



My dear Kritavi -

26<sup>th</sup> April 2011

My attention was drawn to a letter by the Principal Chief Conservator of Forests, Nagpur, Maharashtra dated 24<sup>th</sup> April 2011 to the Additional Chief Secretary (Forests), Revenue and Forests Department, Maharashtra. I have gone over the letter and feel that the correct legal and administrative position with regards to the changed regime of bamboo needs to be clarified. The key issues in the letter are as follows:

**[I] Whether access to and collection of bamboo in the reserve forest amounts to a forest offence under the Indian Forest Year 1927**

Paragraph 2 of the letter states:

*"The act of entering into and cutting down bamboo in the reserve forest by the villagers of Lekha-Menda village without permission in writing by the forest officer is a forest offence under section 26(1)(d) and (f) of the IFA. This is a correct legal position."*

It must be pointed out that the Forest Rights Act 2006 (FRA) is a substantive statute, which vests 'forest rights' in communities and individuals as existing on a cut off date. 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** [See Section 3(c), Emphasis added]".

The FRA defines minor forest produce to include "all non-timber forest produce of plant origin **including bamboo**, brush wood, stumps, cane, tussar, cacoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like [Section 2 (i), Emphasis added]

The FRA also vests the "right to protect, regenerate or conserve or **manage any Community Forest Resources**, which they have been traditionally protecting and conserving for sustainable use."

In this context, where firstly, bamboo is a categorized as a minor forest produce and in addition, the right to community forest resources has been established and recognized, **there is absolutely no grounds to argue that this act continues to be an offence within the ambit of the Indian Forest Act 1927.**

In other words, Lekha-Menda and other similarly placed villages have been clearly and categorically vested with the right to access, collect and dispose of minor forest produce and to also protect, regenerate and manage community forest resource under the Forest Rights Act 2006.

## **[II] Whether a legislative amendment is required for the handing over of Transit Pass Books to the Gram Panchayat**

Paragraph 9 of the letter states:

*“As regards handing over of Transit Pass Books to Village Panchayat is concerned, it is submitted that this office has already submitted a proposal to the Government, including bamboo in the schedule appended to chapter II of the Maharashtra Transfer of ownership of Minor Forest Produce in the Scheduled Areas and the Minor Forest Produce (Regulation and Trade) (Amendment) Act 1997. As soon as the said amendment is carried out, the ownership of bamboo as a minor forest produce shall vest in the concerned village Panchayat under section 4 of the Act, and accordingly TP book may be issued to the Gram Panchayat for the transport of bamboo as per the provisions of the Bombay Forest Rules 1942.”*

The Forest Rights Act being a Union statute under List III of the Constitution of India will as a matter of course override any state statute, unless the state legislates a new statute, with the permission of the President. Furthermore section 13 of the Forest Rights Act states that:

*“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.”*

This must be read subject to the Constitutional regime and Article 254 of the Constitution of India which provides that **whenever there is an inconsistency between the laws of the Union and the laws of the States, the Central law will prevail.**

It would be a wholly incorrect interpretation to take the view that the rights vested by the Parliament (under the Forest Rights Act) were intended to cease to exist from the very moment they were passed, or were to be subject to state forest laws. Unfortunately this seems to be the intention that the letter communicates.

Therefore to say that while the Forest Rights Act vests certain rights in the forest dwellers and that these rights need to be ‘activated’ through the medium of state drafted rules is an untenable and unacceptable proposition.

## **[III] Conclusion**

To summarise the above position:

- a. Minor Forest Produce is a ownership right vested by Parliament under Forest Rights Act and all state forest authorities are obliged to respect this provision;
- b. The prohibitory provisions of the Indian Forest Act must be read harmoniously so as not to render the Parliamentary purpose of Forest Rights Act ineffective.
- c. It is within the Union government’s power to secure and give effect to Minor Forest Produce provision and its inclusion of bamboo under rule making power (section 14).

With regards to the definition of bamboo as timber in the Indian Forest Act, it is also important to note that any question of empowerment over rights and powers does not arise from definition clauses alone. All interpretation and definition clauses have to be read in the context of the statutes. An examination of the Forest Rights Act and the Indian Forests Act makes it clear that:

- a. The Forest Rights Act uses the definitions clauses to empower rights in individuals and communities over minor forest produce and bamboo;
- b. The definition clauses of the Indian Forest Act are broad and could be used in different context differently. Definition clause 2(6) is concerned with activity related to timber, which is dealt with separately as a category from bamboo. In 2 (7), the definition of tree is wide and includes bamboo as one of the many species and this definition is in addition to timber, which is separately defined. **Clearly, this definition cannot be used to override a primary right vested in individuals and communities by the Parliament.**

With the above legal clarification, it is obvious that the right to bamboo as a minor forest produce has been recognized.

While the state amendments are commendable and welcome, they are not prerequisites for the discharge of the rights already enjoyed by forest dwellers under the Forest Rights Act. Furthermore, in light of the changed regime, it is clear that the Transit Pass Book can also be handed over to the Gram Sabha, so that the rights recognized are meaningfully realized.

With regards,

*Jairam personal*

Shri Prithviraj Chavan  
Chief Minister  
Government of Maharashtra

Yours sincerely

*Jairam Ramesh*  
(Jairam Ramesh)