

Changing Rights of Tribal Communities over Commons: Non Timber Forest Produce (NTFP) in Scheduled Areas of India

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Abstract

Historically, in the forest based tribal economy provisions for basic necessities like food, fuel, housing material etc. are made from the forest produce. The tribal economy has subsisted on the non-timber forest produce since time immemorial. However forest policies and legal provisions excluded tribal communities denied them the ownership and even access rights to NTFP in India.

The position of community rights changed after the introduction of Panchayats (Local Government) Extensions to Scheduled Areas Act (PESA) in 1996 and Forest Rights Act (FRA) in 2006. PESA enabled communities to manage their community resources including NTFP subject to the approval from regional governments (states) in terms for power and classification for what constitutes NTFP. However FRA claims that it is meant to correct historical injustice done to forest dwellers. It paved the way for claiming community rights over NTFP through administrative process. It also clearly defined as to what constitute NTFP and included specific items like bamboo to be considered as NTFP or also known as Minor Forest Produce.

These two acts are supposed to have ended the state monopoly over procurement and marketing of NTFP. However study conducted in five states of India Vis:-Andhra Pradesh, Gujarat, Madhya Pradesh, Maharashtra and Odisha of India, where NTFP generates substantial income to tribals, show that these states have not withdrawn their nationalized monopoly over NTFPs. It persists even now as they generate substantial income for the states. Some states given non consequential items to local governments or communities, they have not strengthened community rights over community resources through rules and administrative process. It has not made proper institutional arrangements for the community to assert their right to control and preserve these resources as envisaged by PESA and FRA.

Key words: Indigenous people, Non-Timber Forest Produce, Gram Sabha, Community Rights

Tribes and Forests: A brief history

Scheduled Tribes (STs), an indigenous minority of India, constitute 8.2% of the nation's total population (Census of India-2001). According to the 2001 Census, amongst the nine States with Schedule V Areas, to which the Panchayat Extension to Scheduled Areas Act (PESA) 1996 applies, the number of STs is the largest in Madhya Pradesh followed by Maharashtra, Orissa, Gujarat, Rajasthan and Jharkhand. In terms of economic pursuits, they are very much dependent on nature, especially forests and forest produce, to eke out their livelihoods. Historically, the economy of most tribes was subsistence agriculture or hunting and gathering. A large number of tribals in rural areas are still dependent on forests for their livelihood.

Long before the establishment and consolidation of British rule, the life of the tribe in the forest was without restrictions. They enjoyed rights of use of the forest produce for their own benefit. With the advent of the centralized government control over forests, barriers and regulations were imposed on them in the name of conservation, protection and scientific harvests. The transition from a period when the tribals enjoyed complete rights over forests to a stage of total regulations through scientific forest management has affected the forest based tribal economy in several phases.

Prior to 1865 there were no restrictions on the enjoyment of forests by the tribal people. British rulers saw Indian forests as an important resource to be exploited for the purposes of revenue and export. Forest department was organised in 1856. An Act was made to regulate exploitation, management and preservation of forests and the collection of forest produce by the tribal communities. Thus the British turned the social/ community ownership and management of forest into State ownership and management and isolated community from forest on which their life depends. Gradually the government tightened its hold over the forests by enacting stricter laws. Forests were classified into (a) reserved forests, (b) protected forests and (c) village forests, the last were meant for the local use by the communities. Several Acts were declared as forest offences, punishable under law. Gradual extension of government authorities over forest, thus, resulted in the curtailment of the rights of tribal communities over forests. The traditional rights of these communities were first termed as "rights and privileges" later on they became "concessions" to be changed at the sweet will of the government. All this has adversely affected tribal life and economy. Tribals, who once boasted of being kings of forests, now lament that they are only serfs and slaves in the forest.

A wholesome feature of the revised National Forest Policy of 1988 is that, in contrast to the 1894 and 1952 forest policies, it contains a specific provision for the integration of tribal interests with forest, inter alia, it observed:

"Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations, should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay

special attention, among others, to protection, regeneration of minor forest produce along with institutional arrangements for the marketing of the produce.”

The attention of the Government of India was drawn towards this important issue and after a series of meetings of the Forest Ministries of the States and the Central Board of Forestry, it was proposed that the right of ownership of minor forest produce should be conferred to tribals on account of their traditional dependence on such produce. In important development in this direction is the enactment of Provisions of the Panchayats (Extension of the Scheduled Areas) Act, 1996 (PESA 1996) which inter-alia empowers the Gram Panchayats and Sabhas in Scheduled Areas to preserve community resources and more specifically to provide for endowing Panchayats at the appropriate level with the ownership of minor forest produce.

Further, the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006, (known as Forest Rights Act (FRA), 2006) consolidated the right of the community over MFP under section 3,1.c. It secures forest rights of individual or community tenure or both to the forest dwelling Scheduled Tribes and other forest dwellers on all forest lands for the “**right of ownership, access to collect, use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries**” While PESA has not defined what constitute MFP, FRA defined MFP as “**all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, *tussar*, cocoons, honey, wax, *lac*, or *kendu* leaves, medicinal plants, and herbs, roots, tubers and the like**”.

Forest Rights Act 2006 makes the legal position of tribes over MFP more clear and binding on state governments through recognition of community rights. To understand the current position of community rights over MFP, one needs to analyse the policies and actions on MFP by central and state governments and views of committees constituted to look into the matter of tribes and their interface with MFPs.

Importance of Minor Forest Produce for Tribes

Minor Forest Produce (MFP) include bamboo, canes, fodder, leaves, gums, waxes, dyes, resins and many forms of food including nuts, wild fruits, honey, etc. The MFPs provide both subsistence and cash income for people who live in or near forests. They form a major portion of their food, fruits, medicines and other consumption items and also provide cash income through sale. Some MFPs, especially bamboo and leaf, have significant commercial importance. Nearly 75% MFPs are collected from the six States of Maharashtra, Madhya Pradesh, Chhattisgarh, Orissa, Jharkhand and Andhra Pradesh

MFPs comprise a huge variety of products in terms of usage, availability, value and quality of MFPs vary from being an intoxicant variety like *mahuwa* to being of medicinal importance like *nuxvomica* and *pungam* seed; from being food items like tamarind and *chironji* to being used as industrial raw material like gum, *myrobolans*, etc; from having general household usage like brooms to being used in jewelry making like *lac*.

For many tribal communities who practice agriculture, MFPs are source of cash income, especially during the slack seasons. The economic dependence of

tribal communities on MFPs can be understood from Table 1.

Table 1: Economically Important MFPs

Seasons	MFPs collected	Economy
January-March	Lac (resin), <i>mahuwa</i> , flower and tamarind	Over 75 per cent of tribal households in Orissa, Madhya Pradesh and Andhra Pradesh collect mahuwa flower and earn Rs.5000 a year. 3 million people are involved in lac production.
April-June	Tendu leaves, sal seeds and chironji	30 million forest dwellers depend on seeds, leaves and resins from sal trees; tendu leaf collection provides about 90 days of employment to 7.5 million people, a further 3 million people are employed in bidi processing
July-September	Chironji, mango, mahuwa fruits, silk cocoons and bamboo	10 million people depend on bamboo for livelihood; 1,26,000 households are involved in tussar silk cultivation only
October-November	Lac, kullu gum, resins used in incense sticks	3 lakh person days of employment from collection of gums.

Source: CSE 'Down To Earth' Report, November 1-15, 2010

Legal Status of Ownership Minor Forest Produce (MFP)

Definition and history of the definition

Any term to be operational in law and in practice, it needs precise definition. In fact, the definition of MFP is not settled. There is terminological confusion between MFP and Non-Timber Forest Produce (NTFP). The recent Forest Rights Act (FRA) came out with what is minor forest produce and included item like bamboo which has huge potential as income which makes it necessary to define who owns and has access to it. Different committees in the past defined MFP and state governments adopted their own definitions.

The Chadha committee ¹ which looked into the definition in its report on conferring ownership rights of MFPs on Panchayats and Gram Sabha felt that until and unless there is certainty as to what 'ownership' rights have been conferred, a mechanism for the development, marketing etc. of MFPs cannot be chalked out. The

¹ Report of the Expert Committee on Conferring Ownership Rights of MFPs on Panchayats/Gram Sabhas, Ministry of Environment and Forests, Government of India, New Delhi, January 1998

committee examined various definitions which have been given by different authorities/Organisations. Historically Minor Forest Produce was a collective name given to all the forest produce other than timber because during the British period when scientific forestry started in India, only timber was of major economic importance. Hence the loose definition which prevailed at that point of time categorised only timber as a major forest produce and all other forest products were clubbed together as minor forest produce. However with the passage of time these forest produce gained importance and graduated into economically major ones and at present it would be a misnomer to categorise them as Minor Forest Produce. It is worth noting that India has a wide array of forest products derived from over 3000 species of plants apart from a large number of animal and mineral products spread over 3 million sq. kms. Of the country.

The Indian Forest Act of 1927 with its amendments still continues to be the important legal framework for the administration and management of forests. Section 2 of the Act defines 'forest produce' as follows:-

- a) The following whether found in, or brought from, a forest or not, that is to say:
 - timber, charcoal, *caoutchouc*, catechu, wood oil, resin, natural varnish, bark, *lac*, flowers, mahua seeds, *and kuth* *ad myrobolans* and
- (b) The following when found in or brought from, a forest that is to say:-
 - (i) trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned, of trees,
 - (ii) Plants not being trees (including grass, creepers, weeds and moss) and all parts or produce of such plants;
 - (iii) wild animals and skin, tusks, horns, bones, silk cocoons, honey and wax and all other parts or produce of animals, and
 - (iv) Peat, surface soil, rock and minerals (including limestone, laterite, mineral oils and oil products of mines or quarries);

The Act also defines 'timber' as follows:

"Timber includes trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hollowed out for any purpose or not".

The Act also defines a 'tree' as follows"-

"Tree includes palms, bamboos, stumps, brush wood and canes."

Thus, in the Indian Forest Act and other Acts related to forestry, there is no mention of the term 'Minor Forest Produce'. One thing, however, is clear from the Indian Forest Act that timber includes bamboo and canes and therefore, bamboo and canes cannot come under the category of MFPs.

Many states have tried to define MFP in the context of existing regulations as well as PSEA, 1996 as discussed below:

Andhra Pradesh

In respect of minor forest produce, two regulations namely, Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971 and The Andhra Pradesh Scheduled Areas Minor Forest Produce (Regulation of Trade) Regulation, 1979 are applicable. In both these enactments, trade in minor forest produce is declared as a state monopoly, whether ownership rests with the Government or not. The term MFP however has not been defined. Only a listing of items of minor forest produce has

been done which is subject to change from time to time depending upon the importance of the species/item for trade or otherwise

Gujarat

In Gujarat the trade in minor forest produce has been nationalized and is regulated through the Gujarat Minor Forest Produce (Regulation of Trade Act). 1979. In this Act minor forest produce has been defined as under:-

- a) Timru leaves
- b) Mhowra flowers
- c) Mhowra fruits, seed and doli
- d) Gums
- e) Any other calls of forest products which the state or the Central Government may by notification in official Gazette declare as minor forest produce for the purposes of the Act.

The Gujarat Government issued ordinance No. 13 of 1997 amending the Gujarat Panchayat Act, 1993. Section 11 of the ordinance provides that “there shall be vested in the village Panchayat minor forest produce found shall be paid into and form part of the village fund. The ordinance has given a word of caution that nothing shall, be construed as vesting in the village Panchayat such as the land in the area of forests and plantation there on.

Maharashtra

In Maharashtra, 32 items of forest produce have been categorised as MFPs and have been assigned to the Tribal Development Corporation for monopoly purchase in the Scheduled Areas under the Maharashtra Tribal Economic Condition (Improvement Act). 1976, along with some agricultural produce. Consequent to the enactment of PSEA, 1996 the Maharashtra State government promulgated an Ordinance namely, the Maharashtra Minor Forest Produce (Scheduled Areas) Ordinance 1997 which classifies 33 forest products as Minor Forest Produce in Maharashtra Tribals Economic Condition (Improvement Act), 1976, White Musli and black Musli have been excluded and three new forest products namely Palash, Sitaphal and Cashew-nut have been added. The conspicuous exclusions from the list are Tendu and Apta. The Committee feels that *Patta* and *Apta* should not be excluded from the list of minor forest produce.

Madhya Pradesh

In Madhya Pradesh, the trade of minor forest produce is regulated by the Madhya Pradesh *Vanupaj (VyaparViniyaman) Adhiniyam*, 1969. Here also the term minor forest produce has not been defined in the Act. The MFPs have been classified into two categories namely nationalized and non-nationalised. Tendu Patta, Sal seed, Harran and gums come under the category of nationalised MFP and all others are in the category of non-nationalised MFPs

However, after the seventy sixth amendment of the Constitution and enactment of PSEA, 1996, the Government of Madhya Pradesh went into the entire gamut of MFPs and the term MFP has been defined as follows:

“MFP is forest produce which can be harvested on a non-destructive basis, i.e., the harvesting of produce which leads to destruction of trees, plants and vegetation will not be classified as Minor Forest Produce”

The committee felt that this definition of MFPs with suitable modifications, many serve the purpose of implementing the provisions of the PESA, 1996.

Haq committee which was constituted look into the ownership, price fixation, values addition and marketing of MFPs, on a perusal of the available records and attempts made by the states after the enactment of the PESA, 1996, suggested the following definition of the term 'Minor Forest Produce' :-

"Minor Forest Produce is the forest produce, other than timber, harvestable on a non-destructive basis". The term 'forest produce' and 'timber' will have the same meaning as in the Indian Forest Act, 1927.

It observed that MFP has been defined legally in the recently enacted FRA 2006. The Act defines 'Minor Forest Produce' as follows:

" minor forest produce includes all non-timber forest produce of plant origin including bamboo, brushwood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like." [Clause 2(1) of the Act]

It is important to note that FRA includes bamboo under the definition of MFP. However in practice, State Forest Departments do not include bamboo as MFP claiming that they treat those products as MFP which can be obtained from the forest trees without their felling. Bamboo is, therefore, not treated as MFP for ownership by the people, though bamboo is botanically considered grass (graminae family) and not a tree.

Tendu (kendu) is considered a 'nationalised' MFP in the sense that though its ownership is legally vested with the Gram Sabha, the right of procurement and disposal (trade) is exercised by the State Government agencies exclusively.

The Indian Forest Act 1927, does not define Minor Forest Produce. It mentions "other forest produce" in the Preamble to the Act, allowing the possible subjective inference that "other forest produce" could mean "Minor Forest Produce".

Ownership of MFP

Section 4 (m) (ii) of the PESA, 1996 provides that Panchayats at the appropriate level of the Gram Sabhas be endowed with the ownership of Minor Forest Produce. At this juncture apart from the term MFP, the word ownership is of utmost legal significance. Roman lawyers described the word 'Ownership' by the convenient term dominium as meaningful or perfect ownership. In legal parlance ownership consists of an aggregate or bundle of all possible rights which together make an absolutely unrestrained enjoyment of the commodity owned. In Roman law, different facets of ownership have been spelt out; i.e. the dominus or full owner has the use (usus), the whole of the products (fructus), the right entirely to consume (abusus), and the right of transferring or alienating at pleasure (vindicatio). Roman law further clarified that if a certain right to use some of the produce or to do something, or have something done, were so to speak, broken off and separated from, the total of rights which make up full ownership, such a separate right was termed as 'servitude' because the person who held the separate right over someone else's land or house or forest as if it were the property to serve his purpose. Since in the British legal system, there is no general term for this 'servitude'.

English law gave a peculiar name 'easement' to one class of such rights, leaving the others to be merely called 'profits a prendre' or rights of common'. These rights legally originate in a grant by the proprietor of the estate, but in the Indian

context the origin of such rights is not so traceable. In initial stages there were vast tracts of waste and jungle, so the people got into the habit of openly and, as of their own right, peaceably, grazing cattle, cutting bamboos, collecting dead leaves and so forth in the forest. This went on from year to year and from generation to generation till the practice is held under our law to have “ripened by prescription” into a right.

According to Chada Committee that it is also worthwhile to critically examine the limitations to which rights of users are subjected to. It is settled legal view that rights not being rights of ownership must be exercised with a limit and need to be regulated accordingly. As already stated, the rights cannot go to such an extent as to destroy the property or even render it gradually useless and valueless to the owner that is the Government in the instant case. A certain obligation should also lie on the users; the people cannot exercise their right in such a way as either to destroy the property (forests) or make it useless. This fundamental law of nature acquires additional urgency when the fragile ecosystem of the forest is owned by the government for public benefit, brings in revenue to the treasury, sends useful products to the market and furnished public works with needful material; while at the same time (in the case of forests) the property has such a place in the economy of nature, that its preservation is absolutely indispensable to the community at large. Furthermore, if the rights are enjoyed without any restraint, unless the forest area is very large in proportion to the demand for it, it is certain that the supply of material will gradually fall off, the ill-used trees will die, and the soil will dry up, till there are no more products to harvest. Restrictions of the rights then tend to maintain the estate which, after all, is necessary for the very continuous existence of the right itself.

From this discussion it clearly emerges that, in India, proprietary rights can accrue on the land and rights on forest produce would be in form of prescriptive rights only. It is natural that these prescriptive rights are to be exercised so that the property is not injured or destroyed. There can be no such thing as a right to do a wantonly destructive act or to a usage exercised in a manner destructive to the forest soil and growth. Legally, forest land being the property of the State Government, the trees standing on it, also belongs to the Government and the Minor Forest Produce of non woody biomass is proposed to be given in ownership rights to someone else. This forms a very peculiar and incongruous situation which has led to widespread confusion in the minds of administrators, lawyers, forest managers, social scientists and the public at large. It is undisputed that the harvesting of the natural resources must be sustainable and non-destructive. But when the question is what is injurious to a forest and what is not, it is necessarily professional opinion a competent as can be had- that must be taken into account including enlightened indigenous knowledge, and not the opinion of lay persons, or some self proclaimed experts in forestry.

The present Act PESA, 1996, is only an extension of the provisions of the Panchayat Acts to the Scheduled Areas and the Panchayat Acts, as such, is applicable within the territorial jurisdiction of the Gram Panchayats. According to Chadha committee, the right of ownership cannot be exercised by the Gram Panchayats on national highways, express ways, railway lines, forests, National parks, Sanctuaries, biosphere reserves and similar assets of National importance which do not come within the territorial jurisdiction of the Gram Panchayats. Almost all the Reserved and

Protected Forests, National parks, Sanctuaries and Biosphere Reserves are outside the village boundaries and hence outside the territorial jurisdiction of Gram Panchayats. So much so, in some states like West Bengal, forest villagers numbering around 45,000 and residing for almost 100 years in Reserved Forests do not have voting rights in Panchayat elections.

The suggestion of the Ministry of Rural Areas and Employment, Government of India to make each and every inch of forests as a part of one village or the other also supports our contention that government forests do not fall within the territorial jurisdiction of Panchayats, otherwise where was the need of such a suggestion/proposal, as the Act is legally enforceable in a court of law. The apportionment of such areas between the Gram Sabhas is not only difficult but may also have been enjoying usufructory between Gram Sabhas located away from these areas as they also have been enjoying usufructory benefits from such forests. The committee felt that implication of conferring of exclusive ownership rights of MFPs on any agency will also pose a serious threat to the very existence of wild life as the MFPs form an important ingredient of the food chain of the animal kingdom.

The committee also observed that in almost all the states, the people living in and around forests are already enjoying rights, whether recognized or not, in respect of collection of MFPs for their self use and grazing, mostly free of cost. Trade in a few items like Kendu leaves, Harra nuts, gums etc. have been nationalised and trading of these commodities is controlled by states through corporations, co-operative societies etc. Even in commodities the major portion (at least more than 5%) of the sale proceeds go back to the primary collectors in the form of wages for collection of the produce or as an incentive bonus. Thus, conferring of ownership rights on tribals (Gram Sabhas) is not of much relevance in the context of MFPs. What is important how to safeguard the interest of the tribals and other forest dwellers against exploitation by middlemen? That is why most of the states have necessary legislations for monopoly trade of MFPs. Therefore, the committee feels that in accordance with the spirit of the Act, the Gram Sabhas/Panchayat should be endowed with usufructory rights rather than ownership of MFPs available from all lands except National Parks, Wildlife Sanctuaries and Biosphere reserves

However, Haq committee² veered towards more legal ownership of MFP by the people and felt that the Panchayat (Extension to Scheduled Areas) Act (PESA), enacted in 1996, is an extremely progressive legislation. PESA extends Panchayats to the Schedule V Areas of nine States, namely Maharashtra, Madhya Pradesh, Chhattisgarh, Jharkhand, Orissa, Andhra Pradesh, Rajasthan, Gujarat and Himachal Pradesh with certain exceptions and modifications. Under PESA, Gram Sabhas are deemed to be 'competent' to safeguard and preserve the traditions and customs of their people, their cultural identity, community resources and their customary mode of dispute resolution. Gram Sabhas and Panchayats have:

a) Right to mandatory consultation in matters of land acquisition, resettlement and rehabilitation, and granting of prospecting licenses/ mining leases for minor minerals;

² Report of the Committee on Ownership, Price Fixation, Value Addition and Marketing of Minor Forest Produce, Ministry of Panchayati Raj, Government of India, New Delhi, May 2011

- b) Powers to prevent alienation of land and restore alienated land;
- c) Powers to regulate and restrict sale/ consumption of liquor;
- d) Powers to manage village markets;
- e) Control money lending to STs;
- f) Ownership of minor forest produce;
- g) Powers to control institutions and functionaries in all social sectors, local plans and resources.

With specific reference to Minor Forest Produce (MFPs), the Act directs the State Governments (restricted to Schedule V areas) in the following manner:

“While endowing Panchayats in the Scheduled Areas with such powers and authority as may be necessary to enable them to function as institutions of self-government, a State legislature shall ensure that the Panchayats at the appropriate level and the Gram Sabha are endowed specifically with the powers of ownership of Minor Forest Produce”.

The Scheduled Tribe and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 or Forest Rights Act, (FRA) 2006 has also given the tribal communities and other traditional forest dwellers, under Section 3(c), the “right of ownership, access to collect, use and dispose of minor forest produce, which has been traditionally collected within or outside village boundaries.” As per Section 5(d) of the same Act, the holders of any forest right, Gram Sabha and village level institutions are empowered to ensure that decision taken in the Gram Sabha to regulate access to community forest resources are complied with.

The Haq committee also dealt about the meaning of ownership of MFP and felt that the term ‘ownership’, used with respect to MFP in PESA, is itself to be interpreted. The legal definition of the term is as follows (Dhyani, 2002):

‘The owner of the property is one who has dominion over a thing which he may use as he pleases except as restricted by law or by agreement. Ownership denotes the relation between the person and the object, which forms the subject matter of his ownership. The subject matter of the ownership is both the corporeal as well as incorporeal property. Corporeal property may include material objects like house, land, car, etc. and incorporeal may include copyright, trademark, patent, goodwill, etc.

Ownership of property includes:

1. Right to possession and control and includes the right to protect and defend the possession against intrusion and trespass by others.
2. Right to enjoyment and use of the thing owned. The owner is free to use it, manage it and preserve it subject to the interest of public.
3. Owner also has the right of alienation. He can alienate or destroy the thing if he so desires. Right to alienation is an exclusive right of owner. A non-owner who is in the possession of the property cannot alienate the property.’

The above definition implies that people living in Schedule V Areas are free to collect and sell the produce as they please subject to existing laws.

However “Ownership of MFP” also has to be seen against certain pragmatic concerns. Firstly, there is a history of exploitation of tribals by traders. Since many of these areas have poor access, the conditions of ‘free market competition’ do not prevail, as only a very small number of traders reach the areas and consequently exercise monopoly. Secondly, the produce is usually collected in small quantities and is perishable. This means that gatherers cannot access bigger markets due to their inability to commute to these markets frequently. Finally, the gatherers of MFP are poor and often illiterate. They are therefore unable to bargain with the more powerful traders for their own interests.

Compliance of State Laws with PESA and FRA

Over time, a range of State enactments and regulations have been put in place to control the use and trade of MFP, which are at variance with the provisions of PESA and FRA. State Acts have not yet incorporated the definition of MFP as given in FRA. While PESA and FRA lay down the framework of ownership of MFP by the Gram Sabha, their features need to be reflected in relevant State legislations. At present, ownership of MFP by the Gram Sabha is reflected in varying degrees and ways in various State Acts. Table 2 sums up the status of ownership of MFP in the nine States with PESA areas.

Table 2: Ownership of MFP in State Acts

State	Panchayat Act	Subject Act
Andhra Pradesh	Ownership with GPs	State monopoly
Madhya Pradesh	No provision	Powers with State Government for tendu patta to appoint agents for collection and marketing
Maharashtra	Ownership with GPs for 33 MFPs, excluding national parks and sanctuaries	Monopoly with MSCTDC
Jharkhand	GPs and Panchayat Samiti to manage	Control of State Government over tendu
Orissa	GPs to perform functions as prescribed	MFP policy provides for management by Panchayats for 69 items, excluding bamboo and tendu
Gujarat	Ownership with GPs except for MFPs found in National Parks or Sanctuaries	Gujarat State Forest Development Corporation has control over nationalized MFPs.
Rajasthan	Gram Sabha has power to manage MFP	Powers with State Government.

Chhattisgarh	No provision	State Government can appoint agents for collection and marketing of tendu patta
Himachal Pradesh	Ownership with GPs	State Government has power to appoint agents.

Source: Report of the Committee on Ownership, Price Fixation, Value Addition and Marketing of Minor Forest Produce, Ministry of Panchayati Raj, Government of India, New Delhi, May 2011

Table 3 provides details regarding the status of ownership of MFP in State laws.
Table 3: Status of MFP in State Panchayati Raj (Local Government) Act and Subject Acts

State	Panchayati Raj Act	Subject Acts
Andhra Pradesh	According to Sec.242 I (1)(b) of the A.P.P.R.A. ownership of MFPs is with GPs.	As per the AP Minor Forest Produce (Regulation of Trade) Act, 1971 and the AP Scheduled Area Minor Forest Produce (Regulation of Trade) Regulation, 1979, trade in MFP is declared as State Monopoly .
Gujarat	Under Section 108(5)(a) of the Gujarat Panchayat Act, 1993 ownership of MFPs (including nationalized MFPs) is vested with Village Panchayats except MFPs found in the areas of national parks or sanctuaries.	As per the Gujarat Minor Forest Produce Trade Nationalization Act, 1979, work of nationalized MFPs has been entrusted to Gujarat State Forest Development Corporation. Vide Government Resolution No. GVP-2002-1051 Part I-G, dated-4.3.2006, proceeds of nationalized MFPs are being transferred to Gram Sabha.
Madhya Pradesh	No provision made in the Act.	Section 4 of the Tendu Patta Act, 1964 provides that the State Government can appoint agents for collection and marketing of Tendu Patta.

Maharashtra	<p>Section 54A(f) of the Bombay Village Panchayat Act, 1958 provides for issuing directions by GS to Panchayats with regard to regulation, management and trade of MFP vested in it.</p> <p>The GPs are provided with ownership rights on 33 MFPs occurring on government land excluding national parks and sanctuaries, according to Sec.4 of the Maharashtra Transfer of ownership of MFP in Scheduled Areas and the Maharashtra Minor Forest Produce (Regulation of Trade) (amendment) Act, 1997.</p>	<p>The Maharashtra Tribals Economic Condition (Improvement) Act, 1976 authorised TDC for monopoly purchase of all (33) items of minor forest produce.</p> <p>Recently withdrawn</p>
Orissa	<p>Section 44(2)(b) of the OGPA Act, 1964 provides that in the Scheduled areas, subject to the control and supervision of the Gram Sasan, the GPs shall exercise such powers and perform such functions as may be prescribed in respect of the ownership of MFP.</p>	<p>A policy on MFP, notified by the Forest & Environment Department vide their resolution no.5503 F&E dated-31.3.2000, transferred ownership of 68 MFP items to GPs except MFPs growing in Reserve Forest, Sanctuaries and National Parks. Three items, namely Kendu leaf, Sal seed and Bamboo, were not included as MFPs.</p> <p>However with notification no.7220, dated- 18.7.2006 issued by E&F Department, Sal seed got included in this list and as a result, GPs have ownership over 69 MFPs currently.</p>

Source: Report of the Committee on Ownership, Price Fixation, Value Addition and Marketing of Minor Forest Produce, Ministry of Panchayati Raj, Government of India, New Delhi, May 2011

It may be seen in table 3 that Chhattisgarh and Madhya Pradesh have made no provisions in State Panchayat or subject Acts regarding ownership of MFP by the Gram Sabha. In Andhra Pradesh, Maharashtra, Rajasthan and Himachal Pradesh, while the Panchayati Raj Acts entrust Gram Sabhas or Panchayats with ownership of MFP, the subject Acts specify State Government control. In some States, like Andhra Pradesh, Jharkhand and Maharashtra, State Acts have defined Panchayats rather than the Gram Sabhas as owners. In addition, some State subject laws bar access to MFPs in certain areas such as reserved forests, (as in the case of Maharashtra) whereas as per PESA, ownership is sought to be extended to all

areas where people have had traditional access.

There are also instances where legal rights have been given as per PESA, but withdrawn or changed subsequently through government orders. For example, in Maharashtra, people were given rights over 33 MFPs items notified as such by the State, but within a year these rights were transferred to the Maharashtra State Cooperative Tribal Development Corporation (MSCTDC) on the grounds that Gram Sabhas were unable to manage MFPs. It was decided that Rs. 5 per quintal would be paid to the Gram Panchayats by the MSCTDC for the sale of MFP.

The above suggests that organization of MFP collection and trade by the government should not be interpreted necessarily as lack of ownership, since such intervention may be necessary in the context of undeveloped markets that exist in the area. However, the exercise of monopoly rights by State agencies is an infringement of 'ownership' rights conferred as per PESA. An equally important concern here is the question of who gets the profits. If people are the owners of MFP, then the profits should go to them, and not State agencies

Ownership of MFP: Committees and their views

On marked achievement over the years, is the recognition of rights of tribes and forest dwellers on forests in which they live and depend on as reflected in the recommendations of various committees over the years. For instance if you look at the view of Chadha committee, it was apprehensive of strengthening relationship between forest and even with Panchayat and Gram Sabha. It felt that once Government loses the control over forests and Gram Sabhas and Panchayats no being mature enough, the endowment of ownership of MFPs may lead to over exploitation of forests. This will also not lead to better value realization for marketable MFPs, as the economy of scale plays an important role in marketing and Panchayats may not have the required level of expertise and funding. It may lead to exploitation of the poor by vested interests as was the case in the seventies before Nationalisation/regulation of the MFP trade.

Based on the above premises, the committee felt that conferring of unbridled rights of ownership of MFPs, may lead to for destructive exploitation, and hence is not advisable. The committee felt that the Parliament in its wisdom, while making the enactment, also never had the intention of conferring such unbridled rights. Their intention was, obviously that in order to improve the economic condition of poor tribal forest dwellers, they should enjoy full usufruct rights. The net revenue, hence, should be their property, distribute judiciously in accordance with their contribution in collecting the minor forest produce.

It appears that the purpose of this enactment is social security and economic upliftment of tribals. This purpose can be conveniently served by giving usufructs and revenue, rather than unbridled ownership over MFPs available from Government forests. Keeping that in mind, the Committee recommended that Gram Sabhas not only in Schedule V areas, but also all over the country be give usufructory rights over MFPs available from all government forests except the Protected Areas (i.e. National Parks, Sanctuaries, Biosphere reserves) and the States should continue to regulate the trade of important MFPs through the Corporation, Federations, local enterprises etc. Out of the net surplus revenue available from all the MFPs at least 25% should be

transferred back to the Gram Sabhas through the agency responsible for MFP trade for the development of MFPs. Another 25% should be utilized for community development through the aforementioned agency and the balance 50% should be given to individual collectors in proportion to the value of the produce collected by them, It is reiterated that in view of the fact that women contribute a larger share of labour in collection of MFPs, they should benefit in the same proportion from the net surplus. The Collection of MFPs however, should be in accordance with the working plan/management plan approved by competent authority and utilization of net revenue should be available for community development in conformity with the village plan/micro plan prepared and approved in consultation with the Gram Sabhas with due emphasis on gender issues. The agencies involved in trade of nationalised MFPs should also take up research and development in the field of conservation, collection, storage, processing, marketing etc. of non-nationalised items and depending upon their viability they should take up trading of newer items of MFPs. Thus, it can be surmised from the above views of the committee, that there is an involvement of community in MFP in terms of “giving usufructs and revenue, rather than unbridled ownership over MFPs available from Government forests”.

A K Sharma Committee ³ did not deal directly with issue of conferring rights of MFP on Gram Sabha and Gram Panchayat. It was intended to assure fair deal to tribals in the process of marketing of MFP. It considered that the “Haat Bazaars” as being integral to Tribal and traditions and therefore, it considers it imperative for PSEs and the Governments to contribute to the infrastructure development of such “Haat Bazaars” to conform to Tribal needs while ensuring elimination of exploitative practices. “Barter” system here continues to be a reality like some much loathed traditions that would go away only with time and not due to Government interventions. For this, it is recommended that steps be initiated also to develop “Touch-Screen” computer technologies for such Haats with a “Barter-System” based software that is tribal user-friendly and help eliminate exploitation.

The committee recommended that the three-tier society based Federal system of M.P. and Chhattisgarh states appeared to be the best democratic and decentralized system that comes closest to the soul and spirit of the PESA. It has evolved over decades and has stood well the test of times. The societies under these Federations have a say in the appointment of the “Phad Munshis”. Phad Munshis play the cutting edge role in major MFP related transactions at the grass roots level. Whereas in Gujarat, this position is by “tradition” held and passed down the generation, it is recommended that various states may consider adoption of this system as an option. The Committee also felt that due to restrictions on tobacco related products, the trade in particularly the Tendu/Kendu leaf is on the decline and may ultimately be rendered not as remunerative. Other sources of income generation to compensate for this likely loss need to be explored and encouraged by Panchayats and connected departments.

The Committee recognized that the Forest, the Tribal and the Panchayati Raj

³ Report of the officers on Issues related to Minor Forest Produce in PESA States, Ministry of Panchayati Raj, Government of India, February 2007

Departments are connected with Tribal affairs very intimately, especially the last one after the enactment of PESA. Therefore it is suggested that all Government committees and bodies connected with Tribal affairs must have adequate representation of these departments, if necessary through increasing the strength to accommodate all concerned. The agency dealing with MFP trade in the states must be consulted in all MFP related decisions. Further it felt that there is a very urgent need to create awareness about the provisions, aims and objectives of PESA amongst Government functionaries. For this purpose, Central and State Governments must launch training programs and this subject should be included in the curricula of compulsory vertical training courses. Even after a decade of enactment of PESA, rules under it have not been framed. This needs to be done without any further delay. Implementation should be within six months. Follow up and monitoring on implementation should be done directly by the Secretary Level authority in the concerned ministry in the Government of India.

The Standing Committee on Social Justice and Empowerment noted that Minor Forest Produce is central to the existence of tribal communities. The Committee observed that MFPs are playing a pivotal role in the lives of the forest dependant tribal families but express its serious concern that collection of immature plant parts and unscientific exploitation of MFP resources would ultimately lead to the destruction of the source of livelihood of these tribal families. The Committee is of the view that the existing potential of Minor Forest Produce should be exploited economically and scientifically so that they remain as a sustainable and renewable source of income for the tribal families.

The Committee noted with concern that most of the States are enjoying monopoly rights for the collection of MFPs. The States have devised varying procedures of procurement through different agencies at the grass-roots level, including Large Area Multi-purpose Projects and other primary level cooperative societies. The Committee are, however, of the firm view that the poor tribal collectors of MFPs will be optimally benefited if they are allowed to collect and sell MFPs through Cooperatives or Self Help Groups formed by them. The Committee, therefore, urges the Ministry to direct the States and their Corporations to assist the tribals in forming Cooperatives or Self Help Groups while providing the infrastructural support and acting as a facilitator for the marketing of the MFPs.

However the committee urged to facilitate the ownership issue through passing of “Scheduled Tribes (Recognition of Forest Rights) Bill, 2005”, It felt dismayed to note that the forest-dwelling Scheduled Tribes, who have been residing there for generations and are dependent on MFP for their livelihood are still not enjoying ownership of their MFP mostly due to ambiguity in the definition of the term ‘Minor Forest Produce’. The Ministry have informed that they are in the process of finalizing a draft “Scheduled Tribes (Recognition of Forest Rights) Bill, 2005” to recognize and confer ownership rights to the forest dwelling Scheduled Tribes. The Committee urges the Ministry to clearly define the term “Minor Forest Produce” and bring within the ambit of the term ‘MFP’ all the traditional minor forest produce in the Bill.

The Committee further desired that in order to recognize and vest the forest rights and occupation of forest lands to the forest-dwelling Scheduled Tribes, the

Ministry should finalize the “Scheduled Tribes (Recognition of Forest Rights) Bill, 2005”, in consultation with the Ministry of Environment and Forests and concerned Departments/States and bring it to the Parliament at the earliest.

The Committee further noted that for finalizing a Model Bill for conferring ownership rights in respect of MFP on forest dependent communities, the Ministry of Environment and Forests have sought the comments of concerned Ministries, including the Ministry of Tribal Affairs in this regard. Keeping in view the fact that the Ministry of Tribal Affairs is the nodal Ministry concerned with the welfare and development of the Scheduled Tribes, majority of whom live in forests and depend on MFP for their sustenance, the Committee urge the Ministry to lend their expertise to the Ministry of Environment and Forests and actively involve themselves in the drafting of the Bill. The Committee noted that though the Panchayats (Extension to Scheduled Areas) Act, 1996 gives the rights of ownership of MFP to the respective Panchayats/Gram Sabhas and is applicable to all the Scheduled areas, yet it has not been implemented by the States in the right spirit. The Committee, therefore, urge the Ministry to pursue the States to amend their legislations in accordance with the PESA Act, 1996 so that ownership rights of MFPs is conferred on the Panchayats/Gram Sabhas and the poor Scheduled Tribe families living in the forests are not deprived of their source of livelihood.

The Haq Committee constituted to deal with the minimum support price for MFP is of the view that the states to comply with provisions of PESA and FRA. The Committee has arrived at its recommendations keeping in view the overall goals of ensuring people’s rights over MFP as provided in PESA and FRA, and the need to address the issue of sustainable livelihoods. It emphasized that profit and commercial exploitation of MFP are not the core issues. The key concern is instead, protecting and enhancing the livelihoods of people who depend on MFP, as these are among the poorest in the country. Further, though programmes such as MGNREGA offer new livelihood opportunities, income from MFP remains especially important for women and the less able bodied.

In the long term, the bargaining position of gatherers in the market would need to be strengthened, so that they can get better prices and ensure sustainability of MFP. This would require increasing control of the Gram Sabhas, as well as organization and capacity building of gatherers. In spite of the legal provisions in PESA and FRA, gatherers’ access to MFP is restricted in many ways. Access is restricted most to bamboo, which is harvested under the control of the Forest Departments, with JFMCs involved in a few States. Access to bamboo may need to be regulated, but it should be regulated by the Gram Sabha, with advice from the Forest Department. Some States also ban access to MFP in reserved and protected forests, which is not as per law. Access to MFP in these areas also needs to be ensured. Various types of the inter-State movement restrictions, such as delay in issuing transit passes or dishonoring Panchayati Raj certificates, etc. Should be re-examined and rationalized, in order to streamline and smoothen the movement of MFP from one State to another.

According to the committee that Gram Sabhas and Panchayats can play an important oversight role in ensuring that MSP is in fact paid and practices for

trading in MFP are fair. Laws as well as capacity building exercises should reflect this. Accountability to Gram Sabhas and participative decision-making has to be built into the mandate and structure of all Corporations/Federations trading in MFP. All agencies that undertake trade in MFP have to be accountable to the Gram Sabha, which would include providing full information about the activities of the agency, placing accounts in Gram Sabha meetings, social audit etc. It should be mandatory for the local representatives of these agencies to attend Gram Sabha meetings to help sort out problems that MFP gatherers may be facing. The District Panchayat can become a focal point for monitoring of the activities of Corporations/Federations, including redressal of grievances.

Like other committees in the past, it supported the organization of gatherers into SHGs, producer companies, cooperatives or other collectives can be a key initiative to strengthen their position for participation in the market. These collectives can be linked to more lucrative markets and play an important role in cutting out the long chain of middlemen and ensuring better prices to the gatherers. In addition, they can take up regeneration and value addition activities. They would also be able to access finance from banks.

The Committee felt that there should be amendments in State Laws and IFA. State laws, as well as the Indian Forest Act 1927 need to clearly reflect the ownership of MFP by the Gram Sabha. Further, the definition of MFP as per FRA which includes bamboo, needs to be incorporated in all laws. The FRA is a substantive statute, which vests 'forest rights' in communities and individuals as existing on a cutoff date. Further, it pointed out that forest rights are listed in Chapter II and include: "right of ownership, access to collect, use, and dispose of minor forest produce, which has been traditionally collected within or outside village boundaries (3 (c)). The IFA provides a regime of acquisition, settlement and prohibition. Under the Act, MFP is not defined. However, it provides an activity-based definition of timber and a broad definition of tree, which includes bamboo. Section 26, lists acts, which are prohibited in the forests, which have been acquired and settled. These include "felling any tree or cutting or dragging any timber."

In addition, State Governments have enacted legislations to define minor forest produce in their territories. The FRA being a Union statute under List III, Entry 17 A, will as a matter of course, override any State statute, unless the State legislates a new statute, with the permission of the President. FRA section 13 ("the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.") must be read subject to the Constitutional regime and Article 252 must be harmoniously interpreted. It would be a wrong interpretation to take the view that the rights vested by the Parliament (under FRA) were intended to cease to exist from the very moment they were passed, or were to be subject to state forest regimes. It is therefore for the Union to make clear:

- a. Minor Forest Produce is a ownership right vested by Parliament under FRA and all state forest authorities are obliged to respect this provision;
- b. The prohibitory provision of IFA must be read harmoniously so as not to render the Parliamentary purpose of FRA nugatory.
- c. It is within Union Government's power to secure and give effect to MFPs provision

and its inclusion of bamboo under rule making power (section 14).

Ownership of MFP in practice

Thus over a period, there is recognition that the ownership of rights of MFP on GS and GP. However, in practice, the situation needs lot of attention in terms of changes in state laws and framing rules accordingly. The Haq committee reflected it in its report the very situation by stating that the ownership by the Gram Sabha of MFP as per PESA & FRA is not reflected either legally or in practice. Various departments as well as Corporations and Federations trading in MFPs lack accountability to the people. In spite of the provisions of PESA and FRA, Corporations and Federations exercise monopoly and none of the government Corporations/Federations had ever attempted to explain their activities to the people and obtain their opinion. This makes, the committee felt, the whole process opaque and encourages unfair practices. In addition, the principle of returning profits to gatherers is followed only partly. Profits are not returned to gatherer for all produce, and may be given to Panchayats instead of the gatherers. In the case of bamboo, the problem is especially acute. Though bamboo is defined as MFP as per FRA, it is simply not treated as such. People are not allowed to harvest it for their own use, and though in some areas JFMCs share in the profits, this practice is not universal.

Only few states like Orissa and Maharashtra in practice moved towards conferring rights of MFP on GS and GP. Orissa drew a policy document, as noted earlier, in 2000 to confer more than 60 items of MFP on GP. Still bamboo and sal under the control of forest department like other study states. Further, the arrangement created for implementing this policy is not strong. In this arrangement, the contractors to have register with the Panchayats and price fixation are to be done by committee headed by an official BDO. The control is not passed on to Gram Sabha. There is no arrangement of Tribal Development Cooperative Corporation with any SHGs or any form of institutions at local level which will facilitate the tribes to get better deal for MFP. It is now left entirely to private traders to exploit the tribals.

In case of Maharashtra, until recently many MFPs are under the monopoly procurement of Maharashtra State Cooperative Tribal Development Corporation (MSTDCC). As per the Maharashtra Transfers of ownership of Minor Forest Produce in the scheduled Areas and the Maharashtra Minor Forest Produce (Regulation of Trade) Amendment Ordinance 1997, the Ownership of Minor Forest Produce is now transferred to Gram Panchayats in Scheduled Areas, this Corporation has to take permission for Procurement & Sale of MFP in Scheduled Areas every season from Rural Development Department, Mumbai. As per Government Resolution dated 25th September, 2008, Rural Development department permitted this Corporation to Procure MFP items up to dated 30/9/2009. Recently, RD department of GoM has issued order for not extending this arrangement.

The Government of Madhya Pradesh established *Laghu Vanopaj* (Trade and Development) Cooperative Federation Limited in 1984 with the following objectives:

- a) To engage in collection and trade of nationalized minor forest produce,

- b) To transfer ownership of minor forest produce to collectors,
 - c) To provide incentives for collection, processing and trade of non-nationalized minor forest produce,
 - d) To provide group insurance facilities to collectors of leaves,
 - e) To provide incentives of price support for bamboo,
 - f) To provide incentives for production of Lac,
 - g) To organize *Ayurvedic* dispensaries, and
 - h) To provide incentives through increase in the wage rate to the collectors.
- The federation plays the following role in the collection,

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- Federation organized 1066 primary cooperative societies in different districts of the state especially for collection of tendu leaves, sal seed and Kullu gum,
 - On the basis of minimum support price of tendu leaves, sal seed and Kullu gum, Federation paid price to the collectors within a week's times.
 - Distributed profits accrued to the federation among the collectors and undertook infrastructure development programmes for their benefits. Specifically for the collection year 2010 Rs. 82.37 crore was distributed as a bonus to the collectors.
 - Organized group insurance policy for 32 lakh collectors,
 - For promotion of lac production, seed was distributed for 5 lakh trees,
 - On the demand of procurement clerks in the districts following rates of commission were fixed

These efforts appear to be better arrangement for gatherers out MFP but still it has to go further in conferring rights of MFP over GS and GP as it has control over institutions which it has created.

In AP, *Girijan* Cooperative Corporation(GCC) has monopoly rights for 25 Non Timber Forest Produce items under lease agreement with AP Forest to the 5,00,000 tribal families depending on collection of NTFP / AP in the state. During this current year GCC has an action plan to pump an amount of Rs. 26 Crores to the tribals for this activity. GCC has facilitated the tribal gatherers to sell their produce at purchases points of GCC in their weekly *haats (shandies)* as well as at DR Depots of GCC throughout the year.

After amendment in Gujarat Panchayat Act (No.5 of) 1998 the ownership of M.F.P. s has been transferred to the Gram Panchayat / Gram Sabha. *Jilla* Panchayat carried out M.F.P. activities from 2000 to 2002 season. However, they could not achieve much success. Consequently, the State Government reverted this activity to the Corporation on Panchayat's behalf on "No Profit-No Loss" basis since 2003 season.

Thus, achievements can be discerned over the years, as legally, there is recognition of rights of MFP over GS and GP at least at central level. Many state laws are to be amended in consonance with PESA and FRA. In addition, the appropriate rules have to framed in accordance with law and to tune the administration for

implementation of these rules and for working in consonance with spirit of PESA and FRA
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