



## **The Jammu and Kashmir Fisheries Act, 2018**

Act No. 16 of 2018

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# **FISHERIES ACT, 2018**

**(Act No. XVI of 2018)**

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# THE JAMMU AND KASHMIR FISHERIES ACT, 2018

(Act No. XVI of 2018)

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**THE JAMMU AND KASHMIR FISHERIES ACT, 2018****(Act No. XVI of 2018)**

*[Received the assent of the Governor on 15th May, 2018 and published in Government Gazette dated 15th May, 2018].*

An Act to provide for protection, conservation and development of fisheries in the State and for matters connected therewith or incidental thereto.

Be it enacted by the State Legislature in the Sixty- ninth Year of Republic of India as Follows:—

**CHAPTER I****Preliminary**

1. *Short title and commencement.*—(1) This Act may be called the Jammu and Kashmir Fisheries Act, 2018.

(2) It shall come into force from the date of its publication in the Government Gazette.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

- (a) “Act” means the Jammu and Kashmir Fisheries Act, 2018 ;
- (b) “Department” means Department of Fisheries, Jammu and Kashmir ;
- (c) “Fish” means an animal whether living or dead of a species that throughout its life cycle usually lives—
  - (i) in water (whether fresh water or salt water) ; or
  - (ii) in or on foreshores ; or
  - (iii) in or on land under water,

which includes the spat, spawn and eggs of fish ;

- (d) “fishing craft” means any boat/appliance whether operated manually or mechanically for the capture or transport of fish ;

- (e) “fishing gear” means any net, cage, trap or other contrivance used for fishing ;
- (f) “fixed engine” means any net, cage, trap or any other contrivance fixed in the soil or on boulders or made stationery in any other way for the capture of fish within the waters ;
- (g) “Government’ means the Government of Jammu and Kashmir ;
- (h) “Licence” means licence issued under section 10 of the Act or rules made thereunder ;
- (i) “prescribed” means prescribed by rules under the Act ;
- (j) “Protected Waters” mean and include waters which are declared as such under section 6 of the Act ;
- (k) “Private Waters” mean water—
  - (a) which is the exclusive property of any person ; or
  - (b) in which any person has for the time being an exclusive right of fishing whether as owner, lessee or in any other capacity.

*Explanation:*—Water shall not cease to be “private water” within the meaning of this definition by reason only that other persons may have by custom a right of fishing therein ;

- (l) “Reserved Waters” mean and include waters where fishing is required to be regulated, prohibited or restricted to protect such species of fishes as may be determined by the Government from time to time except trout fishes ;
- (m) “Sanctuaries” mean waters, where fishing because of sacred nature of the places or otherwise, is not permitted ;
- (n) “Trout Waters” mean and include waters which harbor trout and have been stocked with trout fish species as declared under section 6 of the Act ; and
- (o) “Waters” mean and include all rivers, streams, lakes, sars, ponds, springs, reservoirs, canals, aquaria etc. belonging to the State.

## CHAPTER II

## Protection of Fish

3. *Prohibition against destruction of fish by explosive.*—No person shall use any dynamite or other explosive substance in any water with intent thereby to catch or destroy the fish therein.

4. *Prohibition against destruction of fish by poisoning of water.*—(1) No person shall put any poison, lime or noxious materials into any water with intent thereby to catch or destroy any fish therein.

(2) The Government may, by notification in the Government Gazette, suspend the operation of sub-section (1) in any specified area and may in the like manner modify or cancel any such notification.

5. *Power to make rules to protect fish.*—(1) The Government may, by notification in the Government Gazette, make rules for any water other than private waters for all or any of the following matters, namely:—

- (a) prohibiting or regulating,—
  - (i) the erection or use of fixed engine and/or fishing gear or any other operators used to catch or destroy fish ;
  - (ii) the construction of weirs, dam and bunds ; and
  - (iii) the release of any industrial waste, sewage or any other pollutant to the waters which may be harmful to the species of fish or the food of fish ;
- (b) regulating the dimension and the kinds of fish gears to be used and the mode of using them ;
- (c) prohibiting all fishing in the specified waters for a specific period ;
- (d) prohibiting the use of any gun, spear, arrow, any means of electrocution or the like in any water, with intent thereby to take or destroy any fish therein ;
- (e) prohibiting introduction of any kind of fish which may be harmful to the existing species of fish, without obtaining prior permission of the Government ;

- (f) to lease out public water resource for a specified period and to charge fees for such lease ;
- (g) regulating the standard of sale of fish and the fish seed ;
- (h) prohibiting the fishing and marketing of fish during the closed season.

*Explanation:*—For the purpose of this clause, ‘closed season’ means such period as the Government may, by notification in the Government Gazette, specify.

(2) In making rules under this section, the Government may provide for—

- (i) the seizure, forfeiture and removal of fishing gear erected or used in contravention of the rules ;
- (ii) the forfeiture of any fish taken by means of any such fish gear ; and
- (iii) the forfeiture of fish taken or sold during the period specified in clause (h) of sub-section (1).

(3) The Government may, by notification in the Government Gazette, apply such rules or any of them to any private water with the consent, in writing, of the owner thereof and all persons having for the time being any exclusive right of fishing therein.

### CHAPTER III

#### Regulation of Fishing in specified area

6. *Declaring waters as sanctuaries, trout waters, reserved waters and protected waters.*—(1) The Government may, by notification in the Government Gazette, from time to time, declare the localities situated within the areas, which shall, for the purposes of this Act be treated as sanctuaries, trout waters, reserved waters and protected waters.

(2) For declaring the waters under sub-section (1) as sanctuaries, trout waters, reserved waters and protected waters, the Government shall take into consideration the following factors, namely:—

- (a) the need to protect the interests of different sections of persons engaged in fishing, particularly those engaged in fishing using traditional fishing craft ;



- (b) the need to conserve fish and to regulate fishing on scientific basis ;
- (c) the need to maintain law and order in the area ;
- (d) any other area that may be prescribed.

7. *Absolute prohibition against fishing in sanctuaries.*— No person shall capture any fish by any mode of fishing in any area declared as sanctuary under section 6 of this Act.

8. *Powers to regulate, restrict or prohibit certain fishing activities and habitat therein within trout waters, reserved waters and protected waters.*—(1) The Government may, having regard to matters referred to in sub-section (2) of section 5, by notification in the Government Gazette, regulate, restrict or prohibit in any trout waters, reserved waters and protected waters and habitat therein,—

- (a) the catching of such species of fish and for such period, as may be specified, in the notification ;
- (b) the fishing by such class or classes of fishing vessels and for such period, as may be specified in the notification ;
- (c) the use of such fishing gears, as may be specified in the notification ;
- (d) the collection of biological specimen ;
- (e) the number of fishing vessels/small boats which may be used for fishing ; and
- (f) the extraction of bed material including sand, bajri and boulders.

9. *Prohibition of Fishing without Licence.*—No person shall after the commencement of this Act, carry on fishing in any trout waters, reserved waters and protected waters, without a licence granted under section 10 :

Provided that nothing in this section shall apply to different sections of persons who were engaged in fishing, particularly of those engaged in fishing by use of traditional fishing crafts immediately before the commencement of this Act, for such period, as may be specified by the Government by notification in the Government Gazette.

10. *Licences for fishing and sale thereof.*—(1) Any person desirous of fishing in an area where such fishing is permitted by the Government or desirous to sell fish in the market areas, may make an application to the Licencing Officer for the grant of licence in a specified area and for a specified period.

(2) Every application under sub-section (1) shall be in such form, contain such particulars and accompanied by such fees, as may be prescribed.

(3) The Licencing Officer may, after making such enquiry as he deems fit, either grant or refuse to grant the licence for fishing or sale of fish in the specified area mentioned in the licence.

(4) A licence under this section shall be granted in such form, on such term and conditions and on payment of such fees, as may be prescribed.

(5) A licence granted shall be valid for a period of one financial year, unless it is suspended or cancelled earlier and may be renewed from time to time for a period of one year on payment of such fees, as may be prescribed :

Provided that licence for trout fishing by angling procedure shall not be granted for more than one day.

11. *Cancellation, suspension and amendment of licence.*—(1) If the Licencing Officer is satisfied either on a reference made to him in this behalf or otherwise, that—

- (a) a licence granted under section 10 has been obtained by misrepresentation ;
- (b) the holder of a licence has, without reasonable cause, failed to comply with the condition subject to which the licence has been granted or has contravened any of the provisions of this Act or any order or rule made thereunder,

then, without prejudice to any other penalty to which the holder of the licence may be liable under this Act, the Licencing Officer may, after giving the holder of the licence a reasonable opportunity of showing cause, cancel or suspend the licence or forfeit the whole or any part of the fee or security, if any, furnished for the due performance of the conditions subject to which the licence has been granted.

(2) Subject to any rules that may be made in this behalf the Licencing Officer may also vary or amend a licence granted under section 10.

## CHAPTER IV

## Appeal and Revision

12. *Appeal*.— Any person aggrieved by the order of the Licencing Officer under section 10 refusing to grant a licence or under section 11 varying, suspending, cancelling or amending a licence granted may within thirty days from the date on which the order is communicated to him, prefer an appeal in such form and accompanied by such fee as may be prescribed by the Government to the appellate authority :

Provided that the appellate authority may entertain appeal after the expiry of period of thirty days, if the appellant satisfies the appellate authority that he had sufficient cause for not preferring an appeal within such period.

(2) On receipt of an appeal under sub-section (1), the appellate authority shall after giving the appellant a reasonable opportunity of being heard, pass such order in the appeal as he deems just and proper.

(3) In computing a period laid down in sub-section (1), the provisions of the Limitation Act, Svt. 1995 shall, so far as may be, apply.

13. *Revision*.—(1) Subject to the rules that may be made in this behalf, the Government may, on its own motion or on an application by an aggrieved person made to it in this behalf, call for and examine the record of any order passed by the appellate authority and pass such order thereafter as it deems fit and proper :

Provided that no record of any proceeding of the appellate authority shall be called for—

- (i) in a case where an appeal lies under section 12, but no appeal has been filed ; or
- (ii) in a case where an appeal has been made under section 12 and such appeal is pending.

(2) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard.

14. *Bar of Jurisdiction of Civil Courts*.— No civil court shall have jurisdiction to deal with or decide any question which the Licencing Officer,

the Appellate Authority or, as the case may be, the Government is empowered to deal with or decide by or under this Act and no injunction shall be granted by the Civil Court in respect of any action taken or to be taken in pursuance of any provision of this Act.

## CHAPTER V

### Offences and Penalties

15. *Offences and penalties.*—(1) Whosoever contravenes the provisions of section 3, section 4, and section 7 shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine not exceeding ten thousand rupees or with both.

(2) Whosoever contravenes the provisions of section 8 and section 9 shall, on conviction, be punished with imprisonment for a term which may be extended to three months or with fine which may extend to rupees five thousand or with both.

(3) When an offence under sub-section (1) and sub-section (2) is a continuing one, the offender shall be punished with a daily fine not exceeding rupees one thousand during the period of continuance of such offence.

16. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who at time the offence was committed, was incharge of, and was responsible to the company for conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this section has been committed by a company and it is provided that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation:*—For the purpose of this section—

- (a) “company” means a body corporate and includes a firm or other association of individuals ; and
- (b) “director” in relation to a firm means a partner in the firm.

17. *Cognizance of offences.*— Notwithstanding anything contained in the Code of Criminal Procedure, Svt. 1989, the offences punishable under this Act shall be cognizable.

18. *Compounding of offences.*—(1) Notwithstanding anything contained in the Code of Criminal Procedure, Samvat, 1989, the Government or any officer authorised by it in this behalf, may accept from any person who committed any offence punishable under this Act, a sum of money by way of compounding of the offence as prescribed by the Government from time to time.

(2) On payment of the sum of money in accordance with sub-section (1), any person in custody in connection with that offence shall be set at liberty and no proceedings shall be instituted or continued against such person in any criminal court.

(3) The acceptance of the sum of money for compounding an offence under sub-section (1) by the Government or an officer authorised in this behalf shall be deemed to be an acquittal within the meaning of section 403 of the Code of Criminal Procedure, Samvat, 1989.

## CHAPTER VI

### Miscellaneous

19. *Protection of action taken in good faith.*— No suit, prosecution or other legal proceeding shall lie against any person or the State Government, for anything which in good faith is done or intended to be done under this Act.

20. *Appointment of officers.*— The Government may appoint by notification officers as it may consider necessary to exercise the powers conferred on, and discharge the duties imposed upon them under this Act in such area as may be specified in the notification.

21. *Officers and employees to be public servants.*— All officers and employees shall, when acting or purporting to act in pursuance of the provisions

of this Act or any rule made thereunder, be deemed to be a public servant within the meaning of section 21 of the Ranbir Penal Code, Svt. 1989.

*22. Power to remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of the Act, the Government may, by order published in the Government Gazette, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty :

Provided that no order shall be made under this section after the expiry of two years from the date of commencement of the Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature.

*23. Rewards.*— Any person or persons giving such bonafide information as shall lead to a conviction under the Act shall be entitled to a reward which may at the discretion of the Judicial Magistrate trying the case extend to the full amount of the fine inflicted.

*24. Prohibition as to sale or barter of fish unlawfully taken.*—(1) The Government may by notification in the Government Gazette prohibit generally or for any specified areas, the offering or exposing for sale or barter of any fish the taking of which has been made unlawful by the provisions of this Act or any rule made thereunder.

(2) The burden of proving that any fish offered or exposed for sale or barter is not offered or exposed for sale or barter in contravention of this section shall be on the person offering or exposing for sale or barter such fish.

*25. Power to make rules for regulation of sale or barter of fish.*—(1) Notwithstanding anything contrary contained in this Act, the Government may make rules for grant of license for establishing Fishing Markets in any market areas as may be prescribed in this behalf.

(2) In making rules under this section, the Government may provide for—

- (i) declaring any market area as special fish market after consideration of factors conducive for sale or barter of fish ;
- (ii) the manner in which fish venders may sell or barter their fish directly to the consumers in such markets after paying such fee to such person establishing such fish market ; and

- (iii) establishment of separate market committees for effective implementation of provisions of this Act.

26. *Prohibition as to night fishing.*—Whoever though having been granted a licence under this Act, fishes or attempts to fish in any trout waters, reserved waters and protected waters between the hours of sunset and sunrise shall be liable to be punished with imprisonment for a term which may extend to three months or with fine which may extend to rupees five thousand or both.

27. *Power of arrest.*—(1) When any person who, in the presence of an officer duly appointed in this behalf under the provisions of this Act and the rules framed thereunder, commits or attempts to commit or has been accused of committing any offence under this Act, refuses, on demand by such officer to give his name and address, or gives his name or address which such officer has reason to believe to be false, he may be arrested by such officer. The officer making such arrest may seize all fishing implements and other articles intended to be used in connection with the commission of such offences in possession of the person arrested and shall prepare a list of such articles.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond, with or without sureties, to appear before a Judicial Magistrate, if so required, provided that if such person is not resident in the State territories, the bond shall be secured by a surety or sureties resident in State territories.

(3) When the true name and residence of such person is not ascertained within 24 hours from the time of arrest, or such person fails to execute the bond, or if so required, to furnish sufficient sureties, he shall forthwith be forwarded to the nearest Judicial Magistrate having jurisdiction.

28. *Power of search and seizure.*—Any officer authorised by the Government in this behalf having reasonable grounds to believe that any fishing activity is carried out in contravention to the provisions of this Act and any fish or fish product is in possession of a person in any place which has been obtained by violating the provisions of this Act, may enter such place with the object of carrying out a search for such product and its seizure :

Provided that such search shall not be conducted otherwise than in accordance with the provisions of the Code of Criminal Procedure.

29. *Power to make rules.*—(1) The Government may by notification in the Government Gazette, make rules for carrying out the objects of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Government may make rules for all or any of the following matters, namely:—

- (i) protection of fish under section 5 ;
- (ii) the form in which the application for grant of licence for fishing shall be made and the particulars and the fees under sub-section (2) of section 10 ;
- (iii) the form in which and the terms and conditions on which the licence for fishing may be granted under sub-section (4) of section 10 ;
- (iv) the rules subject to which the Licencing Officer may vary or amend the licence under sub-section (2) of section 11 ;
- (v) the form in which appeal is to be filed and the fee to be accompanied with the appeal under section 12 ;
- (vi) regulating of sale or barter of fish under section 25.
- (vii) any other matter which is to be or may be prescribed under this Act.

30. *Repeal and Savings.*—(1) The Jammu and Kashmir State Fisheries Act, 1960 is hereby repealed.

(2) Notwithstanding such repeal anything done or any action taken including any order, rule, notification, notice made or issued under the repealed law shall, in so far as it is not inconsistent with the provisions of the Act be deemed to have been done, taken or issued under the corresponding provisions of the Act.

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