advise Government on policy decisions relating to conservation and development of wild-life and game management in the Province;

(b) scrutinise the development schemes relating to wild-life and game management in the Province referred to it by Government; and

(c) review the progress of development activities in the field of wild-life protection, preservation, conservation and management in the province.]

6. [3][…….]

7. Government may require the Board to furnish it with any document, return, statement, estimate, information of report regarding any matter 2pertaining to the functions] of the Board and the Board shall comply with every such requisition.

8. No persons shall -

[1] In section 4 Sub-section (2) substituted by N.-W. F. P. Ordinance No. II of 1984 Section 1
[2] Section 5 substitued by N.-W. F. P. Ord. No. II of 1984, Section 3
[3] Section 6 omitted by N.W.F.P. Ord. No. II of 1984 section 4.

(i) hunt any wild animal by means of a set gun, drop spear, deadfall, gun trap, explosive projectile, bomb, grenade, baited hook, net, snare or any other trap, an automatic weapon, or a weapon of a calibre used by the Pakistan Army or Police Force or by means of a projectile containing any drug or chemical substance, likely to anesthetize, paralyse, stupify or render incapable an animal whether partly or totally;

(ii) hunt any protected animal;

(iii) hunt any game animal except under a permit and in accordance with the provisions of this Act or the rules;

Provided that no person shall hunt any game animal other than birds or hares with a shot-gun or with non-magnum rifle of 22 calibre or less;

(iv) use, or have in his possession any net, snare, bhagwa, poison or like injurious substance for the purpose of hunting a game animal;

(v) use vehicle of any type to pursue any game animal, or to drive or stampede game animal for any purpose whatsoever;

(vi) shoot any game animal from any conveyance or from within two hundred yards of the conveyance;

[1][(vii) except in the case of ducks of all kinds, hunt with the help of decoys or call birds;]

(vii) construct or use, for the purpose of hunting any wild animal, any pitfall, game pit, treach or similar excavation, any fence or enclosure; or use bhagwa or any other similar contribance:

Provided that it shall not be an offence to use –

(a) a motor vehicle or aircraft to drive any wild animal away from an aerodrome or airstrip when such action is necessary to ensure the safety of aircraft using that aerodrome;

(b) any one or more of the aforesaid prohibited methods if the officer authorised in this behalf grants, at his discretion, a licence with permission to employ such method;

[1][(ix) except in the case of ducks of all kinds, hunt after sunset and before sunrise;]

(x) hunt by hiding near a water hole or salt licks.

9. No person shall use hawks for hawking or dogs, for coursing the game animals except upon payment of a fee –

(i) of one hundred rupees per annum, in the case of any hawk; and
(ii) of twenty rupees per annum, in case of a pair of grey hounds.

[1] In section 8 clauses (vii) and (ix) Positively substituted by Act No. V of 1976 Section 2 (a,) (b).
[1] In section 8 clauses (vii) and (ix) Positively substituted by Act No. V of 1976 Section 2 (a,)

10. Any protected animal or game animal which is found dead or dying or which has been killed or caught otherwise than in accordance with the provisions of this Act and any meat or trophy thereof shall be property of Government.

11. (1) No person shall be in possession of any wild animal, dead or alive, trophy or meat of a kind specified in the Second Schedule unless he be in possession of a Certificate of Lawful Possession granted in respect thereof by the officer authorised in this behalf:

    Provided that any person importing any wild animal, trophy or meat of a wild animal in accordance with the provisions of this Act, or acquiring such animal, trophy or meat in accordance with the terms of a permit issued under this Act, shall obtain such certificate by applying to the authorised officer within thirty days from the date of importing or acquiring the animal, trophy or meat.

    (2) The officer authorised in this behalf may mark or register the animal, trophy or meat in respect of which a Certificate of Lawful Possession is issued, in the prescribed manner, or he may seize; pending the taking of legal action under this Act, any such animal, trophy or meat which in his opinion has not been legally imported or acquired.

    (3) No person shall counterfeit, change or in any way interfers with any mark or registration of animal, trophy or meat for which a Certificate of Lawful Possession has been issued or alter or in any way change a Certificate of Lawful Possession.

12. (1) No person shall transfer by gift, sale or otherwise to any other person any animal, trophy or meat of a kind specified in sub-section (1) of section 11 unless he be in possession of a Certificate of Lawful Possession in respect thereof, and such certificate is endorsed with details of the transaction and given to the transfer at the time of the transfer.

    (2) No person shall receive by gift, purchase or otherwise any animal, trophy or meat of a kind specified in sub-section (1) of section 11 unless he receives at the same time a valid Certificate of Lawful Possession in respect thereof.

13. (1) No person shall import or attempt to import in the Province any wild animal of an endemic or exotic species, or any trophy or meat of a kind specified in sub-section (1) of section 11, except under an import permit granted under this Act and if such import be from outside Pakistan except through a customs post of entry and subject to any law relating, to control on imports for the time being in force.

    (2) No person shall export or attempt to export out of the Province any animal, trophy or meat specified in sub-section (1) of section 11 except under an export permit granted under this Act and if such export be to any country outside Pakistan except through a customs post of exit and subject to any law relating to control on export for the time being in force.

    (3) Nothing in this section shall apply to any animal, trophy or meat in transit through the Province if such animal, trophy or meat, -

        (i) is accompanied by necessary transit customs documents;
        (ii) is entered through a customs post of entry or is schedules to a customs post of exit; or

(iii) is not unloaded from the conveyance on which it is being carried or, in the case of rail or air transport, it does not leave the precincts of the railway station or airport at which it is landed or trans-shipped or does not remain therefor more than forth-eight hours.

14. (1) No person shall as a profession, trade or business, buy, sell or otherwise deal in wild animal, trophies or meat thereof or process of manufacture goods or articles from such trophies or meat, unless he is in possession of a valid licence, hereinafter called a dealer's licence, to do so, issued by an officer authorised in this behalf.

(2) The officer authorised under sub-section (1) may, on payment of such fees as may be prescribed, grant a dealer's licence to be valid for one year to any person which shall entitle the licensee to deal in any wild animal, trophy or meat thereof, or any class of wild animals, trophies or meat specified in such licence.

(3) For the purpose of assessment of fees, dealers may be divided into different classes and a different fee may be prescribed for each class.

(4) The holder of the dealer's licence shall maintain such register or record of his dealings in such manner as may be prescribed, and shall produce them for inspection at any reasonable time when called upon to do so.

15. (1) Government may, by notification in the officials Gazette, declare any area which is the property of Government or over which Government has proprietary rights to be wild-life sanctuary and may demarcate it in such manner as may be prescribed.

(2) The wild-life sanctuary shall be set aside as un-disturbed breeding ground for the protection of wild-life and access thereto for public shall, except in accordance with the rules, be prohibited and no exploitation of forest therein shall be allowed except for reducing fire-hazards, epidemic or insect attacks or other natural calamities.

(3) No person shall –

(i) enter or reside,
(ii) cultivate any land,
(iii) damage or destroy any vegetation,
(iv) hunt, kill or capture any wild animal or fire any gun or other fire-arm within one mile of the boundaries,
(v) introduce any exotic species of animal or plant,
(vi) introduce any domestic animal or allow it to stray,
(vii) cause any fire, or
(viii) pollute water,

in a wild-life sanctuary;

Provided that Government may, for scientific purposes or for aesthetic enjoyment or betterment of scenery, authorise the doing of the aforementioned acts.

16. (1) With a view to the protection and preservation of scenery, flora and fauna in the natural estate, Government may, by notification in the official Gazette, declare any area which is the property of Government or over which Government has

proprietary rights to be a national park and may demarcate it in such manner as may be prescribed.

(2) A national park shall be accessible to public for recreation, education and research subject to such restrictions as Government may impose.

(3) Provision for access roads to and construction of rest houses, hostels and other buildings in the national park along with amenities for public may be so made and the forest therein shall be so managed and forest produce obtained as not to impair the object of the establishment of the national park.

(4) The following acts shall be prohibited in a national park : -

(i) hunting, shooting, trapping, killing or capturing of any wild animal in a national park or within three miles radius of its boundary;
(ii) firing any gun or doing any other act which may disturb any animal or bird or doing any act which interferes with the breeding places;
(iii) felling, tapping, burning or in any way damaging or destroying, taking, collecting or removing any plant or tree therefrom;
(iv) clearing or breaking up any land for cultivation, mining or for any other purposes; and
(v) polluting water flowing in and through the national park;

Provided that Government may, for scientific purpose or betterment of the national park, authorise the doing of the aforementioned prohibited act.

17. Government may declare any area to be a game reserve, where hunting and shooting of wild animal shall not be allowed, except under a special permit, which may specify the maximum number of animals or birds that may be killed or captured and the area and duration for which such permits shall be valid.

18. Government may, from time to time, by notification in the official Gazette, declare any alteration in the boundaries of wild-life sanctuary, national park, and game reserve declared under this Act.

19. (1) Where Government is satisfied that an area of private land has been dedicated by its owner for the purposes similar to a game reserve, it may, by notification in the official Gazette, and on the application of the owner of the area, declare such area to be a private game reserve.

(2) Hunting and shooting of wild animals by any person other than the owner of the area shall not be allowed in a private game reserve except with the permission of the owner thereof.

(3) The owner of a private game reserve shall exercise within the limits of his private game reserve the same powers as are exercisable by an officer under this Act.

(4) Government may, by notification in the official Gazette, at any time, declare that any private game reserve shall cease to by a private game reserve.

20. (1) Whoever contravenes or attempts to contravene,-

(i) any provisions of sections 11, 12, 13 and 14 shall be punished with imprisonment which may extend to a period of one year or with fine which may extend to one thousand rupees, or with both, and any licence or permit granted or issued to him under this Act shall be suspended for a period of two years;

(ii) any provisions of section 8 shall be punished with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both;

(iii) any provisions of section 9, 10 and 27 shall be punished with a fine which may extend to five hundred rupees;

(iv) any provisions of this Act or any rule for the contravention of which no specific penalty is provided, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) Whoever interferes or attempts to interfere in the performance of any functions or in the discharge of any duties under this Act, shall be punished as in clause I) of sub-section (1).

(3) Whoever, having already been convicted of an offence under sub-section (1) or sub-section(2) is again convicted thereunder, shall, on every subsequent conviction, be punished with imprisonment which shall not be less than twelve months, or with fine which shall not be less than one thousand rupees or both, and his fire-arm, vehicle, appliance or anything used in the commission of the offence and his hunting licence shall be confiscated and he shall not be eligible to a hunting permit, licence or a special permit for a period of two years.

20. Abetment of any offence under this Act of the rules made thereunder shall be punishable as the offence.

21. (1) Notwithstanding any other provision of this Act, it shall not be an offence if–

(a) any person kills any wild animal by any means in the immediate defence of his own life or that of any other person;

(b) the owner of standing crops or his employee kills any wild animal which is doing material damage to those crops by any means within the bounds of those crops;

(c) the owner of livestock or his employees kills any wild animal that is doing damage to the livestock by any means within a reasonable distance where that livestock is grazing or where it is enclosed for the night;

Provided that clause (b) and clause (c) shall not apply to any unlawful cultivation in a national park, wildlife sanctuary and a reserved or protected forest or any livestock unlawfully grazing or herded therein.

(2) The killing under sub-section (1) of wild animals specified in the First and Third Schedules shall be reported to the nearest office established for the purposes of this Act with the least possible delay.

(3) The meat or trophy of any wild animal killed in self defence shall be the property of Government and shall be disposed of as directed by the officer authorised in this behalf.

23. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any wild animal, trophy or meat is the

property of Government, such wild animal, trophy or meat shall be presumed to be the property of Government until the contrary is proved.

24. When officer or any other person authorised by Government in this behalf, may search any person, premises, vessels, vehicle, animal, packages receptable or covering so as to satisfy himself whether or not an offence under this Act has been committed.

25. Any officer or any person authorised by Government in this behalf, may seize any wild animal, dead or alive, together with any fire-arm, net, trap, snare, bow, arrow or any vehicle or vessel or anything whatsoever used or suspected to have been used in the commission of an offence under this Act.

26. Notwithstanding any other provision of this Act, the officer or any other person authorised in this behalf, may sell any property seized, under section 25 which, is subject to speedy and natural decay and may, subject to the determination of the rights thereto, deal with the proceeds in such manner as may be prescribed.

27. Every person in possession of any wild animal specified in the Third Schedule shall produce his Certificate of Lawful Possession on demand made by any officer or any other person authorised by Government in this behalf.

28. Every coupe purchaser of forest produce, Lambardar, Canal Patwari, Public Works Department Daroga, Chowkidar, Dafadar, village watchman, Abdar, Zilladar, Revenue Patwari, Qanungo and Tehsildar shall be bound, in the absence of reasonable excuse, to give to any officer or any person authorised in this behalf by Government, information in respect of any snaring, trapping, netting, unauthorised killing, or any other offence under this Act, committed within the limits of his jurisdiction, as soon as the commission of such offence comes to his knowledge.

29. When the offender is not known or cannot be found any officer authorised in this behalf may, if he finds that an offence has been committed, confiscate the property used in the commission of the offence.

30. Every officer or any other person authorised by Government in this behalf shall be competent to prevent by all lawful means the commission of any offence under this Act.

31. Cognizance of any offence under this Act shall not be taken by any Court except on the complaint of the officer or any person authorised by Government in this behalf.

32. No Court inferior to that of a Magistrate of the First Class shall take cognizance of and try an offence under this Act.

33. The District Magistrate or any Magistrate of the First Class specially empowered in this behalf by Government may try summarily any offence punishable under this Act.

34. Nothing contained in this Act, shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act, or from being liable under any other law to any higher punishment or penalty than that provided by this Act.

35. (1) Government may, by notification in the official Gazette, empower an officer-
    (a) to accept from any person against whom reasonable suspicion exists that he has committed any offence under this Act, a sum of money by way of compensation for such offence;

(b) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof, as estimated by such officer.

(2) On the payment of compensation, such sum of money, or such value or property under sub-section (1) or both, as the case may be, the suspected person if in custody, shall be discharged and the property, if any, seized shall be released and no further proceedings shall be taken against such person or property.

(3) The sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of five hundred rupees.

(4) No officer shall have power to compound a second and subsequent offence under this Act.

36. Government may invest any officer or any other person authorised in this behalf with all or any of the following powers, that is to say –

(a) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
(b) the power to issue a search warrant under the Code of Criminal Procedure, 1898 (Act V of 1898);
(c) the power to hold an inquiry into offence under this Act and in the course of such inquiry to receive and record evidence; and
(d) the powers to prosecute a case before a Magistrate.

37. The officers or persons authorised under any provisions of this Act to do a certain thing or act in certain manner shall be deemed to be public servants within the meaning of the Pakistan Panel Code (Act XLV of 1860).

38. No suit, prosecution or other legal proceedings shall be lie against any officer for anything in good faith done or intended to be done in pursuance of any provision of this Act or the rules made thereunder.

39. Every police officer shall, upon request made by any officer or person employed under this Act, assist him in the due discharge of his duties under this Act.

40. Government may, by notification in the official Gazette, delegate all or any of the powers conferred upon it under the provisions of this Act to any Officer subordinate to it.

41. Notwithstanding anything contained in this Act, Government may, in the interest of any scientific or public purpose, allow, by notification in the official Gazette, killing and capturing of such wild animals in such places and by such means as may be specified in the notification.

42. Government may, by notification in the official Gazette, in respect to any specified area –

(i) add to or exclude from the Schedules any wild animals, subject to such conditions as it may impose in each case; and
(ii) alter the period during which any wild animal specified in the First Schedule may be killed.

43. (1) Government may make rules for the purposes of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the forgoing powers, such rules may provide for -

(a) the powers and duties of the officers and other person specially authorised to perform functions under this Act;

(b) the form in which, the terms and conditions on which, a licence special licence, a permit or special permit may be granted;

(c) the fees to be charged for any licence or permit or special licence or special permit;

(d) in the case of any species of wild animals, the number and the sex that may be killed under a special permit;

(e) reward to persons who render help in detection of offences under this Act;

(f) the authorities by whom, the conditions on which, and the manner in which licences may be issued; and

(g) the management of wild-life sanctuaries, national parks and game reserves

44. (1) The following enactments are hereby repealed :-

(a) The Wild Birds and Animals Protection Act, 1912 (Act No. VIII of 1912)

(b) The West Pakistan Wild-life Protection Ordinance, 1959 (W. P. Ord. No. LVI of 1959); and

(c) The North-West Frontier Province Wild-life (Protection, Preservation, Conservation and Management) Ordinance, 1975 (N.-W.F.P. Ord. No. V of 1975)

(2) Notwithstanding the repeal of the enactments mentioned in sub-section (1), everything done, action taken, obligations, liability, penalty or punishment incurred, inquiry or proceedings commenced, officer appointed or person authorised, jurisdiction or power conferred, rule made and licence or order issued under the provisions of the said enactments or rules made thereunder shall continue in force, and so far as may be, deemed to have been respectively done, taken incurred, commenced, appointed, authorised, conferred, made or issued under this Act and any enactment or document referring to any of the said provisions shall, as far as may, be, construed to refer to this Act or the corresponding provisions thereof.

SCHDULE.
FIRST SHEDULE.
[See section 2 (d), (t), 22 (2) and 42 (ii)]
GAMES ANIMALS I. E. , ANIMALS WHICH SHALL ONLY BE HUNTED UNDER THE TERMS OF A GAME
SHOOTING OR GAME CAPTURE LICENCE.

Part I.- (Animal which may be hunted on a small Game shooting Licence).

Name of animals	**Number allowed**	**Fee for licence**	**Time and season hunting permitted**	**Localities in which hunting permitted**
Anatidae: Ducks. Dendrocycna Javanica Lesser Whisling Teal. Dendrocycna bicolor: Large whistling Teal. Tadorna feruqinea: Ruddy Shelduck or Brahmiy Duck. Tadornatadorn: Common Shelduck Anas acuta: Pntail Anas crecca Common Tea. Anas platyrhynchios: Mallard. Anas strepera: Gadwall Anas falacata: Falcited Teal Anas penelope Wigeon Querquandnla: Gragany Anas clypeata: Shoveller Metta refina: red-creasted Pochard Aythya nyroca: White-eyed	Unlimited, but not more than (twenty) ducks of all species combined may be killed in any one day	Rs. 25/-	(1st September to 15th April)	Wherever found

Pochard Aythya ferino: Common Pochard Aythya bearli : Rear's Pochard Aythya fuliqula: Tufted Duck Aythya marila: Scaup Clanqula hymalis: Old squaw Long-tailed Duck Bucephalus clangula: Goldeneya Duck Merqus abelius: Smew Merqus merqanser: Goesandar Merqus serrator: Red-breasted merganser Phasianidae and Turnicida: Partridge Quails				
Ammoperdix griseogularis: Seesee Partridges	Unlimited, but not more than four per day	Rs. 25/-	Wednesday, Sunday and gazetted holidays, from 1st November to 1st March	Whenever found
Alectorisquracca: Chukor	Ditto	Ditto	Ditto	Ditto
Francelinus pondicarianus: Grey partridges	Ditto	Ditto	Ditto	Ditto
Coturniz Coturniz Common quail	Unlimited, but not more than 10 of all species of quail and Button quail combined in any one day			
Ballidae Coots and moorhens Amamrormisphoe nicurus White-breasted Moorhen	Unlimit, but not more than five Coots and Moorhens of all specials combined in any one day	Rs. 25/-	1st November to 1st March	Wherever found
Gallimura			Ditto	Ditto

Chloropus Moorhen				
Porphyrioporphyrio Purple Moorhen			Ditto	Ditto
Pulicula airata Goots			Ditto	Ditto
Charadrieae Plowers Sandipipers, Snipe and other woders			Ditto	Ditto
Vanellus indicus Red wattled Lapwing			Ditto	Ditto
Vanellus malabaricus Yellow wattled Lapwiog			Ditto	Ditto
Pluvialis apricaria Golden Plower			Ditto	Ditto
Pluvialis squatarola Grey Plower			Ditto	Ditto
Pluvialis dominica Eastern Golden Plower			Ditto	Ditto
Numenius arquata Curlew	Unlimited, but not more than two of both species combined in one day		Ditto	Ditto
Capella Solitaria: Solitary Snipe	Unlimited, but not more than ten snipe of all species combined in any one day	Rs. 25/-	Wednesday, Sunday and gazetted holiday from 1st November to 1st March	Ditto
Capella stenurs: Pintail Snipe				
Capella minima: Jack Snipe				
Capella media: Great Snipe				
Rostratulidae: Painted Snipe				
Rostratula benghalensis: Painted Snipe	As for Snipe		Ditto	Ditto
Ptericlididae: Sandgrouse				
Syrrhaptes tibetarus: Tibetan Sand-Sandgrouse	Unlimited, but not more than ten sand-grouse of all species combined (except P. alchata which is protected)	Ditto	Ditto	Ditto

	in anyone day			
Pterocles exustus: Indian Sandgrouse				
Pterocles sonegullus: Spotted Sand-grous				
Pterocles orientalis: Imprial or black-bellied Saudgrous.	Unlimited, but not more than ten sandgrouse of all species combined (except P. alchata which is protected) in any one day.		Wednesday, Sunday and gazetted holiday from 1st November to 1st March	Wherever found
Pterocles coronatus: Coronetted sandgrouse.	Ditto		Ditto	Ditto
Pterocles indicus: Close-barred or painted .Sandgrouse	Ditto		Ditto	Ditto
Columbidae: Pigeons, Green Pigeons and Doves. All species of pigeons, green pigeons and Doves, other than the genus Ducula (Imperial Pigeons) which are protected.	Unlimited, but not more than ten birds of all species combined in any one day.		1st November to 1st March	Ditto
Lequs: Hares				
Lepus Capensis: Cape Hare	Unlimited, but not more than five animals of the genus Lepus in any one day		All year round	Ditto
Lepus niqricollis: Indian Hare				
Lepus arachieus: Arabian Hare				
Martes foina : Stone marten	2	Rs. 500	1st November to 1st March	Ditto
Selanarctor thibatanus: Black Bear	1		Ditto	Ditto
All races except S.T. gedrosianus (the Baluchistan Black Bear) which is protected. Felisilybical Desert	2		Ditto	In such areas as the Chief Warden may specify

Cat.				
Pelis chaus: jungle Cat	2		Ditto	Wherever found
Nemorhuedus goral: Goral	1		Ditto	Ditto
Capra ibex Himalayan: Ibex	1		Ditto	Ditto
Capra falconeri: Markhor, All races except. C. F. jerdoni (Straight-horned Markhor) which are protected.	1		Ditto	Ditto
Ovis orientalis: Urial or Shapu, All races except O. o. puniabiensis (Punjab Urial) which is protected.	1		Ditto	Ditto

1. In addition to the licence fee, a special permit shall be required for the shooting of the following animals which will be issued by the Chief Conservator of Forests on payment of the following fees: -

Common name	Fee for shooting permit for one animal
Black Bear	Rs. 5,000
Goral	Rs. 5,000
Himalayan Ibex	Rs. 5,000
Markhor	Rs. 5,000
Urial and Shapes	Rs. 5,000

SECOND SCHEDULE

See Section –II (1)

Animals, Trophies or Meat, for the possession, transfer or export of which or Certificate of Lawful Possession is required:

1. Any live Game Animal.
2. The horns of Goral, Ibex, Markhor or Urial.
3. The skins of Desert Cat or Jungle Cat.

THIRD SCHEDULE

[See sections 2(n), (t), 22 (2) and 27]

Protected Animals, i.e. Animal which shall not be hunted, killed or captured.

1. All game animals when immature or not fully grown.

2. All female game animals when :

   (a) pregnant;

   (b) in a condition that indicates that they are suckling or feeding young;

   (c) accompanied by their immature off spring.

3. All females of the following species:

   Nemorhaedus goral; Goral

   Capra flconeri; Markhor (all races)

   Capra Ibex; Ibex or Himaleyan Ibex

   Ovis orientalis; Urial or shapu (all races)

4. All individuals of the following species, genera or families of birds.

   All members of the family ARDIEDAE; i.e. all Herons Paddy birds, Egrets or bitterns.

   All members of the family PELICANDAE; i.e. all pelicans.

   All members of the family CICONIDAE; all storks.

   All members of the family THRESKIORNIADAE; i.e. all Ibis's and Spoonbills.

   All members of the family PHOENICOPTERIDAE; i.e. all Flamingos

All members of the genera Anser and Branta; i.e. all geese, including the Bar-headed Goose.

All members of the genus Cygnus; i.e. all Swans.

The following species of Ducks:-

Anas anustirostris; Marbled Teal.

Rhodonessa caryphyllancea; Pink-headed duck.

Nettapus coromandelianus; Cotton Teal.

Oxyura leucocephala; White-headed duck or Stiff-tailed Duck.

Sarkisiornis melanotus; Nukhta or Comb Duck.

All members of the family ACCIPITRIDAE; i.e. all Hawks, Vultures Kit Buzzards, Hawk-Eagles, Eagles, Harriers and Ospereys.

All members of the family FALCONIDAE; i.e. all Falcons, Kestrels and Hobbies.

All members of the family PHAISIANIDAE; i.e. all pheasants, spurfowls, Jungle-fowls and Peafowls.

All members of the family CRUIDAE; i.e. all Cranes.

All members of the Genus Helipais; i.e. Finfoots.

All members of the family OTIDAE; i.e.. Bustards.

Scelopax rusticola; Woodcock.

Pterocles Alchata; Hage, Pin-tailed Sandgrouse.

All members of the Genus Ducula; i.e. all Imperial Pigeons.

Pehasants, Partridges, Peafowls, Junglefowls, Lerwa Lerwa;

[1][Snow Partridge, Himalayensis;] Himalayan Snow Cock, Framcolimus Black Partridge, Gallus gallus; Red Junglefowl].

5. All individuals of the following species, genera or families of mammals;

Macaea mulatta villosa and M. M. Memahoni; i.e. all Rhesus Monkeys found in North-West Frontier Province.

Presbytis entellus; Common Langur.

Manis crassicaudata; Pangolin.

Vulpes cana; Blanford's fox.

[1] In the Third Schedule in the last entry at Serial No. 4 for the words, Comma and Semi-Colon

Cuon alpinus; Wild Dog.

Selenartos thibetanus gedrosianus; Baluclis fan Black Bear.

Ursys arctos; Brown Bear.

Martes flavigula; Yellow-throated Marten.

Vormela peregusna; Marbled Polecat.

Mellivora capensis; Ratel.

Lutra lutra; Common Otter.

Lutra perspicillate; Smooth Otter.

Vivorra ibetha; Larg Indian Civt.

Viverricula indica; Small Indian Civt.

Paradoxurus hermaphroditus;Common Plan Civt or Today Cat.

Peguma larvata;Himalayan Plam Civert or Masked Civet.

Arctitis binturong; Binturong.

Felis manual; Pallas,s Cat.

Felis Caracel; Carscal.

Felis, lynx; Luynx.

Felis bengalensis; Leopard cat.

Felis viverriana; Fishing Cat.

Panthera pardus; Leopard.

1[Felis margarita;Stand Cat. Pantthera pardis; Leopard}.

Callosciurus phygerythrus ; Hoary-bellied Flying Squirred.

Moschus moschiferus ; Musk Deer.

Muntiacus muntijak or barking Deer.

Axis porcinus; Hog Deer.

Gazella gazella ; Chinkara or Indian Gazella.

Capra falconeri jerdoni ; i.e. Staright-horned Markhor.

Ovis ammon pollii ; Marco Polo's sheep.

Ovis orientalis punjabiensis ; Punjab Urial.

Platanista gangeticus ; River Delphin.

6. All individuals of the following species, genera or families of reptiles ;

Groodilus palustrisn ; Marsh Crocodile.

All snakes of the genus pythone ; I.e. all pythons.

All lizards of the genus Varanus ; i.e. all Monitor Lizards.

5.1.4.2 NWFP Wildlife (Protection, Preservation, Conservation and Management) (Amendment) Act, 1976

THE NORTH-WEST FRONTIER PROVINCE WILD-LIFE

(PROTECTION, PRESERVATION, CONSERVATION AND MANAGEMENT)

(AMENDMENT) ACT, 1976

Peshawar, the 1st April, 1976.

N.-W.F.P. ACT NO. V of 1976

AN
ACT

to amend the North-West Frontier Province Wild-life (Protection, Preservation, Conservation and Management) Act, 1975.

Preamble

WHEREAS, it is expedient to amend the North-West Frontier Province Wild-Life (Protection, Preservation, Conservation and Management) Act, 1975 (N.-W.F.P. Act V of 1975), in the manner hereinafter appearing:

It is hereby enacted as follows:-

Short title and commencemnt.

1. (1) This Act, may be called the North-West Frontier Province Wild Life (Protection, Preservation, Conservation and Management) Amendment Act, 1976.

(2) It shall come into force at once.

Amendment of section 8 of NWFP Act of 1975

2. In the North-West Frontier Province Wild-life (Protection, Preservation, Conservation and Management) Act, 1975 (N.-W.F.P. Act V of 1975), hereinafter referred to as the said Act, in section 8—

(a) for clause (vii), the following clause shall be substituted namely:-

"(vii) except in the case of ducks of all kinds, hunt with the help of decoys or call birds;" and

(b) for clause (ix), the following clause shall be substituted namely:-

"(ix) except in the case of ducks of all kinds, hunt after sunset and before sunrise; and."

Amendment of First Schedule to N.W.F.P. Act V of 1975

3. In the First Schedule to the said Act,—

(a) in column 2, for the word “five”, appearing for the first time against the entry “Anatidac: Ducks”, the word “Twenty” shall be substituted; and

(b) in column 4, for the figures and words “1st November to 1st March” appearing for the first time against the entry “ Anatidac: Ducks”, the figures and words “1st September to 15th April”, shall be substituted.

Amendment of third schedule to NWFP Act V of 1975.

4. In the Third Schedule to the said Act.—

(a) in the last entry at Serial No.4, for the words, comma and semi-colon “Ridge, Himaleyensis;” the word, comma and semi-comma Snow Partridge, Himalayensis, ” shall be substituted; and

(b) for the twenty-fourth entry at serial No.5, the following entries shall be substituted, namely:-

“Felis margarita; Sand Cat.—
Panthera pardis; Leopard”.

Repeal

5. The North-West Frontier Province Wild Life (protection, Preservation, Conservation and Management (Amendment) Ordinance, 1976, is hereby repealed.

5.1.5 Protected Areas

5.1.5.1 NWFP Wildlife (Protection, Preservation, Conservation and Management) Act 1975

THE NORTH WESTERN FRONTIER PROVINCE WILD-LIFE (PROTECTION, PRESERVATION, CONSERVATION AND MANAGEMENT) ACT, 1975.

1st August, 1975

N.-W.F.P. ACT No. V OF 1975

[First published after having received the assent of the Governor of the North-West Frontier Province, in the Gazette of North-West Frontier Province (Extraordinary), dated the 1st August, 1975)

AN
ACT

to amend an consolidated the law relating to protection, preservation, conservation and management of wild-life in the North-West Frontier Province.

WHEREAS it is expedient to amend and consolidate the law relating to protection, preservation, conservation and management of wildlife in the North-West Frontier Province, in the manner hereinafter appearing;

It is hereby enacted as follows:-

1. (1) This Act may be called the North-West Frontier Province, Wild-life (Protection, Preservation, Conservation and Management) Act, 1975.

(2) It extends to the whole of the North-West Frontier Province, except the Tribal Areas.

(4) It shall come into force at once.

(4) Nothing hereinafter provided shall be deemed to authorise any person to hunt in the reserved or protected forest or protected waste land as constituted and declared under the provisions of the Forest Act, 1927 (Act XVI of 1927), or the Hazara Forest Act, 1936 (N.-W. F. P. Act VI of 1937), or on any person's private property with out permission.

(7) The provisions of this Act shall not apply to Dhakani petgrey partridges.

3. On this Act, unless the context otherwise requires:-

(w) "Board" means the North-West Frontier Province Wild-life Management Board, constituted under section 4;

(x) "certificate", "licence", "special licence", "permit" or "special permit" means respectively a certificate, a licence, a special licence, a permit or a special permit granted or issued under this Act;

(y) "dealer", when used in relation to wild animals, trophies or meat, shall mean any person who, in the course of trade or business carried on by him whether on his own behalf or on behalf of any person, -

(iii) sells, purchases or barters any wild animal, its meat or trophy;
(iv) cuts, carves, polishes, preserves, cleans, mounts or otherwise prepares any such wild animal, trophy or meat or manufactures any article therefrom;

(z) "game animal" means a wild animal specified in the First Schedule;

(aa) "game reserve" means any area declared as such under section 17;

(bb) "Government" means the Government of the North-West Frontier Province;

(cc) "hunt" means any act directed immediately to the killing or capturing of a wild animal and shall include taking the nest or egg of a wild animal;

(dd) "meat" means the fat, blood, flesh or any eatable part of wild animal, whether fresh or preserved;

(ee) "national park" means an area declared as such under section 16;

(ff) "offence" means an offence punishable under this Act or any rules made thereunder;

(gg) "officer" means any person appointed as such under section 3 and includes every forest officer as defined in the Forest Act, 1927 (Act XVI of 1927), and the Hazara Forest Act, 1936 (N.-W. F. P. Act VI of 1937);

(hh) "prescribed" means prescribed by rules;

(ii) "private game reserve" means an area declared as such under section 19;

(jj) "protected animals" means a wild animal specified in the Third Schedule;

(kk) "province" means the North-West Frontier Province;

(ll) "rules" means rules made under this Act;

(mm) "Schedule" means Schedule appended to this Act;

(nn) "section" means a section of this Act;

(oo) "trophy" means any dead body or any horn, antler, tooth, tusk, bone, claw, hoof, skin, hair, feather, egg-shell or other durable part of game animal or protected animal whether or not included in manufactured or processed article;

(pp) "wild animal" means wild birds or animals specified in the First and Third Schedules;

(qq) "wild-life" includes organic resources, animals, birds, reptiles, vegetation, soil and water; and

(rr) "wild-life sanctuary" means the area declared as such under section 15.

3. (1) Government may, for the purposes of this Act, appoint such officers, including honorary officers, on such terms and conditions as it may determine.

(2) Except as may otherwise be prescribed, as honorary officer shall have all powers conferred by this Act and shall hold office for such period and subject to such conditions as may be prescribed.

4. (1) As soon as may be after the commencement of this Act, Government shall establish a Board to be called the North-West Frontier Province Wild-life Management Board.

[1][(2) The Board shall perform the functions specified in section 5 and such other functions as Government may, from time to time, assign to it].

(4) The Board shall consist of
(iii) a Chairman; and
(iv) such number of members as may be appointed by Government

(4) Chief Minister of the Province shall be the Chief Game Warden and ex-officio Chairman of the Board.

(5) A member shall, unless he sooner resigns or is removed by Government, hold office for such terms as may be prescribed.

(8) The Chairman may appoint any person as Secretary of the Board.

(7) The meeting of the Board shall be held at such times and at such places and in accordance with such procedure as may be prescribed.

[2][5. *Functions of the Board;* - The Board shall -

(d) advise Government on policy decisions relating to conservation and development of wild-life and game management in the Province;

(e) scrutinise the development schemes relating to wild-life and game management in the Province referred to it by Government; and

(f) review the progress of development activities in the field of wild-life protection, preservation, conservation and management in the province.]

6. [3][…….]

[1] In section 4 Sub-section (2) substituted by N.-W. F. P. Ordinance No. II of 1984 Section 1
[2] Section 5 substitued by N.-W. F. P. Ord. No. II of 1984, Section 3
[3] Section 6 omitted by N.W.F.P. Ord. No. II of 1984 section 4.

7. Government may require the Board to furnish it with any document, return, statement, estimate, information of report regarding any matter 2pertaining to the functions] of the Board and the Board shall comply with every such requisition.

8. No persons shall -

(viii) hunt any wild animal by means of a set gun, drop spear, deadfall, gun trap, explosive projectile, bomb, grenade, baited hook, net, snare or any other trap, an automatic weapon, or a weapon of a calibre used by the Pakistan Army or Police Force or by means of a projectile containing any drug or chemical substance, likely to anesthetize, paralyse, stupify or render incapable an animal whether partly or totally;

(ix) hunt any protected animal;

(x) hunt any game animal except under a permit and in accordance with the provisions of this Act or the rules;

Provided that no person shall hunt any game animal other than birds or hares with a shot-gun or with non-magnum rifle of 22 calibre or less;

(xi) use, or have in his possession any net, snare, bhagwa, poison or like injurious substance for the purpose of hunting a game animal;

(xii) use vehicle of any type to pursue any game animal, or to drive or stampede game animal for any purpose whatsoever;

(xiii) shoot any game animal from any conveyance or from within two hundred yards of the conveyance;

[1][(vii) except in the case of ducks of all kinds, hunt with the help of decoys or call birds;]

(xiv) construct or use, for the purpose of hunting any wild animal, any pitfall, game pit, treach or similar excavation, any fence or enclosure; or use bhagwa or any other similar contribance:

Provided that it shall not be an offence to use –

(c) a motor vehicle or aircraft to drive any wild animal away from an aerodrome or airstrip when such action is necessary to ensure the safety of aircraft using that aerodrome;

(d) any one or more of the aforesaid prohibited methods if the officer authorised in this behalf grants, at his discretion, a licence with permission to employ such method;

[1][(ix) except in the case of ducks of all kinds, hunt after sunset and before sunrise;]

(x) hunt by hiding near a water hole or salt licks.

[1] In section 8 clauses (vii) and (ix) Positively substituted by Act No. V of 1976 Section 2 (a,) (b).

[1] In section 8 clauses (vii) and (ix) Positively substituted by Act No. V of 1976 Section 2 (a,)

11. No person shall use hawks for hawking or dogs, for coursing the game animals except upon payment of a fee –

    (iii) of one hundred rupees per annum, in the case of any hawk; and
    (iv) of twenty rupees per annum, in case of a pair of grey hounds.

12. Any protected animal or game animal which is found dead or dying or which has been killed or caught otherwise than in accordance with the provisions of this Act and any meat or trophy thereof shall be property of Government.

11. (1) No person shall be in possession of any wild animal, dead or alive, trophy or meat of a kind specified in the Second Schedule unless he be in possession of a Certificate of Lawful Possession granted in respect thereof by the officer authorised in this behalf:

    Provided that any person importing any wild animal, trophy or meat of a wild animal in accordance with the provisions of this Act, or acquiring such animal, trophy or meat in accordance with the terms of a permit issued under this Act, shall obtain such certificate by applying to the authorised officer within thirty days from the date of importing or acquiring the animal, trophy or meat.

    (4) The officer authorised in this behalf may mark or register the animal, trophy or meat in respect of which a Certificate of Lawful Possession is issued, in the prescribed manner, or he may seize; pending the taking of legal action under this Act, any such animal, trophy or meat which in his opinion has not been legally imported or acquired.

    (5) No person shall counterfeit, change or in any way interfers with any mark or registration of animal, trophy or meat for which a Certificate of Lawful Possession has been issued or alter or in any way change a Certificate of Lawful Possession.

12. (1) No person shall transfer by gift, sale or otherwise to any other person any animal, trophy or meat of a kind specified in sub-section (1) of section 11 unless he be in possession of a Certificate of Lawful Possession in respect thereof, and such certificate is endorsed with details of the transaction and given to the transfer at the time of the transfer.

    (3) No person shall receive by gift, purchase or otherwise any animal, trophy or meat of a kind specified in sub-section (1) of section 11 unless he receives at the same time a valid Certificate of Lawful Possession in respect thereof.

13. (1) No person shall import or attempt to import in the Province any wild animal of an endemic or exotic species, or any trophy or meat of a kind specified in sub-section (1) of section 11, except under an import permit granted under this Act and if such import be from outside Pakistan except through a customs post of entry and subject to any law relating, to control on imports for the time being in force.

    (4) No person shall export or attempt to export out of the Province any animal, trophy or meat specified in sub-section (1) of section 11 except under an export permit granted under this Act and if such export be to any country outside Pakistan except through a customs post of exit and subject to any law relating to control on export for the time being in force.

(5) Nothing in this section shall apply to any animal, trophy or meat in transit through the Province if such animal, trophy or meat, -

(iv) is accompanied by necessary transit customs documents;
(v) is entered through a customs post of entry or is schedules to a customs post of exit; or
(vi) is not unloaded from the conveyance on which it is being carried or, in the case of rail or air transport, it does not leave the precincts of the railway station or airport at which it is landed or trans-shipped or does not remain therefor more than forth-eight hours.

14. (1) No person shall as a profession, trade or business, buy, sell or otherwise deal in wild animal, trophies or meat thereof or process of manufacture goods or articles from such trophies or meat, unless he is in possession of a valid licence, hereinafter called a dealer's licence, to do so, issued by an officer authorised in this behalf.

(5) The officer authorised under sub-section (1) may, on payment of such fees as may be prescribed, grant a dealer's licence to be valid for one year to any person which shall entitle the licensee to deal in any wild animal, trophy or meat thereof, or any class of wild animals, trophies or meat specified in such licence.

(6) For the purpose of assessment of fees, dealers may be divided into different classes and a different fee may be prescribed for each class.

(7) The holder of the dealer's licence shall maintain such register or record of his dealings in such manner as may be prescribed, and shall produce them for inspection at any reasonable time when called upon to do so.

15. (1) Government may, by notification in the officials Gazette, declare any area which is the property of Government or over which Government has proprietary rights to be wild-life sanctuary and may demarcate it in such manner as may be prescribed.

(4) The wild-life sanctuary shall be set aside as un-disturbed breeding ground for the protection of wild-life and access thereto for public shall, except in accordance with the rules, be prohibited and no exploitation of forest therein shall be allowed except for reducing fire-hazards, epidemic or insect attacks or other natural calamities.

(5) No person shall –

(ix) enter or reside,
(x) cultivate any land,
(xi) damage or destroy any vegetation,
(xii) hunt, kill or capture any wild animal or fire any gun or other fire-arm within one mile of the boundaries,
(xiii) introduce any exotic species of animal or plant,
(xiv) introduce any domestic animal or allow it to stray,
(xv) cause any fire, or
(xvi) pollute water,

in a wild-life sanctuary;

Provided that Government may, for scientific purposes or for aesthetic enjoyment or betterment of scenery, authorise the doing of the aforementioned acts.

16. (1) With a view to the protection and preservation of scenery, flora and fauna in the natural estate, Government may, by notification in the official Gazette, declare any area which is the property of Government or over which Government has proprietary rights to be a national park and may demarcate it in such manner as may be prescribed.

(5) A national park shall be accessible to public for recreation, education and research subject to such restrictions as Government may impose.

(6) Provision for access roads to and construction of rest houses, hostels and other buildings in the national park along with amenities for public may be so made and the forest therein shall be so managed and forest produce obtained as not to impair the object of the establishment of the national park.

(7) The following acts shall be prohibited in a national park : -

(vi) hunting, shooting, trapping, killing or capturing of any wild animal in a national park or within three miles radius of its boundary;
(vii) firing any gun or doing any other act which may disturb any animal or bird or doing any act which interferes with the breeding places;
(viii) felling, tapping, burning or in any way damaging or destroying, taking, collecting or removing any plant or tree therefrom;
(ix) clearing or breaking up any land for cultivation, mining or for any other purposes; and
(x) polluting water flowing in and through the national park;

Provided that Government may, for scientific purpose or betterment of the national park, authorise the doing of the aforementioned prohibited act.

21. Government may declare any area to be a game reserve, where hunting and shooting of wild animal shall not be allowed, except under a special permit, which may specify the maximum number of animals or birds that may be killed or captured and the area and duration for which such permits shall be valid.

22. Government may, from time to time, by notification in the official Gazette, declare any alteration in the boundaries of wild-life sanctuary, national park, and game reserve declared under this Act.

23. (1) Where Government is satisfied that an area of private land has been dedicated by its owner for the purposes similar to a game reserve, it may, by notification in the official Gazette, and on the application of the owner of the area, declare such area to be a private game reserve.

(5) Hunting and shooting of wild animals by any person other than the owner of the area shall not be allowed in a private game reserve except with the permission of the owner thereof.

(6) The owner of a private game reserve shall exercise within the limits of his private game reserve the same powers as are exercisable by an officer under this Act.

(7) Government may, by notification in the official Gazette, at any time, declare that any private game reserve shall cease to by a private game reserve.

20. (1) Whoever contravenes or attempts to contravene,-

(v) any provisions of sections 11, 12, 13 and 14 shall be punished with imprisonment which may extend to a period of one year or with fine which may extend to one thousand rupees, or with both, and any licence or permit granted or issued to him under this Act shall be suspended for a period of two years;

(vi) any provisions of section 8 shall be punished with imprisonment which may extend to two years, or with fine which may extend to one thousand rupees, or with both;

(vii) any provisions of section 9, 10 and 27 shall be punished with a fine which may extend to five hundred rupees;

(viii) any provisions of this Act or any rule for the contravention of which no specific penalty is provided, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(4) Whoever interferes or attempts to interfere in the performance of any functions or in the discharge of any duties under this Act, shall be punished as in clause I) of sub-section (1).

(5) Whoever, having already been convicted of an offence under sub-section (1) or sub-section(2) is again convicted thereunder, shall, on every subsequent conviction, be punished with imprisonment which shall not be less than twelve months, or with fine which shall not be less than one thousand rupees or both, and his fire-arm, vehicle, appliance or anything used in the commission of the offence and his hunting licence shall be confiscated and he shall not be eligible to a hunting permit, licence or a special permit for a period of two years.

24. Abetment of any offence under this Act of the rules made thereunder shall be punishable as the offence.

21. (1) Notwithstanding any other provision of this Act, it shall not be an offence if–

(d) any person kills any wild animal by any means in the immediate defence of his own life or that of any other person;

(e) the owner of standing crops or his employee kills any wild animal which is doing material damage to those crops by any means within the bounds of those crops;

(f) the owner of livestock or his employees kills any wild animal that is doing damage to the livestock by any means within a reasonable distance where that livestock is grazing or where it is enclosed for the night;

Provided that clause (b) and clause (c) shall not apply to any unlawful cultivation in a national park, wildlife sanctuary and a reserved or protected forest or any livestock unlawfully grazing or herded therein.

(4) The killing under sub-section (1) of wild animals specified in the First and Third Schedules shall be reported to the nearest office established for the purposes of this Act with the least possible delay.

(5) The meat or trophy of any wild animal killed in self defence shall be the property of Government and shall be disposed of as directed by the officer authorised in this behalf.

43. When in any proceedings taken under this Act, or in consequence of anything done under this Act, a question arises as to whether any wild animal, trophy or meat is the property of Government, such wild animal, trophy or meat shall be presumed to be the property of Government until the contrary is proved.

44. When officer or any other person authorised by Government in this behalf, may search any person, premises, vessels, vehicle, animal, packages receptable or covering so as to satisfy himself whether or not an offence under this Act has been committed.

45. Any officer or any person authorised by Government in this behalf, may seize any wild animal, dead or alive, together with any fire-arm, net, trap, snare, bow, arrow or any vehicle or vessel or anything whatsoever used or suspected to have been used in the commission of an offence under this Act.

46. Notwithstanding any other provision of this Act, the officer or any other person authorised in this behalf, may sell any property seized, under section 25 which, is subject to speedy and natural decay and may, subject to the determination of the rights thereto, deal with the proceeds in such manner as may be prescribed.

47. Every person in possession of any wild animal specified in the Third Schedule shall produce his Certificate of Lawful Possession on demand made by any officer or any other person authorised by Government in this behalf.

48. Every coupe purchaser of forest produce, Lambardar, Canal Patwari, Public Works Department Daroga, Chowkidar, Dafadar, village watchman, Abdar, Zilladar, Revenue Patwari, Qanungo and Tehsildar shall be bound, in the absence of reasonable excuse, to give to any officer or any person authorised in this behalf by Government, information in respect of any snaring, trapping, netting, unauthorised killing, or any other offence under this Act, committed within the limits of his jurisdiction, as soon as the commission of such offence comes to his knowledge.

49. When the offender is not known or cannot be found any officer authorised in this behalf may, if he finds that an offence has been committed, confiscate the property used in the commission of the offence.

50. Every officer or any other person authorised by Government in this behalf shall be competent to prevent by all lawful means the commission of any offence under this Act.

51. Cognizance of any offence under this Act shall not be taken by any Court except on the complaint of the officer or any person authorised by Government in this behalf.

52. No Court inferior to that of a Magistrate of the First Class shall take cognizance of and try an offence under this Act.

53. The District Magistrate or any Magistrate of the First Class specially empowered in this behalf by Government may try summarily any offence punishable under this Act.

54. Nothing contained in this Act, shall be deemed to prevent any person from being prosecuted under any other law for any act or omission which constitutes an offence under this Act, or from being liable under any other law to any higher punishment or penalty than that provided by this Act.

55. (1) Government may, by notification in the official Gazette, empower an officer-
    (c) to accept from any person against whom reasonable suspicion exists that he has committed any offence under this Act, a sum of money by way of compensation for such offence;

    (d) when any property has been seized as liable to confiscation, to release the same on payment of the value thereof, as estimated by such officer.

    (5) On the payment of compensation, such sum of money, or such value or property under sub-section (1) or both, as the case may be, the suspected person if in custody, shall be discharged and the property, if any, seized shall be released and no further proceedings shall be taken against such person or property.

    (6) The sum of money accepted as compensation under clause (a) of sub-section (1) shall in no case exceed the sum of five hundred rupees.

    (7) No officer shall have power to compound a second and subsequent offence under this Act.

56. Government may invest any officer or any other person authorised in this behalf with all or any of the following powers, that is to say –

    (e) the powers of a Civil Court to compel the attendance of witnesses and the production of documents and material objects;
    (f) the power to issue a search warrant under the Code of Criminal Procedure, 1898 (Act V of 1898);
    (g) the power to hold an inquiry into offence under this Act and in the course of such inquiry to receive and record evidence; and
    (h) the powers to prosecute a case before a Magistrate.

57. The officers or persons authorised under any provisions of this Act to do a certain thing or act in certain manner shall be deemed to be public servants within the meaning of the Pakistan Panel Code (Act XLV of 1860).

58. No suit, prosecution or other legal proceedings shall be lie against any officer for anything in good faith done or intended to be done in pursuance of any provision of this Act or the rules made thereunder.

59. Every police officer shall, upon request made by any officer or person employed under this Act, assist him in the due discharge of his duties under this Act.

60. Government may, by notification in the official Gazette, delegate all or any of the powers conferred upon it under the provisions of this Act to any Officer subordinate to it.

61. Notwithstanding anything contained in this Act, Government may, in the interest of any scientific or public purpose, allow, by notification in the official Gazette, killing

and capturing of such wild animals in such places and by such means as may be specified in the notification.

62. Government may, by notification in the official Gazette, in respect to any specified area –

(iii) add to or exclude from the Schedules any wild animals, subject to such conditions as it may impose in each case; and
(iv) alter the period during which any wild animal specified in the First Schedule may be killed.

43. (1) Government may make rules for the purposes of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the forgoing powers, such rules may provide for -

(h) the powers and duties of the officers and other person specially authorised to perform functions under this Act;

(i) the form in which, the terms and conditions on which, a licence special licence, a permit or special permit may be granted;

(j) the fees to be charged for any licence or permit or special licence or special permit;

(k) in the case of any species of wild animals, the number and the sex that may be killed under a special permit;

(l) reward to persons who render help in detection of offences under this Act;

(m) the authorities by whom, the conditions on which, and the manner in which licences may be issued; and

(n) the management of wild-life sanctuaries, national parks and game reserves

44. (1) The following enactments are hereby repealed :-

(d) The Wild Birds and Animals Protection Act, 1912 (Act No. VIII of 1912)

(e) The West Pakistan Wild-life Protection Ordinance, 1959 (W. P. Ord. No. LVI of 1959); and

(f) The North-West Frontier Province Wild-life (Protection, Preservation, Conservation and Management) Ordinance, 1975 (N.-W.F.P. Ord. No. V of 1975)

(2) Notwithstanding the repeal of the enactments mentioned in sub-section (1), everything done, action taken, obligations, liability, penalty or punishment incurred, inquiry or proceedings commenced, officer appointed or person authorised, jurisdiction or power conferred, rule made and licence or order issued under the provisions of the said enactments or rules made thereunder shall continue in force, and so far as may be, deemed to have been respectively done, taken incurred, commenced, appointed, authorised,

conferred, made or issued under this Act and any enactment or document referring to any of the said provisions shall, as far as may, be, construed to refer to this Act or the corresponding provisions thereof.

SCHDULE.

FIRST SHEDULE.

[See section 2 (d), (t), 22 (2) and 42 (ii)]

GAMES ANIMALS I. E. , ANIMALS WHICH SHALL ONLY BE HUNTED UNDER THE TERMS OF A GAME

SHOOTING OR GAME CAPTURE LICENCE.

Part I.- (Animal which may be hunted on a small Game shooting Licence).

Name of animals	**Number allowed**	**Fee for licence**	**Time and season hunting permitted**	**Localities in which hunting permitted**
Anatidae: Ducks. Dendrocycna Javanica Lesser Whisling Teal. Dendrocycna bicolor: Large whistling Teal. Tadorna feruqinea: Ruddy Shelduck or Brahmiy Duck. Tadornatadorn: Common Shelduck Anas acuta: Pntail Anas crecca Common Tea. Anas platyrhynchios: Mallard. Anas strepera: Gadwall Anas falacata: Falcited Teal Anas penelope Wigeon Querquandnla: Gragany Anas clypeata: Shoveller Metta refina: red-creasted Pochard Aythya nyroca: White-eyed Pochard Aythya ferino: Common Pochard Aythya bearli : Rear's	Unlimited, but not more than (twenty) ducks of all species combined may be killed in any one day	Rs. 25/-	(1st September to 15th April)	Wherever found

Pochard Aythya fuliqula: Tufted Duck Aythya marila: Scaup Clanqula hymalis: Old squaw Long-tailed Duck Bucephalus clangula: Goldeneya Duck Merqus abelius: Smew Merqus merqanser: Goesandar Merqus serrator: Red-breasted merganser Phasianidae and Turnicida: Partridge Quails				
Ammoperdix griseogularis: Seesee Partridges	Unlimited, but not more than four per day	Rs. 25/-	Wednesday, Sunday and gazetted holidays, from 1st November to 1st March	Whenever found
Alectorisquracca: Chukor	Ditto	Ditto	Ditto	Ditto
Francelinus pondicarianus: Grey partridges	Ditto	Ditto	Ditto	Ditto
Coturniz Coturniz Common quail	Unlimited, but not more than 10 of all species of quail and Button quail combined in any one day			
Ballidae Coots and moorhens Amamrormisphoenicurus White-breasted Moorhen	Unlimit, but not more than five Coots and Moorhens of all specials combined in any one day	Rs. 25/-	1st November to 1st March	Wherever found
Gallimura Chloropus Moorhen			Ditto	Ditto
Porphyrioporphyrio Purple Moorhen			Ditto	Ditto
Pulicula airata Goots			Ditto	Ditto
Charadrieae Plowers Sandipipers, Snipe and other woders			Ditto	Ditto
Vanellus indicus Red wattled Lapwing			Ditto	Ditto

Vanellus malabaricus Yellow wattled Lapwiog			Ditto	Ditto
Pluvialis apricaria Golden Plower			Ditto	Ditto
Pluvialis squatarola Grey Plower			Ditto	Ditto
Pluvialis dominica Eastern Golden Plower			Ditto	Ditto
Numenius arquata Curlew	Unlimited, but not more than two of both species combined in one day		Ditto	Ditto
Capella Solitaria: Solitary Snipe	Unlimited, but not more than ten snipe of all species combined in any one day	Rs. 25/-	Wednesday, Sunday and gazetted holiday from 1st November to 1st March	Ditto
Capella stenurs: Pintail Snipe				
Capella minima: Jack Snipe				
Capella media: Great Snipe				
Rostratulidae: Painted Snipe				
Rostratula benghalensis: Painted Snipe	As for Snipe		Ditto	Ditto
Ptericlididae: Sandgrouse				
Syrrhaptes tibetarus: Tibetan Sand-Sandgrouse	Unlimited, but not more than ten sand-grouse of all species combined (except P. alchata which is protected) in anyone day	Ditto	Ditto	Ditto
Pterocles exustus: Indian Sandgrouse				
Pterocles sonegullus: Spotted Sand-grous				
Pterocles orientalis: Imprial or black-bellied Saudgrous.	Unlimited, but not more than ten sandgrouse of all species combined (except P. alchata which is protected) in any one day.		Wednesday, Sunday and gazetted holiday from 1st November to 1st March	Wherever found
Pterocles coronatus: Coronetted sandgrouse.	Ditto		Ditto	Ditto
Pterocles indicus: Close-barred or painted	Ditto		Ditto	Ditto

.Sandgrouse				
Columbidae: Pigeons, Green Pigeons and Doves. All species of pigeons, green pigeons and Doves, other than the genus Ducula (Imperial Pigeons) which are protected.	Unlimited, but not more than ten birds of all species combined in any one day.		1st November to 1st March	Ditto
Lequs: Hares				
Lepus Capensis: Cape Hare	Unlimited, but not more than five animals of the genus Lepus in any one day		All year round	Ditto
Lepus niqricollis: Indian Hare				
Lepus arachieus: Arabian Hare				
Martes foina : Stone marten	2	Rs. 500	1st November to 1st March	Ditto
Selanarctor thibatanus: Black Bear	1		Ditto	Ditto
All races except S.T. gedrosianus (the Baluchistan Black Bear) which is protected. Felisilybical Desert Cat.	2		Ditto	In such areas as the Chief Warden may specify
Pelis chaus: jungle Cat	2		Ditto	Wherever found
Nemorhuedus goral: Goral	1		Ditto	Ditto
Capra ibex Himalayan: Ibex	1		Ditto	Ditto
Capra falconeri: Markhor, All races except. C. F. jerdoni (Straight-horned Markhor) which are protected.	1		Ditto	Ditto
Ovis orientalis: Urial or Shapu, All races except O. o. puniabiensis (Punjab Urial) which is protected.	1		Ditto	Ditto

1. In addition to the licence fee, a special permit shall be required for the shooting of the following animals which will be issued by the Chief Conservator of Forests on payment of the following fees: -

Common name	Fee for shooting permit for one animal
Black Bear	Rs. 5,000
Goral	Rs. 5,000
Himalayan Ibex	Rs. 5,000
Markhor	Rs. 5,000
Urial and Shapes	Rs. 5,000

SECOND SCHEDULE

See Section –II (1)

Animals, Trophies or Meat, for the possession, transfer or export of which or Certificate of Lawful Possession is required:

4. Any live Game Animal.
5. The horns of Goral, Ibex, Markhor or Urial.
6. The skins of Desert Cat or Jungle Cat.

THIRD SCHEDULE

[See sections 2(n), (t), 22 (2) and 27]

Protected Animals, i.e. Animal which shall not be hunted, killed or captured.

3. All game animals when immature or not fully grown.

4. All female game animals when :

   (d) pregnant;

   (e) in a condition that indicates that they are suckling or feeding young;

   (f) accompanied by their immature off spring.

3. All females of the following species:

   Nemorhaedus goral; Goral

   Capra flconeri; Markhor (all races)

   Capra Ibex; Ibex or Himaleyan Ibex

   Ovis orientalis; Urial or shapu (all races)

4. All individuals of the following species, genera or families of birds.

   All members of the family ARDIEDAE; i.e. all Herons Paddy birds, Egrets or bitterns.

   All members of the family PELICANDAE; i.e. all pelicans.

   All members of the family CICONIDAE; all storks.

   All members of the family THRESKIORNIADAE; i.e. all Ibis's and Spoonbills.

   All members of the family PHOENICOPTERIDAE; i.e. all Flamingos

   All members of the genera Anser and Branta; i.e. all geese, including the Bar-headed Goose.

All members of the genus Cygnus; i.e. all Swans.

The following species of Ducks:-

Anas anustirostris; Marbled Teal.

Rhodonessa caryphyllancea; Pink-headed duck.

Nettapus coromandelianus; Cotton Teal.

Oxyura leucocephala; White-headed duck or Stiff-tailed Duck.

Sarkisiornis melanotus; Nukhta or Comb Duck.

All members of the family ACCIPITRIDAE; i.e. all Hawks, Vultures Kit Buzzards, Hawk-Eagles, Eagles, Harriers and Ospereys.

All members of the family FALCONIDAE; i.e. all Falcons, Kestrels and Hobbies.

All members of the family PHAISIANIDAE; i.e. all pheasants, spurfowls, Jungle-fowls and Peafowls.

All members of the family CRUIDAE; i.e. all Cranes.

All members of the Genus Helipais; i.e. Finfoots.

All members of the family OTIDAE; i.e.. Bustards.

Scelopax rusticola; Woodcock.

Pterocles Alchata; Hage, Pin-tailed Sandgrouse.

All members of the Genus Ducula; i.e. all Imperial Pigeons.

Pehasants, Partridges, Peafowls, Junglefowls, Lerwa Lerwa;

[1][Snow Partridge, Himalayensis;] Himalayan Snow Cock, Framcolimus Black Partridge, Gallus gallus; Red Junglefowl].

5. All individuals of the following species, genera or families of mammals;

Macaea mulatta villosa and M. M. Memahoni; i.e. all Rhesus Monkeys found in North-West Frontier Province.

Presbytis entellus; Common Langur.

Manis crassicaudata; Pangolin.

Vulpes cana; Blanford's fox.

Cuon alpinus; Wild Dog.

[1] In the Third Schedule in the last entry at Serial No. 4 for the words, Comma and Semi-Colon

Selenartos thibetanus gedrosianus; Baluclis fan Black Bear.

Ursys arctos; Brown Bear.

Martes flavigula; Yellow-throated Marten.

Vormela peregusna; Marbled Polecat.

Mellivora capensis; Ratel.

Lutra lutra; Common Otter.

Lutra perspicillate; Smooth Otter.

Vivorra ibetha; Larg Indian Civt.

Viverricula indica; Small Indian Civt.

Paradoxurus hermaphroditus;Common Plan Civt or Today Cat.

Peguma larvata;Himalayan Plam Civert or Masked Civet.

Arctitis binturong; Binturong.

Felis manual; Pallas,s Cat.

Felis Caracel; Carscal.

Felis, lynx; Luynx.

Felis bengalensis; Leopard cat.

Felis viverriana; Fishing Cat.

Panthera pardus; Leopard.

1[Felis margarita;Stand Cat. Pantthera pardis; Leopard}.

Callosciurus phygerythrus ; Hoary-bellied Flying Squirred.

Moschus moschiferus ; Musk Deer.

Muntiacus muntijak or barking Deer.

Axis porcinus; Hog Deer.

Gazella gazella ; Chinkara or Indian Gazella.

Capra falconeri jerdoni ; i.e. Staright-horned Markhor.

Ovis ammon pollii ; Marco Polo's sheep.

Ovis orientalis punjabiensis ; Punjab Urial.

Platanista gangeticus ; River Delphin.

7. All individuals of the following species, genera or families of reptiles ;

Groodilus palustrisn ; Marsh Crocodile.

All snakes of the genus pythone ; I.e. all pythons.

All lizards of the genus Varanus ; i.e. all Monitor Lizards.

National Parks, Wildlife Sanctuaries, Game reserves and Private game reserves notification

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE

FORESTRY FISHERIES AND WILDLIFE DEPARTMENT

DATED PESHAWAR, THE /1/2000.

NOTIFICATION

No.SOFT:1(FFD)VIII.22.—In exercise of the powers conferred by section 4 of the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (NWFP Act No.V of 1975), and in supersession of this Department's notification No.SOFT:1(FFD)/VIII-22, dated 9.10.1999, the Government of the North-West Frontier Province is pleased to establish with immediate effect, the North-West Frontier Province Wild-life Management Board consisting of the following members :

OFFICIAL MEMBERS

1.	Governor, N.W.F.P.	Chairman
2.	Minister for Forestry, Fisheries and Wildlife, NWFP.	Member
3.	Chief Secretary, NWFP	-do-
4.	Additional Chief Secretary, NWFP	-do-
5.	Secretary, Forestry, Fisheries, and Wildlife Department, NWFP	-do-
6.	Secretary, Finance, NWFP	-do-
7.	Chief Conservator of Forests (T/C) Region, NWFP, Peshawar.	-do-
8.	Conservator of Wildlife, NWFP	-do-

NON OFFICIAL MEMBERS

1. _____
2. _____
3. _____
4. _____

5. _____

6. _____

SECRETARY TO GOVERNMENT OF NWFP,
FORESTRY FISHERIES AND WILDLIFE DEPARTMENT.

GOVERNMENT OF NWFP

FORESTRY, FISHERIES AND WILDLIFE DEPARTMENT

Dated Pesh the 3rd February, 1998.

NOTIFICATION

No.SOFT.I(FFD)VIII-10/97-98 Vol XII. In exercise of the powers conferred by section 18 of the North-west Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975, the Government of North-West Frontier Province is pleased to add the following area within the boundary of Ayubia National Park already declared as such vide this Department, Notification No. SOFT.I(FAD)-VIII-10-75/Vol-III, dated 17-01-84. Consequently, the new boundaries and area of the National Park are specified in table below:-

TABLE

Locality	District	Area (Hectare)	East	West	North	South
Ayubia National Park	Abbottabad	3312	Namlimaira Reserved Forest, Phalkot Reserved Forest, and Bakot Reserved Forest Compartment-6	Kuzagali Location Darwaza Reserved Compartment 3 (iii) Khanispur Location.	Birot Reserved Forest, Lahur village.	Bagan Reserve Forest, Compartment-1 and 10 Kalabagh Natnia gali location Kudla Tohidabad.

SECRETARY TO GOVT; OF NWFP
FORESTRY, FISHERIES AND WILD LIFE DEPARTMENT.

Endst. No. SOFT-I(FFD)VIII-10/97-98 Vol XII Dated 10-2-1998

Copy forwarded to :-

1. PS to Governor NWFP Peshawar.
2. PS to Chief Minister NWFP Peshawar.
3. PS to Minister for Forest, Fisheries and Wildlife NWFP.
4. PS to Chief Secretary NWFP Peshawar.
5. Secretary to Govt. of NWFP, S&GAD, Peshawar.

6. Secretary to Govt. of NWFP, Home & T.As Deptt. Peshawar.
7. Secretary to Govt. of NWFP, Information Deptt Peshawar.
8. Inspector General Police NWFP Peshawar.
9. Managing Director, NWFP FDC, Peshawar.
10. Chief Conservators of Forests T/C & S/F NWFP Peshawar.
11. Commissioner, Hazara Division, Abbottabad.
12. Deputy Commissioner, Abbottabad.
13. Conservator of Wildlife NWFP Peshawar
14. Manager, Govt. Printing Press for publication in the next official gazette.

SECTION OFICER (FOREST-I)

GOVERNMENT OF NORTH WEST FRONTIER PROVINCE

FORESTRY, FISHERIES AND WILDLIFE DEPARTMENT

NOTIFICATION

Peshawar dated the 15-7-1993

No.SOFT.I(FFD)VIII-8-90.—In exercise of the powers conferred by section 16 (I) of the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (NWFP Act-V of 1975), the Government of the North-West Frontier Province is pleased to declare with immediate effect the areas specified in the table given below to be the National Park.]

TABLE

Locality	District	Area	BOUNDARY			
		Hectare	East	West	North	South
Sheikh Buddin	D.I. Khan	15540	District boundary between D.I. Khan and Lakki Distts.	Demarcation line of Reserved Forest near the village of Banda Abu, Paniala Talgi, Banda Khan Mohammad and Kattah Khel.	Nizami Banda	Pezu and chunda villages.

Sd-
Secretary to the Govt. of NWFP
Forestry, Fisheries and Wildlife, Department.

Ends: No.SOFT.I(FFD)VIII-8-90, 6722-62, dated Peshawar the 15-7-1993

Copy forwarded to :-

1. PS to Governor NWFP, Peshawar.
2. PS to Chief Minister, NWFP, Peshawar.
3. PS to Minister for Wildlife and Fisheries NWFP.
4. PS to Chief Secretary NWFP.
5. Secretary to Govt. of NWFP, Information Deptt.
6. Managing Director, Forest Dev. Corporation Peshawar.
7. Chief Conservator of Forests, Peshawar.
8. All Commissioners in NWFP.
9. All Deputy Commissioners in NWFP.
10. Conservator of Wildlife NWFP
11. Director of Information NWFP, Peshawar.
12. The Assistant Draftsman-II, Law Department, Peshawar.
13. Manager Govt. Printing Press, NWFP for publication in the next issue of the official gazette and also supply 30 copies to this Department.
14. Budget and Accounts Officer (Forests)
    Government of NWFP, Forestry, Fisheries and Wildlife Department.

Sd/-
SECTION OFFICER (FORESTS-I)

Copy of letter No.SOFT.I(FAD)VIII-22/79/30875-99, dated 18-10-1984 from the Secretary to Govt: of NWFP, Agri: Forest & Coop: Deptt: to the Chief Conservator of Forests, NWFP, Peshawar and others.

NOTIFICATION

No.SOFT.I(FAD)VIII-22/79:—With view to protecting and preparing Scenery. Flora and fauna in the natural state in the area specified below, which is the property of Government, the Government of the North-West Frontier Province, in exercise of the Powers conferred by sub-section (1) of 16 of the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (N.W.F.P Act V of 1975), is pleased to declare, the said area to be a National Park with immediate effect.

Locality	District	Area (Hectares)	BOUNDARIES	
Chitral Gol	Chitral	7750	North:	Ridge separating Luthoh Tehsil and part of Singur Gol
			West:	Luthoh Tehsil and part of Chimirsan Gol
			South:	Melon Gol and Chimrsan Gol
			West:	Singur and Chitral River.

Sd/-
Secretary to Govt. of NWFP,
Agri. Forest & Coop: Deptt:

No.843 /F-III-89/GR, dated Peshawar the 28-10-1984.

Copy forwarded to the conservator of Forests, Wildlife, Wing NWFP, Peshawar for information and necessary action.

Sd/- Chief Conservator Forests.
N.W.F. Province Peshawar.

No.825-30./WL(CF), dated Peshawar the 10-11-1984.

Copy forwarded to all Divisional Forests, Officers, Wildlife, in N.W.F.P., for information and necessary action.

Sd/-
Conservator of Forests, Wildlife,
N.W.F. Province Peshawar.

GOVERNMENT OF N.W.F.P.

FOREST AND AGRICULTURE DEPARTMENT

PESHAWAR, DATED _____, 1977.

NOTIFICATION

NO.SOFT(FAD)VIII-8/76.—In exercise of the power conferred by Sub-Section (I) of Section 15 of the North-West Frontier Province, Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (N.W.F.P. Act V of 1975) the Government of North West Frontier Province are pleased to declare with immediate effect, the areas specified in the table below to be the Wildlife Sanctuary:-

TABLE

Locality	District	Tehsil	Area in Hectares	BOUNDARIES			
				East	West	North	South
Manshi Reserved Forests	Mansehra	Mansehra	2321	Reori, Gabrial etc.	Barat Kot, Sorori	Manglal Bundi, Paras etc.	———- ———

Sd/-
Secretary to Govt. of N.W.F.P.,
Forest and Agri Department.

GOVT; OF N.W.F.P.

FORESTS AND AGRI;DEPTT;

NO.SOFT(FAD)VIII-8/76(5012-14)
Dated 30.3.1977

A copy is forwarded to the Chief Conservator of Forests, NWFP, Peshawar etc. for information with reference to his letter No.2361/GR, dated 18-2-1977.

Sd/- Section Officer (Forests)

No.2880/GR, dated Peshawar the 9.4.1977.

Copy fwd to the Conservator of Forests, Wildlife, Peshawar for information and necessary action in continuation of this office endst: No.2362/GR, dated 19.2.1977.

Sd/-C.C.F.Peshawar.

NO. 2298/WL, dated Peshawar the 18-4-77.

Copy forwarded to the Divisional Forest Officer, Wildlife, Hazara, Abbottabad for information and necessary action.

Sd/-
(Yar Mohammad Khan)
Conservator of Forests,
Wildlife N.W.F.P. Peshawar.

N.W.F.P. GOVERNMENT GAZETTE, EXTRAORDINARY,

4TH JANUARY, 1977.

No. S.O. Judi (HD)4-16/73.—In Government of North-West Frontier Province are please to renew the certificate of practice as Notary Public granted to Mr. Umar Khitab Advocate, Peshawar for the local area of District Peshawar *vid* Government of North-West Frontier Province, Home Departments' Notification No. S.O.Judl(HD)4-16/73, dated 16th October, 1973 for a further period of three years under section 5 (ii) of the Notaries Ordinance, 1961.

ARSHAD FARID
Secretary to Government of N.-W.F.P.
Home and Tribal Affairs Department.

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE

FOREST AND AGRICULTURE DEPARTMENT.

NOTIFICATIONS

30th November, 1976.

No.SOFT(FAD)VIII-8/76.—In exercise of the powers conferred by section 17 of the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (N.W.F.P. Act V of 1975), the Government of North-West Frontier Province are pleased to declare, with immediate effect, the areas specified in the table below to be the game reserves:

TABLE

Locality	Tehsil	District	Area in Hectares	BOUNDARIES East	West	North	South
Nizampur	Nowshera	Peshawar	780	Nizampur village	Torosar mountain	Garu village	Manglot R.F.
Thanadarwala	Thandai Wala	Lakki	Bannu	4050	Kundal	Daratan Chawani	Kabul Khel
Resi	Kohat Toi Banda.	Kohat	5050	Indus River		Nakband	Pindi Road

No.SOFT(FAD)VIII-8/76.—In exercise of the powers conferred by sub-section (1) of section 15 of the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management Act 1975 (N.W.F.P. Act V of 1975), the Government of the North-West Frontier Province are pleased to declare with immediate effect, the areas specified in the table below to be the wildlife Sanctuary:-

TABLE

Locality	Tehsil	District	Area in Hectares	BOUNDARIES			
				East	West	North	South
Borraka	Kohat	Kohat	2025	Borraka Village	Somari Ibrah Imzai hills	Teen Talab village	Somari Surgul hills.
Manglot	Nowshera and	Peshawar	715	Indus River	Attock Kohat Road	Wach and Namal Payan village	Saratoi Khawar Jungr

Sd/- X X X
Secretary to Government of N.-W.F.P.
Forest and Agriculture Department.

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE,

AGRICULTURE, FOREST & COOP: DEPARTMENT.

NOTIFICATION

Peshawar, dated the 16th March, 1983.

No. SOFT(FAD)VIII-10/76.—In exercise of the powers conferred by sub-section (I) of section 15 of the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (N.W.F.P. Act V of 1975), the Government of the N.W.F.P., is pleased to declare, with immediate effect, the area specified in the table below to be Wildlife Sanctuary.

TABLE

Locality	District	Area in Hectares	BOUNDARIES			
			East	West	North	South
Agram-Besti	Chitral	29896	Ridge connecting Palandhar, Agram Chirgalpur and Besti	Ridge separating Afghanistan and Slrwik Gol from Agram Besti	Ridge separating and Palandhar	Ridge connecting Afghanistan and Shapasht. Agram Besti

Sd/-
Secretary to Govt: of NWFP,
Agriculture, Ft, & Coop: Department.

NO.SOFT(FAD)VIII-10-76/7823-48, dated Peshawar the 17-3-1983

Copy forward to :-

1. 1 to 5.
2. 6 The Chief Conservator of Forests NWFP, Peshawar.
3. 7 & 8.

Sd/-
(MUHAMMAD RAFIQ)
SECTION OFFICER (FORESTS)

Endst No.2921/GR, dated Peshawar the 5th April, 1983

Copy to Conservator of Forests Wildlife NWFP, Peshawar for information and necessary action.

Sd/-
Chief Conservator of Forests,
N.W.F.P. Peshawar.

No.1272(CF)WL, dated Peshawar the 12th April, 1983.

Copy forwarded to Divisional Forest Officer Wildlife Division Chitral for information and necessary action.

Sd/-
Conservator of Forests,
Wildlife N.W.F.P. Peshawar.

GOVERNMENT OF N.W.F.P.

AGRICULTURE DEPARTMENT

NOTIFICATION

Dated Pesh. the _____/1988

NO.SOFT.I(FAD)VIII-8.—In exercise of the powers conferred by section 17 of the North-West Frontier Province, Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (NWFP Act V of 1975), the Government of North-West Frontier Province is pleased to declare with immediate effect, the areas specified in the table below to be the Game Reserve:-

S.No.	Locality	Tehsil	District	Area in Hectares		BOUNDARIES
1.	Bagra	Haripur	Abbottabad	2560	North:	Railway Line between Sarai Saleh Roadside to Shah Maqsood Lora Chowk.
					South:	Main Road Sarai Saleh to Rehana Pakka Road.
					East:	Bagra to Rehana including Karwala Hills ridges.
					West::	Lora Road Shah Maqsood to Bajwala.

SECRETARY TO GOVT. OF NWFP
AGRICULTURE 7 FORESTS DEPTT.

ENDST.NO.SOFT.I(FAD)VIII-8 DATED 22/2/1988

Copy forwarded to :-

1. PS to Governor, NWFP, Peshawar.
2. PS to Chief Minister, NWFP, Peshawar.
3. PS to Minister for Forests, NWFP.
4. PS to Chief Secretary, NWFP
5. Secretary to Govt. of NWFP, Information Department.
6. Managing Director, Forest Dev. Corporation, NWFP, Peshawar.
7. Chief Conservator of Forests, NWFP.
8. All Commissioners in NWFP.
9. All Deputy Commissioners in NWFP
10. Conservator Wildlife, NWFP.
11. Director of Information, N.W.F.P
12. Section Officer (Legis), Law Deptt, NWFP with ref. to his U.O.No.Legis:2(1)76/449, dated 17.2.88
13. Manager, Gover. Printing Press, NWFP for publication in next issue of the official gazet.
14. Budget & Account Officer (Forests) Agriculture Deptt., NWFP.

Sd/-
(Zia-ur-Rehman)
Section Officer (Forests – I)

GOVERNMENT OF N.W.F.P.

AGRI: FORESTS & COOPERATION DEPTT:

NOTIFICATION

DATED PESHAWAR THE 3RD SEPTEMBER, 1980.

NO.SOFT(FAD)VIII-8/76 Vol:II.—In exercise of the powers conferred by Section 17 of the North West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (N.W.F.P. Act V of 1975), the Government of the North-West Frontier Province is pleased to declare with immediate effect, the area specified in the table below to be the game reserve:

TABLE

Locality	District	Area in Hectares	BOUNDARIES East	West	North	South
Qalandarabad Ridge	Abbottabad Mangal		from Lun Patian to Banda Saido having on its banks the hamlets of Chatian, Ranjan, Lunda, Ankhora, Bhijia, Pargal, Narbir and Banda Saido.	8, 490 Bandi, Potha, the Ridge from rpotha to Mohayan, Bagu Nullah and Bihali.	Inchar Nullah between Banda Saido and Safaida Hado Bandi, Narawala Kathe, Rati Dandi and Savadan Bandi	Sayadan Nullah from Banda Pir Khan to halmaira and then bounded by the hamlets of Thiter, Hussainian Doseri and further by the ridge running from Do-seri to hihali.

SD/-
SAHIBZADA MOHAMMAD AYAZ
SECRETARY TO GOVERNMENT OF THE
AGRICULTURE, FOREST & COOPERATION
DEPARTMENT

GOVERNMENT OF NWFP

FORESTRY, FISHERIES & WILDLIFE DEPARTMENT

Dated Peshawar the 15/7/2000

NOTIFICATION

No.SO(FT-I)FWD/VII-10/92.—In exercise of the powers conferred by section-19 of the North West Frontier Province Wildlife (Protection, Preservation, conservation and Management) Act, 1975 (NWFP Act-V of 1975), the Government of North West Frontier Province is pleased to notify Kaigah Nullah Conservation Area as Private Game Reserve with immediate effect. Area of the Private Game Reserve is specified in the table below:

TABLE

S.No.	Locality	District	Area in Hectares	BOUNDARIES			
				North	South	East	West
1)	Kaigah Nullah Highway Community (KKH). Conservation Area	Kohistan	5000	The Ridge separating Shoori & Churi catchment	The ridge separating the watershed line Lotar nullah Barsin Gah and Kaigah Nullah	The Ridge of Chhar Gah, and MS Gah	Karakorum separating the watershed line of

This game Reserve will be managed by community of Kaigah Nullah, Tehsil Dassu, District Kohsitan in adherence to North-West Frontier Province, Forestry, Fisheries and Wildlife Department Notification No.So(FT-I)FFWD/VIII-10/92 dated 27.6.1993.

This Notification does not vest any ownership rights in favour of any person except as contained in the revenue record.

SECRETARY TO GOVT. OF NWFP
FORESTRY, FISH & WILDLIFE DEPARTMENT

Endst. No.SO(FT-I)FFWD/VIII-10/92/755464 dated Peshawar the 15-7-2000

Copy forwarded to :-

1. The PS to Governor NWFP, Peshawar.
2. The PS to Minister for Forests, NWFP, Peshawar.
3. The PS to Chief Secretary NWFP, Peshawar.
4. The PS to Secretary FFWD, NWFP.
5. CCF, S/F NWFP, Peshawar.
6. The CCF, T/C NWFP, Peshawar.
7. The MD, FDC, NWFP, Peshawar.

8. The CF, Wildlife, NWFP, Peshawar.
9. The Dy. Commissioner, Kohistan.
10. The Director (B&A) FFWD, Peshawar.
11. The Manager, Govt. Printing Press, Peshawar.

Section Officer (Forest-I)

5.1.5.2 NWFP Private Game Reserve Rules 1993

NWFP PRIVATE GAME RESERVE RULES 1993

GOVERNMENT OF NWFP

FORESTRY FISHERIES AND WILDLIFE DEPARTMENT

Dated Pesh. the 27th June, 1993.

NOTIFICATION

No.SOFT.I(FFD)VIII-10/92/.—In exercise of the powers conferred by sub-section (1) of section 43 of the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (N.W.F.P Act No. V 1975), the Governor of North-West Frontier Province is pleased to make the following rules namely:-

01. (1) These rules may be called the North West Frontier Province Private Game Reserve Rules, 1993.

(2) They shall come into force at once.

02. (1) In these rules, unless the context otherwise requires-

(a) "Act" means the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act 1975 (N-W.F.P. Act V of 1975);

(b) "Owner" in case where a piece of land is not owned individually, shall include the collective representative or the Organization (by whatever name called) or the family, the tribe of the village community, as the case may be, having entitlement in the land;

(c) "Year" means a calednar year, starting from first January and ending on 31st December.

(2) All other terms used in these rules but not defined shall have the same meanings as assigned to them in the Act.

03. Where Government is satisfied that an area of private land has good potential for development as game reserve and the same has been dedicated in writing by its owner for the purpose. Government may by notification in the official gazetted declare such area to be a private game reserve subject to production of proof of the ownership.

04. Such a private game reserve may be owned by an individual, a family, a tribe or village community represented through their collective representative or organization.

05. The minimum size of the private game reserve shall not be less than 50 acres.

06. The protection and management of private game reserve shall be the responsibility of the owner. However, the Wildlife Department will also provide appropriate assistance wherever possible.

07. The private game reserve shall be maintained and managed exclusively for one or more of the following purposes:-

    i. propagation of wildlife on the farm as farm game.
    ii. sport hunting;
    iii. recreation; and
    iv. conservation of bio-diversity.

08. The following acts shall be prohibited in a private game reserve.

    i. hunting of game animals without a general small game shooting licence issued by the Wildlife Organization Forest Department N-W.F.P.

    ii. hunting of game animals without a special permit issued by the owner of private game reserve or by the Wildlife Organization N-W.F.P. Forest Department on behalf of the owner;

    iii. hunting of any "Protected Animal" or any other animal whose hunting is prohibited;

    iv. hunting of wild animals otherwise than in accordance with the provision of the Act and the rules made thereunder, specially with regard to hunting season and time, and kind of gun etc; and

    v. trapping of game animals in a private game reserve for any purpose what so ever except with the special permission and under supervision of the Wildlife Organization Forest Department.

09. Owner of the private game reserve shall be authorised to levy special permit fee in consultation with the Wildlife Organization.

10. Twenty Five percent of the special fee shall go to the Wildlife Organization as share of the Government, while the remaining seventy five percent shall be the share of the owner.

11. A copy of the shooting permit granted by the owner of the private game reserve will be furnished to the nearest Wildlife office for record and monitoring.

12. The owner of a private game reserve shall be entitled to hunting in the private game reserve only under a special permit issued by the Wildlife Organization as ordinary hunter.

13. The owner of private game reserve shall exercise, within the limit of private game reserve, the same powers as are exercisable by an officer under the act.

14. The owner of private game reserve will sign an undertaking with the Wildlife Organization Forest Department to abide by the rules and regulations regarding private game reserve.

Wildlife Organization Forest Department shall be empowered to monitor the implementation of the said rules.

15. Government may, by notification in the official gazette, at any time, declare that any private game reserve shall seaz to be a private game reserve.

Sd/-
Secretary to Govt of NWFP
Forestry, Fisheries and Wildlife Department.

Endst. No.SOFT.I(FFD)VIII-10/92/6152-200 Dated Peshawar the 27th June, 1993.

Copy forwarded to :

01. PS to Governor N.-W.F.P., Peshawar.
02. PS to Chief Minister N-W.F.P., Peshawar.
03. PS to Minister for Wildlife N-W.F.P., Peshawar.
04. PS to Chief Secretary N-W.F.P., Peshawar.
05. Secretary to Government of N-W.F.P. S&GAD Peshawar.
06. Secretary to government of N-W.F.P., Home Department.
07. Secretary to government of N.W.F.P., Information Department.
08. Inspector General of Police, Peshawar.
09. Managing Director, F.D.C., Peshawar.
10. Chief Conservator of Forest, N-W.F.P.
11. All Commissioners in N-W.F.P.
12. All Deputy Commissioners in N-W.F.P.
13. All Deputy Inspector General of Police in N-W.F.P.
14. Conservator Wildlife N-W.F.P.
15. Director of Information N-W.F.P. for wide publicity through TV, Radio and Press.
16. Manager Government Printing Press N.-W.F.P. for publication in the next official gazette.

sd/-
SECTION OFFICER FOREST-1

GOVERNMENT OF NWFP

FORESTRY FISHERIES AND WILDLIFE DEPARTMENT

Dated Pesh. the 27th June, 1993.

NOTIFICATION

No.SOFT.I(FFD)VIII-10/92/.—In exercise of the powers conferred by sub-section (1) of section 43 of the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act, 1975 (N.W.F.P Act No. V 1975), the Governor of North-West Frontier Province is pleased to make the following rules namely:-

01. (1) These rules may be called the North West Frontier Province Private Game Reserve Rules, 1993.

(2) They shall come into force at once.

02. (1) In these rules, unless the context otherwise requires-

(a) "Act" means the North-West Frontier Province Wildlife (Protection, Preservation, Conservation and Management) Act 1975 (N - W.F.P. Act V of 1975);

(b) "Owner" in case where a piece of land is not owned individually, shall include the collective representative or the Organization (by whatever name called) or the family, the tribe of the village community, as the case may be, having entitlement in the land;

(c) "Year" means a calednar year, starting from first January and ending on 31st December.

(2) All other terms used in these rules but not defined shall have the same meanings as assigned to them in the Act.

03. Where Government is satisfied that an area of private land has good potential for development as game reserve and the same has been dedicated in writing by its owner for the purpose. Government may by notification in the official gazetted declare such area to be a private game reserve subject to production of proof of the ownership.

04. Such a private game reserve may be owned by an individual, a family, a tribe or village community represented through their collective representative or organization.

05. The minimum size of the private game reserve shall not be less than 50 acres.

06. The protection and management of private game reserve shall be the responsibility of the owner. However, the Wildlife Department will also provide appropriate assistance wherever possible.

07. The private game reserve shall be maintained and managed exclusively for one or more of the following purposes:-

    i. propagation of wildlife on the farm as farm game.
    ii. sport hunting;
    iii. recreation; and
    iv. conservation of bio-diversity.

08. The following acts shall be prohibited in a private game reserve.

    i. hunting of game animals without a general small game shooting licence issued by the Wildlife Organization Forest Department N - W.F.P.

    ii. hunting of game animals without a special permit issued by the owner of private game reserve or by the Wildlife Organization N - W.F.P. Forest Department on behalf of the owner;

    iii. hunting of any "Protected Animal" or any other animal whose hunting is prohibited;

    iv. hunting of wild animals otherwise than in accordance with the provision of the Act and the rules made thereunder, specially with regard to hunting season and time, and kind of gun etc; and

    v. trapping of game animals in a private game reserve for any purpose whatsoever except with the special permission and under supervision of the Wildlife Organization Forest Department.

09. Owner of the private game reserve shall be authorised to levy special permit fee in consultation with the Wildlife Organization.

10. Twenty Five percent of the special fee shall go to the Wildlife Organization as share of the Government, while the remaining seventy five percent shall be the share of the owner.

11. A copy of the shooting permit granted by the owner of the private game reserve will be furnished to the nearest Wildlife office for record and monitoring.

12. The owner of a private game reserve shall be entitled to hunting in the private game reserve only under a special permit issued by the Wildlife Organization as ordinary hunter.

13. The owner of private game reserve shall exercise, within the limit of private game reserve, the same powers as are exercisable by an officer under the act.

14. The owner of private game reserve will sign an undertaking with the Wildlife Organization Forest Department to abide by the rules and regulations regarding private game reserve. Wildlife Organization Forest Department shall be empowered to monitor the implementation of the said rules.

15. Government may, by notification in the official gazette, at any time, declare that any private game reserve shall seaze to be a private game reserve.

Sd/-
Secretary to Govt of NWFP
Forestry, Fisheries and Wildlife Department.

Ends. No.SOFT.I(FFD)VIII-10/92/6152-200 Dated Peshawar the 27th June, 1993.

Copy forwarded to :

01. PS to Governor N.-W.F.P., Peshawar.
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05. Secretary to Government of N-W.F.P. S&GAD Peshawar.
06. Secretary to Government of N-W.F.P., Home Department.
07. Secretary to Government of N-W.F.P., Information Department.
08. Inspector General of Police, Peshawar.
09. Managing Director, F.D.C., Peshawar.
10. Chief Conservator of Forest, N -W.F.P.
11. All Commissioners in N -W.F.P.
12. All Deputy Commissioners in N -W.F.P.
13. All Deputy Inspector General of Police in N - W.F.P.
14. Conservator Wildlife N -W.F.P.
15. Director of Information N -W.F.P. for wide publicity through TV, Radio and Press.
16. Manager Government Printing Press N.-W.F.P. for publication in the next official gazette.

sd/-
SECTION OFFICER FOREST-1

5.1.6 Freshwater

5.1.6.1 NWFP River Protection Ordinance 2002

EXTRAORDINARY REGISTERED NO. P.111

GOVERNMENT GAZETTE

North-West Frontier Province

Published by Authority

PESHAWAR, SATURDAY, 19TH JANUARY, 2002.

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE,

LAW DEPARTMENT

NOTIFICATION

19th January, 2002

No.LEGIS:I(6)/2001/481-23.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information: —

THE NORTH-WEST FRONTIER PROVINCE
RIVER PROTECTION ORDINANCE, 2002.
N.-W.F.P. ORDINANCE NO.III OF 2002.

AN

ORDINANCE

to provide for the protection of the aquatic ecology, water quality, economic and environmental value of the rivers and their tributaries in the North-West Frontier Province.

WHEREAS the rivers and their tributaries in the North-West Frontier Province are a public resource used and required by its people of drinking water, irrigation, commercial and sport fishing, and recreation;

AND WHEREAS these rivers and their tributaries have a great potential for economic development of the Province through eco-tourism;

AND WHEREAS the growing human population and urbanization are putting increasing pressure on the rivers and streams;

AND WHEREAS the unplanned construction along the rivers and their tributaries, often involving encroachment of them, is in progress in different areas;

AND WHEREAS these pristine economic and environmental resources are threatened with irreparable damage to the detriment of general public which needs to be curbed;

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, as amended uptodate, and the Provisional Constitution Order No. I of 1999, read with Article 4 of the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. Short title and commencement.—

(1) This Ordinance may be called the North-West Frontier Province Rivers Protection Ordinance, 2002.

(2) It shall in its application, extend to such length of rivers or their tributaries, or any particular river or stream or any part of a river or its tributary, as Government may, from time to time, by notification in the Official Gazette, specify.

(3) It shall come into force at once.

2. Definition.—

In this Ordinance, unless the context otherwise requires,—

(a) "Authorized Officer" means Tehsil Municipal Officer or any other officer notified as such by Government for the purposes of this Ordinance; provided that different Authorized Officers may be appointed for different areas;

(b) "commercial building" means premises, built partially or completely, housing or intended to house commercial activities, and includes, manufacturing units and processing units;

(c) "catchment area" means land receiving and storing water from rains and other forms of precipitation, and feeding the surplus water either as surface runoff or as sub-surface discharges, into the river;

(d) "development" means a set of activities which alters the appearance, composition of functions of the environment;

(e) "encroachment", for the purpose of this Ordinance, shall mean—

(i) construction of any structures or buidlings, permanent or temporary, within the area specified in clause (a) of sub-section (1) of section 3, and includes such structures or buildings, existing in the said area, the owners whereof do not provide proper septic tanks and a soaking pit or an alternate arrangement acceptable to he Authorized Officer; or

(ii) construction of building, house, hotel or any other permanent structure within the area specified in sub-section of section 4 without making the arrangement referred to in clause (i) above;

(f) "environment" means—

(i) air, water and land;

(ii) all layers of the atmosphere;

(iii) all organic and inorganic matters and living organisms;

(iv) the ecosystem and ecological relationship;

(v) buildings, structure, roads, facilities and works;

(vi) all social and economic conditions affecting community life; and

(vii) the inter-relationships between or among any of the factor sin sub-clause (i) to (vii);

(g) "Government" means the Government of the North-West Frontier Province;

(h) "Government Agency" includes a department, attached department, section, commission, office or autonomous body as defined and listed in the North-West Frontier Province Government rules of Business, 1985, as amended from time to time.

(i) "high water limit" means the upper most water level attained by rivers during their peak-flows in the usual flood season, demarcated at site and so notified;

(j) "National Environment Quality Standards: means standard established by the federal Agency under sub-section (1) of section 6 of the Pakistan Environment Protection Act, 1977 (XXXIV of 1999), or the rules made thereunder;

(k) "person" means any natural person or legal entity and includes an individual, firm, association, partnership, society, group, company, corporation, cooperative society, Government Agency, non-governmental organization, local government or local authority and, in the case of a vessel, the master or other person having, for the time being, the charge or control of the vessel;

(l) "Provincial Control Area" means the area specified in sub-section (2) of section 4;

(m) "river" means perennial water bodies draining the catchment Areas, and also includes streams and natural and man-made water reservoirs;

(n) "section" means a section of this Ordinance;

(o) "tributaries" means branch of rivers and streams contributing to water-flows and draining therein, as may be notified by Government for the purpose of this Ordinance; and

(p) "Trial Court" means the court of judicial magistrate of the first class authorized to try offences under this Ordinance.

3. General prohibitions.—

(1) No person shall—

(a) construct, or undertake any related physical works of any commercial building or non-commercial building, or undertake any other developmental work, within two hundred feet to be measured along the slope (lay off land) beyond high water limit on either side of the rivers of their tributaries or on a space within the limits between the banks of a river;

(b) place or deposit or release, directly or indirectly, any substance into the river or their tributaries, in excess of the National Environmental Quality Standards (NEQS) notified by Government from time to time;

(c) dispose, directly or indirectly, any solid waste or hazardous waste or other additional substances specified and notified by Government into rivers or their tributaries.

(2) Government may increase the limits on either side of a river or its tributaries within which construction of buildings or other developments may be prohibited or regulated under this Ordinance.

4. Land and zoning plans.—

(1) government may prepare land use and zoning plans for the catchment area or a part thereof for a specific river or for all the rivers and their tributaries to which this Ordinance apply, and may require mandatory compliance with such plans.

(2) The area upto fifteen hundred feet starting from two hundred feet to be measured along the slope (lay off land) beyond the high water limits on either side of the rivers of their tributaries shall be known as “Provincial” control Area, wherein construction or other developmental activities shall be undertaken in accordance with the land use and zoning plans prepared under sub-section (1).

5. Building control or regulations.—

Government may make regulations, or apply any of the existing building control regulations, under any other law for the time being in force, to control construction of buildings in the catchment areas of any river or a part thereof.

6. Vicarious liability.—

(1) Where an offence of encroachment upon a river or its tributary or indiscriminate disposal of solid waste or flow of untreated water into a river or their tributary is committed by a body corporate or a firm, then every director, manager, secretary, or officer of servant of the body corporate, or every partner, manager or official actively concerned in the conduct of business of such firm, as the case may be, shall be deemed to have committed the offence, unless he proves that the offence was committed without his knowledge or that he used all his efforts to prevent the commission of such an offence.

(2) Any offence committed by any person under this Ordinance shall be deemed to have been committed at the instance of the owner, landlord, employer, lessor, licenser, mortgagor, manager and any other person incharge of the premises, building or land for the time being, and the burden of proving otherwise shall lie upon such person.

(3) A tenant, lessee, licensee, mortgagee and occupant of the property shall be liable to be proceeded against for any offence committed under this Ordinance with respect to that property.

7. Proper arrangements for sanitation, etc.—

(1) It shall be incumbent upon the owner, proprietor or manager of all existing hotel or other building, whether to be used for a public purpose or otherwise, within 200 feet of both sides of a river, to ensure construction of proper septic tanks and a soaking pit or an alternate arrangement acceptable to the Authorized Officer. Similarly the owners of all the new buildings, houses, hotels, etc, within the Provincial Control Area have to make similar arrangements.

(2) No new building, house, structure , or hotel, used for commercial or non-commercial purposes, within the Provincial Control Area shall be made unless that arrangements as mentioned in sub-section (1) are followed, provided that this shall not apply to a kacha house built by a local inhabitant for his agriculture purposes.

8. Power of Authorized Officer to enter building, etc.—

The Authorized Officer or his representative shall have the powers to enter any existing building or structure, constructed within two hundred feet on both sides of the river or its tributaries or any new building constructed within provincial Control Area, for the purpose of inspection and to ensure whether proper sanitation arrangements have been made or not.

9. Power and functions of Authorized Officer. Authorized Officer shall competent—

(a) to register and investigate complaints dealing with offences under this Ordinance before the competent courts,

(b) to hold into offences under this Ordinance, and in the course of such inquiry, to receive and record evidence, and to compel the attendance of witnesses and the production of documents and material objects for the purpose;

(c) to call for and receive police help in dealing with offences under this Ordinance, and except for valid reasons, police shall be obliged to extend due help to the Authorized Office under this Ordinance, and the authorized officers of the Environmental Protection Agency whenever such help is required.

10. Power to seal etc.—

The Authorized Officer or a person duly authorized by him shall have all the powers to seal and stop any commercial activity, business of a hotel, or

establishment with respect to which an offence appears to have been committed under this Ordinance shall have the power to requisition the police force through officer incharge of a police station within whose local jurisdiction an offence under this Ordinance appears to have been committed.

11. Punishment.—

(1) Whoever is found guilty of an offence under the provisions of this Ordinance, shall be punished, with imprisonment which may extend to six months, or with fine which may extend to five hundred thousand rupees, or with both:

Provided that the punishment of imprisonment, in no case, shall be less than one month and the amount of fine, in no case, shall be less than ten thousand rupees.

(2) Whoever fails to remove an encroachment within ten days of the receipt of a legal notice shall also be punished with the same punishment as mentioned in sub-section (1)

(3) Any person who is an abetter of an offence under this Ordinance shall be punishable with the same punishment as is provided in sub-section (1).

12. Cognizance of offence.—

No court shall take cognizance of an offence under this ordinance except on a compliant in writing by the Authorized Officer or an aggrieved person.

13. Trial Courts.—

Government shall, by notification in the Official Gazette, authorize one or more Trial Courts of the judicial magistrates of the first class and specify the area of jurisdiction of each such court which shall exclusively try offences under this Ordinance.

14. Indemnity.—

No suit, prosecution or legal proceedings, whatsoever, shall lie against any public servant in respect of anything which has been done, or intended to be done in good faith, under this Ordinance. The officers or any person authorized under any provision of this Ordinance to perform a certain act in a certain manner shall be deemed to be public servants within the meaning of section 21 of the Pakistan penal Code (XLV of 1860).

15. Removal of difficulty.—

If any difficult arises in giving effect to any of the provisions of this Ordinance, Government may, as occasion may require, by order, do anything which appears to it to be necessary for the purpose of removing such difficulty.

16. Bar of jurisdiction.—

No civil court have jurisdiction to entertain any proceedings, grant any injunction or issue any order in relation to a dispute that any property or part of it is or is not coming within purview of this Ordinance.

17. Overriding effect.—

The provision of this Ordinance shall have effect not withstanding anything contained to the contrary in any other law for the time being in force.

18. Power to make rules.—

Government may make rules and regulations for the purpose of carrying into effect the provisions of this Ordinance.

Peshawar
dated the
15th January, 2002

Lt. Gen (Rtd) IFTKHAR HUSSAIN SHAH,
Governor of the North-West Frontier Province.

SALIM KHAN
Secretary to Government of North-West Frontier Province,
Law Department

5.1.6.3 NWFP Irrigation and Drainage Authority Act 1997

ACT V OF 1997

NORTH-WEST FRONTIER PROVINCE IRRIGATION AND DRAINAGE AUTHORITY ACT, 1977

An Act to provide for adopting a strategy for streamlining the irrigation and drainage system in the Province of the North-West Frontier.

[Gazette of N.-W.F.P Extraordinary,
17th July, 1997]

No.PA/NWFP/Legis/97/14903, dated 17-7-1997.—The North-West Frontier Province Irrigation and Drainage Authority Bill , 1997, having been passed by the Provincial Assembly of the North-West Frontier Province on the 8th July, 1997 and assented to by the Governor of the North-West Frontier Province on the 12th July, 1997 is hereby published as an Act of the Provincial Legislature of North-West Frontier Province.

Preamble.—

Whereas it is expedient to adopt a strategy for streamlining the irrigation and drainage system in the Province of the North-West Frontier with a view to —

(a) replacing the existing administrative set-up and procedure with more responsive, efficient and transparent arrangements in order to achieve economical and effective operation and maintenance of irrigation, drainage and flood control system (in the Province);

(b) ensuring equitable and assured distribution of irrigation water (and providing effective drainage and flood control to the affected lands);

(c) making the irrigation and drainage net-work sustainable on a long term basis and introducing of beneficiaries in the operation and management thereof; and

(d) improving the efficiency of utilisation of water resources and minimising the drainable surplus.

And whereas for achieving the objectives aforesaid, it is further expedient to transform the Provincial Irrigation Department into an autonomous authority and to establish Area Water Boards and Farmers Organisations towards development and management of the irrigation, drainage and flood control infrastructures in the Province.

It is hereby enacted as followr:-

CHAPTER-1
PRELIMINARY

1. Short title, extent and commencement.—

(1) This Act may be called the North-West Frontier Province Irrigation and Drainage Authority Act, 1997.

(2) It extends to the whole of the North-West Frontier Province.

(3) It shall come into force at once.

2. Definitions.—

In this Act, unless there is anything repugnant in the subject or context.—

(a) "AWB' means an Area Water Board established under section 26;

(b) "Authority" means the North-West Frontier Province Irrigation and Drainage Authority established under section 3;

(c) "Canal" means a canal as defined in the Canal and Drainage Act, 1873;

(d) "Drain" means a natural drain, surface or sub-surface drainage network provided for the evacuation of the surplus sub-soil and surface water from the land under the command of canal system;

(e) "drainage cess" means drainage fees to be charged from users/consumers/other beneficiaries using a drain for the conveyance and/or disposal of effluent;

(f) "F.O." means Farmers' Organization formed under section 30;

(g) "Government" means the Government of the Province of North-West Frontier;

(h) "Local Body" means any District Council, Municipal Corporation, Municipal committee, Town Committee, Union Council or any other Local Committee constituted under any law for the time being in force;

(i) "prescribed" means prescribed by rules made under this Act;

(j) "Province" means the Province of the North West Frontier;

(k) "Rules" or "Regulations" means rules or regulations made or framed under this Act;

(l) "section" means a section of this Act;

(m) "WAPDA" means the Pakistan Water and Power Development Authority;

(n) "water" means any water, standing or flowing on surface or sub-surface within the territory of the Province except such water in the inter-provincial reservoirs

and/or rivers and canals within the Province as is allocated to any other Province or Provinces under the Water Apportionment Accord (1991);

(o) "Water rate" means the charge for which the authority agrees to supply water to an A.W.B or any other water user or an A.W.B to an F.O or to any other water user or an F.O. to its members, as the case may be.

CHAPTER-II
CONSTITUTION OF THE AUTHORITY

3. Constitution of the Authority.—

(1) There shall be established an Authority to be known as the North-West Frontier Province Irrigation and Drainage Authority.

(2) The Authority shall be a body corporate, with powers to acquire, hold and dispose of property, having perpetual succession and a common seal and shall by the said name, sue and be sued.

(3) The headquarters of the Authority shall be at Peshawar.

4. Appointment and terms of office of Chairman and Members of the Authority.—

(1) The Authority shall comprise of a Chairman and seven members to be appointed by Government and notified in the Official Gazette. The composition of the Authority shall be as under :-

(i)	Any person appointed by Government	Chairman
(ii)	Additional Chief Secretary to Government Planning, Environment and Development Department.	Member.
(iii)	The Secretary to government, Finance Department	Member
(iv)	The Secretary to Government, Irrigation Department	Member.
(v)	Member, Board of Revenue, Revenue Department	Member.
(vi)	The Secretary to Government, Agriculture Department	Member
(vii)	A representative of the Farmers ' Organization appointed by Government	Member.
(viii)	Managing Director of the Authority	Member-cum-Secretary

(2) The Authority shall be responsible for the overall management and control of the affairs and, for that purpose may, from time to time, delegate such of its powers and functions to any of its members or any employee of the Authority as may be

deemed appropriate in the interest of proper and effective conduct of the business of the Authority.

(3) The Authority shall meet at least once in every three months. The Chairman shall, at the written request of not less than three members, convene special meeting of the Authority, after giving not less than seven days prior notice of such meeting, within a period not exceeding 15 days from the receipt of such requisition. The meetings, other than special meeting shall be convened such notice and in such manner as may be prescribed.

(4) The quorum for a meeting of the Authority shall be four members. In the case of any financial matter being considered by the Authority, one of the four members shall be the Finance Secretary of Government.

(5) Subject to section 6, the term of office of the members of the Authority other than the ex officio members shall be 4 years.

(6) Any member of the authority, other than the ex officio members, upon the expiry of the term of his office shall be eligible for reappointment for the similar term or for a shorter term as may be determined by the Government.

(7) Any member of the Authority, other than an ex officio member, may, at any time, resign, provided that his resignation shall not take effect until accepted by Government.

5. Remuneration of the non-official members of the Authority.—

A non-official member of the authority shall receive, for every meeting actually attended, such allowances as may be prescribed by the authority. No other salary, payment or compensation shall be paid to the Chairman and the members of the Authority for attending the meetings and/or doing any work as Chairman or as member of the Authority.

6. Removal of Members of the Authority.—

(1) Government may, by Notification, remove a non-official member or the Managing Director from the membership of the Authority if he—

(a) is or becomes incapable of discharging his responsibilities under this Act, or

(b) has been declared insolvent by a Court of competent jurisdiction; or

(c) has been declared to be disqualified for employment, or has been dismissed from the service of Government, or has been convicted of an offence involving moral turpitude; or

(d) has knowingly acquired or has continued to hold, without permission, in writing, of Government, directly or indirectly or through partner, any share or interest in any contract or employment with or on behalf of the Authority or in any land or property which, to his knowledge, is likely to benefit or has benefited as a result of the operation of the Authority:

Provided that removal under clauses (a) and (d) above shall not have effect without giving him an opportunity of showing cause:

Provide further that, if the Managing Director is removed from the membership of the Authority, he shall also cease to hold office of the Managing Director.

7. The Board of Management.—

(1) Subject to the overall control and guidance of the Authority, the day to day management of its affairs shall be carried out by a Board of Management (BOM) comprising of the Managing Director and assisted by three General Managers, one of whom shall be General Manager, Finance.

(2) The Managing Director and the General Managers shall be appointed by Government in the prescribed manner on the recommendation of the Authority.

(3) The Managing Director shall be the Chief Executive to run the day to day affairs and business of the Authority.

(4) Government may, on the recommendation of the Authority, change the membership of the B.O.M., or remove any member, including the Managing Director, from the Board of Management on the grounds specified in Clause (a) to (d) of section 6.

(5) The Managing Director or a General Manager may, at any time, resign, provided that his resignation shall not take effect until accepted by Government.

CHAPTER-III
POWERS AND DUTIES OF THE AUTHORITY

8. Powers and duties of the Authority.—

The Authority shall have the following powers and duties:

(a) General.—

(1) Subject to the provisions of the Indus Water Treaty (1960) and the Water Apportionment Accord (1991), to receive irrigation supplies at the barrages and/or headworks falling within the Province and/or from the inter-provincial/link canals and deliver the same in agreed quantities in the various A.W.Bs. in the Province at the relevant canal headworks. The Authority shall also receive drainage effluent at designated points and convey the same to the inter-provincial outfall drains.

(2) To exercise all the powers under the Canal and Drainage Act 1997 and the relevant Manuals, Rules and Instructions otherwise vesting to Government and not inconsistent with or in derogation of any provision contained in this Act and/or any Rules and Regulations made thereunder.

(3) To fix the rates in consultation with Government to which it will supply irrigation water at its disposal to its various A.W.Bs./other entities including the water users mentioned in clause (n) of section 2 as also to drainage

cess payable by the users/consumers/other beneficiaries for the conveyance/disposal of the effluent through the relevant drains.

(4) The Authority may levy appropriate surcharge for late payments and recover arrears from defaulters as arrears of land revenue, provided that in case Government declares a remission, waiver, re-scheduling or suspension of payment of any of the dues of the authority, the same shall be at the cost of Government and Government shall simultaneously notify how the Authority shall be compensated for the loss thereby caused to the Authority and/or any other entity established under this Act.

(b) Policy and Regulation.—

(1) To formulate and implement policies in the water resources sector with a view to continuously improving and achieving effective, economical and efficient utilization, preservation and improvement of such water resources for the development of irrigated agriculture on a sustainable basis.

(2) To formulate and implement policies/guidelines and procedures for the proper and efficient exercise of powers available under this Act by the various authorities and/or their officers/employees and to prescribe training requirements and programmes necessary for the purposes of this Act.

(3) To conduct any enquiries and hear any complaints and adjudicate on any dispute and/or differences of opinion between the Authority and different entities established under this Act and/or any individual and/or the said entity in accordance with the principles of natural justice relevant thereto and to faithfully and punctually implement such decisions as per the letter and spirit thereof.

(4) To prescribe and adhere to the procedures for the filling of documentation regarding water allocation in the Province and all concessions, licences and leases granted by any entity under this Act and to ensure availability thereof to the general public for inspection and taking of copies thereof.

(5) To establish criteria and procedure for granting, modifying, reassigning, renewing, suspending or revoking any concessions, licences and subleases granted by the Authority to any other entity or person and/or for the management of the infrastructure in the event of suspension or revocation of a concession, licence or sublease.

(c) Operation.—

(1) To operate and maintain the irrigation, drainage, storage reservoirs and flood control infrastructure in the Province including hill torrent control and development works for irrigation of adjoining lands including watershed management practices in catchment areas, but not including civil canals and private kathajat.

(2) To plan, design, construct and/or improve the irrigation, drainage, storage, reservoirs and flood control system with a view to ensure optimal utilization of the water resources of the Province on an equitable and efficient basis, in consultation with the Planning, Environmental and Development Department of Government.

(3) To maintain all relevant/necessary records, registers and data banks as may be relevant and/or necessary for the effective performance of any or all of its above-referred powers and duties.

(4) To issue such directions and take such steps as may reasonably be necessary for the prevention of encroachment and unauthorized constructions along or on the properties of the Authority.

(5) To prescribe rates, fees and other charges to be payable in respect of various types of services which the Authority may be required to render or provide under this Act.

(6) To operate and maintain the equipment, machinery and stores of the Authority effectively, efficiently and in a business like manner.

(7) To undertake anti-erosion operations including conservation of forests and reforestation and with a view to achieve this purpose; to restrict or prohibit by general or special order the clearing or breaking up of land in the catchment areas of any rivers, hill torrents and/or other streams.

(d) Finance and Administration.—

(1) To undertake any work, incur any expenditure, procure machinery, plant and stores required for use by the Authority and to negotiate, execute and adopt/ratify all such contracts as may be considered necessary or expedient.

(2) To acquire by purchase, lease, exchange or otherwise and dispose off by sale, exchange or otherwise, any land, property or machinery/equipment or any other interest in or regarding any land or property.

(3) To direct that any work required to be carried out by a person in connection with training of rivers, hill torrents and/or any other streams or undertaking of anti-erosion measures including conservation of forests and reforestation, but left undone shall, after reasonable notice to such person and due consideration of any objections raised by him in this regard, be undertaken by the authority and determine the cost to be borne by such person, or after notice and due enquiry by any other person who may be held by the authority to be liable for the same.

(4) To utilize the Authority Fund to meet the cost and expenses incurred on account of and in connection with the due performance of the various functions of the Authority under this Act including the payment of salaries and other remunerations to the management and employees of the Authority.

(5) To formulate, implement and continuously review/improve the policies and procedures relevant to the management of finances and maintenance of the accounts of the Authority as well as for the inventory and assets valuation and disposal and for the recruitment, promotion, retirement and termination of the services of the employees of the Authority.

(6) To formulate financial policies aimed at ensuring that the finances of the Authority are managed in a consistent, conservative and diligent manner as to protect its assets including provision for their maintenance and periodic replacement as necessary, to preserve its capital and reserves,

and to provide prompt servicing of its debts and obligations. Its financial policies must be based on principles of sustainability.

(7) To prepare for the approval of the authority, the Annual Budget Statement indicating the revenues and sources thereof and the details of revenue and capital expenditure.

(e) Transition.—

(1) To formulate, adopt and implement policies aimed at promoting formation, growth and development of pilot A.W.Bs./F.Os. and compilation/faithful monitoring of the results thereof as per requirements prescribed under this Act and to ensure orderly and systematic induction thereof into the operations of the Authority.

(2) To prepare/cause to be prepared and regularly update/cause to be updated Staffing and Operational and Financial Plan(s) which will generally deal with and reflect the following aspects:

(i) composition of the Authority and Board of Management;

(ii) functions and responsibilities of the Authority and B.O.M.

(iii) vision and strategy;

(iv) organizational structure including job descriptions for key positions and gradings;

(v) human resource strategy, staffing plans and compensation policies;

(vi) measures for reducing costs and improving efficiency of the operations of the Authority.

(vii) Cost sharing/recovery arrangements including measures to improve collection of water rates/drainage cess;

(viii) financial arrangements;

(ix) schemes/programmes for the improvement of irrigation,, drainage, flood control and hill torrents in the Province;

(x) operations management including water allocation, operation and maintenance and effluent disposal;

(xi) programmes for establishment of A.W.Bs. and F.Os.

(xii) detailed financial plans/projections clearly outlining the capital budget, operating statement (revenue and expenditure statement), balance sheets and a funds flow statement showing sources and utilization of funds;

(xiii) transparency and accountability arrangements;

(xiv) performance and monitoring standards;

(xv) co-ordination with the Finance and Planning, Environmental and Development Department to ensure that the provincial irrigation

assets are properly maintained and Authority's development programmes are in conformity with Provincial planning priorities.

(3) To prepare and implement policies with a view to ensuring that the staffing levels within the Authority and other entities under this Act conform with the corresponding levels indicated in the staffing, operational and financial plans prepared/updated under subsection (2) above through enforcement of freeze on hiring of new employees, non-replacement of employees retiring upon attainment of age of superannuation, reassignment of any surplus employees, wherever possible, and by introducing policies offering financial and other benefits for employees voluntarily opting for early retirement and to take all steps and exercise all powers reasonably required to be taken/exercised in this regard.

(4) To formulate and implement policies with view to ensuring that the Authority and other entities under this Act become fully operative as self-supporting and financially self-sustaining entities as regards operation and maintenance (hereinafter referred to as ('O&M') cost of irrigation and drainages as specified in section 22 within a period of seven (7) to ten (10) years.

(f) Research and development.—

(1) To formulate, implement and regularly update polices, studies and research programmes in order to solve/eliminate and prevent waterlogging and salinity, and to develop irrigated agriculture in the Province, in collaboration with the Planning, Environmental and Development Department.

(2) To conduct studies in order to regularly analyse and evaluate the impact of the operations and policies of the Authority on the ecology and the environment within the Province and to establish the various available options for the minimization of the adverse impact of such operations and policies, if any, and to adopt the optimal options(s) for further action, in co-ordination with the Provincial Environmental Protection Agency.

(3) To coordinate/regulate the measures being undertaken/required to be undertaken in the Province for recording/gauging surface waters, monitoring of pound water table and quality of water and the compilation of data relevant hereto and in this regard to establish and regularly maintain proper liaison with similar work being undertaken in other Provinces/agencies.

(4) To cause studies, surveys, experiments, technical investigations and research to be conducted in connection with or regarding the functions and duties of the Authority and/or of any other entity under this Act.

(5) To publish/cause to be published the various policies, details data and information relevant to the affairs of the Authority on regular basis and to ensure reasonable access of the public to the same.

9. Contractual Services.—

(1) The Authority may, under a written agreement as to the terms and conditions including the extent and manner of payment for the same, undertake execution of any scheme(s) or exercise technical supervision and administrative and financial

control over the execution of any scheme(s) framed or sponsored by any other agency.

(2) Notwithstanding anything to the contrary contained in this Act, the Authority may with the previous approval of and written agreement as to the terms and conditions including the extent and manner of payment for the same with the Government, provide agreed services for the execution of any scheme(s) framed or sponsored by Government or any agency (under the control of Government) or provide technical supervision and financial and administrative control over the execution of any such scheme(s).

10. Acquisition of land by the Authority.—

Acquisition of any land or any interest in land by the Authority for the purposes of under this section, or for any scheme under this Act shall be deemed to be an acquisition for a public purpose within the scope and meaning of the Land Acquisition Act, 1894, provisions whereof shall apply to such acquisition proceedings. Provided that the Authority, prior to approaching Government for any proposed acquisition of land or any interest therein shall, in consultation with the likely affectees if any, prepare resettlement plan which shall be duly approved by the Authority.

11. Right of Entry.—

(1) The Managing Director, or any other person authorised by him in writing, may, after prior notice to that effect and with a copy to the respective Deputy Commissioner, enter upon and survey and land, erect pillars for the determination of intended lines of work, make boring and excavations and do all other acts which may be necessary for the preparation and implementation of any scheme under any provisions of this Act; provided that when the affected land does not vest in the Authority, the power conferred by the above subsection shall be exercised in such manner as to cause the least interference with and/or damage to such land and the rights of the owner thereof.

(2) When any person enters into or upon any land pursuant to subsection (1), he shall, at the time of such entry or as soon thereafter, as may be practicable but in no case later than 60 days from the date of such entry, full or tender payment for all necessary damage likely to be caused or caused on account of any operations proposed to be carried out or carried out under subsection (1). In case of any dispute, the same shall be referred to the Collector/Deputy Commissioner of the district who shall decide the same with a maximum period of 30 days from the date of such reference.

12. Arrangement with local bodies or other agencies.—

(1) As soon as the scheme has been completed by the Authority or at a later date, the Authority may arrange by a written agreement with a Local Body or other agency within whose jurisdiction any particular area covered by the scheme lies, to take over and maintain any of the works comprising such scheme in the said area.

(2) Government shall have the power to direct the Authority to hand over any scheme(s) completed by the latter to any agency of Government or any Local Body or take over such scheme(s) completed by any agency. In any such case, the

Authority shall be entitled or liable, as case may be, to the extent of audited expenditure incurred on such scheme(s).

13. Control over Provincial Waster Resources.—

Subject to the relevant provisions in the Indus Basin Treaty (1960) and the Water Apportionment Accord (1991), the Authority, with the previous approval of the Provincial Government, shall have control over such river, canals, drains, streams, torrents, springs, reservoirs (except such reservoirs as are under the control of WAPDA) and underground water resources within the Province as may be specified. The conditions under which the Province's water resources and handed over to the Authority, shall be clearly specified as to terms and conditions.

CHAPTER-IV
ESTABLISHMENT

14. Appointment of officers, servants etc.—

(1) Subject to any other provision of this Act, the Authority may, from time to time, employ such officers and servants, or appoint such experts or consultants as it may consider necessary for the performance of its functions, on such terms and conditions as they may deem fit.

(2) Notwithstanding anything contained in subsection (1), any rule made, or orders or instructions issued by the Authority, the Authority may at any time, for reasonable cause, relieve or remove from its service any person after giving him not less 90 days' notice or pay for the period by which such notice falls short of 90 days.

15. Recruitment and disciplinary powers.—

The Authority shall prescribe the procedure for appointment and terms and conditions of service of its officers and servants and shall be competent to take disciplinary action against its officers and servants in the prescribed manner.

16. Immunity of the Authority and its Employees.—

(1) The Managing Director, members of B.O.M., officers and servants of the Authority shall, when acting or purporting to act, in pursuance of any of the provisions of this Act, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

(2) No suit, prosecution or other legal proceeding shall lie against the Authority, the Managing Director, Members or officers and servants of the Authority in respect of anything done or intended to be done in good faith under this Act.

17. Delegation of powers to Managing Director etc.—

The Authority may, by general or special order, delegate to the Managing Director, a member of the BOM or officer or servant of the Authority any of its powers, duties or functions, under this Act subject to such conditions as it may deem fit to impose.

18. Persons serving in the Provincial Irrigation Department.—

(1) All employees of the Provincial Irrigation Department, except such employees as may be specified by Government in this behalf, shall, subject to any other provision(s) contained herein, on coming into force of this Act, become the employees of the Authority.

(2) Employees under subsection (1) shall serve the Authority on such terms and conditions as amy be prescribed by rules and regulations of the Authority which shall not be less favourable than their existing terms and conditions of service.

(3) The Authority shall, through adoption of policies of hiring freeze, assignment, non-replacement of employees retiring upon attainment of superannuation and providing incentives for early retirement, bring the numbers of its employes in conformity with the corresponding numbers indicated in the relevant staffing operational and financial plans.

(4) Government shall contribute to the pension, gratuity and final payment of the provident fund of the employees of the Provincial Irrigation Department who become the employees of the Authority under subsection (1).

CHAPTER-V
FINANCE

19. Authority Fund.—

(1) There shall be a fund to be known as the “Authority fund” vested in the Authority.

(2) The Authority Fund shall consist of :

(a) all sums received by the Authority in respect of water charges, and proceeds, development cess, drainage cess, etc.;

(b) grants made by Government

(c) loans obtained from Government;

(d) grants made by Local Bodies as required by Government;

(e) sale proceeds of bonds or any other debt instruments issued under the authority of Government;

(f) loans obtained by the Authority with the special or general sanction of Government;

(g) foreign assistance and loans obtained from different foreign agencies with the sanction of, and on such terms and conditions as may be approved by the Federal and Provincial Governments; and

(h) all other sums received by the Authority.

20. Authority to be deemed to be a Local Authority.—

The Authority shall be deemed to be a Local Authority under the Local Authorities Loan Act, 1997 for the purpose of borrowing money under the said Act, and the making an execution of any scheme under this Act shall be deemed to be work which the authority is legally authorized to carry out.

21. Limited Liability.—

The liability of Government to the creditors of the Authority shall be limited to the extent of grant made by Government and the loans raised by the Authority with the sanction of Government.

22. Procedure for fixation of rates for supply of water.—

(1) The Authority shall normally supply irrigation water to different areas on equitable and reasonably assured basis.

(2) The rates at which the Authority shall supply water shall be fixed as to provide for meeting the operation and maintenance cost of the system within a period of 7 to 10 years; provided that before proposing any enhancement in the existing rates and/or agreeing to the same, the Authority/AWB(s) concerned shall use their best endeavours to reduce the quantum of the proposed enhancement of rates through adoption of the following measures:

(i) reducing costs;

(ii) improving assessment and collection of Water Rate and Drainage Cess;

(iii) recovery of arrears;

(iv) recovery of cost of providing drainage to non-farming beneficiaries; and

(v) disinvestment of fresh water tubewells in SCARP areas.

(3) The components of O&M to be recovered from the beneficiaries in the form of abiana/drainage cess shall be the full O&M cost of irrigation canals and secondary drains.

(4) The Q&M cost of flood protection and public sector fresh ground water (FGW) tubewells will be excluded from abiana. A nominal proportion (by 5 to 10 per cent) of the Q&M cost of saline ground water (SGW) tubewells and/or main drain may, however, be borne by the beneficiaries, should such a seed is felt by the Authority at some later stage.

23. Books of Accounts.—

The Authority shall maintain proper books of accounts and records on generally acceptable accounting principles, to explain all its transactions and to give a true and fair view of this state of affairs. The books of accounts relating to a period of not less than ten years immediately proceeding the current year shall be preserved in good order.

24. Annual financial statement.—

(1) The Authority shall, not later than six months after the end of each financial year, prepare financial statements including balance sheet as at the end of the financial year, income and expenditure account for the financial year, and a statement of changes in financial position or statement of sources and application of funds for the financial year, and cause these accounts to be audited in the manner specified in section 25. The financial statements shall be approved by the Authority.

(2) The balance-sheet shall give a true and fair view of the state of affairs of the Authority as at the end of financial year, and the income and expenditure account shall give a true and fair view of the surplus or deficit of income over expenditure of the Authority for the financial year.

(3) Accounting standards of the Pakistan Institute of Chartered Accountants shall be followed in regard to the books of accounts and preparation of the financial statements.

(4) Accounting polices shall be sated as part of the financial statements.

(5) The Authority shall attach to its financial statements a statement providing information on any material changes and commitments affecting the financial position of the Authority which have occurred between the end of the financial year to which the financial statements were prepared.

(6) In the month of February each year, the Authority shall submit to Government for information, projected financial statements for the next year.

25. Audit.—

(1) The Authority shall have a double audit system.

(2) The financial statements of the Authority shall be audited every year by the Accountant-General of the Province as well as by the commercial auditors who shall be appointed by the Authority.

(3) The Auditor shall carry out the audit in accordance with the professional standards of auditing prescribed by the Pakistan Institute of Chartered Accountants, and shall issue a report on the audit.

(4) The Authority shall provide a copy of the audit and financial statements together with detailed information and explanation in regard to the observation, reservation, qualification or adverse remarks contained in the auditor's report to the Government, and shall file a copy with the Accountant General of the North-West Frontier Province within 30 days of the period stipulated for their preparation in section 24. The Authority shall carry out all reasonable directives issued by Government for compliance with the observation, reservation, qualification or adverse remarks in the audit report.

CHAPTER-VI
AREA WATER BOARDS

26. Establishment of Area Water Boards.—

Government shall, as soon as possible, after the coming into force of this Act, notify the establishment of various Area Water Boards (A.W.Bs.) in the Province together with the respective territorial jurisdictions which will preferably be based on the canal commands; provided that an A.W.B. shall initially be formed only as a pilot for certain selected canal command area to be replicated later around all major canal commands in the Province, should the result of the pilot A.W.B. is satisfactory.

27. Constitution of A.W.B.s.—

(1) Government shall, simultaneously with the establishment of the A.W.Bs. in the Province under section 26, notify the constitution of the Boards of Directors (the Boards) of such A.W.Bs. Each Board shall comprise of such number of members as may be required on the basis of successful result of the pilot A.W.B.

(2) The members of a Board shall in their first meeting elect from amongst themselves a Chairman who shall preside over their meetings during their tenure of office, . In case the said Chairman, for any reason, is unable to attend a meeting of the Board, the members present at such meetings may elect one of the present members as the Chairman for that meeting.

(3) The term of office of the members of the Board other than ex office members, if any, shall be 4 years. A member shall on expiry of his term, be eligible for renomination/election for one more similar term.

28. Meeting of the Board.—

(1) The Board shall meet at least once in every quarter. However, the Chairman of the Board shall, upon receipt of requisition signed by one-half of the members, convene a meeting of the Board, after giving 7 days' notice to all the members, within a period not exceeding 15 days from the date of receipt of such requisition.

(2) The quorum for a meeting of the Board shall be two-third of the members, a fraction being counted as one.

29. Function of Area Water Boards.—

An Area Water Board shall—

(a) formulate and implement policies with a view to achieve and continuously improve effective, economical and efficient utilization of irrigation water at its disposal and to ensure that within a period not exceeding 7 to 10 years from the date of its constitution, it becomes fully operative as a self supporting and financially self-sustainig entity;

(b) operate and maintain the irrigation, drainage and flood control infrastructure located within its territorial jurisdiction, but such operation and maintenance shall not extend to civil canals and private kathajar;

(c) adopt and implement policies aimed at promoting formation, growth and development of F.Os. including pilot projects for F.Os. and faithful monitoring of the results thereof; and

(d) perform any other functions assigned by the Authority.

CHAPTER-VII
FARMERS ORGANIZATION

30. Formation of F.Os.—

(1) The Authority and A.W.B. shall, within one year of its establishment, devise and implement pilot programmes, policies and take steps thereunder to ensure that F.Os. are formed at the minor/distributary level in a phased and orderly manner in accordance with the relevant bye-laws and regulations framed by the Authority under section 31.

(2) The Authority and A.W.B. concerned shall enable the F.Os. formed under subsection (1) to become financially self-sustaining and self-sufficient for the due and effective performance of their functions prescribed under this Act within a maximum period of seven (7) to ten (10) years from the respective dates of their formation:

Provided that F.Os. established by Agriculture Department, N.G.Os., community organizations and other sponsoring entities, shall be deemed to F.Os. within the meaning of this Act.

31. Bye-Laws and Regulations for F.Os.—

The Authority shall, within said period as my be reasonable, but in no case exceeding six months from the date of coming into force of this Act, publish/cause to be published bye-laws/regulations relevant to the formation of the F.Os. in the Province.

32. Functions and powers of F.Os.—

A farmer Organization (F.O.) shall:

(a) Operate, manage and improve the irrigations and drainage infrastructure, comprising of minors, distributaries and drains together with any structures thereon located with the area relevant to the F.O. concerned, other than civil canals and private kathajat;

(b) obtain irrigation water from the Authority or A.W.B. concerned all the head of the minor or the distributary and to supply the same to the members and other water users, if any;

(c) receive the drainage effluent from their water users and to convey the same through field/collector drains to the designated nodal points of the drainage system:

(d) collect the agreed water charges/other dues, if any, from its water users and to pay the agreed consideration for supply of irrigation water and conveyance and/or disposal of drainage effluent to the Authority or A.W.B. concerned:

(e) engage, hire or employ and consultants, advisors and employees as may be deemed necessary or be otherwise reasonably required for the due and effective performance of various powers and functions on such terms and conditions as may be prescribed including terms and conditions relevant to the conclusion or premature determination of such engagement etc. of any consultant, advisor or employee, as the case may be; and

(f) any other power and functions not being inconsistent with a functions and powers given above which may be vested in the F.Os. under the bye-laws and regulations framed by the Authority under section 31.

CHAPTER-VIII
REPORTS AND STATEMENTS

33. Submission of Yearly Reports and Returns.—

(1) The F.Os., A.W.B. and the Authority shall submit to Government, as soon as possible after the end of every financial year but, before the expiry of a period of seven months of such end of the financial year, a report on the conduct of their affairs for the year including audited financial statement for the year in question,

(2) Government may reasonably require the submission of the following:

(i) any return, statement, estimate, statistics or other information regarding any matter under the control of such entity; or

(ii) a report on any such matter; or

(iii) a copy of any document in the charge of such entity and the entity concerned shall comply with every such requisition.

(3) The Authority and A.W.Bs. shall cause to be published their annual reports submitted together with brief particulars of the projects proposed to be undertaken during the next financial year in at least one English/Urd/regional language newspaper.

CHAPTER IX—
MISCELLANEOUS

34. Transfer of Rights and Liabilities.—

(1) Upon coming into force of this Act all assets and liabilities and all rights and obligations of the Provincial Irrigation Department shall stand transferred to the Authority, on such terms and conditions particularly as regards the use and disposal of said assets, as my be determined by Government.

(2) All contracts made by the Provincial Irrigation Department relating to irrigation, drainage, flood control and hill torrents shall be deemed to be contracts made by the Authority. All decisions and/or any other employee or employees of the Authority duly authorized by the Managing Director in this behalf.

35. Indemnity.—

(1) Nothing in this Act shall be construed as imposing upon the Authority, either directly or indirectly, any duty enforceable by proceedings before any Court.

(2) No suit, prosecution or other legal proceedings shall lie against the Authority, the Managing Director, or any other officer, servant, expert or consultant of the Authority in respect of any damage caused or likely to be caused, or anything done or intended to be done in good faith, under this Act or the regulations made thereunder.

36. Rules and Regulations.—

For the purpose of carrying into effect the provisions of this Act, the Authority may, with the approval of Government, frame and notify such rules and regulations as it may consider necessary or expedient.

37. Removal of difficulties.—

If any difficulty arises in giving effect to any of the provisions of this Act, Government may make such orders, as inconsistent with the provisions of this Act as may appear to it to be necessary for the purpose of removing the difficulty.

38. Provisions of this Act to override other Laws.—

In case of any confusion or inconsistency between any provision(s) of this Act and any other law(s) of provisions of this Act, to the extent of such conflict or inconsistency, as the case may be, shall prevail.

5.1.6.5 NWFP Rural Area Drinking Water Supply Scheme Act, 1985

THE NORTH-WEST FRONTIER PROVINCE

RURAL AREA DRINKING WATER SUPPLY SCHEME ACT, 1985

N.-W.F.P. ACT NO.VI OF 1985

10th September, 1985.

[First published after having received the assent of the Governer of the North-west Frontier Province in the Gazette of North-West Frontier Province (Extraordinary), dated the 10th September, 1985]

AN
ACT

to make provisions for facilitating the execution of schemes for supply of drinking water in rural areas.

Preamble

WHEREAS it is expedient to make provisions for facilitating the execution of schemes for supply of drinking water in rural area;

It is hereby enacted as follows:-

Short title extent and commencement.

1. (1) This Act may be called the north-West Frontier Province Rural Drinking Water Supply Scheme Act. 1985.

(2) It shall extend to the whole of the North-West Frontier Province.

(3) It shall come into force at once.

Definition.

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

(a) "Department" means the Public health Engineering Department of Government;

(b) "Executive Engineer" means the Executive Engineer concerned of the Department;

(c) "Government" means the Government of the North-West Frontier Province;

(d) "rural areas" shall have the same meaning as assigned to it in the North-West Frontier Province Local government ordinance. 1979 (N.W.F.P. Ord. IV of 1979);

(e) "Scheme" means a scheme made under this Act for the supply of water for drinking purposes to individuals in the rural areas; and

(d) "Superintending Engineer" means the Superintending Engineer concerned of the Department.

Water Supply Scheme.

3. Subject to availability of funds, there shall be executed and administered schemes for the supply of water for drinking purposes in rural areas.

Implimation of scheme.

4. (1) For the purpose of section 3 Government shall perform all functions and exercise all powers as may be necessary to implement and administer the schemes, including the power to imposed and collect rates, fees and charges for water supply, in such manner as may be prescribed.

(2) The Department shall maintain proper account of the receipt under sub-section(1) and credit the same to the Provincial revenue under the proper head of account.

(3) Any rate, fee or charge imposed for water supply under this Act but not paid by the due date specified in that behalf shall be recoverable from the person or persons against who it is outstanding as arrears of land revenue.

Prvilation to damage or dispute water supply.

5. (1) No person shall damage or cause to be damaged any scheme made under this Act or un-authorisedly connect, disconnect or cut the pipelines meant for supply of water or commit any other act disturbing or damaging the water supply arranged under this Act.

(2) No person shall use or apply water made available to him under this Act for irrigation purpose.

(3) No person shall install or cause to be installed any kind of pump or mechanical device on the water supply line of drawing water.

Application for water conenction.

6. (1) Any person desirous of having a water connection in a rural area where a scheme under this Act has been executed shall, in the prescribed manner and on payment of the prescribed fee, apply to the Executive Engineer for the purpose.

(2) All connections of water supply given under sub-section (1) shall be subject to payment of water charges at such rates as Government may from time to time fix or determine under section 4.

Disconnection of water supply.

7. (1) The Executive Engineer shall disconnect or cause to be disconnected water supply of persons who fail to pay water charges in the prescribed manner.

(2) Water supply disconnected under sub-section (1) shall not be restored unless the defaulter makes payment of the arrears outstanding against him and also pays the fee, if any, prescribed for reconnection.

Appeal.

8. Any person aggrieved by an order passed under this Act may within thirty days of the passing of the order, prefer an appeal to the Superintending Engineer and the decision of the Superintending Engineer on said appeal shall be final.

Offence.

9. (1) Contravention of any the provisions of this Act or the rules made thereunder shall be punishable with simple imprisonment which may extend to three months with fine which may extend to five hundred rupees or with both.

(2) Offences under this Act shall be bailable.

Cognizane of offence.

10. No court shall take cognizance of an offence under this Act except upon a complaint made in writing by the Executive Engineer or any other person authorised by him in this behalf.

Idemnity.

11. No suit, prosecution or other legal proceeding shall be taken against any person or Government for anything which is in good faith done or intended to be done under or in pursuance of this Act or any rule or order made thereunder.

Power to make rules.

12. Government may make rules for carrying into effect the provision of this Act.

Repeal.

13. The North-West Frontier Rural Areas Drinking Water Supply Scheme Ordinance, 1985 (N.W.F.P. Ord. XI of 1985), is hereby repealed.

5.1.6.6 NWFP Water Users Association Ordinance 1981

THE NORTH-WEST FRONTIER PROVINCE
WATER USERS' ASSOCIATIONS ORDINANCE, 1981

N.-W.F.P. ORDINANCE NO. II OF 1981

4TH February, 1981

AN
ORDINANCE

to provide for the formation, operation and promotion of water users' association in the North-West Frontier Province

Preamble

WHEREAS it is expedient to provide for the formation, operation and promotion of water users, associations in the North-West Frontier Province and matters ancilliary thereto in the manner hereinafter appearing.

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C. M. L. A., Order No. I of 1977), and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance.

CHAPTER – 1
PRELIMINARY

Short title extent and commencment.

1. (1) This Ordinance may be called the North-West Frontier Province Water Users' Association Ordinance, 1981.

(2) It extends to whole of the North-West Frontier Province.

(3) This section shall come into force at once and all or any of the remaining provisions of this Ordinance shall come into force in such area or areas and on such date or dates as Government may, by notification, direct.

Definitions.

2. In this Ordinance, unless there is anything repugnant in the subject or context:

(a) "Association" means an irrigation association (*Anjuman-e-abpashi)*, organized and registered under this Ordinance;

(b) "Association in good standing" means an Association that is not in default of a *bona fide* legal obligation.

(c) "Association village" means that area of land irrigated from the source of water developed or utilized by the Association;

(d) "Board of Directors" means the governing body of representatives elected by the General Body;

(e) "bye-laws" means bye-laws of the Association;

(f) "Canal Officer" means the Canal Officer as defined in the Canal and Drainage Act, 1873 (VIII of 1873);

(g) "Collector" means the Collector as defined in the West Pakistan Land Revenue Act, 1967 (W.P. Act XVII of 1967);

[1](Ga) "Field Officer" means an officer declared as such by Government and includes the Director, the Deputy Director and the assistant Director of the on farm-water management, and

(h) "General Body" means the collective body of membership of the Association;

(i) "irrigator" means the operator of a separate farm, whether he is an owner of land, tenant or renter, and includes the representative chosen by the joint owners of joint operators of a jointly owned or operated farm;

[2](ia) 'Management' means the Department or Directorate of on-Farm water Management, North-West Frontier Province;

(j) "member in good standing" means any member whose payment of assessment in not in arrears by more than one year, or who is not under conviction for a criminal offence, or is not a minor;

(k) "membership" means all the irrigators who are members of the Association and are entitled to participate in the general assembly;

(l) "outlet/tube well village" means that portion of land irrigated from a particular canal outlet or Government tube-well; and

(m) "watercourse" means the main channel from the canal outlet (mogha) and laterals.

Ordinance to over side other laws.

3. The provisions of this Ordinance and the rules made thereunder shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

[1] (Ga) Ins; by NWFP., Ord. No. V of 1987
[2] (ia) Ins; by NWFP, Ord. No. V of 1987

CHAPTER-2
PURPOSE, POWERS AND FORMATION

Proposal.

4. (1) The primary purpose of the Association shall be-

(i) the operation, maintenance, improvement and rehabilitation of the watercourse;

(ii) the improvement of water supply from surface or ground water; and

(iii) the improvement of On-Farm Water Management.

(2) The secondary purpose of the Association shall be to perform such other functions as relate to the obtaining of other agricultural inputs and the economic and social well being of the membership.

Association to be bodies corporate.

5. An Association shall be body corporate by the name under which it is registered, having perpetual succession with power to hold property, both moveable and immovable, and shall by the said name sue and be sued.

Formation of Association.

6. (1) Whenever at least fifty-one percent of the irrigators on a watercourse who are above the age of eighteen years agree to the formation and operation of an Irrigator's Association (*Anjuman-e-abpashi)*, they shall make an application to the Director, On-Farm Water Management through his Field Officer.

(2) Upon receipt of application, the Field Officer shall review the application and convene a meeting for all irrigators in the watercourse command area.

(3) If seventy-five percent of the irrigators, who are above the age of eighteen years, consent to formation of the Association, membership of the non-consenting irrigators or those who are not capable of so consenting under any law for the time being in force shall be mandatory and they shall be deemed to have consented to be the members of the Association.

(4) Upon receipt of a complete membership list and after ascertaining the facts as mentioned in sub-section (1) or, as the case may be, sub-section (3), the Field Officer shall approve the application, register the Association by entering the name and particulars of the Association in a register to be kept for the purpose, send one copy of the list of the Provincial Director, On-Farm Water Management, and provide the Association with a certificate of formation as evidence of the legal existence.

(5) The membership list shall be kept current by the Association.

(6) The Field Officer shall examine and approve the membership list, and shall determine that each member is a *bona fide* land owner or an operator or a tenant.

(7) Any person aggrieved by the decision of the Field Officer may file an appeal to the Collector, whose decision thereon shall be final.

(8) The list of Associations and names of Officers of Association shall be sent to the Irrigation, Agriculture, Revenue and other requesting Departments.

(9) The Association shall, within 30 days of the approval of the membership list, convene a meeting of the General Body, elect the Board of Directors, adopt bye-laws, and open a bank account.

(10) The level of formation of an irrigators' Association shall be at the outlet village or tubewell village. The Association may increase in irrigated area by tubewells, and Associations sharing a common Government or private tube-well may make provisions in bye-laws for operation and maintenance of the same.

(11) Whenever the area of an outlet or tubewell village is changed by the Irrigation Department, the membership of existing Associations shall change accordingly. If membership changes by twenty-five percent or more, there shall be fresh election of the Board of Directors.

Powers of Association.

7. In carrying out the functions under this Ordinance the Association shall generally have the powers-

(i) to improve, rehabilitate, operate and maintain the water-courses;

(ii) to improve the water supply from surface or sub-surface sources;

(iii) to locate, own, operate and maintain tubewells and lift pumps in the name of the Association;

(iv) to sanction upgrading and maintenance of farm ditches and field outlets;

(v) to encourage adoption of improve on-farm water use and management practices and other improved land and agricultural input practices;

(vi) to participate in programmes to improve watercourses, land levelling and agronomic practice, and to lease, own, operate and maintain equipment, structures and other matters associated with improvement efforts;

(vii) to establish water delivery schedules and supervise water allocation and distribution in the Association village in such a manner so as not to interfere with canal water delivery;

(viii) to set and collect general and special assessments;

(ix) to conscript labour for emergency repair or water course;

(x) to locate, install and maintain drainage facilities for fields;

(xi) to remove obstructions in watercourse during realignment, operation and maintenance;

(xii) to enter into contracts for obtaining loans and grants and setting a repayment schedule;

(xiii) to insure that all members' rights under the law are respected, and that each member gets his fair share of water in a timely fashion; and

(xiv) to insure that all members of the Association contribute their fair share of labour, money and other services for improvement, maintenance and operation of the water course.

[3]7A. Recovery of cost. –

(1) Notwithstanding anything to the contrary contained in any law for the time being in force, where in connection with renovation of a water course the material used in such renovation is made available by the Management, all the irrigators making use of the water course shall be liable to pay proportionately to the Management such percentage of the total cost of the material so used in the renovation of the water course as is specified by Government from time to time by Notification in the official Gazette. The recovery shall be made in equal yearly installments, spread over a period of five years, recoverable after a grace period of two years of the completion of the water course.

(2) For the purposes of recovery of cost under sub-section (1), the Field Officer shall work out the proportionate share of every irrigator and shall, by notice, require the irrigators to deposit with him their share in the manner specified in the notice. The share so deposited shall be credited by Field Officer in a Government Treasury under the prescribed head of account.

(3) When an irrigator fails to deposit his share, as worked out under sub-section (2) in the specified manner, the same shall be recoverable from the defaulter, along with a penalty at the rate of five percent per annum of the amount due, as if it were an arrear of land revenue:

Provided that where an irrigator has preferred an appeal under section 7B the manner specified for the deposit of this share shall be effective from the date of the order passed in appeal.

(4) All materials made available by the Management and used in connection with the renovation of water course on or after the 1st day of July, 1985, shall be the materials in respect whereof the cost, as aforesaid, shall be recoverable under this section.

Explanation :- Renovation of Water Course, for the purpose of this section shall include repair, improvement, construction and maintenance of a Water Course, removal of hindrances in the smooth flow of water in a water course, re-alignment of water course based on engineering survey and design, installation of Pacca Nakkas at sanctioned sites, construction of culverts on the crossings and constructions, reconstruction and maintenance of buffalo wallows where required.

(5) For the purpose of sub-section (2), the proportionate share of each irrigator shall be worked out on the basis of official warabandi of the Irrigation Department or the Board of Revenue or, if there be no official warabandi, on the basis of Khangi Warabandi

[3] (7a) Ins; by N.W.F.P., Ord. No. V of 1987

CHAPTER - 3
GENERAL BODY

Composition.

8. The irrigators of an Association shall constitute the General Body

General Meeting.

9. Every Association shall call an annual general meeting of the membership and not less than one other general meeting per year.

Special Meeting.

10. On request of not less than on-fifth of the members of the Association or at the request of the Board of Directors, the Chairman shall call a special meeting of the membership.

Duties of Geneal body.

11. The General Body shall elect the Board of Directors, make or approve organizational policies, and plan of operation, approve and amend bye-laws, approve assessment and budget, approve selection of ditch tenders and assessment collectors, approve adoption of improvement programmes and leasing, purchasing or otherwise obtaining equipment, pumps, seeds, fertilizer, chemical and other like products, and do all other things necessary to carry out the purposes of this Ordinance and the Association's bye-laws.

Voting

12. (1) All irrigators shall be entitled to vote on issues requiring voting in carrying out the duties of the General Body.

(2) Each decision by the General Body shall require two third majority of votes.

Resolving disputes.

13. (1) The General Body may either elect a special body to, or delegate to the Board of Directors the authority to, hear and decide disputes between members of the Association.

(2) Violation of the decision of the Board of the special body shall only be punishable with a fine, and not suspension of water delivery unless approved by the General Body.

CHAPTER – 4
BOARD OF DIRECTORS

Compensaton.

14. (1) There shall be elected by the General Body, using secret ballot, a Board of Directors consisting of not less than five members in good standing.

(2) The General Body shall decide and include in the Association bye-laws whether the representatives to the Board of Directors are to be elected from geographic portions of the watercourses (head, middle and till) or by group or at large.

(3) No member elected to the Board of Directors shall enjoy any benefits greater than any other member by virtue of his elected position.

(4) Members of the Board of Directors shall be elected for two years term, except in the first election after organization when one-half or thereabouts shall be elected for one year. Thereafter half or thereabouts shall be elected annually. A person shall not serve for more than two consecutive terms on the Board of Directors.

Chairman and Officers.

15. The members of Board of Directors shall annually choose a Chairman, Secretary and Treasurer. If the bye-laws so specify, the Chairman may be by rotation and Vice-Chair man also appointed.

Quorum

16. Action by the Board of Directors shall require two third vote of the total members of the Board.

Oath.

17. Members of the Board of Directors shall make an oath to uphold the purposes and duties of the Association and if they be muslims, to also uphold the tenets of Islam.

Duties of Board of Directors.

18. The Board of Directors shall be responsible for carrying out the purposes of this Ordinance, the Association bye-laws and more particularly shall:

(i) manage the Association activities in delivery of water;

(ii) develop a plan of operation, maintenance, improvement and rehabilitation of the watercourse;

(iii) supervise the construction and maintenance of the water course and other improvement activities;

(iv) employ and discharge ditch tenders, collectors, and construction personnel;

(v) exercise emergency powers to repair watercourse breakages;

(vi) negotiate and contract with government agencies and other institution for improvement programmes acceptable to the General Body;

(vii) serve as the communication link between government agencies in dissemination of information and all matters representing the views and requests of the Irrigators Association;

(viii) maintain the financial and organizational records of the Association; and

(ix) call special meeting of the General Body for any matter involving original expenditures and other important issues involving the general membership.

Duty of Chairman.

19. The Chairman shall be responsible to call and conduct meeting of the Board of Directors and General Body and to otherwise act on behalf of the Association in all other matters. The Chairman may designate a temporary Chairman in case he is unable to perform his duties; provided that if there is a Vice-Chairman, he shall act as the Chairman. The Chairman and the Secretary shall sign all contracts and other obligations of the Association.

Duty of Secretary.

20. The Secretary shall keep a record of minutes o of the Association.

Duties of Treasurer.

21. The Treasurer shall keep and maintain financial records of the Association. The Treasurer may make deposits in the Association's account, but all withdrawals shall require the signatures of both the Chairman and the Treasurer.

Association of Board.

22. The Board of Directors may appoint a person competent to perform the duties of Secretary of Treasurer to assist the Secretary or Treasurer in the performance of their duties.

CHAPTER – 5
FEDERATION OF ASSOCIATIONS.

Disbutary Association.

23. (1) The Irrigator's Associations on each distributary may form a Federation of Associations (hereinafter called the Distributary Associations) Such an Association, when formed, shall be called by the name of the distributary concerned.

(2) When more than half of the watercourses on a distributary are organized into Irrigators' Associations, they may form a Distributary Association. Any other Association formed thereafter on any other watercourse on the same distributary shall immediately become constituent member of the Distributary Association.

(3) Each Irrigators' Association shall send one representative to the Distributary Association.

(4) The Chairman of the Irrigators' Association shall act as the representative of his Association to the Distributary Association.

(5) The members of the Distributary Association shall select a Chairman and other officers as needed.

Canal Association.

24. (1) On each major canal all the Distributary Associations may form a Federation of Associations (hereinafter called the Canal Associations). Such an Association, when formed, shall be called by the name of the canal concerned.

(2) When more than half of the distributars on a major canal are organized into distributary Associations, they may form a Canal Association. Any other Distributary Association formed thereafter on the remaining distributaries shall immediately become constituent member of the Canal Association.

(3) Each Canal Association shall have a Board of Directors and the Chairman of each Distributary Association shall be the representative to the Board of Directors of the Canal Association.

(4) The members of the Canal Association shall select Chairman and other officers as is needed.

Registry of Distributary and canal Association.

25. The Distributary Associations and the Canal Association shall be registered with the Director of On-Farm Water Management Project. A copy of the registry and name of Chairman shall be provided to all other concerned departments.

Duties and powes.

26. (1) The Distributary Association or Canal Association shall –

(i) represent its members in issues and problems related to the distributary or, as the case may be, more than one distributary or the whole canal;

(ii) represent its respective constituent members to the Departments of Irrigation, Agriculture and any other Department;

(iii) serve as channel of communication between the Irrigation Department and the constituent members of the Association;

(iv) participate actively with the Irrigation Department in the improvement, maintenance and operation of the distributaries and canals;

(v) maintain financial records and minutes of meetings, levy assessments upon member Association and exercise collection authority on a voluntary basis or in case of default by certifying the amount for collection to the Collector; and

(vi) make by-laws and rules of operation.

(2) The Distributary Association or Canal Association may -

(i) make recommendations and requests for distribution of water into a minor or distributary on a demand or fixed delivery basis;

(ii) make recommendations and requests to the Irrigation Department for construction of bridges, regulators, drop structures, new minor canals etc. at Association cost or cost sharing.

Capital expenditure and improvements.

27. The Board of Directors of the Distributary or Canal Association shall, before committing or making any major capital expenditure or improvements, obtain the approval from membership of their respective Irrigator's Associations.

CHAPTER – 6
MISCELLANEOUS PROVISIONS

Evidence of land Ownership.

28. Membership in the Association as representative of joint owners or as tenant does not imply relinquishment or *prima facia* evidence of title to land.

Transfer of membership.

29. In the event of a transfer of any type of an irrigator's holding to another Irrigator who previously was not member of the Irrigators' Association, the membership in the Association shall also stand transferred.

Assessments.

30. (1) General Assessment shall be to carry out the primary purposes of the Association.

(2) Special Assessments shall be to carry out the secondary purposes of the Association.

(3) Assessments should be allocated in proportion to cultivable lands in the Association village.

Credit.

31. Credit may be extended to a legally constituted Association responsible for its debts and actions and being in good standing. The Association will have power to encumber the land in the Command area without unanimous consent of the land owners.

Authority of Accounts.

32. The Association shall have the financial accounts audited every year by an auditor selected from the government list of approved auditors.

Fines for abuse.

33. The Association shall adopt a Schedule of fines in the bye-laws, which fines shall be either commensurate with the damage caused or, as the case may be, the benefit received, or may be levied in proportion to acreage irrigated on the watercourse.

Enforcement of fines and fees.

34. (1) The Board of Directors may certify to the Collector the amount recoverable from a member as fines or fees, which the members refuses to pay on demand, collectable as arrears of land revenue.

(2) The Collector shall recover the said amount so certified and reimburse this amount to the Association.

Acquisition of Land.

35. The Association may acquire lands necessary for location or relocation of watercourses and installation of tubewells on a voluntary basis, with compensation to be paid accordingly for the land to acquired.

Contract water and water rates.

36. The Association or Federation of Associations at any level may contract with the Irrigation Department for the supply of canal water on a contract basis at the outlet, or contract on volumetric rate basis at the minor or distributary canal, as provided in the canal rules, instead of the crop rate basis commonly used. In this case, the Association will collect and pay the agreed rate of Government.

Improvements of disributary.

37. Any Association or Federation of Associations which desires to improve the distributary or participate in improvement process on the distributary or canal must first have the approval and supervision of the Canal Officer.

Preferential treatment.

38. The Department of Irrigation, Agriculture, Revenue and Cooperatives and Credit Institutions shall give preferential treatment to Irrigators' Associations organized and registered under this Ordinance to facilitate their efficient functioning.

Preferential of forms.

39. The Directorate, On-Farm-Water Management, shall prepare necessary forms to expedite and facilitate formation of Irrigator's Associations and Federations of Associations.

Powers to make rules.

40. Government may make rules for carrying out the purposes of this Ordinance.

5.1.6.8 Canal and Drainage Act 1873

THE CANAL AND DRAINAGE ACT, 1873

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No right acquired by user.

the Provincial Government except by grant or under the Indian Limitation Act, 1877, Part IV;

and no right to any of the advantages referred to in clauses (a), (b) and (c) of this section shall be acquired, as against the Provincial Government, under the same Part.

9. Limination of Claims

No claim for compensation for any such stoppage, diminution or damage shall be made after the expiration of one year from such stoppage, diminution or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

10. Enquiry into claims and amount of compensation.

The Collector shall proceed to enquiry into any such claim, and to determine the amount of compensation, if any, which should be given to the claimant ; and sections 9 to 12 (inclusive), 14 and 15, 18 to 23 (inclusive), 26 to 40 (inclusive), 51, 57, 58 and 59 of the 3Land Acquisition Act, 1870, shall apply to such inquiries;

Provided that, instead of the last clause of the said section 26, the following shall be read: - “The provisions of this section and of section 8 of the canal and drainage Act, 1873, shall be read to every assessor in a language which he understands, before he gives his opinion as to the amount of compensation tot awarded”.

11. Aboutment of rent on interruption of water suplly.

Every tenant holding under an unexperied lease, or having a right of occupancy, who is in occupation of any land at the time when any stoppage or diminution of water-supply, in respect of which compensation is allowed under section 8 takes place, may claim an abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding.

12. Enhancement of rent on insruction of water supply.

If a water-supply increasing the value of such holding is afterwards restored to the said land, the rent of the tenant may be an enhanced, in respect of the increased value of such land due to the restored water supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored water-supply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

13. Compensation when due.

All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of interest,

and simple interest at the rate of sic percent per annum shall be allowed on any such sum remaining unpaid after the said three months, expect where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same.

PART III
OF THE CONSTRUCTION AND MAINTENANCE OF WORKS

14. Power to enter and survey etc..

Any Canal officer, or other person acting under the general or special order of a Canal officer,

may enter upon any lands adjacent to any canal, or through which any canal is proposed to be made, and undertake surveys or levels thereon;

and dige and bore into the sub-soil;

and make and set up suitable land marks, level-marks, and water gauges;

and do all other acts necessary for the proper prosecution of any enquiry relating to any existing or projected canal under the charge of the said Canal officer;

and, where otherwise such enquiry cannot be completed, such officer or other person may cut down and clear away any part of any standing crop, fence or jungle;

and may also enter upon any land, building or water course on account of which any water rate is chargeable, for the purpose of inspecting or regulating the use of the water supplied, or of measuring the lands irrigated thereby or chargeable with a water rate, and of doing all thing necessary for the proper regulation and management of such canal:

Provided that, if such Canal officer or person proposes to enter into any building or enclosed court or garden attached to a dwelling house not supplied with water following from any canal he shall previously give the occupier of such building, court or garden at least seven days' notice in writing of his intention to do so.

In every case of entry under this section, the Canal-officer shall, at the time of such entry, tender compensation for any damage which may be occasioned by any

proceeding under this section; and, incase of dispute as to the sufficiency of the amount so tendered he shall forthwith refer the same for decision by the Collector, and such decision shall be final.

15. Power to enter reports and to prevent accidents..

In case of any accident happening or being apprehended to a canal any Divisional Canal officer or any person acting under his general or special orders in this behalf may enter upon any lands adjacent to such canal and may erect all works which may be necessary for the purpose of repairing or preventing such accident.

In every such case such Canal officer or person shall tender compensation to the proprietors or occupiers of the said lands for Canal officer shall refer the matter to Collector, who shall proceed to award compensation for the damage as though the Provincial Government had directed the occupation of lands under section 43 of the Land Acquisition Act, 1870.

16. Application by persons designing to use Canal water.

Any persons desiring to use the water of any canal may apply in writing to the Divisional or sub-divisional canal officer of the division or sub-division of the canal from which the water course is to be supplied, requesting such officer to construct of improve a water course at the cost of the applicants.

Contents of state application: The application shall the works to be undertaken, their approximate estimated cost, or the amount which the applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal officer, and how the payment is to be made.

Libaratory of Applicants for cost of work: When the assent of the Superintending Canal officer is given to such application, all the applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Recovery of amount due: Any amount becoming due under the terms of such application, and not paid to the Divisional canal officer, or the person authorized by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the Collector as if it were an arrear of land revenue.

17. Government to provide means of Gossing Lands

There shall be provided, at the cost of the Provincial Government, suitable means of crossing canals constructed or maintained at the cost of the Provincial Government, at such places as the Provincial Government thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands.

On receiving a statement in writing signed by not less than five of the owners of such lands, to the effect that suitable crossings have not been provided on any canal, the Collector shall cause enquiry to be made into the circumstances of the case, and if he thinks that the statement is established, he shall report his opinion thereon for the consideration of the Provincial Government and the Provincial Government shall cause such measures reference thereto to be taken as it thinks proper.

18. Persons using water courseto construct worksfor possing water across road, etc.

The Divisional Canal officer may issue an order to the persons using any water course to construct suitable bridges, culverts or other works for the passage of the water of such water course across any public road, canal or drainage channel in use before the said water course was made, or to repair any such works.

Such order shall specify a reasonable period within which such construction or repairs shall be completed;

If fail canal officer may construct: And, if, after the receipt of such order, the persons to whom it is addressed do not, within the said period, construct or repair such works to the satisfaction of the said Canal officer, he may, with the previous approval of the Superintending Canal officer, himself construct or repair the same;

And recover cost: And if the said persons do not, when so required, pay the cost of such construction or repairs as declared by the Divisional Canal officer, the amount shall, on the demand of the Divisional

The amount shall on the demand of the Divisional Canal Officer recoverbale from then by the Collector as if it where an arear of land revenue.

19. Adjustment of claims between persons jointly using water course.
If any person, jointly responsible with others for the construction or maintenance of a water course, or jointly making use of a water course with others, neglects or refuses to pay his share of the cost of such construction or maintenance, or to execute his share of any work necessary for such construction or maintenance, the Divisional or Sub-divisional Canal officer, on receiving an application in writing from any person injured by such neglect or refusal, shall serve notice on all the parties concerned that, on the expiration of a fortnight from the service, he will investigate the case; and shall, on the expiration of that period, investigate the case accordingly, and make such order thereon as to him seems fit.

Recovery of amount found due: Such order shall be appealable to the 1Commissioner, whose order thereon shall be final.

Any sum directed by such order to be paid within a specified period may, if not paid within such period, and if the order remains in force, be recovered by the Collector, from the person directed to pay the same, as if it were an arrear of land revenue.

20. Supply of water through intervening water course.
Whenever application is made to a Divisional Canal officer for a supply of water from a canal, and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water course, he shall give notice to the persons responsible for the maintenance of such water course to show cause, on a day not less than fourteen days from the date of such notice, why the said supply should not be so conveyed; and, after making enquiry on such day, the Divisional Canal officer shall determine whether and on what conditions the said supply shall be conveyed through such water course.

When such officer determines that a supply of canal water may be conveyed through any water course as aforesaid, his decision shall, when confirmed or modified by the Superintending Canal officer, be binding on the applicant and also on the persons responsible for the maintenance of the said water course.

Such applicant shall not be entitled to sue such water course until he has paid the expense of any alteration of such water course necessary in order to his being supplied through it, and also such share of the first cost of such water course as the Divisional or Superintending Canal officer may determine.

Such applicant shall also be liable for his share of the cost of maintenance of such water course so long as he uses it.

21. Application for construction of new water course.
Any person desiring the construction of a new water course may apply in writing to the Divisional Canal officer stating –

(1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such water course to pass, a right to occupy so much of the land as will be needed for such water course;

(2) that he desires the said Canal officer, in his behalf and at his cost, to do all things necessary for acquiring such right;

(3) that he is able to defray all costs involved in acquiring such right and constructing such water course.

22. Proceudre of Canal Officer there open.

If the Divisional Canal officer considers -

(1) that the construction of such water course is expedient, and
(2) that the statements in the application are true,

he shall call upon the applicant to make such deposit as the Divisional Canal officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due under section 28;

and, upon such deposit being made, he shall cause enquiry to be made into the most suitable alignment for the said water course, and shall mark out the land which in his opinion, it will necessary to occupy for the construction thereof, and shall forth with publish a notice in every village through which the water course is proposed to be taken, that so much of such land as belongs, to such village has been so marked out and shall send a copy of such notice to the Collector of every district in which any part of such land is situate.

23. Applicaton for transfer of existing water course.

Any person desiring that an existing water course should be transferred from its present owner to himself may apply in writing to the Divisional Canal officer, stating--

(1) that he has endeavored unsuccessfully to procure such transfer from the owner of such water course;

(2) that he desires the said Canal officer, in his behalf and at his cost, to do all things necessary for procuring such transfer;

(3) that he is able to defray the cost of such transfer.

Procedure thumb for Canal Officer

If the Divisional Canal considers—

(a) that the said transfer is necessary for the better management of the irrigation from such water course, and
(b) that the statements in the application are true,

he shall call upon the applicant, to make such deposit as the Divisional Canal officer considers necessary to defray the cost of preliminary proceedings, and the amount of any compensation that may become due under the provisions of section 28 in respect of such transfer;

and upon such deposit being made, he shall publish a notice of the application in every village, and shall send a copy of the notice to the Collector of every district through which such water course passes.

24. Objections to construction on transfer applied for.

Within thirty days from the publication of a notice under section 22 or section 23, as the case may be, and person interested

in the land or water course to which the notice refers may apply to the Collector by petition, stating his objection to the construction or transfer for which application has been made.

The collector may either reject the petition or may proceed to inquire into the validity of the objection, giving previous notice to the Divisional Canal officer of the place and time at which such inquiry will be held.

The Collector shall record in writing all orders passed by him under this section and the grounds thereof.

25. When applicant may be pleased in occupation.

If no objection is made, or (where such objection is made) if the Collector over rules it, he shall give notice tot he Divisional Canal officer to that effect, and shall proceed forthwith to place the said applicant in occupation of the land marked out or of the water course to be transferred, as the case may be.

26. Procedure when objections is held which.

If the Collector considers any objection made as aforesaid to be valid he shall inform the Divisional Canal officer accordingly; and, if such officer sees fit, he may, in the case of an application under section 21, alter the boundaries of the land so marked out, and may give fresh notice under section 22, and the procedure hereinbefore provided shall be applicable to such notice, and the Collector shall thereupon proceed as before provided.

27. Procedure when Canal Officers disagrees with collector.

If the Canal officer disagree with the Collector, the matter shall be referred for decision to the Commissioner.

Such decision shall be final, and the collector, if he is so directed by such decision, shall, subject to the provisions of section 28, cause the said applicant to be placed in occupation of the land so marked out or of the water course to be transferred, as the case may be.

28. Expenses to be paid by applicant before receiving occupation.

No such applicant shall be placed in occupation of such land or water course until he has paid to the person named by the Collector such amount as the Collector determines to be due as compensation for the land or water course so occupied or transferred, and for any damage caused by the marking out or occupation of such land, together with all expenses incidental to such occupation or transfer.

In determining the compensation to be made under this section the Collector shall proceed under the provisions of the Land Acquisition Act, 1870; but he may, if the person to be compensated so desires, award such compensation in the form of a rent charge payable in respect of the land or water course occupied or transferred.

If such compensation and expenses are not paid when demanded by the person entitled to receive the same, the amount may be recovered by the Collector as if it were an arrear of land revenue, and shall when recovered, be paid by him to the person entitled to receive the same.

2 See now the Land Acquisition Act, 1894 (1 of 1894).

29. conditions bioding an aplicant placed in occupation.

When any such applicant is placed in occupation of land or of a water course as aforesaid, the following rules and conditions shall be binding on him and his representative in interest:-

First. – All works necessary for the passage across such water course, or water course, existing previous to its construction and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the neighbouring lands, shall be constructed by the applicant, and be maintained by him or his representative in interest to the satisfaction of the Divisional Canal officer.

Second. – Land occupied for water course under the provisions of section 22 shall be used only for the purpose of such water course.

Third.- The proposed water course shall be completed to the satisfaction of the Divisional Canal officer within one year after the applicant is placed in occupation of the land.

In cases in which land is occupied or a water course is transferred on the terms of a rent charge.

Fourth.- The applicant or his representative in interest all, so long as he occupies such land or water course, pay rent for the same at such rate and on such days as are determined by the Collector when the applicant is placed in occupation.

Fifth. - If the right to occupy the land cease owing to a breach of any of these rules, the liability to pay the said rent shall continue until the applicant or his representative in interest has restored the land to its original condition, or until he has paid, by way of compensation for any injury done to the said land, such amount and to such persons as the collector determines.

Sixth. – The Collector may, on the application of the person entitled to receive such rent or compensation, determine the amount of rent due or assess the amount of such compensation; and, if any such rent or compensation be not paid by the applicant or his representative in interest, the Collector may recover the amount, with interest thereon at the rate of six percent per annum from the date on which it became due, as if it were an arrear of land-revenue, and shall pay the same, when recovered, to the person to whom it is due.

If any of the rules and conditions prescribed by this section are not complied with,

Or if any water course constructed or transferred under this Act is discussed for three years continuously,

The right of the applicant, or of his representative in interest, to occupy such land or water course shall cease absolutely.

30. Procedure applicable to occupation for exensions and alternatives.

The procedure hereinbefore provided for the occupation of land for the construction of a water course shall be applicable to the occupation of land for any extension or alteration of a water course, and for the deposit of soil from water course clearances.

PART IV
OF THE SUPPLY OF WATER

31. In absuce of within contract water supply to be subject to rules.

In the absence of a written contact, or so far as any such contract does not extend, every supply of canal water shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the 1[Provincial Government] in respect thereof.

32. Conditions as to power to stop watter supply.

Such contacts and rules must be consistent with the following conditions :-

(a) The Divisional Canal officer may not stop the supply of water to any water course, or to any person, except in the following cases:-

(1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority and with the previous sanction of the Provincial Government;
(2) whenever and so long any water course is not maintained in such proper customary repair as to prevent the wasteful escape of water therefrom;
(3) within periods fixed from time to time by the Divisional Canal officer;

Claim to compensation in case of failure on stoppage of supply: (b) No claim shall be made against the Provincial Government for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of 2[the Provincial Government] or of any repairs, alterations or additions to the canal. Or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the Divisional Canal officer considers necessary; but the person suffering such loss may claim such remission of the ordinary charges payable for the use of the water as is authorized by the Provincial Government:

Claims on account of interruption from others cases: (c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last proceeding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector may award to the petitioner reasonable compensation for such loss:

Duration of supply: (d) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year:

Ballon sub-letting of right to use Canal Water: (e) Unless with the permission of the Superintending Canal-Officer, no person entitled to use the water of any canal, or any work, building or land appertaining to any canal, shall sell or sublet or otherwise transfer his right to such use.

Provided that the former part of this clause shall not apply to the use by a cultivating tenant of water supplied by the owner of a water-course for the irrigation of the land held by such tenant

Transfer with land of contractors for water: But all contracts made between The Provincial Government and the owner or occupier of any immovable property, as to the supply of canal water to such property, shall be transferable therewith, and shall be presumed to have been so transferred whenever a transfer of such property takes pale.

No right aequired by user: (f) No right to the use of the water of a canal shall be, or be deemed to have been acquired under the 2Indian Limitation Act, 1877, Part IV, nor shall the Provincial Government be bound to supply any person with water except in accordance with the terms of a contract in writing.

PART V
OF WATER RATES

33. Liability when person using un-authoribedly cannot be identified.

If water supplied through a water course be used in an unauthorized manner, and if the person by whoes act or neglect such use has occurred cannot be identified.

the person on whose land such water has flowed if such land has derived benefit therefrom,

or if such person cannot be identified or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through such water course, shall be liable, or jointly liable, as the case may be, to the charges made for such use.

34. liability when water runs to waste.

If water supplied through a water course be suffered to run to waste, and if, after enquiry by the Divisional canal Officer, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, al the persons chargeable in respect of the water supplied through such water course shall be jointly liable for the charges made in respect of the water wasted.

35. Charges reoverable in addition to penalties.

Al charges for the unauthorized use or for waste of water may be recovered in addition to any penalties incurred on account of such use, or waste.

Descisouns of questions under sections 33 and 34: All questions under section 33 or section 34 shall be decided by the Divisional Canal Officer, subject to an appeal to the Head revenue officer of the district or such other appeal as may be provided under section 75.

36. Charge our occupier for water how determined.

The rates to be charged for canal water supplied for purposes of irrigation to the occupiers of land shall be determined by the rules1 to be made by the Provincial Government, and such occupiers as accept the water shall pay for it accordingly.

“Occupiers rate”.
A rate so charged shall be called the “occupier’s rate”.

The rules hereinbefore referred to may prescribed and determine what persons or classes of persons are to be deemed to be occupiers for the purposes of this section, and may also determine the several liabilities, in respect of the payment of the occupier’s rate, of tenants and of persons to whom tenants may have sublet their lands or of proprietors and of persons to whom proprietors may have let the lands held by them in cultivating occupancy.

37. Owners rate.

In addition to the occupier’s rate, a rate to be called the “owner’s rate” may be imposed, according to rules to be made by lands, in respect of the benefit which they derive from such irrigation.

38. Amount of Owners rate.

The owner's rate shall not exceed the sum which, under the rules for the time being force for the assessment of land-revenue, might be assessed on such land on account of the increase in the annual value or produce thereof caused by the canal irrigation. And, for the purpose of this section only, land which is permanently settled or held free of revenue shall be considered as though it were temporarily settled and liable to payment of revenue.

39. Owners rate when not chargeable.

No owner's rate shall be chargeable either on the owner or occupier of land temporarily assessed to pay land-revenue at irrigation rates, during the currency of such assessment.

40. When occupation is to pay both owners rate and occupaies rate.

If such land is occupied by the owner,

or if it is occupied by a tenant whose rent is not liable to enhancement on the ground that the value of the produce of the land or the productive powers of the land has or have been increased by irrigation.

Such owner or tenant shall pay the owner's rate as well as the occupier's rate.

41. Power to make rules for appertioning owners rate.

In the case of a tenant with a right of occupancy, the Provincial Government shall have power to make rules for dividing the owner's rate between such tenant and his landlord, proportionately to the extent of the beneficial interest of each in the Land.

42. When owners is to pay owners rate.

If the owner of the land is not the occupier, but has power to enhance the rent of the occupier on the ground that the value of the produce or the productive powers of the land has or have been increased by irrigation;

of it, when the amount of a rent was fixed, the land was irrigated from the canal.

the owner shall pay the owner's rate.

43. Efect of introduction of canal irrigation an land lords right to evlance.

If a revision of settlement is a ground for entertaining a suit for the enhancement of rent, the introduction of canal irrigation into any land shall have the same effect on the landlord's right to re-enhance the rent of a tenant with a right of occupancy of such land, as if a revision of settlement had taken place, under which the revenue payable in respect of such land had been increased.

44. Water rate by when payable when charged on land held by several owners.

Where a water-rate is charged on land held by several joint owners, it shall be payable by the manager or other person who receives the rents or profits of such land, and may be deducted by him from such rents or profits before division, or may be recovered by him from the persons liable to such rate in the manner customary in the recovery of the other charges on such rents or profits.

Recovery of charges

45. certified dues recoverable as land revenue.

Any sum lawfully due under this Part, and certified by the Divisional Canal office to be so due, which remains unpaid after the day on which it becomes due, shall be recoverable by the Collector from the person liable for the same as if it were an arrear of land revenue.

46. Power to contract for collection of canal dues.

The Divisional Canal officer or the Collector may enter into an agreement with any person for the collection and payment to 2[the Provincial Government] by such person of any sum payable under this Act by a third party.

When such agreement has been made, such person may recover such sum by suit as though it were a debt due to him, or an arrear of rent due to him on account of the land, work or building in respect of which such sum is payable, or for or in which the canal water shall have been supplied or used.

If such person makes default in the payment of any sum collected by him under this section, such sum may be recovered from him by the Collector under section 45; and, if such sum or any part of it be still due by the said third party, the sum or part so due may be recovered in like manner by the Collector from such third party.

47. Lamborders may be required to collect canal dues.

The Collector may require the lambardar, or person under engagement to pay the land revenue of any estate, to collect and pay any sums payable under this Act by a third party, in respect of any land or water in such estate. Such sums shall be recovered by the collector as if they are arrears of land revenue due in respect of the defaulter's share in such estate;

and for the purpose of collecting such sums from the subordinate zemindars, raiyats, tenants or sub-tenants, such lambardar or person may exercise the powers, and shall be subject to the rules, laid down in the law for the time being in force in respect to the collection by him of the rents of land or of shares of land revenue.

The Provincial Government shall provide-

(a) for remunerating persons collecting sums under this section ; or
(b) for indemnifying them against expenses properly incurred by them in such collection ; or
(c) for both such purposes.

48. Lines excluded from sections 45, 46, 47.

Nothing in sections 45, 46 or 47 applies to fines.

PART VI
OF CANAL-NAVIGTION

49. Detainer of vessels indating rules.

Any vessel entering or navigating any canal contrary to the rules made in that behalf by the Provincial Government, or so as to cause danger to the canal or the other vessels therein, may be

removed or detained or both removed and detained, by the Divisional Canal officer, or by any other person duly authorized in this behalf.

Liability of owners of vessels causing damages: The owner of any vessel causing damage to a canal, or removed or detained under this section, shall be liable to pay to the Provincial Government such sum as the Divisional canal officer with the approval of the Superintending canal officer, determines to be necessary to defray the expenses of repairing such damage or of such removal or detention, as the case may be.

50. Recovery of files of ofences in navigating canals.

Any fine imposed under this Act upon the owner of any vessel, or the servant or agent of such owner or other person charge of any vessel, for any offence in respect of the navigation of such vessel, may be recovered either in the manner prescribed by the Code of Criminal Prodcure4 or, it the Magistrate imposing the fine so directs, as though it were a charge due in respect of such vessel.

51. Powre to size and ditain visual on failure to pay charges.

If any charge due under the provisions of this Part in respect of any vessel is not paid on demand to the person authorized to collect the same, the Divisional Canal-officer may seize and detain such vessel and the furniture thereof, until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

52. Power to size carage and goods it cahrges due thereon are not paid.

If any charge due under the provisions or this Part in respect of any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for the purposes of a canal is not paid on demand to the person authorized to collect the same, the Divisional Canal-officer may seize such cargo or goods and detain them until the charge so due, together with all expenses and additional charges arising from such seizure and detention, is paid in full.

53. Proceudre for recovery of such charges after sizure.

Within a reasonable time after any seizure under section 51 or section 52, the said canal officer shall give notice to the owner or person in charge of the property seized that it, or such portion of it as may be necessary will on a day to be named in the notice, but not sooner than fifteen days from the date of the notice, be sold in satisfaction of the claim on account of which such property was seized, unless the claim be discharged before the day so named.

And, if such claim be not so discharged, the said canal officer may, on such day, sell the property seized or such part thereof as may be necessary to yield the amount due, together with the expenses of such seizure and sale:

Provided that no greater part of the furniture of any vessel or of any cargo or goods shall be so sold than shall, as nearly as may be suffice to cover the amount due in respect of such vessel, cargo or goods.

The residue of such furniture, cargo or goods, and of the proceeds of the same, shall be made over to the owner or person in charge of the property seize.

54. Proceudre in respect of vessels abondaned and goods unclaimed.

If any vessel be found abandoned in a canal, or any cargo or goods carried in a Government vessel on a canal, or stored on or in lands or warehouses occupied for he purposes of a canal, be

left unclaimed for a period of two months, the Divisional Canal officer may take possession of he same.

The officer so taking possession may publish a notice that, if such vessel and its contents, or such cargo or goods, are not claimed previously to a day to be named in the notice, not sooner than thirty days from the date of such notice, he will sell the same, and if such vessel, contents, cargo or goods be not so claimed, he may at any time after the day named in the notice, proceed to sell the same.

Disposal of procedure of sale: The said vessel and its contents, and the said cargo or gods if unsold, or, if a sale has taken place the proceeds of the sale, after paying all tolls, charges and expenses incurred by the Divisional canal officer on account of the taking possession and sale, shall be made over to the owner of the same, when his ownership is established to the satisfaction of the Divisional Canal officer.

If the Divisional canal officer is doubtful to whom such property or proceeds should be made over, he may direct the property to be sold as aforesaid, and the proceeds to be paid into the district treasury, there to be held until the right there to be decided by a Court of competent jurisdiction.

Part VII
of Drainage

55. Power to probibit absructions of order their removal.

Whenever it appears to the Provincial Government that injury to any land or the public health or public convenience has arisen or may arise from the obstruction of any river, stream or drainage channel, such Government may, by 2notification published in the official Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of such observation.

There upon so much of the said river, stream or drainage channel as is comprised within such limits shall be held to be a drainage work as defined in section 3.

56. Powr to remove abstructions after prohibitation.

The Divisional Canal officer, or other person authorized by the Provincial Government in that behalf, may, after such publication issue an order to the person causing or having control over any such obstruction to remove or modify the same within a time to be fixed in the order.

If, within the time so fixed, such person does not comply with the order, the said canal officer may himself remover or modify the obstruction; and if the person to whom the order was issued does not, when calleded upon, pay the expenses involved in such removal or modification, such expenses shall be recoverable by the Collector from him or his representative in interest as an arrear of land revenue.

57. Preparations of schemes for works of improvement.

Whenever it appears to the Provincial Government that any drainage works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof,

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands,

the Provincial Government may cause a scheme for such drainage works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which the Provincial Government proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

58. Power of person employed on such schemes.

The persons authorized by the Provincial Government to draw up such scheme may exercise all or any of the powers conferred on the Canal officers by section 14.

59. Rate on lands benifited by works.

An annual rate, in respect of such scheme, may be charged, according to rules to be made by the Provincial Government on the owners of all lands which shall, in the manner prescribed by the such rules, be determined to be so chargeable.

Such rate shall be fixed, as nearly as possible, so as not to exceed either of the following limits :-

(1) six percent per annum on the first cost of the said works, adding thereto the estimated yearly cost of the maintenance and supervision of the same, and deducting therefrom estimated income, if any, derived from the works, excluding the said rate:

(2) in the case of agricultural land, the sum which under the rules then in force from the assessment of land revenue might be assessed on such land on account of the increased of the annual value or produce thereof caused by the drainage work.

Such rate may be varied from time to time, within such maximum, by the Provincial Government.

So far as any defect to the remedied is due to any canal, water course road or other work or obstruction, constructed or caused by the Provincial Government or by any person, a proportionate share of the cost of the drainage works required for the remedy of the said defect shall be borne by such Government or such person as the case may be.

60. Recovery of rate.

Any such drainage rate may be collected an recovered in manner provided by section 45, 46 and 47 for the collection and recovery of water rates.

61. Disposal of claim to compensation.

Whenever, in pursuance of a notification made under section 55, any obstruction is removed or modified,

or whenever any drainage work is carried out under section 57, all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction or the construction of such work may be made before the Collector, and he shall deal with the same in the manner provided in section 10.

62. Limitation of such claims.

No such claim shall be entertained after the expiration of one year from the occurrence of the loss complained of, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

PART VIII
OF OBTAINING LABOUR FOR CANALS AND DRAINAGE WROKS

63. Definition of "Labour".

For the purposes referred to in this Part, the word "labour" includes persons who exercise any handicraft specified in rules to be made in that behalf by the Provincial Government.

64. Power to prescribe of number of labour to be supplied by person benefited by canal.

In any district in which a canal or drainage work is constructed, maintained or projected by the Provincial Government, the Provincial Government may, if it thinks fit, direct the Collector-

(a) to ascertain the proprietors, sub-proprietors or farmers whose villages or estates are or will be in the judgement of the collector benefited by such canal or drainage work and

(b) To set down in a list, having due regard to the circumstances of the districts and of the several proprietors, sub-proprietors or farmers, the number of labourers which shall be furnished by any of the said persons, jointly or severally, from any such village or estate, for employment on any such canal or drainage work when required as hereinafter provided.

The Collector may, from time to time, add to or alter such list or any part thereof.

65. Procedure of obtaing labour of works urgently required.

Whenever it appears to a Divisional Canal- officer duly authorized by the Provincial Government that unless some work is immediately executed, such serious damage will happen to any canal or drainage work as to cause sudden and extensive public injury.

and that the labourers necessary for the proper execution thereof cannot be obtained in the ordinary manner within the time that can be allowed for the execution of such work so as to prevent such injury.

the said officer may require any person named in such list to furnish as many labourers (not exceeding the umber which according to the said list he is liable to supply as to said officer seems necessary for the immediate execution of such work.

Every requisition so made shall be in writing, and shall state -

(a) the nature and locality of the work to be done;
(b) the number of labourers to be supplied by the person upon whom the requisition is made; and
(c) the approximate time for which and the day on which the labourers will be required;

and a copy there of shall be immediately sent tot he Superintending Canal -officer for the information of the Provincial Government.

The Provincial Government shall fix, and may from time to time alter the rates to be paid to any such labourers;

Provided that such rates shall exceed the highest rates for the time being paid in the neighbourhood for similar work.

In the case of every such labourers, the payment shall continue for the whole period during which he is in consequences of he provisions of this Part, prevented from following his ordinary occupation.

The Provincial Government may direct that the provisions of this Part shall apply, either permanently or temporarily (as the case may be), to any district or part of a district for the purpose of effecting necessary annual silt clearances, or to prevent the proper operation of a canal drainage work being stopped or so much interfered with as to stop the established course of irrigation or drainage.

with according to law, any person who , within his view, commitments any of the following offences :-

(1) willfully damages or obstructs any canal or drainage work;
(2) without proper authority interferes with the supply or flow of water or from any canal or drainage work, or in any river or stream, so as to endanger, danger or render less useful any canal or drainage work.

66. Definition of "Canal".

In this Part the word "canal" shall (unless there be something repugnant in the subject or context) be deemed to included also all lands occupied by the Provincial Government for the purposes of canals, and all buildings, machinery, fences, gates and other erections, trees crops, plantations or other produce occupied by the belonging to the Provincial Government upon such lands.

PART XI
OF SUBSIDIARY RULES

67. Power to make after and canceled rules.

The Provincial Government may, from time to time make rules to regulate the following matters:-

(1) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action any matter;
(2) the cases in which, and the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act and not expressly provided for as regards appeal, shall be appealable;
(3) the persons by whom, and the time, place or manner at or in, which anything for the doing of which provision is made under this Act shall be done;
(4) the amount of any charge made under this Act; and
(5) generally to carry out the provisions of this Act.

The Provincial Government may from time to time alter or cancel any rules so made.

Publication of rules: Such rules, alternations and cancelments shall be published in the official Gazette, and shall thereupon have the force of law.

SCHEDULE

Rep. By the Repealing Act, 1873 (XII of 1873)s, I and Sch., Pt. II.

5.2 Court Decisions

5.2.1 Syed Rahim Shah versus Government NWFP and others, PLD 1982 Peshawar 93

P L D 1982 Peshawar 93

Before Faiz Muhammad Khan and Ali Hussain Qazilbash, JJ

SYED RAHIM SHAH - Petitioner

versus

GOVERNMENT OF N.W.F.P. AND OTHERS - Respondents

Writ Petition No.90 of 1976, decided on 9th February, 1982.

(a) Hazara Forest Act, 1936

—S.45 — Compounding of offences - vires of legislation - Wisdom of Legislature in enacting S.45 and action taken by Provincial Government by virtue of authority available to it under such section for empowering Forest Officers to compound certain category of offences - Held, cannot be questioned before Court - Powers under S.45 however being misused matter rests with Government to take such decision as may be deemed appropriate to check and arrest evil caused by application of such section and petitioner advised to approach Executive Government for reconsideration of policy regarding retention in present or amended form of S.45 in Act. - [Vires of legislation]. [p.100] A & B.

(b) Hazara Forest Act, 1936

— S.45 — Compensation amount - Title to - Compensation amount leviable by way of punishment under S.45 - Forms part of revenue of Provincial Government - Land owners or proprietary body of village, held, cannot lay claim to compensation amount levied by way of punishment under S. 45.- [Compensation] [p.101]C

(c) Hazara Forest Act, 1936

—S.45 — Title in sale proceeds - Diar, Biar, Pluder and Sum trees predominantly grown in waste-land if officially sold out under a working plan (in village Jabbar) by Forest Authorities, all land-owners of village held, entitled to share rateably price of such trees in accordance with S.3 of Wajibula Arz of village, subject to payment of seigniorage fees and departmental charges to Government. [P.101]D

Sajawal Shah v. Rahim Shah P L D 1975 S C 325 ref.

(d) Hazara Forest Act, 1936

—Ss 10 & 12 - Illicit timber felled from waste-lands - Title to - Illicit timber felled from 'reserved forests' - Vests in Government, a specific provision having been made in law to such effect - No specific provision however made in law in respect of illicit timber felled from 'waste lands' as to its vesting in Government - Omission in such regard — Deliberate, all trees grown in waste-lands being property of land-owners of village - Mere fact of such timber having been extracted as a result of illegal or unauthorised act done

by any person - Cannot change or affect ownership rights of persons in whom such property vests unless illicit felling done with connivance, or at instance of, one or more land-owners in which case he or they stand deprived of share of price and such share forfeited to Government - Land-owners not responsible for illicit felling of trees or not conniving at it, held, cannot be punished and deprived of their dues. [pp. 102, 103] E& J.

(e) Hazara Forest Act, 1936-

—S, 39(1), (3) read with Hazara Management of Waste Lands (Guzara) Rules, 1950, r.25-Confiscation of property - Words "shall be liable to confiscation" appearing in S,39(3)-Leave discretion with competent authority to confiscate or not confiscate property seized under S.39(1) - Does not automatically (in absence of clear confiscation order made by competent authority) stand confiscated to Government so as to be credited to Government revenue in terms of r.25-Rule 25, held, has within its folds only such property regarding which judicial determination made as to its having been obtained by committing forest offence within meaning of Act. - [Interpretation of statutes], [pp. 102, 103] F, G & H

(f) Constitution of Pakistan (1973)-

—Art.199-Writ jurisdiction-Action taken by Forest Department in crediting to Government revenue amount neither covered by Act nor by Rules framed thereunder-Action of such sort, held, not protected and amenable to question in write jurisdiction.[p.103]

Qazi Abdul Rashid for Petitioner,
Bashirullah Khan A. A.-G. for Respondents.
Date of hearing : 9th February 1982.

JUDGEMENT

FAIZ MOHAMMAD KHAN, J. — This constitutional petition, field by Syed Rahim Shah against the Government of N.W.F.P. and others, arises in the following circumstances:

2. There are situated in village Jabbar forests, commonly called 'Guzara Forests' which are grown in land, called 'Waste-Land', allegedly belonging to the proprietary body of the village. In those forests are predominately grown Diar, Biar, Ploudar and Sum trees. In the interest of forest conservancy, the management of the 'Guzara Forest' has been entrusted to the Forest Department of the Government of the North-West Frontier Province under the law, called the Hazara Forest, Act, 1936 (hereinafter called the Act), and the respondents 2 to 6 in this petition are employed by Government under the Act for the purposes of the management and the matters related thereto. Under the law where the officers have been invested with necessary powers for the purpose of forest management and conservancy, some of them, having qualifications as specified in subsection (3) of section 45 of the Act, have also been invested, by virtue of said section 45, with powers to compound certain category of offences in the manner specified in the said section, by accepting, by way of compensation, from a person suspected to have committed an offence, some money, and also, after releasing from him the value of the property as estimated by such officer, releasing to him the property which may have been seized from him by the Forest Authorities suspecting it to be the property with respect to which the offence may have been committed.

3. The Forest Officers, so empowered by the Provincial Government under section 45 of the Act, are exercising such powers eversince the Act came into operation, in consequence whereof many cases of this nature may been compounded by them.

4. A few cases of illicit cutting of timber from 'Guzara Forest' allegedly belonging to the proprietary body of village Jabbar were also compounded by the Forest Officers having authority to do so under section 45 aforesaid, which have annoyance to the said proprietary body, on whose behalf the petitioner before us submitted a written complaint, as alleged in this petition, to respondent No.4 against the 'Officially condoned illicit plunder of the trees, as he called it, to the detriment both of the proprietary body and the Forest conservancy, but to not effect. Similar other incidents were also brought to the notice of the higher Forest Authorities with the request to stop such felling but, it is alleged in the petition, such attempts also proved ineffective. Having no other remedy available, the petitioner filed this constitutional petition, for__

    (i) restraining the respondents from condoning in future the acts of illicit cutting and removal and disposal of trees and timber from 'Guzara Forests' of village Jabbar in accordance with the procedure prescribed in section 45 of the Act; and

    (ii) directing the respondents to distribute amongst the proprietary body of village Jabbar the value of trees or timber realised from the persons specified in Annexure 'B' to this petition, which has wrongly been credited to Government account in Government treasury.

5. The contesting respondents do not dispute the fact that four species of trees, namely, Diar, Biar Ploudar and Sum, are predominately grown in 'Guraza Forests' of village Jabbar. They have, however, disputed the right of the petitioner, as well as the proprietary body of the village of which he is the representative, to receive the value of the trees or timber realised under section 45 of the Act from the person suspected to have committed forest offense in respect of 'Guzara Forests, admitting such right, however, to the extent of the seignorage-fee, as provided in Notification No.32531/DD, dated 31-10-1950. The contesting respondents have also taken firm stand that action taken by them under section 45 of the Act has the backing of law and the petitioner or, for that matter, the proprietary body of village Jabbar has no authority to challenge or stop them from taking action warranted by law.

6. The learned counsel for the petitioner argued that there are two kinds of forests in Hazara Division, one called 'reserved forests' and the other called 'Guzara Forests'. He submitted that the 'reserved forests' are the property of Government and the income accruing therefrom is credited to Government account as Forest Revenue, subject to the payment to the village land owners a seigniorage-fees, as mentioned in section 4 of the Act. On the other hand, he submitted, the 'Guzara Forests', which in the Act and the rules made thereunder are termed as 'waste-lands', are the property, held jointly or severally, as the case may be, of the land-owners of the village in whose boundaries they are included and are only subject to certain rights of the land-owners and payment to Government of seignorage-fees, as mentioned in section 123 of the Act. He further argued that the offences of illicit cutting from the 'reserved forests' are dealt with under section 9 of the Act and all forest produce illicitly obtained from such forests shall, at provided in section 10, be restored to the Government Forest Department. He argued that the offences, including offences of illicit cutting, relating to the 'Guzara Forests' (waste land) are dealt with under section 26 of the Act and there is no provision in the said section, or in any other section of the Act, to the effect that the value of the forest produce illicitly obtained

from 'Guzara Forests' shall also be credited to Government account as Forest Revenue. He submitted that such omission was purposeful because any thing which under law, or belonged to land-owners or the proprietary body of the village could not be taken away by Government without paying to the rightful owners compensation therefore.

7. Further developing his arguments, the learned counsel for the petitioner submitted that if a sale of trees from 'Guzara Forests' is sanctioned, on commercial or other basis, in accordance with working plan of the Forest Department, then the sale proceeds, less departmental charges and seigniorage-fees which paid to Government, are distributed amongs the land-owners because under the law the ownership of 'Guzara Forests' vests in the proprietary body or the land-owners concerned, as the case may be. He submitted that exactly on the same basis the money recovered by the Forest Officers under section 45 of the Act, from the suspected person as value of the trees illicitly felled by him from 'Guzara Forests' should also be paid to the village proprietary body, or the land-owners concerned, as the case may be.

8. In order to correctly appreciate the arguments of the learned counsel for the petitioner, it would be useful to reproduce herein the relevant sections of law relied upon by him. The relevant provisions of sections 9,10, 12, 26, 27 and 45 of the Act are as under:

"9. (1) Whoever—

(a) sets fire to a reserved forest or kindles any fire or leaves any fire burning in such way as to endanger such a forest, or who, in a reserved forest;

(b) Kindles, keeps or carries any fire:

(c) grazes or dries cattle or permits cattle to trespass;

(d) cuts, lops, taps, or burns any trees or brushwood or strips off the bark or leaves from or otherwise damages the same;

(e) causes any damage by negligence in felling any trees or cutting or removing any forest-produce;

(f) quarries stone, burns lime or charcoal or collects or removes any forest-produce;

(g) cultivates any land or clears or breaks up any land for cultivation or any other purpose;

(h) erects any building or makes any enclosure;

(i) enters into a fenced enclosure;

(j) in contravention of any rules which the Local Government may prescribe, shoots or fishes;

(k) sets snares or traps, or poisons water; shall be punishable with imprisonment for terms which may extend to six months, or with fine not exceeding five hundred rupees, or with both, and shall, in addition thereto, be liable to pay such compensation for damage done to the forest as the convicting Magistrate may direct;

Provided that if the offender be a woman, the Magistrate shall, except for reasons to be recorded in writing, dispense with her presence and permit her to appear by an agent, authorised by writing under the signature or thumb impression of the woman, attested by a lambardar or some other respectable person.

(2) When the person who is in charge of cattle which have been permitted to trespass in contravention of clause (c) of subsection (1) is a child under the age of sixteen years, the owner of the cattle shall be deemed to be a person who is guilty of an offence within the meaning of that clause.

(3) Nothing in this section shall be deemed to prohibit-

(a) any act done by permission in writing of the Forest Officer or under any rule made by the Local Government, or

(b) the exercise of any right recorded at settlement or created by grant or contract made by or on behalf of the Local Government.

10. The penalty provided in section 9, may, in the discretion of the adjudicating Magistrate and in the case of habitual offenders only, be accompanied by the forfeiture of all implements, or conveyances used in the commission or furtherance of the offence adjudicated, and all forests-produce illicitly obtained shall be restored to the Government Forest Department.

12. (1) Subject to the rights and powers of the Government in respect of seigniorage and forest conservancy as defined in this Act or in rules made thereunder, and subject also to the claims of right-holders not being owners of the soil, all Waste-Lands are the property, held joinly or severally, as the case may be, of the land-owners of the village in whose boundaries they are included and such land-owners are entitled to use free of charge for their own domestic and agricultural requirements any trees and forest produce found in those Waste Lands. But they shall have no right or power to sell any trees of brushwood growing in such lands except with the permission of the Deputy Commissioner or other Officer authorized by the Government and under such conditions as the Deputy Commissioner may impose; and all such sales shall be subject to payment to the Government of seigniorage-fees as provided by section 27.

(2) The claims of right-holders other than land-owners of the village shall be recognised to the extent defined and recorded at settlement, or in case of doubt or dispute, to the extent which may hereafter be defined by the Deputy Commissioner with the sanction of the Local Government, and the exercise of such rights shall be subject to the provisions of this Act and the rules made thereunder.

26. Whoever commits or abets the commission of any of the following offences, namely:-

(1) . . . . . .

(2) . . . . . .

(3) Without permission knowingly sells or conveys for sale any tree, timber or brushwood produced on Waste-Land, or fells, lops, barks, bores, girdles or otherwise injures any such trees or brushwood contrary to any general or special Management orders issued under section 17;

(4) . . . . . .

27. (2) Similarly, in the case of trees which are sold from Waste Lands, the Deputy Commissioner shall credit to the Government as forest revenue the seigniorage-fees, and the balance of the price realised shall be paid to the right-holders entitled thereto; provided that the trees referred to in this subsection are of one or other of the kinds entered in the seigniorage-list which is in force for the time being.

45. (1) The Local Government may by notification in the official Gazette empower any Forest Officer-

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 41 or section 42, a sum of money by way of compensation for the offence which much person is suspected to have committed; and

(b) When any property has been seized as liable to confiscation, to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, or such value as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) No Forest Officer shall be empowered under this section unless he is of a rank not inferior to that of Ranger, and is in receipt of a monthly salary amounting to at least one hundred rupees, and the sum of money accepted as compensation under subsection (1), clause (a) shall in no case exceed the sum of fifty rupees."

9. The Government of the North-West Frontier Province had in the year 1950 framed rules, called the Hazara Management of Waste Lands (Guzara) Rules, 1950 (hereinafter called the Rules). Rules 7, 8, 12 and 25 thereof are relevant and may be reproduced as under:

"7. Utilization of dry wood and brushwood by right-holder and other persons - In all Guzara dry wood whether standing or fallen or brushwood may be utilized without restriction for domestic or agricultural purpose by resident right-holders within the limits of the village in which it is found any by nonresident right-holders in the limits of the village where they reside and also by persons whether residents or nonresidents who are not right-holders so long as the right-holders raise no objection to their doing so and where the Conservator does not think it necessary to interfere in the interest of forest conservancy:

Provided that nothing in this clause shall be deemed to allow without previous auction of the Conservator, the cutting or removal of any trees that have been killed by illicit methods or the utilization of any brush-wood or dry wood in Guzara that has been burned without the permission of the Conservator.

8. Sale of dry wood and brushwood. -

(a) The sale of dry wood and brushwood from ay Guzara shall be prohibited except with the sanction of the Conservator and under such conditions as he may think fit to impose.

(b) In villages to which permission as in clause (a) has been accorded, the only persons entitled to sell wood shall be the resident right-holders and such other persons as the Conservator may specify. In the case of the latter persons, the Conservator may direct that each of them should obtain from him a licence for which a fee of not more than Rs.5 per annum shall be charged.

12. Commercial feelings. -

(a) All Guzaras shall be closed for commercial feelings for the next twenty years, provided that the sale of trees, silviculturally available, by the Forest Department shall be permissible at all times.

(b) The proceeds of such sales minus such departmental charges not exceeding 20 per cent of the sale proceeds as Government may fix from time to time by Notification in addition to any seigniorage-fees leviable under the Act, shall be payable to the right-holders.

25. Ay breach of these Rules shall be punishable with imprisonment for a term which may extend to six months, or with a fine which may extend to five hundred rupees or with both, and any wood or other produce with regard to which an offence has been committed shall be confiscated, and sold by orders of the conservator subject to the provisions of section 517, Criminal procedure Code. The proceeds of such sale shall be credited to Government as revenue of the Guzara Division."

10. As already mentioned, the petitioner has made two prayers in this petition. His first prayer relates to the misuse by the specially empowered Forest Officers of the authority vesting in them to compound forest offences in pursuance of the provisions contained in section 45 of the Act. The petitioner has claimed that the powers vesting in the Forest Officers under section 45 of the Act are always misused by them, with the result that persons responsible for illicit felling of trees, who should have been prosecuted and punished for committing forest offences, are instead allowed, after paying the nominal compensation and the nominal price of the timber assessed by the Forest Officer concerned, to take away the entire timber which has been illicitly felled. The petitioner has claimed that in this manner the person responsible for illicit felling of trees makes a fortune as a result of his illegal act and is thereby prompted to repeat the offence, which process would ultimately end in the annihibilation of the forest wealth. He had, therefore, prayed in this petition that the Forest Officers be restrained from condoning in future the acts of illicit felling and removal of trees and timber from the waste-land of village Jabbar. His attack, in substance, is directed against the provisions of law contained in section 45 of the Act, and the actions taken on the basis of the authority concerned thereby.

11. The relief aforesaid sought by the petitioner from the Court, in our view, cannot be granted to him for the simple reason that the wisdom of the Legislature in enacting section 45 of the Act and the action taken by the Provincial Government by virtue of the

authority available to it under said section of law for empowering the Forest Officers to compound the category of offences specified therein cannot be questioned before the Court, nor with the court embark upon the study of such question in order to be able to advise Government to retain or not to retain such provision in the Act. To make a statute is the function of the Legislature and not of the Court. To empower or not to empower any person to perform functions prescribed in the law by virtue of power vesting in the Government is the function of the Executive Government. The Court would generally hesitate, unless so compelled by the circumstances of a particular case, to assume to itself the role of advisery body in the matters of policy that may be adopted by the said two organs of the state in the performance of functions assigned to them. In the matter which we are confronted, however, we feel that all what is stated by the petitioner in respect of the misuse of the powers available under section 45 of the Act is not without substance. It is, however, for the Government to further analyse the matter and take such decision as may be deemed appropriate to check or arrest the evil caused by the application of section 45 of the Act. The petitioner would therefore, be well advised to approach the Executive Government for re-consideration, of the policy regarding retention, in the present form or amended form, of section 45 in the Act, and in the matter of the exercise of power vesting in the Provincial Government thereunder for empowering or not empowering such category of the Forest Officers as may be deemed appropriate. We would, thereof, refuse to grant to the petitioner the first relief claimed by him.

12. Before we discuss the second relief claimed by the petitioner in this petition, we consider it convenient to reproduce hereunder the definition of the expression 'waste-land', as used in the Act, which runs as under:

"(p) "waste land" includes all uncultivated land except reserved forest, graveyards, sacred places, land recorded at settlement as part of the village site and land shown as follows;

("Khali" or "Bunjar Jadid) in annual records."

13. The dispute before us relates to the money realised by the Forest Officers as a result of action taken by them under section 45 of the Act in respect of the timber illicitly felled from 'Guzara Forests' of village Jabbar. The said section of law authorises a duly empowered Forest Officer to accept from a person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in section 41 or section 42 of the Act, a sum of money by way of compensation for the offence which such person is suspected to have committed, and to release the property, having been seized as liable to confiscation, on payment of the value thereof estimated by such officer. When analysed further, section 45 of the Act provides for the levy of compensation as a punishment for the suspected offence and for the recovery of the estimated price of the property from the person, who is suspected to have committed the offence, to whom the property, after such payment is ultimately released. So far as the compensation amount which is leviable by way of punishment is concerned, the learned counsel for the petitioner very frankly conceded, and rightly so, that such amount shall form the revenue of the Provincial Government and the land-owners or the proprietary body of the village, as the case may be cannot lay any claim to it. Agreeing with the learned counsel for the petitioner, we would hold that in so far as the compensation amount realised under section 45 of the Act is concerned, the land-owners or the proprietary body of the village has no concern with it and it entirely belongs to Government.

14. It is with respect to the value of the property, which has been illicitly felled and then released to the person concerned after receiving from him the estimated value, in terms of section 45 of the Act, that the petitioner has claimed that it belongs to the village proprietary body. Such value, it appears, has so far been utilised by Government as revenue of the Guzara Division in terms of rules 25 of the Rules. The petitioner claimed

that such value should be distributed amongs the proprietary body of the village in accordance with their respective shares.

15. The illicit felling of trees, the value whereof is the subject-matter of dispute in this petition, admittedly related to Diar, Biar, Ploudar and Sum Trees, which are predominantly grown in the Waste Land of village Jabbar. If such trees are officially sold out of the Waste Land of village Jabbar under a working land prepared by the Forest Authorities, then all the land-owners of village Jabbar are entitled to share rateably the price of such trees in accordance with section 3 of the 'Wajib-ul-Arz of the village, subject, of course, to payment of the seigniorage-fees and the departmental charges to Government, as provided under the Act and the rules made thereunder. This has been held so by the Supreme Court in a case from this village, reported as P L D 1975 S C 325. The decision made by the Supreme Court on the question as to whether the proprietary body or an individual owner is entitled to share the price of the trees is binding on the proprietary body of the village as well as on the land-owners or the right holders of the village. The question which arises for determination in this litigation, however, is whether he price of the illicitly felled trees, realised as a result of action under section 45 of the Act, after deducting therefrom the departmental charges and the seigniorage-fees as provided in the Act and the rules, is the property of the proprietary body of the village, to be distributed amongs them rateably, or is the property of Government, to be utilized by it in any manner it likes.

16. Section 12 of the act clearly proves that all Waste-Lands are the property, held jointly or severally, as the case may be, of the land owners of the village in whose boundaries they are included and such land-owners are entitled to use, free of charge, any trees which may be found in those waste-lands. In respect of illicitly felling of trees from the 'reserved forests', which are the property of Government, section 10 of the Act clearly lays down that the forest produce illicitly obtained shall be restored to the Government Forest Department. In respect of the offences regarding trees found in the waste-lands the relevant section 26 of the Act is completely silent as to who would be entitled to receive the price of the trees illicitly obtained from the waste-lands. The other sections of the Act are also silent on this point. The legal position that obtains, therefore, is that in so far as the Act is concerned where there is no specific provision in it with respect to the vesting of the ownership of the illicit timber obtained from the 'waste-lands', there is a specific provision in it regarding such timber felled from the 'reserved forests', which is contained in section 10 of the Act. It is therefore, clear that in respect of illicit timber felled from 'reserved forests' a specific provision has been made in the law that it shall vest in Government. But no specific provision has been made in the law in respect of the illicit timber felled from the 'wastelands' that it shall also belong to Government. There is, therefore, a conscious omission in the law regarding such timber obtained from the 'wastelands' and to us it appears that it has been deliberately made, inasmuch as all trees thrown in the 'waste lands', according to section 12 of the Act, are the property, held jointly or severally, as the care may be, of the land-owners of the village. The mere fact that such timber has been extracted as a result of illegal or unauthorised act done by any person or contractor would not change or affect the ownership rights of the persons in whom such property under law or otherwise vests, unless it is established that the illicit felling of trees has been with the connivance, or at the instance, of one or more landowners, in which case he or they shall, of course, be deprived of the share of the price. In his or their case such share would be forfeited to Government but the other land-owners who may not be responsible for illicit felling of trees or who may not have

connived at it cannot be punished for no fault of theirs and be deprived of their dues, especially when there be no legal forfeiture of their shares.

17. The learned Assistant Advocate-General brought to our notice section 39 of the Act and argued that under the provisions therein contained any forest produce seized by any Revenue, Police, or Forest Officer, having reason to believe that it has been obtained or is being transported contrary to any provision of the Act, or any rule or order made thereunder, is liable to confiscation. He further pointed out rule 25 of the Rules and submitted that the Forest Authorities, while crediting to Government revenue the value received by them in respect of the property released to the suspected offender under section 45 of the Act, were justified in their action in terms of rule 25 of the Rules, read with section 39 of the Act. We are afraid, the provisions of the Act and the Rules relied upon by the learned Assistant Advocate-General do not advance the case of the respondents any further. We have no hesitation in accepting the argument that the property seized under subsection (1) of section 39 is liable to confiscation under subsection (3) thereof. We are, however, of the view that the words "shall be liable to confiscation" used in subsection (3) aforesaid do not convey the meaning that without further action or order of the competent authority any property seized under subsection (1) of section ..... shall automatically stand confiscated. The word "liable" when used in any law or instrument always leaves discretion with the competent authority to pass such order as may be deemed appropriate by it, and this very fact leads to an irresistible conclusion that a specific order for the purpose has to be made by such authority. The words "shall be liable to confiscation" used in subsection (3) of section 39 would, therefore, be deemed to have been used in the law in the same senses, leaving a discretion with the competent authority to confiscate or not to confiscate the property seized under subsection (1) of section 39. In absence of a clear confiscation order made by the competent authority, such property would not automatically stand confiscated to Government so as to become available to be credited to the Government Revenue in terms of rule 25 of the Rules. Similarly, the stage of confiscation of the property is not arrived when action under section 45 of the Act is initiated and completed. Being an alternative procedure available in law, the suspected offender, instead of being prosecuted for the offence in Court, is proceeded against under section 45 of the Act, and the property instead of being confiscated, is released to him on payment of the value thereof, as estimated by the Officer proceeding under section 45 of the Act.

18. Rule 25 of the Rules, relied upon by the learned Assistant Advocate-General, on the language employed therein, only brings within it fold such property regarding which there is judicial determination to the effect that it has been obtained by committing with respect to it forest offence within the meaning of the Act. As provided in this rule, such property should be confiscated by a valid order made by the Court, and only then such confiscated property can be "sold by orders of the Conservator". The proceeds of such sale only can be credited to Government as revenue of the Guzara Division, as mentioned in the said rule. While keeping all these requirements of rule 25 in mind, one can easily reach at the conclusion the rules 25 is i applicable to cases dealt with under section 45 of the Act. The language employed in section 45 of the Act clearly shows that action thereunder is initiated and completed on mere suspicion and there is no judicial determination in such a case to the effect that the property is the one regarding which forest offence has been committed. Such property is never confiscated but is released to the suspected person on payment of value thereof. While following the procedure prescribed in section 45 of the

Act, the requirements of rule 25 are not satisfied. To such proceedings, therefore, the application of rules 25, as it stands, becomes out of question.

19. The learned Assistant Advocate-General also argued that the writ of mandamus does not lie because the Forest Authorities in this case have taken action in accordance with law and the rules and such action is immune from a write of this nature. We do not agree with the learned Assistant Advocate-General in his contention. We have seen that the action taken by the Forest Authorities in crediting to Government revenue the value of the property released under section 45 of the Act is neither covered by the Act nor the rules made thereunder. Such an action is, therefore, not protected, in view of the language used in Article 9 of the Provisional Constitution Order.

20. We have held above that the share of the land-owners who are directly or indirectly responsible for the illicit fellig of the trees can be forfeited to Government. In this case, however, the respondents have neither taken the stand, nor brought on record any material to show, that any one of the land-owners of village Jabbar had connived at, or was responsible for, the illicit felling of the trees from the Waste-Lands of village Jabbar. In such circumstance, we would hold that the value of such property which has been released by the Forest Authorities, in the course of proceedings initiated and completed under section 45 of the Act, to Abdul Haq Shah, Mian Khan Abdul Wahid and Mudassar Shah, named in Annexure 'B' to this petition, shall be rateably distributed amongs the land-owners of village Jabbar in the same manner in which 'Malakand' is distributed amongst them.

21. In the result, this petition should partially succeed. We would, therefore, direct that the value of the property mentioned in paragraph 20 of this judgement shall be distributed in the manner indicated therein. No order as to costs.

S.A.H. Petition partly accepted.

5.2.2 Syed Aurangzeb Shah versus Government of NWFP and 2 others, PLD 1975 Peshawar 238

P L D 1975 Peshawar 238

Before Ghulam Safdar Shah, C.J. and Qaisar Khan, J

Syed AURANGZEB SHAH—Petitioner

Versus

GOVERNMENT OF N.-W.F.P. AND 2 OTHERS—Respondents

Writ Petition No.109 of 1974, decided on 7th May 1975.

Hazara Forest Act, 1936.

S.29(b) read with Forest Transport Rules, 1962, r-2-Walnut trees already cut by a person from his agricultural land under a valid permission from Government-Government subsequently issuing directive prohibiting cutting of walnut trees and transportation of its timber-Permission to transport timber refused on ground of prohibitory directives of Government-Held: Timber trees already felled under valid permission could not be refused transport permit; directives of Government even otherwise had no legal force unless suitable amendments made in Hazara Forest Act and Rules made thereunder

[p.239] A et seq & B

Qazi Muhammad Anwar for petitioner
Mian Burhanuddin, A.G, for Respondents.
Date of hearing 7th May, 1975.

JUDGMENT

This and the connected six constitutional petitions, in which the facts and legal questions are the same, are directed against the refusal of respondents not to grant transport permits to petitioners to enable them to transport walnut trees cut by them from their cultivated fields to the desired destination.

The case of petitioner is that they had, in line with the requirement of Hazara Forest Act, 1936 and the rules made thereunder obtained from respondents the necessary permission to cut from their respective agricultural lands the specified number of walnut tress. But when the trees were cut by them and they applied to respondents to grant them transport-permits, they refused to do so saying that in view of the contrary instructions received from Provincial Government, in implementation of the directive of Federal Government of Pakistan, they had not authority to issue them necessary points. The learned Advocate General has indeed conceded the claim of petitioners. But even so, tried to justify the impugned action. In this effect, however, he relied only on the directive of Provincial government which reads as under :—

"Cutting of walnut trees has been completely banned by the Government, No fresh marking to be done and trees already marked not to be cut. No permit for the transportation of walnut timber to be issued."

The learned Advocate-General admits, however, that long before the absence of this directive, each one of the petitioners had already cut from their fields the specified number of walnut trees. But all the same, he stated in aid of the impugned action of respondents the words "No permit for the transportation of walnut timber to be issued" appearing in the last line of said directive of Government. We are afraid, this restriction is misconceived. A bare reading of the directive of Provincial Government would reveal it intention is that the cutting of walnut trees is totally banned. And to this extent, no one would be able to question the — of its policy which is evidently based on ecological consideration. In other words, what the Government appears to have intended to achieve to the said policy directive was to save the forest wealth of the nation. And in this context in which the directive issued by it has to be construed.___ in this view, therefore, the contention of learned Advocate-General would appear to be unconvincing, for if the walnut trees in all these cases cut before the issuance of said directive, been cut by petitioners, we cannot conceive of any rational basis on which transport permits could be —— to them. After all, the trees in question could not be replanted with the view to saving the forest wealth of the nation. And therefore we have not been able to see any wisdom in the impugned action of respondents which would, at its bare minimum, lead to destroy the value of cut timber and be cause unnecessary financial loss to petitioners.

It will have been noted that in reaching this conclusion, we have assumed of the said directive of Provincial Government has the force of law. But it is not the position. Although the policy contained in it would appear to be laudable. In order to implement the said policy, therefore, the Government should have rather sought to introduce suitable amendment in Hazara Forest Act and the Rules made thereunder. But unfortunately find of this sort seems to have occurred to any one. In this view of the ___of this sort seems to have occurred to any one. In this view of the — therefore, the said directive, issued in implementation of a similar directive of Federal Government of Pakistan, cannot be even looked into by Court of law so long as it has not received the approval of Legislature. In other words, the dispute in this case will have to be decided according to such section 29(b) of Hazara Forest Act, 1936, would appear to be attracted in those cases and it reads as under :—

"(2) All timber, firewood or other forest produce sold or obtained from the Reserved Forests, waste land and other places in Hazara

District shall, during its transport in the Hazara District by land or covered by a transport pass issued by a Division Forest Officer and accompanied by a Challan. The transport pass and the challan shall be as prescribed and supplied by the Forest Department on payment of such price and in the manner as the Conservator may determine form time to time.

The plain reading of this rule would show that a person would be unable to transport to the desired destination timber cut by him under valid permission even if he is willing to pay such price and abide the manner determined by the Conservator of Forest. It is not the case of respondents, however, that the petitioners were unwilling to pay the required price. At this the refusal of respondents to grant them the transport permit is evidently illegal.

In view of this discussion, all these petitions are allowed as prayed. And we direct that respondents would issue to petitioner the necessary transport permits in regard to the walnut trees which they had cut under the permission of Department.

In so far as the cost of these petitions are concerned, they must be borne by respondents in the sum of Rs.200 for each petition as despite the decision of two similar writ petitions by the Court in 1974, they have fail to discharge their statutory obligation contained in rule 2 of the rules(Act) and thus forced the petitioners to knock at the door of this Court to respecting which there should have no doubt whatever.

PETITION ACCEPTED

5.2.3 Qazi Abdul Kafil Khan versus Faqir and Another, PLD 1962 Peshawar 51

PLD 1962 (W.P.) Peshawar 51

Before J. Ortcheson and Shakirullah Jan, JJ`

Qazi ABDUL KAFIL KHAN—Appellant

Versus

FAQIR AND ANOTHER—Respondents

Further Regular Civil Appeal No.150 of 1956, decided on 7th February 1962.

(a) Interpretation of Statutes—Rules—Courts can enquire into validity of Rules [p.54]A

Emperor V. Abdul Hamid A I R 1923 Pat. 1; Institute of Patent Agents v. Lockwood (1894) A C 347 and maxwell's Interpretation of Statutes 1953 Ed., p.303 ref.

Minister of Health v. R. Exp. D. Yafee 1931 A C 494 rel.

(b) Interpretation of Statutes-Rules and bye-laws to be consistent with relevant statute and not to be repugnant to other laws in force. [p.55]b

(c) Interpretation of Statutes-Alteration in law-Legislature not presumed to have intended to alter statute beyond what is expressly declared or clearly implied, or beyond scope and object of statue.

The legislature must be presumed not to have intended to make any substantial alteration in the law beyond what it explicitly declares, either in express terms or by clear implication, or, in other words beyond the immediate scope and object of the statute; in all general matters outside those limits the law remains undisturbed, it being in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness. [p.55]C

(d) North-West Frontier Province Hazara Forest Act (VI of 1937), S.12 (1) and rule 22 of Rules framed under Act-Rule 22 ultra vires, [pp.56, 57]D, E & G

(e) Interpretation of Statutes- Statutes encroaching on rights of subject-To be strictly construed.

It is fundamental principle of law that statutes which encroach on the right of the subject, whether as regards person or property, are to be strictly construed and that if any doubt exists as to their scope, they should be interpreted, if possible, so as to respect such rights [p.57]F

Peer Bakhsh Khan for Appellant.
Abdul Latif Khan for Respondents.
Date of hearing: 7th February 1962.

JUDGMENT

J.ORTCHESON, J.—The facts of this case as alleged by the plaintiffs are that Faqir, plaintiff No.1, was the exclusive owner of 281 Kanals of land, forming Khasra No.1385, within the limits of village Jaba, Tehsil Mansehra, and that, together with his brother Muhammad Ji, Plaintiff No.2, he owned 167 Kanals 6 marlas, comprised in khasras No.582, 1493, 1494, 1496 and 1497 in the same village, the two holding equal shares. The total land held between them thus amounted to 448 kanal 6 marlas. A portion of the joint land was mortgaged with one Muhammad Ibrahim.

2. By registered deed of exchange (Exh.P.L.) dated the 2nd of February 1952 the plaintiff exchanged 1/3rd of the above land, with a proportionate share in the shamilat, for the 1/5th share owned by Qazi Abdul Kafil efendant in 164 kanals 13 marlas of land (Khasras No.670,675,330-331, 613, 615, 312 and 313), situated in village Ahal in the same Tahsil. Three mutations were attested in respect of the above transaction, namely, Nos.238 and 239 on the 10th of July 1952 in favour of the defendant, and No.2611 on the 24th April 1954, in favour of the plaintiffs.

3. On the 15th of November 1954 the plaintiff sued in the Court of the Sub-Judge, Mansehra, for a declaration to the effect that the deed Exh.P.L and the exchange mutations Nos.238 and 239 were contrary to law and consequently liable to cancellation, and that they were entitled to the sale proceeds of the trees standing on the land given to them by the defendant under the exchange.

4. The Suit was contested, the nature of the defendant's pleas being sufficiently shown by the issues framed, which run-

   (1) Whether plaintiffs are estopped by their conduct from brining this suit?

   (2) Whether plaintiffs have got a cause of action?

   (3) Whether the suit is not competent in its present form?

   (4) Whether the suit is bad for misjoinder of causes of action?

   (5) Whether the suit has not been properly stamped?

   (6) Whether the suit is within time?

   (7) Whether the transaction in dispute is against law, and liable to cancellation?

   (8) Whether plaintiffs are in possession of the land given in exchange to the defendant as owners. If so, its effect?

   (9) Whether the exchange under dispute has been cancelled by the parties?

   (10) Relief.

5. The learned trial Court repelled the plaintiffs' contention that the transaction in dispute offended against the provisions of rule 22 of the Rules framed under the North-West Frontier Province Act VI of 1937 and held that the transaction of exchange was entered into freely and voluntarily by the parties. Issue No.1 was consequently decided in favour

of the defendant, and Issues Nos.8 and 9 against the plaintiff, whose suit was dismissed, the parties being, however, left to bear their own costs.

6. Against the above order, dated the 16th March, 1956, of the learned Senior Sub-Judge, Hazara, to whose Court the suit had been transferred, the plaintiffs filed an appeal in the Court of the learned District Judge who, by his order dated the 3rd of September 1956, disagreed with the finding of the trial Court regarding the validity of the transaction. The appeal was accordingly decreed, but with no order as to costs throughout.

7. Against the above order the defendant came up to this Court in further appeal under section 31 of the North-West Frontier Province Regulation No.1 of 1931.

8. The main question for decision is whether rule 22 of the Rules framed under the North-West Frontier Province Act VI of 1937 (hereinafter referred to as "the Act") was validly framed. It runs-

"22. Miscellaneous:—The exchange of private land comprising a Guzara is prohibited except with the special sanction of the Provincial Government."

In the course of his judgment the learned District Judge referred to section 54 of the Act, which provides that all rules made under the Act shall be published in the Official Gazette, and on such publication shall have effect as if enacted in the Act itself, and went on to observe:

"From the authorities quoted above it is abundantly clear that the statutory rules like the one made under the Hazara Forest Act for all intents and purposes are to be taken as a part of the Act itself. This being the position the validity or otherwise of the rules can be called into question only if the Act itself is ultra vires of the Legislature. In other words whether the then N.W.F.P Legislature was competent to pass the Forest Act?"

(It may here be mentioned by way of clarification that N.W.F.P. Act VI of 1937 is described as "an Act to consolidate and amend the law relating to Reserved Forests and Waste-lands in the Hazara District")

9. In arriving at his conclusion that when a statute contains a provision that the Rules framed under it are to have statutory force, Courts are precluded from challenging their validity, the learned District Judge appears to have relied on Emperor V. Abdul Hamid (1). In the course of his judgment in the above case Das, J, after drawing a distinction between rules, regulations and bye-laws made under a statute which provides that they shall have the same effect as if enacted therein and those made under a statute which contains no such provision, goes on to remark:

> "Now the distinction between the two is this that where the statute, under the authority of which the rules, regulations or bye-laws are promulgated, itself declares that they shall have the same effect as if enacted in the statute, the validity of the rules, regulations or bye-laws cannot be questioned in any Courts of law, nor can the Courts quash them or reject them on the ground that they are uncertain or unreasonable."

With the utmost respect, however, I find myself unable to accept the above observations as laying down the correct law on the subject. They are based on certain remarks of Lord

Herschell in the case Institute of Patent Agents v. Lockwood (2). The remarks in question are to the following effect:—

> "My Lords, I have in vain for any explanation of the meaning of those words or any suggestion as to the effect to be given to them if, notwithstanding that provision, the rules are open to review and consideration by the Courts. The effect of an enactment is that it binds all subjects who are affect by it. They are bound to conform themselves to the provisions of the law so made. The effect of a statutory rule if *validly* made is precisely the same that every person must conform himself to its provisions and, if in such case a penalty be imposed, any person who does not comply with the provisions where of the enactment or the rule becomes equally

(1) A I R 1923 Pat.1 (2) 1894 A C 347

> subject to the penalty. But there is this difference between a rule and an enactment, that whereas apart from some such provision as we are considering, you may canvass a rule and determine whether or not it was within the power of those who made it , you cannot canvass in that way the provisions of an Act of Parliament."

The words italicised are highly significant and appear to me to carry the clear implication that Courts have power to enquire into the validity of a rule. I am fortified in this conclusion by the following passage from Maxwell's Interpretation of Statutes, 1953 Edition, at page 303:—

> "Where Parliament has delegated its legislative function to a Minister of the Crown without retaining any specific control over the exercise of that function by the Minister (such as a condition that an order made by the Minister should be laid before Parliament and be subject to annulment by Parliament) the Court has the right and duty to decide whether the Minister has acted within the limits of his delegated power."

In the present case the power to make rules having statutory effect is a legislative function delegated to the Provincial Government, and on the basis of the above authority, culled from Minister of Health v.R.Exp. Yafee (1), I hold this Court has power to enquire into their validity. It is also to be noted in this connection that section 53(1) of the Act, which confers on the Local Government (now the Provincial Government) to make rules, runs—

> "The Local Government may make rules to carry out the objects and purposes of this Act."

At Page 302 of the above cited work Maxwell observes:

> "Where, however, the statute conferring the power to "make bye-laws" enacts that any such laws consistent with the provisions of the statute and not repugnant to any other law in force shall have the force of law when confirmed by the Executive, it is doubtful whether a Court would not be precluded from questioning the reasonableness of such bye-laws or whether they are ultra vires, unless it be in some very extreme case."

The above passage enshrines the general principle that bye-laws or rules made under a statute must fulfil the two-fold condition of being consistent with the provisions of the statute under which they are framed and of not being repugnant to any other law in force.

10. Another well-known principle, referred to by Maxwell at page 81, is that the legislature must be presumed not to have intended to make any substantial alteration in the law beyond what it explicitly declares either in express terms or by clear implication, or in other words, beyond the immediate scope and object of the statute, and that in all general matters outside those limits the law remains undisturbed, it being in the last degree improbable that the legislature would overthrow fundamental (1) 1931 A C 494 principles, infringe rights, or depart from the general system of law, without expressing its intention with irresistible clearness. In the present case the effect of the rule 22 of the rules under consideration is to restrict the right of a land-owners to alienate his land. Such a restriction can only be justified if the Act itself confers, either expressly or by unmistakable implication, the right to impose it.

11. The only relevant provision of the Act is subsection (1) of section 12, which runs—

"Subject to the rights and powers of the government in respect of seigniorage and forest conservancy as defined in this Act or in rules made thereunder, and subject also to the claims of right-holders not being owners of the soil, all waste-lands are the property, held jointly, or severally as the case may be, of the land-owners of the village in whose boundaries they are included; and such land-owners are entitled to use free of charge for their own domestic and agricultural requirements any trees and forest-produce found in those waste-land. But they shall have no right or power to sell any trees or brushwood growing in such lands except with the permission of the Deputy Commissioner or other officer authorised by the Government and under such conditions as the Deputy commissioner may impose; and all such sales shall be subject to payment to the Government of seigniorage fees as provided by section 27."

Only analysis, the above provision imposes only the following restrictions on the rights of holders of waste-lands:—

(1) They shall be subject to the rights` and powers of the government in respect of seigniorage and forest conservancy and to the claims of right-holders not being owners of the soil.

(2) They shall have no right or power to sell trees or brushwood growing in such lands except with the permission of, and subject to the condition imposed by, the competent authority.

(3) Such sales of brushwood shall be subject to payment of seigniorage-fees to the Government.

None of these restrictions covers alienation of the land on which the trees stand, and it is clear that the effect of any such alienation is merely to substitute a new land-owner for the old, the new owner being as much bound to obey the provisions of the section as was his predecessor-in-interest. Moreover, although clause (c) of subsection (2) of section 53 of the Act is, of course, merely illustrative and not exhaustive, it is not without significance that it provides only for the making of rules relating to the preservation, reproduction and disposal of trees, brushwood and timber produced on waste-lands. Finally, it is not

irrelevant to point out that whereas section 6 of the Act prohibits, with certain exception, the acquisition of a right of any description in or over a reserved forest, no such prohibition obtains in the case of waste-lands, the fundamental difference between the two types of property being that whereas reserved forests are the property of Government, waste-lands vest in the land-owners of the village in whose boundaries they are included. If, therefore, it had been the intention of the legislature exchange of any other form of alienation of waste-lands it is to be expected that intention would have been expressed in clear and unmistakable terms. It is a fundamental principle of law that statutes which encroach on the right of the subject, whether as regards person or property, are to be strictly construed and that if any doubt exists as to their scope, they should be interpreted, if possible, so as to respect such rights.

12. For the above reasons I hold that rule 22 of the rules goes beyond the scope of section 12 of the Act, and is consequently ultra vires.

13. The effect of the above finding is that the appeal must be remanded to the learned District Judge for decision of the issues on the questions of estoppel and of the alleged cancellation of the exchange deed,. Costs of this appeal to abide the event.

K.M.A. Case remanded.

06 Laws and Judicial Decisions Governing Processes and Institutions that affect Natural Resources and Natural Resource Management

6.1.1 Urban Development

6.1.1.1 NWFP Urban Development Board (Dissolution) Ordinance 2002

EXTRAORDINARY REGISTERED NO.P.111

GOVERNMENT GAZETTE

NORTH-WEST FRONTIER PROVINCE

PUBLISHED BY AUTHORITY

PESHAWAR, TUESDAY, 14TH MAY, 2002

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE,

Law Department.

NOTIFICATION

14th May, 2002

No.LEGIS:I(21)/74-II/3269.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information.—

THE NORTH-WEST FRONTIER PROVINCE
PROVINCIAL URBAN DEVELOPMENT BOARD (DISSOLUTION)
ORDINANCE, 2002.

N.-W.F.P. ORDINANCE NO.XVI OF 2002.

AN
ORDINANCE

to provide for the dissolution of the Provincial Urban Development Board,
North-West Frontier Province.

WHEREAS it is expedient to provide for the dissolution of the Provincial Urban Development Board, North-West Frontier Province established under section 3 of the North-West Frontier Province Urban Planning Ordinance, 1978 (N.-W.F.P. Ord. No.IV of 1978);

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance oft he Proclamation of Emergency of the fourteenth day of October, 1999, as amended uptodate, and the Provincial Constitution Order No.1 of 1999, as amended uptodate, read with Article 4 of the Provisional Constitution (Amendment) Order No.9 of 1999 and in exercise of all powers enabling in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. Short title and commencement.—

(1) This Ordinance may be called the North-West Frontier Province Urban Development Board (Dissolution) Ordinance, 2002.

(2) It shall come into force on the appointed day.

2. Definitions.—

(a) "appointed day" means the 1st day of May, 2002, or such other date as Government may, by notification in the Official Gazette, specify;

(b) "Board" means the Province Urban Development Board established under section 3 of the Ordinance;

(c) "District Government" means a District Government established under the North-West Frontier Province Local Government Ordinance, 2001 (N.W.F.P. Ord. No.XIV of 2001);

(d) "Government" means the Government of the North-West Frontier Province.

(e) "Governor" means the Governor of the North-West Frontier Province; and

(f) "Ordinance" or "repealed Ordinance" means the North-West Frontier Province Urban Planning Ordinance, 1978 (N.-W.F.P. Ord. No.IV of 1978)

3. Dissolution and repeal.—

On the appointed day the Board shall stand dissolved, and as a corollary thereof, the Ordinance shall stand repealed.

4. Consequential responsibilities.—

Consequent upon the repeal of the Ordinance, the District Government of the District concerned shall be responsible to deal with the subject-matters of the Board so dissolved in accordance with the provisions contained in section 182 of the North-West Frontier Province Local Government Ordinance, 2001 (N.W.F.P. Ord. XIV of 2001):

Provided that the assets and liabilities of the Peshawar Development Authority, a Local Area Authority created under section 15 of the repealed Ordinance, shall stand transferred to, and be the assets and liabilities of, the Department created under sub-section (3) of section 54 of the North-West Frontier Province Local Government Ordinance, 2001 (N.-W.F.P. Ord. No.XIV of 2001), and all functions, powers, duties and responsibilities of the defunct Peshawar Development Authority, with effect from the appointed day, notwithstanding anything to the contrary contained in the said section, shall be exercised, performed and owned by the said Department.

5. Transfer of assets and liabilities.—

(1) Notwithstanding anything to the contrary contained in the repealed Ordinance, or in any law, agreement or contract for the time being in force, but subject to the

provisions of section 4, the Governor may, at any time before the appointed day, by order direct that any business, project, undertaking or property (movable or immovable) of the Board, shall be transferred to Government on such date, in such manner and to such extent as may be specified in the order, and the business, project, undertaking and property, if any, so transferred shall vest in Government and shall be disposed of in such manner as may be prescribed by rules made under this Ordinance.

(2) Government may set up a committee, consisting of such members as deemed appropriate which will be responsible to resolve the difficulty, if any, arising out of the dissolution of the Board and make recommendations for appropriate action.

(3) Government may appoint one or more officers and staff members, who shall be responsible for carrying out the action in consequence of the dissolution of the Board and to take necessary steps in that behalf.

6. Employees of the Board.—

The employees of the Board shall be dealt with in accordance with the terms and conditions of their appointment under the Board.

7. Supplemental powers.—

Without prejudice to the provisions of this Ordinance, the Governor may, in such manner as he may consider necessary or expedient, provide for the removal of difficulties arising out of, or in connection with, the dissolution of the Board or for the effectively carrying out the purposes of this Ordinance.

Peshawar,
dated the
30th April, 2002

Lt. Gen. (Rtd.) IFTIKHAR HUSSAIN SHAH,
Governor of North-West Frontier Province

Secretary to Government of North-West Frontier Province,
Law Department,

Printed and published by the Controller,
Pig. & Staty. Deptt., NWFP, Pesh.

6.1.1.3 Galiyat Development Authority Act 1996

ACT VII OF 1996

GALIYAT DEVELOPMENT AUTHORITY ACT, 1996

An Act to provide for the establishment of the

Galiyat Development Authority

[Gazette of N.-W.F.P., Extraordinary, 28th July, 1996]

No. PA/NWFP/Legis/96/12569, dated 28-7-1996.---- The Galiyat Development Authority Bill, 1996, having been passed by the Provincial Assembly of the North-West Frontier Province on the 30th June, 1996, and assented to by the Governor of the North-West Frontier Province on the 15th July, 1996, is hereby published as an Act of the Provincial Legislature of North-West Frontier Province.

Preamble.--- Whereas it is expedient to establish an Authority for the development of Galiyat and other regions of Hazara Division; it is hereby enacted as follows:

CHAPTER – I
PRELIMINARY

1. **Short tittle, extent and commencement.—**

(1) This Act may be called the Galiyat Development Authority Act, 1996.

(2) It shall extend to such areas of Galiyat and other regions of Hazara Division as Government may, from time to time, by notification in the official Gazette, specify.

(3) It shall come into force at once.

2. **Definitions.---**

In this Act, unless there is anything repugnant in the subject or context, --

(a) "Authority" means the Galiyat Development Authority established under section 3;

(b) "area" means the area of the jurisdiction of the Authority as notified from time to time;

(c) "Chairman" means the Chairman of the Authority;

(d) "Director-General" means the Director-General of the Authority;

(e) "Government" means the Government of the North-West Frontier Province;

(f) "Government Agency" includes—

(i) a division, department, bureau, section, commission, board, office, or unit of Government;

(ii) a Local Council; and

(iii) a development or any other public authority trust, company or corporation owned or controlled by Government or a Local Council;

(g) "land" includes earth, water and air above, below or on the surface and any improvements in the structure customarily regarded as land and benefit arising out of land and things attached to earth or permanently fastened to earth;

(h) "Local Council" means a Local Council constituted under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ordinance IV of 1979);

(i) "member" means a member of the Authority and includes its Chairman;

(j) "person" includes an individual, company, firm, cooperative society or association of individuals whether incorporated or not;

(k) "prescribed" means prescribed by rules or regulations made under this Act; and

(l) "section" means a section of this Act.

CHAPTER – II
ESTABLISHMENT AND CONSTITUTION OF THE AUTHORITY

3. **Establishment of the Authority.—**

(1) As soon as may be after the commencement of this Act, Government shall, by notification in the official Gazette, establish an Authority known as "The Galiyat Development Authority".

(2) The Authority shall be a body corporate having perpetuate succession and a common seal with powers, subject to the provisions of this Act, to acquire, hold and transfer property, both movable and immovable and may by its name sue or be sued.

4. **Constitution of the Authority.—**

(1) The Authority shall consist of –

(a) the Chief Minister or any Minister nominated by him;

(b) the Minister Incharge;

(c) the Additional Chief Secretary, PE&D Department;

(d) the Secretary, Finance Department;

(e) the Secretary, Forest, Wildlife and Fisheries Department;

(f) the Secretary physical planning and Housing Department;

(g) the Secretary. Communication and Works Department;

(h) the Secretary, Agriculture Department;

(i) Commissioner, Hazara Division;

(j) Director-General, Special Development Unit of Planning Environment and Development Department;

(k) any other person nominated by the Chief Minister

(2) The Chief Minister or the Minister nominated by him under subsection (1) shall be the Chairman of the Authority.

(3) Government may, by notification, alter the membership of the Authority or increase or decrease the number of its members.

(4) A non-official member, if any, may resign from his office by submitting his resignation in writing to Government.

(5) The Chief Minister may, at any time, without assigning any reason, withdraw the nomination made under subsection (1) or nominate any other Minister.

CHAPTER – III
POWERS AND FUNCTIONS

5. **Powers and functions.—**

(1) Subject to the provisions of this Act and the rules framed thereunder, the Authority may exercise such powers and take such measures as may be necessary for carrying out the purposes of this Act.

(2) The strategy for all development works and other measures shall be embedded in the objective of environment upgradation and uplift of the common man.

(3) Without prejudice to the generality of the foregoing subsection, the Authority may—

(a) prepare and implement through line departments and any other agencies as the Authority may direct, feasible means, schemes of education, health, agriculture and industry, forest, conservation and development, preservation of wildlife, promotion of tourism, improvement of water supply, land slide management, development of irrigation facilities, development of means of communication, construction an development of housing, sewerage, drainage, environmental improvement and slum clearance;

(b) acquire property, both movable and immovable;

(c) sell, lease, exchange or otherwise dispose of any property vested in

(d) undertake any works and incur any expenditure in the performance of its functions under this Act;

(e) procure machinery, instruments or any other material required by it;

(f) enter into contracts;

(g) cause studies, surveys, experiments, technical researches or contribute towards the cost of any such studies, surveys, experiments or technical researches, made by any other agencies;

(h) issue interim development orders for area for which a scheme is under preparation and restrict or regulate by general or special order, any change in the use of land and alteration in building structure and installations;

(i) cause removal of any works obstructing the execution of its scheme;

(j) seek and obtain advice and assistance for the preparation of any scheme, or for the execution of scheme, form any Government Agency or person and such Agency or person shall give the advice and assistance sought by the Authority to the best of its or his ability, knowledge and judgement and the additional expenditure, if any, involved in giving such advice or assistance shall be borne by the Authority; and

(k) undertake any other function which Government may assign to it;

(4) The Authority, with the approval of Government, may, and if directed by Government, shall, undertake the maintenance, and regulation of schemes and other activities of a Government Agency as may be necessary and when scheme or any activity is undertaken by the Authority, the assets and liabilities connected therewith shall also stand transferred to the Authority.

(5) The Authority, with the approval of Government, may, and if directed by Government, shall, transfer any of its functions and powers to a Government Agency on such terms and conditions as it may deem fit.

6. **Levy of taxes and delegation of powers.—**

(1) The Authority may levy and collect a tax with the prior approval of Government.

(2) The Authority may, subject to such conditions as it may impose, but with the prior approval of Government, by general or special order, delegate to the Director-General or any officer of the Authority and of its powers, duties and functions under this Act, not being a power, duty or function delegated to it by Government.

7. **Appointment of Officers, etc, and association of other persons.**

(1) The Authority may, subject to such general or special order as Government may give, appoint such officers, advisors, experts, consultants and employees, as it considers necessary, for the efficient performance of its functions on such terms and conditions as it may deem fit.

(2) The Authority may associate with it, in such manner, on such terms and for such purpose as it may deem fit, any person whose assistance or advice it may require in carrying out its functions under this Act.

8. **Constitution of Committees.—**

The authority may constitute such financial, technical and advisory committees as may be deemed necessary for carrying out the purposes of this Act and such committees shall exercise such powers and perform such functions as may be delegated or assigned to them.

CHAPTER – IV
DIRECTOR-GENERAL

9. **Appointment and terms of office.—**

(1) There shall be a Director-General of the Authority to be appointed by Government on such terms and conditions as it may determine.

(2) The Director-General shall –

(a) be a whole time officer of the Authority;

(b) perform such duties as may be assigned to him and exercise such powers as may be delegated to him by the Authority; and

(c) hold office during the pleasure of Government.

CHAPTER – V
EXECUTIVE POWERS AND CONDUCT OF BUSINESS

10. **Executive Authority.—**

(1) Save as otherwise provided the executive authority of the Authority shall vest in, and be exercised by, its Director-General

(2) All Acts of the Authority, whether executive or not, shall be expressed and taken in the name of the Authority and shall be authenticated by the Director-General by affixation of his official seal.

11. **Disposal of business.**—

(1) The business of the Authority shall be disposed of at its meetings, or at the meetings of its committees, or by its Director-General or servants or other functionaries in the prescribed manner.

(2) No Act or proceedings of the Authority shall be invalid merely by reason of any vacancy in, or defect in the constitution of, the Authority.

12. **Meeting of the Authority.—**

(1) The members of the Authority shall meet at such place and at such time as the Authority may decide.

(2) The Authority may frame regulations for the conduct of its meetings.

(3) The Chairman, or in his absence, the Minister Incharge, shall preside over a meeting of the Authority:

Provided that where both the Chairman and the Minister Incharge are absent, the Additional Chief Secretary shall preside over that meeting.

(4) The Authority shall hold at least one meeting in each quarter of the year.

CHAPTER – VI
PREPARATION AND EXECUTION OF SCHEME

13. **Preparation of schemes.—**

The Authority shall, in such form and in such manner as may be prescribed, prepare schemes for the area or any part thereof.

14. **Modification of schemes.—**

A scheme prepared under this Act may, at any time, be amended, modified or abandoned by the Authority in such form an in such manner as may be decided by the Authority.

15. **Power to give directions.**

(1) The Authority may, with the prior approval of Government, require a Government Agency, within whose jurisdiction any particular locality or aspect of development covered by a scheme lies.—

(a) to execute a scheme in consultation with the Authority;

(b) to take over and maintain any of the works and services in that area

(c) to provide any amenity in relation to the land which, in the opinion of the Authority, ought to be provided; and

(d) to enforce regulation on behalf of the Authority.

(2) The expenditure incurred on the execution of any scheme or on the taking over or maintenance of any work, or the enforcement of regulations under this section, shall be borne, as may be agreed to between the Authority and the Government Agency or, in the event of disagreement, as may be determined by Government.

CHAPTER – VII
GENERAL

16. **Direction by Government.—**

The Authority shall, in discharging its functions, Act and be guided by such directions as Government may give to it from time to time.

17. **Borrowing money.—**

(1) The Authority shall be deemed to be a “Local Authority” for the purpose of borrowing money and any scheme or project prepared or undertaken by the Authority shall be deemed to be work as defined in section 2 of Local Authorities Loans Act, 1914 (Act IX of 1914);

Provided that no local or foreign loan shall be obtained by the Authority without the previous sanction of Government.

(2) the Authority may, in consultation with Government, borrow money or raise funds by issuing bonds or debentures or otherwise for carrying out the purposes of this Act. A scheme or project for which money is borrowed or funds raised shall be self-financing according to profit/loss as may be approved by Government.

18. **Power to levy betterment fee.—**

(1) Where as a consequence of any scheme having been executed by the Authority, the value of any property in that locality, in the opinion of the Authority, has increased, the Authority, may with the previous consent of Government, levy upon the owner of the property or any person having an interest therein, a betterment fee in respect of the increase in value of the property resulting from the execution of the scheme.

(2) Any Government Agency, when so directed by Government, shall surrender its local organization alongwith its assets and liabilities including funds or funding source, to the administrative control of the Authority and the Authority shall, in that event take over the organization and ensure its efficient performance.

19. **Assessment of betterment fee.—**

(1) Where it appears to the Authority that any particular development scheme is sufficiently advanced to enable the amount of the betterment fee to be determined, the Authority may, by an order made in this behalf, declare that for the purpose of determining the betterment fee, the execution of the scheme shall be deemed to have been completed and shall thereafter give notice in writing to the owner of the property or any person having an interest therein that the Authority proposes to assess the amount of betterment fee in respect of the property mentioned in section 18.

(2) The betterment fee under section 18 or under subsection (1) of this section, shall be assessed and be payable, in the manner prescribed.

CHAPTER – VIII

FINANCES, ACCOUNTS AND AUDIT

20. **Authority Fund.—**

(1) There shall be formed a fund to be known as the “Authority Fund” which shall vest in the Authority and shall be utilized by the Authority in connection with its functions under this Act including the payment of salaries and other remuneration to the members, officers, servants, experts, and consultants of the Authority.

(2) The Authority Fund, shall consist of –

(a) grants made by Government;

(b) all moneys received form the Federal Government or any International Agency by way of grants, loans, advance or otherwise;

(c) all fees, rates and charges received by the Authority under this Act;

(d) all moneys received by the Authority from the disposal of lands, buildings and other properties movable or immovable.

21. **Act XVIII of 1891 to apply to the books of the Authority.—**

The Authority shall be deemed to be a bank for the purpose of the Bankers’ Books Evidence Act, 1891.

22. **Custody and investment of funds.—**

The Authority may keep money in any treasury, sub-treasury or a bank as may be prescribed.

23. **Budget and Accounts.**

(1) The Authority shall prepare its annual budget estimates and work plan and submit the same to Government by the prescribed date, and Government may modify the said estimates or plan to such extent as it may consider necessary.

(2) Accounts of the receipts and expenditure of the Authority shall be kept in such form as may be prescribed.

(3) The Authority shall, within three months of the close of each financial year, place before Government the annual statement of accounts and audited balance sheet, profit and loss account and the auditor's report, for the preceding financial year.

24. **Audit of Accounts.—**

(1) The accounts of the Authority shall be audited by Chartered Accountants within the meaning of the Chartered Accountants Ordinance, 1961 (Ordinance X of 1961), and appointed by the Authority on such remuneration as it may think fit.

(2) Notwithstanding the provisions of subsection (1), the Auditor-General may, cause to be audited the accounts of the Authority.

25. **Annual Report.—**

The Authority shall, as soon as possible after the end of every financial year, submit an annual report to Government on the conduct of its affairs for that year, and on its proposals for the next ensuing financial year.

CHAPTER – IX
SUPPLEMENTAL PROVISIONS

26. **Public servant.—**

Every person acting or purporting to act under this Act shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code (XLV of 1860).

27. **Bar to proceedings.—**

No suit, prosecution or other legal proceedings shall lie against the Authority or any of its employees for anything in good faith done or intended to be done under this Act.

28. **Winding up to the Authority.—**

No provision of law relating to the winding up of companies and corporation shall apply to the Authority and the Authority shall not be wound up except by order of Government and in such manner as it may direct.

29. **Indemnity.—**

Every Chairman, member, Director-General, Director, Advisor, officer or servant of the Authority shall be indemnified by the Authority against all losses and expenses incurred by him in the discharge of his duties, except as are caused by his own willful Act, negligence or default.

30. **Power to make rules.—**

The Authority may, with the approval of Government, make rules for carrying out the purposes of this Act.

31. **Winding up of Hazara Hill Tract Improvement Trust.—**

As from the coming into force of this Act, the Hazara Hill Tract Improvement Trust, established under the Hazara Hill Tract Improvement Ordinance, 1961 (W.P. Ordinance VIII of 1961), shall stand wound up.

32. **Transfer of assets and liabilities.—**

All rights, properties, assets, liabilities, debts and obligations of the Hazara Hill Tract Improvement Trust and all matters and things engaged to be done by, with or for, and all suits and other proceedings by or against, the said Trust, shall, from the coming into force of this act, be deemed to be right, properties, assets, liabilities, debts and obligations, or, as the case may be, matters and things engaged to be done by, with or for, and all suits and other proceedings by or against, the Authority

33. **Repeal.—**

The Hazara Hill Tract Improvement Ordinance, 1961 (W.P. Ordinance VIII of 1961), will be repealed when so notified by Government.

6.1.1.4 Galiyat Development Authority (Amendment) Act 1999

ACT III OF 1999
GALIYAT DEVELOPMENT AUTHORITY
AMENDMENT ACT, 1999

An Act to amend the Galiyat Development Authority Act, 1996
[Gazette of N.-W.F.P. , Extraordinary,
8th March, 1999

No. PA/NWFP/LEGIS.I/99/4839, dated 8-3-1999--- The Galiyat Development Authority (Amendment) Bill 1999, having been passed by the Provincial Assembly of North- West Frontier Province on the 16th February, 1999 and assented to by the Governor of North-West Frontier Province on the 3rd March 1999, is hereby published as an Act of the Provincial Legislature of North- West Frontier Province.

Whereas it is expedient to amend the Galiyat Development Authority Act, 1996 (N.-.W.F.P.Act No.VII of 1996). For the purposes hereinafter appearing;

It is hereby enacted as fallows:-

1. Short title and commencement.--

(1) This Act may be called the Galiyat Development Authority (Amendment) Act,1999.
(2) It shall come into force at once.

2. Amendment of section 9 of N-.W.F.P. Act No, VII of 1996.—

In the Galiyat Development Authority Act, 1996 (N-.W. F. P. Act No.VII of 1996),

Hereinafter referred to as the said Act , in section 9, after subsection (2) the following new subsection shall be added, namely:

"(3) Notwithstanding the provisions contained in subsection (1) and (2) , till such time as the Director –General is appointed, the commissioner, Hazara Division, shall also act as Director-General of the Authority."

3. Amendment of section 13 of N-.W.F.P. Act VII of 1996.—

In the said Act, the existing section 13 shall be re-numbered as subsection (1) of section 13 and after subsection (1), as so renumbered , the following new subsection shall be added, namely:--

(2) A scheme prepared under subsection (1) shall be subject to the following condition and restrictions:

(a) no residential plot shall be of an area of the less than two Kanals, for shall any such plot be sub-divided to reduce the plot size an area as of less than two Kanals; provided that this restriction shall not apply in relation to those plot where lawful construction work stared before the commencement of this Act;

(b) the covered area of any plot, whether residential or commercial shall not exceed one-third of the total area of the plot;

(c) no residential building raised on a plot shall be of more than two stories and the covered area of the top story shall not exceed half of the covered area of the ground floor ; and

(d) no construction in the area shall be made unless the detail plan of construction alongwith the site plan thereof is approved by the Authority.

(3) All construction, whether of residential or commercial purpose, in the area shall strictly be in accordance with the scheme and the land use plan prepared by the Authority.

(4) No excavation or land leveling in the area shall be made, except with the prior approval of the Authority.

(5) No construction of whatsoever nature, shall be permissible in the area know as Lalazar situated between Nathiagali and Mukshpuri and on the main road leading from Abbottabad and Murree contrary to West Pakistan Highway Authority, 1959.

6.1.1.5 Kaghan Development Authority Act 1996

ACT VIII OF 1996
KAGHAN DEVELOPMENT AUTHORITY ACT, 1996

An Act to provide for the establishment of the Kaghan Development Authority

[Gazette of N.-W.F.P., Extraordinary, 28th, July, 1996]

No. PA/N.-W.F.P./Legis/96/12574, dated 28-7-1996.—The Kaghan Development Authority Bill, 1996, having been passed by the Provincial Assembly of the North-West Frontier Province on the 30th June, 1996 and assented to the Governor of the North-West Frontier Province on the 15th July, 1996, is hereby published as an Act of the Provincial Legislature of North-West Frontier Province.

Preamble.—

Whereas it is expedient to establish an authority for the Development of Kaghan and Other regions of Hazara Division; it is hereby enacted as follows:

1. **Short title, extent and commencement.—**

(1) This Act may be called the Kaghan Development Authority Act, 1996.

(2) It shall extend to such areas of Kaghan and other regions of Hazara Division as Government may, from time to time, by notification in the official Gazette, specify.

(3) It shall come into force at once.

2. **Definitions.—**

In this Act, unless there is anything repugnant in the subject or context.—

(a) "Authority" means the Kaghan Development Authority established under section 3;

(b) "area" means the area of the jurisdiction of the Authority as notified from time to time;

(c) "Chairman" means the Chairman of the Authority;

(d) "Director-General" means the Director-General of the Authority;

(e) "Government" means the Government of the North-West Frontier;

(f) "Government Agency" includes—

(i) a division, department, bureau, section, commission, board, office or unit of Government;

(ii) a Local Council; and

(iii) a development or any other public authority, trust, company or corporation owned or controlled by Government or a Local Council;

(g) "land" includes earth, water and air above, below or on the surface and any improvements in the structure customarily regarded as land and benefit arising out of land and things attached to earth or permanently fastened to earth;

(h) "Local Council" means a Local Council constituted under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ordinance IV of 1979);

(i) "Member" means a member of the Authority and includes its Chairman;

(j) "Person" includes an individual, company, firm, cooperative society or association of individuals whether incorporated or not;

(k) "prescribed" means prescribed by rules or regulations made under this Act; and

(l) "section" means a section of this Act.

CHAPTER – II

ESTABLISHMENT AND CONSTITUTION OF THE AUTHORITY

3. **Establishment of the Authority.—**

(1) As soon as may be after the commencement of this Act, Government shall, by notification in the official Gazette, establish an Authority known as "Kaghan Development Authority".

(2) The Authority shall be a body corporate having perpetuate succession and a common seal with powers, subject to the provisions of this Act, to acquire, hold and transfer property, both movable and immovable and may by its name sue or be sued.

4. **Constitution of the Authority—**

(1) The Authority shall consists of—

(a) the Chief Minister or any Minister nominated by him;

(b) the Minister Incharge;

(c) the Additional Chief Secretary, PE&D Department;

(d) the Secretary, Finance Department;

(e) the Secretary, Forests, Wildlife and Fisheries Department;

(f) the Secretary, Physical Planning and Housing Department;

(g) the Secretary, Communication and Works Department;

(h) the Secretary, Agriculture Department;

(i) Commissioner, Hazara Division;

(j) Director-General, Special Development Unit of Planning, Environment and Development Department;

(k) any other person nominated by the Chief Minister.

(2) The Chief Minister or the Minister nominated by him under subsection (1) shall be the Chairman of the Authority.

(3) Government may, by notification, alter the membership of the Authority or increase or decrease the number of its members.

(4) a non-official member, if any, may resign from his office by submitting his resignation in writing to Government.

(5) The Chief Minister may, at any time, without assigning any reason, withdraw the nomination made under subsection (1) or nominate any other Minister.

CHAPTER – III
POWERS AN FUNCTIONS

5. **Powers and functions.—**

(1) Subject to the provisions of this Act and the rules framed thereunder, the Authority may exercise such powers and take such measures as may be necessary of carrying out the purposes of this Act.

(2) The strategy for all development works and other measures shall be embedded in the objective of environmental upgradation and uplift of the common man.

(3) Without prejudice to the generality of the foregoing subsection, the Authority may—

(a) prepare and implement through line departments and any other agencies as the Authority may direct, feasible means, schemes of education health, agriculture and industry, forest conservation and development preservation of wildlife, promotion of tourism, improvement of water supply landslide management, development of irrigation facilities, development of means of communication, construction and development of housing, sewerage, drainage, environmental improvement and slum clearance;

(b) acquire property, both movable and immovable;

(c) sell, lease, exchange or otherwise dispose of any property vested in it.

(d) undertake any works and incur any expenditure in the performance of its functions under this Act;

(e) procure machinery, instruments or any other material required by it;

(f) enter into contracts;

(g) cause studies, surveys, experiments, technical researches or contribute towards the cost of any such studies, surveys, experiments or technical researches, made by any other agencies;

(h) issue interim development orders for areas for which a scheme is under preparation and restrict or regulate by general or special order, any changes in the use of land and alteration in building structure and installations;

(i) cause removal of any works obstructing the execution of the schemes;

(j) seek and obtain advice and assistance for the preparation of any scheme, or for the execution of scheme, from any Government Agency or person and such Agency or person shall give the advice and assistance sought by the Authority to the best of its or his ability, knowledge and judgement and the additional expenditure, if any, involved in giving such advice or assistance shall be borne by the Authority; and

(k) undertake any other function which Government may assign to it.

(4) The Authority, with the approval of Government, may, and if directed by the Government, shall, undertake the maintenance and regulation of schemes and other activities of a Government Agency as may be necessary and when a scheme or any activity is undertaken by the Authority, the assets and liabilities connected therewith shall also stand transferred to the Authority.

(5) The Authority, with the approval of Government, may, and if directed by Government, shall, transfer any of its functions and powers to a Government Agency on such terms and conditions as it may deem fit.

6. **Levy of taxes and delegation of powers.—**

(1) The Authority may levy and collect a tax with the prior approval of Government.

(2) The Authority may, subject to such conditions as it may impose, but with the prior approval of Government, by general or special order, delegate to the Director-General or any officer of the Authority any of its powers, duties and functions under this Act, not being a power, duty or function delegated to it by Government.

7. **Appointment of officers, etc. and association of other persons.—**

(1) The Authority may, subject to such general or special order as Government may give, appoint such officers, advisors, experts, consultants and employees, as it considers necessary, for the efficient performance of its functions on such terms and conditions as it may deem fit.

(2) The Authority may associate with it, in such manner, on such terms and for such purpose as it may deem fit, any person whose assistance or advice it may require in carrying out its functions under this Act.

8. **Constitution of committees.**

The Authority may constitute such financial, technical and advisory committees as may be deemed necessary of carrying out the purposes of this Act and such committees shall exercise such powers and perform such functions as may be delegated or assigned to them.

CHAPTER – IV
DIRECTOR-GENERAL

9. **Appointment and terms of office.—**

(1) There shall be a Director-General of the Authority to be appointed by Government on such terms and conditions as it may determine.

(2) The Director-General shall—

(a) be a wholetime officer of the Authority;

(b) perform such duties as may be assigned to him and exercise such powers as may be delegated to him by the Authority; and

(c) hold office during the pleasure of Government.

CHAPTER –V
EXECUTIVE POWERS AND CONDUCT OF BUSINESS

10. **Executive Authority.—**

(1) Save as otherwise provided, the executive authority of the Authority shall vest in, and be exercised by, its Director-General.

(2) Sub section (2) of 11,& section 12, sub section, (1)

(3) All acts of the Authority, whether executive or not, shall be expressed and taken in the name of the Authority and shall be authenticated by the Director-General by affixation of his official seal.

11. **Disposal of business.—**

(1) The business of the Authority shall be disposed of at its meetings, or at the meetings of its committees, or by the Director-General or servants or other functionaries in the prescribed manner;

(2) The Authority may frame regulations for the conduct of the meetings;

(3) The Chairman, or in his absence, the Minister Incharge, shall preside over a meetings of the Authority;

Provided that where both the Chairman and Minister Incharge are absent, the Additional Chief Secretary shall preside over that meetings.

(4) The Authority shall hold at least one meeting in each quarter of a year.

CHAPTER – VI
PREPARATION AND EXECUTION OF SCHEMES

13. **Preparation of schemes.—**

The Authority shall, in such form and such manner as may be prescribed, prepare schemes for the area or the part thereof.

14. **Modification of schemes.—**

A scheme prepared under this Act may any time, be amended, modified or abandoned by the Authority in such form and in such manner as may de decided by the Authority.

15. **Power to give directions.—**

(1) The Authority may, with the prior approval of Government, require a Government Agency, within whose jurisdiction any particular locality or aspect of development covered by a scheme lies;--

(a) to execute a scheme in consultation with the Authority;

(b) to take over and maintain any of the works and services in that area;

(c) to provide any amenity in relation to the land which, in the opinion of the Authority, ought to be provided, and

(d) to enforce regulation on behalf of the Authority.

(2) The expenditure incurred on the execution of any scheme or on the taking over or maintenance of any work, or the enforcement of regulations, under this section, shall be borne, as may be agreed to between the Authority and the Government Agency or, in the event of disagreement, as may be determined by Government.

CHAPTER – VII
GENERAL

16. **Direction by Government.—**

The Authority shall, in discharging its functions, act and be guided by such directions as Government may give to it from time to time.

17. **Borrowing money.—**

(1) The Authority shall be deemed to be a “Local Authority” for the purpose of borrowing money and any scheme or project prepared or undertaken by the Authority shall be deemed to be work as defined in section 2 of Local Authority Act, 1914 (Act IX of 1914);

Provided that no local or foreign loan shall be obtained by the Authority without the previous sanction of Government.

(2) The Authority may, in consultation with Government, borrow money or raise funds by issuing bonds or debentures or otherwise for carrying out the purpose of this Act. A scheme or project for which money is borrowed or funds raised shall be self-financing according to profit/loss as may be approved by Government.

18. **Power to levy betterment fee.—**

(1) Where as a consequence of any scheme having been executed by the Authority, the values of any property in that locality, in the opinion of the Authority, has increased, the Authority, may with the previous consent of Government levy upon the owner of the property or any person having an interest therein, a betterment fee in respect of the increase in value of the property resulting from the execution of the scheme.

(2) Any Government Agency, when so directed by Government, shall surrender its local organization alongwith is assets and liabilities including funds or funding source, to the administrative control of the Authority and the Authority shall, in that event take over the Organization and ensure its efficient performance.

19. **Assessment of betterment fee.—**

(1) Where it appears to the Authority that any particular development scheme is sufficiently advanced to enable the amount of the betterment fee to be determined, the Authority may, by an order made in this behalf, declare that for the purpose of determining the betterment fee, the execution of the scheme shall be deemed to have been completed and shall thereafter give notice in writing to the owner of the property or any person having an interest therein that the Authority proposes to assess the amount of betterment fee in respect of the property mentioned in section 18.

CHAPTER – VIII
FINANCES, ACCOUNTS AND AUDITS

20. **Authority Fund..—**

(1) There shall be formed a fund to be known as the “Authority Fund” which shall vest in the Authority and shall be utilized by the Authority in connection with its functions under this Act including the payment of salaries and other remuneration to the members, officers, servants, experts and consultants of the Authority.

(2) The Authority Fund, shall consist of—

(a) grants made by Government;

(b) all moneys received from the Federal Government or any International Agency by way of grants, loans, advance or otherwise;

(c) all fees, rates and charges received by the Authority under this Act.

(d) all moneys received by the Authority from the disposal of lands, buildings and other properties movable or immovable.

21. **Act XVII of 1891 to apply to the books of the Authority. –**

The Authority shall be deemed to be a bank for the purpose of the Bankers book Evidence Act, 1891.

22. **Custody and investment of funds.—**

Authority may keep money in any treasury, sub-treasury or bank as may be prescribed.

23. Budget and Accounts -

(1) The Authority shall prepare its annual budget estimates and work plan and submit the same to Government by the prescribed date, and Government may modify the said estimates or plan to such extent as it may consider necessary.

(2) Accounts of the receipts and expenditure of the Authority shall be kept in such form as may be prescribed.

(3) The Authority shall, within three months of the close of each financial year, place before Government the annual statement of accounts and audited balance sheet, profit and loss account and the auditor's report, for the preceding financial year.

24. Audit of Accounts

(1) The accounts of the Authority shall be audited by Chartered Accountants within the meaning of the Chartered Accountants Ordinance, 1961 (Ordinance X of 1961), and appointed by the Authority on such remuneration as it may think fit.

(2) Notwithstanding the provisions of subsection (1), the Auditor General may, cause to be audited the accounts of the Authority.

25. Annual Report. – The Authority shall, as soon as possible after the end of every financial year, submit an annual report to Government on the conduct of its affairs for that year, and on its proposals for the next ensuing financial year.

CHAPTER-IX
SUPPLEMENTAL PROVISION

26. Public servant. – Every person acting or purporting to act under this Act shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code. (XLV of 1860).

27. Bar to proceedings. – No suit, prosecution or other legal proceedings shall lie against the Authority or any of its employees for anything in good faith done or intended to be done under this Act.

28. Winding up of the Authority . – No provision of law relating to the winding up of companies and corporations shall apply to the Authority and the Authority shall not be wound up except by order of Government and in such manner as it may direct.

29. Indemnity.- Every Chairman, member, Director-General, Director Advisor, Officer or servant of the Authority shall be indemnified by the Authority against all losses and expenses incurred by him in the discharge of his duties, except as are caused by his own wilful Act, negligence or default.

30. Power to make rules . – The Authority may, with the approval of Government, make rules for carrying out the purposes of this Act.

6.1.1.6 Kaghan Development Authority (Amendment) Act 1999

North West Frontier Province

GOVERNMENT GAZETTE

Published by Authority,

Peshawar, Monday 8th March, 1999.

PROVINCIAL ASSEMBLY OF N.W.F.P.

NOTIFICATION

8th March,1999.

No.PA/NWFP/LEGIS:I/99/4834. The Kaghan Development Authority (Amendment) Bill, 1999, Having been passed by the provincial Assembly of North -West Frontier Province on 16th February, 1999 and assented to by the Governor of North-West Frontier province on the 3rd March, 1999, is hereby Published as an act of the provincial Legislature of North-west Frontier province.

(N.W.F.P. ACT NO. IV OF 1999)

[first published after having received the assent of the Governor of the North-west frontier province in the Gazette of North west Frontier province (Extraordinary), dated the 8th March, 1999]

AN
ACT

to amend the Kaghan Development Authority Act, 1996.

WHEREAS It is expedient to amend the Kaghan Development Authority Act,1996 (N.W.F.P. Act No.VIII OF 1996, for the purposes hereinafter appearing:

it is hereby enacted as Follows :-

1. Short title and Commencement.

(1) this act may be called the Kaghan Development Authority (Amendment) Act 1999.

(2) it Shale come into force at once.

2. Amend if section 9 of N.W.F.P. Act NO.VIII of 1996.

In the Kaghan Development Authority Act,1996(N.W.F.P.Act NO.VIII of 1996) hereinafter referred to as the said Act ,in Section No, 9, after sub-section (2) the Following new sub-section shall be added, namely :

"(3) Notwithstanding the provisions contained in sub-section (1) and (2), title such time as the Director General is a pointed the Commissioner, Hazara Division, Shall also act as Director General of the Authority."

3. Amendment of section 13 of N.W.F.P. Act VIII OF 1996.

In the said Act, the Exiting section 13 Shall be re-numbered as sub-section (1) of section 13 and after sub-section (1), as so renumbered, the following new sub-section shall be added, namely:

"(2) A scheme prepared under sub-section (1) shall be subject to the following condition and restriction:

(a) no residential plot shall be of an area of less than two Kanals, nor shall any such plot be sub-divided to reduce the plot size to an area of less than two kanals, provided that this restriction shall not apply in relation to those plot where lawful construction work started before the commencement of this act:

(b) the covered area of any plot, weather residential or commercial, shall not exceed one-third of the total area of the plot:

(c) no residential building raised on a plot shall be of more than to stories and the covered area of the top story shall not exceed half of the covered area of the ground floor, and

(d) no construction in the area shall be made unless the detailed plan of constructions along with the site plan there of is approved by the Authority :

(3) All Construction, with here for residential or commercial purpose ,in the area shall strictly be in accordance with the scheme and the land use plan prepared by the authority.

(4) No excavation are land levelling in the area shall be made, except with the prior approval of the authority:

(5) No Construction, of whatsoever nature ,shall be permissible in the area known as Shogran:

BY ORDER OF MR. SPEAKER
Provincial assembly of N.W.F.P.

ABDUL HAMEED KHATTAK,
Secretary,

Provincial Assembly of N.W.F.P.

6.1.1.7 NWFP Katchi Abadis Act 1996

ACT VI OF 1996
NORTH-WEST FRONTIER PROVINCE KATCHI ABADIS ACT, 1996

An Act to make provisions for regularisation, development and improvement of Katchi Abadis in the Province of North-West Frontier

[Gazette of N.-W.F.P. Extraordinary, 28th July, 1996]

No. PA/N.-W.F.P./Legis/96/12564, dated 28-7-1996.- The North-West Frontier Province Katchi Abadis Bill, 1996, having been passed by the Provincial Assembly of the North-West Frontier Province on the 30th June, 1996 and assented to by the Governor of the North-West Frontier Province on the 15th July, 1996 is hereby published as an Act of the Provincial Legislature of North-West Frontier Province.

Preamble, - Whereas it is expedient to make provisions for regularisation of Katchi Abadis in the Province of North-West Frontier and to provide for development and improvement thereof;

It is hereby enacted as follows:-

1. **Short title, extent and commencement.—**

(1) This Act may be called the North-West Frontier Province Katchi Abadis Act, 1996.

(2) It shall extend to the whole of the Province of the North-West Frontier.

(3) It shall come into force at once.

2. **Definitions**

(1) In this Act, unless the context otherwise requires:-

(a) "Council" means a Local Council constituted under the North-West Frontier Province Local Government Ordinance, 1979;

(b) "Commissioner" means the Commissioner of a Division;

(c) "Committee" means an implementation Committee constituted under section 5 of this Act;

(d) "Development Authority" means Development Authority constituted under any law for the time being in force;

(e) "Division" means an area notified as Division under section 5 the West Pakistan Land Revenue Act, 1967 (W.P. Act XVII of 1967);

(f) "Dwelling unit" means a house or a similar structure, built of any material, and used wholly or partially for human habitation;

(g) "Government" means the Government of the North-West Frontier Province;

(h) "Katchi Abadi" means any area declared as such under section 6 of this Act;

(i) "prescribed" means prescribed by rule made under this Act; and

(j) "rules" means rules made under this Act.

(2) Words and expressions not defined in this Act shall, unless the context otherwise requires, have the meanings assigned to them in the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ordinance IV of 1979)

3. **Appointment of Director-General.**

(1) There shall be appointed by Government a Director-General for carrying out the purposes of this Act.

(2) The Director-General may be provided with such officers and staff as is considered necessary by Government for the efficient performance of the functions of the Director-General.

(3) Till such time as the Director-General is appointed under subsection (1), every Commissioner, in respect of Katchi Abadi in the Division concerned, shall exercise all the powers and perform all the duties and functions of the Director-General conferred on, or assigned to him under this Act.

4. **Powers and functions of the Director-General**

(1) Subject to the provisions of this Act and general control of Government, the Director-General shall exercise such powers and perform such functions and duties as may be necessary for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the foregoing provisions, the Director-General shall—

(i) implement policies formulated by Government for the regularization, development and improvement of Katchi Abadi;

(ii) lay down guidelines for the implementation of such policies by the concerned authorities;

(iii) identify an area to be declared as a Katchi Abadi under this Act;

(iv) arrange or carry out detailed physical survey and census of occupants of Katchi Abadi and prepare or cause to be prepared plans and amelioration plans and designs of infrastructure works in connection with the regularisation and development of the Katchi Abadis;

(v) formulate development and financial programmes in respect of Katchi Abadis and determine implementation strategy of such programmes;

(vi) oversee the operation of the fund;

(vii) acquire, hold, control and administer movable or immovable property or dispose of such property;

(viii) prepare or cause to be prepared schemes and execute or cause to be executed such schemes;

(ix) undertake, where necessary, low cost housing and redevelopment schemes for resettlement of shiftees from Katchi Abadis and the area which are not regularisable as Katchi Abadis;

(x) enter into and perform contracts;

(xi) incur expenditure for carrying out the purposes of this Act;

(xii) arrange civic amenities and civic services in Katchi Abadis through the Local Councils, other concerned agencies or donor agencies of Pakistan or foreign origin;

(xiii) inspect or cause to be inspected the development schemes of Katchi Abadis and may issue such instructions as may be necessary with regard to the sanctioning and preparation of such schemes;

(xiv) call for the record of any of the proceedings of an implementation committee and subject to the prior approval of Government, alter its decisions if deemed proper;

(xv) evict or cause to be evicted unauthorised persons or remove or cause to be removed encroachments from Katchi Abadis in accordance with the law for the time being in force;

(xvi) decide, with the prior approval of Government, all disputes between an Implementation Committee and local authorities with regard to survey lists, fixations of market price of the land and all matters concerning the regularisation or development of Katchi Abadis; and

(xvii) issue direction with regard to survey lists, fixation of market price and development charges.

5. **Constitution of Implementation Committee**

(1) There shall be an Implementation Committee in each Development Authority or Council in which a Katchi Abadi is located.

(2) The Committee shall consist of a Chairman and such other members as Government may appoint.

(3) The Committee may Coopt any person as its member for any particular purpose.

(4) The Committee shall---

(i) assist Government and the Director-General in the performance of their functions under this Act;

(ii) be responsible for effective coordination of the activities pertaining to Katchi Abadis with those of the concerned agencies in the respective areas;

(iii) ensure prevention of encroachments in Katchi Abadis;

(iv) take such steps as may be necessary or conducive to the attainment of the objective of this Act; and

(v) perform such other functions as may be assigned to it by Government.

(5) The Committee shall function as may be assigned to it by Government.

6. **Declaration of Katchi Abadis and acquisition of land.—**

(1) Subject to the provisions of subsections (2), (3), (4) and (5) and the direction, if any of Government, the Director-General may after such inquiry as he deems fit, and after obtaining Government's specific permission, by notification in the official Gazette declare any area or part thereof which was occupied unauthorized before the 23rd of March, 1985, and continue to be so occupied and has at least forty dwelling units on it to be a Katchi Abadi:

Provide that Government may, by notification from time to time redetermine the number of dwelling units for the purpose of declaration of Katchi Abadi.

(2) No area belonging to the Federal Government or any authority or Corporation or body established or controlled by the Federal Government shall be declared as Katchi Abadi without the consent of the Federal Government.

(3) Except as otherwise provided, no area owned by a person or a society shall be declared as Katchi Abadi, except with the consent of such person or society and the Katchi Abadi so declared shall be subject to such terms and conditions as may be agreed to between such person or, as the case may be, the society and the Director-General.

(4) Except as otherwise directed by Government, no area which is reserved for the purposes of roads, streets, water supply arrangements, sewerage, or other conservancy arrangements, hospitals, schools, colleges, libraries, playgrounds, gardens, mosques, graveyards, railways, high tension lines, or similar other purposes or is not safe from flood hazard, shall be declared to be Katchi Abadi.

(5) Where Government is of the opinion that the area referred to in subsection (3) cannot by acquired be consent or agreement, the area may be acquired under the provisions of the Land Acquisition Act, 1894 (I of 1894).

7. **Schemes.—**

(1) The Director-General shall prepare or cause to be prepared schemes for development, improvement or regularization of Katchi Abadis, including the grant of proprietary rights in Katchi Abadis to the dwellers thereof and the schemes so prepared shall have effect on being sanctioned by Government.

(2) The scheme may relate to –

(i) Community planning, housing, re-housing, including low cost housing and amelioration;

(ii) rehabilitation of occupants of Katchi Abadis in the same Katchi Abadis, or, where it is not possible, in some other area or locality;

(iii) community facilities including water supply, sewerage disposal, electricity supply, gas and other public utilities or amenities;

(iv) roads and streets; and

(v) any subject or matter incidental or ancillary to the purposes of this Act.

(3) Government may, by notification in the official Gazette, alter or amend the list of subjects given in subsection (2) and any such addition or modification shall take effect as If it had been enacted in this Act.

(4) All schemes shall be prepared in such manner and form as Government may specify, and shall contain, among other things, the following information, namely:--

(i) description of the scheme and the manner of its execution;

(ii) estimate of cost and benefits;

(iii) allocation of cost to the various purposes to be served by the scheme;

(iv) date of commencement; and

(v) date of completion.

(5) At any time after sanctioning of any scheme but before its completion, Government may, on its own motion or on the recommendation of the Director-General, alter it.

(6) The Director-General, and if so directed by him, the concerned Development Authority or Council shall execute or cause to be executed the sanctioned schemes and take such measures and exercise such powers including the power of removal of encroachments in accordance with the law for the time being in force as may be necessary for the purpose.

8. **Shifting of occupants of Katchi Abadis. ---**

(1) Occupants of any Katchi Abadi may, with the prior approval of Government, be shifted by the Director-General in the land under a Katchi Abadi or part thereof—

(a) is not transferred by the owner of the land; or

(b) is required for providing civil amenities in the Katchi Abadi s, or

(c) is low-lying and its development is not economical; or

(d) is required for any public purpose.

9. **Katchi Abadi Fund.—**

(1) There shall be a separate fund of each concerned to be known as Katchi Abadi Fund.

(2) The fund shall consist of –

(a) grants and subsidy received form the Federal Government, the Provincial Government or any Local Authority;

(b) loans raised or obtained by the Development Authority or the Council;

(c) contributions or donations, aid or gifts received by the Director-General, the Development Authority or Council for a particular Katchi Abadi and

(d) price of land and development charges, recovered under this Act and other charges, if any, for services rendered by the Development Authority or the Council.

10. **Loans Grants, Aids and Gifts—**

The Director-General may with the previous sanction of Government and on such terms and conditions as may be approved by Government, obtain—

(a) loans from banks and other sources for carrying out the purposes of this Act; and

(b) Grants, aids, gifts from donor agencies.

11. **Custody and investment.—**

The amount credited in the fund shall be operated, kept and invested in such manner as may be prescribed.

12. **Utilization of the fund.—**

The amount credited in the fund shall be utilized for carrying out the purposes of this Act .

13. **Accounts.—**

(1) The accounts of the fund shall be maintained in such manner and form as may be prescribed.

(2) An Annual statement of the accounts shall be prepared by the Development Authority or Council after the close of every financial year and shall be transmitted to the Director-General by such date as may be prescribed.

14. **Audit.—**

The accounts of the fund shall be audited by such Audit Agency as may be prescribed.

15. **Betterment fee.—**

(1) Where Government is of the opinion that in consequences of the execution of any scheme the value of any property involved in such scheme has increased or will increase, it may levy upon such property a betterment fee and collect or cause to be collected the same from the owner thereof or any person in possession thereof or having interest therein.

(2) The betterment fee shall be levied at such rate as may be determined by the Government:

Provided that such fee shall not be more than half of the amount by which the value or the property on the completion of the execution of the scheme exceeds the value of the property prior to such execution.

(3) When it appears to Government that any scheme is sufficiently advanced to enable the determination of the betterment fee, Government may, by an order made in this behalf, declare that for the purpose of levying the betterment fee the execution of the scheme shall be deemed to have been completed and thereupon give notice in writing to the owner of the property or any person in possession thereof or having interest therein that Government proposes to determine the betterment fee in respect of such property.

(4) Government shall at the expiry of fifteen days after the service of the notice under subsection (3) or if any representation is received by Government against the determination of betterment fee, after decision on such representation, proceed to levy and collect or cause to be collected betterment fee in such manner and in accordance with such procedure as may be prescribed.

16. **Delegation of powers—**

(1) Government may delegate any of its powers under this Act to the Director-General.

(2) The Director-General may, with the previous approval of the Government and subject to such conditions as it may impose, delegate to any person, agency or authority any of his powers, duties or functions under this Act not being the powers delegated to him under subsection (1).

17. **Committee.—**

The Director-General may constitute financial, technical or Advisory Committees with such constitution and functions as Government may specify.

18. **Powers of Government to give direction.—**

(1) Government may, from time to time, give such directions as it considers necessary for the guidance and compliance by the Director-General.

(2) Government may require the Director-General, the Development Authority or the Council to furnish to it any document, return, statement or any other information regarding any matter under this Act and the Director-General, Development Authority or the Council shall comply with such requirements.

19. **Offences and their cognizance.—**

(1) Whoever obstructs or causes to obstruct any person in the discharge of his duties or execution of any scheme or work under this Act, or contravenes, attempts to contravene or abets the contravention of the order or direction given under this Act or rules in connection with the execution of such scheme or work shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to twenty thousand rupees or with both.

(2) No Court shall take cognizance of any offence under this Act on a complaint in writing made by Government, the Director-General or by a person duly authorised by it or him in this behalf.

(3) No Court, inferior to that of a Magistrate of the First Class, shall be competent to take cognizance of an offence under this Act.

20. **Validation.—**

All appointments or regulations made, notifications orders, instructions or notices issued, Katchi Abadis declared scheme prepared, or caused to be prepared, surveys, conducted or caused to be conducted, contracts entered into rights acquired or granted, claims made, proceedings or actions taken before the commencement of this Act by Government or any officer or authority in exercise of powers derived form Government with regard to regularization or development of Katchi Abadis shall be deemed to have been conducted, caused to be conducted, entered into, acquired, granted, made or taken under this Act.

21. **Power to make Rules.—**

Government may make rules for carrying out the purposes of this Act.

22. **Removal of difficulties.—**

If any difficulty arises in giving effect to any of the provisions of this Act, Government may make such orders as may appear necessary or expedient for the purposes of removal of the difficulty.

6.1.1.8 NWFP Establishment of District Development Advisory Committees Act 1989

ACT IV OF 1989

NORTH-WEST FRONTIER PROVINCE

ESTABLISHMENT OF DISTRICT

DEVELOPMENT ADVISORY COMMITTEE ACT, 1989

An Act to provide for proper planning and supervision of local level development activities in the North-West Frontier Province

[Gazette of N.-W.F.P., Extraordinary, 28th May, 1989]

No. PA/NWFP/Legis/89/6609, dated 28-05-1989.—The North West Frontier Province Establishment of District Development Advisory Committee Bill, 1989 having been passed by the Provincial Assembly of the North-West Frontier Province on the 17th May , 1989, and assented to by the Governor of the North-West Frontier Province on the 27th May, 1989, is hereby published as an Act of the Provincial Legislature of North-West Frontier Province.

Preamble.—

Whereas it is expedient to provide for proper planning and supervision of local level development activities in the North-West Frontier Province.

It is hereby enacted as follows:—

1. Short title, extent and commencement.—

(1) This Act may be called the North-West Frontier Province Establishment of District Development Advisory Committee Act, 1989.

(2) It shall extend to the whole of the North-West Frontier Province.

(3) It shall come into force at once.

2. Definitions.—

In this Act, unless the context otherwise requires—

(a) "Chairman" means the Chairman of the Committee appointed under section 3(2);

(b) "Chief Minister" means the Chief Minister of the North-West Frontier Province;

(c) "Committee" means the District Development Advisory Committee of the District concerned, established under section 3;

(d) "Department and Attached Department" shall have the same meaning as respectively assigned to them in the North-West Frontier Province Rules of Business, 1985;

(e) Government" means the Government of the North-West Frontier Province;

(f) "Member" means a member of the Committee;

(g) "Project Director" means the Divisional Director Rural Development Department of the Division concerned;

(h) "Secretary" means the Secretary of the Committee; and

(i) "Section" means a section this Act.

3. Establishment of District Development Advisory Committee.—

(1) There shall be established, with immediate effect, a Committee to be shown as the District Development Advisory Committee in each District consisting of —

(a) all the Members of the Provincial Assembly from the District concerned;

(b) Such other elected representatives, as the Government may specify to be taken on the Committee as co-opted members; and

(c) Such Heads of Attached Departments at the District level as may be co-opted by the Committee for their expert opinion.

(2) A co-opted member shall have no right of vote to exercise in any deliberation of the Committee.

(3) The Chief Minister shall appoint one of the members to be the Chairman of the Committee who shall hold officer during the pleasure of the Chief Minister.

(4) The Committee shall take all decisions by consensus of opinion, but where such consensus is not achieved, the matter shall subject to the provisions of subsection (2), be decided by major of votes:

Provided that in case of equality of votes, the Chairman shall have a second or casting vote:

Provided further that where a quota has been allocated to a Member in the development schemes of the Province or the schemes approved are to be divided quota-wise, then there shall be no need for obtaining consensus of opinion regarding the allocation of project or selection of sites, as the case may be, and it shall be the sole discretion of the member concerned to select sites or allocate projects, as the case may be, within his own quota.

(5) No act or proceeding of the Committee shall be invalid by reason only of the existence of a vacancy in, or defect in the establishment of the Committee.

4. Functions of the Committee.—

(1) The Committee shall formulate and recommend—

(i) proposals for Annual Development Programme (ADP) of the District and communicate it to the Planning and Development Department;

(ii) the list of schemes to be implemented under the Rural Development Programme, other than those of the Union Council. This list may also include those schemes to be funded from such Federal Grants for the purpose as may be provided;

(iii) Location and selection of site, subject to such planning criteria, as may be prescribed by Government for Development Scheme in the following sectors/sub-sectors;

(a) Primary, Middle and High Schools;

(b) Rural health (establishment of basic health unit and rural health centres);

(c) Public health engineering (rural drinking water supply and sanitation schemes);

(iv) locations or sites for such other development projects in other sectors as may be included in local programme of ADP including electrification of villages; and

(v) The allotment of Ration Depots in the respective Districts.

(2) The committee shall be responsible for conducting periodical reviews of the District Development Programmes approved by it in order to monitor its progress and ensure its timely implementation.

5. Administrative approval and implementation of schemes.—

(1) The schemes under the Rural Development Programme, except those for which special grants-in-aid have been announced by visiting dignitaries to a local area, shall be approved, financed and implemented by the Project Director.

(2) All other schemes included in the Annual Development Programme, which are subject to the advice of the Committee, shall be administratively approved and implemented by the Government Departments concerned in accordance with the prescribed procedure of the Departments or as may be directed by Government.

6. Meetings of the Committee.—

(1) The Chairman shall convene meetings of the Committee as and when he considers necessary for the performance of the functions assigned to it under this Act; provided that at least one meeting shall be held in every two months.

(2) The meeting shall be convened on such date and at such time, as the Chairman may appoint and unless otherwise directed all such meetings shall be held at the

District Headquarter in the office of the Chairman of the Committee or the Secretary of the Committee as the case may be.

(3) The Secretary shall, by notice, inform all the members about the date, time and venue of the meeting. The notice shall be accompanied by a duly attested list of a business (hereinafter called the Agenda).

(4) The Agenda shall be forwarded to the Members at least three days before the day fixed for the meeting.

7. Quorum.—

(1) It shall be obligatory for all members to attend the meeting of the Committee, whenever the member, for reasonable cause, is unable to attend a meeting, he shall inform the Chairman of his inability to do so.

(2) No business shall be transacted in a meeting unless a quorum of one-third of total number of members of the Committee is present throughout the meeting; provided that where one-third of the total number of members in a Committee is less than two, then at least two members shall constitute the quorum.

(3) Notwithstanding the foregoing provisions, absence of a member from a meeting shall not invalidate the action taken or decision made by the Committee.

8. Returns and Statements.—

The committee or Government may require the implementing agency, through which a scheme or project is being implemented under section 4, to furnish it with any return, statement, estimates, or other information or report regarding any matter pertaining to the scheme or the project.

9. Staff.—

The Assistant Director, Local Government and Rural Development Department, of the District concerned, shall act as Secretary of the Committee and all other officers and officials borne on the office of the Assistant Director shall assist and obey the Committee in the performance of its functions within the purview of this Act.

10. Overriding effect.—

(1) The provisions of this Act shall have effect notwithstanding anything to the contrary contained in any law for the time being in force.

(2) Power to make rules.—

Government may make rules for carrying out the purposes of this Act.

11. Repeal.—

The following laws are hereby repealed:

(i) The North-West Frontier Province (Establishment of District Planning and Development Advisory Committees) Act, 1987 (N.-W.F.P. Ordinance No.111 of 1989).

(ii) The North-West Frontier Province Establishment of District Development Advisory Committees Ordinance, 1989 (N.-W.F.P. Ordinance No.. 111 of 1989).

6.1.1.9 NWFP Salinity Control and Reclamation of Land Act 1988

North-West Frontier Province Salinity control and

Reclamation of Land Act, 1988

ACT VI OF 1988

An Act to make provisions for facilitating the execution of schemes for drainage of sub-surface water and removal of hindrance in installation of sub-surface drains in the North-West Frontier Province.

[Gazette of N.-W.F.P., Extraordinary, 12 March, 1988]

No.PA/NWFP/Legis/88/3217, dated 12-3-1988.—The North-West Frontier Province Salinity Control and Reclamation of Land Bill, 1988 having been passed by the Provincial Assembly of the North-West Frontier Province on the 2nd March, 1988, and assented to by the Governor of the North-West Frontier Province on the 8th march, 1988, is hereby published as an Act of the Provincial Legislature of North-West Frontier Province.

Preamble.—

Where it is expedient to make provisions for the execution of schemes for drainage of sub-surface water and removal of hindrance in installation of sub-surface drains and maintenance thereof in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. Short title, extent and commencement.—

(1) This Act may be called the North-West Frontier Province Salinity control and Reclamation of Land Act, 1988.

(2) It shall extend to whole of the North-West Frontier Province.

(3) It shall come into force on such date as Government may, by Notification in the official Gazette, appoint in this behalf, and different dates may be appointed in respect of different areas or parts of the Province.

2. Definitions.—

In this Act, unless the context otherwise requires, —

(a) "Authority" means the Secretary to government, Irrigation and Public Health Engineering Department or an officer authorised by him to exercise the power of Authority under this Act:

(b) "deep-rooted tree" means the trees specified in the Schedule to this Act and includes such other trees as Government may, from time to time, by Notification in the official Gazette add to the said Schedule;

(c) "Government" means the Government of the North-West Frontier Province;

(d) "local area" means the area notified by the Government from time to time under subsection (3) of section 1 of this Act;

(e) "prescribed" means prescribed by rules made under this Act;

(f) "scheme" means a scheme framed under section 4 of this Act; and

(g) "sub-surface drain" means any engineering structure meant to facilitate drainage of sub-surface water.

3. Provision of the Act to be overriding.—

The provisions of this Act shall take effect notwithstanding anything to the contrary contained in any other law for the time being in force.

4. Framing and implementation of scheme.—

(1) Government may, on its own motion or on the application of any owner of land or any person interested therein, direct the Authority to frame schemes for the control of salinity and reclamation of land in any local area or a part thereof.

(2) When a scheme under subsection (1) has been framed and approved by Government, the Authority shall prepare a notice stating.—

(a) the fact that the scheme has been framed;

(b) the boundaries of the locality comprised in the scheme, and cause the said notice to be published in the official Gazette. The notice shall also be published in a newspaper or newspapers for at least seven consecutive days for public information and may be displayed in such other manner as the Authority may deem appropriate to bring the scheme to the knowledge of the persons having interest in the land comprised in the scheme.

5. Restriction on plantation of tress or raising of structure.—

(1) No person shall, from the date of publication of the notice under subsection (2) of section 4 in the official Gazette, plant a deep-rooted tree within the area included in a scheme and specified in the said notice, without prior permission in writing of the Authority, or effect or raise any building or permanent structure over a sub-surface drain.

(2) The Authority, where satisfied that the plantation of the deep-rooted tree is not likely to harm the sub-surface drains laid or to be laid under the scheme, or does not obstruct drainage in any manner, shall grant the permission requested for:

Provided that where it is decided not to grant such permission or to grant it with such restrictions or conditions as the Authority may specify in that behalf, the decision of the Authority shall be final.

(3) It shall be necessary for every person intending to erect or raise any building or permanent structure in a local area to ascertain from the Authority in writing that the site selected by him for raising any building or permanent structure does not run over a sub-surface drain.

(4) Any deep-rooted tree planted or any building or permanent structure erected or raised in default of the preceding sub-sections shall be liable to be uprooted or demolished, as the case may be, the defaulter shall not be entitled to any compensation thereof and trees or the material as the case may be, shall be confiscated in favour of the Authority.

6. Power to enter upon the land etc.—

(1) On publication of the notice under subsection (1) of section 4 in the official Gazette, it shall be lawful for any person or any authority, Department or Organization acting under a general or special order of the Authority or of Government to enter upon any land comprised in the scheme with such men, animals, vehicles, appliances and instruments, as may be necessary, and undertake investigations survey or levels thereon, and dig and bore into the land, and make and set up suitable land marks, pillars, levels marks and water-gauges, and do all acts required for the determination of areas and intended lines of works for securing the flow of water, and all other acts necessary for the implementation and maintenance of the scheme:

Provided that the function aforesaid shall be discharged in such manner as to cause the least interference with, and the least damage to, the rights of the owners in the land:

Provided further that where it is necessary to enter into any building or enclosed court or garden attached to a dwelling house, the occupier of such building , enclosed court or gardent shall be given such reasonable notice as the urgency of the case or the circumstances may require, before so entering.

(2) It shall be lawful for any person acting under subsection (1) to make an entry for the purpose of inspection or search, to open or cause to be opened a door, gate or other barrier,—

(a) if he considers the opening thereof necessary for the purpose of such entry, inspection or search; and

(b) if the occupier or owner, as the case may be, is absent or being present, refuses to open such door, gate or barrier.

7. Cases in which compensation is admissible.—

If any damage is caused to trees, orchards, crops or temporary or permanent structures, already standing on the land comprised in a scheme on the date of notification under subsection (2) of section 4 during the course of implementation, or, as the case may be, maintenance of the scheme, the owner shall be entitled to the compensation at the market rate to be assessed by the Collector of the District as if the same were proceedings under the Land Acquisition Act, 1894.

8. Penalty for removing machinery, etc.—

If any person, without lawful Authority,—

(a) removes any mark set up for the purposes of indicating any levels or direction necessary for the implementation of maintenance of a scheme under this Act; or

(b) infringes or does not comply with any order given under this Act:

he shall be punishable with fine which may extend to one thousand rupees.

9. Penalty for obstruction.—

If any person.—

(a) damages, alters, obstructs or interferes with any land reclamation operations as to cause damage to the operation or render it less useful; or.

(b) obstructs or molests any person in the performance of the duties under this Act; or

(c) removes any machinery, pipes, gauges, fence, or in any other manner hampers the work in operation; or

(d) Plants a deep-rooted tree or erects or raises any permanent building or structure in contravention of section 5,

(e) he shall be punishable with simple imprisonment which may extend to three months or with fine not exceeding five thousand rupees or with both.

10. Cognizance of offence.—

No Court shall take cognizance of an offence under this Act except upon a complaint made in writing to an Officer authorised in this behalf by the Authority.

11. Removal of structure, etc.—

Where the owner of any temporary structure or tree or other plantations in a local area where a scheme under this Act is in operation is directed by an Officer authorised in this behalf to remove the structure or to uproot any tree or other plantation, the removal or uprooting whereof is necessary for the implementation or maintenance of the scheme, and he fails to remove the said structure or, as the case may be, to uproot the tree or other plantation, within the period specified in the direction, without cogent reasons, it shall be lawful for the officer giving the direction to remove the structure or to uproot the tree or other plantation and the owner shall not be entitled to any compensation therefore.

12. Indemnity.—

No suit or other proceeding shall lie against Government, the Authority or any other Department or Organization responsible for the implementation or maintenance of a scheme under this Act or against any officer, servant or other person acting under the

direction of Government, the Authority or any other Department or Organization, as the case may be, for anything which is in good faith done or intended to be done in pursuance of this Act.

13. Power to make rules.—

Government may make rules for carrying out the purposes of this Act.

SCHEDULE

[See Section (b)]

Serial No.	Description of deep-rooted trees.
1.	Salix Species (Willow).
2.	Eucalyptyus Spp (eucalyptus).
3.	Dalbergia Sisoo (shisham).
4.	Tamarix articulata (temarix)
5.	Salmalia malabarica (simal).
6.	Melis azedarach (bakain).
7.	Populus species (poplar)
8.	Morus alba (milbery).
9.	Ailenthus glandulosa (heave tree)
10.	Acacia nilotica (babool/kikar).

6.1.1.10 NWFP Salinity Control and Reclamation of Land Rules 1989

NORTH-WEST FRONTIER PROVINCE

SALINITY CONTROL AND RECLAMATION OF LAND RULES,1989

[Gazette of N.W.F.P. Extraordinary , 10th March,1990]

No.IRR :SO (P)/6-81/86/12177, dated 11-12-1989- in exercise of the power conferred by section 13 of the North-West Frontier Province Salinity Control and Reclamation of Land Act,1988 (N.-W.F.P.Act No.VI of 1988), Government of the North-West Frontier province is pleased to make the followings rules for carrying out the purpose of the said Act, namely,:-

(1) Short title and commencement :- (1) These rules may be called the North-West Frontier province Salinity Control and Reclamation of Land rules,1989.

(2) They shall come into force at once.

2. Definitions.—

In these rules, context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say.—

(a) ”Act” means the North-west frontier province salinity control and Reclamation of land Act,1988(N.W.F.P.Act VI of 1988);

(b) ”Division” means a Canal division under the charge of a Divisional Canal Officer ;

(c) ”Divisional Canal Officer ” means an officer exercising control over a canal division; and

(d) ”Section “means a section of the Act .

3. Procedure for application.—

(1) Any person making an application under section 4 or section 5 shall address his application to the Divisional Canal Officer, who shall examine the feasibility of the request made therein and shall forward the case to the Authority, alongwith his recommendations, for appropriate orders of the Authority .

(2) Where an application relates to framing of a scheme under section 4 and the Divisional Canal Officer, after due scrutiny, is satisfied about the feasibility and urgency of the scheme, he shall also frame a scheme, for the approval of the Authority .

(3) The Authority shall pass such orders on the recommendations of the Divisional Canal Officer, received by him under sub-rule (2), as he may deem fit.

(4) Persons seeking permission for plantation of deep-rooted trees or erection of permanent structure or building within the area included in a scheme shall be informed of the decision of the Authority through registered letter.

4. Compensation.—

Claim, if any for compensation under section 7 shall be made to the Collector of the District concerned within 30 days from the date the damage was actually caused to the claimant; provided that the Collector may admit a claim for assessment if, for reasons to be recorded in writing, he is satisfied that it was not reasonably practicable for the claimant to make the claim within the specified period or thereafter till the date the claim had actually been made.

6.1.1.11 NWFP Housing Facilities for Non-Proprietors in Rural Areas Act 1987

THE NORTH-WEST FRONTIER PROVINCE HOUSING FACILITIES FOR NON-PROPRIETORS IN RURAL AREAS ACT, 1987

28TH October, 1987

N.-W.F.P. ACT NO. XVII OF 1987

[First published after having received the assent of the Governor of the North-West Frontier Province in the Gazette of North-West Frontier Province (Extraordinary), dated the 28th October 1987]

AN
ACT

to provide for housing facilities to non-proprietors in rural areas of the North-West Frontier Province

Preamble

WHEREAS it is expedient to make provisions for providing housing facilities to non-proprietors in rural areas of the North-West Frontier Province and to provide for matters connected therewith or ancillary thereto.

Short title exent and commencement.

1. (1) This Act may be called the North-West Frontier Province Housing Facilities for Non-proprietors in Rural Areas Act, 1987.

(2) It shall apply to all rural areas in the North-West Frontier Province

(3) It shall come into force at once.

Definitions

2. In this Act, unless there is anything repugnant in the subject or context.

(a) "Allotment Committee" means a Committee constituted under section 5;

(b) "Commissioner" means the Chief Officer Incharge of revenue and general administration of a Division includes an Additional Commissioner of such Division;

(c) "Deputy Commissioner" means the Chief Officer Incharge of the revenue and general administration of a District and includes an Officer notified as such by Government for the purpose of this Act;

(d) "District Zakat and Ushr Committee" means a District Zakat and Ushr Committee constituted under section 16 of the Zakat and Ushr Ordinance, 1980 (XVIII of 1980);

(e) "Government" means the Government of the North-West Frontier Province;

(f) "Mustahiq-e-Zakat" means a person who is entitled to receive money from the Zakat Funds established under the Zakat and Ushr Ordinance, 1980 (Ord. No. XVIII of 1980);

(g) "non-proprietor" means a person who is a *bonafide* resident of the District for which a scheme is prepared under this Act and who or any member of whose family does not own any agricultural land, a house or other immovable property any where in Pakistan;

(h) "prescribed" means prescribed by rules made or instructions issued by Government under this Act;

(i) "rural areas" means an area other than the are declared as urban areas by or under any law relating to Local Government for the time being in force; and

(j) "section" means a section of this Act.

Explanation – For this purpose of clause (g):-

(i) "family" means husband, wife and their children; and

(ii) "immovable property" shall not include a structure raised by a non-proprietor on land not owned by him.

Housing Scheme for non-proprietors.

3. (1) Government may, subject to availability of funds, prepare schemes in rural areas for development of housing colonies and grant of land, free of cost to non-proprietors.

(2) Government may, subject to payment of cost from the Zakat Funds established under the Zakat and Ushr Ordinance, 1980 (Ord. No. XVIII of 1980), reserve such number or percentage of plots in a housing colony for allotment to non-proprietor Mustahiqeen-e-Zakat, as it may determined from time to time:

Provided that where a housing colony is developed on State land, the cost for the land reserved for Mustahiqeen-e-Zakat shall not be charged.

Allotment of land.

4. (1) In any such scheme prepare under section 3, plots of land, not exceeding seven marlas, may be allotted, free of cost, to non-proprietors on such terms and conditions and in such manner as may be prescribed for the exclusive purpose of construction of houses by them for their residence.

(2) A non-proprietor, once allotted land, shall not be eligible for any other allotment under this Act.

5. (1) Government shall constitute, in each District for which a scheme under section 3 has been prepared, an Allotment Committee, consisting of the Members of the Provincial Assembly from that District and such other members as may be prescribed, for scrutinizing the cases of allotment of plots of non-proprietors of the District concerned:

Provided that the cases of allotment of land to non-proprietors Mustahiqeen-e-Zakat shall be scrutinized by the Zakat and Ushr Committee of the District concerned.

(2) The Chairman of the District Planning and Development Advisory Committee constituted under the N.-W.F.P. Act No. VII of 1987 shall be Ex-officio Chairman of the Allotment Committee.

(3) Each Allotment Committee shall conduct its business in the prescribed manner.

Condition of allottment.

6. Every allotment under this Act shall be subject to the conditions that the allottee -

(a) is a *bonafide* resident of the District for which a scheme is prepared under this Act;

(b) shall construct the house on the land within a period of two years from the date of delivery of possession of the plot or within such period as may, from time to time, be extended by the Allotment Committee in individual cases;

(c) shall permit, without let or hindrance, the Deputy Commissioner or his authorised representative to enter upon the land at all reasonable times to do all acts and things necessary for or incidental to the purpose of any of the provisions of this Act or the rules made thereunder:

(d) shall not sublet or alienate by sale, gift, mortgage or otherwise either the land or house constructed thereon or any portion thereof for a period of ten years from the date of allotment:

Provided that for the purpose of obtaining loans for the construction or completion of the house on the land the allottee may mortgage the land with a scheduled bank or a loan giving agency recognised or sponsored by the Federal or Provincial Government, and in such cases, the lender, not-withstanding anything to the contrary contained in this Act or any other law for time being in force shall have first charge on the land or plot so mortgaged.

Propreitory rights.

7. On completion of construction of the house Government may grant proprietary rights to the allottee in such manner as may be prescribed.

Concellations of allottment.

8. (1) Notwithstanding the allotment of a plot, the Deputy Commissioner may, after giving the allottee an opportunity of being heard, cancel the allotment at any time before the conferment of proprietary rights and resume the land if he is satisfied that allottee:

(a) wilfully furnished wrong information for securing allotment in his favour; or

(b) has committed a breach of any of the conditions, of allotment or any of the provision of this Act, or the rules made or instructions issued thereunder.

(2) The building or structure, if any raised on the plot so resumed shall be forfeited to Government.

Resumptions of land.

9. (1) Where the allotment of a plot is cancelled under section 8, the Deputy Commissioner shall, -

(a) where the plot is vacant or a house, partly or completely, has been constructed thereon, but has not yet been inhabited, immediately take possession of the plot; or

(b) where the house having been constructed on the plot is in occupation, give thirty days notice to the occupants to vacate it and remove their house-hold belongings therefrom, failing which the occupants shall be forcibly evicted.

(2) Where the plot taken into possession under sub-section (1) is free from any encumbrance or charge, it shall be allotted to a non-proprietor in accordance with the provisions of sections 4 and 5;

Provided that where the plot is encumbered, it shall be put to open auction and the proceeds thereof utilized for discharging the liability of the Bank or the loan giving agency and the surplus, if any, shall be credited to Government account:

Provided further that where a house has been constructed on an encumbered plot, it shall subject to the willingness of the allottee, be transferred to him in accordance with the provision of sections 4 and 5 along with the undischarged liability of the loan on its original terms and conditions:

Provided further that where a house is partly constructed on an encumbered plot, it shall, subject to the willingness of the allottee, be transferred to him in accordance with the provisions of section 4 and 5 and his liability with regard to the undischarged loan shall be limited to the value of the construction thereon as assessed in accordance with the rules prescribed under this Act.

Libalitiy of acquisition.

10. Acquisition of land for the purposes of this Act shall be deemed to be a “public purpose” within meaning of Land Acquisition Act, 1894.

Appeal

11. Any person aggrieved by an order of the Deputy Commissioner under this Act may prefer an appeal to the Commissioner and the decision of the Commissioner thereon shall be final;

Provided that :-

(i) no order in any appeal under this section shall be passed without giving the person concerned an opportunity of being heard; and

(ii) the time limit for filling an appeal under this section shall be thirty days from the date of passing of the order by the Deputy Commissioner and while computing the period of limitation, the provisions of section 12 of the Limitation Act, 1908, shall apply.

Penalty and proecedure.

12. Any person found guilty of furnishing wrong information under clause (a) of section 8 shall be punished with imprisonment which may extend to six months.

Dues recoverbale as arrears of land revenue.

13. Where a person fails to repay the loan, if any, obtained by him for the construction of a house under this Act, the same shall be recoverable as arrears of land revenue.

Special Power of Government.

14. (1) In prior consultation with the Allotment Committee constituted under section 5, Government may issue instructions consistent with this Act and the rules framed thereunder, relating to any matter to which the provisions of this Act apply

(2) If in the opinion of Government anything done or intended to be done by or on behalf of the Government, is not in conformity with the law or in any way against the public interest, in prior consultation with the District Allotment Committee constituted under section 5, Government may for reasons to be recorded, quash any proceedings of suspend or prohibit the doing of any act or things as the circumstances may require.

(3) Government may delegate any of its powers and functions under sub-sections (1) and (2) to any officer not below the rank of a Commissioner provided that the Commissioner will have to consult the Allotment Commissioner constituted under section 5 before issuing any orders.

Rules.

15. Government may make rules for carrying out the purposes of this Act.

Repal of Act II of 1976

16. The North-West Frontier Province Housing Facilities for Non-proprietors in Rural Areas Act, 1976 (N.-W.F.P. Act No. II of 1976) is hereby repealed.

Repal of order No.III of 1987

17. The North-West Frontier Province Housing Facilities for Non-proprietors in Rural Areas Ordinance, 1987 (N.-W.F.P. Act No. III of 1987) is hereby repealed.

6.1.1.12 NWFP Sarhad Development Authority Act 1972

Sarhad Development Authority

THE NORTH-WEST FRONTIER PROVINCE

SARHAD DEVELOPMENT AUTHORITY ACT, 1972

12TH January, 1973

N.W.F.P. ACT NO.XI OF 1973

(Received the assent of the Governor of the North-West Frontier Province on 12th January, 1973

AN
ACT

to provide for the establishment of Sarhad Development Authority For the purpose of promoting the economic and industrial development of the North-West Frontier Province

Preamble.—

WHEREAS it is expedient to provide for the establishment of Sarhad Development Authority for the purpose of promoting the economic and industrial development of the North-West Frontier Province and for matters ancillary thereto;

It is hereby enacted as follows.—

1. Short title extent and commencement.—

(1) This Act may be called the North-West Frontier Province Sarhad Development Authority Act, 1972.

(2) It extends to the whole of the North-West Frontier Province, except the Tribal Areas.

(3) It shall come into force at once.

2. Definition.—

In this Act, unless there is anything repugnant in the subject or context the following expressions shall have the meanings hereby respectively assigned to them, that is to say.

(a) 'Authority ' means the Sarhad Development Authority , North-West Frontier Province established under section-3;

(b) 'Board ' means the Board of Director s of the Authority ;

(c) 'Chairman' means the Chairman of the Authority ;

(d) 'Director ' means a Director of the Authority and includes the Chairman;

(e) 'Government ' means the Government of the North-West Frontier Province;

(f) 'Governor' means the Governor of the North-West Frontier Province;

(g) 'industry' means an industry for the manufacture for consumer or producer goods, other than—-

(i) cottage or small industry, and

(ii) the industry the development whereof under Federal Control is declared by Federal Law to be expedient in the public interest;

(h) 'minerals' mean all minerals excluding minerals necessary for the generation of nuclear energy and minerals oil and natural gas;

(i) 'prescribed' means prescribed by rules or regulations;

(j) 'regulations' means regulations made under this Act;

(k) 'rules' means rules made under this Act;

(l) 'Scheduled Bank' means the Bank for the time being included in the list of banks maintained under sub-seciton (j) of section 37 of the State Bank of Pakistan Act, 1956 (Act XXXIII of 1956); and

(m) 'State Bank' means the State Bank of Pakistan .

3. Establishment of the Authority and its Office.—

(1) As soon as may be after the commencement of this Act, Government shall establish an Authority to be called the Sarhad Development Authority North-West Frontier Province.

(2) The Authority shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act to acquire and hold property, both moveable and immovable, and shall by the said name sue and be sued.

(3) The Head Office of the Authority shall be at Peshawar but Government may, by notification in the official Gazette, transfer it to such other place as may be specified in such Notification.

(4) The Authority shall establish Regional Offices at such places as Government may direct.

4. Share Capital.—

(1) The authorized share capital of the Authority shall in the first instance, be one crore of rupees divided into one hundred fully paid up shares of one lakh of rupees

each, which may be issued from time to time by the Authority with the previous sanction of Government .

(2) Nothing in sub-seciton (1) shall prevent the Authority form increasing its capital with the previous sanction of Government .

5. Management.—

(1) The general direction and administration of the Authority and its affairs shall vest in the Board which may exercise all powers and do all acts and things which may be exercised or done by the Authority, in accordance with the provisions of this act.

(2) The Board in discharging its functions shall act on commercial considerations and shall be guided by such directions as Government may from time to time give.

(3) If the Board fails to obey any direction as aforesaid, Government may remove the Director s including the Chairman, and, notwithstanding anything in section 6, appoint persons in their places to be Director s temporarily until fresh Director s are appointed under that section.

6. Appointment and terms of office of Director s .—

(1) The Board shall consist of such number of Director s not less than three and not more than five, as may be appointed by Government .

(2) Each Director shall.—

(a) be a whole-time or part-time officer of Authority ;

(b) perform such duties as the Board may be regulations assign to him;

(c) divest himself of any Director s hip or other interest held by him in any other Corporation, Company, or concern other than public companies sponsored by the Authority, under sub-section (5) of section 17 before assuming office as whole-time Director.

(d) subject to the provision of section 9, hold office for a term of three years and my be appointed thereafter for a further term a terms of such duration as Government may, in appointed him thereto determine; and

(e) receive such salary and allowances as Government may determine;

Provided that Government may, in exceptional circumstances where it considers it necessary to do so in the public interest; exempt, by a special order, any person, who has been appointed or is about to be appointed a Director, form the application of clause (c).

(3) One of the Director s appointed under sub-section (1) shall be the Financial Director, who shall exercise such power and discharge such duties as may be prescribed.

7. Chairman.—

(1) Government shall appointone one of the Director s to be the Chairman of the Board, who shall be the Chief Executive of the Authority.

(2) subject to his continuing to hold office as a Director, the Chairman shall hold office as Chairman for a term of three years and subject as aforesaid, shall remain in office of as Chairman thereafter until his successor in that officer is appointed and may, subject as aforesaid, be appointed to hold that office for a further term or terms as Government may, in appointing him there to determine.

8. Term of office and first Chariman nd Director s .

Notwithstanding anything contained in section 6 and 7, whene the Board is first constituted, .the Chairman and Director s shall hold office for such term, not exceeding three years, as may be determine by Government ;

Provided that such Chairman and Director may be appointed to hold that office for a further term or terms as Government may, in appointing them thereto, determine.

9. Disqualification of Director s .—

(1) No person shall be or shall continue to be a Director who —

(a) is or at any time has been convicted of an offense involving moral turpitude; or

(b) is or at any time has been adjudicated insolvent; or

(c) is found a lunatic or becomes of unsound mind ;or

(d) is or at any time has been disqualified for employment in or dismissed from the service of Pakistan ;or

(e) is under the age of twenty–one years; or

(f) is not a citizen of Pakistan .

(2) **Removal of Chairman or a Director :--** Government may, by order in writing, remove the Chairman or a Director if he:--

(a) refuses or fails to discharge or becomes in the opinion of Government , incapable of discharging his responsibilities under this Act; or

(b) has in the opinion of Government , abused his position as Chairman or Director ; or

(c) has knowingly acquired or continued to hold without the permission in writing of Government , directly or indirectly or through a partner, any share or interest in any contract or employment with, by or on behalf of the Authority ,

or in any property which, in his knowledge, is likely to benefit or has benefited as a result of the operations of the Authority ; or

(d) has absented himself from three consecutive meetings of the Board without the leave of Government in the case of the Chairman, or of the Chairman in the case of a Director.

(3) **Resignation by Chairman or Director.**

Notwithstanding anything contained in this Act, the Chairman or a Director may at any time before the expiry of his term, upon three months' notice, resign his office, or upon similar notice be removed from office by Government without assigning any reason.

10. Appointment of Officers, advisors etc.

(1) The Authority may, subject to such general or special orders as Government may from time to time give, appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, on such terms and conditions as it may determine.

(2) The Authority may employ such officers, expert, Advisers, consultants and other persons as may be transferred to it by Government , on such terms and conditions as may be determined by Government .

(3) The Chairman, in cases of urgency, may appoint such officers, advisers, consultants and other employees as may be necessary:

Provided that every appointment made under this sub-section shall be reported to the Authority without unnecessary delay, and shall not continue beyond six months unless approved by the Authority .

11. Powers of Authority to associate other persons.—

(1) The Authority may associate with itself in such manner, on such terms and for such period as it may deem fit, any person whose assistance or advice it may deem necessary in carrying out any of the purpose of this Act.

(2) A person associated under sub-section (1) for any purpose shall have a right to take part in the discussion of the Board relating to that purpose but shall not have a right to vote and shall not be deemed to be a Director for that or any other purpose.

12. Financial technical and advisory committee.—

The Authority may constitute such financial technical and advisory committees as may be necessary for carrying out the purposes of this Act.

13. Declaration of fidelity and secrecy.—

(1) Every Director , adviser, officer or other employee of the Authority , before entering upon his duties, shall make such declaration of fidelity and secrecy as may be prescribed by regulations.

(2) Any adviser, officer or other employee of the Authority , who in the opinion of the Governor or a person authorized by the Governor in this behalf, has violated the declaration of fidelity or secrecy made by him under sub-section (1) shall be liable after being given a reasonable opportunity of showing cause against the action proposed to be taken with respect to him, to be forthwith removed from his office or post.

14. Meetings of the Board .—

(1) The meetings of the Board shall be held at such times and at such places as may be prescribed by regulations:

Provided that at least one meeting shall be held in a month:

Provided further that until regulations are made in this behalf, such meetings shall be held at such times and at such places as may be determined by the Chairman.

(2) The quorum necessary for transacting business at a meeting of the Board shall be three, if the Board consists of five Director s and two if the number is less.

(3) Each Director , including the Chairman, shall have one vote but in the event of an equality of votes, the Chairman shall have a second or casting vote.

(4) The meetings of the Board shall be presided over by the Chairman and in his absence by a Director authorized by him in this behalf and in default of such authorization by a person elected for the purpose by the Director s present from among themselves.

(5) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in, or any effect in the constitution of, the Board.

(6) The minutes of every meeting, stating among other things, the names of the Director s present, shall be drawn up and recorded in a book to be kept for the purpose, and shall be signed by the person residing at the meeting, and such book shall at all reasonable times and without charge be open to inspection by any Director.

15. Forwarding of statements, etc. to Government .—

(1) If the Governor so directs in any case, the Chairman shall forward to him copies of all papers which were laid before the Board for consideration at meeting.

(2) Government may require the Chairman to furnish it with.

(a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Authority ; or.

(b) a report on any such matter; or

(c) a copy of any document in the charge of he Chairman.

(3) The Chairman shall comply with any such requisition under sub-section (2) without undue delay.

16. Delegation of powers.—

Subject to the provisions of sub-section (3) of section 6, the Authority may, by general or special order in writing, direct that such of its powers shall, in such circumstances and under such conditions, if any as may be specified in the order, be exerciserable also by the Chairman or such Director or officer or employee as may be specified therein.

17. Business which the Authority shall transact.—

(1) The Authority shall take over and be responsible for such business, projects undertakings and properties, rights, duties and liabilities as may be transferred to it by Government .

(2) Unless, otherwise directed by Government the Authority shall also be responsible for-

(a) planning, promoting organizing and implementing programmes for the establishment of industries, and commercial ventures;

(b) the exploration exploitation and development of minerals and mines; and

(c) tendering advice on the technical, operational and commercial feasibility of any programme on scheme specified by Government .

Explanation.— In clause (a) “planning” includes studies surveys, experiments and scientific and technical investigation.

(3) Notwithstanding anything contained in sub-section (1) and (2), the Authority shall perform such other duties and functions as Government may, from time to time, assign to it.

(4) The Authority shall, in order to carry out any functions under sub-section (1) or clauses (a) and (b) of sub-section (2) or sub-section (3)—

(a) submit, for the approval of Government proposals or schemes; nd

(b) Proceed to give effect to any proposal or shcems as approved by Government.

(5) The Authority may, and, where Government so directs, shall, for the purpose of giving effect to any proposal or scheme approved by Government , sponsor limited companies independent of each other or subsidiary companies incorporated under the Companies Act, 1913.

Provided that before sponsoring any such company, the Authority shall obtain the approval of Government to the company's capital structure.

(6) The Authority shall be represented on the Board of Director s of the aforesaid companies.

(7) The Authority may issue the capital required for the aforesaid companies for public subscription and, if any portion thereof remains unsubscribed after the expiry of the closing date for public subscription, subscribe on behalf of Government that portion.

Provided that the Authority shall not subscribe to an extent which in the aggregate exceeds such limits as may be notified by Government from time to time.

(8) The Authority may underwriter the whole or any portion of the capital issued under sub-section (7).

(9) The Authority shall, when it considers the time apportune sell or transfer the shares subscribed for by it under sub-section (7):

Provided that no such sale or transfer shall take place at a rate below the market quotation or below the par value of such shares without the previous sanction of Government.

(10) The Authority may participate in joint ventures with [the public or private sector or both] in regard to matters specified in clauses (a) and (b) of sub-section (2).

18. Security for subscription.—

No subscription shall be made unless it is adequately secured by pledge, mortgage, hypothecation or assignment of such property, movable or immovable, and of such value in proportion to the subscription as may be notified by Government from time to time.

19. Loans in foreign currency.—

The Authority may, with the previous approval of Government and the Federal Government , and on such terms and conditions as may be approved by Government , borrow in foreign currency from the International Bank for Re-construction and Development or otherwise moneys required for the development of industries.

20. Act XV III 1891 to apply the books of Authority .—

The Authority shall be deemed to be a bank for the purpose of the Baker's Book Evidence Act, 1891.

21. Annual Budge Statement.—

The Authority shall by such date in each year as may be prescribed by rules, submit to Government for approval a statement to be called the Annual Budget Statement in the prescribed from for every financial year showing the estimated receipts and expenditure and sums which are likely to be required from Government during that financial year.

22. Custody and investment of Authority fund.—

(1) All moneys at the credit of the Authority shall be kept in such institution of banks as may be approved by Government.

(2). Nothing in sub-section (1) shall be deemed to preclude the Authority from investing any such moneys which are not required for immediate expenditure in any of the securities described in the section 20 of the Trust Act, 1882 or placing them in fixed deposits with a bank approved by Government or in such other manner as may be approved by Government.

23. Maintenance of accounts.—

The Authority shall maintain proper accounts and other relevant records and prepare annual statement of accounts, including the profit and loss account and balance-sheet, in accordance with such general directions as may be issued, and in such form as may be specified by Government in consultation with the Auditor-General of Pakistan, hereinafter refereed to as the Auditor-General.

24. Audit.—

(1) The accounts of the Authority shall be audited by Auditors who shall be chartered accountants within the meanings of the Chartered Accountants Ordinance, 1961. And appointed, with the approval of Government by the Authority on such remuneration as it may think fit, and such remuneration shall be paid by the Authority.

(2) Notwithstanding the audit provided for in sub-section (1), the Auditor-General shall once a year audit or cause to be audited the accounts of the Authority.

(3) The Auditor-General shall also hold, or cause to be held, a test audit of the undertakings wholly owned by the Authority and of the companies sponsored by it and in the event of a test audit disclosing irregularities, the Auditor-General may carry out or cause to be carried out, such further audit as he considers necessary.

(4) The Authority and every such undertaking and company as is referred to in sub-section (3) shall produce the accounts, books and connected documents, at the place where they are normally expected to be available, and furnish such explanations and information as the Auditor-General or any officer authorized by him in this behalf may require at the time of the audit.

(5) The Auditor-general shall in holding the audit, keep in view the provisions of sub-section (2) of section 5 and state in his report how far in his opinion these provisions have been complied with.

(6) A statement of accounts of the Authority and the report of the Auditor-General on the said accounts, together with the report of the Auditor-General on the account of undertaking and the companies referred to in sub-section (3) shall be furnished to Government by the Authority after the end of every financial year.

25. Annual report.—

(1) The Authority shall as soon as possible after the end of every financial year, submit an annual report to Government on the conduct of its affairs for that year, and on its proposals for the next ensuing financial year.

(2) The annual report referred to in sub-section (1) shall, as soon as possible be laid by Government before the provincial Assembly of the North West Frontier Province.

26. Public servants.—

The Chairman, Director s officers, advisers, or employees of the Authority shall, while acting or purporting to act in pursuance of the provisions of this Act, or, the rules or regulations made thereunder, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

27. Indemnity of Director s , etc.—

(1) Every Director, adviser, officer or other employee of the Authority shall be indemnified by the Authority against all losses and expenses incurred by him in the discharge of his duties, except such as are caused by his own willful act or default.

(2) The Director shall not be personally responsible for the acts of any other Director, or of any officer, adviser, or an employee of the Authority for any loss or expense resulting to the Authority by reason of the insufficiency or deficiency in value of or price to any property or security acquired or taken on behalf of the Authority , or by the wrongful act of any person under a liability to the Authority or by anything done by him in good faith in the execution of the duties of his office.

28. Placing of audit reports, etc., before the Provincial Assembly.—

(1) The annual statement of accounts referred to in section 23 together with the audit report and test audit report of the Auditor-General on the accounts of the Authority undertaking and companies referred to in section 24 shall be placed by Government before the Provincial Assembly of the North-West Frontier Province as soon as possible after they are received, and the Provincial Assembly shall refer the same to its committee on Public Accounts for scrutiny.

(2) The Committee on public accounts shall scrutinize and examine the reports referred to it under sub-section (1) in the same manner, and shall in respect thereof perform the same functions and exercise the same powers as are required by it to be performed and exercised in respect of appropriation accounts of the Provincial Government and the report of the Auditor-General thereon.

29. Power to make rules.—

(1) Government may, by notification in the official Gazette make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generally of the foregoing powers such rules may provide for—

(a) the manner of keeping accounts of the Authority and the companies managed by it;

(b) the recruitment of officers, advisers and employees of he Authority;

(c) the terms and conditions of service of the officers advisers and employees of the Authority including the functions of the advisers;

(d) the borrowing by the Authority.

(e) the purchase and sale of goods by the Authority:

(f) the date by which, and the form in which, the annual budget statement shall be submitted in each year;

(g) the procedure for appropriation and re-appropriation of moneys return; at the credit of the Authority;

(h) the form and manner in which and the authorities to whom returns, reports or statements shall be submitted; and

(i) such other matters relating to the administration of the affairs of the Authority as Government may think fit to regulate by rules;

30. Power to make regulations.—

(1) The Authority may with the previous sanction of Government , make regulations to provide for all matters, not provided for in the rules for which provision is necessary or expedient for carrying out the purposes of this Act and the said rules.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for—

(a) the meetings of the Board;

(b) the investment of the Authority's funds; and

(c) the sale or transfer of shares under sub-section (9) of section. 17.

31. Winding up of the Authority .—

No provision of law relating to the winding up of companies and corporations shall apply to the Authority and the Authority shall not be wound up except by order of Government and in such manner as it may direct.

32. Repeal and saving.—

(1) The North-West Frontier Province, Sarhad Development Authority Ordinance, 1972 (N.W.F.P. Ord No.XX of 1972) is hereby repeaed.

(2) Notwithstanding the repeal of the North-West Frontier Province, Sarhad Development Authority , Ordinance 1972, everything done, action taken, Authority established, obligation or liabilities incurred rights, assets or property acquired, persons appointed or authorized, jurisdiction or powers conferred or notifications or orders issued under any of the provisions of the said Ordinance or rules or regulations made thereunder, if not inconsistent with the provisions of the Act or rules or regulations made under this Act, shall be continued, and, so far as may be, be deemed to have been respectively done, taken, established, incurred, acquired, appointed or authorized , conferred and issued under this Act, and any document referring to any of the provisions of the said Ordinance rule or regulations shall so far as may be, considered to refer to the corresponding provisions of this Act or rules or regulations made under this Act.

6.1.1.13 New Irrigation Projects (Planned Development) Act 1953

THE NORTH-WEST FRONTIER PROVINCE NEW IRRIGATION PROJECTS (PLANNED DEVELOPMENT)ACT, 1953

(Act No. XIII of 1953)

(Received the assent of the Governor, North-West Frontier Province, on the 9th December, 1953)

AN
ACT

to provide for the speedy and planned development of the areas brought under new irrigation projects and for the levy of development fee.

WHEREAS it is expedient to provide for the speedy and planned development of the areas brought under new irrigation projects and for the levy of development fee;

It is hereby enacted as follows:--

Short title extent and commencement. —

1. (i) This Act may be called the North-West Frontier [1][Province] New Irrigation Projects (Planned Development) Act, 1953.

(ii) It extends to the Bannu districts, provided that the Provincial Government may, by notification, extend all or any of its provisions to any other part of the [2][North-West Frontier [3][Province]

(iii) It shall come in to force at once.

Definition. —

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

(i) "Collector" shall be a person appointed under this Act, and shall have the meaning as in the Land Acquisition Act, 1894, the Land Revenue Act and the North-West Frontier [4][Province] New Irrigation Projects |(Control and Prevention of Speculation in Land) Act, 1950.

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[1] The word "Province" inserted by N.-W.F.P. A.L.O. 1975, which was earlier omitted by W.P.A.O. 1964.

[2] Subs. ibid for the word "Province"

[3] The word "Province" inserted by N.-W.F.P. A.L.O. 1975, which was earlier omitted by W.P.A.O. 1964.

[4] The word "Province" inserted by N.-W.F.P. A.L.O. 1975, which was earlier omitted by W.P.A.O. 1964.

(ii) "Development Fee" shall means a fee imposed under the provisions of this Act.

(iii) "Local Area" means an area to which this Act applies or is extended.

(iv) "Scheme" means a scheme framed under this Act.

(v) "Committee" means the Central Development Committee.

(vi) "Local Committee" means the Local Executive Committee.

(vii) "Local Authority" means a Local body within the meaning of the North-West Frontier Province Municipal Act, 1950, or the Punjab District Board Act, or any other Agency to be set up by Government to whom all or any of the functions under this Act may be entrusted.

(viii) "Government" means the Provincial Government.

(ix) The expression "tree" , "timber" and "cattle" have the meaning respectively assigned to them in the Forest Act, 1927.

Scheme for Developpment Scheme. —

3. Government may, on the advice of the committee, frame a scheme or schemes for the development of any local area or part thereof providing for all or any of the following matters:--

(i) The acquisition under the North-West Frontier [5][Province] New Irrigation Projects (Control and Prevention of Speculation in Land) Act, 1950, of any land or any interest in land necessary for, or affected by the execution of the scheme;

(ii) The acquisition by purchase, lease, exchange or otherwise of such land or interest in land;

(iii) The retention, letting on hire, lease, sale, exchange or disposal otherwise of any land vested in or acquired by the Government;

(iv) The relaying of any land comprised in the scheme and reservation of any land not exceeding one-fifth of the total area for the common purposes of the village or villages comprised in the scheme, and the redistribution of the rest of the land among the owners of the property comprised in the scheme, and management of lands reserved for common purposes;

(v) The layout and construction of towns, mandis, market places, villages and settlements including the demolishing of existing buildings, the erection and re-erection of buildings, by the Government or by the owners, or by the Government in default of owners;

(vi) The provisions of facilities for communication including the layout and alteration of roads, streets, foot paths, bridle-paths and waterways;

(vii) The provision of open spaces, planned field forests camp sites, graveyards and places of religious worship.

[5] The word "Province" inserted by N.-W.F.P. A.L.O. 1975, which was earlier omitted by W.P.A.O. 1964.

(viii) The breaking up, cultivation, afforestation or plantation of lands, and the raising, lowering of reclamation of any land for the production of food-grains, fruit, vegetables, fuel, fodder, the setting up of nurseries, seed farms, pastures and the like, and the provision of means of irrigation and irrigation channels by the Government or by the owners or by the Government in default of owners;

(ix) The draining, water supply and lighting of street and sanitation of villages and settlements, towns, mandis and market places;

(x) The provision of a system of drains or sewer for the improvement of ill-drained and in sanitary localities;

(xi) The provision of fisheries, poultry farms, live-stock farms, dairy farms, sheep-farms, bee-farms, sericulture farms and the like;

(xii) The installation, management, maintenance, and encouragement of public utility undertakings, rural trades, and crafts, industries and works;

(xiii) the doing of all acts intended to promote the health, well being and prosperity of the residents of a local area, including the conservation and preservation from injury or pollution of river, and other sources and means of water supply and establishment of educational institutions and dispensaries;

(xiv) The execution of nay scheme or part of the scheme by any local authority on such terms and conditions as may be agreed upon between the Government and the Local Authority.

(xv) All other matters which the Provincial Government may deem necessary for the purposes of a scheme or for the development of a local area.

Prepration, Publication and Transmission of notice of Schemes and supplied of documents and applicans. —

4. (1) When a scheme under this Act has been framed, Government shall prepare a notice stating:-

(i) the fact that the scheme has been framed,

(ii) the boundaries of the locality comprised in the scheme, and

(iii) the place and time at which details of the scheme including a statement of the land proposed to be acquired or an which it is proposed to charge a development fee and a general map of the locality comprised in the scheme may be inspected.,

(2) Government shall give the said notice adequate publicity in local area and cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period which shall not be less than thirty days, within which objections will be received.

Notice of proposed acquistion of land. —

5. (1) During the thirty days, next following the first day, on which any notice is published under Section 4 in respect of any scheme under this Act, Government shall serve a notice on;

(i) Every person whom Government has reason to believe, after due enquiry, to be the owner of any immovable property which it is proposed to acquire for executing the scheme or in respect of which it is proposed to charge development fee:-

(ii) The occupier or tenant (who need not be named) of such premises or land as Government propose to acquire for executing the scheme.

(2) Such notice shall:--

(a) state that Government proposes to acquire such property or to impose a Development fee in respect of such property for the purposes of carrying out a scheme under this Act, and

(b) require such person, if he objects to such acquisition or imposition of development fee, to state his reasons in writing a period of thirty days from the service of notice.

(3) Every such notice shall be signed by an Officer appointed by Government in this behalf.

Abandoment of scheme or its Notification. —

6. After the expiry of the period respectively prescribed in sub-section (2) of Section 4 and clause (b) of sub-section (2) of section 5, Government shall consider all objections and hear all parties making such objections if any and thereafter may abandon the scheme or make such modifications as may be deemed necessary.

Republication of a scheme. —

7. If a scheme is modified by Government, it shall be republished in accordance with Section 4, in every case in which the modification materially affects the scheme or involves the acquisition of any land not previously proposed to be acquired, or the levy of development fee on land which was not previously proposed to be liable to such development fee.

Notification of Scheme. —

8. (1) When a scheme is finally adopted by Government, it shall announce the fact by notification, and shall forthwith proceed to execute the scheme either itself or through the Local Committee in such manner as may be prescribed.

(2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and shall not be called in question before any court.

Inclusion of different localities in conbined schemes. —

9. Any number of localities in respect of which Government has framed or proposes to frame schemes under this Act may at any time be included in one combined scheme.

Passing our of works to local authority. —

10. As soon as any scheme has been carried out by Government or at a later date, Government may by written requisition call upon a kocal authority within whose jurisdiction any particular area covered by the scheme lies, to take over and maintain any of the works in that area and the local authority shall be bound to comply with such requisition.

Powers and duties of Government. . —

11. (1) Government may subject to such rules as may be prescribed, undertake any work and incur any expenditure for the improvement and development of al local area, and

(2) Set up a committee and a local committee consisting of such members and of such number as Government may decide; and the committee so appointed shall advise Government on all or any of matters referred to in Section 3, but shall have no financial powers.

(3) Without prejudice to the generality of powers conferred by the preceding sub-sections the Government may:-

(a) grant land vested in it to any person on any condition it thinks fit, and for this purpose issue a statement or statements of conditions on which Government is willing to grant land to tenants;

(b) resume the land so granted, or in the alternative impose a penalty not exceeding five hundred rupees where the tenant is proved to the satisfaction of Government, to have committed a breach of the conditions of the tenancy;

Provided that before an order is made under this clause, the tenant shall be given an opportunity to appear and state his objections;

Provided further that in case of resumption, the tenant shall be liable to restore possession forth with, but shall be enttiled to compensation for the standing crops and for improvements made by him during the tenancy.

(c) notwithstanding anything contained in any enactment for the time being in force, prepare and execute a scheme for consolidation of holdings in any local area by re-distribution of titles of any of the lands therein, and order of payment of compensation to any person who has received an allotment under any such scheme of consolidation of less market value than his original holding, to be paid by all or any of the other persons affected b the said scheme, and in such proportion as Government may decide.

Note.—

The duties of the Consolidation Officer under the said Act shall be performed by such officer as may be appointed by Government in this behalf:--

(d) regulate by general or special order the use of land and restrict or prohibit the carrying of any offensive or unwholesome trade unhealthy or harmful agricultural practice or the construction of any building or structure;

(e) advance money by way of loan to any person for the purpose of furthering any of the objects of this Act, on conditions as provided in the Agriculturist Loans Act, 1884 or Land Improvement Loans Act, 1883;

(f) promote and undertake research on any matter in furtherance of this Act;

(g) appoint a Colonization Officer with such powers as may be delegated to him under the rules for:--

(i) the levelling, terracing and embankment of fields,

(ii) the construction of earth works in fields or ravines,

(iii) the provisions of drains for storm water;

(iv) the draining of streams, and

(v) the execution of such other works as are necessary to protect the land from the erosive action of wind or water or for the development of such area or for the exploitation of its mineral or water resources;

(h) direct that any work which has been required to be done by any person under the preceding clause, and which remains undone, shall, after due notice to such person and consideration of any objection raised by him, be executed by Government, and specify the portion in which the risk and expense shall be borne by such person, or by any other person who is held by Government upon due enquiry after reasonable notice to him, to be responsible for the execution of such work in whole or in part;

(i) regulate, restrict or prohibit by general or special order in respect of any area;

(i) the clearing or breaking up of land for cultivation;

(ii) the quarring of stones and the burning of lime or charcoal;

(iii) the admission, herding, parking and retention of cattle, or other animals,

(iv) the felling, girdling, lopping, tapping or burning of any tree or timber, and

(v) the kindling, keeping or carrying of any fire;

(j) direct the growing of a particular kind or type of crops or trees in a particular area, and prescribe the rotation of crops to be followed;

(k) undertake the breaking of land, planting of trees, construction of water course, and do all necessary acts to bring land included in the scheme under cultivation, and

(l) make or order arrangements for the marketing of the produce and manufactures.

(4) Any general order made under this section shall be published in such manner as may be prescribed.

12. All actions by any Department or Government in connection with development of the resources made available by a project shall be taken on the advice of the Committee.

Power to make surveys.—

13. The Colonization Officer may cause a survey of land to be made when he considers that a survey is necessary or expedient for the carrying out of any of the purposes of this Act.

Power to entry.—

14. (1) The Colonization Officer or any person authorised by him in writing in this behald, may enter upon and survey any land, erect pillars for the determination of areas and intended lines of works, made borings and excavations for the discovery of water or any minerals,

construct channels and aqueducts for securing the flow of water, and do all other acts which may be necessary to carry out all or any of the purposes of this Act;

Provided that when the affected land does not vest in Government, powers conferred by this sub-section shall be exercised in such manner as to cause the least interference and damage to the rights of owners or occupiers therein.

(2) If any damage is caused to the land in pursuance of sub-section (1), the Colonization Officer shall assess the amount of compensation to be paid to the owner or occupier and in case of dispute as to the sufficiency of the amount, the matter shall be final.

(3) It shall be lawful for any person authorised under sub-section (1) to make an entry for the purpose of inspection or search, to open or cause to open a door, gate or other barrier;

(a) If he considers the opening thereof necessary for the purpose of such entry, inspection or search; and

(b) If the occupier or owner, as the case may be, is absent, or being present, refuses to open such gate, door or barrier:

Provided that if the entry is to be made into a residential house the provisions of Sections 102 and 103 Criminal Procedure Code shall be applicable as far as possible.

Acquisition of land in urgent cases.—

15. (1) Government may, by notification in the Official Gazette declare any locality comprised in a local area to be acquired immediately for re-settlement of persons, or for development or for any other purposes, and undertake in respect of such locality all or any matters as may be included in a scheme under this Act.

(2) After a notification has been issued under sub-section (1), in respect of any locality the Colonization Officer after giving such reasonable notice to the owners and occupiers as may be prescribed, shall take possession of any land in such locality and the land shall thereupon, notwithstanding anything contained in any other enactment for the time being in force vest absolutely in Government free form all encumbrances subject to only payment of compensation to be assessed by Government on the recommendation of the Colonization Officer:

Provided when a person is dispossesed of land under this section and has no other land or enough land to sustain him, Government shall compensate him to the extent possible by granting him land elsewhere under the scheme.

(3) When the possession of any land has been delivered to Government under sub-section (2), it shall do all such acts in respect thereof in order to comply with the directions contained in the notification issued under sub-section (1).

Development Fund.—

16. There shall be a fund to be known as “Development Fund” which shall be utilized for the execution of schemes under this Act, and shall consist of such moneys as Government makes available to it.

17. Government may on the advice of the Committee levy in any local area or part thereof any tax, fee, or cess which the Provincial Legislature has power to impose;

Provided that Government may exempt any person from the payment of all or part of any such tax, fee, or cess which may be due from him on such conditions as it may impose.

18. Government may on the advice of the Committee further impose or increase a tax on the annual value of buildings or lands situate within a local area and enhance the rate of land revenue and abiana within a local area to such extent as may be necessary.

19. The Government may allocate the whole or part of any tax, fee or cess levied under Section 17 and 18 to the fund.

Power of Government to make rules.—

20. In addition to the powers conferred by any other provisions of this Act, Government may, by notification in the [6][Gazette], but always subject to pre-publication, make rules consistent with this Act:-

(i) As to the Authority on which the money may be paid from the development fund;

(ii) for fixing the fees payable for copies of, or extracts from the record prepared by Government;

(iii) as to the accounts to be kept and the manner in which such accounts shall be kept;

(iv) as to the powers and function which the committee, a local committee or a local Authority may have;

(v) as to the preparation of estimates of income and expenditure and the authority by whom and the conditions subject to which such, estimates may be sanctioned;

(vi) as to the returns, statements and reports to be submitted;

(vii) to prescribe and define the mutual relations, to be observed between Government and other Local Authorities in any matter in which they are jointly interested; and

(viii) as to powers and function which the Colonization Officer will exercise.

Stamping and signature on notice or letters.—

21. Every notice or bill issued by Government under this Act, shall be signed by the Colonization Officer, and every such notice or bill shall be deemed to be properly signed, if it bears the facsimile of the signature of the Colonization Officer or is printed thereupon.

Method of giving public notice.—

22. Subject to the provisions of this Act, every public notice required under this Act shall be deemed to have duly given if it is published in some newspaper and posted upon a notice board to be exhibited for public information outside the office of the Colonization Officer.

Service of Notice.—

23. (1) Every notice other than a public notice, and every bill, issued under this Act shall, unless it is under this Act otherwise expressly provided, be served or presented—

(a) by giving or tendering the notice, or bill, or sending it by registere post, to the person to whom it is addressed, or.

[6] Now refers to the official Gazette of West Pakistan see W.P. Act XVI of 1957.

(b) If such person cannot be found, then by leaving the notice or bill at his last known place of abode, or by giving or tendering it to some adult male member or servant of his family, ordinarly residing with him, or by causing it to be affixed on some conspicuous part of the building or land to which it elates.

(2) When a notice is required or permitted under this Act to be served upon an owner, occupier or tenant, as the case may be, of a building or land it shall not be necessary to name the owner, occupier or tenant therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either:--

(a) by giving or tendering the notice, or sending it by post, to the owner, occupier or tenant, or if there be more owners, occupiers or tenants then to any one of them; or

(b) if such owner, occupier or tenant cannot be found, then by giving or tendering the notice to an adult male member or servant of his family ordinarily residing with him or by causing the notice to be affixed on some conspicuous part of the building or land to which it relates.

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon ad adult male member or servant of his family ordinarily residing with him shall be deemed to be service upon the minor.

Disobedent to Act or to notice.—

24. When a notice is issued under this Act, requiring the public or any person to do or to refrain from doing anything, a person who fails to comply with such requisition shall, if such failure is not an offence punishable under any other section, be liable, on conviction by a Magistrate, to a fine not exceeding five hundred rupees for every such failure, and in the case of a continuing breach, to a further fine which may extend to fifty rupees for every day after the date of the last conviction during which the offender is proved to have persisted in the breach:

Provided that when the notice fixes a time with certain acts is to be done, and no time is specified in this Act, it shall rest with the Magistrate to determine whether the time so fixed was a reasonable time within the meaning of this act.

Power of the Government to execute works on failure to comply with notice.—

25. If a notice has been given by Government under this Act to a person requiring him to execute a work in respect of any property, movable or immovable public or private, or to provide or do or refrain from doing anything within a time specified in the notice, and if such person fails to comply with such notice, then the Colonization Officer may cause such work to be executed or such thing to be provided or done, and may recover all expensed incurred by him on such account from the said person.

Liability of occupied to pay in default of owner.—

26. (1) If a person to whom the notice mentioned in Section 23, has been given, is the owner of the property in respect of which it is given, Government may (whether any action or other proceedings have been brought or taken against such owner or not) require the person if any, who is the occupier or tenant of such property or a part thereof under such owner, to pay to Government instead of paying to the owner, the rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under Section 25 and any such payment made by the occupier or tenant to Government shall be deemed to have been made the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1), Government may require an occupier or tenant of property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is payable; and if the occupier or tenant refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner.

Right of accupire to execute work in the default of owner.—

27. Whenever default is make by the owner of a building or land in the execution of a work required under this Act to be executed by him, the occupier or tenant of such building or land may, with the approval of Government cause such work to be executed and the expenses thereof shall be paid by the owner, or the amount may be deducted out of the rent form time to time becoming due from him to such owner.

Recovery of cost of work by the occupier.—

28. When the occupier or tenant of a building or land has, in compliance with a notice issued under this Act, executed a work for which the owner, of such building or land is responsible either in pursuance of the contract of tenancy or by law, he shall be entitled to recover from the owner by deduction from the rent payable by him the reasonable cost of such work.

Penalty for obstruction contractor or removing mark.—

29. if any person :-

(a) obstructs, or molests any person with whom Government has entered into a contract under this Act, in the performance or execution of the contract by such person, or

(b) removes any mark setup for the purpose of indicating any level or direction necessary to the execution of works authorised under this Act,

he shall be punishable with fine which may extend to two hundred rupees or with imprisonment for a term which may extend to two months.

Penalty for unauthorized cultination etc.—

30. If any person, in contravention of the provisions of this Act, or the rule framed thereunder or any general or special order issued:-

(a) clears or breaks up for cultivation or cultivates any land which is owned by or in the possession of Government and is not included in any tenancy or allocated residential enclosure, or which has been set apart for the common purposes of a town or a village community or section of the same or for a road, canal or water-course; or

(b) erects any building on any such land; or

(c) fells or otherwise destroys standing trees on such land; or

(d) otherwise encroaches on any such land; or

(e) makes an excavation or constructs a water channel on any such land; or

(f) does any other Act in contravention of any direction by the Government;

he shall be punishable with a fine which may extend to two hundred rupees.

Additional Powers of the colanization Officer.—

31. When the Colonization Officer is satisfied that an Act punishable under Section 30 has been committed, he may, in addition of any other penalty provided under this Act proceed as follows:-

(i) in the case of an offence under Section 30, sub-section (a) confiscate the crops growing on any land cultivated in contravention of this Act, or if the crops have been cut, recover such sum as he may assess as the value thereof from the offender;

(ii) in the case of an offence under Section 30, sub-section (c), recover such sum as he may assess as the value of the tree or trees destroyed;

(iii) in the case of an offence under Section 30, sub-section (b), (d), or (e), cause the building or other encroachment to be demolished or removed or the excavation or channels to be filled up and levy the cost of so doing from the person responsible for such Act; and

(iv) order that irrigation water shall not be allowed to him form such time as may be mentioned in the order.

Authority for prosecution.—

32. No court shall take cognizance of any offence punishable under this Act, except on the complaint of the Colonization Officer or some person authorised by him in this behalf.

Recovery of dues.—

33. The Colonization Officer or any person generally or specially authorised by him, may recover any sum due under this Act or by agreement made under this Act as if it were an arrear of land revenue.

General Power to pay compensation.—

34. In any case not otherwise expressly provided for in this Act, Government may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the power vested under this Act, in Government, or the Colonization Officer or any officer or servant of Government.

Compensation for damage to government property.—

35. In any case not otherwise

(1) If on account of any Act or omission, any person has been convicted of any offence under this Act, and by reason of such Act or omission damage has occurred to any property of Government, compensation shall be paid by the said person for the said damage notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Court before whom he was convicted of the said offence.

(3) If the amount of any compensation and under this section be not paid, the same shall be recovered, under a warrant from the said Magistrate, as if it were a fine imposed by him other person liable thereof.

6.1.1.14 NWFP New Irrigation Projects (Control and Prevention of Speculation in Land) Act 1950

THE NORTH-WEST FRONTIER PROVINCE NEW IRRIGATION PROJECTS (CONTROL AND PREVENTION OF SPECULATION IN LAND) ACT, 1950.

(ACT NO. XIX OF 1950).

(Received the assent of the governor, North-West Frontier Province on the 24th March, 1950).

AN ACT

to control the lands and their alienation in the Irrigation Projects areas.

Preamble. —

WHEREAS the Provincial Government contemplate to commence the execution of the New Irrigation Projects in order to conserve and utilize to the best advantage the waters of the Rivers and Sub-soil Waters,

AND WHEREAS considerable purchases of land which are of speculative character have been made or are likely to be made in the areas which are to be irrigated when the project are complete;

And whereas it is necessary that the Government should control the areas as well as the alientations;

It is hereby enacted as follows: -

Short title extnet and commencment. —

1. (1) This Act may be called the [1]North-West Frontier [2][Province] New Irrigation Projects (Control and Prevention of Speculation in land) Act, 1950.

(2) (a) It extends to the areas and villages in the North-West Frontier [3][Province] to be notified by the Provincial Government.

(b) The Provincial Government may by notification in the Official Gazette: -

(i) remove any specified area or village or portion of a village;

(ii) extend all or any of the provisions of the Act to any village or portion of a village or areas subject to such modifications as may be specified in the notification.

(iii) It shall come into force at once.

1 Now to be constructed as referring to the districts of Bannu, D.I. Khan, Hazara, Kohat, Mardan, and Peshawar see W.P. Act XVI of 1957 s.3 (1) Sch. 1.

2 The word “Province” inserted by n.-w

3 The word “Province” inserted by n.-w

Definition. —

2. In this Act, unless there is any thing repugnant in the subject or context :-

(1) "alienation" includes sale, mortgage, lease, gift, exchange but shall not include alienation of land in lieu of dower

(2) "prescribed" means prescribed by rules made under the Act.

(3) "project area" or "area" means area consisting of the villages or portion of villages or area notified by the Provincial Government from time to time.

(4) "Project land" or "land" means land in such area.

Appoint ment of Collector, his duties and Status. —

3. (1) The Provincial Government may, by notification in the official gazette appoint either by name or as holding any office for the time being, a Collector for any project area.

(2) The Collector so appointed shall perform such duties and exercise such powers as may be prescribed, for the purposes of carrying into effect the provisions of the Act and the rules made there-under.

(3) Every such Collector and every member of his staff appointed to assist him shall be deemed to be a "public servant" within the meaning of Section 21 of the Pakistan Penal Code.

Bar on Alienation of Project Land. —

4. No Person shall alienate land in project areas from the commencement of this Act, until the expiry of fifteen years after such date as may be notified by the Provincial Government as the date on which water from the Rivers and sub-soil waters is made available for the irrigation of the land.

Annulment cretain alienations. —

5. No alienation of any land in the project area made by as owner, his agent, assignee or attorney on or after the 15th of August 1947 and until the commencement of this Act, shall be effective as to confer any right or remedies on the party to such transfer any person claiming under him, unless such transfer is proved to be satisfaction of the Collector to *bona fide,* for a reasonable period and not speculative in character.

Valuation of Land in the Project areas. —

6. (a) The Collector shall value all lands in the project areas at the average price of such land prevailing during the five years commencing from the first of January, 1934 and ending with 31st December, 1938.

(b) For the purpose of determining the value, the Collector shall consider the following among other matters as evidence of such value:-

(i) the price or value actually received by the vendors from the vendees in the sale of project lands during the said five years;

(ii) the estimated amount of the average annual net assets of the land;

(iii) the land revenue assessed upon the land; and

(iv) the value of land as shown in mortgages during the said five years.

(c) Subject to the provision of the next succeeding sections valuation fixed by the Collector shall be final and shall not be called in question in any civil, revenue or criminal court.

Power of Provincial Government to revise valuation. —

7. The Provincial Government may revise the value of any land fixed by the Collector under Section 6 and fix any other valuation of such land as it deems fit, in which case the value fixed by the Government will be final and will not be called in question by any civil, revenue or criminal court.

Power of Provincial Government to revaluate lands within 15 years. —

8. The Provincial Government may, at any time within fifteen years after such date as may be notified in the official gazette as the date on which water from an Irrigation Project is made available for the irrigation of land, revalue the lands in the project area, which valuation fixed under section 6 or 7 and valuation so fixed shall be final and shall not be called in question in any civil, revenue or criminal court.

Differnece between the two valuations to be a debt payable by the owner. —

9. The difference which is found in revaluation between the first valuation under Section 6 or 7 and second valuation under Section 8 shall be a debt which the owner of the land for the time being shall be deemed to owe to the Provincial Government and on demand shall be liable to pay this debt in five equal annual installments to the Provincial Government. The debt or part of the debt due from the owner of the land shall be recovered as an arrear of land revenue.

Acquisition of land by Provincial Government. —

10. (1) Any person owning any land in the project area shall on demand made by the Provincial Government by notice in writing within 15 years from the commencement of this Act, be bound the sell the land or part of the land, as the case may be, to the Provincial Government at the price, mentioned in the notice.

(2) The Provincial Government may dispose of any project land which it owns or which it acquires by purchase under this section in any manner it thinks fit.

Alienation made in contravention of the Act to be null and void. —

11. Any alienation of project land made by a person against the provisions of this Act shall be null and void and shall not confess any right or remedies on the parties to such alienation or any person claiming under them.

Powr of the Provincial Government to call for and examine the reocrds. —

12. The [4][Board or Revenue] or the officer appointed by it in that behalf may at any time either *suo motu* or on application call for and examine the records relating to any order passed or proceedings taken under this Act by any authority or officer, for the purposes of satisfying itself or himself as the case may be as to the legality, regularity or propriety of such order or proceeding, and may pass such order in reference thereto as it thinks fit.

Finality of order.

13. No order passed by the Provincial Government or any authority or officer under this Act shall be called in question in any civil, revenue or criminal court.

[4] Subs. for "Provincial Government" by W.P. Act XVI of 1957, s.3. (3), Sch.- III

Bar of certain proceedings. —

14. (1) No suit or other proceeding shall lie against the Provincial Government for anything done or purporting to be done under this Act, or any rule made thereunder.

(2) No suit prosecution or other proceeding shall lie against any officer or servant of the Provincial Government for any act done or purporting to be done by such officer or servant under this Act or any rule made thereunder, without the previous sanction of the Provincial Government.

(3) No officer or servant of the Provincial Government shall be liable in respect of any such act in any civil or criminal proceedings, if the act was done in good faith in the course of the execution of duties or the discharge of functions imposed or authorised by or under this Act.

Powr to make Rules. —

15. (1) The Provincial Government may make rules to carry out all or any of the purposes of this Act and no inconsistent therewith.

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

(a) all matters expressly required or allowed by this Act to be prescribed;

(b) the opening and maintenance of a common register for the project area, showing the ownership, and changes in the ownership of lands therein and any other particulars which may be deemed necessary;

(c) the penalties which may be imposed for contravention of any of the provisions of this Act and the authority which may impose such penalties, provided that penalty shall not in any one case exceed one thousand rupees and;

(d) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act and fixing the time within which such proceedings shall be initiated.

(3) All rules made under this section shall be published in the official Gazette and upon such publication shall have effect as if enacted in this Act.

Powr to remove difficulties. —

16. If any difficulty arises in giving effect to the provisions of this Act the Provincial Government may, as occasion may require. by order do anything which appears to them to be necessary for the purpose of removing the difficulty.

Savings. —

17. Nothing in this Act shall apply to the acquisition of any land:-

(a) at a sale held by any Civil, Revenue or Criminal Court in execution of a decree or order; or

(b) at a sale conducted under any law for the time being in force for the recovery of any revenue due to the Provincial Government or of any sum recoverable as arrear of such revenue; or

(c) by exchange in accordance with any Scheme made or approved by the Provincial Government;

Provided that in cases falling under clause (a) or clause (b) the court which, or the officer, who ordered the land to be sold, may its or his own motion or on the application of the Provincial Government or any party to the proceedings, set aside the sale, the Court or officer is satisfied that the sale was a collusive transaction was made with a view to defeat or evade the provisions under this Act.

Punishment for obstruction in the execution of the project. —

18. Any person who obstructs or abets obstruction to the execution of the projects shall be liable to a term of imprisonment which may extend to one year or fine or both.

Effect on other enactments. —

19. The provisions of this Act shall take effect notwithstanding anything contained to the contrary in any other enactment for the time being in force.

6.1.2 Agriculture

6.1.2.1 NWFP Agriculture Development Authority (Dissolution) Ordinance 2001

ORDINANCE III OF 2001

NORTH-WEST FRONTIER PROVINCE AGRICULTURAL

DEVELOPMENT AUTHORITY (DISSOLUTION) ORDINANCE, 2001

An Ordinance to provide for the dissolution of the North-West Frontier Province Agricultural Development Authority

[Gazette of N.W.F.P. Extraordinary,
8th May, 2001]

No. Legis: 1(13)/72/2409, dated 8-5-2001. The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:-

Whereas it is expedient to provide for the dissolution of the Authority and for matters ancillary or incidental thereto;

And whereas the Provincial Assembly of the North-West Frontier Province is in abeyance and the Governor is satisfied that the circumstances exist which render it necessary to take immediate action;

Now, therefore, in pursuance of the Proclamation of the fourteenth day of October, 1999, and the Provisional Constitution Order No.1 of 1999, read with the Provisional Constitution (Amendment) Order No.9 of 1999, and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. Short title and commencement.—

(1) This Ordinance may be called the North-West Frontier Province Agricultural Development Authority (Dissolution) Ordinance, 2001.

(2) It shall come into force at once and shall be deemed to have taken effect on the appointed day.

2. Definition.—

In this Ordinance, unless the context otherwise requires;--

(a) “appointed day” means the first day of May, 2001 or such other date as Government may by Notification in Official Gazette, specify;

(b) "Authority" means the Agricultural Development Authority established under the North West Frontier Province Agricultural Development Authority Ordinance, 1980 (N.W.F.P Ord. No.1 of 1980);

(c) "Government" means the Government of the North-West Frontier Province.

3. Dissolution and repeal.—

On the appointed day the Authority shall stand dissolved, and as a corollary thereof, the North-West Frontier Province Agricultural Development Authority Ordinance, 1980 (N.W.F.P. Ordinance No.1 of 1980), shall stand repealed.

4. Transfer of states and liabilities.—

(1) Notwithstanding anything contained in the North-West Frontier Province Agricultural Development Authority Ordinance, 1980 (N.W.F.P. Ordinance No.1 of 1980), or in any law, agreement or contract for the time being in force, the Governor may, at any time before the appointed day, by order direct that any business, project, undertaking or property (movable and immovable) of the Authority shall be transferred to Government on such date, in such manner and to such extent as may be specified in the order, and the business, project, undertaking and property, if any, so transferred shall vest in Government and shall be disposed of in such manner as may be prescribed by rules under this Ordinance.

(2) Government may set up a committee, consisting of such members as deemed appropriate which will be responsible to sum up the consequences of the dissolution of the Authority and make recommendations for appropriate action.

(3) Government may also appoint one or more officers and staff members, who shall be responsible for carrying out the actions in consequence of the dissolution of the Authority and to take necessary steps in that behalf.

5. Employees of the Authority.—

The employees of the Authority shall be dealt with in accordance wit the terms and conditions of their appointment under the Authority.

6. Supplemental powers.—

Without prejudice to the provisions of this Ordinance, the Governor may, in such manner as he may consider necessary or expedient, provide for the removal of the difficulties arising out of, or in connection with, the dissolution of the authority or for effectively carrying out the purposes of this Ordinance.

6.1.2.3 Seed Act, 1976

THE SEED ACT, 1976

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[1]ACT No. XXIX of 1976

[11th May, 1976]

An Act to provide for controlling and regulating the quality of seeds of various varieties of crops.

WHEREAS it is expedient to provide for controlling and regulating the quality of seeds of various varieties of crops and for matters connected therewith;

AND WHEREAS the Provincial Assemblies of the Punjab, Sind, the North-West Frontier Province and Baluchistan have passed resolutions under Article 144 of the Constitution of the Islamic Republic of Pakistan to the effect that Parliament may by law regulate and control the quality of seeds of various varieties of crops;

It is hereby enacted as follows:-

PRELIMINARY

1. (1) This Act may be called the Seed Act, 1976.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. In this Act unless there is anything repugnant in the subject or context:-

(a) "approved seed" means seed true to species as approved by the Federal Seed Certification Agency;

(b) "basic seed" means seed produced by an organization set up by a Provincial Government for the purpose;

(c) "certified seed" means seed certified by the Federal Seed Certification Agency;

(d) "Federal Seed Certification Agency" means the Federal Seed Certification Agency established under section 5;

(e) "National Registration Agency" means the National Registration Agency established under section 7;

(f) "National Seed Council" means the National Seed Council established under section 3;

(g) "notified variety or species" means a variety or species which has been notified as such under section 10;

(h) "post-control" means a trial to check on varietal authenticity and purity of the certified seed;

(i) "pre-basic seed" means seed of high genetic purity produced by a plant breeder;

(j) "prescribed" means prescribed by rules;

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(k) "Provincial Seed Council" means a Provincial Seed Council established under section 9;

(l) "registered variety" means a variety registered by the National Registration Agency under section 8.

(m) "registered grower" means a person or group of persons engaged in producing seed and registered as such under this Act;

(n) "released variety" means a registered variety having agricultural value for growing in a Province and approved by the Provincial Seed Council.

(o) "rules" means rules made under this Act;

(p) "seed" means any of the following classes of seeds used for sowing or planting namely:-

(i) Seeds of food crops including edible oil seed and seeds of fruits and vegetables;

(ii) cotton seed;

(iii) Seeds of fodder; and includes seedlings, rubers, bulbs, rhizomes, roots, cuttings, all types of grafts and other vegetatively propagated material of food crops or fodder.

(q) "Seed Analyst" means a Seed Analyst appointed under section 17;

(r) "Seed Certification Officer" means a Seed Certification Officer appointed under section 18;

(s) "Seed Inspector" means a Seed Inspector appointed under section 19;

(t) "species" means a group of plants representing a crop known by a common name, such as, wheat, paddy and cotton belonging to one species sub species or forma; and

(u) "Variety" means a group of plants belonging to a species which for cropping purpose is considered as an individual unit and can be distinguished from other varieties of the same species.

3. As soon as may be after the commencement of this Act, the Federal Government shall establish a National Seed Council under the Chairmanship of the Federal Minister-in-Charge of Agriculture for the performance of such functions as may be entrusted to it under this Act.

4. The functions of the National Seed Council inter-alia shall be:-

(i) to advise no policy for the development, operation and regulation of the Provincial seed industries;
(ii) to maintain a watch on the operation of the provisions
(iii) to guide in administering the seed quality control service;
(iv) to direct initiation of Provincial Seed Projects;
(v) to ensure and protect investment in the seed industry;
(vi) to approve and sanction seed standards;
(vii) to regulate inter Provincial seed movement;
(viii) to advise on import of seeds;
(ix) to coordinate multiplication and supply of seeds of approved varieties;
(x) to coordinate the arrangements for the maintenance of genetic potential; and

(x) to assist in developing approved seed production farms.

5. As soon as may be after the commencement of this Act, the Federal Government shall establish a Federal Seed Certification Agency for the performance of such functions as may be entrusted to it under this Act.

6. The Federal Seed Certification Agency shall perform the following functions, namely :-
   (a) controlling the quality of seeds;
   (b) registering growers in such manner and subject to such conditions as may be prescribed;
   (c) certification of seeds;
   (d) field inspection of the crops of registered varieties and released varieties intended for sale as basic seed or certified seed;
   (e) sampling and testing of seed lots intended for sale in order to ascertain their purity, viability, germination capacity and health status in the prescribed manner;
   (f) issuing certificates in respect of seeds which meet the prescribed standards of particular category of seeds;
   (g) carrying out post-control trials on pre-basic, basic and certified seeds;
   (h) sampling and analysing seed lots delivered to the processing plants to establish a basis for the purchase of such lots;
   (i) arranging training courses for seed Certification Officer; and
   (j) providing technical and specialist advice and assistance to the National Seed Council in the performance of its functions.

7. As soon as may be after the commencement of this Act, the Federal Government shall establish a National Registration Agency for the performance of such functions as may be entrusted to it under this Act.

(i) conduct pre-registration checking of varieties submitted for the purpose of:-
   (a) determining suitability for registration as a variety;
   (b) providing definitive botanical description of crop varieties; and
   (c) providing information on genetic suitability and adaptability of varieties;

(ii) register seed varieties after conducting pre-registration checking under clause (i);

(iii) publish a list of registered-seed varieties; and

(iv) perform such other functions as the National Seed Council may entrusted to it.

9. As soon as may be after the commencement of this Act, each Provincial Government shall establish a Provincial Seed Council for the performance of such functions for the purposes of this Act as may be entrusted to it by the Federal Government, in consultation with the Provincial Government.

10. The Federal Government may, by notification in the official Gazette, specify:-
(a) the varieties or species of seed approved for production in a Province or any part thereof;
(b) the minimum limits of germination and purity standards to which such seed shall conform; and
(c) the mark and label to indicate that such seed conforms to the minimum limits of germination and purity standards and the particulars which such mark or label may contain.

11. No person shall sell, offer for sale, or advertise or hold in stock for sale, or barter or otherwise supply, and seed of any notified variety or species unless:-
    (a) such seed is identifiable as to its variety or species;
    (b) such seed conforms to the minimum limits of germination and purity standards as laid down under section 10;
    (c) the container of such seed bears the mark and label containing correct particulars thereof in the prescribed manner; and
    (d) he complies with such other requirements as may be prescribed.

12. The Federal Seed Communication Agency may, on any recommendation of a Provincial Seed Council, register any farmer or grower as a registered grower to produce seed in the prescribed manner.

13- (1) Any person intending to produce notified varieties or species of seed, or stock for sale, or offer for distribution or otherwise supply seed of a notified variety or species may, if he desires to have such seed certified or tested by the Federal Seed Certification Agency, apply to the said Agency for the grant of a certificate for this purpose.

(2) Every application under sub-section (1) shall be in such form and be accompanied by such fee and contain such information as may be prescribed.

(3) On receipt of an application under sub-section (1), the Federal Certification Agency, may after such enquiry as it thinks fit and after satisfying itself that the seed to which the application relates conforms to the minimum prescribed standards, grant a certificate in such form and on such conditions as may be prescribed.

14- (1) The registration of a grower for producing seeds shall be effective for such period, not exceeding five years, as may be prescribed.

(2) The certification of the notified varieties and species of seeds shall be effective for such period as may be prescribed.

15. If, at any time after certification under sub-section (3) of section 13, the Federal Seed Certification Agency is satisfied, either on a reference made to it in this behalf or otherwise, that:-

(i) the certificate granted by it has been obtained by mis-representation or suppression of an essential fact; or

(ii) the holder of the certificate has, without cause, failed to comply with the conditions subject to which the certificate has been granted or has contravened any of the provisions of this Act or the rules,

then, without prejudice to any other penalty to which the holder of the certificate may be liable under this Act, the Federal Seed Certification Agency may, after giving the holder an opportunity of showing cause, cancel the certificate.

16- (1) Any person aggrieved by a decision of the Federal Seed Certification Agency under section 15 to cancel a certificate may, within thirty days from the date on which the decision to cancel the certificate is communicated to him and on payment of such fee as may be prescribed, prefer an appeal to the Federal Government or any other authority as it may determine from time to time.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall, after giving the appellant an opportunity of being heard, dispose of the appeal as expeditiously as possible.

(3) The order of the appellate tribunal provided that the power to break open the door shall be exercised only after the owner or any other person in occupation of the premise, if he is present therein, refuses to open the door on being called upon to do so.

(5) Where the Seed Inspector takes any action under sub-section (1), he shall, as far as possible, call not less than two persons of the locality to be present at the time when such action is taken and take their signature on a memorandum to be prepared in the prescribed form and manner.

(6) The provisions of the Code of Criminal Procedure, 1898 shall, so far as may be, apply to any search or seizure made under this section as they apply to any search or seizure made under the authority of a warrant issued under section 98 of the said Code.

21- (1) Whenever a Seed Inspector intends to take a sample from the crop of any notified variety or species for analysis, he shall:-

(a) give notice in writing of his intention to do so to the person from whom he intends to take sample; and

(b) except in special cases provided by rules, take three representative samples in the prescribed manner and mark and seal or fasten up each sample in such manner as its nature permits.

(2) When samples of any seed of any notified variety or species are taken under sub-section (1), the Seed Inspector shall:-

(a) deliver one sample to the person from whom it has been taken;

(b) send, in the prescribed manner, another sample for analysis to the Seed Testing Laboratory of the area within which such sample has been taken; and

(c) retain the remaining sample in the prescribed manner for production in case any legal proceedings are taken.

(3) Where a Seed Inspector makes an order under clause (a) of sub-section (2) of section 20.

(a) he shall use all despatch in ascertaining whether or not the seed contravenes any of the specifications laid down under section 10, and, if it is ascertained that the seed does not so contravene, forthwith revoke the order passed under the said clause or, as the case may be, taken such action as may be necessary for the return of the stock of the seed seized thereunder;

(b) if the stock of the seed seized under that clause does not conform to the aforesaid specifications, he shall, as soon as may be, report the matter to a Magistrate and take his orders as to the custody thereof; and

(c) without prejudice to the institution of any prosecution, in the alleged offence is such that the defect may be removed by the processor of the seed, he shall, on being satisfied that the defect has been so removed, forth with revoke the order passed under the said clause.

(4) Where a Seed Inspector seizes any record, register, documents or any material object under clause (b) of sub-section (2) of section 20, he shall, as soon as may be, report the matter to a Magistrate and take his orders as to the custody thereof.

22- (1) The Seed Testing Laboratory shall, as soon as may be after the receipt of the sample under section 21, analyse the sample and deliver, in such form as may be prescribed, one copy of the report of the result of the analysis to the Seed Inspector and another copy thereof to the person from whom the sample has been taken.

(2) The production in any inquiry, trial or other proceedings under this Act of a report under the hand of a Seed Analyst in the form prescribed shall, until the contrary is proved, be sufficient to prove the facts stated therein.

(3) When any person is accused of an offence under this Act, the court may, if it considers necessary in the interest of justice and the accused deposits in the court a sum of money in accordance with the scale prescribed, summon as a witness the Seed Analyst who analysed the sample in respect of which such person is accused of having committed an offence, and, if such person is acquitted, any sum of money so deposited shall be refunded to him.

23. Whoever:-

(i) contravenes any provision of this Act or any rule; or

(ii) prevents a Seed Certification Officer or a Seed Inspector from taking a sample or inspecting seed under this Act; or

(iii) prevents any official from exercising any power conferred on him by under this Act, shall be punishable:-

(a) for the first offence, with fine not exceeding one thousand rupees;

(b) where the offence continues after conviction, with a further fine of one hundred rupees for each day during which the offence continues; and

(c) for a subsequent offence, with imprisonment for a term which may extend to six month, or with fine, or with both.

24. If any person is convicted of an offence punishable under this Act in respect of any notified variety or species of seed, the court convicting him shall further direct that the seed shall be forfeited to the Federal Government.

25. (1) No court interior to that of a Magistrate of the first class shall try an offence punish magistrate Act.

(2) No court shall take cognizance of an offence punishable under this Act except upon a complaint in writing made by the Federal Seed. Certification Agency or a person authorised by it in this behalf by an order in writing.

26. Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a court shall presume within the meaning of the Evidence Act, 1872 that such order was so made by that authority.

27. No suit, prosecution or other legal proceeding shall lie against any person for anything which is an good faith done or intended to be done under this Act or the rules.

28. The Federal Government may, by notification in the official Gazette, direct that all or any of its powers under this Act or the rules shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercisable also by-

a) a provincial Government ; or

b) an officer or authority subordinate to the Federal Government.

29. (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act,

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

(a) the requirements which shall be complied with by the registered growers or a person carrying on the business of seed production, processing or distribution;

(b) the requirements which shall be complied with by the registered growers or a person carrying on the business of seed production, processing or distribution;

(c) the form of application for the grant of a certificate under section 13, the particulars it shall contain, the fees which shall accompany it, the form of the certificate and the conditions subject to which the certificate may be granted;-

(d) the records to be maintained by a registered grower or a person carrying on the business referred to in sub-section (1) of section 13 and the particulars which such records shall contain;

(e) the form and manner in which, and the fee on payment of which, an appeal may be preferred under section 16 and the procedure to be followed by the appellate authority in disposing of the appeal;

(f) the qualifications and duties of a Seed Certification Officer;

(g) he manner in which samples may be taken by the Seed Inspector, the procedure for sending such samples to the Seed Testing Laboratory- and the manner of analysing- such samples ;

(h) the form of report of the result of the analysis under sub-section (1) of section 22 and the fees payable in respect thereof ;

(i) the powers and functions of a Seed Analyst ; and

(j) any other matter is to be or may be prescribed.

30. If any person fraudulently retains, or willfully secretes, makes away with or detains a message which ought to have been delivered to some other person, or, being required by a telegraph officer to deliver up any such message, neglects or refuses to do so, he shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

31. A telegraph officer shall be deemed a public servant within the meaning of sections 161, 162, 163, 164 and 165 of the Pakistan Penal Code; and in the definition of “legal remuneration” contained in the said section 161, the word

"Government" shall, for the purposes of this Act, be deemed to include a person licensed under this Act.

32. Whoever attempts to commit any offence punishable under this Act shall be punished with the punishment herein provided for the offence.

PART V
SUPPLEMENTAL PROVISIONS

33- (1) Whenever it appears to the [2][Provincial Government] that any act causing or likely to cause wrongful damage to any telegraph is repeatedly and maliciously committed in any place, and that the employment of an additional police-force in that place is thereby rendered necessary, the [1][Provincial Government] may send such additional police-force as it thinks fit to the place, and employ the same therein so long as, in the opinion of that Government, the necessity of doing so continues.

(2) The inhabitants of the place shall be charged with the cost of the additional police-force, and the District Magistrate shall, subject to the orders of the [1][Provincial Government], assess the proportion in which the cost shall be paid by the inhabitants according to his judgement of their respective means.

(3) All moneys payable under sub-section (2) shall be recoverable either under the warrant of a Magistrate by distress and sale of the moveable property of the defaulter within the local limits of his jurisdiction, or by suit in any competent Court.

(4) The [1][Provincial Government] may, by order in writing, define the limits of any place for the purposes of this section.

34. [Application of Act to Acceding States] Omitted by the Federal Laws (Revision and Declaration) Ordinance, 1981 (XXVII of 1981), s.3 and Sch.II.

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6.1.2.4 Chemical Fertilizers (Development Surcharge) Act 1973

THE CHEMICAL FERTILIZERS (DEVELOPMENT SURCHARGE) ACT, 1973

ACT No. XLI OF 1973

27th June, 1973

An Act to provide for the levy and collection of a development surcharge on chemical fertilizers and for matters connected therewith

WHEREAS it is expedient to provide for the levy and collection of a development surcharge on chemical fertilizers and for matters connected therewith;

It is hereby enacted as follows:-

1-(1) This Act may be called the Chemical Fertilizers (Development Surcharge) Act, 1973.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. In this Act, unless there is anything repugnant in the subject or context:-

(a) "company" means any company engaged in the business of manufacturing chemical fertilizers;

(b) "development surcharge" means the surcharge payable under section 3;

(c) "differential margin", in relation to a chemical fertilizer, means the amount by which the maximum sale price of that fertilizer exceeds its maximum retail selling price as in force immediately before the commencement of the Chemical Fertilizers (Development Surcharge) Ordinance, 1973, hereinafter referred to as the said Ordinance, or, as the case may be, the amount by which its maximum sale price exceeds the aggregate of its ex-factory price and the incidental charges;

(d) "ex-factory price", in relation to a chemical fertilizer produced by a factory, means such ex-factory price of that fertilizer as the Federal Government may, by notification in the official Gazette, declare to be the ex-factory price having regard to the cost of production of such factory;

(e) "incidental charges" means the aggregate of the freight by rail or road and such distribution consists as the Federal Government may, by notification in the official Gazette, fix;

(f) "landed cost" in relation to any chemical fertilizer, means the aggregate of c.i.f. value, duties, taxes, fees and other charges payable on or after the import of that fertilizer into Pakistan;

(g) "maximum sale price", in relation to a chemical fertilizer, means such retail price of that fertilizer, not exceeding 125 percent, of its landed cost, as the Federal Government may, by notification in the official Gazette; declare to be the maximum sale price.

3- (1) Subject to the provisions of this Act, every company shall pay to the Federal Government a development surcharge equal to the differential margin in respect

of a chemical fertilizer produced by it, including a chemical fertilizer so produced and held in stock immediately before the commencement of the said Act.

(2) Subject as aforesaid, every stockist shall pay to the Federal Government a development surcharge equal to the differential margin in respect of a chemical fertilizer held by him in stock immediately before commencement of the said Ordinance.

4- (1) Subject to such conditions, limitations or restrictions as it may think fit to impose, the Federal Government may, in such general cases as it may prescribe by rules or in particular cases by special order, exempt a company from the payment of the development surcharge in respect of all or any of the fertilizer or authorise the refund in whole or in part of the development surcharge paid by a company.

(2) Subject to any rules made under this Act, the development surcharge shall be collected in the same manner as a duty of excise leviable under the Central Excise and Salt Act, 1944 is collected.

5- (1) Notwithstanding anything contained in any other law, no company or stockist shall sell any chemical fertilizer at a price higher than the maximum sale price.

(2) A contravention of sub-section (1) shall be deemed to be a contravention of an order made under the Essential Commodities Act, 1957, and all the provisions of that Act, shall have effect accordingly.

6. Notwithstanding anything contained in any other law, the amount of the development surcharge paid by a company or stockist under section 3 shall be an expenditure for which allowance is to be made in computing profits or gains under sub-section (2) of section 10 of the Income-tax Act, 1922.

7. The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

8. The Federal Government may by notification in the official Gazette, direct that all or any of its powers under this act or the rules made thereunder shall in such circumstance and under such conditions, if any, as maybe specified in the direction, be exercised also by and officer or authority subordinate to the Federal Government.

9. The Chemical Fertilizers (Development Surcharge Ordinance, 1973, is hereby repealed)

6.1.2.5 Loans for Agricultural Purposes Act 1973

THE LOANS FOR AGRICULTURAL PURPOSES ACT, 1973

ACT NO. XLII OF 1973

[27th June, 1973]

An Act to provide for credit facilities for persons engaged in agriculture

WHEREAS it is expedient to provide for credit facilities for persons engaged in agriculture;

It is hereby enacted as follows:-

1-(1) This Act may be called the Loans for Agricultural Purposes Act, 1973.
(2) It extends to the whole of Pakistan.
(3) It shall come into force at once.

2. The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

3. In this Act, unless there is anything repugnant in the subject or context:-

(a) "bank" means a schedule bank within the meaning of the State Bank of Pakistan Act, 1956, and includes the Agricultural Development Bank of Pakistan established under the Agricultural Development Bank Ordinance, 1961;

(b) "land" means land used for agricultural purposes or for purposes subservient to agriculture;

(c) "land-owner" has the same meaning as in the West Pakistan Land Revenue Act, 1967, but does not include a lessee or a mortgage.

(d) "loans or advances" means loans or advances for agricultural purposes;

(e) "prescribed" means prescribed by rulesmade under this Act; and

(f) "Revenue Officer" has the same meaning as in the West Pakistan Land Revenue Act, 1967, and include a Naib Tehsildar and Head Munshi.

4- (1) A Land owner applying to any bank for the grant of a loan or advance may, for the purpose of enabling the bank to take action in accordance with sub-section (4); produce before the bank a pass book prepared in the prescribed form and manner setting out particulars of the land owned by him.

(2) The entries in the pass book shall be authenticated by the Revenue Officer and shall be prima facie evidence of the title of the holder of the pass book to the parcels of land entered in the pass book, free of any prior encumberance, unless otherwise specified therein.

(3) The pass book shall be deemed to be a title deed and accepted as such by the bank for granting a loan or advance to a land-owner on the security of such land entered therein as he may indicate.

(4) If the bank grants a loan or advance to the land-owner on the production of the pass book, the bank shall endorse the pass book against the entry relating to the land on the security of which the loan or advance is granted by it.

(5) The endorsement made in the pass book under sub-section (4) shall create a charge in favour of the bank on the land against the entry relating to which the endorsement has been made and the land-owner shall be debarred from alienating the land until the outstanding amount of the loan or advance granted by the bank has been repaid.

(6) Any alienation of land in contravention of sub-section (5) shall be void.

(7) If the land-owner fails to repay the amount of the loan or advance in accordance with the terms of his agreement with the bank, the bank may, without prejudice to any other legal remedy available to it, apply to the Collector for the recovery of the amount in default as an arrear of land revenue and there-upon all the provisions of the Revenue Recovery Act, 1890, shall apply to the recovery of the amount in default as they apply to the recovery of an arrear of land revenue.

5- (1) The Federal Government or, if the Federal Government so direct, the Provincial Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may specify the ratio to be maintained by the scheduled banks between loans and advances granted to land-owners having land not exceeding a subsistence holding, those having land exceeding such holding but not exceeding an economic holding and those having land exceeding an economic holding.

Explanation:- In this sub-section, "subsistence holding" and "economic holding" have the same meaning as in the Land Reforms Regulation, 1972.

(3) The ratio specified in the rules shall not be varied:-
(i) to the disadvantage of land-owners having land not exceeding a subsistence holding and to the advantage of land-owners having land exceeding a subsistence holding; or

(ii) to the disadvantage of land-owners having land less than an economic holding and to the advantage of land-owners having land exceeding an economic holding.

6. The Loans for Agricultural Purposes Ordinance, 1973, is hereby repealed.

6.1.2.6 Agricultural Pesticides Ordinance 1971

THE AGRICULTURAL PESTICIDES ORDINANCE, 1971

ORDINANCE NO. II OF 1971

[25th January,1971]

An Ordinance to regulate the import, manufacture, formulation, sale, distribution and use of pesticides

WHEREAS it is expedient to regulate the import, manufacture, formulation, sale, distribution and use of pesticide and for matters ancillary thereto;

AND WHEREAS the national interest of Pakistan in relation to the achievement of uniformity requires Central legislation in the matter;

Now, THEREFORE, in pursuance of the Proclamation of the 25th day of March, 1969, read with the Provisional Constitution Order, and in exercise of all powers enabling him in that behalf, the President is pleased to make and promulgate the following Ordinance:-

CHAPTER I
INTRODUCTORY

1. Short titles extent and commencement.—

(1) The Ordinance may be called the Agricultural Pesticides Ordinance, 1971.
(2) It extends to the whole of Pakistan.
(3) It shall come into force at once.

2. Application of other laws not barred.—

The provisions of this Ordinance shall be in addition to and not in derogation of the provisions of the Poisons Act, 1919, and any other law for the time being in force.

3. Definitions.—

In this Ordinance, unless there is anything repugnant in the subject or context, the expression:-

(a) "adulterated" when used with reference to a pesticide means any pesticide the strength or purity of which falls below the professed standard or quality which is expressed on its label or under which it is sold or a pesticide any valuable ingredient of which has been wholly or partially extracted;

(b) "advertise" means to make known by publication or distribution of any advertisement, circular or other notice;

(c) "brand" means the trade name applied by an importer, manufacturer, formulator or vendor to the goods imported, manufactured or sold by him;

(d) "Committee" means the Agriculture Pesticide Technical Advisory Committee constituted under this Ordinance;

(e) "formulation" means the process by which a pesticide is converted, by mixing with other substances, into a form in which it is ready to be used;

(f) "fungi" means all rusts, smuts, mildews, moulds, yeasts, and similar forms of plant life prescribed in this behalf and includes bacteria affecting plant life;

(g) "Government Analyst" means a Government Analyst appointed under this Ordinance;

(h) "guarantee" means the statement indicating the strength, effectiveness and other qualities of a brand of a pesticide which an importer, manufacturer, formulator, vendor or person holding stock for sale of a brand of a pesticide is required to submit under the rules at the time of applying for the registration of the brand;

(i) "Inspector" means an Inspector appointed under this Ordinance;

(j) "ingredient" means any material used in making a pesticide;

(k) "insect" means any of the small invertebrate animals commonly known as insects and include such forms of animal life as may be prescribed;

(l) "label" means the written, printed or graphic matter on, or attached to, a pesticide or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide;

(m) "package" includes every container;

(n) "pesticide" means any substance or mixture of substances used or represented as a means for preventing, destroying, repelling, mitigating or controlling, directly or indirectly, any insect, fungus, bacterial organism, nematodes, virus, weed, rodent, or other plant or animal pest; but does not include a substance which animal pest; but does not include a substance which is a 'drug' within the meaning of the Drugs Act. 1940;

(o) "prescribed" means prescribed by rules made under this Ordinance;

(p) "registered" means registered under this Ordinance;

(q) "registration number" means a specific number assigned by the federal Government to each registered branch of pesticide;

(r) "rules" means rules made under this Ordinance; and

(s) "weed" means any plant which grows where not wanted.

CHAPTER II
IMPORT, MANUFACTURE, FORMULATION, SALE, DISTRIBUTION, AND USE OF PESTICIDES

4. **Pesticides to be registered.—**

No person shall import, manufacture, formulate, sell, offer for sale, hold in stock for sale or in any manner advertise any brand of pesticide which has not been registered in the manner hereinafter provided.

5. Application for registration of pesticides.—

(1) Any person intending to import, manufacture, formulate, sell, offer for sale, hold in stock for sale or advertise any brand of a pesticide may apply to the Federal Government for the registration of the brand under such name as he may indicate in the application.

(2) An application under sub-section (1) shall be in such form, be accompanied by such fee and contain such statements and information as may be prescribed.

(3) Where the person making an application under sub-section (1) is not domiciled in Pakistan, the application shall, besides such person, be signed by his agent or representative in Pakistan.

(4) Upon the receipt of an application under sub-section (1), the Federal Government may register a brand of a pesticide by the name indicated in the application, if it is satisfied that:-

(a) the brand is not such as would tend to deceive or mislead the purchaser with respect to the guarantee relating to the pesticide or its ingredients or the method of its preparation; or

(b) the guarantee relating to the pesticide or its ingredients is not the same as that of another registered brand by the same manufacturer or is not so similar thereto as to be likely to deceive; or

(c) it is effective for the purpose for which it is sold or representative to be effective; or

(c) it is not generally detrimental or injurious to vegetation, except weeds, or to human or animal health, even when applied according to directions.

(5) When it registers a brand of a pesticide on the application of any person, the Federal Government shall grant to him a certificate of registration in such form as may be prescribed.

6. Period for which registration shall be effective.—

The registration of a brand of a pesticide shall be effective from the date of its registration until the thirtieth day of June of the third year following the year of registration.

7. Cancellation of registration.—

If, at any time after the registration of the brand of a pesticide, the Federal Government is of opinion that the registration has been secured in violation of any of the provisions of this Ordinance or the rules or that the pesticides is ineffective against pests or hazardous to vegetation, other than weeds, or to human or animal life, the Central Government may, after giving to the person on whose application it had been registered an opportunity of being, cancel the registration.

8. Renewal of registration.—

(1) The Central Government may, on the application of the importer, manfacturer, formulator, vendor or stock holder of a registered brand of a pesticide in the guarantee or ingredients of which no change has taken place since the date of its registration, renew the registered of the brand for a further period of three years.

(2) An application under subsection (1) shall be in such form and be accompanied by such fee as may be prescribed and shall be made before the expiration of the period for which the registration of the bran to which it relates is effective.

9. Importation may be prohibited.—

If any pesticide imported into Pakisan is found to be adulterated or incorrectly or misleadingly tagged, labelled or named, or if its sale in any way contravenese any of the provisions of this Ordinance, the Central government may, by notification in the official Gazette, prhoibit the further import of the pesticide into Pakistan.

10. Labelling of packages.—

No person shall sell or offer or expose for sale, or advertise or hold in stock for sale any pesticide unless each package containing the pesticide, and every tag or label durably attached thereto, is branded or marked in printed characters in such form and in such manner as may be prescribed.

11. Storage and use of pesticides.—

No person shall store or use any pesticide save in accordance with rules made under this Ordinance.

CHAPTER III
AGRICULTURE PESTICIDE TEHCNICAL ADVISORY COMMITTEE ETC.

12. THE AGRICULTURE Pesticide Technical Advisory Committee.—

(1) As soon as may be after the commencement of this Ordinance, the Central Governmen shall constitute a committee, to be called the Agriculture Pesticide Technical Advisory Committee, to advise the Central Government on echnical matters arising out of the administration of this ordinance and to perform any other functions assigned to it by or under this Ordinance.

(2) The Committee shall consist of a Chairman and such number of Vice-Chairman and other members, being officers of the Central Government or a Provincial Government or persons representing trade and industry engaged in presticide business, as the Central Government may appoint:

Provide that no officer of a provincial Government and no person representing trade and indusry so engaged in a province shall be appointed otherwise than on the ecommendation of the Government of the Province concerned.

(3) The names of the Chairman the Vice-Chairman and the other members of the Committee shall be published in the official Gazette.

(4) The Central Government shall appoint one of the members of the Committee, being an officer of that Government, to be the Secreary of the Committee for the period for which he is such a member.

(5) The non-official members of the Committee shall hold office for a term of three years and shall be eligible for re-appointment.

(6) A member of the Committee may, at any time, resign his office by writing under his hand addressed to the Chairman; but the seat of such member shall not be deemed to have

fallen vacant unless the registration has been accepted by the Chairman with the previous approval of the Federal Government.

(7) A person appointed to fill a vacancy created by the registration or death of a member shall hold office for the residue of the term of his predecessor.

(8) The functions of the Committee may be exercised notwithstanding any vacancy in the membership thereof.

(9) The Committee shall have the power to regulate with the prior approval of the Federal Government the procedure for the conduct of its business.

(10) The Committee may appoint sub-committees consisting of specialists for the consideration of particular matters for such periods, not exceeding three years, as it may consider necessary.

13. Pesticides laboratory.—

(1) As soon as may be after the commencement of this Ordinance the Federal Government shall set up a Pesticide Laboratory suitably equipped to carry out the functions entrusted to it by or under this Ordinance.

(2) The function of the Pesticide Laboratory and the mode of submission of samples for analysis or test to the Laboratory shall be such as may be prescribed.

(3) The secretary of the formulate of brands of pesticides, samples of which are submitted to the Pesticide Laboratory for analysis or test, shall be duly safeguarded in the manner prescribed.

14. Governemnt Analyst.—

The Federal Government may, by notification in the official Gazette, appoint as many persons as it deems fit to be Government Analyst for pesticides and, where it appoints more than one person to be Government Analysts, shall specify in the notification the local limits within which each one of them shall perform the functions of Government Analysts.

15. Inspector.—

The Federal Government may, by notification in the official Gazette, appoint from amongst the officers of the Federal Government or a provincial Government employed for working relating to plant protection such number as it deems fit to be Inspectors within such local limits as may be specified in the modification.

16. Powers of Inspector.

An Inspector may, within the local limits for which he is appointed, enter upon any premises where pesticides are kept or stored, whether in containers or in bulk, by or on behalf of the owner, including premises belonging to a bailee, such as a railway, a shipping company or any other carrier, and may take samples therefrom for examination. No compensation shall be payable for a reasonable quantity taken as a sample.

17. Procedure of Inspetor.—

(1) Where an Inspector takes a sample of a pesticide for the purpose of test or analysis under section 16, he shall intimate such purpose in writing in the prescribed form to the person from whose possession he takes it and, in the presence of such person (unless he wilfully absents himself), shall divide the sample into three portions and effectively seal and suitably mark the same and permit such person to add his own seal and mark to all or any of the portions so sealed and marked.

Provided that, where the pesticide is made up in containers of small volume, instead of dividing a sample as aforesaid, the Inspector may, and if the pesticide be such that it is likely to deteriorate or be otherwise damaged by exposure shall, take three of the said containers after suitably marking the same and, where necessary, sealing them.

(2) The Inspector shall restore one portion of a sample so divided or one container, as the case may be, to the person from whom he takes it, and shall retain the remainder and dispose of the same as following:-

(i) he shall forthwith send one portion or container to the Government Analyst for test or analysis; and

(ii) he shall send the second portion or container to the Federal Government.

18. Report of Government Analyst.—

(1) The Government Analyst to whom a sample of any pesticide has been forwarded by an Inspector under sub-section (2) of section 17 shall deliver to the Inspector, in triplicate in the prescribed form, a signed report of the result of the test or analysis conducted by him.

(2) The Inspector shall deliver one copy of the report received by him to the person from whose possession the sample was taken and shall send one copy to the Federal Government.

(3) Any document purporting to be a report signed by the Government Analyst of an analysis conducted by him under this Chapter shall be conclusive evidence of the particulars stated therein unless the person to whom the report has been delivered under sub-section (2) dispute the correctness of the analysis conducted by the Government Analyst and, within thirty days of the delivery of the report to him, places before the Federal Government evidence which in his opinion controverts the correctness of such analysis.

(4) Where the evidence placed before the Federal Government under sub-section (3) is such as would in its opinion justify a further investigation, it may cause a second part of the same sample to be analysed at the Pesticide Laboratory.

(5) After the sample forwarded to it by the Federal Government has been analysed by the Pesticide Laboratory, the Laboratory shall record the result of the analysis in a certificate of analysis and forward the certificate to the Federal Government.

(6) A certificate of analysis prepared by the Pesticide Laboratory shall be conclusive evidence of the facts stated therein.

19. Publication of results of test and analysis.—

The Federal Government may publish in such manner as it may deem fit the result of the test and analysis of a pesticide made by a Government Analyst or the Pesticide Laboratory under section 18 together with such other information relating thereto, if any, as it may consider necessary.

20. Purchaser of pesticides may have it tested or analysed.—

(1) Any person who has purchased a pesticide may apply to a Government Analyst to conduct a test or analysis of the pesticide.

(2) An application under sub-section (1) shall be made in such form and manner and be accompanied by such fee as may be prescribed.

(3) The Government Analyst to whom an application is made in accordance with sub-section (2) shall conduct the test or analysis and issue to the applicant a report signed by him of the test or analysis.

CHAPTER IV
MISCELLANEOUS

21. Offences and penalties.—

Any person who:-

(a) sells, offers or exposes for sale, holds in stock for sale or advertises a registered brand of a pesticide which is not of the nature, substance or quality which it is represented to be by the brand or mark on the package containing it or, as the case may be, on the tag or label attached thereto; or

(b) falsely represents a pesticide in an advertisement; or

(c) contravenes any of the provisions of this Ordinance or the rules for the contravention of which no other penalty is provided in this Ordinance.

shall be punishable, for the first offence, with fine which may extend to one thousand rupees and for every subsequent offence with fine which shall not be less than two thousand rupees or more than three thousand rupees and in default of payment of any such fine with imprisonment for a term which may extend to one year.

22. Manufactured warranty to declares.—

Whoever gives false warranty to a dealer or purchaser in respect of a pesticide, that it complies in all respects with the provisions of this Ordinance shall, unless he proves that when he gave the warranty he had good reason to believe the same to be true, be punishable with fine which may extend to one thousand rupees.

23. Unlawful use of registration numbers, lowering of peticidal value or hindering the inspection from performing his duties.

Any person who:-

(a) unlawfully uses any registration number assigned or as if it had been assigned under this Ordinance, or

(b) wilfully alters the composition of a pesticide by mixing any other substance therewith after the said pesticide has been placed on the market by the manufacturer, importer or vendor, or

(c) wilfully obstructs, hinders, resists, or in any way opposes any Inspector in performing his duties under this Ordinance,

shall be punishable with fine which shall np; be less than two thousand and five hundred rupees or more than five thousand rupees or with imprisonment for a term which shall not be less than one year or more han two years.

24. Early and Seizure.—

(1) If an Inspector has reason to believe that an offence punishable under this Ordinance or the rules made thereunder has been, is being or is about to be committed at any time or place, he may enter and search such place and seize any pesticide, article or thing to which the offence relates found therein.

(2) Any pesticide, article or thing seized under sub-section (1) shall be disposed of in accordance with the decision of the Court before which the offender is prosecuted for a contravention of any of the provisions of this Ordinance or the rules.

25. Power of Court to order forfeiture.—

If any person is convicted of an offence punishable under this Ordinance committed by him in respect of any pesticide, article or thing, the Court convicting him may further direct that the pesticide, article or thing shall be forfeited to the Federal Government.

26. Congnizance of offence, etc.—

(1) No court inferior to that of a Magistrate of the first class shall try an offence punishable under this Ordinance.

(2) Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the first class to pass any sentence authorised by this Ordinance even if such sentence exceeds his powers under the said section 32.

27. Power to try offences summarily.—

Any Magistrate of the first class or any bench of Magistrates invested with the powers of a Magistrate of the first class empowered for the time being to try in a summary way the offences specified in sub-section (1) of section 260 of the Code of Criminal Procedure, 1898, may, on application in this behalf being made by the prosecution, try in accordance the provision contained in section 262 to 265 of that code, any offence punished under section 21.

28. Indemnity.—

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Ordinance or the rules.

29. Power to make rules.—

(1) The Federal Government may, in consultation with the Agriculture Pesticide Technical Advisor /committee and after pervious publication in the official gazette, make rules for carrying the provision of this Ordinance into effect.

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

(k) the nomenclature of every form of plant and animal life that shall be deemed to be insects, fungi or other plant or animal pest ;

(l) the form in which an application for the registration of a brand of a pesticide or for the renewal of registration shall be made , the information that shall be furnished therewith and the fee that shall accompany it ;

(m) the procedure for the grant of certificates of registration of brand of pesticides and renewal of such registration and the form of such certificates ;

(n) the language of the tags or label to be attached to the containers and packages containing pesticides and the character and location of the printing to be marked on such tags, labels and contain ;

(o) the function of the pesticides Laboratory and the procedures to be followed by it in the performance of such function, including-

(i) safeguarding of the secrecy of the formula of any brands of pesticides disclosed to it ;

(ii) collection of samples of pesticides for test or analysis it ; and

(iii) the form in which its report of test or analysis shall be written.

(f) the methods of analysis to be followed, and the limits of variability to be allowed, by the Government Analyst as between the information marked on the container or on a labell attached there to or supplied to the purchaser when sold in bulk, and the result of the analysis ;

(g) the qualification and duties of the Government Analysis ;

(h) the form in which an intimation of the purpose for which a sample is taken by an Inspector shall be given by him to the person from whose possession the sample is taken, the instruments to be employed, and the quantities to be taken, by an Inspector while taking samples for test or analysis and the manner in which they should be preserved and sent to the Government Analyst and the Federal Government.

(i) the form in which an application shall be made by the purchaser of a pesticide to a Government Analyst for test or analysis of the pesticide, the manner in which a purchaser may send a pesticide for test or analysis to the Government Analyst, the information that shall be furnished with such application and the fee that shall accompany if;

(j) the pesticides that are generally detrimental or injurious to vegetation, domestic animals or public health even when used according to directions;

(k) the pesticides that are to be labelled “Poison” and their antidotes;

(l) the requirements for the safe storage of pesticides;

(m) the quantities of different brands of pesticides which a person may hold in stock at any one time and the premises in which, and the conditions subject to which, he may hold them in stock;

(n) the precautions for the protection of workers against risk of poisoning by pesticides arising from their working:-

(i) in connection with the use of such pesticides in agriculture; or

(ii) on land on which such pesticides are being or have been used in agriculture;

(o) the restrictions or conditions as to the purposes for which, the circumstances in which, or the methods or means by which, a pesticide may be used;

(p) the restrictions or conditions involving a general prevention or limitation of the use of any pesticide in agriculture;

(q) the provision, and keeping available and in good order, or facilities for washing and cleaning and of other things needed for protecting persons, clothing, equipment and appliances from contamination with pesticides or for removing sources of contamination therefrom;

(r) the observance of precautions against poisoning by pesticides including the use of things provided in pursuance of the rules, and abstentions from eating, drinking and smoking in circumstances involving risk of poisoning by pesticides;

(s) intervals between, or limitations of periods of exposure to risk of poisoning by pesticides;

(t) the observance of special precautions in the case of persons who, by the reason of their state of health, age, or other circumstances, are subject to particular risk of poisoning by pesticides or of injury therefrom, or imposing, in case of persons so subject, prohibitions or restrictions on employment of workers;

(u) the measures for detecting and investigating cases in which poisoning by pesticides has occurred;

(v) the provisions of effective facilities for prevention of poisoning by pesticides and first aid treatment; and

(w) the provision of instruction and training in the use of things provided in pursuance of the rules and in the observance of precautions against poisoning by pesticides.

30. Delegation of powers:

The Federal Government may, by notification in the official Gazette, direct that all or any of its powers under this Ordinance or the rules shall in such circumstances, and under such conditions, if any, as may be specified in the direction, be exercised also:-

(a) by any officer or authority subordinate to the Federal Government, or

(b) by any Provincial Government or by any officer or authority subordinate to such Government.

6.1.2.7 West Pakistan Cotton Control Ordinance 1966

ORDINANCE XX OF 1966

(WEST PAKISTAN COTTON CONTROL ORDINANCE, 1966)

An Ordinance to amend and consolidate the law relating to control over the production, processing and sale of cotton, and other matters incidental thereto.

[Gazette of West Pakistan, Extraordinary, 11th May 1966]

No. Legis 3 (20)/66.—The following ordinance (made on 8-5-66) by the Governor of West Pakistan is hereby published for general information :-

Preamble.—

Whereas it is expedient to amend and consolidate the law relating to control over the production, processing and sale of cotton, and other matters incidental thereto.

And whereas the provincial Assembly of West Pakistan is not in session, and the Governor of West Pakistan is satisfied that circumstances exist which render immediate legislation necessary;

Now, therefore, in exercise of the powers conferred on him by clause (1) of Article 79 of the Constitution, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement.—

(1) This Ordinance may be called the West Pakistan Cotton Control Ordinance, 1966.

(2) It extends to the whole of the Province of West Pakistan, except the Tribal Areas.

(3) It shall come into force at once.

2. Definitions.—

In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say—

(a) "admixture of cotton" means such mixture of different varieties of cotton as may be prescribed;

(b) "Advisory Committee" means committee established under section 3;

(c) "bale" means any pressed package of cotton of whatever size or density;

(d) "Board" means the Cotton Control Board established under section 3;

(e) "cotton" means ginned or unginned cotton or pressed and baled cotton or cotton waste"

(f) "cotton dealer" means a person or a firm or a company, dealing in cotton, which received five hundred maunds or more of cotton or cotton seed in any one month during the cotton year;

(g) "cotton ginning factory" means any premises including the precincts thereof, where cotton is ginned or where cotton fibre is separated from cotton-seed, by any process whatever involving the use of power;

(h) "cotton pressing factory" means any premises including the precincts thereof, in which cotton is pressed into bales with the aid of power;

(i) "cotton-seed oil factory" means any premises, including the precincts thereof, where cotton-seed is pressed, with the aid of power, for the extraction of oil, whether or not the same machinery is used for the extraction of oil from any other type of seed;

(j) "cotton waste" includes droppings, strippings, fly, fuzz and other waste products of a cotton mill, or of a cotton ginning factory, or of a cotton pressing factory, but does not include yarn waste;

(k) "cotton year" means the year beginning from 1st September to 31st August of the following year;

(l) "Director of Agriculture", "Deputy Director of Agriculture" and "Extra Assistant Director of Agriculture" respectively mean the persons appointed by Government to perform the functions of a Director of Agriculture, a Deputy Director of Agriculture or an Extra Assistant Director of Agriculture, as the case may be;

(m) "factory" means a cotton ginning or cotton pressing or a cotton-seed oil factory, as the context may require;

(n) "Government" means the Government of West Pakistan;

(o) "licence" means a licence granted under this Ordinance;

(p) "cotton market" means any building or area where transactions in ginned or unginned cotton, or in cotton-seed, whether spot or forward, are conducted for the time being;

(q) "notified area" means an area notified as such under section 22;

(r) "occupier" means the person who has ultimate control of the affairs of factory, and includes the Manager or Managing Agent of the factory and any other person or persons authorised to represent the occupier;

(s) "power" means power generated by electricity or heat engine, and includes any other power except animal and human power;

(t) "prescribed" means prescribed by rules made under this Ordinance;

(u) "pure seed" means such cotton-seed as has been declared pure by the prescribed authority;

(v) "variety" means any variety of cotton approved by Government and notified under this Ordinance.

3. Constitution of Cotton Control Board and Advisory Committees.—

(1) Government shall establish for the whole of West Pakistan a Cotton Control Board.

(2) Government may also constitute Advisory Committees for the Province or parts thereof.

(3) The Board and each Adviosry Committee shall be Constitute in such manner and shall consist of such number of members as may be prescribed.

4. Powers and duties of the Board and the Advisory Committees.—

The Board and the Advisory Committees shall exercise such powers and perform such functions and their business shall be conducted in such manner and in accordance with such procedure as may be prescribed.

5. Inspectors.—

(1) Every Director of Agriculture, Deputy Director of Agriculture and Extra Assistant Director of Agriculture shall be ex officio Inspector for the purposes of this Ordinance within his respective jurisdiction.

(2) Government may, by notification, appoint any other officer under its control to exercise and perform all or any of the powers and duties conferred or imposed upon an Inspector by or under this Ordinance, within such local limits as Government may specify.

(3) An inspector may—

(a) on his own motion or on receipt of a complaint that there has been a contravention of any provision of this Ordinance, cause any cotton or the contents of any package or bale or a sample of cotton taken from a factory in the process of ginning to be examined by the prescribed authority; and in the process of ginning to be examined by the prescribed authority; and

(b) enter into and inspect during the usual working hours any factory for the purpose of ascertaining whether there is, or has been any contravention therein of any of the provisions of this Ordinance or of any rule made thereunder, or of any of the conditions subject to which a licence has been granted to the factory and take samples from all such articles in respect of which an offence punishable under this Ordinance appears to have been committed.

(4) An Inspector shall exercise such other powers and perform such functions as may be prescribed.

6. Administration of the Ordinance.—

Government may, by notification, appoint an office to exercise and perform all or any of the powers and duties conferred or imposed on Government under this Ordinance.

7. Licence for working cotton ginning or cotton pressing or cotton-seed oil factories.—

(1) No factory shall be worked without a licence and an identification number granted to the occupier thereof by such authority, in such form, subject to such conditions and on payment of such fees, payable for each year or otherwise, as may be prescribed.

(2) A licence granted under this may be valid for such period and shall be subject to such conditions as may be prescribed.

(3) A licence granted under this section may be cancelled, or suspended, by the authority competent to grant it, for such period as it may deem fit, on the ground that the occupier of the factory in respect of which the licence was granted has been convicted of an offence under this Ordinance.

(4) A licence granted under this section shall cease to have effect seven days after the expiry of the cotton year for which the prescribed annual fee payable in respect of the licence has been paid.

(5) If any person works a factory in respect of which a licence has not been granted or has been suspended or cancelled, he shall be punishable.

(i) on a first conviction, with imprisonment which may extend to three months, or with fine which may extend to five hundred rupees, or with both, and, if the offence has continued for more than one day, with an additional fine which may extend to one hundred rupees for each day subsequent to the first day during which the offence has continued; and

(ii) on every subsequent conviction, with imprisonment which may extend to six months, or with fine which may extend to fifteen hundred rupees, or with both, and, if the offence has continued for more than one day, with an additional fine which may extend two hundred rupees for each day subsequent to the first day during which the offence has continued.

8. Maintenance of Registers.—

(1) The occupier of every cotton ginning factory shall maintain a the factory, in such form as may be prescribed—

(a) a register containing the record of the amount of cotton received daily in the factory for ginning, the names of persons from whom it is received, and the quantity received from each person; and

(b) a ginning register containing a record of the dates on which the cotton has been ginned for each person.

(2) The occupier of every cotton pressing factory shall maintain at the factory, in such form as may be prescribed, a press register containing a daily record of the number of bales pressed in the factory, the serial number of each bale, and the name of person for whom it has been pressed.

(3) The occupier of every cotton-seed oil factory shall maintain such registers as may be prescribed.

(4) The occupier of a factory shall be bound to produce the registers maintained under this section whenever so required by an Inspector and the occupier of a cotton pressing factory shall be bound to furnish tot he prescribed authority, if so required by it in writing a copy, certified as correct by the occupier, of the entry relation to any specified bale, made in the press register maintained a the factory under the provisions of subsection (2).

(5) No register required to be maintained under this section shall be destroyed until after the expiration of three years from the date of the last entry borne by it.

(6) If—

(i) in any factory, any register required to be maintained under this section is not maintained or is maintained in a form other than he prescribed form ; or

(ii) any entry in any such register is proved to be false in any material particular; or

(iii) any such register is destroyed before the expiration of the period referred to in subsection (5),

the occupier of the factory shall be punishable with fine which may extend to five hundred rupees.

(7) If the occupier of any factory fails to produce any register or to furnish a certified copy of an entry when so required under subsection (4) or furnishes a certified copy of such entry knowing or having reason to believe such copy to be false, he shall be punishable with fine which may extend to fifty rupees, and if he has previously been convicted of any offence under this subsection, the fine may extend to five hundred rupees.

9. Liability on change of occupancy.—

(1) A change in the occupancy of any factory shall be intimated, in writing, to the prescribed authority by both the previous and the new occupier, within thirty days of the date o which the change takes place.

(2) On a change in the occupancy of any factory—

(a) the previous occupier shall hand over to the new occupier the registers maintained in respect of the factory under section 8 and obtain from the new occupier a receipt in this behalf; and

(b) the new occupier shall form with report to the prescribed authority any default on the part of the previous occupier in complying with the provisions of this subsection or in maintaining the registers in accordance with the provisions of section 8.

(3) If default is made by the previous occupier in handing over to the new occupier any register which he is required to hand over to him, or either of them makes default in making any report, the previous or the new occupier, as the case may be, shall be punishable with fine, which may extend to five hundred rupees.

10. Returns of a ginning factory.—

(1) The occupier of every cotton ginning factory shall furnish to the prescribed authority, within such time and in such form as may be prescribed, weekly returns showing the quantity of cotton ginned in the factory—

(a) during the preceding week; and

(b) since the commencement of the cotton year to the end of that week, and publish such statement in such manner as Government may direct:

(2) The prescribed authority shall compile form weekly returns under subsection (1), statements showing the total quantity of cotton ginned in the province during the week to which the returns relate and from the commencement of the cotton year to the end of that week, and published as such manner as may be direct:

Provided that the quantity cotton ginned in any individual factory shall not be published.

(3) If default is made in furnishing any return as required by subsection (1), the occupier of the factory shall be punishable with fine which may extend to fifty rupees.

(4) Where the occupier of a ginning factory has notified to the prescribed authority that the work of ginning cotton in that factory has been suspended, it shall not be necessary for him to submit weekly returns under subsection (1) until such work has been resumed.

11. Returns of a pressing factory.—

(1) The occupier of every cotton pressing factory shall furnish to the prescribed authority, within such time and such form as may be prescribed, weekly returns showing the total number of bales of cotton pressed in the factory—

(a) during the preceding week and their approximate average net weight; and

(b) since the commencement of the cotton year to the end of that week and publish such statement in such manner as Government may direct :

(2) The prescribed authority shall compile from the weekly returns received under subection (1). a statement showing the total number of bales pressed in the province during the week to which the returns relate and from the commencement of the cotton year to the end of that week, and publish such statement in such manner as Government may direct:

Provided that the number of bales pressed in an individual factory shall not be published.

(3) If default is made in furnishing any return as required by subsection (1), the occupier of the factory shall be punishable with fine which may extend to fifty rupees.

(4) Where the occupier of a cotton processing factory has notified to the prescribed authority that the work of pressing bales in that factory has been suspended, it shall not be necessary for him to submit weekly returns under subsection (1) until such work has been resumed.

12. Returns of a cotton seed oil factory.—

(1) The occupier of every cotton seed oil factory shall furnish to the prescribed authority, within such time and in such form as may be prescribed, weekly returns showing the quantity of cotton seed crushed in the factory—

(a) during the preceding week; and

(b) since the commencement of the cotton year to the end of that week.

(2) The prescribed authority shall compile from the weekly returns received under subsection (1), a statement showing the total quantity o cotton seed crushed in the Province during the week to which the returns relate and from the commencement of the cotton year to the end of that week, and publish such statement in such manner as Government may direct:

Provided the quality of cotton seed crushed in any individual factory shall not be published.

(3) If default is made in furnishing any return as required by sub section (1), the occupier of the factory shall be punishable with fine which may extend to fifty rupees.

(4) Where the occupier of a cotton seed oil factory has notified to the prescribed authority that the work of crushing cotton seed in that factory has been suspended, it shall not be necessary for him to submit weekly returns under subsection (1) until such work has been resumed.

13. Marking of bales.—

(1) The occupier of every cotton pressing factory shall cause every bale pressed in the factory to be marked, in such manner as may be prescribed, before it is removed from the factory, with a serial number and with the mark prescribed for the factory.

(2) Every bale which contains cotton from the crop relating to the current cotton year mixed with cotton from the crop relating to any previous cotton year shall be clearly marked, in the prescribed manner, to distinguish it from the bales containing exclusively cotton from the crop relating to the current cotton year.

(3) If any bale is removed from the premises of any cotton pressing factory without having been marked as required by subsection (1) of subsection (2) the occupier of the factory shall be punishable with imprisonment which may extend to one months , or with fine which may extend to fifty rupees, or with both, for every bale of cotton in respect of which such contravention has taken place.

14. Scales and weights.—

(1) No scales or weights shall be used in any factory other than the scales and weights prescribed under the West Pakistan Weights and Measures Ordinance, 1965 (XXXIII of 1965).

(2) If in any factory, any scale or weights are used in contravention of the provisions of subsection (1), the occupier of the factory shall be punishable with fine which may extend to fifty rupees, or, if he has been previously convicted of any offence under this subsection, with fine which may extend to five hundred rupees.

15. Structural requirements.—

(1) No person shall commence the construction of any new factory or any extension of an existing factory, which is likely to increase its capacity for ginning or pressing cotton or crushing cotton seed, unless he has been granted a licence under this subsection by such authority, in such form, subject to such conditions and on payment of such fees, as may be prescribed.

(2) a licence under subsection (1) shall be valid for such period as may be specified therein, and may be revalidated, on payment of the prescribed fee, for subsequent periods not exceeding two years from the date of issue of the licence by the authority competent to grant the same.

(3) In the case of cotton ginning factories, the construction of which is commenced after the commencement of this Ordinance—

(a) gin-houses shall be provided with separate entrances and exits for the bringing in of unginned and the taking out of ginned cotton, respectively; and

(b) the factories shall be constructed in accordance with plans and specifications previously approved by the prescribed authority :

Provided that nothing in this subsection shall apply to any factory in which only roller gins are used and where number of such gins is not more than four.

(4) In any cotton ginning factory, whether constructed before or after the commencement of this Ordinance—

(a) no alternations or additions, whether structural or in plant or machinery, shall be made so as to minimise the degree of compliance of the factory as a whole with the requirements set-forth in clauses (a) and (b) of subsection (3); and

(b) every addition, whether structural or in plant or machinery, made after the commencement of this Ordinance, shall be made in accordance with the plans and specifications previously approved by the prescribed authority ;

Provided that nothing in this subsection shall apply to any factory in which, after any alteration or addition has been made, only single roller gins, not more than four in number, are left.

(5) The occupier of a cotton ginning factory, whether erected before or after the coming into force of this Ordinance, shall provide in the factory such number of delineating machines as the prescribed authority may, by order in writing, direct.

(6) The occupier of every cotton pressing factory, in which cotton is handled on the ground floor, shall cause the pressing-house to be paved or provided with other suitable flooring to the satisfaction of the prescribed authority.

(7) If the occupier of any factory fails to comply with any of the provisions of this section applicable to the factory or, an order made under subsection (5), he shall punishable with imprisonment which may extend to three months or with fine which may extend to five thousand rupees, or with both.

(8) Where the occupier of a factory has been convicted of an offence punishable under subsection (7), the prescribed authority may serve on him an order in writing directing that such alternations shall be made, or so many delating machines shall be provided in the factory by a specified date, as in the opinion of the authority are necessary to secure compliance with the provisions of subsection (3), (4), (5) or (6), as the case may be.

(9) Where the alternations are not carried out or the delineating machines are not provided, in accordance with the order served on the occupier of the factory under subsection (8), the prescribed authority may serve on the occupier of the factory an order in writing directing that the work of ginning or pressing of cotton in such factory shall be suspended until the alterations have been carried out or the delineating machines have been provided in accordance with the order made other subsection (8).

(10) The occupier of a factory shall be liable to fine which may extend to fifty rupees for each day on which cotton is ginned or pressed in the factory in contravention of an order served on him under subsection (9).

Explanation.—

For the purposes of this section the equivalents of other types of gins, such as double roller gins and saw gins, in terms of single roller gins, shall be such as may be prescribed.

16. Prohibition on admixture of different varieties of cotton.—

Government may, by notification, declare that in any area specified in such notification, no cotton which contains an admixture of different varieties of cotton, in excess of the prescribed limits, shall be ginned or pressed in any factory.

17. Punishment for admixture, adulteration and watering cotton.—

(1) Any occupier of a factory—

(a) who, knowing or having reason to believe that any cotton is watered or contains seed in excess of the prescribed proportion, or any foreign substance or cotton waste, gins or presses or allows such cotton to be ginned or pressed in such factory; or

(b) who, in any area specified in the notification under section 16, gins or presses or allows to be ginned or pressed any cotton which he knows or has reason to believe to contain an admixture of different varieties of cotton ;

shall be punishable with imprisonment which may extend to three months or with fine which may extend to five thousand rupees, or with both:

Provided that any occupier of a factory shall be absolved from responsibility under this section and no proceedings shall be taken against him if before proceeding to gin or press the cotton be had obtained certificate—

(i) in the case of cotton which is alleged to have been watered or contain seed in excess of the prescribed proportion or any foreign substances or cotton waste, or admixture of cotton from the prescribed authority authorising the ginning or pressing of such cotton and had marked the bales as mixed ; and

(ii) in the case of cotton which has been ginned in another factory, free the owner of ginned cotton that such cotton was free from such watering adulteration or mixture as is punishable by or under this Ordinance.

(2) Any owner of cotton who knowingly waters or causes to be water any cotton to be ginned, or which being already ginned is intended to pressed in a factory, or mixes or causes to be mixed other varieties, seed, foreign substance or cotton waste with such cotton, or who abets or knowingly allows or connives at any such act, shall be punishable with imprisonment which may extend to three months, or with fine which may extend to five thousand rupees, or with both.

Explanation.—

For the purposes of this section, cotton shall not be deemed to be watered unless such cotton contains mixture in excess of the normal quantity, that is to say, the amount of moisture that any given quantity of cotton is reasonably expected to have, regard being had to the place or places and the time or times of the year in which such cotton has been picked, collected, stored, conveyed, left, ginned or pressed.

18. Determination of occupiers for purposes of punishments under this Ordinance—

(1) Where the occupier of a factory is—

(a) a firm or other association of individuals, every partner of such firm or member of such association shall be liable to be prosecuted and punished under this Ordinance for any offence for which the occupier of the factory is punishable;

(b) a company, all the directors thereof, or, in the case of a private company, all the shareholders thereof, shall be liable to be prosecuted and punished under this Ordinance for any offence for which the occupier of the factory is punishable ;

Provided that the firm, association or company may give notice to the prescribed authority that it has nominated one of its partner or members or as the case may be, a director (or in the case of a private company, a share-holder) to be the occupier of the factory for the purposes of this section, and such partner, member, director or share-holder, as the case may be, shall thereupon be deemed to be the occupier of the factory for he purposes of this section, until

further notice cancelling his nomination is received by the prescribed authority or until he ceases to be a partner, member, director or share-holder.

19. Cognizance of offences.—

No prosecution under this Ordinance shall be instituted except by or with the previous sanction of the prescribed authority and no Court interior to that of a Magistrate of the First Class shall try an offence punishable under this Ordinance.

20. Power to reject unmarked bales in fulfillment of contracts.—

(1) Any person, who has made a contract for the purchase of bales cotton, may require that not bales other than bales marked with the mark prescribed under section 13 for the factory in which they were pressed shall be supplied in fulfillment of such contract and, if he does so require, no bales not so marked shall be tendered in fulfillment of the contract.

(2) Any bale marked in accordance with the provisions of section 13 small within the meaning of the Evidence Act, 1872 (I of 1872), be presumed for all purposes as between the parties to a contract for the purchase of dated cotton, to have been so marked before leaving the factory in which was pressed.

21. Growing of particular varieties.—

(1) Government may, by notification, prohibit the growing of all or any varieties of cotton in a particular area.

(2) Whoever, in contravention of a notification issued under subsection (1) grows any cotton or any variety of cotton in an area where the growing is prohibited shall be punishable with fine which may extend to five hundred rupees.

22. Power to issue notification prohibiting import of cotton into specified areas.—

(1) Government may for the purpose of avoiding adulteration in the cotton grown in any area in the Province, by notification, prohibit the import of any cotton or cotton or cotton-seed or any specified variety or varieties of cotton or cotton-seed into an area where their cultivation is forbidden under this Ordinance, by rail, road, air or sea, or by more than one of such means, save under and in accordance with the conditions of a licence granted in the manner, by the authority and on payment of such fee as may be prescribed :

Provided that no such notification shall be deemed to prohibit the import into any notified area of packages containing any kind of cotton samples not exceeding ten pounds avoirdupois in weight.

(2) Delivery to, and the taking of delivery by, any person, at any place situated within a notified area, of any cotton, the import of which into that area is prohibited shall be illegal unless such person holds a licence for the import of such cotton into that area.

23. Refusal to carry unlicensed cotton.—

(1) Notwithstanding anything contained in the Railways Act, 1890 (IX of 1890), or any other law for the time being in force, no person who receives goods for the purposes of transport, whether by rail, road, river or any other means, shall so receive at, or forward or allow to be carried from, any place any cotton consigned to a place in a notified area, unless both places are in the same notified area, or unless the consignor produces a certified copy of a licence for the import of the cotton into the notified area in which such place is situated.

(2) A certified copy of a licence where so produced shall be attached to the invoice or way-bill, as the case may be, and shall accompany the consignment to its destination, and shall there be dealt with in the prescribed manner.

24. Procedure when cotton arrives at a place within a notified area.—

(1) When any cotton, the import of which into a notified area has been prohibited, has been consigned to and arrives at the destination in any such area, no person shall, unless both the place of despatch and the place delivery are situated in the same notified area, deliver the cotton to the consignee or any other person until he is satisfied that the consignee holds a licence for the import of the cotton into the notified area; and if the person receiving the cotton or cotton-seed is not satisfied area; and if consignee holds a licence for the import thereof into the notified area, or if within fourteen days from the receipt of the goods the consignee or some he shall return the cotton to the place of despatch together with any intimation that delivery of the cotton has been refused or has not been taken, as the case may be.

(2) Any person receiving any cotton returned under subsection (1) shall cause to be served on the consignor a notice stating that the cotton has been so returned and requiring the consignor to pay the railway freight and any rates, terminal or other charges due in respect of the carriage of the cotton to and from the place to which it was consigned, and such charges shall be deemed to be due from the consignor.

(3) Any person who contravenes the provisions of section 22 or section 23 or who, without reasonable excuse, the burden of proving which shall lie upon him, in contravention of the provisions of subsection (1) of this section, delivers any cotton to a consignee or other person, shall be liable on first conviction to a fine not exceeding one thousand rupees and upon any subsequent conviction, to imprisonment which may extend to three months, or to a fine which may extend to five thousand rupees, or to both.

25. Pure seed.—

Government may direct that any cotton which has been reserved wholly or partially for procuring pure seed for sowing purposes by the prescribed authority shall not ginned without special permission from the authority, which may be granted subject to such conditions as may be prescribed in this behalf.

26. Regulation of price of cotton.—

(1) Government may, by notification, fix the maximum and minimum prices which shall be paid for any variety of cotton or ctton-seed in any cotton market or notified area.

(2) Whoever, in contravention of notification issued under subsection (1), demands or charges, in any market or notified area, for any variety of cotton, a price in excess of, or pays a price lower than, the price fixed for that variety for that market or notified area, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

27. Grading and marketing of cotton.—

Government may, by notification, regulate the grading and marketing of cotton.

28. Protection of persons acting under this Ordinance.—

No suit or other legal proceedings shall be instituted against any person in respect of any action in good faith taken under this Ordinance.

29. Power to exempt from the Ordinance and rules.—

Government may, by notification, exempt any factory or class of factories from all or any of the provisions of this Ordinance or the rules framed thereunder.

30. Power of Government to frame rules.—

(1) Government may, by notification, frame rules consistent with this Ordinance to give effect to the provisions of this Ordinance.

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

(a) the constitution and functions of the Board and Advisory Committees;

(b) the appointment, powers and functions of Inspectors;

(c) he conditions for the grant of licences for working factories;

(d) the forms in which registers, records and returns shall be maintained or furnished by occupiers of factories, and the inspection of such registers and records;

(e) the allotment of a special mark to be sed by each cotton ginning and pressing factory;

(f) the manner in which bales shall be marked;

(g) the persons or bodies authorised to examine bales or cotton-seed under subsection (3) of section (5) ;

(h) the substances which shall constitute an admixture of cotton;

(i) the time within which the returns required by sections 10, 11 and 12 shall be furnished;

(j) the appointment of authorities for the purposes of sections 7, 8, 9, 10, 11, 12, 15, 17, 18, 19, 22 and 25;

(k) the manner of service of orders made under section 15;

(l) the fees to be paid by the occupiers of factories or by cotton dealers of by managers of companies at the rates to be prescribed by Government, for the development and improvement of agriculture relating to cotton crop, and for meeting the expenses on the administration of this Ordinance.

(m) the manner in which fees shall be realised or recovered; and

(n) any other matter for which provisions is deemed necessary in order to carry out the purposes of this Ordinance.

31. Repeal and savings.—

(1) The West Punjab Cotton Control Act, 1949 (IV of 1949), the Bahawalpur Cotton Control Act, 1949 and the Sind Cotton Control Act, 1954 (I of 1954), are hereby repealed.

(2) Notwithstanding the repeal of the enactments mentioned in subsection (1), anything done, action taken, obligation, liability, penalty or punishment incurred, inquiry or proceedings commenced, officer appointed or person authorised jurisdiction or power conferred, rule made, fee imposed or realised and order issued under any of the provisions of this Ordinance, continue in force an be deemed to have been respectively done, taken, incurred, commenced, appointed, authorised, conferred, made, imposed, realised or issued under this Ordinance.

6.1.2.8 West Pakistan Seeds and Fruits Plants Ordinance 1965

THE WEST PAKISTAN SEEDS AND FRUIT PLANTS

ORDINANCE 1965.

[1]WEST PAKISTAN ORDINANCE No. XIII OF 1965

31ST May, 1965

AN
ORDINANCE

to provide for better production and distribution of seeds and fruit plants of high quality in West Pakistan.

WHEREAS it is expedient to provide for better production and distribution of seeds and fruit plants of high quality in the Province of west Pakistan;

AND WHEREAS the Provincial Assembly of West Pakistan is not in session and the Governor of West Pakistan is satisfied that circumstances exist which render immediate legislation necessary;

NOW, THEREFORE, in exercise of the powers vesting in him under clause (1) of Article 79 of the Constitution, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance-

1. This Ordinance may be called the West Pakistan Seeds and Fruit Plants Ordinance, 1965.

   (1) It extends to the whole of the [2][North-West Frontier Province] except the Tribal Areas.

   (2) This section and section 2 shall come into force at once and the remaining provisions of this Ordinance shall come into force in such areas and on such dates as Government may, by notification in the Official Gazette, appoint in this behalf.

2. In this Ordinance, unless the context otherwise requires the following expressions shall have the meanings hereby respectively assigned to them that is to say-

   (i) "certified fruit plant", "certified nursery" and "certified seed" respectively means a fruit plant, nursery or seed, as the case may be certified under section 6;

   (ii) "competent authority" means the person authorised by Government to exercise the powers, discharge the duties and perform the functions of the competent authority under this Ordinance;

   (iii) "fruit plant" means a fruit plant notified under section 3;

[1] This Ordinance was approved by the West Pakistan Provincial Assembly under Article 79 (3) of the Constitution at its meeting held on 8th July 1965, see Gazette of West Pakistan 1965 Extraordinary, pages 3617-21.

[2] In section-1, sub-section (2), the words "Province of West Pakistan", the word "North-West Frontier Province", substituted by N.-W.F.P. Adaptation of Laws Order 1975.

(iv) "Government" means the Government of [3][North-West Frontier Province];

(v) "nursery" includes seeds, cutting, suckers, saplings or other material used for the raising of fruit plants;

(vi) "prescribed" means prescribed by rules made under this Ordinance;

(vii) "progeny garden" means a garden raised of certified fruit plants from which material for budding and grafting is being or is intended to be used for raising a nursery;

(viii) "registered grower" means a person or a group of persons engaged in raising of seeds, fruit plants and nurseries, and duly register under this Ordinance:

(ix) "seed" includes cuttings, bulbs, rhizomes, runners, suckers, nursery plants or any other material used for the reproduction of plants.

3. Government may, by notification in the Official Gazette, specify.

(i) the local areas where certified seeds, fruit plants and nurseries may be raised.

(ii) the species of seeds and fruit plants which may be raised by registered grower in such areas;

(iii) the standard which a seed, fruit plant and nursery shall attain for being certified under section 6.

4. (1) Any person desirous of raising certified seeds, fruit, plants and the nursery thereof on commercial basis and possessing such qualifications as may be prescribed may apply, in the prescribed manner, to the competent authority for registration under this Ordinance.

(2) If such person is approved by the competent authority, his name shall be entered in a register to be maintained by the competent authority for that purpose.

(3) The competent authority shall issue to such person a registration certificate in the prescribed form specifying the seed the fruit plants and the nursery thereof which he shall be entitled to raise.

5. (1) A registered grower shall, within the period specified by the competent authority, raise such seeds, fruit plants and nursery thereof as may be specified in his registration certificate and, where necessary, shall maintain a progeny garden therefor.

(2) A registered grower shall, if so required by the competent authority, import seeds or fruit plants of such specification as may be laid down by the competent authority.

(3) In raising the seeds, fruit plants and nursery, the registered grower shall follow such instructions and directions as may be given to him by the competent authority and, in particular, shall observe such precautions as the competent authority may require him to take.

[3] In section-2, in clause (iv) the words "West Pakistan" the words" North-West Frontier Province", substituted by N.-W.F.P. Adaptation of Laws Order 1975.

(4) A registered grower may by application in the prescribed manner, request the competent authority t inspect the crop of seeds, progeny garden, fruit plants and nursery raised by him, and to suggest such measures as the competent authority may consider necessary for the improvement thereof.

6. (1) On the application made in the prescribed manner by a registered grower, the competent authority shall inspect his crop of seeds, godowns of sees, progeny garden, fruit plants and the nursery.

(2) If the competent authority is satisfied that the seeds fruit plants and nursery raised by the registered grower have attained the standard notified under section 3, the competent authority shall certify such sees, fruit plants and nursery as seeds, from plants and nursery, as the case may be, of high quality.

7. (1) The certified seeds produced by a registered growers shall be disposed of in such manner as may be prescribed.

(2) Out of the certified seeds produced by a registered grower, such quantity as may be allowed by the competent authority shall be retained by him for his own use. The remaining seeds shall, subject to the payment of price in advance, be sold by him to Government or to the competent authority. Where the price has been so paid, the registered grower shall, subject to payment of charges for storage, make arrangements, for storage thereof until delivery is taken in pursuance of the sale. Where the price has not been so paid, the registered grower shall, after a fortnights notice to Government of his intentions so do, be at liberty to all the certified seeds in the markets.

(3) For the purposes of sale of certified fruit plants and products of certified nurseries outside the local area specified under sub-section (3) of section 1, the competent authority may require a registered grower to sell fruit plants and products of nursery to such persons and at such reasonable rates as may be specified by the competent authority, and the registered grower shall comply accordingly.

(4) Save as provided in sub-section (3), a registered grower shall be free to dispose of fruit plants and products of his nursery in such manner as he may consider proper.

8. (1) If a registered grower fails to grow seed and fruit plants of high quality or nursery thereof, the competent authority may, after giving notice to the registered grower and giving him an opportunity of being heard, cancel the registration.

(2) If a registered grower maintains a nursery which is below the standard notified under section 3, the competent authority may, after giving such owner an opportunity of being heard, seize the nursery and confiscate it.

(3) If a registered grower contravenes any of the provisions of this ordinance, he shall, without prejudice to the action that may be taken against him under sub-section (1) or sub-section (2), be liable, on conviction before a Magistrate of the First Class to a cine not exceeding one thousand rupees.

(4) Whoever, not being a registered grower, raises a nursery of fruit plants of any quality on commercial basis shall be liable on conviction before a Magistrate of the First Class to a fine not Exceeding on thousand rupees and, where the offence is continued after conviction, to a further fine of fifty rupees for each day during which the offence is continued.

(5) No Court shall take cognizance of any offence punishable under sub-section (4), except on complaint made by the competent authority or any person duly authorised in this behalf by the competent authority.

9. The competent authority shall have power –

(i) to inspect or cause to be inspected at any time the crop of certified seeds, stores of certified seeds, progeny garden, fruit plants and nursery raised by a registered grower;

(ii) to seize and detain or cause to be seized and detained seeds and products of a notified nursery found to be below the standard notified under section 3, and to destroy them in the prescribed manner.

10. (1) Government may, by notification in the Official Gazette, make rules for the purpose of giving effect to the provisions of this Ordinance.

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

(a) the qualifications, if any, for registration and the procedure therefor;

(b) the number, type and kind of fruit plants to be maintained in progeny garden, and the seize of the garden;

(c) the manner in which the competent authority may be requested to inspect crops of seed, progeny gardens, fruit plants and nurseries and to suggest improvements.

(d) the control and regulation of the import and export of seeds and fruit plants of high quality and the nursery products;

(e) the manner of seizure, detention, confiscation or destruction of seeds and nurseries, found to be below the standard notified under section 3;

(f) the manner in which a registered grower shall dispose of the certified seeds produced by him.

11. Government may by notification in the official Gazette, delegate to any officer subordinate to it any of its powers under this Ordinance or the rules made thereunder.

6.1.2.9 West Pakistan Rice (Restriction on Cultivation) Ordinance 1959

ORDINANCE XVIII OF 1959

WEST PAKISTAN RICE (RESTRICTIONS ON CULTIVATION) ORDINANCE, 1959

An Ordinance to regulate the cultivation of rice in the Province of West Pakistan

No. Leg. 3 (58)/59, 17th December 1959, (Gazette, Extraordinary, 17th December 1959).__The following Ordinance was made on 16th December information in the Gazette.

Preamble.—

Whereas in order to check the increase of water-logging, salinity, seepage and the resultant damage to land in the Province of West Pakistan, it is expedient to regulate the cultivation of rice in the Province in the manner hereinafter appearing ;

Now therefor, in pursuance of the Presidential Proclamation of the seventh day of October, 1958, and in exercise of all powers enabling him in that behalf, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance :_

1. Short title, extent and commencement.—

(1) This Ordinance may be called the West Pakistan Rice (Restrictions on Cultivation) Ordinance, 1959.

(2) It extends to the whole of the Province of West Pakistan except the Federal Capital and the Special Areas.

(3) It shall apply in such area and on such date as the Board of Revenue may, by notification, appoint in this behalf.

2. Definition.__

In this Ordinance.

(i|) "Board of Revenue" means the Board of Revenue, West Pakistan, as established under the West Pakistan Board of Revenue Act, 1957 ;

(ii) "Government" means the Government of West Pakistan.

3. Powers to regulate cultivation of rice.__

The Board of Revenue may by notification, prohibit or impose such restrictions on the cultivation rice in such area as may be specified in the notification ;

Provided that a cultivator shall be entitled to gather the standing crop raised by him before the issue of such notification.

Penalty.__

Whoever contravenes the provisions of this Ordinance or the rules made or directions issued thereunder shall, on a complaint made in writing by any Revenue Officer, be unissued with fine which may extend to ten times the land revenue assessment chargeable for the crop or simple imprisonment no exceeding six months or both.

5. Jurisdiction of Civil Court.__

No Civil Court shall have jurisdiction to entertain any claim, suit, prosecution or any other legal proceedings for anything done, or intended to be done in good faith under the provisions of this Ordinance, or the rules made and directions issued thereunder.

6. Power to make rules.__

For the purposes for carrying into effect the provisions of this Ordinance, the Board of Revenue may frame rules and issue such directions in the form of Standing Orders as it may deem fit.

6.1.2.10 West Pakistan Agriculture Pests Ordinance 1959

THE WEST PAKISTAN AGRICULTURAL PESTS ORDINANCE, 1959.

(W.P. Ordinance XXVIII of 1959)

[11*th* *May*, 1959].

AN
ORDINANCE

to amend and consolidate the law relating to the eradication of agricultural pests in the Province of West Pakistan.

WHEREAS it is expedient to amend and consolidate the law relating to the eradication of agricultural pests in the Province of West Pakistan.

NOW, THEREFORE, in pursuance of the Presidential Proclamation of the seventh day of October 1958, and in exercise of all powers enabling him in that behalf, the Governor of West Pakistan is pleased to make and promulgate the following Ordinance: -

1. (1) This Ordinance may be called the West Pakistan Agricultural Pests Ordinance,, 1959.

(2) It extends to the whole of the [1][North-West Frontier Province] except the [2][Tribal Areas].

(3) It shall come into force[3] in such area or areas and from such date or dates as Government may, by notification, specify.

2. In this Ordinance, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say –

(a) "affected area" means any area affected by an agricultural pest;

(b) "agricultural pest" means a pest mentioned in the Schedule to this Ordinance;

(c) "crops" includes all agricultural or horticultural crops and all trees, bushes or plants;

(d) "Government" means the Government of [4][North-West Frontier Province].

(e) "infested crop" means a crop affected by any agricultural pest;

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[1] In sub-Section (2) of section 1, for the words, "Province of West Pakistan" the words "North-West Frontier Province" ,subs. by N.-W.F.P. Adapt Order, 1975.

[2] In Subsection (2), for the words "Federal Capital and the Special Areas" the words "Tribal Areas" subs. by W.P. Ord. No. VII of 1964.

[3] This Ordinance was brought in force in the whole of the Province of W.P. with effect from 1st February, 1960, see Gazette of West Pakistan, 1960. P. 1249.

[4] In section (2), in clause (d) for the words "West Pakistan" , the words "North-West Frontier Province" , Subs. by N.-W.F.P. A.L.O., 1975.

(f) "Inspector" means an officer appointed under this Ordinance to perform the functions of an inspector;

(g) "occupier" means the person in actual possession of land and includes the manager or managing agent or any other person authorised to represent the occupier;

(h) "preventive measures" means measures prescribed by Government to eradicate and to prevent the spread of any agricultural pest. and

(i) "prescribed" means prescribed by rules made under this Ordinance.

3. Government may, by notification, prohibit[5]-

(a) the employment of such methods of cultivation as help the spread of agricultural pests either generally or with respect to any particular crop;

(b) the transport or sale of any infested crop.

4. Every occupier of land in which any crop is cultivated shall be bound to carry ot the preventive measures prescribed in respect of such crop or crops.

5. Government may, by notification [6] appoint such persons as it thinks fit to be Inspectors for the purposes of the Ordinance within each such local area as may be specified, and the persons so appointed shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

6. An Inspector may, subject to any rules [7]made in this behalf by Government-

(a) at any time enter and inspect any land, building, palace vessel or vehicle for the purpose of exercising the power or performing the duties conferred or imposed on his by or under this Ordinance;

(b) seize any infested crop and destroy or cause to be destroyed such crop in such manner as may be prescribed

(c) seize any infested crop or b a requisition in writing direct the occupier or the person incharge of such crop not to sell or dispose of or pick or collect or move the seized crop from such place as may be specified in the requisition with out the written permission of such authority as may be prescribed in this behalf.

7. (1) Whenever an Inspector is satisfied that preventive measures have not been duly carried out by the occupier of any land ha shall call upon such occupier by notice in writing to carry out such measures within fifteen days of the receipt of the notice.

(2) The occupier may within seven days from the service upon him of such notice prefer an appeal to the Collector, or Deputy Collector, or Assistant Collector, first grade specially empowered in this behalf by the Collector, against the notice.

(3) The authority before whom the appeal is preferred may extend the time specified in the notice issued, under sub-section (1) and shall, after giving the occupier an opportunity of be heard, pass such order on the appeal as he thinks fit.

[5] See Gazette of West Pakistan, 1961, Pt. I, p. 54, and ibid 1962 Pt. I. P.542.

[6] See Gazette of West Pakistan, 1961, Pt. I, p. 54, and ibid 1962 Pt. I. P.542.

[7] See the West Pakistan Agricultural Pests rules 1960, Gazette of West Pakistan 1960, Extraordinary, pp. 1247-1249.

(4) every order passed under sub-section (3) shall be final.

8. (1) If an occupier on whom a notice has been erved under sub-section (1) of section 7 does not comply with such notice within the time specified therein or where an appeal has been preferred by him under sub-section (2) or that section, does not comply with the order passed on such appeal within seven days, the Inspector may carry out or cause to be carried out the preventive measures not undertaken, at the cost of the occupier and for such purpose may take with him or depute or employ such subordinated or other person as he deems fit.

(2) Where an Inspector has taken any action under this Ordinance in respect of any property at the expenses of a person bound to take such action he may record a certificate indicting the amount of the cost and the person from whom such amount is recoverable and such amount shall be recoverable as arrears of land revenue.

9. (1) Whenever it appears to Government that the Province or any party thereof is affected or threatened by an agricultural pest and that immediate action is necessary, Government may by notification declare the Province or such areas as affected areas and take such remedial and preventive measures in respect of such area as may be necessary.

(2) Government may recover the whole or a part of the costs incurred in connection with the aforesaid remedial and preventive measures from the occupier or land owners in the affected area from the person who in its opinion have benefited by such measures.

(3) All such costs, if unpaid, shall be recoverable as arrears of land revenue.

10. Whoever contravenes the provisions of [8][section 3 or section 4] shall be punished for a first offence with a fine which may extend to five hundred rupees, and for every subsequent offence with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both.

11. (1) Any person aggrieved by an order of seizure or destruction may, within seven days of such order, appeal to the Collector, Deputy Collector or Assistant Collector, first grade, specially empowered by the Collector in this behalf.

(2) Any order passed on appeal under sub-section (1), and if no appeal is preferred, the order of the Inspector shall be final .

12. Government may, if it considers it expedient, by notification add to or exclude any pest form the schedule.

13. No suit, prosecution or other legal proceeding shall lie against an inspector or any person acting under his order in respect of any thing in good faith done or intended to be done under this Ordinance.

14. No prosecution under this Ordinance shall be instituted except on the complaint in writing of [9][an officer authorized[10]by Government in this behalf] stating the facts constituting the office.

[8] Subs. for the word and figure section "3 " by W.P. Ord. IV of 1961P. s. 2

[9] Subs ibid s.3. for the words "the Collector".

15. (1) Government may make rules [11]to carry out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing powers Government may make rules –

(a) prescribing preventive measures;

(b) prescribing the manner in which an inspector may exercise his powers under section 6;

(c) prescribing the form of requisition and notices and the manner in which requisitions and notices may be served ;

(d) prescribing the authority which may release seizure imposed under the Ordinance; and

(e) prescribing the manner in which costs shall be assessed and paid.

16. The following enactments are hereby repealed:-

(a) The North-West Frontier Province Sugarcane (Protection against Pyrilla Pest) Act, 1950;

(b)[12][…….]

(c) The North-West Frontier Province Fruit-Fly (Preventive Measures) Act, 1950.

[10] For the officer authorised to criminal proceeding under the Ordinance, See Gazette West Pakistan, 1961, pt. I, P.245 and ibid, 1961, p. 452.

[11] For the W.P. agricultural Pests Rules, 1960, see Gazette of West Pakistan, 1960 Extraordinary, pp. 1247, for amendments to the Rules see ibid, 1960, Extraordinary, p 1487-A, ibid, 1961.pt. I, P.54, and ibid 1962, Extraordinary P. 153

[12] in section 16, clause (b) Omitted by Adaptation of laws Order, 1975

6.1.2.11 Oilseeds Committee Act 1946

THE OILSEEDS COMMITTEE ACT, 1946

Act No IX OF 1946

An Act for providing for

financing a Committee] for the improvement and development of the cultivation and marketing of oilseeds and of the production, manufacture and marketing of oilseed products;

It is hereby enacted as follows:-

1-(1) This Act may be called the Oilseeds Committee Act, 1946.

(2) It extends to the whole of Pakistan

2- In this Act, unless there is anything repugnant in the subject or context:-

(a) "Collector" means the officer appointed by the Central Government to perform in any specified area the duties of a Collector under the provisions of this Act and the rules made thereunder, and includes any officer sub-ordinance to that officer whom he may by order in writing authorise to perform his duties under those provisions;

(b) "the Committee" means the Pakistan Food and Agriculture Committee set up under sub-section (1) of section 5A of the Agricultural Produce Cess Act, 1940, or any body which replaces the said Committee under sub-section (2) of that section;

(c) "grower" means an agriculturist who grows oilseeds, with or without the aid of hired labour;

(d) "mill" means any place in which oilseeds are crushed

with the aid of power, which is a factory as defined in section 2 of the Factories Act, 1934;

(e) "oilseeds" does not include coconuts;

(f) "prescribed" means prescribed by rules made under this Act.

3-(1) There shall be levied and collected on and after the date of the commencement of this Act as cesses for the purpose of this Act:-

(a) on all oils extracted from oilseeds crushed in any mill in Pakistan, whether the oilseeds are produced in or imported from outside [2][Pakistan] , a duty of excise at the rate of one anna per maund, and
(b) on all oilseeds exported out of [2][Pakistan] to a destination outside Pakistan, a duty of customs at the rate of two annas per maund;

Provided that the Central Government may from time to time fix by notification in the official Gazette a different rate at which the duty of excise or duty of customs shall be levied and collected;

Provided further that no such duty of customs shall be levied on any oilseeds exported under a contract for export entered into before the aforesaid date.

(2) On the last day of each month, or as soon thereafter as may be convenient, the proceeds of the duties recovered during that month shall, after deduction of the expenses, if any, of collection and recovery, be paid to the Committee.

(3) The proceeds of the duties recovered since the fifteenth day of August 1947 after deduction of the expenses, if any, of collection and recovery shall be paid to the Committee forth with.

(i) advising and providing assistance on all matters connected with the improvement of the cultivation of oilseeds (including advising on the best and most suitable varieties of oilseeds to be cultivated) and the improvement of the industries using oilseeds or their products;

(j) promoting and encouraging the co-operative movement in the oilseeds industry;

(k) adopting such measures as may be practicable for assuring remunerative returns to growers;

(l) organising the establishment of growers', millers' and consumers' associations;

(m) aiding and encouraging the establishment of exhibitions for demonstrating the uses of oilseeds and oilseed products;

(n) adopting any other measures or performing any other duties which it may be required by the Central Government to adopt or perform or which the Committee may itself think necessary or advisable in order to carry out purposes of this Act.

10-(1) The owner of every mill shall furnish to the Collector, on or before the 7th day of each month, a return stating the total amount of oils extracted in the mill during the preceding month, together with such further information in regard thereto as may be prescribed;

Provided that no return shall be required in regard to oils extracted before the commencement of this Act.

(2) Every such return shall be made in such form and shall be verified in such manner as may be prescribed.

11-(1) On receiving any return made under section 10, the Collector shall assess the amount of the duty of excise payable under section 3 in respect of the period to which the return relates, and if the amount has not already been paid, shall cause a notice to be served upon the owner of the mill requiring him to make payment of the amount assessed within thirty days of the service of the notice.

(2) If the owner of any mill fails to furnish in due time the return referred to in sub-section (1) of section 10 or furnishes a return which the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount, if any, payable by him in such manner as may be prescribed, and the provisions of sub-section (1) shall thereupon apply as if such assessment had been made on the basic of a return furnished by the owner :

Provided that, in the case of a return which he has reason to believe is incorrect or defective, the Collector shall not assess the duty of excise at an amount higher than that at which it is assessable on the basis of the return without giving to the owner a reasonable opportunity of proving the correctness and completeness of the return.

(3) A notice under sub-section (1) may be served on the owner of a mill either by post or by delivering it or tendering it to the owner or his agent at the mill.

12-(1) Any owner of a mill who is aggrieved by an assessment made under section 11 may, within three months of service of the notice referred to in sub-section (1) of that section, apply to the District Judge, [1]* * * for the cancellation or modification of the assessment and, on such application, the said Judge may cancel or modify the assessment and order the refund to such owner of the whole or part, as the case may be, of any amount paid thereunder.

(2) The decision under sub-section (1) of the District Judge [2]* * * shall be final.

(3) Any sum recoverable under section 11 may be recovered as an arrear of land-revenue.

13-(1) The Collector or any officer empowered by general or special order of the Central Government in this behalf shall have free access at all reasonable times during working hours to any mill or to any part of any mill.

(2) The Collector or any such officer may, at any time during working hours, with or without notice to the owner, examine the purchase, sale and stock records and accounts of any mill and take copies of or extract from all or any of the said records or accounts for the purpose of testing the accuracy of any return or of informing himself as to the particulars regarding which information is required for the purposes of this Act or any rules made thereunder;

Provided that nothing in this section shall be deemed to authorise the examination of any description or formulae of any trade process.

14-(1) All such copies and extracts and all information acquired by a Collector or any other officer from an inspection of any mill or warehouse or from any return submitted under this Act shall be treated as confidential.

(2) If the Collector or any such officer disclose to any person other than a superior officer any such information as aforesaid without the previous sanction of the Central Government, he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine;

Provided that nothing in the section shall apply to the disclosure of any such information for the purposes of a presentation in respect of the making of a false return under this Act.

15 and 16 *Keeping and auditing of accounts, Dissolution of Committee Omitted by the Oilseeds Committee (Amdt.) Act, 1950 (XIX of 1950), s.10*.

17-(1) The Central Government may, after previous publication, make rules for the purpose of carrying into collect the provisions of this Act.

* 17A. Rules made under section 17 may provide that a breach of any of them shall be punishable with fine not exceeding one thousand rupee.

18. *Power of the Committee to make regulations Omitted by the Oilseeds Committee (Amdt) Act. 1950, (XIX of 1950), s.12*

19. All rules made under section 17 shall be published in the official Gazette.

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[1] The words and comma “or in a Presidency-town, to the Chief Judge of the Small Cause Court” omitted by the Oilseeds Committee (Amdt.) Act, 1950 (19 of 1950), s.9.

[2] The words and commas “or the Chief Judge of the Small Case Court, as the case may be, “omitted, ibid.

6.1.2.12 Coconut Committee Act 1944

THE COCONUT COMMITTEE ACT, 1944

ACT No. X OF 1944

[31st March, 1944]

An Act to provide for financing a Committee for the improvement and development of the cultivation, marketing and utilization of coconuts in Pakistan

WHEREAS it is expedient to provide for financing a Committee for the improvement and development of the cultivation, marketing and utilization of coconuts in [3][Pakistan];

It is hereby enacted as follows: --

1. –(1) This Act maybe called the Coconut Committee Act, 1944.
(2) It extends to the whole of Pakistan.

2. In this Act, unless there is anything repugnant in the subject or context,--

(a) "Collector" means the officer appointed by the Central Government to perform in any specified area the duties of a Collector under the provisions of this Act and the rules made thereunder, and includes any officer sub-ordinate to that officer whom he may by order and in writing authorize to perform his duties under those provisions;

(b) " the Committee" means the Pakistan Food and Agriculture Committee set up under sub-section (1) of section 5A of the Agricultural Produce Cess Act, 1940, or any body which replaces the said committee under sub-section (2) of that section;

(c) "mill" means any place in which copra is crushed for the extraction of oil, which is a factory as defined in section 2 of the Factories Act, 1934;

(d) "prescribed" means prescribed by rules made under this Act.

3. —(1)] There shall be levied and collected, as a cess for the purposes of this Act, on all copra consumed in any mill in Pakistan, whether produced in or imported from outside Pakistan, a duty of excise at such rate not exceeding four annas per cwt., as the Central Government may, by notification in the official Gazette, fix in this behalf

Provided that the Central Government may by notification in the official Gazette vary the rate at which the duty of excise shall be levied and collected.

(2) On the last day of each month, or as soon thereafter as maybe convenient, the proceeds of the duty recovered during that month shall, after the deduction of the expenses, if any, of collection and recovery, by paid to the Committee,

(3) The proceeds of the duties recovered since the fifteenth day of August 1947 after deducting expenses of collection and recovery if any shall be paid to the Committee forthwith

4 to 8. *Constitution of Indian Coconut Committee. Incorporation of the Committee. Vacancies. President of Committee, Secretary, Sub-committees and staff. Appointment of officers. Omitted by the Coconut Committee (Amendment) Act, 1950 (XVIII of 1950), s. 7.*

9. —(1) The Committee shall take such measures as it may consider necessary or expedient for the improvement and development of the cultivation and marketing or coconuts and of the production, utilization and marketing of copra, coconut oil and coconut poonac.

(2) Without prejudice to the generality of the foregoing power, the Committee may defray expenditure involved in ---

(a) undertaking, assisting or encouraging agricultural, industrial, technological and economic research;
(b) the supply of technical advice to growers
(c) encouraging the adoption of improved methods in cultivation;
(d) carrying on such propaganda in the interests of the coconut industry as may be necessary
(e) collecting statistics from growers, dealers, millers and other sources on all relevant matters bearing on the industry;
(f) fixing grade standards or copra and its products;
(g) recommending the maximum and minimum prices to be fixed for copra;
(h) advising on all matters which require attention for the development of the industry
(i) improving the marketing of coconuts and suggesting suitable measures to prevent unfair competition;
(j) assisting in the control of insects and other pests and diseases of coconut trees;
(k) promoting and encouraging co-operative efforts among the coconut growers and in the coconut industries;
(l) adopting such measures as may be practicable for assuring remunerative returns to growers;
(m) maintaining and assisting in the maintenance of such institutes, farms and stations as it may consider necessary;
(n) adopting any other measures or performing any other duties which it maybe required by the Central Government to adopt or perform or which the Committee itself may think necessary or advisable in order to carry out the purposes of this Act.

10. –(1) The owner of every mill shall furnish to the Collector on or before the 7th day of each month, a return stating the total amount of copra consumed in the mill during the preceding month, together with such further information in regard thereto as maybe prescribed:

Provided that no return shall be required in regard to copra consumed before the commencement of this Act.

(2) Every such return shall be made in such form and shall be verified in such manner as may be prescribed.

11. –(1) On receiving any return made under section 10, the Collector shall assess the amount of the duty payable under section 3 in respect of the period to which the return relates, and if the amount has not already been paid shall cause a notice to be served upon the owner of the mill requiring him to make payment of the amount assessed within thirty days of the service of the notice.

(2) If the owner of any mill fails to furnish in due time the return referred to in sub-section (1) of section 10 or furnishes a return which the Collector has reason to believe is incorrect or defective, the Collector shall assess the amount if any, payable by him in such manner as may be prescribed, and the provisions of sub-section (1) shall thereupon apply as if such assessment had been made on the basis of a return furnished by the owner:

Provided that in the case of a return which he has reason to believe is incorrect or defective, the Collector shall not assess the duty at an amount higher than that at which it is assessable on the basis of the return without giving to the owner a reasonable opportunity of proving the correctness and completeness of the return.

(3) A notice under sub-section (1) may be served on the owner of a mill either by post or by delivering it or tendering it to the owner or his agent at the mill.

12. -— (1) Any owner of a mill who is aggrieved by an assessment made under section 11 may, within three months of service of the notice referred to in sub-section (1) of that section, apply to the District Judge, for the cancellation or modification of the assessment and on such application the said Judge may cancel or modify the assessment and order the refund to such owner of the whole part, as the case may be, or any amount paid thereunder.

(2) The decision under sub-section (1) of the District Judge shall be final

(3) Any sum recoverable under section 11 may be recovered as an arrear of land-revenue.

13. –(1) The Collector or any officer empowered by general or special order of the Central Government in this behalf shall have free access to all reasonable times during working hours to any mill or to any part of any mill.

(2) The Collector or any such officer may at any time during working hours, with or without notice to the owner, examine the purchase, sale and stock records and accounts of any mill and take copies of or extracts from all or any of the said records or accounts for the purpose of testing the accuracy of any return or of informing himself as to the particulars regarding which information is required for the purposes of this Act or any rules made thereunder:

Provided that nothing in this section shall be deemed to authorize the examination of any description or formulae of any trade process.

14. –(1) All such copies and extracts and all information acquired by a Collector or any such officer from and inspection of any mill or warehouse or from any return submitted under this Act shall be treated as confidential.

(2) If the Collector or any such officer discloses to any person other than a superior officer any such information as aforesaid without the previous sanction of the Central Government, he shall be punishable with imprisonment which may extend to six months and shall also be liable to fine:

Provided that nothing in this section shall apply to the disclosure of any such information for the purposes of a prosecution in respect of the making of a false return under this Act.

15. *Application of proceeds of duty.] Omitted by the Indian Coconut Committee (Amdt.) Act, 1946 (XV of 1946), s.8.*

16 and 17. *Keeping and auditing accounts. Dissolution of Committee. Omitted by the Coconut Committee (amdt.) Act, 1950 (XVIII of 1950), s.10.*

18. —(1) The Central Government may make rules for the purpose of carrying into effect the provisions of this Act.

18A**.** Rules made under section 18 may provide that a breach of any of them shall be punishable with fine not exceeding one thousand rupees.

19. *–Power of the Committee to make regulations. Omitted by the Coconut Committee (Amdt.) Act, 1950 (XVIII of 1950) s.12.*

20. –All rules made under section 18 shall be published in the official Gazette.

6.1.2.13 Agricultural Produce Market Act 1939

THE AGRICULTURAL PRODUCE MARKET ACT 1939,

[PUNJAB ACT V OF 1939]

[An Act to provide for the better regulation of the purchase and sale of agricultural produce and the establishment of market for agricultural produce in the Province of West Pakistan].

Preamble.—

WHEREAS it is expedient to provide for the better regulation of the purchase and sale of agricultural produce in the province of West Pakistan and for that purpose to establish markets and make rules for their proper administration, in the manner hereinafter appearing:

It is hereby enacted as follows:—

1. Short title and extent.—

(1) This Act may be called the Agricultural Produce Market Act, 1939.

(2) It extends to the whole of the north West Frontier Province except the Tribal Areas.

2. Definitions.—

In this Act, unless there is anything repugnant in the subject or context:-

(a) "Agricultural Produce" means cotton, wheat, barley gram, rice, maize, millets, pulses, sugar-cane, oil seeds, vegetables, fruits and livestock products including hies, bones, skins, wool, hair and ghee, or any product derived from anyone of these or any other commodity that may hereafter be declared by notification to be "Agricultural Produce" for the purposes of this Act.

(b) "Dealer" means any person not being a grower who within the notified market area set up, establishes or allows to be continued any place for the purchase or sale of the agricultural produce notified under sub-section (1) of Section 4 or purchase or sells such agricultural produce.

(b) "Government" means the Provincial Government of North-West Frontier Province.

(c) "Grower " means a person who grows agricultural produce personally, through tenants or otherwise but shall not include a grower who works as a dealer or a broker or who is partner of a firm of dealers or brokers or is otherwise engaged in the business of disposal or storage of agricultural produce;

Provided that no persons shall be disqualified from being a grower on the ground only that he is member of a society registered under the Co-operative

Societies Act, 1912, which deals in the purchase or sale of agricultural produce or is otherwise engaged in the business of disposal or storage of agricultural produce.

If a question arises ask to whether any person is a grower or not for the purposes of this Act, the decision of the Deputy Commissioner of the district in which the notified area is situated shall be final.

Provided that the Deputy Commissioner shall not pass any order without giving the aggrieved person an opportunity of being heard.

(d) "Market' means a building, block of buildings, enclosure or other area which may be so notified in accordance with the rules made under this Act.

(c) "Notified market area" means any area notified under section-4.

(f) "Prescribed" means prescribed by rules or bye-laws made under this Act.

(g) "Trade Allowance" includes such allowances as have the sanction of custom in the notified area concerned.

(h) "Warehousemen" includes a person who stores any agricultural produce not belonging to himself and charges rent therefor, in any form, from the person at whose instance the said produce is so stored.

3. Notification of intention of exercising control over purchase and sale of agricultural produce in specified area.—

The Government may, by notification, declare there intention of exercising control over the purchase and sale of such agricultural produce and in such area as may be specified in the notification. Such notification shall state that any objections or suggestions which may be received by Government, within a period to be specified in the notification, will be considered:

Provided that such notification shall not less than one month.

4. Declaration of notified area.—

(1) After the expiry of the period specified in the notification under section 3 and after considering such objections and suggestions as may be received before the expiry of the specified period, the Government may, by notification and in any other manner that may be prescribed, declare the area notified under section 3 or any portion thereof to be a notified market area for the purpose of this Act in respect of the Agricultural produce notified under section 3 or any part thereof.

(2) After the date of issue of such notification or from such later date as may be notified in this behalf, no person unless exempted by rules framed under this Act shall either for himself or on behalf of another person, or of the government within the notified market area set up, establish or continue or allow to be continued any place for the purchase and sale of the agricultural produce so notified, or purchase or sell such agricultural produce except under a licence granted in accordance with

the provisions of this Act, the rules and bye-law made thereunder and the conditions governing the grant of licence:

Provided that a licence shall not be required by a grower who sells himself or through a bonafide agent his own agricultural produce or the Agricultural produce of his tenants on their behalf or by a person who purchases any agricultural produce for his private use.

5. Authority to whom application for grant of licences are to be made.—

The Government shall by rules made under this Act specify the authority to whom an application may be made for the grant of a licence.

6. Application for licences, fees to be paid and cancellation or suspension of licences.—

(1) Any person may apply to the authority specified for a licence which shall be granted for such period, in such form, on such conditions and on payment of such fees not exceeding Rs.10 as may be prescribed:

Provided that if any person carrying on any business of the nature specified in sub-section (2) of section 4 in a notified market area on the 15th day of April, 1941, fails to apply for a licence on or before the 1st day of September, 1941, the licensing authority may refuse to grant him a licence until after the expiry of such period not exceeding three years as it may think fit.

Provided further that government may in their discretion issue a licence to such person and may before issuing such licence impose such penalty not exceeding two thousand rupees as they may think fit:

Provided further that the aforesaid proviso shall not come into force until notified by the Government in the Gazette.

(2) The Government may, or any officer not below the rank of a gazetted officer specially empowered in this behalf may on being satisfied that there has been a breach of any of the conditions of a licence, by an order in writing, cancel or suspend such licence and may also direct that such licence shall not be renewed for such period not exceeding four months for a first breach and not exceeding nine months for a second breach as may be specified in that order; provided that no such order shall be passed without giving the licensee and opportunity to show cause why such an order should not be passed.

(3) Any person aggrieved by an order passed under this section, not being an order of Government, may at any time within one month of the passing thereof, appeal to the Commissioner against such order.

7. Establishment of "Market Committee".—

The Government shall by notification establish a market committee for every notified market area.

8. Constitution of the Committee.

(1) A market committee shall consist of nine or sixteen members as Government may in each case determine.

(2) Of these members one may be appointed by government, from amongst the salaried servants of the state by virtue of his office.

(3) The remaining members shall be appointed by Government, in the manner provided hereunder, that it to say:-

(a) if the committee is to consist of nine members, there shall be appointed:-

(i) five members from growers of the district; and (ii) three members from persons licensed under section 6 and 9 for the notified market area concerned, of whom one, but not more, shall be a person carrying on the occupation of a weight-man, measurer of surveyor.

(b) if the committee is to consist of sixteen members there shall be appointed;-

(i) nine members from growers of the district; and

(ii) six members from person licensed under sections 6 and 9 for the notified market area concerned, of whom one, but not more, shall be a person carrying on the occupation of weighman, measurer or surveyor.

(4) Omitted

(5) Omitted.

(6) No Act done by the committee shall be called into question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the committee.

9. Duties of the Committee.—

(1) It shall be the duty of the market committee to enforce the provisions of this Act, and the rules and bye-laws made thereunder in the notified market area and, when so required by the Government, to establish a market therein providing such facilities for persons visiting in connection with the purchase, sale, storage, weighment, pressing and processing of agricultural produce concerned as the government may from time to time direct.

(2) Subject to such rules as the Government may make in this behalf, it shall be the duty of the market committee to issue licences to brokers, weighmen, measurers, surveyors, warehouse-man, changers, palladars, Boriotas and Rolas for carrying on their occupation in the market area in respect of agricultural produce as defined in this Act and to renew, suspend or cancel such licences.

(3) No broker, weighman, measurer, surveyor, warehouseman, Changer, Palladar, Boriotas and Rolas shall, unless duly authorised by licence, carry on his occupation in a notified market area in respect of agricultural produce as defined in this Act.

10. Period of office of members.—

Subject to the provisions of section 13, every member shall hold officer for a period of three years from the date of his appointment and if, when such period expires, no person has been appointed to succeed him, such member shall, unless the Government otherwise directs, continue to hold office until his successor is appointed.

11. Removal of members.—

The Government may at any time during the period of his office remove by notification after giving an opportunity of being heard and member if such member has, in their opinion, been guilty of misconduct or neglect of duty or has been wrongly or improperly appointed or has lost the qualification on the strength of which he was appointed or whose continuance as a member in the opinion of Government is not desirable.

12. Election of Chairman and Vice-Chairman.—

Every market committee shall elect from amongst its members a chairman and a vice chairman.

13. Filling of Vacancies.—

If through death, resignation, transfer, residence outside the Province, inability to act as a member of the committee or removal in accordance with the provisions of section 11 any vacancy occurs, Government may appoint a member to fill such vacancy in accordance with the provisions of section 8:

Provided that the term of office of the members so appointed shall expire on the same date as the term of office of the vacating member would have expired had the latter held office for the full period allowed under section 10 unless there by delay in appointing a new member to succeed the member first mentioned above, in which case it shall expire on the date on which his successor is appointed by Government.

14. Incorporation of Committee.—

Every market committee shall be a body corporate by such name as the Government may specify in the notification establishing it, shall have perpetual succession and a common seal, may sue and be sued in its corporate name, and shall, subject to the provisions of section 24, be competent to acquire and hold property, both movable and immovable, to lease, sell or otherwise transfer any movable or immovable property which may have become vested in or been acquired by it, and to contract and to do all other things necessary for the purposes for which it is established:

Provided that no committee shall permanently transfer any immovable property except in pursuance of a resolution passed at a meeting specially convened for the purpose by a majority of not less than three fourths of the members of the committee.

15. Sub-committee and Joint Committees and delegation of powers.—

The market committee amy appoint two or more of its members to be a sub-committee for the conduct of any work or to report on any matter, and may delegate to any one or more of its members and withdraw from him or them such of its powers or duties and in such manner as may be prescribed.

16. Appointment and salaries of officers and servants of market Committee.—

(1) Subject to such rules as amy be made by the government in this behalf, a market committee may employ such persons as may be necessary for the management of the market, may pay such person such salaries as it may think fit and shall have power to control and punish them. The Committee amy also, in such manner as may be prescribed. Provide for payment to its employees of such leave, compassionate and medical allowances, gratuities and pensions as it deems proper; and may contribute to any provident fund which may be established for the benefit of such employees.

(2) The committee shall, in the case of any Government servant whom, it employs, pay to Government such contribution towards the pension and leave allowances of such servant as may be payable under any regulation in force.

17. Persons who are deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.—

Every person employed by the Market Committee under the provisions of section 16 and every member of the committee shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code.

18. Execution of contract.—

(1) Every contract entered into by the market committee shall be in writing and shall be signed on behalf of the market committee by the Chairman or, if, for any reason he is unable to act, by the Vice-Chairman and two other members of the committee and shall be sealed with the common seal of the committee.

(2) No contract other than a contract executed as provided in sub-section (1) shall be binding on a market committee.

19. Levy of fees.—

The market committee may, subject to such rules as may be made by Government in this behalf, levy fees on the agricultural produce bought or sold by licensees in the notified market area and Government shall make rules specifying the maximum rates of the said fees:

[1][Provided that—

(a) no fee shall be leviable in respect of any transactions in such delivery of the agricultural produce bought or sold is not actually made; and

(b) a fee shall be liable only on the parties to a transaction in which delivery is actually made.

20. Market Committee Funds.—

(1) All moneys received by a market committee shall be paid into a fund to be called the “Market Committee Fund”. All expenditure incurred by market committee under or for the purposes of this Act shall be defrayed out of the said fund; and any

surplus remaining after such expenditure has been met shall be invested in such manner as may be prescribed by rules.

(2) (a) Every market committee shall, out of its funds, pay to the Government the cost of any special or additional staff employed by the Government in consultation with the committee for giving effect to provisions of this Act in the notified market area.

(b) The government shall determine the cost of such special or additional staff and shall, where the staff is employed for the purposes of more market committees than one, apportion such cost among the committees concerned in such manner as they think fit. The decision of the government determining the amount payable by any market committee shall be final:

21. Purposes for which the fund may be expended.—

Subject to the provisions of section 20 the market committee fund shall be expended for the following purposes only:-

(i) the acquisition of a site or sites for the market;

(ii) the maintenance and improvement of the market;

(iii) the construction and repair of building which are necessary for the purposes of such market and for the health, convenience and safety of the persons using it;

(iv) the provision and maintenance of standard weights and measures;

(v) The pay leave, compassionate and medical allowances, gratuities, pension and contribution towards leave allowance or provident fund of the persons employed by the market committee;

(vi) the payment of interest on loans that may be raised for purposes of the market and the provision of a sinking fund in respect of such loans;

(vii) The collection and dissemination of information regarding all matters relating to crop, statistics and marketing in respect of the agricultural produce concerned and propaganda in favour of agricultural improvement and thrift.

(viii) providing comforts and facilities, such as shelter, shade, parking accommodation and water for the persons, draught cattle and pack animals coming to the market, and similar other purposes

(ix) The expenses incurred in auditing the accounts of the committee;

(x) With the previous sanction of the Government, any other purpose which is calculated to promote the general interest of the market; and

(xi) for the payment of travelling allowance to the members and the employees of the market committee as prescribed.

21-A. (1) Every person shall be liable for the loss, waste or misapplication of any money or other property belonging to a market committee, if such loss, waste or misapplication is provided to the satisfaction of the Deputy commissioner or any Gazetted Officer

specially empowered in this behalf by the Provincial Government to be the direct consequence of such person's neglect or misconduct in the performance of his duties while a member of the market committee, and he may after being given an opportunity by a written or oral representation why he should not be required to make good the loss, be surcharged with the value of such money on the amount of such money by the Deputy Commissioner of the Gazetted Officer, as the case may be, and if the amount is not paid within 14 days from the expiry of the period of appeal prescribed by sub-section (2) it shall be recoverable by the committee as arrears of land revenue.

(2) The person against whom an order under sub-section (1) is made may within one month of the notification of such order appeal to the Commissioner who shall have the power of confirming, modifying or disallowing the surcharge.

22. No Trade allowance permissible except as prescribed by rules or bye-laws.—

No trade allowance, other than an allowance prescribed by rules or bye-laws made under this Act, shall be made or received in a notified market area by any transaction in respect of the Agricultural produce concerned and no civil court shall in any suit or proceeding arising out of any such transaction, recognize any trade allowance not so prescribed.

22-A. (1) The Provincial Government may, by notification direct that all or any dispute other than disputes to which all the parties are dealers licensed under section 6, arising in a notified market area, and relating to such matters connected with agricultural produce as may be prescribed by the Provincial Government, shall be referred to a Board of Arbitrators constituted under this Act.

(2) The Board shall receive and record evidence, and shall have power to administer oaths to parties and witnesses, and on requisition in writing signed by the Chairman of the Board, the Magistrate authorised by the District Magistrate in this behalf shall issue the necessary processes for the attendance of witnesses and the production of documents and material objects required by the Board, and may enforce the said processes as if they were processes for attendance or production before himself.

(3) No member of the Board, who has a direct interest in the matter under reference, shall take part in the consideration for discussion of; or vote on any question with respect to the said matter.

22-B. (1) The decision of every Board of Arbitration shall be in accordance with the majority of votes.

(2) If there is not a majority of votes in favour of any proposed decision, the opinion of the Chairman shall prevail.

(3) The decision of a Board of Arbitration shall:-

(a) be enforced by any Civil court having jurisdiction in the same manner as a decree of such court; and

(b) be final and shall not be questioned in any Court.

23. Bar of suit in absence of notice.—

(1) No suit shall be instituted against any market committee or any member, or employee thereof or any person acting under the direction of any such committee, member, or employee for anything done or purporting to be done under this Act, until the expiration of two months next after a notice in writing, stating the cause of action, the name and place of abode of the intending plaintiff and the relief which he claims, has been, in the case of a committee) delivered or left at its office, and in the case of any such member, employee or person as aforesaid, delivered to him or left at his office or usual place of abode, and the plaintiff shall contain a statement that such notice has been so delivered , or left:

Provided that where a suit is instituted without delivering or leaving such notice, or before the expiration of said period of two months, or the plaint does not contain a statement that such notice has been so delivered or left, the plaintiff shall bot be entitled to any costs, if any settlement as regard the subject matter of the suit is reached or the market committee, any member, employee or person referred to above concedes the plaintiff's claim, within the period of two months form the date of the institution of the suit.

(2) [1][**********]

24. Power to borrow.—

(1) The market committee may, with the previous sanction of the Government raise the money required for carrying on the purpose for which it is established on the security of any property vested in and belonging to the market committee and of any fees leviable by the market committee under this Act.

(2) The market committee may, for the purpose of meeting the initial expenditure on lands, building and equipment required for establishing the market, and for the proper discharge of the duties and functions imposed on it by or under this Act, obtain a loan from the Government on such conditions, and subject to such rules as may be prescribed.

[2][**24-A.** (1) The Government may by order in writing [after giving a reasonable opportunity of showing cause]annual any proceedings of a committee or sub-committee which it considers not be in conformity with law or the rules or byelaws in force thereunder and may do all things necessary to secure such conformity, or may suspend any resolution which it considers likely to lead to a breach of the peace, or to cause injury or annoyance to the public or to any class or body of persons, or is likely to affect adversely the interest of the market committee or of growers or dealers transacting business in agricultural produce or of any class of functionaries working in the notified market area concerned.

(2) The Deputy Commissioner may, by order in writing suspend within the limits of the district the execution of any resolution or order of a market committee or sub-committee of prohibit the doing within those limits of any act which is being done or is about to be done in pursuance of or under cover of this act or any rule or by-law made thereunder. If in his opinion, the resolution or order of a market committee or sub-committee or prohibit the doing within those limits of any act which is being done or is about to be done in pursuance of or under cover of this act or any rule or bye-law made thereunder. If in his opinion, the resolution, order or act is in excess

of the powers conferred by law, or is likely to lead to a breach of peace, or to cause injury or annoyance to the public or to any class or body of person, oris likely to effect adversely the interest of the market committee or of growers or dealers transacting business in agricultural produce or of any class of functionaries working in the notified market area concerned.

(3) When the Deputy Commissioner makes and order under this section, he shall forward a copy thereof, with a statement of his reasons for making it and the explanation, if any, of the market committee concerned, to the Provincial Government, who may thereupon rescind the order or direct that it shall continue in force with or without modification, permanently, or for such period as it thinks fit.

(4) The Deputy Commissioner may, subject to such conditions or restrictions ad he may deem fit to impose, by order in writing delegate his power under this section to any officer not below the rank of an Extra Assistant Commissioner as the Provincial Government may be general or special order direct.

25. Supersession of market Committees.—

(1) If, in the opinion of the Government, market committee is incompetent to perform or persistently makes default in performing the duties imposed on it by or under this Act, or abuses its powers, the Government may by Notification, supersede such committee.

Provided that before issuing a notification under this sub-section the Government shall give a reasonable opportunity to the market committee for showing cause against the proposed supersession and shall consider the explanation and objections if any, of the market committee.

(2) Upon the publication of a notification under sub-section(1) superseding a market committee, the following consequences shall ensure:—

(a) all the members including the chairman and vice-chairman of the market committee shall, as from the date of such publication, be deemed to have ceased to be members of the committee;

(b) all assets of the committee shall vest in Government and the Government shall be liable for all the legal liabilities of the committee subsisting at the date of its supersession up to the limit of the said assets.

(3) The Government may, at their discretion, by order constitute either a new committee as provided under section 7 of such other authority for the carrying out of the functions of the committee, as the Government may deem fit.

(4) (a) When the Government have made an order under sub-section (3), the assets and liabilities defined in sub-section (2) (b) vesting in the Government at the date of such order shall be deemed to have been transferred on the date of such order to the new committee or authority constituted as aforesaid.

(b) (i) Where the Government by order under sub-section (3) of section 25 have appointed an authority other than a new committee for the carrying out of

the functions of the superseded committee the Government may by notification determine the period for which such authority shall act. Such period shall not be longer than three years:

Provided that the term of office of such authority may be terminated earlier if the Government for any reason consider it necessary.

(ii) At the expiry of the term of office of such authority, a new committee shall be constituted.

(iii) Upon such an order being made the assets and liabilities vesting in the authority thereby superseded, be deemed to have been transferred by such order to the new committee.

(5) Whenever the assets of a committee vest in the Government and no new Committee or authority is appointed in its place, the Government shall employ the balance of the assets remaining after the discharge of the subsisting legal liabilities of the said committee for any object of public utility in the area specified in the notification issued under sub-section (1) of section 4.

[1][25-A. Emergency powers.—

If at any time Government are satisfied that a situation has arisen in which the purposes of this Act cannot be carried out in accordance with the provisions thereof, Government may by notification:-

(a) Declare that the functions of the market committee shall, to such extend as may be specified in the notification, be exercised by Government or such person or persons as they may direct;

(b) Assume to themselves all or any of the powers vested in or exercisable by any marked committee;

[and such notification may contain such incidental and consequential provisions as may appear to Government to be necessary or desirable for giving effect to the object of the notification]

[1][(2) .....]

26. Penalties.—

(1) Whoever contravenes the provision of section 4 shall, on conviction, be punishable with fine which may extend to five hundred rupees, and, in the case of a continuing contravention, with a fine which in addition to such fine as aforesaid, may extend to thirty rupees for every day after the date of first conviction during which the contravention is continued.

(2) Whoever contravenes the provisions of sub-section (3) of section 9, shall, on conviction, be punishable with fine which may extend to fifty rupees, and, in the case of a continuing contravention with a fine which, in addition to such fine as aforesaid, may extend to two rupees for every day after the date of first conviction during which the contravention is continued.

(3) Whoever contravenes the provisions of section 22 shall, on conviction, be punishable with fine which may extend to one hundred rupees.

27. Power to make Rules.—

(1) The Government may, either generally or specially for any notified market area or areas, make rules consistent with this Act for carrying out all or any of the purposes thereof.

(2) In particular and without prejudice to the generality of the fore-going power such rules may provided for:—

(i) the appointment and removal of members of a market committee;

(ii) the powers to be exercised and the duties to be performed by the market committee;

(iii) the election of the Chairman and Vice-Chairman of such committee, their powers and term of office.

(iv) the filling of casual vacancies in the office of members or in the office of Chairman or Vice-Chairman of the market committee;

(v) the time, place and manner in which a contract between buyer and seller is to be entered in to an the money is to be paid to the seller:

(vi) generally for the guidance of the market committee;

(vii) management of the market, maximum fees which may be levied by the market committee in respect of the agricultural produce bought or sold by licensees in the notified market area, and the recovery and disposal of such fees;

(viii) the issue by a market committee of licences to brokers, weighmen, measurers,. surveyors, and warehousemen, the form in which, and the conditions under which, such licences shall be issued or renewed and the fees, if any, to be charge therefor;

(xi) the place or places at which the agricultural produce shall be weighed, the kind and description of the scales, weights and measures which alone may be used in transactions in agricultural produce in a notified market area;

(x) the inspection, verification, regulation, correction and confiscation of scale, weights and measures in use in a notified market area;

(xi) the trade allowances which may be made or received by any person in any transaction in an agricultural produce in a notified market area;

(xii-a) the constitution, powers and functions of a Board of Arbitration (the manner in which reference shall be made to it);

(xii-b) the procedure to be followed by Boards of Arbitration in the disposal of references under this Act;

(xii-c) the transfer of matters and cases for from one Board of Arbitration to another and the transfer of money in such cases;

(xii-d) the representation in proceedings before Boards of Arbitration of parties who are minors or of unsound mind or are unable to make an appearance;

(xii-e) the regulation of the scale of costs which may be allowed in proceedings before Boards of Arbitration:

Xii-f) prescribed and determining the amount of the fees payable in respect of any proceedings before a Board of Arbitration; and

(xii-g) the maintenance by Boards of Arbitration of registers and records of proceedings before such Boards and for the inspection of such registers and record;

(xiii) the prohibition of brokers from acting in the same transaction on behalf of both the buyer and the seller of agricultural produce;

(xiv) the provision of accommodation for storing any agricultural produce brought into the market;

(xv) the preparation of plans and estimates for works proposed to be constructed partly or wholly at the expense of the market committee, and the grant of sanction to such plans and estimates;

(xvi) the form in which the accounts of a market committee shall be kept, the audit and publication of such accounts, and the charge, if any, to be made for such audit;

(xvi-a) the management and regulation of provident funds which may be established by a market committee for the benefit of its employees.

(xvii) the preparation and submission for sanction of an annual budge and the reports and returns to be furnished by a market committee.

(xviii) the investment and disposal of the surplus funds of a market committee;

(xix) the manner in which auctions of agricultural produce shall be conducted and bids made and accepted in any market;

(xx) [xxxxxxxxxxxxxxxxxxxxx]

(xxi) prescribing any matter in respect of which fees shall be payable under this Act, and fixing the amount of such fees and the mode of payment and recovery thereof;

(xxii) exemption of persons or classes of persons from the obligation of obtaining licences under section4;

(xxiii) specifying the authority to which application for obtaining licences shall be made;

(xxiv) the realization or disposal of fees recoverable under this Act of under any rules or bye-laws made under this Act;

(xxv) the travelling expenses that may be paid to the members and employees of market committee;

(xxvi) the settlement of any question as to whether any person is grower or not;

(xxvii) the appointment of members of a marketing committee;

(xxviii)the submission of a panel by person, licensed non official members of the District Council and persons licensed under section 6 and 9.

(xxix) imposing on persons licensed under section 4, the duty of making returns to market committee at regular intervals of transactions of sale and purchase effected by them, or at their place of business, and of producing accounts for inspection and furnishing information when called upon by the an authority duly empowered and prescribing the form and mode of verification of and the particulars to be entered in, such returns as well as the nature of such information; and

(xxx) such other matters as, in the opinion of the Provincial Government, are necessary or expedient to be prescribed.

(3) Any rule made under this section may provide that any contravention thereof or of any of the conditions of any licence issued or renewed there under shall be punishable with fine which may extend to five hundred rupees.

(4) All such rules be laid on the table of the Provincial Assembly for one month previous to the next session thereof and shall, subject to the provisions of section 22 of the West Pakistan General Clause Act, 1956 be liable to be rescinded or modified by a motion of the said Assembly tabled at the next session.

28. Bye-Laws.—

(1) Subject to any rules made by the Government under section 27, the market committee may, in respect of the notified market area under its management, make bye-laws for:-

(i) the regulation of business;

(ii) the conditions of trading;

(iii) the appointment and punishment of its employees:

(iv) the payment of salaries, gratuities, pension, leave, companssionate and medical allowances to such employee;

(v) the delegation of powers, duties, and functions of the sub-committee, if any, provided by section 15;

(vi) the remuneration of different functionaries not specifically mentioned in the Act working in notified market area and rendering any service in connection with the sale or purchase of agricultural produce; and

(vii) such other matters as in the opinion of the Provincial Government are necessary or expedient to be provided for in bye-laws; and may provide that contravention thereof shall be punishable on conviction, by a competent Magistrate with a fine which may extend to fifty rupees.

(2) The power to make bye-laws under this Act is subject to the condition of the bye-laws being made after previous publication, in such manner as may be prescribed.

(3) No bye-law made under this Act shall have any validity until and unless confirmed by the Provincial Government.

(4) Before confirming any such bye-law the Provincial Government may modify it.

(5) The Provincial Government amy cancel their confirmation of any such bye-law and thereunder the bye-law shall cease to have effect.

[2][**28-A.** All rules and bye-Laws made and (when confirmation is required) confirmed under this Act shall be published in the official Gazette and shall thereupon have effect as if enacted in this Act.]

29. Trail of offence.—

(1) No offence made punishable, by this Act or any rule or bye-law made thereunder shall be tried by a Court inferior to that of a magistrate of the first class.

(2) Prosecutions under this Act may be instituted by any person duly authorised by a resolution of the market committee in this behalf.

(3) All fines received from an offender shall be credited to Provincial revenues and grant equivalent to such fine shall be paid to the market committee.

The market committee may, by a resolution, compound any offence under the Act, the rules or bye-laws and may exercise this power at any time before direction prosecution, or where a prosecution has been instituted before the case is finally disposed of by trying magistrate.

30. Appeals.—

In all cases in which power under section 6 has been exercised by a Gazetted Officer specially empowered in this behalf an appeal shall lie to Government in the manner prescribed.

31. Recovery of sums due to Government from market Committee.—

All sums due from a market committee on the Government may be recovered in the same manner as arrears of land revenue.

32. Delegation of certain powers.—

Government may, by notification, delegate all or any of its powers under this Act, other than the power to make rules, to the Commissioner.

33. Repeal.—

(1) The following enactments are hereby repealed.

(a) the North-West Frontier Province, Agricultural produce markets Act, 1939;

(b) [.....]

(c) [.....]

(2) Notwithstanding the repeal of the enactments specified in sub-section 91), everything done, action taken, obligation, liability, penalty or punishment incurred, licence granted, inquiry or proceedings commenced, committee appointed or person appointed or authorised, jurisdiction of power conferred rule or bye-law made and order or notification issued under any of the provisions of the said enactment, shall if not inconsistence with provisions of this Act, be continued and so far as may be, deemed to have been respectively done, taken, incurred, commenced, appointed, authorised, conferred, made or issued under this Act.

6.1.2.14 Agricultural Produce (Grading and Marking) Act 1937

THE AGRICULTURAL PRODUCE (GRADING AND MARKING) ACT, 1937

[1]ACT No. 1 OF 1937

[24th February 1937]

An Act to provide for the grading and marking of agricultural and other produce.

WHEREAS it is expedient to provide for the grading and marking of Agricultural [and other] produce; It is hereby enacted as follows:-

1. (1) This Act maybe called the Agricultural Produce (Grading and Marking) Act, 1937.

(2) It extends to the whole of Pakistan.

2. In this Act, unless the contrary appears from the subject or context, ---

(a) "agricultural produce" includes all produce of agriculture or horticulture and all articles of food or drink wholly or partly manufactured from any such produce, and fleeces and the skins of animals.
(b) "counterfeit" has the meaning assigned to that word by section 28 of the Pakistan Penal Code.
(c) "covering' includes any vessel, box, crate, wrapper, tray or other container.
(d) "grade designation" means a designation prescribed as indicative of the quality of any scheduled article;
(e) "grade designation mark" means a mark prescribed as representing a particular grade designation;
(f) "quality" , in relation to any article, includes the state and condition of the article;
(g) "prescribed" means prescribed by rules made under this Act;
(h) "scheduled article" means and article included in the Schedule; and
(i) an article is said to be marked with a grade designation mark, if the article itself is marked with a grade designation mark or any covering containing or label attached to such article is so marked.

3. The Central Government may, after previous publication by notification in the official Gazette, make rules ---

(a) fixing grade designations to indicate the quality of any scheduled article.
(b) defining the quality indicated by every grade designation;

[1] For statement of Objects and Reasons, *see* Gazette of India, Extraordinary, dated the 13th February, 1937, p. 71.
The Act has been extended to the Leased Areas of Baluchistan *see* the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950); and applied in the Federated Areas of Baluchistan, *see* Gazette of India, 1937, Pt.1. p.1499.
It has also been extended to the state of Bahawalpur by the Bahawalpur (Extension of Federal Laws) Order of 1953 (G.G.O. 11 of 1953), as amended

(c) specifying grade designation marks to represent particular grade designations;
(d) authorising a person or body of persons, subject to any prescribed conditions, to mark with a grade designation mark any article in respect of which such mark has been prescribed or any covering containing or label attached to any such article;
(e) specifying the conditions referred to in clause (d) including in respect of any article conditions as to the manner of marketing, the manner in which the article will be packed, the type of covering to be used, and the quantity by weight, number or otherwise to be included in each covering;
(f) providing for the payment of any expenses incurred in connection with the manufacture or use of any implement necessary for the reproduction of a grade designation mark or with the manufacture or us of any covering or label marked with a grade designation mark or with measures for the control of the quality of articles marked with grade designation marks including testing or samples and inspection of such articles or with any publicity work carried out to promote the sale of any class of such articles; and
(g) providing for the confiscation and disposal of produce marked otherwise than in accordance with the prescribed conditions with a grade designation mark.

4. Whoever marks any scheduled article with a grade designation mark, not being authorised to do so by rule made under section 3, shall be punishable with fine which may extend to five hundred rupees.

5. Whoever counterfeits any grade designation mark or has in his possession any die, plate or other instrument for the purpose of counterfeiting a grade designation mark shall be punishable with imprisonment which may extend to two years, or with fine, or with both.

6. The Central Government, after such consultation as thinks fit of the interests likely to be affected, may by notification in the official Gazette declare that the provisions of this Act shall apply to an article other than an article or agricultural produce not included in the Schedule or to an article other than an article of agricultural produce, and on the publication of such notification such article shall be deemed to be included in the Schedule.

THE SCHEDULE
(see section 2)

1. Fruit
2. Vegetables
3. Eggs
4. Dairy Produce
5. Tobacco
6. Coffee
7. Hides and Skins.

6.1.2.15 Sugar–Cane Act 1934

THE SUGAR-CANE ACT, 1934

ACT No. XV OF 1934

[1st May, 1934]

An Act to regulate the price of sugar-cane intended for use in sugar factories.

WHEREAS it is expedient for the purpose of assuring to sugar-cane growers a fair price for their produce, to regulate the price at which sugar-cane intended to be used in the manufacture of sugar may be purchased by or for factories; It is hereby enacted as follows:-

1. Short title, extent and Commencement:

(1) This Act may be called the Sugar-cane Act, 1934

(2) It extends to the whole of Pakistan

(3) This section shall come into force at once; the remaining sections of this Act shall come into force in any Province on such date as the Provincial Government may, by notification in the official Gazette, appoint in that behalf.

2. Definitions:

In this Act, unless there is anything to the repugnant in the subject or context,---

(1) "controlled area" means any area specified in a notification issued under sub-section (1) of section 3.

(2) "factory" means any premises (including the precincts thereof) wherein twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which any manufacturing process connected with the production of sugar is being carried on or is ordinarily carried on with the aid of power; and

(3) "sugar" means any form of sugar containing more than ninety per cent of sucrose.

3. Declaration of controlled areas, and fixing of prices:

(1) The Provincial Government may, by notification in the official Gazette, declare any area specified in the notification to be a controlled area for the purposes of this Act.

(2) The Provincial Government may, by notification in the official Gazette, fix a minimum price or minimum prices for the purchase on any controlled area of sugar-cane intended for use in any factory.

(3) The Provincial Government may, by notification in the official Gazette, prohibit in any controlled area the purchase of sugar-cane intended for use in any factory otherwise than from the grower of the sugar-cane or from a person licensed by the Provincial Government to act as a purchasing agent.

4. Previous publication of notifications under Section 3:

Not less than thirty days before the issue of any notification under sub-section (1) or sub-section (2) of section 3, the Provincial Government shall publish in the official Gazette and in such other manner (if any) as it thinks fit a draft of the proposed notification specifying a date on or after which the draft will be taken into consideration, and shall consider any objection or suggestion, which maybe received from any person with respect to the draft before the date so specified.

5. Penalty for purchase of sugar-cane in contravention of notification under Section 3:

Whoever in any controlled area purchases any sugar-cane intended for use in a factory at a price less than the minimum price fixed therefor by notification under sub-section (2) of section 3 or in contravention of any prohibition made under sub-section 3 shall be punishable with fine which may extend to two thousand rupees.

6. Sanction for prosecution under this Act:

No Court shall take cognizance of any offence punishable under section 5 except upon complaint made by order of, or under authority from, the District Magistrate.

7. Power of Provincial Government to make rules:

(1) The Provincial Government may, by notification in the official Gazette, make rules, for the purpose of carrying in effect the objectives of this Act.

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

(a) the carrying out of inquiries preliminary to the exercise of the powers conferred by section 3;

(b) establishing Advisory Committees for any purpose connected with the administration of this Act and defining the powers, functions and procedure of such Committees;

(c) the issue of licences to purchasing agents, the fees for such licences and the regulation of the purchase and sale of sugar-cane by and to such agents;

(d) the organisation of growers of sugar-cane into societies for the sale of sugar-cane to factories;

(e) the authorities by which any functions under this Act or the rules made thereunder are to be performed; and

(f) the records, registers and accounts to be maintained for ensuring compliance

with the provisions of this Act.

(3) In making any rule under sub-section (1) or under clause (c) or clause (f) of sub-section(2), the [Provincial Government] may provide that a breach of the rule shall, where no other penalty is provided by this Act, be punishable with fine not exceeding two thousand rupees.

8. Power of Provincial Government to make rules:

The Provincial Government after previous publication may, by notification in the official Gazette, make rules providing for the exemption of factories or any class of factories from the provision of this Act.

6.1.2.16 Cotton Transport Act 1923

THE COTTON TRANSPORT ACT – 1923

ACT No.III of 1923

[23rd February 1923]

An Act to provided for the restriction and control of the transport of cotton in certain circumstances.

WHEREAS it is expedient for the purpose of maintaining the quality and reputation of the cotton grown in certain areas in Pakistan to enable the restriction and control of the transport by rail and the import of cotton into those areas; it is hereby enacted as follows: -

1. Short title and extent:

(1) This Act maybe called the Cotton Transport Act, 1923

(2) It extends to the whole of Pakistan.

2. Definitions:
In this Act, unless there is anything repugnant in the subject or context, -

(a) "certified copy", in relations to a license, means a copy of the license certified in the manner described in section 76 of the Evidence Act, 1872, by the authority by which the license was granted

(b) "cotton" means every kind of unmanufactured cotton, that is to say, ginned and unginned cotton, cotton waste and cotton seed;

(c) "cotton waste", means droppings, strippings, fly and other waste products of a cotton-mill other than yarn waste;

(d) "license" means a license granted under this Act;

(e) "notified station" means a railway station specified in a notification under section 3;

(f) "prescribed" means prescribed by rules made under this Act; and

(g) "protected area" means an area into which the import of cotton or of any kind of cotton has been prohibited wholly or partly by a notification under section 3

(h) "appropriate Government" means in relation to the transport of cotton across the customs frontiers and interprovincial trade and commerce, the Federal Government and for other purposes the Provincial Government.

3. Power to issue notification prohibiting import of cotton into protected area:

(1) The appropriate Government may for the purpose of maintaining the quality or reputation of the cotton grown in any area in the Province, by notification in the official Gazette, prohibit the import of cotton or of any specified kind of cotton into that area by rail, road, river and sea, or by any one or more of such routes save under, and in accordance with the conditions of, a license:

Provided that not such notification shall be deemed to prohibit and import into any protected area of packages containing any kind of cotton and not exceeding ten pounds avoirdupois weight.

(2) Any such notification may prohibit the delivery to, and the taking of delivery by, any person, at any specified railway station situated in the protected area, of any cotton, the import of which [by rail] into that area is prohibited when such cotton has been consigned from a railway station not situated in that area, unless such person holds a license for the import [by rail] of the cotton into that area.

4. Refusal to carry unlicensed cotton:

(1) Notwithstanding anything contained in the Railways Act, 1890, or any other law for the time being in force, the station master of any railway station or any other railway servant responsible for the booking of goods or parcels at that station may refuse to receive for carriage at, or to forward or allow to be carried on the railway from, that station any cotton consigned to a notified station, being cotton of a kind of which the delivery at such notified station has been prohibited unless both stations are in the same protected area, or unless the consignor produces a certified copy of a license for the import of the cotton by rail into the protected area in which such notified station is situated.

(2) Every certified copy of a license when so produced shall be attached to the invoice or way-bill, as the case may be, and shall accompany the consignment to its destination, and shall there be dealt with in the prescribed manner.

5. Procedure where cotton arrives at notified station:

(1) Where any cotton, the import of which by rail into any protected area has been prohibited, has been consigned to an arrives at a notified station in any such protected area, the station master or other railway servant responsible for the receipt and delivery to the consignee of goods or parcels, as the case maybe, at that station shall, unless both the notified station and the railway station from which the cotton has been consigned are situated in the same protected area, refuse to deliver the cotton until he is satisfied that the consignee holds a license for the import of the cotton [by rail] into the protected area in which such notified station is situated; and, if he is not so satisfied, or if within fourteen days the consignee or some person acting on his behalf does not appear in order to take delivery, shall return the cotton to the railway station from which it was consigned, together with an intimation that delivery of the cotton has been refused or has not been taken as the case may be.

(2) Any station master or other railway servant receiving any cotton returned under sub-section (1), or returned with a like intimation from a railway station specified in a notification under sub-section (3) if section 4, shall cause to be served on the consignor in any manner authorized in section 141 of the Railways Act, 1890, a notice stating that the cotton has been so returned and requiring the consignor to pay any rate, terminal or other charges due in respect of the carriage of the cotton to and from the railway station to which it was consigned, and such charges shall be deemed to be due from the consignor for all the purposes of section 55 of that Act.

6. Penalties:

Any person who in contravention of this Act or of any notification or rule made hereunder, knowingly takes delivery of any cotton from a notified station or
imports or attempts to import, any cotton into a protected area, and any station master or other railway servant who, in contravention of the provisions of sub-section (1) of section 5, without reasonable excuse, the burden of proving which shall lie upon him, delivers any cotton to a consignee or other person shall be liable to a fine not exceeding one thousand rupees, and upon any subsequent conviction to imprisonment which may extend to three months or to fine which may extend to five thousand rupees, or to both.

7. Power to make rules:

(1) The Appropriate Government may by notification in the official Gazette make rules to provide for any of the following matters, namely: -

(a) the prevention of the import into a protected area by road, river or sea, save under and in accordance with the conditions of a license, of cotton the import of which into that area has been prohibited wholly or partly by a notification under section 3;

(b) the terms and conditions to be contained in licenses and the authorities by which they maybe granted; and

(c) the manner in which licenses and certified copies thereof shall be dealt with on and after the delivery of the cotton to which they relate.

(2) Any such rules may provide that any contravention thereof or of the conditions of any license, not otherwise made punishable by this Act, shall be punishable with fine which may extend to five hundred rupees.

8. Previous approval of Provincial Legislature to issue of notifications and rules:

No notification under section 3 or rule under section 7 shall be issued by the Appropriate Government, unless it has been laid in draft before the Parliament or, as the case may be the Provincial Assembly, and has been approved by a Resolution of Parliament or of that Assembly, either with or without modification or addition, but upon such approval being given the notification or rule, as the case may be, may be issued in the form in which it has been approved;

9. Protection for acts done under Act:

No suit or other legal proceeding shall be instituted against any person in respect of anything which is in good faith or intended to be done under this Act.

6.1.2.17 Cattle Trespass Act 1871

The Cattle-Trespass Act, 1871

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[1] Act No. I of 1871

[13*th January,* 1871]

An Act to consolidate and amend the law relating to Trespasses by Cattle.

WHEREAS it is expedient to consolidate and amend the law

[1]For Statement of Objects and Reasons, *see* Gazette of India, 1870, Pt. V. P.310. for Proceedings in Council, see *ibid.,* Supplement, Pp. 1150, 1200, 1290 and Supplement, 1871, P. 178.

The Act, has been repealed in its application to the Province of Punjab, by Punjab Act. XXXIV of 1975, s. 233.

(Chapter 1. –Preliminary)

relating to trespass by cattle; It is hereby enacted as follows :–

CHAPTER I
PRELIMINARY

[1][1.–(1) This Act may be called the Cattle-trespass Act, 1871]; ;and

(2) It extends to [2][the whole of Pakistan], [3]except 4* * * such local areas as the [5][Provincial Government], by notification in the official Gazette, may from time to time exclude from its operation.]

[6]* * * * * * *

2. [*Repeal of Acts. References to repealed Acts.*] *Rep. by the Repealing Act, 1938* (*1 of 1938*).

3. In this Act. –

"officer of police" includes also village-watchmen, and "cattle" includes also elephants, camels, buffaloes, horses, mares, geldings, ponies, colts, fillies, mules, asses, pigs, rams, ewes, sheep, lambs, goats, and kids, [7][and [8] "local authority" means any body of persons for the time being invested by law with the control and administration of any matters within a specified local area, and "local fund" means any fund under the control or management of a local authority.]

It has been applied to Phulera in the Excluded Area of Upper Tanawal to the extent the Act is applicable in the N.W.F.P., subject to certain modifications; and extended to the Excluded Area of Upper Tanawal (N.W.F.P.) other than Phulera with effect from such date and subject to such modifications as may be notified–*see* N.W.F.P. (Upper Tanawal0 (Excluded Area) Laws Regulation, 1950.

It has also been extended to the Leased Areas of Baluchistan, *see* the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950); and applied in the Federated Areas of Baluchistan, *see* Gazette of India, 1937, Pt. I, P. 1499.

[1]Subs. by the Cattle-trespass Act. (1871) Amendment Act, 1891 (1 of 1891), s. 1, for original s. 1.

[2]Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Such. (with effect from the 14th October, 1955), for "all the Provinces and the Capital of the Federation" which was subs. for "the whole of British India" by A. O., 1949, Arts. 3(2) and 4.

[3]This Act has been declared in force in Baluchistan by the British Baluchistan Laws Regulation, 1913 (2 of 1913), s. 3.

[4]The words "the presidency-towns and" committed by A. O., 1949, Sch.

[5]Subs. by A.O., 1937, for "L.G.".

[6]Sub-section (3) of s. 1 rep. by the Repealing and Amending Act, 1914 (10 of 1914), s. 3 and 2nd Sch.

[7]Ins. by Act 1 of 1891, s. 2.

[8]*Cf.* definition in section 3 (28) of the General Clauses Act, 1897 (10 of 1897), which read with s. 4 (2) of that Act applies, to all Acts passed after the 14th January, 1887.

CHAPTER II
POUNDS AND POUND-KEEPER

4. Pounds shall be established at such places as the Magistrate of the District. subject to the general control of the [1][Provincial Government], from time o time directs.

The village by which every pound is to be used shall be determined by the Magistrate of the District.

5. The pounds shall be under the control of the Magistrate of the District; and he shall fix, and may from time to time alter, the rates of charge for feeding and watering impounded cattle.

6. [2][The [3]Provincial Government shall appoint a pound-keeper for every pound.

Any pound-keeper may hold simultaneously any other office under the [Government].

Every pound-keeper shall be deemed to be a public servant within the meaning of the Pakistan Penal Code.

Duties of Pound-Keepers

7. Every pound-keeper shall keep such registers and furnish such returns at the [1][Provincial Government] from time to time directs.

8. When cattle are brought to a pound, the pound-keeper shall enter in his register,–

(*a*) the number and description of the animals.
(*b*) the day and hour on and at which they were so brought,
(*c*) the name and residence of the seizer, and
(*d*) the name and residence of the owner, if known, and shall give the seizer or his agent a copy of the entry.

9. The pound-keeper shall take charge of, feed and water the cattle until they are disposed of as hereinafter directed.

CHAPTER III
IMPOUNDING CATTLE

1. The cultivator or occupier of any land,
or any person who has advance cash for the cultivation of the crop or produce on any land, or the vendee or mortgagee of such crop or produce or any part thereof, may seize or cause to be seized any cattle trespassing on such land, and doing damage thereto or to any crop or produce

[1]Subs. by A. O. 1937, for "L. G.",

[2]Subs. by the Suppl. A.O., 1937, for the original section 6.

[3]This expression includes also such person as the Provincial Government may direct under s. 241 (1) (b) of the G. of 1 Act. 1935, *see* the General Clauses Act, 1897, s. 4A (2).

[4]Subs. by A. O., 1961, Art. 2, for "Crown" (with effect from the 23rd March, 1956).

thereon, and [1][send them or cause them to be sent within twenty-four hours to the pound established for the village in which the land is situate.

All officers of police shall, when required, aid in preventing (*a*) resistance to such seizures, and (*b*) rescues from persons making such seizures.

[2]11. Persons in charge of public roads, pleasure-grounds, plantations, canals, drainage-works, embankments and the like and officers of police, may seize or cause to be seized any cattle doing damage to such roads, grounds, plantations, canals, drainage-works, embankments and the like, or the sides or slopes of such roads, canals, drainage-works or embankments or found straying thereon,

and shall [3][send them or cause them to be sent within twenty-four hours] to the nearest pound.

[4][12. For every head of cattle impounded as aforesaid, the pound-keepers shall levy a fine in accordance with the scale for the time being prescribed by the [5][Provincial Government] in this behalf by notification in the official Gazette. Different scales may be prescribed for different local areas.

All fines so levied shall be sent to the Magistrate of the District through such officer as the [5][Provincial Government] may direct.

A list of the fines and of the rates of charge for feeding and watering cattle shall be posted in a conspicuous place on or near to every pound.]

CHAPTER IV
DELIVERY OR SALE OF CATTLE

13. If the owner of the impounded cattle or his agent appear and claim the cattle, the pound-keeper shall deliver them to him on payment of the fines and charges incurred in respect of such cattle.

The owner or his agent, on taking back the cattle, shall sign a receipt for them in the register kept by the pound-keeper.

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1 Subs. by the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891) s. 3, for "take them or cause them to be taken without unnecessary delay".

2 As to the application of s. 11 to forests, *see* the Forest Act, 1927 (16. of 1927), s. 70; and to railways, *see* the Railways Act, 1890 (9 of 1890), s. 125 (4).

3 Subs. by Act 1 of 1891, s. 4, for "take them without unnecessary delays.

4 Subs. by the Cattle-trespass (Amendment) Act, 1921 (17 of 1921), s. 2, for the originals. 12. *see* s. 71 of the Forest Act, 1927 (16 of 1927) under which the Provincial Government may fix a different scale of fines for cattle impounded under s. 70 of that Act.

5 Subs. by A. O., 937, for "L.G.".

4. seven days from the date of their being impounded, the pound-keeper shall report the fact of the officer in charge of the nearest police-station or to such other officer as the Magistrate of the District appoints in this behalf.

Such officer shall thereupon stick up in a conspicuous part of his office a notice sating–

(*a*) the number and description of the cattle.
(*b*) the place where they were seized.
(*c*) the place where they are impounded.

and shall cause proclamation of the same to be made by beat of drum in the village and at the market-place nearest to the place of seizure.

If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the said officer, or an officer of his establishment deputed for that purpose, at such place and time and subject to such conditions as the Magistrate of the District by general or special order from time to time directs;

[1] Provided that, if any such cattle are, in the opinion of the Magistrate of the District, not likely to fetch a fair price if sold as aforesaid, they may be disposed of in such manner as he thinks fit.

15. If the owner or his agent appear and refuse to pay the said fines and expenses, on the ground that the seizure was illegal and that the owner is about to make a complaint under section 20, then, upon deposit of the fines and charges incurred in respect of the cattle, the cattle shall be delivered to him.

16. If the owner or his agent appear and refuse or omit to pay or (in the case mentioned in section 15) to deposit the said fines and expenses, the cattle, or as many of them as may be necessary, shall be sold by public auction by such officer at such place and time, and subject to such conditions, as are referred to in section 14.

The fitness leviable and the expenses of feeding and watering, together with the expenses of sale, if any, shall be deducted from the proceeds of the sale.

The remaining cattle and the balance of the purchase-money, if any, shall be delivered to the owner or his agent, together with an account showing–

(*a*) the number of cattle seized,
(*b*) the time during which they have been impounded,
(*c*) the amount of fines and charges incurred,
(*d*) the number of cattle sold,
(*e*) the proceeds of sale, and
(*f*) the manner in which those proceeds have been disposed of.

The owner or his agent shall give a receipt for the cattle delivered to him and for the balance of the purchase-money (if any) paid to him according to such account.

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[1] The proviso has been amended in its application to the Bombay Presidency, by Bom. Act 5 of 1931.

17. The officer by whom the sale was made shall send to the Magistrate of the District the fines so deducted. The charges for feeding and watering deducted under section

16. Shall be paid over to the Pound-keeper, who shall also retain and appropriate all sums received by him on account of such charges under section 13.

The surplus unclaimed proceeds of the sale of cattle shall be sent to the Magistrate of the District, who shall hold them in deposit for three months, and if no claim thereto be preferred and established within that period, shall, at its expiry, [1] [be deemed to hold them as part of the revenues of the Province].

18. *[Application of fines and unclaimed proceeds of sale] Rep. by A.O., 1937.*

19. No officer of police or other officer or pound-keeper appointed under the provisions herein contained shall, directly or indirectly, purchase any cattle as a sale under this Act.

No. pound-keeper shall release or deliver any impounded cattle otherwise than in accordance with the former part of this Chapter, unless such release or delivery is ordered by a Magistrate or Civil Court.

[2][CHAPTER V]
COMPLAINTS OF ILLEGAL SEIZURE OR DETENTION

20. Any person whose cattle have been sized under this Act, or having been so seized, have been detained in contravention of this Act, may, at any time within ten days from the date of the seizure, make a complaint[3] to the Magistrate of the District or any Magistrate authorized to receive and try charges without reference by the Magistrate of the District,

21. The complaint shall be made by the complainant in person, or by an agent personally acquainted with the circumstances. It may be either in writing or verbal. If it were verbal, the Magistrate shall take down the substance of it in writing.

If the Magistrate, on examining the complainant or his agent, sees reason to believe the complaint to be well founded, he shall summon the person complained against, and make an enquiry into the case.

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[1] Subs. by A. O., 1937, for "dispose of them as hereinafter provided".

[2] Subs, for the original Chi. V by the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891), s. 6.

[3] The term "offence" as defined by s. 4 (*o*) of the Code of Criminal Procedure, 1898 (5 of 1898), includes any act in respect of which a complaint may be made under this section.

Offences under this section may be tried in a summary way, see Act 5 of 1898, s. 260-(1) (*m*).

(Chapter VI. Penalties)

22. If the seizure or detention be adjudged illegal, the Magistrate shall award to the complainant, for the loss caused by the seizure or detention, reasonable compensation, not exceeding one hundred rupees, to be paid by the person who made the seizure or detained the cattle together with all fines paid and expenses incurred by the complainant in procuring the release of the cattle,

And, if the cattle have not been released, the Magistrate shall, besides awarding such compensation, order their release and direct that the person who made the seizure or detained the cattle shall pay the fines and expenses livable under this Act.

23. The compensation, fines and expenses mentioned in section 22 may be recovered as if they were fines imposed by the Magistrate[1]]

CHAPTER VI
PENALTIES

24. Whoever forcibly opposes the seizure of cattle liable to be seized under this Act,

and whoever rescues the same after seizure, either from a pound, or from any person taking or about to take them to a pound, such person being near at hand and acting under the powers conferred by this Act,

Shall, on conviction before a Magistrate, be punished with imprisonment for period not exceeding six months, or with fine not exceeding five hundred rupees, or with both.

[2]25. Any fine imposed[3] [under the next following section or] for the offence of mischief by causing cattle to trespass on any land may be recovered by sale of all or any of the cattle by which the trespass was committed, whether they were seized in the act of trespassing or not, and whether they are the property of the person convicted of the offence, or were only in his charge when the trespass was committed.

26. Any owner or keeper of pigs who, through neglect or otherwise, damages or causes or permits to be damaged any land, or any crop or produce of land, or any public road,[4] by allowing such pigs to trespass thereon, shall, on conviction before a Magistrate, be punished with fine not exceeding ten rupees.

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1 *See* ss. 63 to 70 of the Pakistan Penal Code (45 of 1860), and s. 386 of the Code of Criminal Procedure, 1898 (5 of 1898); *c*. also, s. 25 of the General Clauses Act, 1897 (10 of 1897).

2 As to the application of s. 25 in the case of cattle-trespassing on a railway, *see* the Railways, Act, 1890 (9 of 1890), s. 125 (3).

3 Ins, by the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891), section 7,

4 "Public road" in section 26 includes a railway-*see* Act 9 of 1890,

Gazette, may from time to time, with respect to any local area specified in the notification, direct that the foregoing portion of this section shall be read as if had reference to cattle generally, or to cattle of a kind described in the notification, instead of to pigs only, or as if the words "fifty rupees" were substituted for the words "ten rupees," or as if there were both such reference and such substitution.]

[3]* * * * * * *

27. Any pound-keeper releasing or purchasing or delivering cattle contrary to the provisions of section 19, or omitting to provide any impounded cattle with sufficient food and water, or failing to perform any of the other duties imposed upon him by this Act, shall, over and above any other penalty to which he may be liable, be punished, on conviction before a Magistrate, with fine not exceeding fifty rupees.

Such fines may be recovered by deductions from the poundkeeper's salary,

28. All fines recovered under section 25, section 26 or section 27 may be appropriated in whole or in part as compensation for loss or damage proved to the satisfaction of the convicting Magistrate.

CHAPTER VII
SUITS FOR COMPENSATION

29. Nothing herein contained prohibits any person whose crops or other produce of land have been damaged by trespass of cattle from suing for compensation in any competent Court.

30. Any compensation paid to such person under this Act by order of the convicting Magistrate shall be set-of and deducted from any sum claimed by or awarded to him as compensation in such suit.

[4][CHAPTER VIII]
SUPPLEMENTAL

31. The [2][Provincial Government] may, from time to time, by notification in the official Gazette,

(a) transfer to any local authority[5] within any part of the territories under its administration in which this Act is in *SCHEDULE- [Rep. by the Repealing Act. 1938 (I of 1938).]*

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1 Ins. by the Cattle-trespass Act (1871) Amendment Act, 1891 (1 of 1891), section 8.

2 Subs. by A. O., 1937 for "L. G."

3 Last paragraph of s. 26 rep., by the Repealing and Amending Act, 1941 (10 of 1914).

4 Ch. VIII was added by Act 1 of 1891, s.9.

5 For special enactment as to the Punjab, *see* the Punjab District Boards Act, 1883 (20 of 1883), s. 20, close (n).

6.1.3 Extractive Industry—Mining, Petroleum

6.1.3.2 NWFP Mines Registration Rules 1994

NORTH WEST FRONTIER PROVINCE MINES

REGISTRATION RULES, 1994

[Gazette of N.W.F.P. Extraordinary, 5th July, 1994]

No.SO(L)/1-15/94/426-27, dated 15-6-1994. The following rules, which the Government of the North-West Frontier Province proposes to make in exercise of the powers conferred by section 30(k) of the Mines Act, 1923 (IV of 1923) are hereby published for information of the persons likely to be affected thereby and notice is hereby given that the proposed rules together with any objections and suggestions with respect thereto, which may be received by the Secretary to Government of the North-West Frontier Province, Industries, Commerce, Mineral Development, Labour and Transport Department within a period of ninety days from the publication of this notification in the official Gazette, shall be taken into consideration after the expiry of the said period.

1. (1) These rules may be called the North-West Frontier Province Mines Registration Rules, 1994.

(2) They shall come in force at once.

2. (1) In these rules unless there is anything repugnant in the subject or context.

(a) "Act" means the Mines Act, 1923 (IV of 1923);

(b) "Form" means a form appended to these rules;

(c) "Registrar" means the Chief Inspector of Mines appointed under section 4 of the Act;

(d) "Quarry" means a dig or bore on, into or under the land, exposed to surface, to win, extract or collect any mineral therefrom in any manner; and

(e) "Treasury" means a Government Treasury or Sub-Treasury, the State Bank of Pakistan and any Branch of the National Bank wherever it represents the State Bank of Pakistan .

(2) Words and expressions not defined here shall have the same meaning as assigned to them under the Act.

3. **Procedure for registration:-**

Every mine shall be registered with the Registrar on an application in Form I to be submitted dully filled in by the agent owner or manager alongwith registration fee at the following rates:--

	Categories of Mines	Amount of Registration fee
(a)	Coal Mines	Rs. 1000 (One thousand only)
(b)	Metalliferous Mines	Rs.500 (Five hundred only)

(2) Every registration shall be renewed annually on payment of the fee on the same rate as specified in sub-rule(1)

(3) The registrations as well as renewal fee shall be deposited in the treasury under the Head of Account .

(4) An application for registration of Mine shall be received by the Registrar, or an officer authorized by him and the record of Registration shall be maintained by the Registrar in a Register in form II.

(5) the Registrar shall issue the Certificate of Registration in Form toall within one month of the receipt of the application complete in every respect.

(6) The Certificate shall be prominently displayed by the owner, agent or manager in the mine office/premises.

6.1.3.3 NWFP Mining Concession Rules 1976

NORTH-WEST FRONTIER PROVINCE

MINING CONCESSION RULES, 1976

[Gazette of N.W.F.P., Extraordinary, 1st February, 1977]

No.M.D.(S.O.II)7-14/73.— In exercise of the powers conferred by section 2 of the Regulation of Mines and Oilfields and Mineral Development (Government Control) Act, 1948 (Act XXIV of 1948), and in supersession of the Pakistan Mining Concession Rules, 1960, in their application to the North-West Frontier Province, the Government of the North-West Frontier Province are pleased to make the following rules, namely:—

1. Short title and commencement.—

(1) These rules may be called the North-West Frontier Province Mining Concession Rules, 1976.

(2) They shall come into force at once.

2. Definitions.—

In these rules and in every prospecting licence and mining lease issued hereunder, unless there is anything repugnant in the subject or context.—

(a) "Act" means the Regulation of Mines and Oilfields and Mineral Development (Government Control) Act, 1948;

(b) "assignee" means a person or a party to whom a lease is assigned, transferred or mortgaged under these rules;

(c) "Collector" means the Government of the Chief Revenue Officer incharge of the District;

(d) "Government" means the Government of the North-West Frontier Province;

(e) "Lessee" means a person to whom a mining lease under these rules is granted and includes his successors-in-interest;

(f) "Licensee" means a person to whom a prospecting Licence under these rules is granted and includes his successor-in-interest;

(g) "Licensing Authority" means the authority to whom application for prospecting licences and mining leases are to be submitted under rule 6 of these Rules; and who has the powers to grant mining concessions and take action as provided under these rules;

(h) ”mineral” for the purpose of these rules means all surface and sub-surface natural deposits of ores and metals and other metallic and non-metallic substances but shall not include-

(i) radioactive minerals necessary for the generation of nuclear energy except Beryl:

(ii) mineral oil;

(iii) minor minerals, that is ordinary sand, bajri, gravel, etc; and

(iv) natural gas

(i) “mines” means any surface or underground excavation where any operation for the purpose of searching for or obtaining a mineral has been or is being carried on and includes all works, machinery, tramways, ropeways and sidings, whether above or below ground, on or adjacent or belonging to or appertaining to a mine; but does not include the manufacturing or processing plant;

(j) “mining lease” means a lease granted under these rules to work, develop and commercially exploit a mineral deposit in accordance with the scheme of development and exploitation approved by the licensing authority;

(k) “pit’s mouth” means a place within the property leased, or licensed where the mineral is collected, stored or taken charge of immediately after it has been mined;

(m) “quarry” means to dig or bore on, into or under the land, exposed a surface, to win, extract or collect any mineral therefrom in any manner; and

(n) “Schedule” means a Schedule appended to these rules.

3. Grant of licences and leases.—

No licence to prospect for any mineral and no lease for mining any mineral shall be granted otherwise than in accordance with these rules.

4. Existing licences and leases to continue.—

Any prospecting licences of mining lease granted or renewed by a competent authority under any law for the time being in force and existing immediately before the coming into force of these rules shall be deemed to have been granted or renewed for the submitting period in accordance with provisions of these rules as if these rules are in force at the time such licence or lease was granted or renewed and will be treated accordingly.

5. Persons by whom application may be made.—

Any person may apply for the grant of a prospecting licence or a mining lease for mineral covered under these rules.

6. Manner in which application may be made.—

Every application for a prospecting licence or a mining lease shall be made in writing in the form set out in the First and Second Schedules respectively and shall be addressed to the licensing authority and presented at his Office against a receipt or sent by post under a registered cover.

7. Particulars of application.—

(1) The licensing authority to whom an application is submitted shall maintain separate registers of applications for prospecting licences and mining leases containing the following columns, specifying:—

(a) Serial No.
(b) Date and time of receipt of the application
(c) Name of the applicant.
(d) Complete address of the applicant.
(e) Whether a national of Pakistan or a company incorporated in Pakistan.
(f) Mineral for which prospecting licence or lease is required.
(g) Period for which licence or lease is required.
(h) District or Districts in which licence or lease is required.
(i) Place and total area applied for.
(j) Application fee paid.
(k) Final disposal of the application.
(l) Remarks.

(2) The register and the Master Plan or topo sheet or index map showing the area for which the mining leases or prospecting licences have been granted shall be opened to public for inspection on payment a fee of Rs.20.00 for topo sheet or master plan or index map.

(3) Every application for a prospecting licence or a mining lease shall *inter alia* contain-

(a) in case of an application by an individual, his name, father's name, address, place of domicile (Domicile Certificate to be attached), nationality and occupation; and

(b) In case of a firm an authenticated copy of partnership deed and in the case of a Registered Firm, a copy of the Registration Certificate.

[Note: Firm shall include company registered under Companies Act, 1913]

(4) An application by an alien or a company incorporated outside Pakistan, shall contain, in addition to the matters specified in sub-rules (1) and (3), full particulars of the company to be incorporated in Pakistan under rule 13 for the purpose of receiving the grant of and working any licence or lease which may be granted in pursuance of the application.

(5) Every application for the grant of a prospecting licence or a mining lease shall be accompanied by a sketch prepared by the applicant from the Survey of Pakistan

Topo Sheet of the scale 1,50,000 or the nearest scale available, duly signed by the applicant, showing boundaries, gridlines, grid numbers, location and the acreage of the area in respect of which the licence or lease is applied for. The licensing authority shall prepare ten copies of the plan of the area applied for in every case, as per sketch supplied by the applicant, on payment of fee of Rs.200 as cost of the plan. This fee shall be deposited by the applicant alongwith the application fee and shall be non-refundable. The fee on account of preparation of plans may be revised from time to time by general or special order of Government.

(6) The applicant for a mining lease shall furnish with his application evidence of his financial and technical qualifications and his ability to comply with the terms and conditions in the model clauses set out in the Third Schedule relating to the lease for which application is made. In case of an alien firm or a company incorporated outside Pakistan, sufficient evidence of technical and financial soundness will have to be furnished to the licensing authority to prove the ability and competence to work, operate or develop any area. The Applicant shall also state whether any application for such lease has been submitted by him in the past in any other country and the result thereof. The applicant shall also furnish upon request by the licensing authority such further evidence relating to such matter, as may be necessary and if such further evidence is not furnished to the satisfaction of the licensing authority within three months of the request thereof, the application shall, unless the licensing authority otherwise determines, be deemed void.

(7) The information supplied or furnished to the licensing authority in pursuance of an application made in accordance with these rules other than that incorporated in the register referred to above in sub-rule (1) shall be treated as confidential by the licensing authority.

8. Application fee.—

Every application for a prospecting licence or mining lease shall be accompanied by a non-refundable fee of :—

(a) Rs.150 in the case of a prospecting licence; and

(b) Rs.300 in the case of a mining lease or for conversion of a prospecting licence into a mining lease.

9. Demarcation of the area in special cases.—

(1) The licensing authority may declare in respect of any particular area that in lieu of furnishing the particulars required under sub-rule(5) of rule 7 by the applicant for a prospecting licence or a mining lease, the area shall be demarcated by the licensing authority by adopting the procedure set forth below or such modifications thereof as it may prescribe, namely:—

(a) At every angle or corner of each boundary line or as near thereto as is practicable, the applicant shall affect the fixation of pillars of substantial, material standing not less than two feet above the surface of the ground, and being not less than two feet square or diameter at the base, at his expense.

(b) The direction of the boundary line on each side of each pillar shall be indicated with reasonable care by a trench having a length of four feet, and a breadth and depth of not less than six inches; provided that if trenches cannot be conveniently cut, the direction of the boundary lines shall be indicated by finger posts, or in any other manner suitable for the purpose.

(c) The pillars shall bear or have affixed thereto some distinguished marks.

(d) In the case of an application for land on the river bank, it shall not be necessary to mark out the land below flood level.

(e) No pillar employed in marking out the land applied for shall be removed or defaced after the application has been filed without prior permission of the licensing authority.

(2) The applicant shall deposit the demarcation fee at such rate or rates as the licensing authority may by general or special order prescribe to meet the cost for survey of the area:

Provided that if no rate is prescribed by the licensing authority, the application shall be accompanied by the minimum fee of rupees one thousand and five hundred:

Provided further that the depositing of fee shall not confer upon the applicant any right in respect of grant of the licence or the lease, as the case may be.

(3) Unless the licensing authority is to the opinion that it is not expedient to grant the licence or lease, as the case may be, it shall, as soon as possible after the receipt of application, cause the land applied for to be surveyed at the expense of the applicant at the rates provided rule 5(2) and the area and all other details ascertained in the course of such survey shall be assumed to be correct.

10. Separate application to be made for each area and each mineral.—

(1) When an applicant requires a licence or lease for two or more areas, or more than one mineral a separate application shall be made in respect of each area and for each mineral.

(2) Nothing in these rules shall prevent more than one licence or lease being granted to the same person.

11. Assignment.—

(1) A licence shall not be assigned, alienated or sublet to any form by the licensee.

(2) A lease shall not be assigned or alienated in any form without the previous consent in writing of the licensing authority. Such a consent shall be granted or refused within a period of three months after the receipt of such application. In case the application is rejected, reasons for rejection shall be stated unless their disclosure is against public interest.

(3) A mining lease shall not be sublet by the lessee to any party, in any way.

(4) Notwithstanding the provisions of sub-rules (1), (2) and (3) above the licensee or lessee may, under intimation to and with the consent of the licensing authority assign, sublet, mortgage or charge the lease or license to or in favour of Industrial Development Bank of Pakistan or its successor-in-interest or its assignee or to any other Bank of Financing Institution approved by the licensing authority in that behalf.

12. Method of making application for assignment.—

(1) An application by a lessee for the assignment of a lease shall be in the form set out in the Second Schedule, addressed in writing to the licensing authority and shall be accompanied by a non-refundable fee of Rs.300 or fee as prescribed by the licensing authority from time to time. The applicant shall furnish in the application the same particulars in respect of the proposed assignee as are required in the case of applicants for lease under rule 8.

(2) An agreement in the form set out in the Seventh Schedule duly executed by the proposed assignee, shall also accompany the application referred to in sub-rule(1):

Provided that where any assignment is proposed to be made in favour of the Industrial Development Bank of Pakistan or any other Financing Institution, a formal agreement under sub-rule(2) will not be necessary, and in such a case it will be sufficient if the notice of assignment is given by the Industrial Development Bank of Pakistan or the Financing Institution concerned to the licensing authority. In case the lessee fails to repay the loan etc., the Industrial Development Bank of Pakistan or the Financing Institution shall get the assignment registered with the licensing authority and in such a case the Industrial Development Bank of Pakistan or the Financing Institution shall acquire all the rights and shall be liable to all the obligations of the original lessee.

13. Companies to be incorporated in Pakistan.—

(1) In case of a company a licence or lease shall only be granted if the company is incorporated in Pakistan.

(2) An Alien(s) shall not be eligible for grant of mining concession under these rules, unless the alien(s) forms a company incorporated in Pakistan.

14. Acknowledgement of application.—

On receipt of the application under rule 6, the licensing authority, or such Officer as it may authorize in this behalf, shall note thereon the date and time of its receipt and shall issue to the applicant an Acknowledgement stating the date and time of receipt of the application. Acknowledgement to be given by the licensing authority or his authorised officer shall clearly state the documents received alongwith the application.

15. Priority.—

If more than one application for the grant of prospecting licence or mining lease in respect of the same land is made, then unless the licensing authority in his discretion decides otherwise, preference may be given to the applicant who has, in accordance with these

rules, filed his application first, subject to the fitness of the applicant and his suitability who may be proved or established to the satisfaction of the licensing authority.

16. Inquiry.—

On receipt of an application the licensing authority shall, as far as possible, ascertain that the area applied for does not overlap with any other area already covered by a licensee or lease of any other applied for area. In case the applied for area is involved in overlapping with the already granted area(s), the application shall be considered for the grant of the free available area, if any in accordance with the rules.

17. Refusal to grant licence, etc.—

If, in the opinion of the licensing authority, it is not expedient to grant a licence or a lease, it shall refuse it and the refusal will be communicated to the applicant within a period of one month of taking such a decision. The reason for refusal will also be conveyed to the applicant unless it is inexpedient to do so in the public interest.

18. Lapse of right to lease.—

If the lease deed is not executed within three months of the communication of the approval of the application for a mining lease, the right of the applicant to such lease shall be deemed to have lapsed, after a reasonable opportunity has been provided to the lessee by the licensing authority to explain the delay; provided that such right shall not be deemed to have lapsed if the licensing authority considers that the delay is not attributed to any fault of the applicant.

19. Right of surrender.—

(1) Subject to sub-rules (2) and (3) the licensee or lessee shall be at liberty to surrender his licence or lease in whole or in part of licensed or leased area at any time on giving not less than ninety day notice in writing to the licensing authority. Upon the expiry of ninety days, the licence or lease shall be determined; provided that all lawful orders issued by the licensing authority and the Chief Inspector of Mines have been complied with and all sums due on account of the licence or lease have been paid and the shape and size of the area remaining after surrender conform to the rules.

(2) The licensee or lessee shall be responsible for all payments due from him on account of acts of omission and commission during the term of the licence or lease even after its determination.

(3) Where the licence or lease have been assigned or sublet to or charged in favour of Industrial Development Bank of Pakistan or its successor-in-interest or assignee or any other bank or Financing Institution approved by the licensing authority, the licensee or lessee shall not surrender the licence or lease except with the consent in writing of the bank or the Financing Institution concerned.

20. Reduction of rent, etc.—

On the surrender of area held under the prospecting licence or mining lease as provided in rule 19, the licensee or leassee shall become entitled to a proportionate reduction in

rent provided that such reduction in rent shall not take effect during the year in which he surrenders the area and for which rent has either been paid or has accrued.

21. Publication.—

As soon possible, after the grant, surrender, determination or assignment of any licence or lease under these rules, the licensing authority shall publish notice of such grant, surrender, determination or assignment in the official Gazette stating the name of the licensee or lessee or assignee and a brief description of the area concerned.

22. Terms and conditions of leases.—

The mining lease shall be in the form set out in the Third Schedule and may include such additional clauses not inconsistent with these rules and the Act, relating to ancillary matters as the licensing authority may deem fit to insert.

23. Security deposit.—

(1) In case of a prospecting licence the security deposit will be at the rate of Rs.2.50 per acre subject to minimum of Rs.1,000. In the case of a mining lease the security deposit will be at the rate of Rs.250 per acre, subject, to a minimum of Rs.1,000 and maximum of Rs.10,000.

(2) If the application for a lease relates to an area for which the applicant already holds a prospecting licence any amount held in deposit under sub-rule(1) of this rule in respect of such prospecting licence shall be carried to his account.

24. Adjustment of security.—

If a mining lease is granted to a person who had made a deposit under rule 25 the amount of the deposit after making such deductions or compensation for surface damage, penalty or otherwise as the licensing authority may order, shall be carried to his credit and adjusted towards the rents, royalties or other deposits payable under these rules. If he declines to receive or fails to obtain any such lease, as aforesaid, the amount will be returned to him on his satisfying the licensing authority that the conditions of rules 32 and 34 have been complied with and on his furnishing the licensing authority with the information required by rules 37 and 70.

PART II-PROSPECTING LICENCE

25. Rights under a prospecting licence.—

A licence to prospect for minerals, hereinafter called prospecting licence shall, subject to these rules and the conditions, if any, prescribed by the licensing authority at the time of grant of prospecting licence, confer on the licensee the sole right-

(a) to mine, quarry, bore, dig and search for, win, work and carry away and dispose of any specified mineral or minerals laying or being within, under or throughout , the land specified in the licence and to clear undergrowth and bushwood and make road or roads on the said land;

(b) subject to the approval of the licensing authority to use for the purpose aforesaid the water upon or within any of the said lands and to collect and impound the same for such purpose in such manner that in the exercise of this privilege the licensee shall not deprive any lands, villages, houses or water places for cattle of a reasonable supply or water as heretobefore accustomed;

(c) subject to the approval of the licensing authority, to erect and bring upon the lands demised under prospecting licence such temporary huts, sheds and structures, machinery and conveniences, chattles and effects as shall be proper and necessary for effectually carrying on the prospecting operations and to enclose with a fence the lands occupied by the aforesaid construction provided that such fence does not interfere with existing or projected right of way or roads.

26. Area.—

(1) Except as otherwise decided by Government a prospecting licence shall not be granted in respect of an area more than five square miles.

(2) Each area in respect of which a prospecting licence is granted, shall be as far as possible, a compact area shall either be limited by well marked permanent physical boundaries or be bounded by straight lines and the shape of the area shall be determined by the geological setting.

27. Maintenance of registers.—

The licensing authority shall maintain a register of prospecting licences granted by it, containing the following information:—

1. Number of the prospecting license.
2. Name of the Licensee.
3. Address of the Licensee.
4. Date of grant of Licensee.
5. Mineral for which licence is granted.
6. Period for which granted.
7. Situation and boundary of the land.
8. Total area.
9. Annual fee payable under rule 31.
10. Amount of security deposit.
11. Particulars of disposal or refund of deposit.
12. Date of first renewal.
13. Date of second renewal.
14. Date of conversion of prospecting licence into mining lease.
15. Remarks.

28. Petrol.—

A prospecting licence shall in the first instance be valid for a period not exceeding two years and not less than one year. The total period of the prospecting licence shall not exceed five years.

29. Renewal.—

Subject to the licensee having carried out his working obligation under rule 30, the licensing authority may, in its discretion, grant further renewals of prospecting licence for a period of twelve months at a time to enable the licensee to complete the prospecting work to the satisfaction of the licensing authority provided the licensee had applied to the licensing authority in writing at least two months before the expiry of the initial period of the prospecting licence.

30. Working obligations.—

(1) The licensee shall, in respect of the area covered by the licence, carry out the prospecting work with due diligence and is a workman like manner in accordance with the general conditions of carrying out prospecting operations in the Area, up to the entire satisfaction of the licensing authority and in accordance with specified instructions, if any, accompanying the letter notifying the grant of the licence. The licensee shall submit to the licensing authority, in such form as may be prescribed by it, quarterly reports about the progress of work alongwith layout plans indicating the position of working carried out by the licensee and shall abide by the instructions issued by the licensing authority from time to time in respect of the prospecting work. The licensee shall also maintain at the mine the accounts of the minerals won and carried away from the site in the prescribed form.

(2) If, in the opinion of the licensing authority, the licensee has failed to fulfill the working obligations including acceptance of terms and conditions of letter of allotment, work orders, payment of Government dues, demarcation of the area and submission of prescribed progress reports or has not carried out reasonable prospecting operations up to the satisfaction of the licensing authority it has committed any other breach , the licensee shall forfeit the right of renewal of the prospecting licence or grant of a mining lease over whole or any part of the area covered by the licence and in such case the licence may also be liable to cancellation at any time during the currency of a term. This is in addition and not in lieu of any other punishment provided under these rules.

31. Annual fee.—

(1) The licensee shall pay a fee of rupees two per acre per year or part thereof for the land covered by the licence during the first two years of the licence. This fee shall be doubled each time the licence is renewed beyond the initial period of two years.

(2) The annual fee shall be payable for each mineral separately even if the area under prospecting licences for different minerals is the same.

32. Compensation.—

The licensee shall make and pay such reasonable compensation, whether recurring or fixed as may be assessed by the licensing authority for any damage, injury or disturbance which may be done by the licensee in exercise of the powers granted by the licence, to the party(ies) effected by such damage, injury or disturbance and shall indemnify Government against all claims which may be made by third parties in respect of any such damage, injury or disturbance.

33. Operation in the reserved and protected forests.—

All operation conducted under the authority of these rules within a reserved or protected forest shall be subject to such conditions as Government may by general or special order form time to time prescribe. It shall be a condition of every licence granted under these rules that before the commencement of prospecting operations within a reserved or protected Forest, 30 days' notice shall be given by the licensee to the Divisional Forest Officer of the intention to commence operations, and that the operation shall be conducted subject to any condition that he and licensing Authority may prescribe.

34. To plug mines, etc.—

Save in the case of land over which the licensee shall have been granted a mining lease on or before the determination of the licence, he shall within one month next after the determination of the licence or the date of abandonment of the undertaking, whichever shall occur first, securely plug all mines and fill up or fence any holes or excavation that he may have made in the land to such extent as the licensing authority may require and shall to the like extent restore the surface of the land and all buildings thereof which he may have damaged in the course of prospecting; provided that the licensee shall not be compelled to restore the surface of land or any buildings in respect of which full and proper compensation has already been paid under rule 32.

35. Structure of property left for more than two months after determination of licence.—

If, three months after the expiry or determination of a prospecting licence any machinery, buildings or structures or minerals or mineral ores or other property which the licensee is entitled to remove from the area, the same shall become the property of Government.

36. Right of the licensee to a mining lease.—

The licensee shall have preferential right to a mining lease in accordance with the terms contained in these rules for mining leases, provided that he has carried on prospecting operations to the entire satisfaction of the licensing authority in accordance with the working obligations, paid all Government dues regularly and paid compensation to the third parties as provided in these rules. Such lease may include the whole or a part of the area for which the prospecting licence was granted. The licensing authority may in its discretion grant the conversion of prospecting licence into mining lease for any period not exceeding 30 years for whole or part of the area, covered under the prospecting licence or refuse the grant of mining lease by giving lease by giving sufficient reason for refusal.

37. Disclosing the information acquired by the licensee during the course of his operations.—

If so required by the licensing authority the licensee shall, before the fee deposited by him under rule 23 is returned to him, disclose to the licensing authority all information acquired in the course of the operations carried on under the licence, regarding the minerals contained therein, or the geological formation of the area.

PART-III—MINING LEASE

38. Application.—

(1) An applicant for a mining lease shall submit alongwith the application a complete development and exploitation scheme for the approval of the licensing authority for working and exploiting the mineral under technically qualified personnel. The scheme shall be prepared and authenticated by qualified technicians having technical qualifications prescribed in the Fourth Schedule.

(2) The development and exploitation scheme shall inter alia include-

(i) a statement of expenditure incurred by the licensee during prospecting, duly audited and certified by a Registered Firm of Auditors/Chartered Accountants;

(ii) detailed maps of the area of which at least one-third would show the geology of the area in detail on a scale of 5"= 1 mile minimum;

(iii) location and description of major deposits;

(iv) estimates of proved and probable reserves;

(v) minimum rate of production;

(vi) method of mining including machinery and equipment to be used;

(vii) technical personnel to be employed at various stages of exploitation;

(viii) details of roads and other surface as well as underground workings, and construction work, such as stores and lamp rooms, workshops, beneficiations or mineral dressing plants, office and residential accommodation and other amenities for staff and labour to be provided;

(ix) estimated phased expenditure on the scheme; and

(x) development and exploitation scheme.

(3) The applicant shall also furnish banker's guarantee for such reasonable sums as the licensing authority may fix at the time scrutinizing the scheme submitted under sub-rule (1)

(4) The licensing authority may approve the development and exploitation scheme subject to such modifications as it may prescribe; provided that if no changes are made, the development and exploitation scheme shall be approved within three months of its receipt. No change in the approved development and exploitation scheme shall be made by the lessee without prior approval in writing of the licensing authority. A copy of the approved development of an exploitation scheme shall be kept by the lessee at the mine.

39. Register of mining lease.—

The licensing authority shall maintain a register of mining leases granted by it specifying.

1. Number of the mining lease.

2. Name of the lessee.
3. Address of the lessee.
4. Date of grant of lease.
5. Mineral for which lease granted.
6. Period for which granted
7. Situation and boundaries of the land.
8. Estimated total cost of exploitation scheme.
9. Rents and rate of royalty payable under these rules.
10. Amount of security deposit.
11. Particulars of disposal or refund of deposit.
12. Date of first renewal.
13. Date of second renewal.
14. Date of third renewal.
15. Date of assignment transfer of the lease and fee paid therefore and names and addresses of the partners of the assignee.
16. Remarks.

40. Area.—

The lease shall not be granted in respect of any area of more than five square miles.

41. Period.—

The initial term of a mining lease shall not exceed thirty years but the lease shall contain a clause permitting renewal at the discretion of Government for a further period not exceeding thirty years on the terms and conditions in accordance with the rule in force.

42. Dead Rent.—

The lessee shall pay a fixed half-yearly dead rent is advance by the last day of January and last day of July each year and proportionate advance dead rent for the broken periods, if any at the commencement of and termination of the lease, at a rate not less than that laid down in the Sixth Schedule, provided that the lessee shall not pay both royalty and dead rent in respect of the same lease, but only such one of them as may be of the greater amount.

43. Compensation.—

The lessee shall make and pay such reasonable compensation, as may be assessed by the Licensing authority for any damage, injury or disturbance which may be done by the lessee in exercise of the powers granted by the lease, to the party(ies) affect by such damage, injury or disturbance and shall indemnify Government against all claims which may be made by the third parties in respect of any such damage, injury or disturbance.

44. Working Obligations.—Commencement of operations, etc.—

Unless the licensing authority for good and sufficient reasons of which it shall be the sole judge, otherwise directs, the lessee shall commence operations accordingly to the approved development and exploitation scheme within six months from the date of the grant of mining lease with the granted area and shall thereafter carry then out effectively in a proper, scientific, skilful and workman like manner, up to the entire satisfaction of the licensing authority and shall not depillar or abandon the mine without obtaining the prior

approval of the licensing authority. It shall be deemed to be a breach of this condition if the lessee within one year of the commencement of the operations, without good and sufficient cause, fails to work the mine so as to produce sufficient mineral for which the royalty accrued is at least equal to the dead rent. In case of breach of any condition of working obligation by the lessee, his lease shall be liable to cancellation at any time during the currency of a term.

PART IV – MISCELLANEOUS

45. Surface Rent.—

The licensee or lessee shall also pay for all land which he may use or occupy superficially for the purpose of the operation conducted under the licence or the lease, a surface rent at the rate as mutually agreed by the licensee or lessee and the land owners or at such rate or rates as are determined by the Licensing authority. While determining such rate or rates the licensing authority shall have due regard to the nature of the area, soil conditions, mineral value, land value, extent of the area and other relevant factors. Such determination by the licensing authority shall be final and binding on all concerns.

46. Auction of areas with proved mineral resources.—

In case of cancellation or termination of a prospecting licence or mining lease over an area which has proved mineral reserves, or in respect of an area in which the existence of economic quantities of mineral has been established through efforts of a public, semi-public or private agency, not being licensed or leased by the competent authority, the licensing authority may auction the area for grant of a mining lease on such terms and conditions as the licensing authority may determine, or grant it to any deserving party by adopting usual procedure.

47. Boundary marks.—

The licensee or lessee shall, at his own expense, erect and at all times maintained and keep in repair boundary marks and pillars according to the demarcation to be shown on a plan annexed to his licence or lease.

48. Weighing machine etc.—

The licensee or lessee shall provide at or near the mine or quarry a properly constructed and correct weighing machine or other suitable means for determining the weight or quantity of the mineral produced.

49. Keeping of accounts and their inspections.—

(1) The licensee or lessee shall keep correct accounts at the mine premises showing the quantity and particulars of the minerals obtained and dispatched from the mine, the number of persons employed therein and complete plans of the mine, and shall allow any Officer authorised by the licensing authority in that behalf at any time to examine such accounts and place.

(2) The detail of production, dispatches, sales, etc., of minerals shall be maintained in forms prescribed by the licensing authority from time to time.

50. Strengthening and supporting of mines.—

The licensee or lessee shall strengthen and support to the satisfaction of the licensing authority whole or any part of the mine when in its opinion such strengthening or support is needed for conservation and economic development of the mineral or for any other reason.

51. Discovery of other minerals.—

The licensee or lessee shall without delay report to the licensing authority the discovery of any other mineral not covered under the licence or lease, on or within any of the lands or mines demised by the licence or lease, he shall not, unless a fresh licence or lease in respect of the mineral(s) as discovered is granted to him under these rules, have any right to those minerals. Subject to the discretion of the licensing authority the licensee or lessee, may, upon application, be granted prospecting licence/mining lease for such other mineral(s) discovered and reported by him.

52. Delivery of mines, etc., in good condition.—

On determination of the licence or lease the licensee or lessee shall deliver to the licensing authority the said premises and all mines (if any) dug therein in a proper and workable state, save in respect of any sanctioned abandonment.

53. Pre-emption.—

Government shall at all times have the right of pre-emption over the mineral laying upon the land in respect of which licence or lease has been granted or elsewhere under the control of the licensee or lessee; provided that the fair market price shall be paid to the licensee or lessee for all minerals taken in pre-emption.

54. Right to acquire.—

Government shall have the right to acquire any mine for public purposes on payment of reasonable compensation to be determined by the licensing authority.

55. Shape of area.—

Each area in respect of which a prospecting licence or mining lease is granted shall be as for as possible, a compact area and may either be limited by well-marked physical boundaries or be bound by lines.

56. Limitation of working area.—

(1) The licensee or lessee shall not carry on or permit to be carried on any prospecting or mining operations at or up to any point whether on surface or underground, within a distance of fifty yards inside his licensed or leased boundaries, except with the previous permission in writing of the licensing authority and in accordance with the conditions, if any, if may impose, provided that the restriction shall not apply to a common boundary of the said lands and of any contiguous area leased licensed to the lessee/licensee.

(2) The licensee or lessee shall not carry on or permit, to be carried on any prospecting or mining operations at or up to any point within a distance of 100 yards from any railway line, reservoir, canal or other public works or buildings.

57. Construction of building prohibited in public places, etc.—

The licensee or lessee shall not erect any building or carry on any surface operations upon any public pleasure ground, burning or burying ground or place held sacred by any class of persons or any house or village site, or public road or any other place which the licensing authority may exclude from such operations.

58. Damage to trees.—

The licensee or lessee shall not cut or damage any tree on unoccupied land or unreserved forest without the permission in writing of the licensing authority or of such Officer as it may appoint nor shall be, without the permission of the licensing authority, disturb the surface of any road, or enter upon any public pleasure ground, burning or burying ground or place held sacred by any class of persons or interfere with any right of way, well or tank.

59. Operations in the reserved and protected forest.—

All surface operations conducted under the authority of these rules within a reserved or protected forest shall be subject to such conditions as the Forest Department and the licensing authority may by general or special order prescribe from time to time. Instruction and guidance to this effect shall be obtained from the Forest Department by the licensing authority shall be final.

60. Access to other licensees or lessees.—

The licensee or lessee shall allow existing and future licence or lease holders of any area which is comprised in or adjoins or is reached by the land held by the licensee or lessee all reasonable facilities of access thereto

61. Priority.—

When applications for a prospecting licence or mining lease area presented in respect of the same area, by applicants not being in possession of a prospecting licence or a mining lease over the same area, the priority may unless the licensing authority decides otherwise in any particular case, be deemed to lie with the applicant, who, after compliance with the procedure prescribed by these rules, shall have been the first to file his application with the licensing authority or is otherwise considered suitable for such grant:

Provided that if the prior right the prospecting licence or mining lease is held to lie with an applicant for a lease the licensing authority may in its discretion grant him a licence, instead.

Explanation.—For the purpose of this rule the return of the plan/map for correction of overlapping or survey data will not affect the original priority of the applicant

62. Fitness of applicant.—

The licensing authority may grant a prospecting licence or mining lease to an applicant, provided he is considered fit for such grant. Where an applicant is already holder of some prospecting licences or mining leases, his performance in respect of such licences or leases shall be taken into account while finding his fitness..

63. Inspection.—

The licensee or lessee shall provide the licensing authority or any other Officer authorised by the licensing authority all reasonable facilities to enter upon the mine premises including inspection of records at the mines and elsewhere, carry out survey, measurement, examination or enquiry about any matter auxiliary or incidental to the matters set out in these rules and the Act.

64. Royalty.—

(1) Government may from time to time, fix rates of royalty for various minerals by Notification in the official Gazette.

(2) The licensee or lessee shall pay royalty at the prescribed rates quarterly by 7th day of April, July, October and January on the mineral extracted by him during the preceding three months. Failure on the part of lessee of licensee to pay the royalty within the prescribed time may result in the penalty including the cancellation of prospecting licence or mining lease and the outstanding dues shall be recoverable as arrears of land revenue.

65. Submission of production returns.—

(1) After the grant of permission to commence prospecting or mining operations the licensee or lessee will send to the licensing authority or any Officer authorised by the licensing authority in this behalf monthly production returns of the mineral in the prescribed form so as to reach the licensing authority or the authorised Officer, as the case may be by the 7th of each month following the month to which it relates in case no production is made in a particular month a “Nil” report shall be submitted containing reasons thereof.

(2) A penalty of up to Rs.500 may be imposed by the licensing authority for non-submission of a monthly production return in time. In case returns are not submitted for three consecutive months the prospecting licence or mining lease will be liable to cancellation.

66. Recovery of royalty.—

If the licensing authority has reason to believe that royalty on the production of minerals has not been paid by a licensee or lessee either by reason of non-submission of monthly production returns or by submitting incorrect returns, it may assess the quantity of such mineral through measurement, inspection or by any other means and direct the licensee or lessee through a notice to pay royalty on the quantity of mineral so assessed. If the royalty so demanded is not paid by the due date mentioned in the notice the provisions of rule 67 shall apply.

67. Rights of distress.—

If and when any of the rents and royalties payable by the lessee are not paid within three months next after the date fixed for the payment of the same, or where a notice is served under rule 66, in such time as is specified in the notice, the licensing authority may cancel the licence or lease without any notice and proceed to recover the dues form the security deposited and in case of any balance still outstanding as arrears of land revenue:

Provided that if the prospecting licence or mining lease has been assigned to or mortgaged in favour of the Industrial Development Bank of Pakistan or its successor-in-interest or assignee or any other bank or Financing Institution approved by the licensing authority, the licensing authority shall inform the said Bank or Institution about the intention to cancel the lease and recover the dues. The licensing authority shall then be entitled to enforce the sale of the assigned or mortgaged property and adjust the sale proceeds first towards the sale and other charges which the licensing authority may have incurred, and then proceed to adjust, out of such sale proceeds, the due of the financing institution and out of the balance so remaining pay to the Government its dues. If the amount recovered from the sale or auction of the lease does not satisfy the claim of Government the licensing authority shall have all powers to recover the dues as arrears of land revenue from the defaulters.

68. Association of local capital.—

The licensing authority may require the applicant for a prospecting licence or mining lease to associate capital furnished by the residents of the District or the Division wherein the area applied for is situated to such extent as may be required by the licensing authority.

69. Employment of Nationals of Pakistan.—

The licensing authority may require the licensee or lessee to employ Nationals of Pakistan in his organization in all grades and in all branches including technical and administrative units and to arrange for the training in Pakistan or abroad of the Nationals of Pakistan to fill up those appointments.

70. Submission of annual accounts and periodical returns.—

The licensee or lessee shall submit to the licensing authority at the end of every year Balance Sheet and such other information and periodical returns as may from time to time be prescribed by the licensing authority, provided that the licensing authority may require that the Balance Sheet to be submitted be audited by an approved auditor.

71. Submission of statistical data to a statistical organisation.—

The licensee or lessee shall submit statistical data and such information as my be required for the purpose of planning and development to all statistical organisations approved by Government in such form as may be prescribed.

72. Production target.—

The licensing authority ay require the lessee to meet the target of production fixed by it.

73. Beneficiation.—

The licensing authority may require the licensee or lessee to grade, beneficiate refine and concentrate the mineral to attain the standard fixed by a general or special order of the licensing authority or Government within a time limit prescribed thereof.

74. Power of revocation.—

Without prejudice to other powers the licensing authority may require the licensee or lessee to pay a penalty not exceeding an amount equivalent to twice the amount of the annual fee or dead rent, as the case may be, and may cancel the licence or lease, black-list the licensee or lessee for further grants of mining concessions and forfeit in whole or in part the security deposit made by the licensee or lessee, if the licensee or lessee violates the undertaking given in accordance with these rules or fails to remedy any breach of the provisions of the licence or lease, within thirty days from the date such breach is brought to his notice by the licensing authority:

Provided that if the prospecting licence or mining lease has been assigned to or mortgaged in favour of the Industrial Development Bank of Pakistan or its successor-in-interest or assignee or any other bank or Financing Institution approved by the licensing authority, the licensing authority shall inform the said bank or Institution about the intention to cancel the lease. The licensing authority shall then be entitled to enforce the sale of the assignee or mortgaged property and apply the sale proceeds first towards the sale and other charges which the licensing authority may have incurred, then towards the satisfaction of the dues of the financing institution and out of the balance pay to Government its dues. If the amount recovered from the sale or auction of the lease does not satisfy the claim of the Government, the licensing authority shall have all powers to recover the dues as arrears of a land revenue from the defaulters.

75. Protection of the rights of discoverer.—

(1) Any person other than a public servant directly concerned with prospecting, exploration exploitation or development of mines and minerals discovering a commercially exploitable mineral, other than the one for which he already holds an appropriate licence or lease, may have a prior claim to get a licence under these rules or have option in case the discovered mineral is of the value of Rs.10 lac or more to receive a cash reward in accordance with these rules.

(2) The discoverer may register his claim with the licensing authority giving the particulars of the area where the mineral occurs, furnishing details of the discovery including samples of the mineral found and a copy of the plan showing survey details of the area on the scale of 1:50,000 or the nearest scale available. The discoverer may also submit instead a rough sketch marking the physical features and whereabouts of his discovery identifying various land-marks in and around the discovery.

(3) The registration may confer on the discoverer a right to get a prospecting licence over the area independently or in association with other suitable party in accordance with these rules; provided that a formal application for the purpose is received by the licensing authority within three months of the date of registration of

the discovery and all other conditions and formalities are completed by the applicant.

(4) In case the discoverer does not apply for a prospecting license within the time specified in sub-rule(3), the licensing authority may release the information for the benefit of the public through a press note and invite application for the grant of prospecting licence.

(5) If no application is receive from he discoverer under sub-rule(3) an initial reward, to be determined by the licensing authority will be paid to the discoverer by the party who is granted a prospecting licence over the area. The licensing authority shall then proceed to evaluate the discovery and after approval by Government arrange to pay the balance of the final reward to the discoverer in accordance with the value of the discovery.

(6) The scale of final reward shall be as under :—

(i)	big deposit of valuable mineral evaluated at more than rupees fifty lacs	Upto Rs. 20,000
(ii)	medium deposit of valuable mineral evaluated at more than Rs. Twenty lace but nor more than rupees fifty lacs	Upto Rs.10,000
(iii)	small deposit of valuable mineral evaluated at rupees twenty lacs or less, but not less than rupees ten lacs	Upto Rs.5,000

The amount of such reward and the expenditure incurred by the licensing authority in evaluating the discovery shall be recovered from the beneficiary of discovery.

(7) Radioactive minerals which are already covered by a reward plan of the Atomic Energy Commission, Government of Pakistan are excluded from the purview of this rule, except Beryl, Limestone, sandstone, gypsum, calcarious minerals and other minerals of common occurrence are also excluded from the purview of this rules. Anything the value of which is less than that given in clause (iii) of sub-rule(6) shall be considered as uneconomic.

(8) The payment of the reward to the discoverer of a mineral deposite shall be made within fifteen months of the registration of the discovery and the decision of the licensing authority shall be final.

(9) Every discovery shall be registered with the licensing authority on a prescribed form obtainable from the Office of the licensing authority or the nearest post office. Every registration will be duly acknowledged by the licensing authority.

76. Employment of technical persons.—

(1) No area demised under a license or lease for any mineral other than coal the average monthly production of which exceeds 600 tons or the total average monthly sales are above Rs.50,000 shall be worked in any manner unless the licensee or lessee has on its staff the holder of 1st or 2nd Class Mine Manager's Certificate of Competency or Degree, Diploma or Certificate in Mining Engineering

from a recognized University or Institution for supervision of operations under Mines Act, 1923.

(2) The minimum requirements of technical persons and their requisite qualifications shall be determined at the time of approval of the exploitation scheme.

(3) Every licensee or lessee of coal shall appoint a duly qualified person to act as Mine Manager in accordance with the provisions of Mines Act, 1923 and the rules and regulations made thereunder.

77. Underground Boundaries.—

The boundaries of the area demised under a licence or lease shall run vertically downwards below the surface towards the center of the earth. The licensee or lessee shall work within the boundaries of his granted area even underground in accordance with rule 56.

78. Training.—

The licensee or lessee shall, whenever required by the licensing authority, arrange and provide facilities for training of students of any mining engineering college or to other person associated with the profession of engineering, geology or other related science. The licensee or lessee shall pay the stipend per month to such trainees at the rate fixed by the licensing authority for such training, during their actual training period.

79. Evaluation of precious stone, mineral, etc.—

The licensing authority may from time to time ascertain and verify in such manner as it may deem fit, the value of all minerals, ores and metals dressed or extracted by the licensee or lessee.

80. Approval for depillaring or abandoning the mine.—

The licensee or lessee shall not depillar or abandon the mine without obtaining prior approval of the licensing authority.

81. Note of fresh issue of capitals.—

The licensee or lessee shall report to the licensing authority the particulars of any fresh issues of capital which may from time to time be made by him and any alteration which may be made in the Memorandum and Articles of Association.

82. Layout and working plans.—

(1) All layout and working plans shall be prepared by a Registered Mine Surveyor engaged by the licensee or lessee in accordance with the provisions of this Rule and shall-

(a) bear the name of the mine, number of the licence or lease and the name of the licensee or lessee;

(b) show the scale together with the magnetic meridian and the date;

(c) be properly inked on durable paper or on tracing cloth;

(d) be on a scale of one inch to 100 feet; and

(e) bear the signature and address and registration number of the surveyor:

Provided that where plans have been prepared on any other scale before the enforcement of these rules the licensing authority may on application by the licensee or lessee permit such plans to be maintained on the scale.

(2) The licensee or lessee shall keep a layout plan of the working of each mine in the area over which he holds a licence or lease. The position of the workings at the time of the last survey shall be shown by a dotted line drawn through the ends of the workings and such dotted line shall be marked with the date of the last survey. The plan shall also show all shafts, tunnels and incline openings, all areas from where mineral has been excavated , the limit of the ore body/mineral deposit, where possible, and all important features within the boundaries such as railway, roads, rivers, trams, tanks, buildings and reservoir which overlie any part of the workings or any horizontal plane, the general direction and rate of dip of the strata, the depth of every shaft, a section of the seam/vein being marked and the position of all faults and dykes with the amount and direction of their throw. There shall be a separate plan of the working of each seam/vein and each separate section or level of each seam/vein.

(3) The licensee or lessee shall also keep a separate tracing of a surface plan showing all surface features referred to in sub-rule (2) and in addition all buildings and structures on the surface and within the boundaries which overlie working of the mine or at any point within six hundred feet of the workings measured on the horizontal plan.

(4) The licensee or lessee shall also keep a separate plan showing the system of ventilation in the mine and, in particular, the general direction of the air currents, the points where the quality of air is measured and the principal devices for the regulation and distribution of air. So far as practicable the intake airways shall be coloured blue and the return airway red. The position of any underground medical posts and telephones shall be indicated on the plan. The code of signs set out in Eighth Schedule shall be utilized in plans under this rule:

Provided that nothing in this sub-rule be deemed to apply to any mine in which the workings do not extend underground.

(5) The layout and working plans required by these rules shall be kept in the office at the mine and shall be accurate and brought up-to-date in respect of advancement in working after every six months. The licensee or lessee shall submit the copy of the same layout plans, sections to the licensing authority for scrutiny and record purposes. Such plans shall invariably indicate the size of advancement in the mineral deposit and also along the host rocks:

Provided that where any mine or coal seam or vein is abandoned or working thereof has been discontinued due to circumstances beyond the control of the

licensee or lessee the reason for the plan not being up-to-date shall be recorded on it.

(6) The licensee or lessee shall at any time on the request of the licensing authority or any other officer authorised in this behalf produce at the mine office such plans and sections with markings, indicating the present state of the working of the mine; and the licensing authority or the officer so authorised shall be entitled to examine the plans and the sections and for official purposes to make or have a copy made of any part thereof.

(7) Where any mine or seam or vein is abandoned or the working thereof has been discontinued over a period exceeding one year, the licensee or lessee thereof at the time of the abandonment or discontinuance shall within three months after the abandonment or discontinuance of working as the case may be, send to the licensing authority accurate plans and section of the working of the mine or seam/vein up to the time of the abandonment or discontinuance showing the pillars of mineral and all other features required in compliance with these rules.

83. Release of lands Including Inadvertently in the licenced or leased area.—

In the event of the inclusion of an area inadvertently in the area demised under a licence or lease over which Government was not entitled to the mineral rights or in respect of which the mineral rights have already been granted to other individual or company or due to any other reason the licensee or lessee shall immediately release to the licensing authority any such lands or, areas when required to do so by the licensing authority and the licensee or lessee, as the case may be, shall not be entitled to any compensation in respect thereof.

84. Exclusion of land for public purposes.—

If any or all of the area held under prospecting licence or mining lease is required at any time for any public purpose, the licensee or lessee shall forthwith release to the licensing authority such areas to such extent as may be required by Government under such terms and condition may be prescribed:

Provided that if any area excluded as above becomes subsequently available for the purpose of grant under a prospecting licence or mining lease the licensee or lessee who released the areas shall have prior right over such area.

85. Concessionaires ceasing to be Nationals of Pakistan.—

If the licensee or lessee ceases to be a Pakistani National or a company incorporated in Pakistan the licensee or lessee would for the with inform the licensing authority and apply to it within a period of one month for its consent to the assignment of the rights granted by the licensee or lessee, failing which the licensing authority may revoke the prospecting licence or mining lease. The prejudice and not subject to any obligation or liability imposed by or incurred under the terms and conditions of the licence or lease.

86. Power to assets and claim compensation for damage to mineral property.—

In the event of any damage caused to the mineral property due to unscientific working, lack of supervision, negligence or any other act of omission or commission on the part of the licensee, the licensing authority shall assess the extent of damage and the

compensation payable therefore by the licensee or lessee and the licensee or lessee shall be liable to pay on demand the compensation so assessed in the same manner as arrears of rent and royalties.

87. Registration of Mine Surveyor.—

(1) The licensing authority shall maintain a list of suitably qualified Mine Surveyors who in its opinion are competent to carry out boundary demarcation surveys, mine surveys, both underground and above ground, and to prepare plans of workings as required under these rules.

(2) For the purpose of these rules, surveyors referred to in sub-rule (1) shall be known as Registered Mine Surveyors.

(3) A boundary demarcation certificate required under rule 88 shall be accepted by the licensing authority only if the demarcation has been carried out by a Registered Mine Surveyor and the prescribed certificate is signed by him, indicating the date of actual demarcation.

(4) If at any time the licensing authority has reason to believe that a Registered Mine Surveyor has committed gross negligence or misconduct in discharge of his duties under these rules, it may cancel the registration of such surveyor.

(5) The registration of surveyors as aforesaid will be done with the sole object of facilitating the operations and enforcement of these rules and should not be used as a qualification, academic or professional, by a Registered Mine Surveyor.

(6) The list of surveyors shall be prepared out of candidates who may apply for registration to the licensing authority. The application for registration to the licensing authority shall be accompanied by a non-refundable fee of Rs.50.

88. Checking of boundary demarcation.—

(1) A licensee or lessee shall within sixty days of the issue of a licence or lease, cause the area granted to him to be accurately demarcated on the ground according to the survey data and submit a certificate on the prescribed form signed by a Registered Mine Surveyor of having carried out the said boundary demarcation himself to the best of his ability and in accordance with the relevant survey data.

(2) On receipt of certificate referred in sub-rule(1), the licensing authority as soon as practicable, may cause the boundary demarcation done by a Registered Mine Surveyor to be physically checked by a competent official who shall after obtaining permission from the licensing authority make any correction if necessary in the demarcation survey of the Registered Mine Surveyor.

(3) A licensee or lessee shall deposit a sum of Rs.1,500 for meeting the expenses of the check referred to in sub-rule (2) under the head of account notified by the licensing authority from time to time.

(4) No licensee or lessee shall commence prospecting or mining operations in the area granted under a licence or lease unless he is permitted to do so in writing by the licensing authority. Such written permission shall be known as "Work Order".

(5) No Work order shall be issue unless the demarcation certificate referred to in sub-rule (1) above has submitted to, and accepted by the licensing authority.

89. Boundary disputes.—

In case of a boundary dispute between two or more licensees or lessees in respect of surface or underground working or due to any other reasons, the decision of the licensing authority shall be final and shall be binding on the parties to such dispute.

90. Penalties.—

(1) Any licensee or lessee who contravenes or attempts to contravene-

(i) any provision of rule 30,47,58,70,71,82 or 88 shall be punished with a fine which may extend to two thousand rupees for each such contravention;

(ii) any provision of rule 34,45,49,50,52,56,57,60 or 76 shall be punished with fine which may extend to two thousand rupees for each such contravention;

(iii) the provision of rule 63 shall render himself liable to cancellation of his licence or lease, as the case may be;

(iv) any provision of these rules for the contravention of which no specific penalty is provided shall be punished with a fine which may extend to one thousand rupees for each such contravention.

(2) Any order imposing penalties in accordance with sub-rule(1), shall be issued under the signature of the licensing authority after an opportunity has been provided to the licensee or lessee to explain his position. An appeal against the order of the licensing authority, shall lie with Government within one month of the issue of the order imposing the penalty.

91. Non-payment of dues.—

In case the dues outstanding against a licensee or lessee relating to annual fee, royalty, dead rent or any other penalty imposed under these rules, have not been deposited from the date the first became due, the following procedure shall be observed:—

(i) simple interest as prescribed by Government on outstanding dues shall be charged in case the payment is made after expiry of the second month next after the due date;

(ii) in case of default in payment of penalty imposed under these rules, the penalty shall be enhanced by 50% for each month or part thereof in addition to simple interest as laid down by Government on the amount outstanding against defaulters; and

(iii) in case outstanding dues alongwith penalty is not paid until the expiry of three months after they first become due the prospecting licence or mining

lease shall be cancelled and the outstanding dues shall be recovered as arrears of land revenue in accordance with the provision of rule 67.

92. Persistent violation of rules.—

If a licensee or lessee persists in the violation of these rules, he may be in addition to any penalty under rule 90 be served with a notice for remedying the violation and if the violation is not remedied within a period of thirty days of the receipt of notice by the licensee or the lessee, the licence or lease shall be cancelled.

93. Appeal.—

(1) Any person aggrieved by a decision given or order made by a licensing authority under these rules may, within thirty days of such decision or order, prefer an appeal to Government.

Explanation.—In computing the period of thirty days mentioned in sub-rule(1), the day on which the decision or order sought to be appealed against was given or made and the time requisite for obtaining a copy thereof shall excluded.

(2) Government may confirm, modify, alter or set aside any decision or order appealed against;

Provided that no order shall be passed in appeal except, after giving the aggrieved person an opportunity of being heard.

(3) Subject to the provisions of these rules, the decision of Government on an appeal shall be final.

94. Force Majeure.—

(1) Where the failure on the part of the licensee or lessee to fulfill any of the terms and conditions of these rules arises from Force Majeure, the licensee or lessee shall stand absolved of responsibility.

(2) For the purpose of this rule the expression “Force Majeure” means an act of God, War, insurrection, riot, civil commotion, tide, storm, tidal wave, Flood, lightning, explosion, earthquake or any other happening which the licensee or lessee could not in the opinion of the licensing authority reasonably prevent or control.

95. Conservation of mineral properties.—

If at any time during the validity of prospecting licence or mining lease the licensing authority is satisfied that unscientific prospecting or mining operations of the licensee or lessee are resulting in the wastage of mineral property and are prejudicial to its conservation , the licensing authority may, by an order in writing, stop such unscientific operations forthwith and ask the licensee or lessee to carry out remedial measures of the type and nature to be specified by the licensing authority within a specified time limit. If such an order is made by the licensing authority, the licensee or lessee shall not commence prospecting or mining operations unless remedial measures have been carried out by the licensee or lessee to the satisfaction of the licensing authority to ensure the conservation of the mineral property.

96. Penalty for unauthorised working or obstruction.—

(1) If any person starts or carries on prospection or mining operation, whether on surface of underground, of any mineral outside the area granted to him or in an area for which he has not obtained a prospecting licence or a mining lease to lessee to the licensed or leased area directly or indirectly, or tries to interfere with the prospecting in mining operations by a licensee or lessee or comments pilferage of any mineral, directly or indirectly, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both.

(2) In case the person under sub-rule (1) is guilty of unauthorised prospecting of mining, then in addition to the punishment prescribed under sub-rule(1), the total value of the mineral extracted shall also be recovered from him. The decision of the licensing authority as to the total value of unauthorised excavated or mined mineral shall be final.

(3) In case the person guilty of any offence under sub-rule(1) is a licensee or lessee, then any licence or lease granted to him shall be liable to cancellation and he may be black-listed for further grants of mining concessions. The decision of the licensing authority under this sub-rule shall be final.

(4) If in the opinion of the licensing authority any licensee or lessee is persistently violating instructions conveyed to him from time to time or is habitually unresponsive to the demands for payment of royalty or has been concealing information with regard to the discovery of precious mineral or the quantity of sanctioned minerals produced by it, such licence or lease shall be liable to cancellation alongwith the penalty which the licensing authority may impose.

FIRST SCHEDULE
APPLICATION FORM FOR A PROSPECTING LICENCE

1. If application is by an individual or individuals:

(a) Names Son of

1.

2.

3.

4.

(b) Nationality: (c) Occupation.

1.

2.

3.

4.

(d) Address(es)

(e) Place of domicile (state Town, district and Province of Domicile)

1.

2.

3.

4.

2. If application is by a firm or Company:

(a) Name of the Firm or Company:

(b) Principal place of business;

(c) If principal place of business in outside Pakistan, name and address of duty authorised agent in Pakistan.

(d) Nature of business:

(e) Authorised, subscribed and paid-up capital:

(f)	Name of Director(s)	Nationality
	1.	1.
	2.	2.
	3.	3.
	4.	4.

(g)	Name of principal share holders of shareholding.	Nationality	Amount
	1.		
	2.		
	3.		

3. State mineral for which a Prospecting licence is required;

4. Period for which licence is required;

(Please note that initial term of the prospecting licence shall not be less than one year or more than two years);

5. Situation and approximate size of the area for which application is made (the name of the Province, Division, District and Sub-Division be stated);

6. Give details of any prospecting licence/mining lease already held by the applicant or its sister concern in or outside Pakistan;

7. If the applicant is an alien or a company incorporated outside Pakistan, state full particulars of the company to be incorporated by the applicant in Pakistan for the purpose of receiving the Grant of any licence including particulars similar to those specified at serial No.2(e), (f) and (g) above and the amount of the capital proposed;
(Documentary evidence of incorporation of the company in Pakistan should be furnished alongwith a copy of the Memorandum and Articles of association and Prospectus of the company as soon the Company has been incorporated in Pakistan);

8. Any special remarks;

The following enclosures are attached:

(i) Original copy of Treasury Challan No._____ dated_____ for Rs._____ (Rupees_____) as application fee under the head of account XLVI –Miscellaneous (K) Receipts arising out of the Mines and Oilfields and Mineral Development, N.-W.F.P. deposited in the State Bank of Pakistan, Peshawar/N.-W.F.P. Treasury at _____.

(ii) Original copy of Treasury Challan No._____ dated_____ for Rs._____ (Rupees_____) as cost of preparation of plans departmentally, under the head of account XLVI-Miscellaneous (K) Receipts arising out of the Mines and Oilfields and Mineral Development N.W.F.P. deposited in the state Bank of Pakistan, Peshawar N.-W.F.P. Treasury at _____.

(iii) Rough sketch of the area applied for, signed and prepared from the Survey of Pakistan Sheet No._____.

(iv) Domicile Certificate(s) of the applicant.

(v) Authenticated copy of partnership deed duly registered with the Sub-Registrar concerned (in case of partnership firm only).

(vi) A copy of memorandum and Article of Association alongwith an attested copy of the certificate of Incorporation/Registration of the company (in case of limited company only).

I/We solemnly and sincerely declare that all the foregoing particulars are correct and that no Government dues are outstanding against me/us in respect of any concession(s) held by me/us or by any firm of which I/we have been partner(s).

I/We hereby solemnly declare that in the event of the licensing authority granting me/us the required licence we will abstain from all political activity/activities whatsoever affecting the Sovereignty or security of Pakistan or such as may be tantamount to interference in the internal affairs and that I/we will eschew all espionage.

In the event of any violation of this undertaking by me/us the licensing authority shall have the right to cancel the licence at any time. If any statement made above should prove to be incorrect, I/we shall render myself /ourselves debarred from the grant of mining concession(s):

Dated_____ Signature of applicant(s)

SECOND SCHEDULE
APPLICATION FORM FOR A MINING LEASE

1. If application is by an individual or individuals:

(a) Names Son of

1.

2.

3.

4.

(b) Nationality: (c) Occupation.

1.

2.

3.

4.

(d) Address(es) domicile (state Town, district Domicile)

(e) Place of and Province of

1.

2.

3.

4.

2. If application is by a firm or Company;

(a) Name of the Firm or Company;

(b) Principal place of business;

(c) If principal place of business in outside Pakistan, name and address of duly authorised agent in Pakistan.

(d) Nature of business;

(e) Authorised, subscribed and paid-up capital;

(f) Name of Director(s) — Nationality

1. — 1.

2. — 2.

3. — 3.

4. — 4.

(g) Name of principal share holders of shareholding. — Nationality — Amount

1.

2.

3.

3. State mineral for which a Mining lease is required;

4. Period for which lease is required;

(Initial term of a Mining Lease shall not be more than 30 years).

5. Situation and approximate size of the area for which application is made (the name of the Province, Division, District and Sub-Division should be stated).

6. Brief particulars of previous experience in mining giving details of any prospecting licence/mining lease already held by the applicant or its sister concern in or outside Pakistan;

7. Brief particulars of any application for licence or lease which has been submitted in the past in any country and its disposal.

8. Name and qualification of technical experts or advisers.

9. If the applicant is an alien, or a company incorporated outside Pakistan, state full particulars of the company to be incorporated by the applicant in Pakistan for the purpose of receiving the grant of any licence or lease, including particulars similar to those specified at serial No.2.(e), (f) and (g) and serial No.8 above and amount of the capital proposed;
(Documentary evidence of incorporation of the company in Pakistan should be furnished alongwith a copy of the Memorandum and Articles of ?association and Prospectus of the company has been incorporated in Pakistan).

10. Any special remarks;

11. The following enclosures are attached;

    (i) Original copy of Treasury Challan No._____ dated_____ for Rs._____ (Rupees_____) as application fee under the head of account XLVI –Miscellaneous (K) Receipts arising out of the Mines and Oilfields and Mineral Development, N.-W.F.P. deposited in the State Bank of Pakistan, Peshawar/N.-W.F.P. Treasury at _____.

    (ii) Original copy of Treasury Challan No._____ dated_____ for Rs._____ (Rupees_____) as cost of preparation of plans departmentally, under the head of account XLVI-Miscellaneous (K) Receipts arising out of the Mines and Oilfields and Mineral Development N.W.F.P. deposited in the State Bank of Pakistan, Peshawar N.-W.F.P. Treasury at _____.

(iii) Rough sketch of the area applied for, signed and prepared from the Survey of Pakistan Topo Sheet No._____.

(iv) Domicile Certificate(s) of the applicant.

(v) Authenticated copy of partnership deed duly registered with the Sub-Registrar concerned (in case of partnership firm only).

(vi) A copy of Memorandum and Article of Association alongwith an attested copy of the certificate of Incorporation/Registration of the company (in case of limited company only).

(vii) An Exploitation/Development Scheme complete with enclosures, maps, etc.

I/We solemnly and sincerely declare that all the foregoing particulars are correct and that no Government dues are outstanding against me/us in respect of any concession(s) held by me/us or by any firm of which I/we have been partner(s).

I/We hereby solemnly declare that in the event of the Licensing authority granting me/us the required lease I/we will abstain from all political activity/activities whatsoever affecting the sovereignty or security of Pakistan or such as may be tantamount to interference in the internal affairs and that I/we will eschew all espionage.

In the event of any violation of this undertaking by me/us the licensing authority shall have the right to cancel the licence at any time. If any statement made above should prove to be incorrect, I/we shall render myself /ourselves debarred from the grant of Mining concession(s)

Dated_____ Signature of applicant(s)
(If the applicant is a Firm or Company, state capacity in which application form is signed).
*(In Case the applicant is an alien or a company incorporated outside Pakistan)

THIRD SCHEDULE
STANDARD FORM OF MINING LEASE DEED

This deed made on _____ day of _____ in the year _____ between the Governor of North-West Frontier Province (hereinafter to as the “Governor” which expression shall include his successors-in-office and assigns) of the one part and _____ (hereinafter referred to as the “Lessee” which expression shall include his heirs, executors, administrators, representative and assigns) of the other part;

Whereas, the lessee, in accordance with the conditions laid down in the North-West Frontier Province Mining Concession Rules, 1976 for the grant of Mining lease(s), has applied to the Governor for a mining lease in respect of the lands specified in Part I of the Annexure marked “A” hereunder written (hereinafter referred to as the said lands) and has deposited a sum of Rs._____ as prescribed security in respect of such lease and on the due compliance with the terms and conditions of the Deed and the provisions of the said rules.

And whereas, the Governor has found that there is no objection to granting the said lease.

Now, this Deed Witnesseth as follows :—

In consideration of the rents, royalties, Covenants and Agreements hereinafter reserved and contained on the part of the lessee to be paid and observed, the Governor hereby demises to the Lessee the lease for _____(hereinafter referred to as the mineral) lying or being within, under or throughout the said lands and hereby grants the liberties, powers and privileges to be exercised in connection with the said mineral subject the restrictions and conditions which are specified in Part II of the said Annexure marked "A" and to the provisions contained in Part VI of the said Annexure marked "A" and in the North-West Frontier Province Mining Concession Rules, 1976.

To hold, exercise and enjoy all and singular the premises, liberties, powers and privileges hereby granted and demised to the lessee from the _____ day of _____ 19___ for the term of _____ years thence paying the several rents, royalties and sums of money etc. mentioned and specified in Part IV of the said Annexure marked "A" and as assessed by the licensing authority and the Lessee hereby convenants with the Governor as expressed in Part VII of the said Annexure marked "A" and the Governor hereby Covenants with the lessee as expressed in Part VIII of the said Annexure marked " A", and it is hereby mutually agreed and declared by and between the parties hereto as expressed in Part IX of the said Annexure marked "A and is hereby declared that the Annexure "A" hereunder written shall be deemed part of these presents and be read and construed accordingly.

(In witness whereof these presents have been executed in the manner hereunder appearing in the day and the year first above written).

THE ANNEXURE 'A'
PART I—THE LANDS RESERVED TO IN THE LEASE

Description of the said lands;

All that tract of land situated in _____ shown on survey of Pakistan Topo Sheet No_____ containing an area of _____ or thereabouts delineated on the plan hereto annexed and thereon coloured _____ and bearing the survey data as follows:—

(data to be specified):

PART II- LIBERTIES, POWERS AND PRIVILEGES TO BE EXERCISED OR ENJOYED BY THE LESSEE, BUT SUBJECT TO THE RESTRICTIONS AND CONDITIONS IN PART III

1. Liberty to work mines.—

Liberty and power to enter upon the lands referred to in Part I (hereinafter referred to as the said land) and to search for, win, work, get, raise (convert) and carry away the said mineral, save and hereafter provided.

2. To appropriate water, etc.—

Subject to the prior approval of the licensing authority to appropriate and use for any purpose connected with mining or refining operations the water available in the said land,

so that in the exercise of this privilege the lessee shall not deprive any land(s), village(s), house(s) or watering place for cattle, of a reasonable supply of water, as heretofore accustomed.

3. To appropriate surface of land or works, etc.—

Liberty and power to enter upon, use and occupy a sufficient part of the said lands adjoining the mines, pits, works for the purposes of stacking, heaping or depositing thereon any produce of the mines and for carrying on the work of the said mines, pits, works, or operation under the liberties and powers mentioned in this part.

4. To erect houses, etc.—

Liberty and power to erect, set up and make in or on the said lands workmen's houses, sheds, engines, machinery, furnaces, building erections, pipe lines, telephone lines, railroads, tram-rods and other roads and works necessary or convenient for the effective working of the said mines, pits, works of refining operations connected therewith and the exercise of the several liberties and powers hereby granted.

5. To dig gravels etc.—

Liberty and power to search for, dig and get free of charge gravel, sand, clay and ordinary stone within the said lands for the purpose mentioned in this Part but not for sale:

Provided that at the expiration of this lease, any excavation shall be fenced or filled in or leveled and left otherwise fit for cultivation and occupation, so far as may be reasonably practicable, if so required by the licensing authority.

6. To cut timber, etc.—

Liberty and power to cut down the Bush-wood and undergrowth which may grow on the said lands, with the consent of the licensing authority, for the purposes of clearing lands for the erection of machinery and plants, protection against damage by fire, construction of workmen houses, making pastures for the animals used by the lessee and for all other purposes mentioned in this Part, provided that :—

(a) the clearing for any single pasture shall not exceed ten acres; and

(b) the lessee shall pay a reasonable price for all timber and undergrowth cut down, taken, used or filled by him for the purpose of making pastures. Such price shall be assessed by the licensing authority. This clause shall not apply to any land that may have been proclaimed to be Forest Reserves provided that the prior consent of the Forest Department and the licensing authority in writing has been obtained by the lessee for the purpose.

7. To enclose with a fence.—

Liberty and power to enclose with a fence the surface of any of the said lands in respect of which the rents reserved in clause 17 (Surface Rents) of this Annexure are paid; provided that the liberties and powers reserved to the Governor in Part IV of this Annexure and all rights of way shall not thereby be affected.

PART III-RESTRICTIONS AND CONDITIONS AS TO THE EXERCISE OF THE ABOVE LIBERTIES, POWERS AND PRIVILEGES

8. Notice to be given before entering on land for surface utility purposes.—

(1) Before occupying any land for the purposes of making pastures under clause 6 (to cut timber etc.) of this Annexure, the lessee shall give to the licensing authority one month's notice in writing specifying by name of other sufficient designation and by quantity the land proposed to be occupied and the purpose for which the same is required

(2) The licensing authority shall at any time within one month from the receipt of such notice impose the objections, if any, on grounds of public interest to the proposed site and the lessee shall not proceed with any of the operation mentioned in sub-clause (1) of this clause till the objections are removed.

9. No building etc. to be erected upon certain places.—

No building or structure shall be erected, set up or placed and no surface operations shall be carried on in or upon any public pleasure grounds, any burning of burial ground or place held sacred by any class of persons or any house or village site or public road or any other place which the licensing authority may determine on public rounds to bring within this restriction nor in such a manner as to injure prejudicially and affect any buildings, works property or right of other persons and no land shall be used for surface operations which is already occupied by persons other than the Governor for works or purposes, not included in the lease.

10. Compensation to occupiers.—

The lessee shall, before occupying any land for surface operations, pay or tender reasonable compensation to the occupiers thereof and shall thereupon be entitled to occupy the land, but shall nevertheless be bound to pay the amount of compensation which, in case of dispute, shall be referred to and decided by the licensing authority.

11. Sale or lease of surface to third party(ies).—

(1) The licensing authority may at any time give notice in writing to lessee that application has been made by the third party(ies) to the Governor for purchase or lease of the surface of lands referred to in this lease, as is mentioned in such notice.

(2) If the lessee shall not, within ninety days after service of such notice on him give to the Governor's notice in writing that he objects to the Governor acceding to such application on the ground that the proposed sale or lease will prejudicially affect his rights under this lease, it shall be lawful for the Governor at any time after the expiration of that period to sell or lease all or any part of the surface specified in such first mentioned notice, and lessee shall thereupon be relieved of all liabilities and obligations hereunder in respect of the area specified in such first mentioned notice, except such liabilities and obligations as may have accrued before the date of service of such notice.

(3) Where a sale or lease of the surface of portion of the lands has been made by the Governor under this clause, the lessee shall have a prior right to have the land again included in the lands subject to this lease if it shall subsequently become available for this purpose.

12. Distance of mines or pits and its extension within the boundaries of the said lands.—

No mining operations or working shall except with the consent in writing of the licensing authority, be carried out by the lessee in or under the said lands at or to a distance of not less than fifty yards inside the boundaries of the said lands, provided that the restriction shall not apply to the common boundary of the said lands and of any contiguous area(s) leased to the lessee.

13. No mining operation to be carried on near railway, etc.—

No mining operations or workings shall be allowed or carried on by the lessee in the said lands at or up to any point within 100 yards of any railway, reservoir, canal or other public works or any building or inhabited site on or near the said lands except with the previous permission in writing of the licensing authority or any officer authorised by him in this behalf and subject to any instructions, restrictions and conditions which may be attached to such permission by the officer granting the same.

PART IV—LIBERTIES AND POWERS OF THE GOVERNOR AND OTHERS

14. These presents or anything herein contained shall not prejudice or affect the exercise form time to time of all or any of the following liberties and powers, that is to say:—

(1) Governor may work other mineral, etc.—

Liberty and powers of the Governor or any other person authorised by him in that behalf to enter into and upon the said lands and to search for, win, work, dig etc. raise (convert) and carry away any minerals or substance other than the said mineral upon or under the said lands and for the purpose aforesaid to sink, drive, make, erect, construct, maintain and use such pits, shafts, inclines, drifts, levels, drain, watercourse, tunnels, buildings engines or machinery, railways, wagon-ways and other ways and works, through or under the said lands as he may deem necessary or expedient; provided always that the said reserved liberties and powers to work for minerals or substance other than _____shall be exercised and enjoyed in such a manner as not to hinder or interfere with the rights and privileges of the lessee under these presents.

(2) Governor may enter lands to make Railways, roads etc.—

Liberty and power of the Governor or any other person authorised by him in that behalf to enter into and upon the said lands and to make and maintain on, over or through the said lands, such reservoirs, pumping stations, generating stations, water-ways, roads, tram-ways, railways, telegraph and telephone lines and pipe-lines or other works as he may deem necessary or expedient for any purpose and other materials as may be necessary requisite for making, repairing or maintaining the same or any of them and at all times to draw water from the said lands and to

have free access thereto, and to pass and repass at all times over and along the said lands for all such purposes as occasion shall require; provided always that the said reserved liberties and powers shall be exercised and enjoyed in such a manner as not to hinder or interfere with the rights and privileges of the lessee under these presents.

PART V-RENTS AND ROYALTIES RESERVED BY THIS LEASE

15. Certain half-yearly rent.—

(1) The lessee shall pay certain half-yearly dead rent in advance to the Governor during the term hereby granted, at the rate of _____ per acre or part of acre per annum.

(2) Payment of the certain half-yearly rent reserved by this lease, shall be made half-yearly in advance and the first payment of the sum of _____ in respect of he first half year of the term hereby granted shall be made prior to the date of grant of lease.

16. Royalties.—

(1) The lessee shall, during the subsistence of this lease, pay royalty quarterly by 7th day of April , July, October and January at the rate of _____ per cent of the sale value at the pit mouth or per ton of all _____ produce form the said lands during the preceding three months, subject to such increase in the rate of royalty as may from time to time be prescribed by Government in that behalf. Failure to pay the dues by the lessee within the prescribed time may result in penal action including the cancellation of mining lease and the recovery of dues shall be made as arrears of land revenue.

(2) The lessee shall not pay both royalty and half-yearly dead rent in respect of the same lease, but only such one of them as may be of greater amount .

17. Surface rents.—

(1) The lessee shall also pay for all land which he may use or occupy superficially for the purpose of the operation conducted under the lease, a surface rent at the rate as mutually agreed by the lessee and the land owners or at such rate or rates as are determined by the licensing authority. While determining such rate or rates the licensing authority shall have due regard to the nature of the area, soil condition, mineral value, land value, extent of the area and other relevant factors. Such determination by the licensing authority shall be final and binding on all concerns.

PART VI- PROVISION RELATING TO RENTS AND ROYALTIES

18. Place of payment.—

The rents and royalties mentioned in Part V of this Annexure shall be paid free from any deductions to the account of the licensing authority under the head of account specified by it, at any Government treasury in the North-West Frontier Province or the State Bank of Pakistan in North West Frontier Province or to such other Offices and at such other places as the Governor shall from time to time appoint.

19. Refund of certain half-yearly rent on determination or surrender of lease.—

(1) Upon the determination of the terms of the lease hereby granted or any renewal thereof or upon the surrender by the lessee of the rights granted by this lease in respect of any part of parts or the said lands, the licensing authority will refund to the lessee an apportioned part of half yearly rent paid by the lessee in advance in respect of the said lands or any such part or parts thereof, provided that such reduction in rent shall not take effect during the year in which he surrenders and for which rent has either been paid or has accrued.

(2) Upon the release by the lessee of any lands or areas under the provision of clause 32 of this Annexure, the licensing authority, will refund to the lessee an apportioned part of any certain half-yearly rent paid by the lessee during the term hereby granted in respect of the said lands; provided that half-yearly rent after the said refund shall not be less than the amount of royalties payable by the lessee in respect of any such year under the provision of clause 16 of this Annexure.

(3) The lessee shall pay the rents and royalties reserved by this lease at the time and in the manner provided in Part V and in this part and shall also pay and discharge all taxes, rates, assessments and impositions whatsoever being in the nature of public demands which shall, from time to time the lessee or any part thereof by the licensing authorities or otherwise except demands for land revenue, and shall also pay interest at the prevailing bank rate subject to such change in the interest rate as Government may notify from time to time, on all arrears of such rent or royalty from the date whereon the same ought to be paid under these presents provided that no interest will be payable if rents, royalties and other dues are paid by the lessee within two months from the date whereon the same ought to have been paid under these presents.

(4) In case of non-payment of royalty until the expiry of three months after the date it first became due, the lease shall be cancelled forthwith subject, however, to the provisions of rules 67 of the North-West Frontier Province Mining Concession Rules, 1976

(5) Recovery of Royalty.—

If at any time, the Licensing Authority has reason to believe that correct amount of royalty on the production of…. Has not been paid by he lessee either by the reason of non-submission of monthly production returns or by submitting incorrect returns, the licensing authority may assess the quantity of such mineral for which the royalty has not been paid, through physical means, by measurements or

inspection or by any other means and direct the lessee through a notice to pay royalty on he quantity of minerals so assessed. If the royalty so demanded is not paid until after the expiry of three months after the date mentioned in the notice the lease shall be cancelled.

PART VII.—THE LESSEE'S COVENANTS

20. Payment of rents, royalties, taxes etc.—

The lessee shall pay the several rents and royalties hereby reserved at the time and in the manner above appointed in that behalf.

21. To provide weighing machines.—

The lessee shall provide, and at all time keep at or near the pit head or each of the pit heads at which the said mineral shall be brought to bank, a properly constructed and efficient weighing machine and shall weigh or cause to be weighed thereon all the said mineral from time to time raised and brought to the bank, and at the close of each day cause the total weights ascertained by such means of the said mineral raised during the previous twenty-four hours to be entered in the book of accounts and will permit the licensing authority or an Officer authorised by him in this behalf at all times during the said terms to be present at the weighing of the said minerals as aforesaid and to keep account thereof and to check the weighments and accounts kept by the lessee.

22. To allow test of weighing machine.—

The lessee shall allow any person or persons appointed in that behalf by the licensing authority at any time or times during the said term, to examine and test every weighing machine to be provided and kept as aforesaid and the weights used therewith and in order to ascertain whether the same are correct and in good repair and order and if upon any such examination or testing, any such weighing machine or weights shall be found incorrect or out of repair or order, the licensing authority may require that the same be adjusted, repaired and put in order by and at the expenses of the lessee and if such requisition be not complied with, within fourteen days after the same shall have been made, the licensing authority may cause such weighing machine or weights to be adjusted, repaired and put in order and the expenses of so doing shall be paid by the lessee to the licensing authority on demand alongwith such penalty not exceeding Rs.1,000 as the licensing authority may impose. If upon any such examination or testing as aforesaid any error shall be discovered in any weighing machine or weights to the prejudice of the licensing authority such error shall be regarded as having existed for three continuous months previous to this discovery or from the last occasion of so examination and testing and the said rent and royalty shall be paid and accounted for, accordingly.

23. Not to alter measurement and weighing appliances.—

The lessee shall not make any alteration in the method or methods of measurements or weighing used by him or any appliance used for the purpose without first informing the licensing authority and licensing authority may, in any case, require that no alteration shall be made save in the presence of an Officer authorised by the licensing authority.

24. To keep book of accounts and furnish abstract, etc.—

(1) The lessee at all time during the said terms shall keep or cause to kept at an Office to be situated upon or near the said lands correct and intelligible books of account in such a way and in such form as may be prescribed by the licensing authority. Such books shall contain accurate entries showing from time to time ; (1) the quantity of the said mineral realized form the said lands; (2) the quantity of the said mineral sold and exported respectively; (3) the quantity of the said mineral otherwise disposed of and the manner and purpose of such disposition; (4) the price and other particulars of all sales of the said mineral; (5) the number of persons employed in the mines or works in or upon the land; and (6) all such other facts, particulars and circumstances as the licensing authority may consider necessary for conveniently ascertaining the amount of royalty from time to time payable under these presents; and the lessee shall also furnish free of charge to such Officer, as the licensing authority may appoint, true and correct abstract of all or any of such books of account and such information and returns as to all or any of the matters aforesaid as the licensing authority may prescribe and shall, in that behalf appoint to enter into and have free access to the said Office for the purpose of examining and inspecting the said books of accounts and to take copies thereof and make extracts therefrom.

(2) the lessee shall within two months after the end of each year of the terms hereby granted or renewed deliver to the licensing authority an abstract in a form prescribed by the licensing authority, of the said accounts for each such year together with a statement in the like form of all royalties payable in respect of each such year.

25. Establishment of Boundary marks.—

The lessee shall, unless the licensing Authority otherwise determines, at his own expense forthwith erect and at all times maintain and keep in repair, substantial boundary marks of brick, Stone or Concrete, not less than two feet high and not less than two feet square/diameter at the base at every angle or corner of the boundary line of the said lands. Such boundary marks shall be referenced by a survey to at least two readily identifiable points in such a manner that the boundaries of the said lands can be accurately traced on the ground. The lessee shall ensure that the area demarcated on the ground conforms as closely as possible to the area delineated on the plan have to be annexed.

26. Maintenance of shafts, pits and other workings.—

The lessee shall, during the said term, sufficiently secure and keep open with timber or other durable means, all pits, shafts, and workings that may be made and used in the said land, and maintain sufficient fences around every such pit or shaft and also shall at all times during the said term keep all workings in order in the said lands, free from water and foul air, as far as possible except such as may be abandoned.

27. Safety of installation of public works.—

The lessee shall, on notice from the licensing authority, strengthen and support to its satisfaction any part or parts of the mine when in its opinion such strengthening and

support is needed for the safety of any railway, reservoir, canal or other public work or any building, whether the said railway, reservoir, canal or other public work or other buildings shall be already existing or constructed after the said part of the mine have been worked out. Such strengthening and support shall be made and done at the expense of the lessee if these are needed for the safety of any railway, reservoir, canal or other public works or other building as aforesaid.

28. Resident Manager and service of notices on lessee.—

The lessee shall, before commencing any operations in the said lands, furnish to the licensing authority the name and address of the Manager resident in the locality of the said land under whose supervision such operations are to be carried on in pursuance of Mines Act, 1923. Every notice by these presents required or authorised to be given to the lessee may be given to such Manager at such address or to any person in the employment of the lessee who may be found upon the said lands or if no person be found then the same may be left at the said Office of the lessee upon the said lands or affixed in some conspicuous part of the building or erection on occupation of the lessee upon the said lands.

29. Compensation.—

The lessee shall make and pay reasonable compensation on recurring or fixed basis, as assessed by the licencing authority for any damage or injury disturbance to the property and rights of other parties which may be done by him, his agents or servant in exercise of the liberties and powers conferred by the this lessee.

30. Indemnity against third party claims.—

The lessee shall at all time indemnify and keep harmless the Governor and every Officer of Government against all actions costs, charges, claims and demands whatsoever, which may be made or brought by any third party in relation to or in connection with this lease or any matter or thing done or proposed to be done, in pursuance thereof.

31. Release of lands included by inadvertence in the said lands.—

In the event of inclusion by inadvertence in Part I of this Annexure of lands of areas over which it may subsequently be proved that Government was entitled to the mineral rights or of lands or areas in respect of which the mineral rights have already been granted to other individual(s) or companies or of lands or arrears which were in use for public purposes or due to any unconditionally, any such lands or areas when required to do so by the licensing authority and he shall not be entitled to any compensation thereof.

32. Lessee not to cultivate, etc.—

The lessee shall not, except with the consent of the licensing authority, cultivate or use the said lands in any manner save for the purpose of this demise and the rights hereby granted.

33. Exclusion of lands for public purposes etc.—

(1) Notwithstanding the rights conferred on the lessee under this lease, the Governor shall have power to require the exclusion from the lands included in Part I of this Annexure of any area or areas which may, from time to time, be required for

villages, new villages, village extensions, water reserves or any other public purposes whatsoever; provided that during the subsistence of this lease the area of the said lands; and provided further that the exclusion of any area or areas upon which any active operations such as working any mine, road construction, water works or other works relating to the mining of ….. have previously been commenced or be inn progress may not be required but in lieu therefore an equal area or areas upon which active operation as aforementioned have not already been commenced or are not for time being in progress shall be excluded; provided that such alternative area or areas or in the opinion of the Governor suitable for the public purposes aforementioned, and the lessee shall thereupon be relieved of all liabilities and obligations hereunder in respect of any such area or areas excluded under the provisions of this clause, except such liabilities and obligations as may have accrued before such exclusion.

(2) Where any area or areas have been excluded under this clause the lessee shall have prior right to have such lands or areas included in the lands subject to his lease if they shall subsequently become available for this purpose.

34. Advertisements, prospectuses etc.—

No statement shall be made either in the form of any notice, advertisement, prospectus or other document issued by or to the knowledge of the lessee or in any other manner claiming or suggesting whether expressly or by implication that the Governor or any Department of Government or any person or body acting on behalf of the Governor has or have formed or expressed any opinion that the said lands, from their geological formation or otherwise are likely to contain.

35. Notice of fresh issues of capital.—

The lessee shall report to Government particulars of any fresh issue of capital which may from time to time be made by it and any alteration which may be made in the Memorandum or Articles of Association or in the constitution of the lessee.

36. Consent to assignment.—

(1) The lessee shall not grant or assign any interest under this lease or any part thereof or the possession of any of the rights hereby granted, to any person or persons whomsoever, without the previous consent in writing of licensing authority or of an officer authorised by it in that behalf. The licensing authority may, without prejudice to his right to make such consent, subject to any conditions it may think fit, requires the assignee(s) at his or their expense to execute a deed of convenant, to observe and perform the covenants and conditions on the part of the lessee as in these presents contained. The lessee shall not be allowed to attach this lease or any interest hereunder, in compliance with any decree or order of a Court of Revenue Officer or for any other such purpose:

Provided that notwithstanding the above provisions, the lessee may under intimation to the licensing authority, assign, sublet or transfer charge of the lease to or in favour of Industrial Development Bank of Pakistan or its successor-in-interest or assignee or to any other bank or financing Institution approved by the licensing authority in that behalf.

37. Assignment of lease.—

The lessee shall not assign or attempt to assign the rights granted by this lease to any person other than a citizen of Pakistan or a company incorporated in Pakistan.

38. Lessee ceasing to be a Pakistan subject.—

If the lessee shall cease to be or Pakistan national or a company incorporated in Pakistan the lessee shall forthwith inform the licensing authority and apply to him within a period of one month for his consent to an assignment of the rights granted by this lease in accordance with clause 37 of this Annexure, failing which the licensing authority may revoke this lease. The revocation of this lease in pursuance of the foregoing provisions of this clause shall be subject to and without prejudice to any obligation or liability imposed by or incurred under terms and conditions hereof.

39. Lessee not to obstruct working of other minerals.—

The lessee shall exercise the liberties and powers hereby granted in such a manner as not to offer unnecessary or unreasonable obstruction or interruption to the prospecting, development and working in the adjacent lands of any mineral(s) not included in this lease. The lessee shall at all times afford to the licensing authority or its representative and to the holders of prospecting licences or mining leases in respect of any such mineral(s) within any lands adjacent to the said lands, reasonable means of access and safe and convenient passage upon and across the said lands to such mineral(s) for the purpose of gettings, working, developing and carrying away the same. In the event of failure of the lessee to abide by the above conditions the lease shall be liable to cancellation and action may be taken against the lessee, under rule 96 of these Rules.

40. Notice of the site and commencement of operations.—

As soon as the site of any mine has been decided and operations commenced, the lessee shall notify the same to the licensing authority in writing and the mine shall be described by a certain number or name in the plans and records which the lessee is required to keep under the provisions of this lease. The lessee shall notify to the licensing authority of any change of the number or name of any such mine which may be made.

41. Abandonment and plugging of mines.—

(1) No mine or pit shall be abandoned and no permanent form of mine support shall be withdrawn from any mine or pit which is proposed to be abandoned, without the prior consent in writing of the licensing authority. Such consent will not be unreasonably withheld, in the case of mines or pits which have become or considered unproductive.

(2) Every mine or pit which the lessee intends to abandon shall, unless the licensing authority otherwise determines, be so securely plugged by the lessee as to prevent ingress and egress of water in and from any portion of the strath broad through.

(3) The licensing authority may in any case require that no mine or pit shall be plugged or any works be executed for that purpose save in the presence of an officer authorised by the licensing authority.

42. Delivering the productive mines, etc. in good order.—

The lessee shall at the expiration or determination of the lease deliver to the Governor all mines, pits, shafts, inclines, drifts, levels, waterways, airways and other works now existing and hereafter to be sunk or made under the said land (except such as may have been abandoned with the approval of the licensing authority or in an ordinary and fair course of working) and all engine, machinery, plant, buildings, structures and other works and conveniences which at the commencement of the term of the lease were located upon or under the said lands and all engines, machinery, plant and fixture set up by the lessee below ground level which cannot be removed without causing injury to any mines or works under the said lands, except such of the same as may with the sanction of the licensing authority have become unserviceable and all buildings and structures of brick or stone erected by the lessee above ground level in good repair, order and condition and fit in all respects for further working of the said mineral(s) if so required by the licensing authority.

43. Plugging of mines on determination of lease.—

Within two months after the exploration or determination of this lease, the lessee shall, if required to do so by the licensing authority, plug all mines and pits as provided in clause 42 of this Annexure.

44. Health and safety of workers and employees.—

The lessee shall comply with any instructions given to him by an officer authorised by the licensing authority, for securing housing accommodation, health, safety and welfare of persons employed in or about the mines within the lease.

45. Commencement of operations.—

Unless the licensing authority otherwise directs, the lessee shall commence operations according to the approved Exploitation/Development Scheme within six months from the date of the grant of mining lease or within three months from the date of grant of permission to start work or execution of the lease deed, whichever is earlier, and shall thereafter carry them out effectively in a proper scientific, skilful and workmanlike manner up to the entire satisfaction of the licensing authority and shall not depillar or abandon the mine without obtaining the prior approval of the licensing authority. It shall be deemed to be a breach of this condition if the lessee without good and sufficient cause fails to work and produce sufficient mineral to earn royalty at least equal to the dead rent within one year of the commencement of operations. In case of breach of any condition of working obligations by the lessee, his lease shall be liable to cancellation.

46. To set up plants for economic development.—

(1) The lessee, if so required by the licensing authority, shall, within such period as may be specified by it, set up a concentration, refining, smelting or processing plant for improving the quality of …… or set up a plant, the product of which requires the use of said mineral as major raw material, in order to promote economic exploitation of the mineral resources and shall observe and carry out all instructions issued by the licensing authority from time to time in that behalf.

(2) In case the lessee fails to set up the above-said plant within the specified time the lease may be cancelled by the licensing authority and granted to such other party who may undertake to set up the said plant within such time as specified by the licensing authority and is considered suitable for the purpose.

47. Lessee to supply mineral to plants, smelters or factories.—

If and when the Governor, or any organisation sponsored by the Governor, sets up a plant or smelter or factory requiring regular supply of the mineral hereby demised, the lessee shall, if so required by the licensing authority, arrange regular supply of the mineral to the Governor or to that organisation at a price to be agreed upon mutually by them and, in default of such agreement and at such price as may be determined by licensing authority whose decision shall be final.

48. Layout/working plans.—

(1) All layout/working plans of the mine/quarry workings shall be prepared by a Registered Mine Surveyor engaged by the lessee in accordance with the provisions of this clause and shall—

(a) bear the name of mine, number of the lease and the name of the lessee;

(b) show the scale together with the magnetic meridian and the date of the latter;

(a) be properly inked on durable paper or on tracing cloth;

(d) be on a scale of 1 inch to 100 feet; and

(e) bear the signature and address and registration number of the surveyors and Manager of the Mines, quarries.

(2) The lessee shall keep a plan of each workings in the said lands. The position of the workings at the time of the last survey shall be shown by a dotted line drawn through the ends of the workings; such dotted line shall be marked with the date of the last survey. The plan shall also show all shafts and incline openings, all areas from where mineral has been excavated, the boundaries of the leasehold, the limits of the ore body/mineral deposits where possible, and all important features within the boundaries such as railways, roads, rivers, streams, water tanks, buildings and reservoirs, which overlie any part of the workings or any point within six hundred feet of any part of the workings measured on the horizontal plan ,the general direction and rate of dip of the strata, the depth of every shaft, a section of the seam/vein being worked and the position of all faults and dykes with amount and direct of their throw. There shall be separate plan of the workings of each seam/vein and a separate section of each seam/vein. The lessee shall submit copy of the same layout plan/section to the licensing authority for security and record, after every six months. Such plans shall invariably also indicate the size of advancement in the mineral deposit and also along the host rocks.

(3) The lessee shall also keep a separate tracing of a surface plan showing all surface features referred to in sub-clause (2) and in addition all buildings and erections on

the surface and within the boundaries which overlie the working of the mine or any point within six hundred feet of the workings measured on the horizontal plan.

(4) (a) The lessee shall also keep a separate plan showing the system of ventilation in the mine and in particular, the general direction of the air currents, the points where the quantity of air is measured and the principal device for the regulation and distribution of the air. So far as practicable the intake airway shall be coloured blue and return airway as red.

(b) the position of any under ground First Aid Station and telephone booth shall be indicated on the plan; provided that nothing in this sub-clause shall be deemed to apply to any mine, quarry in which the workings do not extend underground.

(5) The code of signs indicated in Eighth Schedule to the North-West Frontier Province Mining Concession Rules, 1976, shall be utilized in plans made in accordance with this clause.

(6) The plans required by the this clause shall be kept in the office at the mine. These shall be accurate and shall be maintained up-to-date within six months; provided that where any mine or coal seam or vein is abandoned or the working(s) thereof has been discontinued the plan shall, before such abandonment or discontinuance, as the case may be, brought up-to-date unless such abandonment or discontinuance has been caused by circumstance beyond the control of the lessee, in which case the fact that the plan is not up-to-date shall be recorded on it.

(7) The lessee shall, at any time, on the demand of the licensing authority or any officer authorised by it in this behalf produce to him at the mine such plans and sections and also on a like demand mark on such plans and sections the then state of the workings of the mine, and the licensing authority or the officer authorised by it shall be entitled to examine the plans and the sections and for official purpose to make or have a copy made of any part thereof, respectively.

(8) Where any mine or seam or vein is abandoned, or the working(s) thereof has been discontinued over a period exceeding one year, the lessee shall, within three months after the abandonment or within fifteen months after the discontinuance of working, as the case may be, send to the licensing authority accurate plans and sections or true and accurate copy of the same, of the workings of the mine or seam or vein up to the time of the abandonment of discontinuance, showing the pillars of mineral unworked and all other feature required in compliance with this clause:

Provided that if a change of ownership occurs after the abandonment or discontinuance and before expiry of the three months or the fifteen months aforesaid, as the case may be, such plans and section shall be sent forthwith.

(9) After the expiry of ten years from the date of an abandonment or discontinuance of workings in any mine or seam or vein or where the consent of lessee has been obtained prior to the expiry of the said period, the licensing authority may, on such conditions as it thinks fit to impose, permit any person(s) to inspect the plan or, section of any such mine or seam or vein, sent to the licensing authority by the

lessee in accordance with the provisions of sub-clause (8) and it may further, on such conditions as it thinks fit to impose supply to any such person or persons copies of the like plan or section.

49. Lessee to keep samples of strata and minerals.—

The lessee shall, as far as reasonably practicable, correctly label and preserve for reference, for a period of twelve months, sufficient characteristic sample of the strata encountered in any mine or pit and samples of any mineral discovered in the said land and the licensing authority or its representative shall have access to such samples at all times and shall be entitled to require that representative specimen not exceeding one-half of any such samples be delivered to it and to retain any specimen so discovered.

50. To report discover of other minerals.—

Whenever the lessee shall find in the said lands any mineral or product other than the said mineral, the lessee shall immediately report such discovery in writing to the licensing authority with full particulars of the nature and position of such find.

51. Periodical reports, etc.—

(1) The lessee shall furnish to the licensing authority half yearly or at such times, as the licensing authority may direct during the term hereby granted or any renewal thereof, a record, in a form specified by the licensing authority, of the progress of operations in the said lands. Such records shall contain among other things—

(a) a statement of the extent or working excavation in each mine or pit;

(b) a statement of any workable mineral, mine workings or underground water encountered in the course of the said operations;

(c) a statement of all ore produce;

(d) a statement of any geological or geophysical work carried out in the said lands; and

(e) a statement showing the progress made in implementation of the exploitation/Development Scheme.

(2) Within two months after the end of each year comprised in the term hereby granted or any renewal thereof, the lessee shall furnish to the Licensing authority a record in a form specified by the licensing authority, of the operations conducted in the said lands during each such year together with a plan required under clauses 48 and 49.

52. Submission of monthly production returns.—

(1) After the grant of permission to commence mining operations, the lessee shall send to the licensing authority and to such other officer(s) as may be directed by the licensing authority, monthly production/disposal returns of mineral in the prescribed form so as to reach the licensing authority and the above said officer(s)

if any, by the 7th of each month following the month to which it relates. In case of no production, Nil report shall be submitted.

(2) A penalty of Rs.500 may be imposed by the licensing authority non-submission of a monthly production return in time. In case the returns are not submitted three times consecutively, the lease will be liable to cancellation.

53. To report accidents.—

The lessee shall without delay send to the licensing authority a report of any accident which may at any time occur at or in the said lands or any pit, shaft or workings therein.

54. Report to be treated as confidential.—

All logs records, plan, maps, so accounts and information which the lessee is or may from time to time be required to furnish under the provision of this lease, shall be supplied at the expense of the lessee and shall (except with the consent on writing of the lessee which shall not be unreasonably withheld) be treated by the licensing authority as confidential. The licensing authority shall, nevertheless, be entitled at any time to make use of any information, received from the lessee, for the purpose of preparing and publishing aggregate returns and general reports on the extent of prospecting or mining operations in the North-West Frontier Province and for the purpose of any litigation between the Governor and the Lessee of for any other purpose.

PART VIII.—THE GOVERNOR'S COVENANTS

55. For quiet enjoyment.—

The lessee paying the rent and royalties hereby reserved and observing and performing all the covenants and provisions herein contained and on his part to be observed and performed and successfully abiding by the provision of North-West Frontier Province Mining Concession Rules, 1976 may peacefully hold and enjoy the rights and privileges hereby demised for and during the term hereby granted.

56. Renewal.—

The lessee having paid the several rents and royalties due and having observed and performed the terms and conditions herein contained at the satisfaction of the licensing authority may be granted, on giving to the licensing authority previous notice in writing in that behalf of not more than two years nor less than one year before the termination of the term hereby granted at the discretion of the licensing authority a renewal of this lease for a further term not exceeding thirty years from the date of expiration of the said term, upon the terms and conditions contained in the rules in force at the time, subject to such modifications or exclusions and enhancement of rates for royalties and rents as the Governor may in his discretion determine.

57. Right of lessee to determine lease.—

Without prejudice to any obligation or liability imposed by or incurred under the terms and conditions hereof, the lessee may, at any time during the term hereby granted or any renewal thereof, determine this lease by giving to the licensing authority not less than twelve months' previous notice in writing to that effect:

Provided that where the lease has been assigned or sublet or transferred to the Industrial Development Bank of Pakistan or its successor-in-interest and/or assignee or any other bank or Financing Institution approved by the licensing authority the lessee shall not determine the lease except with the consent in writing of the bank or the Financing Institution concerned.

58. Right of lessee to abandon, surrendered portion of the said land.—

Without prejudice to any obligation or liability imposed by or incurred under the terms and conditions hereof, the lessee shall be entitled, at any time during the terms of lease hereby granted or any renewal thereof, by giving three months' notice in writing to the licensing authority, to surrender the rights granted by the lease in respect of any part or parts of the said lands; provided that the part of said lands; in respect of which the said rights are surrendered shall comply with the rules for the time being in force as to the shape and size of areas in respect of which a mining lease may be granted to any third party(ies).

PART IX – GENERAL PROVISIONS

59. Power to inspect plants, records, accounts.—

Any person or persons authorised by the licensing authority shall be entitled at all times to enter into and upon any land for the time being possessed or occupied by the lessee in the said lands for the purpose:—

(a) to examine the mine, pits, appliances, buildings and works made or executed by the lessee in pursuance of this lease and state of repair and conditions thereof:

(b) to inspect and check the accuracy of the weighing or measuring appliance, weights, measurements, logs, records, plans and maps which the lessee is required to keep or make in accordance with the provisions of this lease;

(c) to inspect and make abstracts or copies of any logs, records, plans, maps or accounts which the lessee is required to keep in accordance with the provisions of the lease; and

(d) to execute any works which the licensing authority may be entitled to execute in accordance with the provisions of this lease.

60. To take control of works, plants and premises, etc. in the event of a National emergency.—

In the event of national emergency or war, the Governor shall be at the liberty to take control of the works, plans, and premises of the lessee and in such event the lessee shall conform to an obey all directions issued by the Governor or on his behalf by the licensing authority.

61. Right of pre-emption.—

(1) The Governor or the licensing authority shall from time to time and at all times during the said term have the right (to be exercised by notice in writing to the lessee) of pre-emption of the said mineral(s) and all products thereof, lying upon the said lands hereby demised or elsewhere under the control of the lessee and the lessee shall, with all possible expedition and so as to avoid demurrage on the vessel or vessels engaged to convey the same, deliver all mineral(s) or products of minerals purchased by the Governor under the power conferred by this provision in the quantities, at the times, in the manner and at the place of shipment or storage specified in the notice exercising the said right.

(2) Should the right of pre-emption conferred by this present provision be exercised and a vessel chartered to carry the mineral(s) or products thereof procured on behalf of the Governor hereunder be detained on demurrage at the port of loading, the lessee shall pay the amount due for demurrage according to the terms of the charter of such vessel unless the Governor shall be satisfied that the delay is due to the cause beyond the control of the lessee.

(3) The price to be paid for all mineral(s) or products of mineral(s) taken in pre-emption by the Governor in exercise of the right hereby conferred shall be the fair market price for the time being to be determined by the licensing authority. In order to determine the fair market price the lessee shall if so required, furnish to the licensing authority, for the confidential information of Government, particulars of the quantities, descriptions and prices of the said mineral(s) or products thereof sold to other customers and of charters entered into for freight for carriage of the same and shall produce to such officer or officers, as may be directed by the licensing authority original or authenticated copies of contracts and charter parties entered into for the sale or freight of such minerals of products.

(4) In the event of existence of a State of War or of grave national emergency, the lessee shall, on receiving a notice in writing from the licensing authority requiring him to use his utmost endeavours to increase the supply to or for the Governor, of the mineral or products thereof purchased by him as aforesaid to the extent specified in such notice.

62. Internal requirements of Pakistan.—

The Governor may, at his discretion, require the lessee to meet the internal requirements of Pakistan to the satisfaction of Government before exporting the said mineral or any of its products to other countries and the lessee shall comply with the instructions issued by Government in this behalf.

63. Association of Pakistan Capital.—

The Governor may, at his discretion require the lessee to associate Pakistan Capital to the extent of 51 percent, of all classes of capital and debentures issue by him from time to time and the lessee shall comply with the instructions issued by the Governor in this behalf.

64. Employment of nationals of Pakistan and their training.—

The lessee shall employ and train Pakistani national in his organization in all grades as required by the Governor form time to time. The number of Pakistani Nationals to be trained by the lessee will be determined by the licensing authority in consultation with the Government.

65. Submission of Accounts and Periodical Returns.—

The lessee shall submit to the licensing authority at the end of every year balance-sheet audited by an approved auditor and such other information and periodical returns as may from time to time be prescribed by the licensing authority.

66. Power to execute works.—

If the lessee shall, at any time, fail to perform the obligations arising under the terms and conditions of any of undermentioned clauses of this Annexure:

(a) Clause 21-23 (Measurement of minerals obtained from the said lands).

(b) Clause 42 (Abandonment and plugging of mines).

(c) Clause 43 (Delivering up of productive mines in good order).

(d) Clause 44 (Plugging of mines on determination of lease).

(e) Clause 46 (Health and safety of workers and employees) or

(f) In accordance with the working obligations, then and in any such case the licensing authority shall be entitled, after giving to the lessee reasonable notice in writing of such of its intention to execute any works, as in the opinion of the licensing authority may be necessary to secure the performance of the said obligations or any of them and to recover the cost and expense of so doing from the lessee. In the event of breach of any above conditions by the lessee his lease shall be liable to cancellation.

67. Power to assess and claim compensation of the damage to mineral property.—

In the event of any damage caused to the mineral property due to unscientific working, lack of supervision, negligence or any other omission or commission on the part of the lessee, the licensing authority shall, as the sole Judge, assess the extent of the damage and the amount of compensation payable, therefore by the lessee and may cancel the lease. The lessee shall be liable to pay the compensation so assessed in the same manner as arrears of rents and royalties are paid.

68. Right of distress.—

If and when any of the rents and royalties payable by the lessee be not paid within three months next after the date fixed for payment of the same, the licensing authority shall have the power to cancel the lease and proceed to recover the dues as arrears of land revenue:

Provided that if the lease has been assigned to or mortgaged in favour of the Industrial Development Bank of Pakistan or its successor-in-interest or assignee or any other bank or Financing Institution approved by the licensing authority, the licensing authority shall inform the said bank or institution about the intention to cancel the lease and recover the dues. The said bank or Financing Institution shall then be entitled to enforce sale of the assigned or mortgaged property and apply the sale proceeds first towards the legal charges which the said Bank or Financing Institution may have incurred, then towards its own dues and out of the balance pay to Government its dues.

Note:—There will be provision in the Assignment/Mortgage Deed that in case, the Industrial Development Bank of Pakistan or the Financing Institution does not exercise his right the Bank or financing Institution will then itself pay of the Government dues and shall include the amount in the principal loan granted to the lessee.

69. Determination of lease without compensation.—

Notwithstanding anything to the contrary contained herein, the licensing authority reserves the liberty to determine the lease granted hereunder without any compensation being paid to the lessee if at any time during the currency of the lease the licensing authority is of the opinion, which opinion shall be binding upon the lessee, that mining operations under the lease tend directly or indirectly or are likely to prejudicially affect the salt mines or salt deposits in or around the area demised hereunder.

70. Power of revocation.—

If there shall be any violation of the undertaking given in accordance with the North-West Frontier Province Mining concession Rules, 1976, or any breach or Non-observance by the lessee of any of the terms and conditions of this lease or if the lessee shall become bankrupt or make or enter into any agreement for compensation with his creditors or, if where the lessee is a Company, a Receiver shall be appointed of the Company or the Company shall enter into liquidation, or in any other such case, the licensing authority may forfeit, in whole or in part, the security deposit made by the lessee under the North-West Frontier Province Mining concession Rules, 1976 and/or revoke this lease and thereupon all rights hereby granted shall cease, but subject nevertheless and without prejudice to any obligation or liability imposed by or incurred under the terms and conditions of this lease. The licensing authority may also black list the lessee for further grants for ever or for any period specified by it:

Provided always that save as to the non-payment of rents and royalties, the aforesaid power shall not be exercisable unless and until notice has been given to the lessee specifying the particular breach complained of and if the breach is capable of remedy , may require the lessee to remedy it within one month and thereafter, to make reasonable compensation in money to the satisfaction of the licensing authority of the said breach.

71. Whenever the said security deposit or any part thereof of any further sum hereafter deposited with the licensing authority in replenishment thereof shall be forfeited or applied by the licensing authority in pursuance of the power herein above declared in that behalf, the lessee shall forthwith deposit with the licensing authority such further sum as may be sufficient with the unappropriated part thereof to bring the amount in deposit with licensing authority up to the sum of Rs_____.

72. Training.—

The lessee shall when asked to do so by the licensing authority shall arrange and provide facilities for training of students of mining engineering or to any other person or persons associated with the profession of engineering, geology, or other related science. The lessee shall pay stipend per month to such trainees at the rates fixed by the licensing authority for such training, during the such training period

73. Boundary disputes.—

If at any time during the currency of this lease any dispute arises as to its boundary limits or in respect of the extents of underground working within that boundaries or due to any other reasons, the decision of the licensing authority shall be final.

74. Power of lessee to remove plant, etc.—

Subject to the provision of clause 43 (Delivering of productive mines, in good order;) of this Annexure the lessee may, provided that all rents, royalties and other impositions payable by him by virtue of these presents have been paid and that all the covenants and conditions herein contained have been observed and performed, at any time or times within six calendar months after the determination of this lease, enter into and upon the said lands or any part there of for the purpose of taking out, removing and disposing of for his own use and benefits, all or any of the buildings, works, railways, pipelines, machinery, utensils, implements, articles and things set up and used or employed by him in or about the said lands, which the Governor shall not have selected to purchase under the provisions of clause 75 (power of Governor to purchase property, etc.), of this Annexure (except buildings erected with bricks, stone or concrete) by making reasonable compensation for all damage done to the said lands by such removal.

75. Power of Governor to purchase property etc.,—

If at the expiration or determination of this lease, the Governor shall be desirous of purchasing all or any of the buildings, works, railways, pipelines, machinery, utensils, implements, articles or things constructed , set up or used or employed by the lessee in or about the said lands, and which the lessee is not bound to deliver up under clause 42 (Delivering of Productive mines, in good order) of this Annexure and shall signify his such desire by notice in writing to the lessee at least six calendar months before the expiration of this lease, or if this lease shall be determined under the power of revocation hereinbefore contained at any time within three calendar months after the determination of this lease, the lessee shall sell to the Governor the articles and things specified in such notice at reasonable price to be determined by the licensing authority.

76. Forfeiture of property left for more than six months after determination of lease.—

If at the expiration of six months after the expiry of determination of the lease, there shall remain in or upon the said lands any engines, machinery, plants, buildings, structures,

tramways, railways,, and other property which the lessee is entitled to remove from the said lands, the same shall, if to removed by the lessee within one calendar month of the notice in writing requiring their removal be deemed to become the property of the Governor and may be sold or disposed of for the benefit of Government in such manner as the Governor may deem fit without any liability to pay any compensation to the lessee in respect thereof.

77. Lessees' right in respect of other minerals.—

If any mineral(s) not included in the lease shall, during the said terms, be discovered within the said lands the lessee shall not unless a fresh lease in respect of the mineral(s) so discovered is granted to him under the North-West Frontier Province Mining Concession Rules, 1976, have any right to those mineral(s).

78. Penalty for unauthorised working or obstruction.—

(1) If the lessee starts or carries on mining or quarry operations, whether on surface or underground of any mineral(s) outside the area granted to him or in the area for which he has not obtained a mining lease in accordance with the North-West Frontier Province Mining Concession Rules, 1976 or encroach upon the areas of other concessionaires, or illegally obstructs access of the other concessionaires to their granted areas directly or indirectly or tries to interfere with the mining operations of other lessees, or commits pilferage of any mineral, directly or indirectly, he shall be punished with imprisonment for a term which may extend to three years, or with fine which may extend to twenty thousand rupees or with both. In such event his mining lease shall be cancelled and may also be black-listed for future grants of mining concessions. The total value of the mineral illegally extracted shall also be recovered from him.

79. Force Majeure.—

(1) Failure on the part of the lessee to fulfill any of the terms and conditions of this lease shall not give Government/licensing authority any claim against the lessee or be deemed a breach of this lease in so far as such failure arises from force majeure.

(2) In this clause the expression "force majeure" means the act of God, war, insurrection, riot, civil commotion, tide, storm, tidal waves, flood, lightning , explosion, fire, earthquake and any other happening which the lessee could not reasonably prevent or control.

80. Headings.—

The headings in italics (which are to be treated as marginal notes) are for convenience only and doe not form part of this lease.

Signed by_____
Name and Designation

for and on behalf of the Governor of North-West Frontier Province, in the presence of :—
Witness:—
(1)

(2)

(1) Signed by above named by his/their_____/Attorney in the presence of:—

Witness:—

(1)

(2)

(2) Signed in the name and on behalf of the above-named by Director of the said company in the presence of :—

Witness:—

(1)

(2)

(3) Signed in the name and on behalf of the above-named by their authorised agent in the presence of:—

Witness:—

(1)

(2)

(4) Signed by the above-named by their Attorney agent in the presence of :—

Witness:—

(1)

(2)

1. This clause is to be used where the lease is granted to one or more individuals (the name of the constituted attorney being filled in of the lessee of lessees do not sign personally).

2. This clause is to be used where the lease is granted to a registered company and if the signature is by an agent or attorney the appropriate designation should be inserted in place of word “Director”.

3. This clause is to be used where the lease is granted to an un-incorporated syndicate.

4. This clause is to be used where the lease is granted to a private firm the name of the attorney or agent being filled in if the signature is not by a partner in the firm.

FOURTH SCHEDULE-QUALIFICATION OF TECHNICIANS WHO CAN PREPARE AN EXPLOITATION DEVELOPMENT/SCHEME

1. Coal.—

A degree, diploma, or certificate in Mining Engineering from a recognized University or Institute with at least one year underground working experience in the coal mines in case of a degree-holder and three years’ working experience in coal mines in case of a diploma certificate-holder, of First or Second Class Mine Manager’s Certificate or Competency, or any other qualification not mentioned above which in the opinion of the licensing Authority is equal to or comparable with the above qualification.

2. Mineral other than coal.—

A Degree, Diploma or Certificate in Mining Engineering from a recognized University or Institute with the one year underground working experience in mines in case of a Degree-holder and three years underground working experience in mines, in case of Diploma/Certificate-holder, or First or Second Class Mine Manager's Certificate of Competency; or any other qualification not mentioned above which in the opinion of the licensing authority is equal to or comparable with the above qualification .

FIFTH SCHEDULE
(See rule 64)

———Not readable three lines of the text———

average pit mouth value of such minerals in the North-West Frontier Province on the following basis:—

Coal, including coal dust and coal used on the works:—	15% on the value at the pit mouth subject to a minimum of Rs.14 per ton.
Mica	12% on the value at pit mouth.
Gold and Silver	12% on the value of the market value.
Precious stones	25% on the value at pit mouth (for Mining lease only).
Limestone.	12% on the value at pit's mouth subject to a minimum of Rs.5.00 per ton (2,240 lbs)
Gypsum and Silica Sand.	12% on the value at pit's mouth subject to a minimum of Rs.10 per ton (2,240 lbs).
Fireclay	12% on the value at pit's mouth subject to a minimum of Rs.10 per ton (2,240 lbs).
Phosphate rock.	20% on the value at pit's mouth.
All other minerals not specified above	12% on the value at pit's mouth or on the surface, of the dressed ore metal, convertible at the option of the Licensing Authority to an equivalent charge per ton to be fixed annually or for a term.

Note.—The value at pit's mouth of a mineral will be determined by deducting from the market value the actual expenditure incurred in carrying the mineral from the pit's mouth to the

market unless this is otherwise fixed in accordance with any Act of Government Order for the time being in force in respect of any mineral.

SIXTH SCHEDULE
(DEAD RENT)

	MINERALS:—	DEAD RENT (MINIMUM)
1.	Gold and Silver:—	
	(a) Deed rent per acre if the area demised under mining lease does not exceed 640 acres;	Rs.5 per acre per annum subject to a minimum of Rs.1,000
	(b) Exceeding 640 acres	Rs.7 per acre per annum
2.	Precious and Semi-precious minerals:—	
	(a) Dead rent per acre if the area demised under mining lease does not exceed 640 acres;	Rs.12 per acre per annum subject to a minimum of Rs.1,500 in case of semi-precious stone and Rs.2,000 in case of precious stones.
	(b) Exceeding 640 acres	Rs.16 per acre per annum.
3.	All other minerals not included above.	Rs.4 per acre per annum subject to a minimum of Rs.500.

The above rates are only minimum. Higher rates may be fixed in respect of any minerals by the licensing authority.

SEVENTH SCHEDULE
FORM OF AGREEMENT FOR USE IN CONNECTION WITH THE TRANSFER OF A LEASE

An Agreement dated_____and made between the Governor of the North-West Frontier Province hereinafter referred to as the "Governor" which expression shall include his successors-in-office and assigns of the one part and _____ _____ ___ hereinafter referred to as the Assignee(s) which expression shall include his——(respective) heirs, executors, administrators, representatives and assigns of the other part.

Whereas by virtue of an Indenture of Mining Lease hereinafter referred to as the lease deed_____ and made between the Governor

(A)_____
_____
____ and
(B)_____
_____ and now vested by transfer in
_____
_____ hereinafter referred to as the Lessee(s) is/are entitled to search for and work the mines and minerals therein mentioned for the term and subject to the payment of rents and royalties and the observance and performance of the lessee's covenants and conditions in the lease reserved and contained including a convenant not a assign the ease/or any interest thereunder without the previous sanction of the Governor and whereas the lessee(s) are desirous of transferring and the Governor has at the request of the lessee(s) granted sanction to such transfer and assignment upon condition of the Assignee(s) entering into an agreement in and containing the terms and conditions hereinafter set forth.

Now, it is hereby agreed and declared by the assignee(s), with and to the Governor that from and after the transfer and assignment of the lease by the lessee(s) to the assignee(s) shall be bound by and liable to perform observed and conform and be subject respectively to all the provisions and conditions of all the convenants and stipulations on the part of the lessee(s) and conditions in the lease contained in the same manner in all respect as if the lease had been granted to the assignee(s) as the lessee(s) hereunder and he/they had originally executed it as such and the assignee(s) hereby undertake(s) and agree(s) with the Governor to perform and reserve the same convenant, stipulations and conditions in all respects accordingly.

6.1.3.4 NWFP Sarhad Development Authority Act 1972

THE NORTH-WEST FRONTIER PROVINCE
SARHAD DEVELOPMENT AUTHORITY ACT, 1972

12TH January, 1973

N.W.F.P. ACT NO.XI OF 1973

(Received the assent of the Governor of the North-West Frontier Province on 12th January, 1973

AN
ACT

to provide for the establishment of Sarhad Development Authority For the purpose of promoting the economic and industrial development of the North-West Frontier Province

Preamble.—

WHEREAS it is expedient to provide for the establishment of Sarhad Development Authority for the purpose of promoting the economic and industrial development of the North-West Frontier Province and for matters ancillary thereto;

It is hereby enacted as follows.—

1. Short title extent and commencement.—

(1) This Act may be called the North-West Frontier Province Sarhad Development Authority Act, 1972.

(2) It extends to the whole of the North-West Frontier Province, except the Tribal Areas.

(3) It shall come into force at once.

2. Definition.—

In this Act, unless there is anything repugnant in the subject or context the following expressions shall have the meanings hereby respectively assigned to them, that is to say.

(a) 'Authority' means the Sarhad Development Authority, North-West Frontier Province established under section-3;

(b) 'Board' means the Board of Director s of the Authority;

(c) 'Chairman' means the Chairman of the Authority;

(d) 'Director' means a Director of the Authority and includes the Chairman;

(e) 'Government' means the Government of the North-West Frontier Province;

(f) 'Governor' means the Governor of the North-West Frontier Province;

(g) 'industry' means an industry for the manufacture for consumer or producer goods, other than—-

(i) cottage or small industry, and

(ii) the industry the development whereof under Federal Control is declared by Federal Law to be expedient in the public interest;

(h) 'minerals' mean all minerals excluding minerals necessary for the generation of nuclear energy and minerals oil and natural gas;

(i) 'prescribed' means prescribed by rules or regulations;

(j) 'regulations' means regulations made under this Act;

(k) 'rules' means rules made under this Act;

(l) 'Scheduled Bank' means the Bank for the time being included in the list of banks maintained under sub-seciton (j) of section 37 of the State Bank of Pakistan Act, 1956 (Act XXXIII of 1956); and

(m) 'State Bank' means the State Bank of Pakistan.

3. Establishment of the Authority and its Office.—

(1) As soon as may be after the commencement of this Act, Government shall establish an Authority to be called the Sarhad Development Authority North-West Frontier Province.

(2) The Authority shall be a body corporate having perpetual succession and a common seal with power, subject to the provisions of this Act to acquire and hold property, both moveable and immovable, and shall by the said name sue and be sued.

(3) The Head Office of the Authority shall be at Peshawar but Government may, by notification in the official Gazette, transfer it to such other place as may be specified in such Notification.

(4) The Authority shall establish Regional Offices at such places as Government may direct.

4. Share Capital.—

(1) The authorized share capital of the Authority shall in the first instance, be one crore of rupees divided into one hundred fully paid up shares of one lakh of rupees

each, which may be issued from time to time by the Authority with the previous sanction of Government .

(2) Nothing in sub-seciton (1) shall prevent the Authority form increasing its capital with the previous sanction of Government .

5. Management.—

(1) The general direction and administration of the Authority and its affairs shall vest in the Board which may exercise all powers and do all acts and things which may be exercised or done by the Authority , in accordance with the provisions of this act.

(2) The Board in discharging its functions shall act on commercial considerations and shall be guided by such directions as Government may from time to time give.

(3) If the Board fails to obey any direction as aforesaid, Government may remove the Directors including the Chairman, and, notwithstanding anything in section 6, appoint persons in their places to be Director s temporarily until fresh Director s are appointed under that section.

6. Appointment and terms of office of Directors.—

(1) The Board shall consist of such number of Director s not less than three and not more than five, as may be appointed by Government.

(2) Each Director shall.—

(a) be a whole-time or part-time officer of Authority;

(b) perform such duties as the Board may be regulations assign to him;

(c) divest himself of any Director s hip or other interest held by him in any other Corporation, Company, or concern other than public companies sponsored by the Authority, under sub-section (5) of section 17 before assuming office as whole-time Director.

(d) subject to the provision of section 9, hold office for a term of three years and my be appointed thereafter for a further term a terms of such duration as Government may, in appointed him thereto determine; and

(e) receive such salary and allowances as Government may determine;

Provided that Government may, in exceptional circumstances where it considers it necessary to do so in the public interest; exempt, by a special order, any person, who has been appointed or is about to be appointed a Director, form the application of clause (c).

(3) One of the Director s appointed under sub-section (1) shall be the Financial Director , who shall exercise such power and discharge such duties as may be prescribed.

7. Chairman.—

(1) Government shall appointone one of the Director s to be the Chairman of the Board, who shall be the Chief Executive of the Authority.

(2) subject to his continuing to hold office as a Director , the Chairman shall hold office as Chairman for a term of three years and subject as aforesaid, shall remain in office of as Chairman thereafter until his successor in that officer is appointed and may, subject as aforesaid, be appointed to hold that office for a further term or terms as Government may, in appointing him there to determine.

8. Term of office and first Chariman nd Director s .

Notwithstanding anything contained in section 6 and 7, whene the Board is first constituted, .the Chairman and Director s shall hold office for such term, not exceeding three years, as may be determine by Government;

Provided that such Chairman and Director may be appointed to hold that office for a further term or terms as Government may, in appointing them thereto, determine.

9. Disqualification of Director s .—

(1) No person shall be or shall continue to be a Director who —

(a) is or at any time has been convicted of an offense involving moral turpitude; or

(b) is or at any time has been adjudicated insolvent; or

(c) is found a lunatic or becomes of unsound mind; or

(d) is or at any time has been disqualified for employment in or dismissed from the service of Pakistan; or

(e) is under the age of twenty–one years; or

(f) is not a citizen of Pakistan.

(2) **Removal of Chairman or a Director :--** Government may, by order in writing, remove the Chairman or a Director if he:--

(a) refuses or fails to discharge or becomes in the opinion of Government, incapable of discharging his responsibilities under this Act; or

(b) has in the opinion of Government, abused his position as Chairman or Director; or

(c) has knowingly acquired or continued to hold without the permission in writing of Government, directly or indirectly or through a partner, any share or interest in any contract or employment with, by or on behalf of the Authority, or in any

property which, in his knowledge, is likely to benefit or has benefited as a result of the operations of the Authority; or

(d) has absented himself from three consecutive meetings of the Board without the leave of Government in the case of the Chairman, or of the Chairman in the case of a Director.

(3) **Resignation by Chairman or Director.**

Notwithstanding anything contained in this Act, the Chairman or a Director may at any time before the expiry of his term, upon three months' notice, resign his office, or upon similar notice be removed from office by Government without assigning any reason.

10. Appointment of Officers, advisors etc.

(1) The Authority may, subject to such general or special orders as Government may from time to time give, appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, on such terms and conditions as it may determine.

(2) The Authority may employ such officers, expert, Advisers, consultants and other persons as may be transferred to it by Government , on such terms and conditions as may be determined by Government.

(3) The Chairman, in cases of urgency, may appoint such officers, advisers, consultants and other employees as may be necessary:

Provided that every appointment made under this sub-section shall be reported to the Authority without unnecessary delay, and shall not continue beyond six months unless approved by the Authority.

11. Powers of Authority to associate other persons.—

(1) The Authority may associate with itself in such manner, on such terms and for such period as it may deem fit, any person whose assistance or advice it may deem necessary in carrying out any of the purpose of this Act.

(2) A person associated under sub-section (1) for any purpose shall have a right to take part in the discussion of the Board relating to that purpose but shall not have a right to vote and shall not be deemed to be a Director for that or any other purpose.

12. Financial technical and advisory committee.—

The Authority may constitute such financial technical and advisory committees as may be necessary for carrying out the purposes of this Act.

13. Declaration of fidelity and secrecy.—

(1) Every Director , adviser, officer or other employee of the Authority , before entering upon his duties, shall make such declaration of fidelity and secrecy as may be prescribed by regulations.

(2) Any adviser, officer or other employee of the Authority , who in the opinion of the Governor or a person authorized by the Governor in this behalf, has violated the declaration of fidelity or secrecy made by him under sub-section (1) shall be liable after being given a reasonable opportunity of showing cause against the action proposed to be taken with respect to him, to be forthwith removed from his office or post.

14. Meetings of the Board .—

(1) The meetings of the Board shall be held at such times and at such places as may be prescribed by regulations:

Provided that at least one meeting shall be held in a month:

Provided further that until regulations are made in this behalf, such meetings shall be held at such times and at such places as may be determined by the Chairman.

(2) The quorum necessary for transacting business at a meeting of the Board shall be three, if the Board consists of five Director s and two if the number is less.

(3) Each Director , including the Chairman, shall have one vote but in the event of an equality of votes, the Chairman shall have a second or casting vote.

(4) The meetings of the Board shall be presided over by the Chairman and in his absence by a Director authorized by him in this behalf and in default of such authorization by a person elected for the purpose by the Director s present from among themselves.

(5) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in, or any effect in the constitution of, the Board .

(6) The minutes of every meeting, stating among other things, the names of the Director s present, shall be drawn up and recorded in a book to be kept for the purpose, and shall be signed by the person residing at the meeting, and such book shall at all reasonable times and without charge be open to inspection by any Director .

15. Forwarding of statements, etc. to Government .—

(1) If the Governor so directs in any case, the Chairman shall forward to him copies of all papers which were laid before the Board for consideration at meeting.

(2) Government may require the Chairman to furnish it with.

(a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Authority; or.

(b) a report on any such matter; or

(c) a copy of any document in the charge of he Chairman.

(3) The Chairman shall comply with any such requisition under sub-section (2) without undue delay.

16. Delegation of powers.—

Subject to the provisions of sub-section (3) of section 6, the Authority may, by general or special order in writing, direct that such of its powers shall, in such circumstances and under such conditions, if any as may be specified in the order, be exerciserable also by the Chairman or such Director or officer or employee as may be specified therein.

17. Business which the Authority shall transact.—

(1) The Authority shall take over and be responsible for such business, projects undertakings and properties, rights, duties and liabilities as may be transferred to it by Government .

(2) Unless, otherwise directed by Government the Authority shall also be responsible for-

(a) planning, promoting organizing and implementing programmes for the establishment of industries, and commercial ventures;

(b) the exploration exploitation and development of minerals and mines; and

(c) tendering advice on the technical, operational and commercial feasibility of any programme on scheme specified by Government .

Explanation.— In clause (a) “planning” includes studies surveys, experiments and scientific and technical investigation.

(3) Notwithstanding anything contained in sub-section (1) and (2), the Authority shall perform such other duties and functions as Government may, from time to time, assign to it.

(4) The Authority shall, in order to carry out any functions under sub-section (1) or clauses (a) and (b) of sub-section (2) or sub-section (3)—

(a) submit, for the approval of Government proposals or schemes; nd

(b) Proceed to give effect to any proposal or shcems as approved by Government .

(5) The Authority may, and, where Government so directs, shall, for the purpose of giving effect to any proposal or scheme approved by Government , sponsor limited companies independent of each other or subsidiary companies incorporated under the Companies Act, 1913.

Provided that before sponsoring any such company, the Authority shall obtain the approval of Government to the company's capital structure.

(6) The Authority shall be represented on the Board of Directors of the aforesaid companies.

(7) The Authority may issue the capital required for the aforesaid companies for public subscription and, if any portion thereof remains unsubscribed after the expiry of the closing date for public subscription, subscribe on behalf of Government that portion.

Provided that the Authority shall not subscribe to an extent which in the aggregate exceeds such limits as may be notified by Government from time to time.

(8) The Authority may underwriter the whole or any portion of the capital issued under sub-section (7).

(9) The Authority shall, when it considers the time apportune sell or transfer the shares subscribed for by it under sub-section (7):

Provided that no such sale or transfer shall take place at a rate below the market quotation or below the par value of such shares without the previous sanction of Government .

(10) The Authority may participate in joint ventures with [the public or private sector or both] in regard to matters specified in clauses (a) and (b) of sub-section (2).

18. Security for subscription.—

No subscription shall be made unless it is adequately secured by pledge, mortgage, hypothecation or assignment of such property, movable or immovable, and of such value in proportion to the subscription as may be notified by Government from time to time.

19. Loans in foreign currency.—

The Authority may, with the previous approval of Government and the Federal Government, and on such terms and conditions as may be approved by Government, borrow in foreign currency from the International Bank for Re-construction and Development or otherwise moneys required for the development of industries.

20. Act XV III 1891 to apply the books of Authority.—

The Authority shall be deemed to be a bank for the purpose of the Baker's Book Evidence Act, 1891.

21. Annual Budge Statement.—

The Authority shall by such date in each year as may be prescribed by rules, submit to Government for approval a statement to be called the Annual Budget Statement in the prescribed from for every financial year showing the estimated receipts and expenditure and sums which are likely to be required from Government during that financial year.

22. Custody and investment of Authority fund.—

(1) All moneys at the credit of the Authority shall be kept in such institution of banks as may be approved by Government .

(2). Nothing in sub-section (1) shall be deemed to preclude the Authority from investing any such moneys which are not required for immediate expenditure in any of the securities described in the section 20 of the Trust Act, 1882 or placing them in fixed deposits with a bank approved by Government or in such other manner as may be approved by Government .

23. Maintenance of accounts.—

The Authority shall maintain proper accounts and other relevant records and prepare annual statement of accounts, including the profit and loss account and balance-sheet, in accordance with such general directions as may be issued, and in such form as may be specified by Government in consultation with the Auditor-General of Pakistan, hereinafter refereed to as the Auditor-General.

24. Audit.—

(1) The accounts of the Authority shall be audited by Auditors who shall be chartered accountants within the meanings of the Chartered Accountants Ordinance, 1961. And appointed, with the approval of Government by the Authority on such remuneration as it may think fit, and such remuneration shall be paid by the Authority .

(2) Notwithstanding the audit provided for in sub-section (1), the Auditor-General shall once a year audit or cause to be audited the accounts of the Authority.

(3) The Auditor-General shall also hold, or cause to be held, a test audit of the undertakings wholly owned by the Authority and of the companies sponsored by it and in the event of a test audit disclosing irregularities, the Auditor-General may carry out or cause to be carried out, such further audit as he considers necessary.

(4) The Authority and every such undertaking and company as is referred to in sub-section (3) shall produce the accounts, books and connected documents, at the place where they are normally expected to be available, and furnish such explanations and information as the Auditor-General or any officer authorized by him in this behalf may require at the time of the audit.

(5) The Auditor-general shall in holding the audit, keep in view the provisions of sub-section (2) of section 5 and state in his report how far in his opinion these provisions have been complied with.

(6) A statement of accounts of the Authority and the report of the Auditor-General on the said accounts, together with the report of the Auditor-General on the account of undertaking and the companies referred to in sub-section (3) shall be furnished to Government by the Authority after the end of every financial year.

25. Annual report.—

(1) The Authority shall as soon as possible after the end of every financial year, submit an annual report to Government on the conduct of its affairs for that year, and on its proposals for the next ensuing financial year.

(2) The annual report referred to in sub-section (1) shall, as soon as possible be laid by Government before the provincial Assembly of the North West Frontier Province.

26. Public servants.—

The Chairman, Director s officers, advisers, or employees of the Authority shall, while acting or purporting to act in pursuance of the provisions of this Act, or, the rules or regulations made thereunder, be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

27. Indemnity of Directors, etc.—

(1) Every Director , adviser, officer or other employee of the Authority shall be indemnified by the Authority against all losses and expenses incurred by him in the discharge of his duties, except such as are caused by his own willful act or default.

(2) The Director shall not be personally responsible for the acts of any other Director, or of any officer, adviser, or any employee of the Authority for any loss or expense resulting to the Authority by reason of the insufficiency or deficiency in value of or price to any property or security acquired or taken on behalf of the Authority , or by the wrongful act of any person under a liability to the Authority or by anything done by him in good faith in the execution of the duties of his office.

28. Placing of audit reports, etc., before the Provincial Assembly.—

(1) The annual statement of accounts referred to in section 23 together with the audit report and test audit report of the Auditor-General on the accounts of the Authority undertaking and companies referred to in section 24 shall be placed by Government before the Provincial Assembly of the North-West Frontier Province as soon as possible after they are received, and the Provincial Assembly shall refer the same to its Committee on Public Accounts for scrutiny.

(2) The Committee on public accounts shall scrutinize and examine the reports referred to it under sub-section (1) in the same manner, and shall in respect thereof perform the same functions and exercise the same powers as are required by it to be performed and exercised in respect of appropriation accounts of the Provincial Government and the report of the Auditor-General thereon.

29. Power to make rules.—

(1) Government may, by notification in the official Gazette make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generally of the foregoing powers such rules may provide for—

(a) the manner of keeping accounts of the Authority and the companies managed by it;

(b) the recruitment of officers, advisers and employees of he Authority;

(c) the terms and conditions of service of the officers advisers and employees of the Authority including the functions of the advisers;

(d) the borrowing by the Authority.

(e) the purchase and sale of goods by the Authority:

(f) the date by which, and the form in which, the annual budget statement shall be submitted in each year;

(g) the procedure for appropriation and re-appropriation of moneys return; at the credit of the Authority;

(h) the form and manner in which and the authorities to whom returns, reports or statements shall be submitted; and

(i) such other matters relating to the administration of the affairs of the Authority as Government may think fit to regulate by rules;

30. Power to make regulations.—

(1) The Authority may with the previous sanction of Government, make regulations to provide for all matters, not provided for in the rules for which provision is necessary or expedient for carrying out the purposes of this Act and the said rules.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for—

(a) the meetings of the Board;

(b) the investment of the Authority's funds; and

(c) the sale or transfer of shares under sub-section (9) of section. 17.

31. Winding up of the Authority .—

No provision of law relating to the winding up of companies and corporations shall apply to the Authority and the Authority shall not be wound up except by order of Government and in such manner as it may direct.

32. Repeal and saving.—

(1) The North-West Frontier Province, Sarhad Development Authority Ordinance, 1972 (N.W.F.P. Ord No.XX of 1972) is hereby repeaed.

(2) Notwithstanding the repeal of the North-West Frontier Province, Sarhad Development Authority , Ordinance 1972, everything done, action taken, Authority established, obligation or liabilities incurred rights, assets or property acquired, persons appointed or authorized, jurisdiction or powers conferred or notifications or orders issued under any of the provisions of the said Ordinance or rules or regulations made thereunder, if not inconsistant with the provisions of the Act or rules or regulations made under this Act, shall be continued, and, so far as may be, be deemed to have been respectively done, taken, established, incurred, acquired, appointed or authorized , conferred and issued under this Act, and any document referring to any of the provisions of the said Ordinance rule or regulations shall so far as may be, considered to refer to the corresponding provisions of this Act or rules or regulations made under this Act.

6.1.4 Non-Extractive Industry

6.1.4.2 NWFP Power Crushers (Licensing) Ordinance 1980

THE NORTH-WEST FRONTIER PROVINCE POWER CRUSHERS (LICENSING) ORDINANCE, 1980.

N.-W.F.P. ORDINANCE NO. XV OF 1980.

26th October, 1980.

AN ORDINANCE

to provide for the licensing of power crushers in the North-West Frontier Province.

Preamble

WHEREAS it is expedient to provide for the licensing of power crushers in the North-West Frontier Province, in the manner hereinafter appearing;

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977), and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

1. Short title extned and commencment.

(1) This Ordinance may be called the North-West Frontier Province Power Crushers (Licensing) Ordinance, 1980.

(2) It shall extend to whole of the North-West Frontier Province.

(3) It shall come into force at once and shall be deemed to have taken effect on and from 18th October, 1980.

2. Definitions.

In this Ordinance, unless the context otherwise required -

(a) "Director" means the Director of Industries, Commerce and Mineral Development, North-West Frontier Province;

(b) "Government" means the Government of the North-West Frontier Province;

(c) "Prescribed" means Prescribed by rules made under this Ordinance;

(d) "Power Crusher" means the crushing machine drive by electrical power or a tractor or other mechanical device or process for crushing sugarcane for the purposes of manufacturing Gur as defined in the North-West Frontier Province Sugarcane (Control) Order, 1980; and

(e) "Schedule" means the Schedule appended to this Ordinance.

3. Power crushers to be licencsed

No person shall crush sugarcane by means of a power crusher unless it is licensed under this Ordinance, or otherwise than in compliance with any condition and restrictions imposed by such license.

4. Licensing authority

The authority having power to grant licence under this Ordinance (hereinafter referred to as the licensing authority) shall be the Districts Magistrate of the District concerned:

Provided that Government may, by notification in the official Gazette, constitute for the whole or any part of the Province such other authority as it may specify in the notification to be the licensing authority for the purposes of this Ordinance.

5. Grant of License

(1) A person operating power crusher immediately before the commencement of this Ordinance, or a person intending to install a power crusher after such commencement, shall apply to the licensing authority, within thirty days of such commencement or, as the case may be, installation for the grant of licence under this Ordinance.

(2) The application for the grant of licence shall be made in the form specified in Part A of the Schedule and shall be accompanied by-

(a) a Bank or Treasury challan in token of payment of the licensing fee prescribed under section 6; and

(b) the certificate of registration issued by the Director, if such power crusher was, before the commencement of this Ordinance, registered with him under section 3 of the West Pakistan Industries (Control and Enlargement) Ordinance, 1963 (W.P Ord. IV of 1963).

(3) The licensing authority may, if the applicant fulfils the conditions specified in Part B of the Schedule and after making such inquiry as may be deemed appropriate, grant him the licence in the form specified in Part C of the Schedule.

(4) The licence granted under sub-section (3) shall be valid for one year, commencing from the first day of July of the year in which the licence is issued and expiring on the 30th day of June next following unless renewed at least thirty days before the date of expiry.

(5) The Procedure for renewal of licence shall be the same as prescribed for the grant of licence.

6. Fee

(1) The fee to be charged for the grant of licence shall be-

(a) seven thousand rupees per power crusher, if the power crusher on the commencement of this Ordinance, was already registered with the Director under section 3 of the West Pakistan Industries (Control and Enlargement) Ordinance, 1963 (W. P. Ord. IV of 1963): and

(b) ten thousand rupees, if the power crusher was no registered as aforesaid or a new power crusher is installed after the commencement of this Ordinance.

(2) The fee for renewal of a licence shall be seven thousand rupees per power crusher.

(3) The fee prescribed under sub-section (1) or sub-section (2) may be revised by Government from time to time by a notification issued in the official Gazette.

(4) The fee may be deposited in the State Bank or any Government Treasury under the head of account [1](1300- Miscellaneous Receipts- 1390- Receipts from installation /renewal, of Power Crushers).

7. Calculation of License

(1) If a licensee fails to fulfil the conditions specified in Part B, or fails to observe any of the restrictions imposed by Part D, of the Schedule , the licensing authority may, after giving the licensee an opportunity of being heard, cancel the licence.

(2) The cancellation of licence shall be in addition to and not in derogation of any punishment prescribed under this Ordinance or the rules made thereunder.

8. Apeal

Any person aggrieved by an order of the licensing authority under this Ordinance may, within fifteen days of the order, appeal to such officer or authority as Government may, by notification, appoint in this behalf (and the officer or authority so appointed shall, after giving the appellant an opportunity of being heard, pass such order as may be deemed fit).

9. Penalty

(1) Whoever runs a power crusher in contravention of the provision of this Ordinance or the rules made thereunder shall be punished with imprisonment which may extend to one year or with fine which may extend to ten thousand rupees or with both.

(2) Wherever, having been convicted of an offence under sub-section (1), continues the contravention shall be punished with fine which may extend to five hundred rupees for each day during which the offence continues.

10. Cognizance of offence

No Court shall take cognizance of an offence under this Ordinance, except upon a complaint in writing made by the licencing authority.

11. Government may make rules to carry out the purpose of this Ordinance.

SCHEDULE
PART-A

[See Section 5(2)]

Form of application for licence to install and operate a power crusher

I apply for a licence to enable me to install and operate the power crusher for the purpose of manufacturing 'Gur'.

1. Applicant's name.

2. Applicant's profession.

3. Applicant's residence.

4. Situation of the place where the applicant to install and operate the power crusher.

5. I have carefully read the conditions and restrictions of licence given in part B, and Part D. of the Schedule to the North-West Frontier Province Power Crusher (Licencing) Ordinance, 1980.

Signature or thumb impression
of the applicant.

PART - B

[See Section 5(3) and 7(1)].

Conditions of licence.

1. This licence is not transferable.

2. This licence will be renewed on yearly basis.

3. Renewal of the licensee will be obtained each year from the competent authority at least thirty days before the date of expiry on payment of prescribed fee.

PART – C

[See Section 5(3)].

Licence to operate a power crusher.

No…….. Dated……..……..

(Name)…….son/daughter of (father's

name)……of (permanent,

address)……..is licenced to

operate a power crusher.

2. This licence is valid
from…….to……

3. So long this licence is valid and is renewed from time to time, the holder is authorised to crush sugarcane for the purpose of manufacturing "Gur" as defined in the North-West Frontier Province Sugarcane (Control) Order, 1980.

Licencing Authority

PART – 'D'
[See Section 7(1)].

Restrictions subject to which the licence may be granted.

1. One person will be eligible to own and operate only one power crusher.

2. The person applying for licence will produce document before the licensing authority to prove the ownership of the power crusher.

3. No license will subject to any other party the power crusher licensed in his name.

[i] Substituted by N.W.F.P. Ordinance No. VI of 1984 S.2.
[ii] Substituted and inserted by N.W.F.P. Act. No. II of 1935 with Schedule-

6.1.4.4 NWFP Sugar Factories Control Act 1950

THE NORTH WEST FRONTIER PROVINCE

SUGAR FACTORIES CONTROL ACT 1950,

(Act No.XXII OF 1950),

(Received the assent of the Governor, North-West Frontier Province, on the 5th April, 1950).

AN
ACT

to provide for the regulated supply of sugarcane [1][and sugar beet] to the Sugar Factories.

Preamble.—

WHEREAS it is expedient to provide for regulating the supply of ugarcane [1][and sugar beet] intended for use in such factories and the price at which it may be purchased and for such other matters as my be incidental thereto:

It is hereby enacted as follows:-

1. Short title and extent.—

(1) This Act may be called the North-West Frontier Province Sugar Factories Control Act, 1950.

(2) It extend to the whole of the North-West Frontier Province except the Tribal Areas.

2. Definitions.—

In this Act, unless there is anything repugnant in the subject or context:-

(a) "assigned area" means an area assigned to a factory under sub-section (1) of Section 14;

(b) "Board" means the sugarcane and sugar beet Control Board established under Section 3;

(c) "Cane" means sugarcane intended for use in a factory and includes the sugar-beet;

(d) "Cane Commissioner" means the officer appointed to be cane Commissioner under Section 6:

(e) "Cane-grower" means a person who cultivates cane either by himself or by members of his family or by hired labour and who is not a member of a Cane-growers' Co-operative Society;

(f) "Cane-growers Co-operative Society" means society registered under the Co-operative Societies Act, 1912, (Act II of 1912), [1][or the Sindh Co-operative Societies Act, 1925] one of the objects of which is to sell came grown by its members;

(g) "Collector" in any provision of this Act includes any officer whom the Governor may, by notification, appoint to exercise and perform the powers and duties of a collector under that provision;

(h) "Crushing season" means the period beginning on the 1st October in any year and ending on the 30th June next following;

(i) "Factory" means any premises, including the precincts thereof, wherein twenty or more workers are working or were working on any day of the preceding twelve months and in any part of which any manufacturing process connected, with the production of sugar by means of vacuum pans is being carried on, or is ordinarily carried on, with the aid of power:

(j) "Inspector" means an Inspector appointed under Section 7 of the Act and includes an ex-officio or additional Inspector;

(k) "Occupier of a factory" means the person who has ultimate control over the affairs of a factory:

Provided that where the affairs of a factory are entrusted to a managing agent, or a Managing Director or a Director in-charge, such managing agents, Managing Director or Director in-charge shall be deemed to be the occupier of the factory;

(l) "Prescribed" means prescribed by rules;

(m) "purchasing agent" means a person licensed under this Act to act as a purchasing agent;

(n) "Reserved area" means an area specified in an order issued under Section 10;

(o) "Rule" means a rule made under this Act.

(p) "Slicing season" means the period beginning on the 15th April, in any year and ending on the 31st July, next following.

3. Sugar-Cane Control Board.—

The Provincial government may, by notification establish a Sugar-cane and [Sugar-beet] Control Board for the Province.

4. Constitution of the Board.—

The Board shall consist of a Cane Commissioner, who shall be the chairman of the Board and such and so many members from the cane-growers, factory owners and servants of the State as may be prescribed.

5. Powers and duties of the Board.—

The Board shall exercise and perform such powers and duties as may be prescribed, and its business shall be conducted in such manner and in accordance with such procedure as may be prescribed.

6. Appointment of Cane-Commissioner.—

(1) The Provincial government may, by notification, appoint any officer, not below the status of a Collector, to be the Cane Commissioner to exercise and perform, in addition to their powers and duties conferred and imposed on him by this Act such powers and duties as may be prescribed from time to time.

(2) The Cane-Commissioner shall be deemed to have powers of a Collector under the West Pakistan Land Revenue Act, 1963 and the North-West Frontier Province Tenancy Act, 1950 or any other enactment relating to land revenue and tenancy inforce in any part of the Province.

6-A. Appointment of Additional Cane Commissioner.—

The Provincial Government may, by notification appoint the Collector to be an Additional Cane Commissioner to exercise such powers and perform such duties and functions of Cane Commissioner, within the district or any part thereof, as may be specified.

7. Appointment of Inspectors.—

(1) The Provincial Government may, by notification appoint such persons as it thinks fit, to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

(2) No person shall be appointed to be an Inspector under sub-section (1) or, having been so appointed, shall continue to hold office, who is or becomes directly or indirectly interested in a facotryor in any proces or business carried on therin or in any patent or machinery connected therewith.

(3) Every Inspector, who shall be deemed to be a public servant within the meaning of the Pakistan Penal Code, shall be officially subordinate to such authority as the Provincial Government may specify in this behalf, and shall exercise such powers and duties as may be prescribed from time to time.

8. Notice of Crushing or Slicing.—

The occupier of a factory shall send a notice of the Cane Commissioner in a prescribed form intimating him of his intention to Start Crushing or Slicing one clear month before the crushing or, as the case may be, Slicing Starts:

Provided that the occupier shall start crushing by a date not later than 30th November, and Slicing by a date not later than 15th May, each year.

9. Estimate of quantity of Cane required by Factory.—

(1) The Cane Commissioner may, by order, require the occupier of any Factory to submit to him on or before a date to be fixed by him an estimate in the prescribed form and manner of the quantity of the cane, which will be required during such crushing season or Slicing Season as the case may be, as may be specifed in the order.

(2) The Cane Commissioner shall examine every such estimate and shall publish the same in the prescribed manner with such modifications, if any as he may think fit to make therein after consultation with the Board.

(3) The Cane Commissioner may revise an estimate under sub-section (2) at any time without consulting the Board.

10. Declaration of Reserve Area.—

(1) The Cane Commissioner may, after consulting the Board, issue an order declaring any area to be aaeserved area for the purposes of the suply of cane to a particular retory during a particular crushing season [or Slicing Season] of seasons, and may likewise, at any time, cancel such order or alter the boundaries of an area so reserved.

(2) an appeal shall lie against the order of the Cane Commissioner under sub-section (1) to the Commissioner of the Division.

11. Survey or Reserved Area.—

(1) The Provincial Government may order a survey to be made of the area proposed to be reserved for or assigned to a factory and may recover the cost of such survey from the occupier of such Factory.

(2) Every survey mentioned in sub-section (1) shall be made by an officer appointed by the Provincial Government for this purpose, and the said officer shall exercise and perform such powers and duties in making such survey as may be prescribed and the survey shall be made in accordance with the prescribed procedure.

(3) Every person owning or occupying land in any area in respect of which a survey is being made under sub-section(2) shall afford to the officer making the said survey such assistance and facilites for making the said survey as may be prescribed.

(4) Any amount due form the occupier of a Factory under sub-section (1) shall be recoverable from such occupier as an arrear of land revenue.

12. Maintenance of Register.—

The occupier of a Factory for the purposes of which an area has been reserved, shall maintain a register in the, prescribed form and manner of all cane growers and Cane-Growers Co-operative Societies in such area.

13. Purchase of Cane in Reserved Area.—

(1) A cane-grower or a Cane-Growers Co-operative Society in a reserved area may, if required to do so by the Cane Commissioner shall, often in the form and by the date prescribed, and supply to the occupier of the Factory, for which the area is reserved, such quantity of cane grown by the cane-grower or by the members of such Cane-Grower's Co-operative Society, as the case may be as is generally prescribed for, or specially directed by the Cane Commissioner, for such cane grower or Cane-Grower's Co-operative Society.

(2) The occupier of a Factory, fir which an area is reserved, shall enter into an agreement in such form by such date and on such terms and condition as may be prescribed to purchase the cane offered in accordance with sub-section (1); provided that he shall not purchase or enter into an agreement to purchase cane from a person who is member of Cane-Grower's Co-operative Society.

(3) Unless the Provincial government otherwise directs, cane grown in a reserved area shall not be purchased by a purchasing agent or by any person other than the occupier of the Factory, for which such area has been reserved except by another grower for the bona fide purpose of seed.

(4) Cane grown in a reserved area shall not be sold by any person other than a cane-grower or a Cane-Growers' Co-operative Society, provided that a cane-grower or a Cane-Grower's Co-operative Society may deliver cane intended for a factory through another cane-grower of that area, or through a carrier.

(5) During the crushing season or the slicing season as the case may be, the Provincial government may, if it is satisfied that there is likely to be in the area reserved for a Factory andy quantity of cane available for sale to the occupier of the Factory in excess of the quantity for which he is required to enter into an agreement, direct that cane shall not be purchased outside the reserved area until the occupier of the factory enters into agreements to purchase all the cane offered to him in the reserved area.

13-A Restriction on supply of Cane.—

Notwithstanding anything to the contrary contained in this Act or any other law for the time being inforce, the Provincial Government may, where it considers necessary by notification in the official Gazette, direct that the total supply of Cane or a specified percentage thereof to a factory from its assigned or reserved, area or any part thereof shall be made through a Cane-Grower's Co-operative Society only. On any such direction the occupie of the facotry shall not, to the extent of the quantity or the percentage specified in the notification, purchase or enter into an agreement to purchase cane from any source other than a Cane-Grower's Co-operative Society.

14. Declaration of Assigned area and purchase of Cane therein.—

(i) The Cane Commissioner may, after consulting the Board issue an order declaring an area to be an assigned area for the purposes of the supply of cane to a particular factory.

(ii) The occupier of a Factory, for which an area has been assigned, shall enter into an agreement with cane-growers in the assigned area or Cane-grower's Co-operative Society or purchasing agents for the purchase in the assigned area of such quantity of cane by such date and in such form and on such terms and conditions as may be prescribed by the Cane Commissioner, provided that such agreement shall not be entered into with a person who is a member of Cane-Growers' Co-operative Society.

(iii) If such an agreement is entered into with the purchasing agent, he shall enter into agreement with Cane-Growers in the assigned area or Cane-Growers' Societies in respect of all the cane which he has undertaken to supply.

(iv) If the cane-growers or Cane Growers Co-operative Societies in the assigned area are not willing to enter into agreements to supply, the Cane Commissioner may, by an order in writing require them to do so on such terms and conditions as may be prescribed by him, which order shall be legally binding on the cane-growers or the Cane-Growers' Co-operative Societies, as the case may be.

(v) In the event of failure to supply the requisite quantity of cane, the occupier of the Factory or the Purchasing agent, may, after giving the prescribed notice to the Cane Commissioner, purchase the balance of the cane required from outside the assigned area, unless otherwise directed by him.

(vi) An appeal shall lie against the order of the Cane Commissioner under sub-section (i) or sub-section (ii) and (iv) to the Commissioner of the Division.

14.A Powersof cane Commissioner to prohibit cultivation of unsutiable varities of sugar-cane.—

The Cane Commissioner may, by an order in writing prohibit the cultivation in any reserved area by cane-growers or Cane Growers' Co-operative Societies of any variety of cane declared by the Provincial Government under section 18 to be unsuitable for distribution.

15. Purchase of cane outside Reserved area.—

In any area, other than q reserved area, no person shall purchase cane except (a) the occupier of a Factory or a person employed by him for the purpose of making such purchases (b) a purchasing agent or a person employed by him for the purpose of making such purchases; or (c) a Cane-Growers' Co-operative, Society; (d) A Cane grower for bona-fide seed purpose;

Provided that a person entitled to purchase cane, may take delivery thereof through a cane grower or through a carrier.

16. Power of Provicial Government to fix Minimum Price.—

(i) The Provincial government after consultation with the Board, may by notification, determine in respect of any area the minimum price to be paid by occupiers of Factories or purchasing agents for cane purchased in that area either generally or related to the sugar contents of the cane or direct that such minimum price shall be calculated in the manner prescribed.

(ii) The Provincial government may from time to time vary, by notification, the price fixed under sub-section.(1)

(iii) The occupier of a Factory or a purchasing agent shall not make any deduction from the amount due for cane sold to him by a Cane-grower or a Cane-Growers' Co-operative Society, except such deductions as may be prescribed or as the Provincial Government may, by notification, from time to time, allow.

(iv) The Provincial Government may, after consultation with the Board, by notification, direct that in addition to the minimum price to be paid for cane, the occupier of a factory shall pay for special varieties of cane to be specified in the notification and which the Cane-grower's Co-operative Society has agreed to supply, such additional price as the Provincial Government may direct.

(v) sub-section V added by NWFP Act VIII of 1988.

17. Licensing of Purchasing Agents.—

No person or class of persons shall be employed by an occupier of a Factory or by a purchasing agent to do any work or class of work in connection with any transaction for the purchase of cane and no person shall exercise any of the powers conferred by or under this Act on a purchasing agent, unless he is licensed in the prescribed manner.

18. Distribution of seed cane by Factories.

(i) The occupier of a Factory or any other person acting on his behalf shall not distribute [seed] of any variety to any person to be used by seed growers or the members of Cane-Growers' Co-operative Societies if the Provincial government after consulting the Board, has by an order published in the Gazetter, declared that such variety of seed is unsuitable for distribution to cultivators.

(ii) The Provincial Government may, on the recommedations of the Board require the occupier of a Factory to distribute in an area reserved for the Factory such variety of seed on such conditions and in such manner as it may prescribe in every case.

19. Determination of "Occupier" for purpose of this Act.—

(1) Where the occupierof a Factory is a firm or other association of individuals, any one of the individual partners or members thereof may be prosecuted and punished under this Act for any offence for which the occupier of the Factory is punishable:

Provided that the firm or association may give notice to the purposes Collector that it has nominated one of its members to be the occupier of the factory for the purpose of this Act and such individual shall be deemed to be the occupier for the purposes of this Act until further notice cancelling his nominations is received by the Collector or until he ceases to be a partner or member of the firm or assocation.

(2) Where occupier of a factory is a company, any one of the directors thereof, or in the case of a private comnpany, any one of the share-holders thereof, may be

prosecuted and punished under this Act for any officence for which the occupier of the factory is punishable:

Provided that the company may give notice to the Collector that it has nominated a director, or, in the case of a Private Company, a shareholder, to be the occupier of the factory for the purposes of this Act and such director or share-holder shall be deemed to be the occupier of the factory for the purposes of this Act until further notice cancelling his nomination is received by the collector or until he ceases to be a director or share-holder.

20. Appointment and removal of Factory Staff.—

The occupier of a factory shall have to employ a Cane Supertintendent and such staff as may be prescribed by the Provincial Government, on the recommendations of the Cane Commissioner to regulate, arrange and supervise he purchase of cane for the factory. The appointment and the award of punishment including removal from service of Cane Superintendent and other staff shall be subject to the approval of the Cane Commissioner.

21. Penalties.—

(a) Any person contravling the provisions of this Act or any order or rule made thereunder shall be punishable with imprisonment for a period extending upto six months or with fine which may extend to Rs.10,000 or with both.

(b) Offences under the Act shall be bailable and non-cognizable.

22. Institution of Proceedings.—

(i) No prosecution shall be instituted under this Act, except upon a complaint made by or under the authority, from the Collector or Cane Commissioner.

(ii) On the application of a person accused of an offence under this Act, the Cane Commissioner or the Collector may with the previous approval of the Provincial Government, compound such offence by levying a composition fine not exceeding two times the fine which could be imposed for such offence at any stage before conviction.

(iii) No court inferior to that of a Magistrate of the 1st Class shall try any offence under this Act or any order or rule made there under.

(iv) (a) No suit, prosecution or other legal proceeding shall lie against the Provinicial government or any of its servants for any thing which is in good faith done or intended to be done under this Act or the rules framed thereunder.

(b) The exercise of any discretion or authority conferred on the Provincial Government or the Board or the Cane Commissioner by this Act shall not be questioned in any Civil Court.

(c) The Provincial government may delegate all or any of its powers under this Act, to any officer not below the status of a Collector.

23. Power to make Rules.—

(1) The Provincial government may make rules to carry out the provisions of this Act.

(2) In particular and without prejudice to the generality of foregoing powers, such rules may provide for the constitution, powers, duties and procedure of the appointment of the Cane Commissioner and Inspectors and the powers and duties to be exercised and performed by them.

(3) The authorities by which any functions under this Act or the rules made thereunder are to be performed.

(4) The form in which the notices required by Section 8 and 14 (v) should be given.

(5) The form, manner and date for the submission of estimates mentioned in Section 9, and the manner in which and the places at which such estimates should be published.

(6) The procedure to be followed for making, a survey under section 11, the powers to be exercised by survey officers and the assistance to be afforded by owners and occupiers of land to the officers making such survey.

(7) Records, registereds and accounts and the submission of returns, the supply of copies of entries there in and the fees to be charged for the same.

6.1.5 Taxation

6.1.5.2 NWFP Land Tax and Agricultural Income Tax Ordinance 2000

GOVERNMENT GAZETTE

North-West Frontier Province

Published by Authority

PESHAWAR, THURSDAY, 27TH JULY, 2000

GOVERNMENT OF THE NORTH-WEST FRONTIER PROVINCE

LAW DEPARTMENT

NOTIFICATION
27th July, 2000

No.Legis:1(5)/93/4227.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:—

North-West Frontier Province

N..W.F.P ORDINANCE NO.IV OF 2000

AN
ORDINANCE

to provide for levying Land Tax and Agricultural Income tax
in the North-West Frontier Province.

WHEREAS it is expedient to provide for levying Land Tax and Agricultural Income Tax in the North-West Frontier Province.

AND WHEREAS the Provincial Assembly of the North-West Frontier Province stands suspended in pursuance of the Proclamation of the fourteenth day of October, 1999, and the Provisional Constitution Order No.1 of 1999.

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action.

NOW, THEREFORE, in pursuance of the aforesaid Proclamation and the Provisional Constitution Order No.1 of 1999, Article 4 of the Provisional Constitution (Amendment) Order No.9 of 1999, on the instructions of the Chief Executive of Pakistan, and in exercise of all other powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

CHAPTER-I

PRELIMINARY

1. Short title, extend and commencement.—

(1) This Ordinance may be called the North-West Frontier Province Land Tax and Agricultural Income Tax Ordinance, 2000.

(2) It extends to the whole of the North-West Frontier Province.

(3) It shall come into force at once and shall be deemed to have taken effect on and from the first day of July, 2000.

2. Definition.—

(1) In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "agricultural income" means-

(a) any rent or revenue derived from land which is situated in the North-West Frontier Province and is used for agricultural purpose;

(b) any income devised from such land by-

(i) agriculture; or

(ii) the performance by a cultivator or receiver or rent-in-land or any process ordinarily employed by a cultivator or receiver of rent-in-kind to render the produce raised or received by him fit to be taken to market; or

(iii) the sale by a cultivator or receiver of rent-in-kind of the produce raised or received by him, in respect of which no process has been performed other than a process of the nature described in paragraph (ii);

(c) any income derived from any building owned and occupied by the receiver of the rent or revenue of any such land, or occupied by the cultivator or the receiver of rent-in-kind of any land with respect to which, or the produce of which, any operation mentioned in paragraph (ii) and (iii) of sub-clause (b) is carried on:

Provided that the building is on, or in the immediate vicinity of the land, and is a building which the receiver of the rent or revenue or the cultivator, or the receiver of the rent-in-kind by reasons of his connection with the land, requires as a dwelling house, or a store-house, or other out-building.

(b) "Agriculture income year" means-

(i) the agricultural year as defined in the north-West Frontier Province Land Revenue Act, 1967;

(ii) such period as the Board of Revenue may, in the case of any person or class of person, specify by notification in the official Gazette;

(c) "agriculture income tax" means land tax or, agricultural income tax, leviable under this Ordinance and includes any penalty, fee or other charge or any sum or amount payable under this Ordinance.

(d) "assessee" means a person by whom any tax or any other sum of money is payable under this Ordinance, and includes-

(i) every person in respect of whom any proceeding under the Ordinance has been taken for the assessment of his agricultural income or, as the case may be, the agricultural income of any other person in respect of which he is assessable or of the amount of refund due to him or to such other person;

(ii) every person who is required to file a return of total agricultural income under this Ordinance; and

(iii) every person who is deemed to be an assessee or an assessee in default under any provision of this Ordinance;

(e) "assessment" include reassessment and additional assessment and the cognate expressions shall be construed accordingly;

(f) "assessment year" means the period of twelve months beginning on the first day of July next following the income year and includes any such period which is deemed, under any provision of this Ordinance, to be the assessment year in respect of any agricultural income or any agriculture income year;

(g) "Board of Revenue" means the Board of Revenue established under the North-West Frontier Province Board of Revenue Act, 1957;

(h) "Collector" means Collector of a district appointed under the North-West Frontier Province Land Revenue Act 1967 and includes an Assistant Commissioner of a Sub-Division;

(i) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1925 or under any other law for the time being in force in Pakistan for the registration of co-operative societies;

(j) "cultivable land" means the net area sown which was actually cropped during a tax year regardless of the number of crops raised and includes area under matured orchards for the same year;

(k) "Government" means the North-West Frontier Province.

(l) "matured orchard" means orchard of the age of seven years or more in the case of mango orchard and of the age of five years or more in the case of other orchards;

(m) "owner" includes a mortgagee in possession, or tenant or lessee of Government land;

Explanation I.—Where any land is owned by more than one person whether as member of a firm or association or otherwise, every one of these persons individually, to the extent of his share in the said land, shall be deemed to be an owner.

Explanation II.—Every "ward" whose estate in managed by a Court of Wards shall be deemed to be the owner of such estate.

Explanation III.—A share holder of a joint stock company or member of a co-operative farming society shall be deemed to be the owner of such portion of the land possessed by the company or the society as is proportionate to his share or interest as a share holder or member, as the case may be;

(n) "prescribed" means prescribed by rules;

(o) "rules" means rules made under this Ordinance.

CHAPTER-II
LAND TAX

3. Charge of Land.—

Subject to the other provisions of the Ordinance, there shall be charged, levied and paid for every assessment year a land tax in respect of cultivable land of an owner at the rates specified in the First Schedule to this Ordinance.

4. Liability to pay land tax.-

The land tax shall be payable by the owner of land in respect of cultivable land in such manner as amy be prescribed.

5. Assessment and collection of land tax.—

The land tax shall be assessed and collected by the Collector in such manner as may be prescribed.

CHAPTER-III
AGRICULTURAL INCOME TAX

6. Charge of agricultural income tax.—

(1) Subject to the provisions of this Ordinance there shall be charged, levied, assessed and paid for each assessment year commencing from 1st July, 2001 agricultural income tax in respect of agriculture income of the agriculture income year of an owner of land at the rates specified in the Second Schedule to this Ordinance:

Provided that if in any case the tax assessed under this sub-section works out to be less than the tax calculated in accordance with the First Schedule, then the owner shall pay the tax worked out in accordance with the First Schedule.

(2) Government may, by a notification in the official Gazette, requires an owner having cultivable land above a certain limit to file a return of his agricultural income of the agriculture income year.

7. Liability to pay agricultural income tax.—

The agricultural income tax shall be payable by the owner of land in such manner as amy be prescribed.

8. Assessment and collection of Agricultural income tax.—

Subject to the provisions of this Ordinance, agricultural income tax shall be assessed and collected by the collector in such manner as may be prescribed.

CHAPTER-IV
MISCELLANEOUS

9. Penalty for concealment of cultivated land etc.—

Where in the course of any proceedings under this Ordinance, the collector or the appellate or revisional authority is satisfied that any owner has, either in the said proceedings or in any earlier proceedings relating to an assessment in respect of any agriculture income tax year, concealed the particulars of cultivable land or furnished inaccurate particulars of such cultivable land, he or it may impose upon such owner a penalty equal to the amount of land tax which the said owner sought to evade by concealment of his cultivable land or furnishing of inaccurate particulars of such cultivable land as aforesaid.

10. Penalty for concealment of agricultural income etc.—

Where, in the course of any proceedings under this Ordinance, the collector or the appellate or revisional authority is satisfied that any person has, either in the said proceedings or in any earlier proceedings relating to an assessment in respect of agriculture income year, concealed his agricultural income or furnished inaccurate particulars of such income, he or it may impose upon such person a penalty equal to the amount of tax which the said person sought to evade by concealment or his agricultural income or furnishing of inaccurate particulars of such income, as aforesaid.

11. Imposition of penalty.—

No penalty shall be imposed on any person by a collector or the appellate or revisional authority unless such person has been given a reasonable opportunity of being heard.

12. Refund.—

Refund of tax where due shall be made in such manner as may be prescribed.

13. Exemptions.—

Government may exempt any land or class of owners wholly or partially from payment of tax in a manner and to the extent as prescribed by the rules.

14. Maintenance of accounts.—

Accounts regarding demand and recovery of tax shall be maintained by the collector in such manner as may be prescribed.

15. Application of N.W.F.P. Act XVII of 1967.—

(1) Subject to the other provisions of this Ordinance, the provisions of sections 13 and 14 of the North-West Frontier Province Land Revenue Act, 1967(XVII of 1967), shall apply to cases of land tax and agricultural income tax under this Ordinance.

16. Appeal, review or revision.—

For the purposes of appeal, review or revision, an order passed under this Ordinance regarding land tax and agricultural income tax shall be deemed to be an order of a Revenue Officer within the meanings of sections 161, 162, 163 and 164 of the West Pakistan Land Revenue Act, 1967 (XVII of 1967).

17. Bar of Jurisdiction.—

No civil court shall have jurisdiction in any manner relating to the assessment or collection of the agriculture income tax leviable under this Ordinance and no order passed or proceedings taken by any authority under this Ordinance shall be called in question in any civil court.

18. Rules.—

Government may frame rules to carry out the purposes of this Ordinance.

19. Deletion.—

Section 5 of the North-West Frontier Province Finance Act, 1999 (NWFP Act No.V of 1999), is hereby deleted.

THE FIRST SCHEDULE
(See section 3)
RATES OF LAND TAX

S.No.	Kind/Area of Land		Per acre rate
(1)	(2)		(3)
1.	Slab of total cultivated land, computed as Irrigated land, by treating one irrigated Acre as equal to two unirrigated acres, excluding orchard:		
	(i) Not exceeding 5 Acres		Rs.50/-
	(ii) Exceeding 5 acres but not exceeding 12 ½ acres		Rs.72/-
	(iii) Exceeding 12 ½ acres		Rs.100/-
2.	Orchard		Rs.300/-

THE SECOND SCHEDULE
(See section 6)

RATES OF AGRICULTURAL INCOME TAX

PART-I

A. In the case of every owner, the agricultural income tax shall be charged on the agricultural income:

(1)	Where the net agricultural income does not exceed Rs.1,00,000/-	5% of the taxable income
(2)	Where the net agriculture income exceeds Rs.1,00,000/- but does not exceed Rs.2,00,000/-	Rs.1,000/- plus 7½% of the amount exceeding Rs.1,00,000/-
(3)	Where the net agricultural income exceeds Rs.2,00,000/- but does not exceed Rs.3,00,000	Rs.8,500/- plus 10% of the amount exceeding Rs.2,00,000/-
(4)	Where the net agricultural income exceeds Rs.3,00,000/-	Rs.18,500 plus 15% of the amount exceeding Rs.3,00,000/-

Provided that.—

(a) no tax shall be payable on the first eighty thousand rupees of the aforementioned income; and

(b) the agriculture income liable to tax will be net of costs as prescribed in rules.

Peshawar,
dated the 22nd July, 2000

LT.GEN (RTD.) MUHAMMAD SHAFIQ,
Governor of North-West Frontier Province.

SALIM KHAN
Secretary to Government of N.-W.F.P.
Law Department.

6.1.5.3 Local Councils (Tax on Transfer of Immovable Property) Rules 1997

LOCAL COUNCILS (TAX ON TRANSFER OF IMMOVABLE PROPERTY) RULES, 1997

[5th January, 1997]

No.AO.II(LCB 14-4/93, dated 15-1-1997.— In exercise of powers conferred by section 172 of the North-West Frontier Province Local Government Ordinance, 1979 (N.W.F.P. Ordinance IV of 1979), read with section 142 thereof and item (1) of Part II of the Second Schedule therein Government of the North-West Frontier Province is pleased to made the following rules, namely:—

1. Short title and commencement.—

(1) These rules may be called the Local Councils (Tax on Transfer of Immovable Property) Rules, 1997.

(2) They shall come into force with effect from 1-7-1997.

2. Definitions.—

In these rules, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:—

(a) "Immovable property" means any building or land within the limits of Local Council, used or intended to be used, for any purpose;

(b) "Local Council" for the purposes of these rules means a District Council or, as the case may be, Municipal Committee and Town Committee;

(c) "Ordinance" means the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P Ordinance IV of 1979);

(d) "Tax" means the tax levied on the transfer of immovable property under these rules;

(e) "Taxation Officer" means an officer appointed by the Local Council;

(f) "Transfer of immovable property" means an act by which a living person conveys proprietary rights in any immovable property to any other living person.

Explanation.—For the purposes of these rules living person includes a company or association or body of individuals, whether incorporated or not.

3. Levy of tax.—

(1) A local Council may levy a tax on the transfer of immovable property situated within its limits: Provided that such tax shall not be leviable,—

(i) If the transfer is in the nature of a gift from parents to children, grandparents to grand children and one spouse to another; and

(ii) If the transfer is an exchange of agricultural land for consolidation purpose.

(2) The rate of the tax shall not exceed 4% of the consideration of such transfer.

Explanation.—For the purpose of this rule" consideration" means the price paid for the transfer of the immovable property and where no price is paid the market value as assessed by the authority competent to collect the tax.

(3) The tax shall be payable by the transferee.

4. Assessment and collection of tax.—

(1) Where an immovable property is transferred through a registered deed, the tax shall be assessed and collected at the time of the registration of such deed by the Registrar or Sub-Registrar registering the deed.

(2) Where an immovable property is transferred orally and such transfer is by mutation in the Revenue Office the tax shall be paid at the time of sanction of such mutation.

(3) Where a transfer is not covered by sub-rule(1) or sub-rule(2), the tax in respect of the transfer shall be assessed and collected by the Taxation Officer, of the Local Council concerned.

5. Credit of tax to Local council Fund.—

The authority collecting the tax under rule 4 shall immediately credit the amount so collected to the fund of the Local council concerned.

6. Recovery of arrears of tax.—

If the tax assessed under 4 is not paid, the authority competent to collect the tax under that rule shall, if it be not the Taxation Officer, intimate the default to the Taxation Officer of the Local Council concerned and the Taxation Officer shall take such steps as may be necessary to recover the tax.

7. Appeals.—

Any person aggrieved by an order of assessment passed under rule 4 or rule 6, may prefer an appeal to the Chairman of the Local Council concerned within thirty days of the date of such order, and the order passed by the Chairman on appeal shall be final.

8. Repeal.—

The West Pakistan District Councils (Tax on Transfer of Immovable Property) Rules, 1963, and the West Pakistan Municipal Committees (Tax on Transfer of Immovable Property) Rules, 1969, are hereby repealed.

6.1.5.4 West Pakistan Motor Vehicles Taxation Act, 1958

ACT XXXII OF 1958

WEST PAKISTAN MOTOR VEHICLES TAXATION ACT, 1958

An Act to consolidate the law relating to imposition of tax on Motor Vehicles in West Pakistan

(First published, after having received the assent of the governor of West Pakistan, in the Gazette of West Pakistan on the 24th April, 1958.)

No.Leg.1(32)/58, 24th April 1958, (Gazette, Extraordinary, 24th April 1958).—The following Act having received the assent of the Governor of West Pakistan on the 19th April 1958 and was published for general information in the Gazette.

Preamble.—

Whereas it is expedient to consolidate the law relating to imposition of tax on Motor Vehicles in West Pakistan in the manner hereinafter appearing;

It is hereby enacted at follows :—

1. Short title, extent and commencement.—

(1) This Act may called the West Pakistan Motor Vehicles Taxation Act, 1958.

(2) It extends to the whole of the Province of West Pakistan except the Federal Capital and the Special Areas.

(3) It shall come into force at once.

2. Definitions.—

In this Act, unless there is anything repugnant in the subject or context—

(a) "Government" means the Government of West Pakistan;

(b) "licensing officer" means an officer appointed by the Government to perform the duties and exercise the powers imposed or conferred upon a licensing officer under this Act ;

(c) "MOTOR VEHICLE" INCLUDES A VEHICLE, CARRIAGE OR OTHER MEANS of conveyance propelled, or which may be propelled, on a road by electrical or mechanical power either entirely or partially;

(d) "prescribed" means prescribed by rules made under this Act:

(e) "tax" means the tax imposed under this Act;

(f) "token" means a ticket to be displayed on a motor vehicle as an indication that the tax leviable thereon has been duly paid or that no tax is payable;

(g) "Director" means the officer appointed by the Government as Deputy Director of the Taxation Department, and

(h) "Deputy Director" means an officer appointed by the Government as Deputy Director of the Taxation Department, and includes an officer appointed by the Government to perform the duties of Deputy Director under this Act.

3. Imposition of tax.—

(1) A tax shall be leviable on every motor vehicle, in equal instalments for quarterly periods, commencing on the first of April, the first day of July, the first day of October and the first day of January, at the rates specified in the Schedule to this Act :

Provided that in respect of such buses and public carriers as ply on bad or hilly roads or such buses as ply on routes having traffic density lower than a prescribed limit resulting in income lower than the prescribed limit, the Government may, by notification, prescribed a rate lower than the rate mentioned in the Schedule :

Provided further that any broken period in such quarterly periods shall, for the purpose of levying the tax be considered as a full period.

(2) The tax shall be paid upon a licence to be taken out and paid for under the provisions of this Act by the person who keeps the motor vehicle for use.

4. Obligation of persons keeping motor vehicles to make declaration and to pay tax .—

(1) Every person who keeps a motor vehicle for use shall fill up and sign a declaration in the prescribed for, stating the prescribed particulars, and shall deliver the declaration as filled up and signed by him to the licensing officer before the expiry of twenty-one days from the day of his commencing to keep the motor vehicle for use. Any such or similar declaration filled up, signed and delivered under any of the enactments mentioned in subsection (1) of section 17 of this Act, shall be deemed to have been filled up, signed and delivered under this section.

(2) The tax to which he appears by such declaration to be liable shall be paid by the person keeping the motor vehicle, if for the first quarterly period before the 30th day of April, if for the second quarterly period before the 31st day of July, if for the third quarterly period before the 31st day of October and if for the fourth quarterly period before the 31st day of January :

Provided that if such person commences to keep the motor vehicle for use after the commencement of this Act he shall pay the first instalment due before the expiration of twenty-one days from the day of his commencing to keep the motor vehicle for use.

(3) Every person who owns any motor vehicle which is left for hire, shall, for the purposes of this Act, be the person who keeps the motor vehicle for use.

5. Obligation to make additional declaration and to pay further tax.—

Whenever any person, who has delivered a declaration under the preceding section become liable to an additional tax by reason of his keeping a greater number of motor vehicles for use than he has stated in the declaration, or by reason of any change in the character of any motor vehicle kept by him for use, he shall fill up and sign an additional declaration specifying with reference to such liability the particulars required by the preceding section. Such person shall deliver the additional declaration so filled up and signed and pay such additional tax as by the last mentioned declaration appears to be payable by him to the licensing officer before the expiration of twenty-one days from the day of his becoming so liable as aforesaid :

Provided that when payment is made of additional tax by reason of any change in the character of any motor vehicle, an allowance shall be made for the tax already paid.

6. Service of special notice to make declaration and to pay tax.—

The licensing officer may direct a special notice to be served upon any person requiring such person to fill up, sign and deliver to the officer named in such notice, a form of declaration, to be left with such notice, stating whether such person is or is not liable to the payment of any tax and to pay the tax to which he appears by such declaration to be liable to the person named therein before the expiration of fourteen days from the date of the service of such special notice.

7. Grant of licence.—

Every licensing officer shall grant and deliver to every person who pays to him the first instalment of tax due, a licence in which shall be specified the particulars of the tax paid, with any other particulars that may be prescribed. The licence shall be dated on the day of granting the same and shall expire on the 31st day of March next following.

8. Penalty for omission to comply with the provisions of section 4.—

(1) If a person—

(a) fails to deliver a declaration in accordance with the provisions of this Act, or

(b) delivers a declaration wherein the particulars prescribed to be therein set forth are not fully and truly stated, the licensing officer may, after making such enquiry as he deems fit and after hearing the person if he desires to be heard, impose on such person any tax or additional tax for such quarterly period or periods as the licensing officer may find that such person is liable to pay under the provisions of this Act, and may also impose a penalty whom may extend to twice the amount of the tax to which he is found liable.

(2) The tax or additional tax imposed shall be payable before the expiry of fourteen days from the date of order of the licensing officer.

9. Penalty for keeping a motor vehicle without a licence or failure to pay tax.—

Whoever—

(a) keeps a motor vehicle for use without having a proper licence; or

(b) neglects or refuses to pay any amount of tax to which he is liable within the period fixed for such payment,

shall be liable to pay, in addition to any arrear of tax that may be due from him, a penalty which may extend to an amount equal to the amount of the tax to which he is liable.

10. Recovery of a tax or additional tax imposed under section 8 or section 9.—

Any tax or additional tax or penalty imposed under the provisions of section 8 or section 9 may be recovered in the manner provided in section II for the recovery of an arrear of tax.

11. Recovery of arrears of tax.—

(1) If any tax payable under this Act is not paid within the fixed period, and the defaulter does not show cause to the satisfaction of the Deputy Director or any officer authorised by him in this behalf, for his failing to do so, such tax (including the cost of recovery thereof) may be recovered under warrant in the prescribed form signed by the Deputy Director, by distress and sale of movable property belonging to such person. The warrant may be addressed to an officer of the Excise and Taxation Department for execution, who may obtain such assistance from other Government servants of the said Department as he may consider necessary for the execution thereof.

(2) Notwithstanding anything in subsection (1), any tax, additional tax or penalty under this Act remaining unpaid may be recovered as arrears of land revenue.

12. Appeals.—

(1) Any person aggrieved by an order relating to the assessment, imposition or recovery of tax or penalty may, within a period of thirty days from the date of such order, appeal from such order to they Deputy Director.

(2) The Director may either of his own accord or on receiving a petition from the aggrieved party, at any time revise an appellate order passed by the Deputy Director under subsection (1).

(3) Subject to the order, if any, passed on revision by the Director under subsection (2) the order of the Deputy Director passed under subsection (1) or that of the licensing officer, if not appealed against, shall be final and shall not be called in question in nay proceedings whatsoever,

13. Exemption and deductions.—

The government may by rules, or order, exempt a person or class of persons from liability to pay the whole or part of the tax in respect of any motor vehicle, or class of motor vehicles, and may, in like manner, exclude any motor vehicle, or class of motor vehicles, from the operation of this Act.

(2) Whoever becomes liable to pay a quarterly instalment of tax, but proves to the satisfaction of the licensing officer that he has not used or permitted the use of the motor vehicle throughout the quarterly period preceding shall be entitled to receive an order in writing from the licensing officer exempting him from liability to pay such first mentioned quarterly instalment and the licensing officer shall make an endorsement to that effect upon the licence.

(3) Whoever becomes liable to pay a quarterly instalment of tax in respect of a motor vehicle, but proves to the satisfaction of the licensing officer that he has paid a tax imposed by a municipality, or a cantonment authority, in respect of the same motor vehicle, and for the whole or part of the quarter for which the instalment of tax is due, then the amount of the municipal tax paid for the said period shall be deducted from the quarterly instalment of tax and the licensing officer shall make an endorsement to that effect upon the licence.

(4) Nothing in this Act, shall apply to a motor vehicle other than a tractor and a trailer used together for transporting agricultural produce of the owner used solely for the purpose of agriculture.

Explanation.—A motor vehicle used for transporting agricultural produce shall not; for the purpose of this section, be deemed to be used solely for the purpose of agriculture.

14. Bar to jurisdiction of civil and criminal Courts in matters of taxation.—

The liability of a person to pay the tax or penalty shall not be determined or questioned in any other manner or by any other authority than is provided in this Act, or in rules made thereunder, and no prosecution, suit or other proceeding shall lie against any Government officer for anything in good faith done, or intended to be done, under this Act.

15. Power of Government to make rules.—

(1) The Government may, after previous publication, make rules for the purpose of carrying into effect the provisions of this Act..

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules on all or any of the following matters, namely :—

(a) to prescribe the form of any declaration, licence certificate or special notice and the particulars to be stated therein;

(b) to prescribe the officers by whom any duties are to be performed and the area in which they shall exercise their authority;

(c) to provide for the total or partial exemption for a limited period from liability to taxation, in respect of any motor vehicle brought into the territory to which this Act extends by persons making only a temporary stay there;

(d) to regulate the method of assessing and recovering the tax;

(e) to regulate the manner in which special notices may be served;

(f) to regulate the extent to which licences may be transferred;

(g) to regulate the manner in which exemptions or refunds may be claimed and granted;

(h) to regulate the manner in which appeals may be instituted and heard;

(i) to require that no motor vehicle shall be used in the Province unless a token is displayed thereon indicating that the tax has been duly paid or that the owner of the vehicle is entitled to exemption;

(j) to prescribe the form of tokens and the manner in which they shall be displayed.

(k) to provide for the issue of token and its duplicate; and

(l) to prescribe the limit of density of traffic and limit of income for the purposes of subsection (1) of section 3.

16. Punishment.—

(1) In making any rule under the preceding section, the Government may direct that any person contravening the rule shall be punished with fine which may extend to twenty rupees and in the event of any subsequent conviction for the same offence, with a fine which may extend to one hundred rupees.

(2) No Court inferior to that of a Magistrate of the Second Class shall try any offence punishable under this Act.

17. Repeal.—

(1) the following enactments are hereby repealed :-

(a) the Punjab Motor Vehicle Tax Act, 1924 (IV of 1924);

(b) the North-West Frontier Province Motor Vehicle Taxation Act 1936 (I of 1937).

(c) the Sind Motor Vehicles Tax Act 1939 (XV of 1939);

(d) the Punjab Motor Vehicles Taxation Act, 1924 (IV of 1924), as applicable to the area which, before the establishment of the Province of West Pakistan, formed part of the State of Bahawalpur; and

(e) the Sind Motor Vehicles Tax Act 1939 (XV of 1939), as applicable to the area which, before the establishment of the Province of West Pakistan, formed part of the State of Khairpur.

(2) Notwithstanding the repeal of enactments mentioned in subsection (1) (hereinafter called the said Acts)—

(a) the validity of anything done under the said Acts shall not be affected:

(b) all appointments made, notifications and notices issued and legal proceedings instituted under any of the said Acts shall, so far as they are not inconsistent with the provisions of this Act and the rules made thereunder, continue in force and be deemed to have been made, issued and instituted under this Act; and

(c) any exemption from liability to taxation granted under any of the said Acts shall continue in force and be deemed to have been granted under this Act.

THE SCHEDULE (vide section 3)

Description of motor vehicles Annual rate of tax Rs.

1. Cycles (including motor scooter and Cycles with attachment for propelling the same by mechanical power) not exceeding 8 cwts, in unladen weight—
   - (a) Bicycle not exceeding 200 lbs, in unladen weight 20
   - (b) Bicycle exceeding 200 lbs. in unladen weight 40
   - (c) Bicycles if used for drawing a trailer or sidecar, in addition 10
   - (d) Tricycles 40
2. Vehicles not exceeding 5 cwt, in unladen weight, adapted and used for invalids 5
3. Vehicles used solely for the transport of goods (Private Carriers) in the course of trade and industry (including tricycles weighing more than 8 cwt. in unladen weight) 5
   - (a) Electrically propelled but not exceeding 25 cwt. in unladen weight 35
   - (b) Vehicles other than such electrically propelled vehicles as aforesaid, not exceeding 12 cwt. in unladen weight 25
   - (c) All vehicles with maximum laden capacity upto 5,000 lbs (including delivery vans) 100
   - (d) Vehicles with maximum laden capacity exceeding 5,000 lbs but not exceeding 8,960 lbs but not exceeding 13,440 lbs. 320
   - (f) Vehicles with maximum laden capacity exceeding 13,440 lbs, but not exceeding 17,920 600
   - (g) Vehicles with maximum laden capacity exceeding 17,920 lbs 900
   - (h) Extra charges for trailer 100
4. Vehicles plying for hire and used for transport or haulage of goods or material (public carriers)—
   - (a) With maximum laden capacity not exceeding 18,000 lbs 1,200
   - (b) With maximum laden capacity exceeding 18,000 lbs. 1,800
5. Vehicles plying for hire and ordinarily used for the transport of passengers (Taxis and Buses) exclusively within the limits of a Corporation, a Municipality or a Cantonment—
   - (a) Tram Cars 15
   - (b) ther vehicles seating not more than 4 persons 160
   - (c) ther vehicles seating more than 4 but not more than six persons 200
   - (d) ther vehicles seating more than 6 persons 45 per seat
6. Vehicles plying for hire and ordinarily used for the transport of passengers (Taxis and Buses) not exclusively within the limits of a Corporation, a Municipality or Cantonment
   - (a) Tram Cars 15
   - (b) Other vehicles seating not more than 4 persons 160
   - (c) Other vehicles seating more than 4 but not more than 6 persons 200
   - (d) Other vehicles seating more than 6 persons 80 per set.

Note— Under Articles 5 and 6 the number of persons mentioned does not include the driver and, as the case may be, the cleaner, the conductor or the attendant of the vehicle.

7. Motor vehicles other than those liable to tax under the foregoing provisions of this Schedule—

(a) seating not more than one person 60

(b) seating not more than three persons 90

(c) seating not more than four persons 120

(d) seating more than four persons, for every additional person that can be seated 30

Note—Station wagons used for private purposes shall be taxed under Article 7.

6.1.6 Investment—Domestic and Foreign

6.1.6.1 NWFP Small Industries Development Board Act 1972

THE NORTH-WEST FRONTIER PROVINCE

SMALL INDUSTRIES DEVELOPMENT BOARD ACT, 1972

N.W.F.P. ACT NO. II OF 1973.

Received the assent of the Governor of the North-West Frontier Province on 12th January, 1973).

AN
ACT

to establish a Small Industries Development Board in the Province of North-West Frontier.

WHEREAS, it is expedient to establish a Board to take over the assets and labilities of West Pakistan Small Industries Corporation and for promoting the development of industries in the Province of North-West Frontier, with particular reference to small and cottage industries;

It is hereby enacted as follows.

CHAPTER-I

Preliminary

1. (1) (This Act may be called the North-West Frontier Province Small Industries Development Board Act, 1972.

(2) It extends to the whole of the North-West Frontier Province except the Tribal Areas.

(3) It shall come into force at once.

2. In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say.--

(a) "Board" means the Board of Directors established under this Act;

(b) "borrower" means any person or persons or body of persons, whether incorporated or not, to whom a loan is made by the Board or by a Schedule Bank on the guarantee of the Board under this Act, and includes the successors and assignees of such person or persons;

(c) "Chairman" means the Chairman of the Board;

(d) "Cottage Industry" means an industry which is carried on wholly or primarily with the help of the members of a family as a whole-time or part-time occupation;

(e) "Director" means a Director of the Board and includes the Chairman;

(f) "Government" means the Government of the North-West Frontier Province;

1(g) (.....)

(h) "other industry" means an industry other than cottage or small industry, approved by Government and set up or established in a small industries estate;

(i) "Prescribed" means prescribed by rules or regulations;

(j) "regulations" mean regulations made under this Act;

(k) "rules" mean rules made under this Act;

(l) "Schedule Bank" means a bank for the time being included in the list of banks maintained under sub-section of section 37 of the State Bank of Pakistan Act, 1956;

(m) "small industries estate" means an estate established or managed by the Board to provide land and facilities for the establishment and development of small, cottage and other industries;

(n) "small industry" means an industry engaged in the handicrafts or manufacture of consumer of producer goods, the value of the total fixed assets whereof (including land) does not exceed such limit as Government may from time to time fix: and

(o) "State Bank" means the State Bank of Pakistan.

CHAPTER II
Constitution of the Board

3. (1) As soon as may be after the commencement of this Act, there shall be established a Board to be known as the North West Frontier Province Small Industries Development Board.

(2) The Board shall be a body corporate, shall have the power to acquire and hold property, both movable and immovable subject to the provisions of this Act and shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Board shall consist of such number of Directors, not less than four, as may be appointed by Government.

(3a) The President of Sarhad Chamber of Commerce and Industry shall be ex-officio Director of the Board.

(3b) Government may appoint such persons as ex-officio Directors as it may deem fit.

(4) The General Manager of the Board, or where the posts of the General Manager and the Chairman are held by the same person such office of the Board as designated by the Chairman shall act as Secretary to the Board.

(5) The head office of the Board shall be at Peshawar.

4. (1) For effectively discharging its functions, the Board shall, subject to the provisions of this Act, have all powers necessary for the purpose.

(2) The Board in discharging its functions shall act on commercial considerations and shall be guided by such directions as the Government, may from time to time give.

(3) If the Board fails to carry out any direction given as aforesaid the Government may for reasons to be recorded in writing, remove the directors and notwithstanding anything contained in section 3 (3) and section 5 appoint persons in their place to be Directors temporarily until a fresh Board is constituted in accordance with the provisions of this Act.

(4) The Government may suspend the execution of any such resolution or order of the Boards as, in the opinion of the Government, contravenes the directions mentioned in sub section (2) or prohibit the doing of any act which is to be done or is being done in pursuance of the said resolution or order or, if the act has been accomplished, order its rectification in such manner as may be specified.

Provided that where an order which the Government intends to make under this sub-section is likely to affect adversely the interest of any person, whether individually or collectively, it shall not be made unless the person or persons so affected are given an opportunity of being heard.

5. TERMS OF OFFICE AND CONDITIONS OF APPOINTMENT OF DIRECTORS—

(1) Each Director shall,

(a) subject to the provisions of sub-section (1) of section 6, be appointed on part-time basis;

(b) perform such duties as may be prescribed by regulations, or as the Board may assign to him;

(c) receive such salary and allowances as Government may determine.

(2) Subject to the provisions of section 4 (3), 8,9, 10 and 11 the term of office of the office of the Directors other than the ex-officio Directors or a Director appointed to fill a casual vacancy, shall be three years:

Provided that—

(i) in the case of the first Board re-constituted after the coming into force of the North-West Frontier Province Small Industries Development Board (Amendment) Act, 1975, one third of the Directors, other than the ex-officio Directors, shall retire every year and.

(ii) after the expiry of the terms of a Director, Government may appoint him for a further term or terms of such duration as it thinks fit.

(3) For the purpose of clause (i) of the proviso to sub-section (2), the Directors, other than the ex-officio Directors shall be divided into three groups by drawing of lots, and the term of office of the Directors of the first group second group and the third group shall respectively be one year, two years and three years.

(4) The term of office of a Director appointed to fill a casual vacancy shall be the un-expired term of office of the Director whose vacancy he is appointed to fill.

6. (1) Government shall appoint on while-time basis, one of the Directors to be the Chairman of the Board.

(2) Subject to his continuing to hold office as Director, the Chairman, shall hold office as Chairman for a term of three years, and subject as aforesaid-

(a) shall remain in office as Chairman thereafter until his successor in that office is appointed :

(b) may be appointed to hold that office for a further term or terms, as the Government may, in appointing him thereto, determine ; and

(c) may also be appointed as General Manager of the Board.

7. Government may point a General Manager of the Board. Who shall be the Chief Executive of the Board and shall exercise such powers and perform such duties as Government may, from time to time, specify or the Board may under section 16 delegate.

8. Notwithstanding any thing contained in section 3 (3), 5 and 6, when the Board is first constituted, the Chairman and Directors shall hold office for such term, not exceeding three years, as the Government may determine.

9. No person shall be appointed as or shall continue to be a Director, who -

(a) is or at any time has been convicted of an offence involving moral turpitude; or

(b) is or at any time has been adjudicated insolvent; or

(c) is found a lunatic or becomes of unsound mind; or

(d) is or at any time has been disqualified for employment in or dismissed from the service of Pakistan; or

(e) is under the age of twenty one years; or

(f) is not a citizen of Pakistan.

10. The Government may by order in writing and after giving an opportunity of being heard remove the Chairmen or a Director, if he-

    (a) refuses or fails to discharge or becomes, in the opinion of Government, incapable of discharging his responsibilities under this Act; or

    (b) has, in the opinion of the Government, abused his position as Chairman or Director; or

    (c) has knowingly acquired or continued to hold, with out the permission in writing of the (Government) directly or directly, or through a partner any share or interest in any contract or employment with, by or on behalf of the Board of in any property, which in his knowledge is likely to benefit or has benefitted as a result o the operations of the Board: or

    (d) has in opinion of the Government, violated the declaration of fidelity and secrecy provided under section 13; or

    (e) has absented himself from three consecutive meetings of the Board without the leave of the (Government) in the case of the Chairman and of the Chairman in the case of a Director.

11. Notwithstanding anything contained in this Act, the Chairman or Director may at any time before the expiry of his term upon three months notice, resign, his office, or upon similar notice be removed from office by the Government without assigning any reason.

12. (1) The Board may, subject to such general or special orders as the Government, may from time to time give, appoint such officers, advisers and employees as it considers necessary for the efficient performance of its functions, on such terms and conditions as may be prescribed.

    (2) The Board may employ such officers, experts, advisors, consultants and other persons as may be transferred to it by Government on such terms and conditions as may be determined by Government.

    (3) The Chairman, in cases of urgency, may appoint such officers, advisors, consultants and other employees as may be necessary:

    Provided that every appointment made under this sub section shall be reported to the Board without unnecessary delay and shall not continue beyond six months unless approved by the Board.

13. (1) Every Director, adviser, officer or other employee of the Board before entering upon his duties shall make such declaration of fidelity and secrecy as may be prescribed by regulations.

    (2) Any advisor officer, or other employee of the Board who, in the opinion of the Government or a person authorised by the Government in this behalf has violated the declaration of fidelity or secrecy made by him under sub-Section (I) shall be liable after being given a reasonable opportunity of showing cause against the action proposed to be taken with respect to him, to be forthwith removed from his office or post.

14. The Board may constitute such financial, technical and advisory committees as may be necessary for carrying out the purpose of this Act.

15. (1) Every Director, advisor officer of other employee of the Board shall be indemnified by the Board against all losses and expenses increased by him in the discharge of his duties, except such as are caused by his own wilful act or default.

(2) A Director shall not be personally responsible for the acts of any other Director or of any advisor, officer or employee of the Board which he could not have reasonably prevented by the due exercise of his powers and functions under this Act, and the rules and regulations, 107 any loss or expense revalue of or title to any property or security acquired or taken on behalf of the Board for the wrongful act of any person under a liability to the Board or for anything done by him in good faith in the execution of the duties of his office.

16. The Board may by general or special order delegate to the Chairman, Director, General Manager, Officer or employee of the Board any of its powers, duties, or functions under this Act, the rules and regulations, subject to such conditions as it may deem fit to impose.

17. (1) The meetings of the Board shall be held at such time and at such places as may be prescribed by regulations.

Provided that at least the one meeting shall be held in every three months:

Provided further that until regulations are made in this behalf, such meetings shall be held at such times and at such places as may be determined by the Chairman.

(2) The quorum necessary for transacting business at meeting of the Board shall be three, if the Board consists of five or more Directors, and two if the number is less.

(3) Each Director, including the Chairman, shall have one vote but in case of equality of votes, he Chairman shall have a second or casting vote.

(4) The meeting of the Board shall be prescribed over by the Chairman and in his absence, by the senior most Director present at the meeting.

(5) No act or proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy in or any defect in the constitution of the Board.

(6) The minutes, of every meeting stating among other things the names of the Directors present shall be drawn up and recorded in a book to be kept for the purpose and shall be signed by the person presiding over the meetings, and such book shall at all reasonable times and without charge be open to inspection by any Director.

(7) If the Government so direct in any case, the Chairman shall forward to it copies of all papers which were laid before the Board for consideration at a meeting.

(8) Government may require the Chairman to furnish it with-

(a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Board; or

(b) a report on any such matter; or

(c) a copy of any document in the charge of the Chairman.

The Chairman shall comply with any such requisition without any undue delay.

18. (1) The Board may associate with itself in such manner, on such terms and for such period as it may deem fit any person whose assistance or advice it may desire in carrying out any of the purposes of this Act.

(2) A person associated under sub-section (I) for any purpose shall have a right to take part in the discussions of the Board relating to that purpose but shall not have a right to vote and shall not be deemed to be a Director for that or any other purpose.

CHAPTER-III

Powers, Duties and Functions of the Board.

19. (1) In accordance with the provisions of this Act. , the Board shall take such measures as it thinks fit to render assistance in the establishment and development of cottage, small and other industries.

(2) In particular and without prejudice to the generality of the foregoing powers the Board may, in order to promote and carry out the purpose of this Act-

(a) give loans to borrowers for the purpose of small, cottage and other industries;

(b) furnish guarantees to the Schedule Banks for the repayment of loans to borrowers for the development of industries and to share losses on account of bad debts in accordance with the agreement in this regard between the Board and those Banks:

Provided that the loans given under clause (a) or guaranteed under clause (b) shall repayable within a period not exceeding twenty years.

Explation-Loans made by the Board may be in kind or in cash or in the form of buildings, developed plots or lands in the small industries estate or machinery and equipment on lease or on hire-purchase basis.

20. No loan shall be made by the Board until it is secured by pledge, mortgage hypothecation or assignment of such property, movable or immovable, and of such value in proportion to the loan as the Board may deem fit:

Provided that when loan is made to an individual and does not exceed two thousand rupees in the aggregate, it may be secured by bond with at least two solvent sureties.

21. The rate of interest chargeable on loans made by the Board maybe determined and notified by government from time to time.

22. (1) The Board shall not take make loans or subscription to or furnish any guarantee in respect of any small or cottage industries located outside the small industries estate in excess of the following aggregate limits, namely.

(a) when made to an individual, rupees five lacs;

(b) when made to any borrower other than an individual, rupees fifteen lacs.

(2) The Board shall not make loans or furnish guarantees in the case of industries located in the small industries estate in excess of such limits as may be notified by Government form time to time.

23. Government may, from time to time, on the recommendation of the Board relax the aggregate limit of loans, subscriptions and guarantees provided under section 22.

24. At the time of entering into any transaction, the Board may impose such conditions as it may think necessary or expedient for protecting its own interest and for securing that the loan, underwriting or other aid shall be put to the best use.

25. (1) Notwithstanding anything in any agreement or in any law to the contrary, if-

(a) it is found that the loan was obtained by information supplied by the borrower which was false or misleading in any material particular, or

(b) the borrower is found to have committed a breach of the terms of his agreement with the Board relating to the loan; or

(c) the loan or any part of it is found to have been utilised otherwise than for the purpose for which it was made; or

(d) there is a reasonable apprehension that borrower will be unable to pay his debts or may go into liquidation; or

(e) the property pledged, mortgaged, hypothecated or other equipment is removed from the premises is not kept in a proper condition by the borrower or the property has depreciated in value by more than the prescribed percentage and the borrower is unable to give additional security to the satisfaction of the Board; or

(f) without the permission of the Board, machinery on other equipment is removed from the premises of the borrower's industrial establishment without being replaced; or

(g) Without the permission of the Board, building or other property mortgaged as security for the loan is in any way disposed of or charged by the borrower; or

(h) for any other reason, it is necessary in the opinion of the Board to do so in order to protect the interests of the Board:

any officer authorised generally specially in this behalf by the Board may by notice, call upon the borrower to pay up the entire sum then remaining unpaid by the borrower in respect of the loan and the interest payable thereon, or any lesser sum, as the case may be or require the borrower to surrender the building, machinery and equipment or other materials given to him by way of

loan or require him to comply with such directions as the Board may consider necessary to give in order to safeguard its interests.

(2) Such notice shall specify the time within which the borrower is required to make the payment or to surrender the factory building machinery and equipment or material or to carry out the direction given and shall also contain a warning that if the borrower fails to pay the amount demanded or to surrender the factory building, machinery and equipment or materials or to carry out the directions given, as the case may be, within the time specified, the Board may issue a certificate certifying the borrower to be a defaulter and certifying the sum due from borrower to be recoverable as arrears of land revenue.

26. (1) If the borrower fails to make the payment demanded or to carry out the directions given in a notice under section 25 within the time specified in the notice, the Board may issue a certificate in the prescribed form and manner certifying the borrower to be a defaulter and certifying the aggregate sum including interest, payable by the borrower to the Borrower to the Board on and upto the date of the certificate and the rate which interest was payable thereon thereafter.

(2) Subject to the provisions of sub-section (3) a certificate issued under sub-section (I) shall be conclusive evidence that the sums ceritified in the certificate together with further interest at the rate certified were recoverable by the Board from the borrower.

(3) The borrower may within fifteen days of the issue of the certificate under sub-section (1) appeal to Government in this behalf against the certificate and thereupon Government after giving an opportunity of being heard cancel or modify the certificate.

(4) Notwithstanding anything in any agreement or in any law to the contrary-

(a) the Board shall have the option to recover the amount due from a borrower either from him or from his surety and a certificate issued under sub-section (I) shall also be executable against the surety as if he himself were borrower;

(b) any transfer of properties pledged, mortgaged, hypothecated or assigned by the borrower as security for the loan, so long as the loan or the interest thereon or any part thereof remains unpaid to the Board, shall be void as against the Board and such properties shall be liable to attachment and sale as if no such transfer had taken place;

(c) where a loan has been advanced in the form of building or machinery and equipment on hire- purchase basis and the borrower has committed a breach of the terms and conditions of the agreement or otherwise violated any provision of this Act or failed to comply with the notice issued under sub-section (1), the Board shall be entitled to take possession of the building or machinery and equipment, as the case may be,

(d) all sums due to the Board from a borrower or any other person shall be recoverable as arrears of land revenue.

27. (1) The Board may with the previous approval of Government and the Federal Government and on such terms and conditions as may be approved by Government borrow in foreign currency from the International Bank for Reconstruction and Development or otherwise moneys required for the development of small cottage and other industries. In the case of loan secured for the purpose of section 19 the Board may pledge mortgage, hypothecate or assign to the said Bank or other lender all or any part of security taken by the Board for the loan granted in foreign currency.

(2) All loans obtained in foreign currency shall be repayable either.-

(a) in the currency in which they are obtained; or

(b) in any other currency which is agreed upon by the loan given agency, Government and the Federal Government; or

(c) in Pakistan currency at the rate of exchange prevailing at the date of repayment.

28. The Board shall also be responsible for.-

(a) preparing and submitting schemes to Government for the development of cottage, small and other industries. Such schemes may include schemes for research and mechanization in respect of cottage and small industries;

(b) giving effect to schemes approved by appropriate means;

(c) laying down policy for the promotion o small industries in the Province;

(d) sponsoring industries to be set up in the small industries estate;

(e) taking over and running schemes, projects and training institutions as may be transferred to the Board by Government;

(f) organising cooperative societies in furtherance of the purposes of this Act;

(g) taking appropriate measures for integration of small industries with large industries;

(h) undertaking census, and surveys of cottage, small and other industries;

(i) organising trade associations and taking other appropriate measures for promoting and marketing the products of cottage and small industries;

(j) organising fairs, pavilions, sales and display of products of cottage and small industries;

(k) establishing service centres and common facility centres for specific industries or groups of industries;

(l) establishing in special case and with the prior approval of the Government small and cottage industries in less developed areas;

(m) establishing small industries estates;

(n) establishing artisan colonies, design centres, workshops, institutes for promotion and development of handicrafts;

(o) taking appropriate means for promotion and development of sericulture;

(p) procuring and distributing to cottage and small industries, raw materials, machinery and spare parts;

(q) establishing institutes for the promotion and development of cottage, small and other industries;

(r) maintaining and running depots for supply of raw material and for the purchase and sale of finished goods from cottage and small industries and project run by the Board;

(s) Introducing better means of production and new designs including proto-types;

(t) formulating and implementing schemes for training of artisans and small industrialists;

(u) arranging for grading and standardization of products of small and cottage industries;

(v) working out entitlements of raw materials of cottage, small and other industries;

(w) sanctioning balancing modernising etc. of cottage, small and other industrial units in accordance with the instructions of Government or in exercise of powers that may be delegated in this behalf by Government;

(x) undertaking such other functions, measures or steps as may be directed by Government.

29. The Board shall be deemed to a bank for the purpose of the Banker's Books Evidence Act, 1891.

CHAPTER—IV

Finance

30. (1) There shall be a fund to be known as the "Board Fund" vested in the Board, which shall be utilised by the Board to meet charges in connection with its functions under this Act, including salaries and other remuneration of the Directors and employees of the Boards.

(2) The Board Fund shall consists of.-

(a) grants made by Government;

(b) revolving fund placed by Government at the disposal of the Board for preparing feasibility studies for the schemes;

(c) loans obtained from Government;

(d) grants made by the local bodies;

(e) sale proceeds of raw material and finished goods;

(f) loans obtained by the Board from the Scheduled Banks;

(g) foreign loans obtained under the provision of section 27;

(h) charges for the plots of land and other facilities provided on the small industries estate;

(i) all other sums received by the Board.

21. The Board shall be deemed to be a local authority under the Local Authorities Loans Act, 1914 (Act No. IX of 1914), for he purposes of borrowing money under the said Act, and the making and execution of any scheme under this Act shall be deemed to be a work which such authority is legally authorised to carry out.

32. (1) All moneys at he credit of the Board shall be kept as prescribed.

(2) Nothing in sub-section (I) shall be deemed to preclude the Board from investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Trust Act 1882, (Act No. II of 1882), or placing them in fixed deposit with a bank approved by Government or in such other manner as may be approved by Government.

33. The Board shall maintain complete and accurate books of accounts in such forms as may be prescribed.

34. (1) The accounts of the Boards shall be audited by auditors who shall be Chartered Accountants with the meaning of the Chartered Accountants Ordinance. 1961 (Ord. So. X of 1961), and appointed with the approval of Government on such remuneration as may be fixed and such remuneration shall be paid by the Board.

(2) Notwithstanding the audit provided for in sub-section (1) Government shall appoint a special auditor to audit or cause to be audited the accounts of the Boards and to hold or cause to be held a test audit of the undertakings owned by the Board and in the event of test audit disclosing irregularities the special auditor may carry out or cause to be carried out such further audit as he considers necessary.

35. (1) The Board shall furnish to Government as for as possible within four months of the close of the financial year an audited statement in the prescribed from of its assets and liabilities of commercial undertakings and transactions as they stand at the close of that year together with a profit and loss account for the year and full report on the working of the Board during the year and copies of the said statement, account and report shall be published in the Official Gazette.

(2) The Board shall submit to government its proposals for the next ensuing financial year at such time and in such manner as may be prescribed.

36. No Provision of law relating to the winding up of companies and corporations shall apply to the Board and the Board shall not be wound up except by order of the Government and in such manner as it may direct.

37. (1) Government may, by notification in the Official Gazette, make rule for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers such rules may provide for.—

(a) the manner of keeping accounts of the Board:

(b) the recruitment of officers, advisers and employees of the Board;

(c) the terms and condition of service of the officers, advisers and employees of the Board, including the functions of the adviser;

(d) the borrowing by the Board;

(e) the date by which, and the form in which the annual budget statement of the Board shall be submitted in each year;

(f) the procedure for appropriation and re-appropriation of moneys at the credit of the Board;

(g) the form and manner in which and the authorities to whom returns, report or statements shall be submitted; and

(h) such other matters relating to the administration of the affairs of the Board as Government may think fit to regulate by rules.

38. (1) The Board may, with the previous approval of Government make regulations to provide for all matters not provided for in the rules, for which provisions is necessary or expedient for carrying out the purposes of this Act and the rules.

(2) in particular and without prejudice to the generality of the foregoing power, such regulation may provide for the —

(a) meeting of the Board;

(b) investment of the Board Funds;

(c) sale or transfer of industrial units and other immovable property of the Board;

(d) the constitution, power ,and terms and conditions of committees constituted under section 14;

(e) building bye-laws agreements and lease deeds pertaining to small industrial estates;

(f) conditions subject to which the Board grant loans; and

(g) form and manner of determining the sufficiency of security taken for loans or for guaranteeing the loans.

39. As from coming into force of this Act —

(a) all business, projects,. undertakings and properties of the Corporation transferred to the North West frontier province by under or by virtue of the Federal law shall pass by succession to Government or the Board as the case may be;

(b) all debts, liabilities and obligations incurred contract entered into and all matters and things engaged to be done by with or for and all suits and other proceedings by or against the Corporation shall in so for as they sand transferred to the North-West Frontier Province, by under or by virtue of the Federal law be deemed to be debts, liabilities and obligations incurred, contracts entered into or as the case may be matters and things engaged to be done by with or for, and suits and other proceedings by or against Government or the Board, as the case may be;

(c) all officers and servants of the Corporation transferred to the North-West Frontier Province by or under the Federal shall stand transferred to, and be appointed by, Government or the Board, as the case may be, in such manner as the Government may by order determine; provided that such persons shall, notwithstanding the provisions of section 12 be appointed on such terms and conditions as may be determined by or under the Federal law.

Explanation I.—In this section and section 40, "Corporation} means the West Pakistan Small Industries Corporation dissolved under the West Pakistan Small Industries Corporation (dissolution) Ordinance, 1972, (Ord. No. XXIV of 1972).

Explanation I.—In this section, "Federal law" means the West Pakistan Small Industries Corporation (Dissolution) Ordinance, 1972 (Ord. No. XXIV of 1972).

40. For the purposes of carrying into effect the provisions of this Act, the Government may in such manner as it may consider necessary or expedient provide for-

(a) entrusting to a person the functions of the Board till such time the Board is established under this Act;

(b) the removal of difficulties arising out of or in connection with the dissolution, or the transfer of assets and liabilities, of the Corporation;

(c) other matters supplemental or incidental to, or consequential upon the dissolution of the Corporation.

41. (1) The North-West Frontier Province Small Industries Development Board Ordinance, 1927 (N.W.F.P. Ord. No. XVI of 1972) is hereby repealed.

(2) Notwithstanding the repeal of the North-West Frontier Province Small Industries Development Board Ordinance 1972 everything done, action taken Board established obligation or liabilities incurred rights assets or property acquired persons appointed or authorised, jurisdiction or powers conferred or notification or orders issued under any of the provisions of the said Ordinance or rules or regulations made thereunder, if not inconsistent with the provisions of this Act or rules or regulations made under this Act, shall be continued, and, so far as may be, be deemed to have been respectively done, taken established incurred, acquired appointed or authorised conferred and issued under this Act, and any document referring to any of the provisions of the said Ordinance rules or regulations shall so far as may be, be considered to refer to the corresponding provisions of this Act or rules or regulations made under this Act.

6.1.6.2 NWFP Industrial Loans Act, 1946

**THE NORTH-WEST FRONTIER [1][PROVINCE]
INDUSTRIAL LOANS ACT, 1946.**

ACT XIV OF 1946.

An Act to improve the law relating to loans by the
Government for industrial purposes

WHEREAS, it is expedient to improve the method of advancing loans by the Government for industrial purposes and of recovering the same from the borrowers:

It is hereby enacted as follows:-

1. (i) This Act may be called the North-West Frontier [2][Province] Industrial Loans Act, 1946.

   (ii) It extends to the whole of the [3]North-West Frontier [4][Province]

   (iii) It shall come into force on such date as the Provincial Government may, by notification in the official Gazette, appoint in this behalf.

2. In this Act-

   (i) "Industrial" means relating to and connected with the manufacture of articles by hand, by machinery or by chemical process.

   (ii) "Company" means a Company, as defined in the companies Act, 1913

   (iii) "Prescribed" means prescribed under the rules made under this Act.

3. Subject to such rules as may be made under Section 12, loans may be granted under this Act for industrial purposes by such officers as may from time to time be empowered in this behalf by the Provincial Government.

4. Application for a loan may be made by an individual, a firm or a company and shall be made on the prescribed form.

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1 Inserted by Adaptation of Laws Order, 1975 s.2 (1) read with the schedule, which was earlier omitted by W.P. A.L., Order 1964.

2 Inserted by Adaptation of Laws Order, 1975 s.2 (1) read with the schedule, which was earlier omitted by W.P. A.L., Order 1964.

3 Now to be construed as referring to the districts of Bannu, Dera Ismail Khan, Hazara, Kohat, Mardan and Peshawar vide W.P. Act XVI of 1957, s.3 (1), Sch. 1.

4 Inserted by Adaptation of Laws Order, 1975 s.2 (1) read with the schedule, which was earlier omitted by W.P. A.L., Order 1964.

5. (i) When an application for a loan has been accepted, the applicant shall execute a deed in the prescribed form undertaking to apply the money lend to the purpose or purposes for which and generally to fulfil the conditions on which the loan was granted and rendering himself and his property liable for the payment of any penalty imposed under Section II, and for the repayment of the loan, together with all interest due thereon, if any, and Costs, if any, incurred in making or recovering the loan.

(ii) When the application has been made by a firm or company the deed shall be executed by a representative thereof, and the deed shall thereupon be deemed binding on the said firm or company and the property of the said firm or company shall be liable in the same manner, as if the loan had been granted to an individual.

6. The loan together with all interest due thereon, if any, shall be repayable either in lump sum or by installments (in the form of an annuity or otherwise) as the officer granting the loan may direct.

7. (i) When any loan or installment or interest thereon falls due and is not paid on or before the due date or when any penalty has been imposed under Section II, or when a loan has been declared to be immediately repayable under the said section the officer empowered by the Provincial Government in this behalf may cause to be served on the debtor a notice in the prescribed manner calling upon him to pay the sums due with in such time as may be fixed therein.

(ii) Such notice shall contain an intimation that in case of default the said officer will issue a declaration in the prescribed form showing the amount of the debt due and the property liable to satisfy the same.

8. (i) If within the time so fixed the sums due are not paid, the officer empowered under Section 7, may issue the declaration as described in sub-section (ii) of the same section. Such declaration shall be published in the official Gazette.

(ii) Such declaration shall be conclusive evidence of its contents and shall not be called into question in any court:

Provide that any person, other than the debtor, who claims to have any interest in the property declared liable to satisfy the debt may, within thirty days of the publication of such declaration in the official Gazette, make an objection to the officer issuing the declaration. Such officer shall after taking such evidence as may be necessary [5][and after giving the objector an opportunity of being heard] accept or reject such objection and modify or confirm his declaration accordingly:

Provided further that within sixty days of the passing of any order under this sub-section the person making the objection may appeal to the Provincial Government against such order, and the decision thereon of the Provincial Government shall be final.

(iii) Such declaration may be presented by the said officer or by such person as he may, either generally or specially, appoint in this behalf in a competent civil court in the same manner as a decree of which execution is sought.

[5] Inserted by N.-W.F.P., Act No. II of 1985.

9. When a declaration has been received by a civil court under Section 8, the court shall pass an order directing the debtor to pay the amount shown therein as due, and such order may be executed in same manner as if it had been a money decree passed b a court in the exercise of its ordinary civil jurisdiction and the property mentioned in such declaration had been attached thereunder.

10. Subject to the rules made under Section 12 the officer empowered by the Provincial Government in this behalf may from time to time inspect the premises, books, machinery, stocks, stores and all other belongings and things connected with the industrial undertaking or undertakings in respect of which a loan has been granted under this Act in order to satisfy himself that such loan is being applied to the purpose or purposes for which it was granted, or that the conditions on which it was granted are being duly fulfilled and shall have such powers of entry as may be necessary to make such inspection.

11. If such officer, is, after inspection, not satisfied that the money lent is being applied to the purpose or purposes for which the loan was granted, or that the conditions on which the loan was granted are being duly fulfilled, he may pass an order directing that the borrower shall pay, by way of penalty, a sum not exceeding Rs. 100 and may declare notwithstanding anything contained in the deed executed under Section 5 that the loan is immediately repayable:

    Provided that the borrower may within six days of the receipt of such order appeal against it to the Provincial Government , and the decision thereon of the Provincial Government shall be final:

    [6][Provided further that the Provincial Government shall not pass any order without giving the borrower an opportunity of being heard].

12. The Provincial Government may, after previous publication by notification in the official Gazette, make rules consistent with this act to provide for the following matters, namely:-

    (i) the manner of making application for loans;

    (ii) the officer by whom loans may be granted;

    (iii) the form of deed to be executed under Section 5;

    (iv) the nature and amount (not exceeding one and-a-half times the amount of the loan) of the security to be taken for the due application and repayment of the money lent together with all interest due thereon, if any, the rate of interest at which and the conditions under which loans may be granted:

    Provided that where the security consists wholly or in part of the premises, machinery, stock stores or other property, present or future, movable or immovable, of the industrial undertaking concerned then the whole of such property, present and future, movable and immovable, may be made liable for the recovery of the loan and all interest due thereon, if any;

    (v) the manner in and the place at which notices under sub-section (I) of Section 7 or orders under Section 11 may be served on any debtor;

    (vi) the form of the declaration to be used under Section 8;

[6] Proviso ins, by N.-W.F.P. Act No II of 1985.

(vii) the inspection of the premises, books, machinery, stock, stores and all other belongings and things connected with the industrial undertaking in respect of which loans have been granted; and

(viii) all other matters pertaining to the working of this Act.

6.1.7 Transport

6.1.7.1 NWFP Bus Stand and Traffic Control (Peshawar) Ordinance 1978

THE NORTH-WEST FRONTIER PROVINCE BUS STAND

AND TRAFFIC CONTROL (PESHAWAR) ORDINANCE, 1978.

N.-W.F.P. ORDINANCE No. VII OF 1978.

14th March, 1978.

AN
ORDINANCE

to provide for measures to remove and prevent traffic congestion and to regulate movement of vehicular traffic within the limits of Municipal Committee, Peshawar.

WHEREAS it is expedient to provided for measures to remove and prevent traffic congestion and to regulate movement of vehicular traffic within the limits of Municipal Committee, Peshawar.

AND WHEREAS the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977) and in exercise of all powers enabling him in that behalf, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance;

1. (1) This Ordinance may be called the North-West Frontier Province Bus Stand and Traffic Control (Peshawar) Ordinance, 1978.

(2) It shall come into force on and from the 15th day of March, 1978.

2. In this Ordinance, unless the context otherwise requires:-

(a) "bus stand" means the stand provided by the Municipal committee, Peshawar, for halting stage carriages;

(b) "Commissioner" means the Commissioner, Peshawar Division, an includes and officer who may be appointed by Government to exercise the powers of Commissioner under this Ordinance;

(c) "Government" means the Government of the North-West Frontier Province;

(d) "rules" means the rules made under this Ordinance; and

(e) "stage carriage" means the stage carriage as defined in the Pakistan Motor Vehicles Ordinance, 1965. (W.P. Ord. XIX of 1965).

3. No person, company or association plying stage carriages to, from or through the limits of the Municipal Committee, Peshawar, shall establish or maintain within such limits any Stand (Adda) of use any place, including a highway, road or street within the said limits, for picking up or setting down the passengers of halting the stage carriage except at the place allotted for the purpose in the bus stand.

4. The Commissioner may require the Municipal committee, Peshawar to provide and maintain within its limits bus stands as such places as may be approved by him.

5. All existing Stands (Adda) within the limits of Municipal Committee, Peshawar, shall ceases to function and be shifted to the bus stand within one month of the promulgation of this Ordinance, or within such further period as may be fixed by the Commissioner.

6. Notwithstanding anything to the contrary contained in any other law for the time being in force, or any decree, judgment or order of any court or Authority, the Commissioner, for the purposes of this Ordinance, may –

   (a) acquire any land required for the bus stand, approaches and roads and eject forcibly any person in possession thereof, on payment of such compensation as may be determined by the Collector, Acquisition in accordance with the principle laid down in the Land Acquisition Act, 1894 (I of 1894); and

   (b) direct the Municipal Committee, Peshawar, toe regulate the administration of bus stand established under this Ordinance, in accordance with the rules framed for the purpose.

7. Any stage carriage found plying or at halt in contravention of any of the provisions of this Ordinance or the Directions issued by the Commissioner in pursuance of this Ordinance shall be impounded by an officer, authorised by the Commissioner in this behalf, or by any Police Officer not below the rank of an Assistant Sub-Inspector

8. Any person, company or association using the bus stand or using any land belonging to the Municipal Committee or to any person on its behalf as may be fixed by the rules. Any arrear of rent due from any such person, company or association shall be recoverable as arrears of land revenue.

9. The Commissioner may delegate any of the powers vested in him under this Ordinance to any officer subordinate to him or to the Municipal Committee, Peshawar, or any officer thereof.

10. The Commissioner may exempt any stage carriage or class of stages from the operation of all or any of the provisions of this Ordinance.

11. Any person who contravenes or attempts to contravene or abets the contravention of any provisions of this Ordinance or any directions issued by the Commissioner in pursuance of this Ordinance or the rules, framed thereunder shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both, on a complaint by the chairman, Chief Officer or Taxation officer of the Municipal Committee, Peshawar, or by a Police Officer not below the rank of an Assistant Sub-Inspector.

12. Government may make rules to carry out the purposes of this Ordinance.

6.1.7.2 NWFP Bus Stand and Traffic Control (Peshawar) Rules, 1999

EXTRAORDINARY — REGISTERED NO.P-111

GOVERNMENT GAZETTE

NORTH-WEST FRONTIER PROVINCE

PUBLISHED BY AUTHORITY
PEWSHAWAR, WEDNESDAY, 17TH MARCH, 1999.

GOVERNMENT OF NORTH-WEST FRONTIER PROVINCE
INDUSTRIES, COMMERCE, MINERAL DEVELOPMENT,
LABOUR AND TRANSPORT DEPARTMENT.

NOTIFICATION

15th March, 1999

No.SOII(IND)PTA/9-29/87. - In exercise of the powers conferred by section 12 of the North-West Frontier Province Bus Stand and Traffic Control (Peshawar) Ordinance, 1978 (N.W.F.P. Ordinance VII of 1978), the Government of the North-West Frontier Province is pleased to make the following rules, namely:

THE NORTH-WEST FRONTIER PROVINCE
BUS STAND AND TRAFFIC CONTROL

(PESHAWAR) RULES, 1999.

1. Short title and commencement.

(1) These rules may be called the North-West Frontier Province Bus Stand Traffic Control (Peshawar) Rules, 1999.

(2) They shall come into force at once.

2. Definitions.—

In these rules, unless the context otherwise requires, the following expressions hall have the meanings hereby respectively assigned to them, that is to say:—

(a) ”Administrator” means the officer-in-charge of the administration of Municipal Corporation, Peshawar, duly appointed as such by the Government and includes the Mayor of the said Corporation duly elected as such.

(b) ”Corporation” means the Municipal Corporation, Peshawar.

(c) ”Ordinance” means the North-West Frontier Province Bus Stand and Traffic Control (Peshawar) Ordinance, 1978 (N.WF.P. Ordinance VII of 978).

3. Regulation of administration of Bus Stands.—

(1) When so directed by the Commissioner under section 6 of the Ordinance, the Corporation shall regulate the administration of Bus Stand in the public interest.

(2) All the powers, functions and duties with regard to a bus stand or land thereof conferred, assigned or imposed on the Corporation, shall be exercised, performed or discharged by the Corporation through, or under the orders and supervision of its administrator.

(3) The administrator may exercise, perform or discharge such powers, functions and duties either directly or through officers subordinate to him or through a Contractor, lessee or company duly registered under the law or any other person or group of persons so authorized by him.

(4) The Corporation may allot different places for the purposes of different routes or stage carriages and for issuing tickets or other ancillary or incidental purposes within the Bus Stand by means of fair competition.

4. Powers functions and duties of the Corporation.–

(1) The Corporation shall have the power to fix rent for using a bus stand or using any land belonging to the Corporation for running a bus stand, keeping in view the prevailing circumstances, and may fix different suitable rent for different purposes.

(2) The rent so fixed may be increased or decreased after a ten days notice has been given to the persons, companies and associations as mentioned in section 8 of the ordinance, through national news papers to submit written objections if any and such objections have been considered and have been either totally or partially accepted or rejected within a further period of not less than five days.

(3) The Corporation shall collect the rent and issue proper receipt therefor and shall maintain the record and account of such rent.

(4) Subject to availability of resources, it shall be the duty of the Corporation to construct and maintain roads, waiting rooms/sheds and other suitable facilities, like drinking water and lavatories, within the limits of the bus stand if so agreed through an agreement with the allottee/lessees.

Sd/ xxxx
Secretary to Government of N.W.F.P.,
Industries, Commerce, Mineral Development,
Labour & Transport Department.

6.1.7.3 NWFP Truck Stand and Traffic Control (Peshawar) Act 1972

THE NORTH-WEST FRONTIER PROVINCE TRUCK STAND

AND TRAFFIC CONTROL (PESHAWAR) ACT, 1972.

12TH January, 1973.

***N.-W.F.P. ACT NO. X OF* 1973.**

(Received the assent of the Governor of the North-West Frontier Province on 12th January, 1973).

AN
ACT

to provide for measures to remove and prevent traffic congestion and to regulate movement of goods vehicles within the Municipal Limits of Peshawar.

WHEREAS, it is expedient to provide for measures to remove and prevent traffic congestion and to regulate movement of goods vehicles within the Municipal Limits of Peshawar;

It is hereby enacted as follows-

1. (1) This Act may be called the North-West Frontier Province Truck Stand and Traffic Control (Peshawar) Act, 1972.

(2) It shall come into force at once.

2. In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say –

(a) "Commissioner" means the Commissioner, Peshawar Division and includes an officer who may be appointed by Government to exercise the powers of Commissioner under this Act.

(b) "Goods vehicle" means any motor vehicle constructed or adapted for use for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods, solely or in addition to passengers;

(c) "Government" means the Government of the North-West Frontier Province;

(d) "rules" means rules made under this Act.

3. No person, company or association plying goods vehicles to, from or through the Municipal Limits of Peshawar shall keep limits Truck stand (Adda), except at the place allotted for the purpose in the Municipal Truck Stand.

4. No goods carrier shall save for loading or un-loading goods halt at any place, within the Municipal limits of Peshawar, other than the Municipal Truck Stand or the place approved by the Commissioner.

5. The Commissioner may require the Municipal Committee, Peshawar to provide and maintain with in its limits Truck Stand at such places as may be approved by him.

6. All existing Truck Stand within the Municipal limits of Peshawar or within a radious of 4 miles outside such limits shall cease to function and be shifted to the Municipal Truck Stand within one month of the promulgation of this Act, or within such further period as may be fixed by the Commissioner.

7. Notwithstanding anything to the contrary contained in any other law for the time being in force or any decree, judgment or order of any Court or Authority, the Commissioner, for the purposes of this Act may –

   (a) acquire any land required for the Truck Stand approaches and roads and eject forcibly any person in possession thereof, on payment of such compensation as may be determined by the Collector Acquisition in accordance with the principles laid down in the Land Acquisition Act, 1894;

   (b) direct the Municipal Committee to regulate the administration of Truck Stand established under this Act in accordance with the rules framed for the purpose.

8. Any goods carrier found plying or at halt in contravention of any of the provisions of this Act or the directions issued by the Commissioner, in pursuance of this Act, shall be impounded by an officer authorised by the Commissioner in this behalf or by any Police Officer not below the rank of an Assistant Sub-Inspector.

9. Any person, company or association using the Municipal Truck Stand, or using any land belonging to the Municipal Committee, Peshawar, for running a Truck Stand shall pay such rent to the Municipal Committee or to any person on its behalf as may be fixed by the rules. Any arrears of rent due from any such person, company or association, shall be recoverable as arrears of land revenue.

10. The Commissioner may, delegate any of the powers vested in him under this Act, to any officer thereof.

11. The Commissioner may exempt any vehicle or class of vehicles from the operation of all or any of the provisions of this Act.

12. Any person who contravenes or attempts to contravene o abets the contravention of any provisions of this Act or any directions issued by the Commissioner in pursuance of this Act or rules framed thereunder, shall be punished with imprisonment for a term which may extend to one year rigorous imprisonment or with a fine which may extend to five thousand rupees or with both, on a complaint by the Chairman, Chief Officer or Taxation Officer of the Municipal Committee, Peshawar, or by a Police officer not below the rank of an Assistant Sub-Inspector.

13. Government may make rules to carry out the purposes of this Act.

6.1.8 Energy

6.1.8.1 Sarhad Development Organization Ordinance 1993

Sarhad Hydel Development Organization

Ordinance, 1993

ORDINANCE I OF 1993

SARHAD HYDEL DEVELOPMENT ORGANIZATION

ORDINANCE, 1993

An Ordinance to provide for the development of power resources of the North-West Frontier Province

[Gazette of N.-W.F.P., Extraordinary, 16th January, 1993]

No.Legis, (3)/89-Vol.II, dated 16-1-1993.—The following Ordinance by the Governor of the North-West Frontier Province is hereby published for general information:

Preamble.-- Whereas it is expedient to provide for the development of power resources of the North-West Frontier Province;

And whereas the Provincial Assembly is not in session and the Governor of the North-West Frontier Province is satisfied that circumstances exist which render it necessary to take immediate action;

Now, therefor, in exercise of the powers conferred by clause (1) of Article 128 of the Constitution of the Islamic Republic of Pakistan, the Governor of the North-West Frontier Province is pleased to make and promulgate the following Ordinance:

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.—**

(1) This Ordinance may be called the Sarhad Hydel Development Organization Ordinance, 1993.

(2) It extends to the whole of the North-West Frontier Province.

(3) It shall come into force at once.

2. **Definitions.—**

In this Ordinance, unless there is anything repugnant in the subject or context,--

(i) "Authority" means the Water and Power Development Authority established under the West Pakistan Water and Power Development Authority Act, 1958 (W.P. Act XXXI of 1958);

(ii) "Board" means the Board of Directors of the Sarhad Hydel Development Organization;

(iii) "Chairman" means the Chairman of the Board;

(iv) "Federal Government" means the Government of Islamic Republic of Pakistan;

(v) "Government" means the Government of the North-West Frontier Province;

(vi) "land" includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(vii) "local body" means a Local Council constituted under the North-West Frontier Province Local Government Ordinance, 1979 (N.-W.F.P. Ordinance No. IV 1979);

(viii) "Managing Director" means the Managing Director of the Sarhad Hydel Development Organization;

(ix) "member" means a member of the Board;

(x) "Organization" means the Sarhad Hydel Development Organization established under section 3;

(xi) "Officer" means an Officer of the Organization including the Managing Director;

(xii) "Power" includes hydraulic power, electrical energy, steam, gas or any other power notified as such by Government in the official Gazette;

(xiii) "prescribed" means prescribed by rules and regulations;

(xiv) "Province" means the North-West Frontier Province;

(xv) "regulations" means regulations framed under this Ordinance;

(xvi) "rules" means rules made under this Ordinance;

(xvii) "section" means a section of this Ordinance, and

(xviii) "Scheduled Bank" means a Bank for the time being included in list of Banks maintained under subsection (1) of section 37 of the State Bank of Pakistan Act, 1957 (XXXIII of 1956).

CHAPTER II

CONSTITUTION OF BOARD

3. **Establishment of Organization.---**

(1) There shall be established and Organization to be known as the Sarhad Hydel Development Organization.

(2) The Organization shall be a body corporate having power to acquire and hold property, both movable and immovable, shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The head office of the Organization shall be at Peshawar.

4. **Board of Director.--**

(1) The powers, functions and management of the Organization shall vest in a Board constituted under subsection (2).

(2) The Board shall consist of the following:

(i)	The Chief Minister of the North-West Frontier Province	--	Chairman.
(ii)	Minister for Finance, North-West Frontier Province	--	Member.
(iii)	The Chief Secretary, Government of North-West Frontier Province	--	Member.
(iv)	The Additional Chief Secretary, Government of North-West Frontier Province	--	Member.
(v)	the Secretary to Government of North-West Frontier Province, Finance Department	--	Member.
(vi)	A nominee of the Chief Minister of the North-West Frontier Province, and	--	Member.
(vii)	The Managing Director of the Organization appointed under section 5.	--	Member.

5. **Managing Director.--**

(1) Government shall appoint a person, with the prescribed experience as the Managing Director of the Organization.

(2) The Managing Director shall be the Chief Executive of the Organization and shall be responsible for its day to day administration and management.

(3) The term of office of the Managing Director shall be four years. on expiry of his term of office, the Managing Director shall be eligible for re-appointment for sub-sequent term or terms or for such shorter term as Government may determine.

(4) The Managing Director may, at any time, resign from his office and by virtue of his resignation, he shall cease to be member of the Board, or if he resigns from the membership of the Board, he shall cease to be the Managing Director;

Provided that his resignation in either case shall not take effect until accepted by Government.

6. **Secretary.—**

There shall be a full-time Secretary of the Board, who shall, under the general supervision of the Managing Director, be responsible for dealing with the proceedings of the meetings and other matters entrusted by the Organization.

7. **Other Officers.—**

(1) The Board may employ such experts, advisors, consultants and other officers as it considers necessary for the efficient performance of functions of the Organization, on such terms and conditions as may be determined by the Board.

(2) The Managing Director, in cases of emergency, may appoint such experts, advisors, consultants and other officers as may be considered necessary;

Provided that every appointment made under this subsection shall be reported to the Board without unnecessary delay and shall not continue beyond six months unless approved by the Board.

8. **Removal of Managing Director.—**

Government may, by notification, remove the Managing Director—

(a) if he refuses or fails to discharge or becomes, in the opinion of Government, incapable of discharging his responsibilities under this Ordinance; or

(b) if he has been declared insolvent;

(c) if he has been declared to be disqualified for the employment in, or has been dismissed from the services of Pakistan, or has been convicted of an offence involving moral turpitude; or

(d) if he has knowingly acquired or continues to hold without the permission in writing of Government, directly or indirectly or through a partner, any share or interest in any contract or employment with, or on behalf of the Organization or in any land or property which in his knowledge, is likely to benefit or has benefited as a result of the operation of the Organization.

9. **Meeting of the Board.—**

(1) The Board shall meet at least once in every six months in such manner and at such time and place as may be prescribed by the Chairman.

(2) The Chairman, or in his absence, a member authorised by him to preside over the meeting and two other members shall be present to constitute a quorum at meeting of the Board.

(3) Any decision made under subsection (2) in the absence of the Chairman, shall be submitted by the Managing Director to the Chairman, for approval, before implementing it.

CHAPTER III

POWER AND DUTIES OF THE ORGANIZATION

10. **General powers and duties of the Organization and framing of schemes.—**

(1) Subject to any other law for the time being in force, the Organization shall prepare, for the approval of Government, a comprehensive plan for the development and utilization of the power and energy resource of the Province. The Organization may also undertake such other schemes as Government may direct.

(2) Without prejudice to the provisions of subsection (1), the Organization may frame a scheme for the Province or any part thereof providing for all or any of the following matters, namely:-

(i) the generation, transmission and distribution of power;

(ii) the construction, maintenance and operation of power houses, grids and microgrids, transmission and distribution lines specially in the remote mountainous areas of the Province.

(3) Every scheme prepared by the Organization under subsection (1) and (2) shall be processed in accordance with Government procedures or instructions, which may be issued to the Organization from time to time. The Organization will submit to the Government periodical reviews and other reports required by it.

(4) Government may sanction or may refuse to sanction or may return for reconsideration or further examination any scheme submitted to it under subsection (3), or may call for such further details or information about any such scheme as it may consider necessary.

(5) The Organization will act as adviser to Government on all matters regarding issuance of licences and joint ventures in the power sector.

(6) The Chairman may request the Government to provide assistance for the efficient functioning of the Organization.

11. **Survey and experiments.—**

The Organization if it considers necessary or expedient for carrying out the purposes of this Ordinance, may,--

(a) cause studies, pre-feasibility studies, detailed feasibility studies surveys, experiments of technical research to be made, or

(b) contribute toward the cost of any such studies, surveys, experiments or technical research made by any other agency.

12. **Winding up of the Small Hydel Development Organization and transfer of assets and liability.—**

Consequent upon the winding up of the Small Hydel Development Organization under section 12 of the Sarhad Hydel Development Organization Ordinance, 1992. (N.-W.F.P. Ordinance II of 1992) having since been repealed with effect from the 3rd June, 1992, all officers, servants and other employees of the aforesaid Organization transferred to the Organization established under the repealed Ordinance shall be officers, servants and employees of the Organization established under this Ordinance and shall continue to work on the same terms and conditions as applicable to them immediately before the commencement of Ordinance.

13. **Control over powers houses, grids and transmission and distribution lines.—**

(1) Subject to the provisions of any other law for the time being in force, the Organization—

(i) shall have control over the operation of all power houses, grids, transmission and distribution lines in the Province constructed by or transferred to, the Organization, including such ancillary works as may be considered necessary for their proper operation;

(ii) may make recommendations to Government for prescribing standards for the maintenance of power houses, grids, microgrids and transmission and distribution lines of the Organization; and

(iii) may make recommendations to Government for promoting simplification of methods of charge for supplies of electricity an standardization of the system of supply.

(2) Before the Organization exercises any control under clause (i) of subsection (1), the area over which and extent to which control is intended to be exercised shall be agreed to and notified by Government in the official Gazette.

(3) Nothing in this section shall entitle the Organization to exercise any power in respect of works, power houses or grids, transmission and distribution lines owned by the Federal Government or the Authority for the exclusive use of any department of the Federal Government, the Authority or of a Military Cantonment.

14. **Organization to have powers and obligations of licensee under Electricity Act, 1910.—**

The Organization shall, for the purposes of the Electricity Act, 1910 be deemed to be a licensee and shall have all the powers and discharge all the obligations of a licensee under the said Act;

Provided that nothing in sections 3 to 11, subsections (2) and (3) of section 21 and sections 22, 23 and 27 of the said Act, or in clause I to XII the Schedule to the said Act, relating to the duties and obligations of a licensee shall apply to the Organization.

15. **Powers regarding certain matters.—**

(1) The Organization may take such measures and exercise such powers as it considers necessary or expedient for carrying out the purposes of this Ordinance.

(2) Without prejudice to the generality of the powers conferred by the preceding sections and the provisions of subsection (1), the Organization may, in the prescribed manner and subject to the provisions of this Ordinance—

(a) undertake any work, incur any expenditure, procure plant, machinery and materials required for its use and enter into and perform at such contracts as it may consider necessary or expedient to carry out the purposes of this Ordinance;

(b) acquire by purchase, lease, exchange or otherwise and dispose of by sale, lease, exchange or otherwise, any land or any interest in land;

(c) place wires, poles, wall brackets, stays, apparatus and appliances for the transmission of electricity or for the transmission of telegraphic or telephone communications necessary for the proper execution of a scheme;

(d) undertake any anti-corrosion operations;

(e) restrict or prohibit by general or special order the clearing and breaking up of land in the catchment area of any river; and

(f) seek and obtain advice and assistance in the preparation or execution of a scheme from any local body or agency of the Government, and such local body or agency shall give the advice and assistance so sought to the best of its ability, knowledge an judgement;

Provided that the Organization shall pay the cost of such advice and assistance, if the giving of such advice and assistance entails additional expenditure to the local body or the agency concerned.

(3) The acquisition of any land or any interest in land for the Organization under this section or for any scheme under this Ordinance, shall be deemed to be an acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894, and the provisions of the said Act shall apply to all such proceedings.

16. **Right of entry.—**

The Chairman or any person authorized by him in writing may enter upon any survey and land, erect pillars for the determination of intended lines of works, make boring and excavations and do all other acts which may be necessary for the preparation of any scheme;

Provided that when the affected land does not vest in the Organization the power conferred by this subsection shall be exercised in such manner as to cause the least interference with, and the least damage to, the rights of the owner thereof.

17. **Sanction of Government.—**

A scheme framed and sanctioned under this Ordinance may be amended or modified by the Board at any time, but if a material change is made in the scheme and its cost or the

revised cost exceeds the sanctioning limit of the Organization, then sanction of Government shall be obtained afresh.

18. **Arrangement with local body or other agency.—**

(1) As soon as any scheme has been carried out by the Organization or at a later date, the Board may arrange by a written agreement with a local body or other agency within whose jurisdiction any particular area covered by the scheme lies, to take over and maintain any of the works and services in that area. If the Board fails to obtain the assent of such a local body or other agency, it may refer the matter to Government, and Government may give such directions to the local body or other agency as it may deem fit.

(2) Government shall have the power to direct the Organization to hand over any scheme other than a power scheme or the power part of a multipurpose scheme carried out by it to any agency of Government or a local body. In such case the Organization shall be entitled to receive audited total cost incurred on that scheme.

CHAPTER IV

ESTABLISHMENT

19. **Employment of Officers and servants.—**

(1) The Board may from time to time employ directly or by induction, transfer, deputation or by absorption from Federal or other Provincial Government, semi-autonomous and autonomous bodies such officers and servants as it may consider necessary for the efficient performance of its functions, on such terms and conditions as it may deem fit:

Provided that the terms and conditions of service of any such person as aforesaid shall not be varied by the Board to his disadvantage.

(2) Appointment and promotions of officers and employees up to and including BPS-16 shall be made by the Managing Director in the prescribed manner.

20. **Service rules.—**

(1) The Board may, for its own officers and employees, make rules for recruitment, service and discipline.

(2) The Board may, in the prescribed manner, offer the deputationists working in the Organization an opportunity to opt for permanent absorption in the service of the Organization on such terms and conditions as the Board may determine. The option once exercised shall be final:

Provided that rights and benefits accrued to such deputationists by virtue of their past service shall, as far as practicable, be protected.

21. **Immunity.—**

(1) The Chairman, Members, Managing Director, officer and servants of the Board or the Organization shall when acting or purporting to act in pursuance of any of the

provisions of this Ordinance be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code.

(2) No suit, prosecution or other legal proceedings shall lie against the Chairman, Managing Director, Members or officers and servants in respect of anything done or intended to be done, in good faith under this Ordinance.

22. **Delegation of powers.—**

The Board may, by general or special order delegate to the Chairman, the Managing Director, a member or an officer of the Organization any of its powers, duties or functions under this Ordinance subject to such conditions as it may think fit to impose.

CHAPTER V

REPORTS AND STATEMENTS

23. **Submission of yearly reports and returns, etc.—**

(1) The Board shall submit to the provincial Assembly, as soon as possible after the end of every financial year but before the last day of October next following, a report on the conduct of the affairs of the Organization for the year including an analysis of its physical activities and financial achievements.

(2) Provincial Assembly may require the Board to furnish it with –

(i) any return, statement, estimate, statistics or other information regarding any matte under the control of the Organization; or

(ii) a report on any such mater; or

(iii) a copy of any document in the charge of the Board;

and the Board shall comply with such requisition.

CHAPTER VI

FINANCE

24. **FUND.—**

(1) There shall be a fund to be known as the Organization Fund vested in the Organization which shall be utilized by it to meet charges in connection with its functions under this Ordinance, including the payment of salaries and other remuneration to the Managing Director, officers, servants and employees.

(2) The fund shall consist of –

(a) grants made by Government including the Federal Government;

(b) loans obtained from Government including the Federal Government;

(c) grants made by local bodies as required by Government;

(d) sale proceeds of bonds issued under the authority of Government;

(e) loans obtained by the Organization from commercial banks or any other source;

(f) foreign loans, grants or any other financial assistance obtained; and

(g) all other sums received by the Organization.

(3) The Organization may keep money in any scheduled bank or National Saving Center subject to the rules of Government.

(4) Nothing is subsection (3) shall be deemed to preclude the Organization from investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Trust Act, 1882 (Act No. II of 1882), or placing them in a fixed deposit with a scheduled bank or National Saving Center to the rules of Government.

(5) The Board will endeavor to promote private sector in the generation, transmission and distribution of power. For this Purpose it may sponsor, promote or join private limited companies.

(6) The Board may also permit the Organization to join, promote, sponsor or incorporate public limited companies involved in the generation, transmission and distribution of power.

25. **Organization to be deemed a local authority.—**

The Organization shall be deemed to be a local authority under the Local Authorities Loans Act, 1914, for the purpose of borrowing money under the said Act, and the making and execution of any scheme under this Ordinance shall be deemed to be a work which such authority is legally authorized to carry out.

26. **Limited Liability.—**

The liability of Government to the creditors of the Organization shall be limited to the extent of grants made by it and the loans raised by the Organization with the sanction of Government.

27. **Rates for sale of power.—**

The rates at which the Organization shall sell power shall be so fixed as to provide for meeting the operation costs, investment costs and depreciation of assets, the redemption at due time of loans other than those covered by depreciation, the payment of any taxes and a reasonable return on investment or the rates approved by Government or by adopting, subject to approval of Government, tariff rates prescribed form time to time by the Authority.

28. **Maintenance of accounts.—**

The Organization shall maintain complete and accurate books of accounts in such form as may be prescribed by it:

Provided that separate accounts shall be maintained for all schemes and transactions relating to power.

29. **Annual statement of account.—**

In the month of January each year, the Organization shall submit to Government for approval a statement of the estimated receipts and expenditure in respect of the next financial year.

30. **Audit.—**

(1) The accounts of the Organization shall be audited by Chartered Accountants within the meaning of the Chartered Accountants Ordinance, 1961 (Ordinance X of 1961), appointed by the Board on such remunerations as it may deem fit.

(2) Notwithstanding the provisions of subsection (1), the Auditor-General may, on the request of Government, cause to be audited the accounts of the Organization.

CHAPTER VII

RULES AND REGULATIONS

31. **Rules and Regulations.-** For the purpose of carrying into effect the provisions of this Ordinance, the Board may, with the approval of Government, frame such rules and regulations as it may consider necessary or expedient.

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