

Documenting state level restrictions in top 10 bamboo growing states in India

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ABSTRACT

'A law defining Bamboo as tree and not grass has impacted the livelihood of millions of people in India and at the same time stunted the growth of Bamboo industry in the country.'

As 'Forest' is under the concurrent list, it is subjected to both state and central laws. This paper gives a brief overview of the central laws on bamboo and an extensive study of the state laws of top ten bamboo growing states. The paper also highlights losses to the exchequer in their revenue collection, due to near zero growth of bamboo industry, by drawing parallels from the revenue collection of its close substitute: timber. Lastly, the paper discusses the immense potential of bamboo as an export commodity with its growing world demand especially in US and Europe.

INTRODUCTION

India has maximum area under bamboo in the world approx. 11,361 km² and China has the second largest approx. 5444km² (FAO, 2005). Most of the bamboo traded internationally is exported by China. It accounts for 83.16% of the world trade (Muller I. and C. Rebelo). The contradictions in Indian law regarding the status of bamboo as a tree or a grass and the lack of recognition of community rights on bamboo by the forest departments has disrupted the growth of bamboo industry. With such a large source of bamboo, India is not even able to meet its domestic demand, so emerging, as a major exporter of the product seems unachievable right now. The domestic demand mainly arises from use of bamboo in handicrafts industry, for construction purposes, paper and pulp industry, bamboo flooring, furniture etc. There are huge supply side constraints mainly due to the presence of various convoluted forest laws in the country.

Bamboo is classified as a "tree" under the Indian Forest Act, 1927 (IFA). Under the IFA, cutting or removing trees (including bamboo) from a government designated "reserved" forest is a criminal offense (Harvard Law and Development Society, 2012). However, under the Forest Rights Act, 2006, (FRA)¹ bamboo is designated as non timber minor forest produce² (MFP) thus consolidating forest dwellers' ownership right (nistar)³ to collect, process, store and transport

¹ Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

² Minor Forest Produce includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.

³ Another name for community rights

bamboo. This act gives gram sabha the authority to issue transit passes and prepare conservation and management plans for forest resources. It mandates that the administration cannot arbitrarily reject forest rights claims (Mahapatra R. and K. Sambhav)⁴. But the FRA would provide a limited scope for the development of bamboo industry. It appears that unless FRA provision explicitly states an exception to a previous law, it may be subject to being read together with that earlier law's provisions (Harvard Law and Development Society 2012). Thus, this definition of bamboo as MFP under FRA is in direct conflict with IFA's definition of bamboo as a tree. Furthermore, the Supreme Court in *T.N. Godavaram Thirumulkpad vs. Union of India (1977)* ordered a complete ban on the movement of cut trees and timber from any of the seven north eastern states to any other state of the country either by road, rail or water transport. The cultivation, harvest and transport of bamboo are therefore constrained by the said judgement when read with the IFA (K. Salam).

Case studies in Maharashtra and Andhra Pradesh have highlighted that with recognition of community rights on bamboo the Panchayats in some villages have been able to earn an annual income of as high as Rs. 1 crore. However, in some states like Nagaland a positive step towards removing all transit restrictions on bamboo have little impact because in other surrounding states the restrictions are well in place. The differences in laws in bamboo from one state to another adversely affect the industry.

Also due to this stunted growth of the industry, the Government of India is losing out on its tax collections that otherwise it would have amassed if the industry were booming. Bamboo is a near perfect substitute of timber, environmentally viable and ecologically sound. In the future its demand will increase manifold and India can benefit a lot by tapping into the market for bamboo, provided it makes positive changes in its laws.

RESEARCH METHODOLOGY

This paper is based on the use of secondary data including extensive study of previous research papers on the bamboo industry and understanding the problems faced by it in India.

⁴ For the extent of implementation of the Act across various states, refer to the table in appendix 1

It includes two case studies: one on Khammam village in Andhra Pradesh and other on Lekha Mendha village in Maharashtra where, by transferring of the passbooks of bamboo from forest department to the Gram Panchayats and hence recognizing the community rights of villagers, the tribal communities in the villages have benefitted a lot and it has made a positive impact on their livelihood.

The paper also includes study of the tax structure in timber industry⁵ in India and analyses that if the bamboo industry were booming then how it could have contributed to the revenue collections of the country.

The research also involves the study of forest acts and various other related legislations of top 10 bamboo growing states in India to develop a matrix of the state laws on bamboo. The various parameters included in the matrix are laws regarding cultivation of bamboo on private land, harvest, trade and transit of bamboo in the states. The matrix is limited to laws governing raw bamboo and not the processed bamboo products.

WORLD DEMAND FOR BAMBOO

About 2.5 billion people in the world depend economically on bamboo and the international trade in bamboo amounts to between \$5 and \$10 billion (FAO, 2005). Most of the bamboo in the world is exported by China. In 2002, China exported \$314 million worth of bamboo and rattan products. The main importers of Chinese bamboo products are the USA (32%), Japan (22.5%), Hong Kong (15.1%) and European countries (Xuhe, 2003). The US is the largest Western consumer of bamboo products with annual imports of \$300 million, almost entirely from China. Most of the bamboo comes in form of flooring and baskets (Muller I. and C. Rebelo).

⁵ As it is a close substitute of bamboo

Bamboo is an environmentally sustainable commodity and has proved to be a near perfect substitute for timber. There has been a growth in the world demand for environmentally friendly green products and thus, the world bamboo market is expected to double by 2015 (Xuhe, 2003). India has the opportunity to tap into this market and become a major exporter of the product in global market.

Market size in the USA of various bamboo product categories based on 2004 imports

Bamboo uses (Category)	Market share(%)
Handicrafts	0.9
Kitchen Articles	9.1
Basketry	27.0
Decoration	11.9
Garden	10.3
Raw Material	6.0
Furniture	7.7
Flooring	27.0
Total	100

Source: Adapted from CORPEI, 2005

Products	2002
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Bamboo shoots, fresh or chilled	4,957
Bamboo shoots, in brine	7,346
Bamboo shoots, dried	11,359
Bamboo used primarily for plaiting	25,665
Bolied bamboo shoots in airtight containers	116,989
Mats, matting and screens made of bamboo	138,199
Basketwork, wickerwork and other articles of bamboo	138,199
Seats of cane, osier, bamboo and similar materials	21,157
Other furniture of cane, osier, bamboo and similar materials	33,627

Export value in China 2002 (1000 US \$)

The table above shows the uses of bamboo in the world and the world demand of each use as well. The adjacent table outlines the export value of China for its different bamboo products. Both the tables depict variety of uses of bamboo in the world and the demand for the same. The export value for different products of bamboo in China highlights the potential that bamboo products hold for India and how it can positively impact the Indian economy. If right initiatives are taken, this industry can contribute to our GDP significantly.

Source: Customs General Administration of China, 2003

IKEA:

Bamboo flooring is considered to have the highest potential, with major retail chains like IKEA and Home Depot increasingly interested in this product (Bamboo worldwide). In India, there has been talks about IKEA entering the country's market through FDI⁶ in single brand retail. In the policy on FDI in single-brand product retail trading, 30% sourcing would mandatorily have

⁶ Foreign Direct investment

to be done from SMEs/village and cottage industries, artisans and craftsmen.⁷ This is a golden opportunity for India to exploit its bamboo resources and become a major supplier of raw material to such multinational companies. This will benefit the village communities living near the resource immensely and increase the earnings of the gram sabha. At the same time the government revenue will also witness a rise.

CASE STUDIES

Even after passing of the FRA in 2006, there has been an unwillingness on the part of the forest departments to hand over the transit passbooks of MFP to the concerned gram sabhas. The following case studies of the two states, Maharashtra and Andhra Pradesh will showcase the benefits that have accrued to the villagers where community rights have been recognised.

A. LEKHA MENDHA VILLAGE, MAHARASHTRA:

On April 27th 2011, Mr. Jairam Ramesh, then Environment minister visited Maharashtra and in Gadchiroli, one of the most underdeveloped districts in Maharashtra handed over the passbooks of MFP to the village gram sabhas. Thus, gram sabha in Lekha Mendha⁸ became the first one to get community rights under FRA. Mendha with a community forest of 1800 hectares has raked in Rs. 75 lakh so far after selling bamboo. About, 500 people got employment as a result. The villagers have further decided to cut only 50 lengths of bamboo per day and every worker has a bank account to receive wages of which Rs. 28 lakh has been paid for (Menon M. 2012).

In Maharashtra, control over 70% of the bamboo area was given to a private paper pulp company, BILT putting the village communities in that area at a disadvantage and curbing their right to benefit from bamboo commercially. However, after a meeting with top forest department officials, areas where community rights have been recognised, the permit of BILT to extract bamboo has been cancelled.

⁷ The policy is available on Press information bureau's website.

⁸ Village in Gadchiroli district in Maharashtra

This case study points to the fact that with recognition⁹ of the community rights over MFP, lives of many marginalized communities which draw their livelihood from forest produce can be improved upon and actually made much better.

In an RTI filed by Centre for Civil Society, the concerned department in its reply pointed to the fact that the success that has been witnessed in Lekha Mendha village has not been replicated in other villages where community rights have been recognised by the forest department. Fortunately, during the study of this research paper another similar positive impact was observed in Andhra Pradesh. This brings us to our second case study.

B. SIRSANAPAALI VILLAGE, ANDHRA PRADESH:

In Khammam district in undivided Andhra Pradesh, Sirsanapaali became the first village to get community forest rights. They can now harvest and sell bamboo from the forest where they live. Earlier, the villagers used to hand over their bamboo produce to the forest department which used to auction for them. However, the villagers started the campaign “our bamboo, our right” and after their struggle of 10 years they were finally given community rights and in turn the right to sell their produce directly as well. On May 19th, 2014 the villagers conducted their first auction and unexpectedly got a high turnout of 36 bidders. The villagers feared that the bidders might collude and lower the price. But under the watch and guidance of forest department the auction went off smoothly and the gram sabha raised approx. Rs. 26 lakh.

The village has decided to spend half the income on building infrastructure such as canals for fields, bamboo regeneration activities etc. They plan to distribute one fourth of it among the 31 families in the village and the remaining has been kept in the reserve fund.

This case study points out that the role of the forest department as a facilitator instead of a controller benefitted the community tremendously. It is essential for the forest departments to channelise their expertise in promoting the welfare of the forest

⁹ By recognition, here, we mean that the forest department has handed over the transit passbook of MFP to the gram sabhas

dwellers and not stifle their prospectives of growth by exercising control and monopoly over what rightfully belongs to the forest dwellers.

REVENUE LOSS TO THE EXCHEQUER

The paper argues that due to the stunted growth of the bamboo industry owing to various supply side constraints, Government of India is heavily losing out on the revenue that otherwise it could have collected. To corroborate the argument, the researcher has studied the tax structure of a close substitute of bamboo i.e. timber.

In India, the tax collected on timber is called the tax collection at source (TCS)^{10 11} under Section 206C of the Income Tax Act. The statute provides that the tax is to be collected by the seller of the commodities specified at the time of receipt of the sale proceeds either through cash or cheque or draft or by any other mode or at the time of debit of such amount to the account of the buyer (Income Tax Act, Section 206C). The provisions of TCS apply to both timber obtained under a forest lease or timber obtained by any mode other than under a forest lease. Currently, the tax rate for TCS is 2.5%.

¹⁰ Tax deducted at source (TDS) and Tax collection at source (TCS), as the names imply aim at collection of revenue at the very source of income. It is essentially an indirect method of collecting tax which combines the concepts of 'pay as you earn' and 'collect as it is being earned.' (Income Tax Department)

¹¹ It is a tax collected by Union Government.

TCS is a tax collected only for raw timber. As timber is further processed at sawmills and the product enters the manufacturing sector in form of furniture, flooring, ply and other wood products, the tax is collected along the value chain and thus increasing the government revenue. This kind of tax system is well explained in the paper, Forest Marketing Systems, Benefit Sharing and Community Forestry (World Bank) which is as follows.

Government can capture a share of initial resource revenues in a variety of ways, such as levying various taxes, fees and royalties on the resource. Revenues can also be captured further along the value chain as primary products are transformed and value added. As an example, the timber logs can be sold to the sawmills, which would transform them into lumber and sell it to distributors or tertiary producers, such as furniture manufacturers. Along the value chain, governments could assess various sales, value added and income taxes to generate further public revenues from the wood products. Experience shows that a well designed and effectively implemented forest fiscal system can be a more progressive instrument to increase forest sector contributions to growth and development than a narrow regulatory-based approach.

The above system of taxation can be replicated into the bamboo industry as the two products are close substitutes. In the case studies mentioned above, it has been observed that after the recognition of the community rights in the aforementioned villages, the gram sabhas have earned a substantial amount of money through the sales of bamboo. This recognition will not only eliminate the supply side constraints plaguing the bamboo industry but the Government can tax this income and benefit from the revenue thereafter collected.

Also, as mentioned above the world demand for bamboo is going to increase in the future and there are various domestic opportunities forthcoming in India in the form of IKEA whereby the Indian bamboo market will expand further. In all these not only will the villagers be benefitted if they get their rights but the exchequer will surely benefit as well in terms of increased revenue collection. Its a win-win situation for all the stakeholders.

STATE LAWS AND THE MATRIX

Under the Constitution of India, Forest is a subject under concurrent list. This implies that both central and state laws are applicable on forests of India. Thus, from one state to another there



are different laws on forests and hence bamboo as well. The matrix below lists the differences in laws regarding bamboo in top 10 bamboo growing states across various parameters.

S.No.	States	Management of forests on private land	Is Bamboo a tree or Grass?	Harvest of Bamboo	Transit of Bamboo	Trade in Bamboo
1.	Madhya Pradesh	<p>For bamboo on private land, the Govt. of Madhya Pradesh has initiated Lok Vaniki Programme.</p> <p>(a) Under this any person can manage the tree-covered area on his/her private land.</p> <p>(b) In order to promote forest- based industries, these can plant trees on fallow land or private land of farmers with their cooperation.</p>	Bamboo is a tree under the India Forest Act, 1927.	No mention	The control of all rivers and their banks as regarding the floating timber as well as the control of all forest produce in transit by land or water is vested in the State Govt.	Prohibition of import, export, collection or moving of forest produce without a pass or a permit.

2.	Mizoram	No felling permission required from non-forest areas required.	According to Mizoram Forest Act, 1955, bamboo is a tree. With the extension of FRA, 2006 in Mizoram, bamboo is now an MFP but the laws governing bamboo have still not changed.	(a) Under Mizoram Bamboo Policy, bamboos under Govt. notified forests are annually worked under Mahal system since District Council Period. Most of the bamboo harvested by the Mahaldars is supplied to Hindustan Paper Corporation (HPC) of Assam. Rivers are preferably used for transportation to HPC such as the Barak River. (b) In an area designated as village forest reserve, any person resident in the village may cut bamboo from this reserve for household	No mention	Government may fix the selling price of the forest produce and it shall be binding on the permit holder.
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				needs but not for sale or trade.		
3.	Assam	Homegrown bamboo does not require felling permission.	Under the Assam Forest Regulation, 1891, Bamboo is a tree.	Since bamboo is a tree in Assam, it is timber (thus, a forest produce) and comes under Mahal system. Forest officer determines the right to pasture and cutting the forest produce.	The control of all rivers and their banks regarding floating timber as well as forest produce is vested in the State Govt.	Prohibition of import, export, collection or moving of forest produce without a pass or permit.
4.	Odisha	If Bamboo is felled or	Bamboo is a tree	Orissa Forest	If an individual wants to	Under Rule 5(1), of

		bought from a private land then it does not come under the category of forest produce. Thus, it is exempted from the restrictions that are imposed on forest produce.	and hence a timber product (Bamboo felled from private land is exempted from this categorization).	Development Corporation (OFDC) has monopoly over harvesting of bamboo from forests.	transport bamboo other than the Govt. officials then permit has to be taken. This situation may arise if feeling of bamboo is being done under Joint forest Management Scheme.	Orissa Timber and other Forest produce Rules, 1980 transit permit would not be required for three varieties of bamboo like B. nutans, B. vulgaris and B. tulda. However, for the two species i.e. salia and daba permit is required.
5.	Manipur	No separate laws regarding private plantations. The Manipur Land Revenue Act (1960) does make some mention of forest and land rights in forestlands and on all lands not in private hands. It states that the right to all trees, jungles and natural produce on such land shall be vested	Bamboo is a non-timber product. It comes under MFP.	No mention	(a) For transporting bamboo outside the state, the Divisional Forest Officers concerned shall issue a necessary pass and realize a transit pass fee as well. (b) The booking or moving of bamboos exceeding 100 in	No mention

		with the Govt.			number by rail, steamer or boat is prohibited unless accompanied by a transit pass.	
6.	Maharashtra	No mention	Bamboo is a minor forest produce under Maharashtra Minor Forest Produce (Regulation of Trade) Act, 1969 under Section 2(e)	No mention.	The state govt. has divided the areas under MFP into units. Transporting MFP within the unit is permitted but outside the unit requires permits from the state govt.	State monopoly over trade in bamboo. An advisory committee is set up that fixes the price for MFP.
7.	Arunachal Pradesh	No mention	The Assam Forest Regulation, 1891, is applicable to States of Assam and Arunachal Pradesh that includes bamboo within the definition of tree.	Under, Arunachal Pradesh Forest Act, 2014 there are various regulations and prohibitions regarding cutting or felling of trees.	The control of all rivers and their banks regarding floating timber as well as forest produce is vested in the State Govt.	Prohibition of import, export, collection or moving of forest produce without a pass or permit. Under Arunachal Pradesh Forest Act, 2014 where the right is

			Under Arunachal Pradesh Forest Act 2014, bamboo is a forest produce.			a right to forest produce, the Forest Settlement Officer shall record whether the Forest Produce obtained by the exercise of such right maybe leased, sold or bartered and such other particulars as may be necessary in order to define the existence, nature and extent of such a right.
8.	Nagaland	The laws related to private land are associated with felling of trees on private land but not minor forest produce.	Bamboo is a non-timber product.	No mention	No transit restrictions on bamboo.	No mention
9.	Tamil Nadu	Rules for felling of trees in private forests:	Bamboo is a tree under Tamil Nadu	No mention	The Government makes the rules for transit of	No mention

		<p>(a) A minimum of six culms should be left in each clump; a clump shall be considered mature, if it is at least one year old.</p> <p>(b) No culm, which is less than a year old, shall be felled.</p> <p>(c) All cutting of bamboos shall be below one metre but not below the first ground level.</p>	forest Act 1882.		timber. It even prescribes the routes from which timber can be imported or exported.	
10.	Andhra Pradesh	The laws related to private land are associated with felling of trees on private land but not minor forest produce.	Under the Andhra Pradesh Minor Forest Produce Act, 1971, bamboo is an MFP.	Every grower other than the Govt. shall, if the quantity of the MFP grown by him during a year is likely to exceed such quantity as may be prescribed, get himself registered.	A registered grower may collect MFP from the land belonging to him and transport the MFP so collected to the nearest depot within the unit in which land is included.	<p>(a) An exporter of MFP has to get registered with the Govt.</p> <p>(b) The Govt. shall fix the price of MFP from time to time. It shall also open depots in various places in the state where the growers of MFP shall sell their</p>



						produce at the price fixed by Govt.
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POLICY RECOMMENDATIONS

- (a) **Removing contradictions in the laws regarding bamboo:** The contradictions that arise that whether bamboo is a 'tree' according to IFA or an MFP under FRA should be dealt with and removed. Bamboo should be designated as an MFP so that it can be exploited commercially and benefit a large section of forest dwellers who live near the resource.
- (b) **Recognition of community rights by the forest department:** The forest departments should hand over the transit passbooks of MFP to the village gram sabhas and give them their rights on the resources they have lived with and nourished their entire life.
- (c) **Uniformity of laws across all states:** It is important that there should be uniformity of law across all states. For example, in the state of Nagaland even though the state authorities have removed all restrictions on the transit of bamboo, the other north eastern states haven't and they can hamper the transit of bamboo produce of Nagaland.¹² These differences in laws across states will disable the bamboo industry to realise its full potential as various supply side constraints will still remain in place.
- (d) **Encouraging growth of bamboo on private plantations:** The plantation of bamboo on private land should be encouraged and it should be exempted from various state regulations to incentivize such landowners to grow bamboo on their land. This will make such plantations commercially viable ventures.

CONCLUSION

What we need is not a new law but implementation of the existing law. This will bring a positive impact to not only those for whom law is being implemented but the implementor as well. The benefits of community rights to the villagers near forests have been studied in various research papers but this paper has highlighted the benefits accruing to another stakeholder i.e. the Government. With the two case studies already pointing to the increase in their earnings through selling of bamboo and the current trend showing that the world demand for bamboo will only grow, the Government of India should make concerted efforts to remove all

¹² Under the Indian Forest Act, 1927 a state can regulate the forest produce of any other state if it enters its territory.

bottlenecks that are hampering the growth of bamboo industry and in turn the tax revenue collections as well. The above state regulation matrix also points to the fact that with differences in laws across major bamboo growing states, the industry is facing further problems to grow. The positive actions of the state governments in this respect are tremendously important in giving the bamboo industry its long awaited growth.

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States	No. of claims received	No. of titles distributed	Extent of forest land for which titles distributed (in acres)
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APPENDIX

STATUS REPORT ON IMPLEMENTATION OF FOREST RIGHTS ACT, 2006 (FOR PERIOD ENDING 30TH SEPTEMBER

Andhra Pradesh	3,30,479 (3,23,765 individual and 6,714 community)	1,67,797 (1,65,691 individual and 2,106 community)	14,51,223
Assam	1,31,911 (1,26,718 individual and 5,193 community)	36,267 (35,407 individual and 860 community)	77,609
Bihar	2,930	28	Not available
Gujarat	1,91,592 (1,82,869 individual and 8,723 community)	42,752 (40,994 individual and 1,758 community)	51,570
Chattisgarh	7,56,062	3,06,184	6,15,652.18
Himachal Pradesh	5,692	346	0.3548
Jharkhand	42,003	15,296	37,678.93
Karnataka	1,68,718 (1,65,638 individual and 3,080 community)	6,577 (6,487 individual and 90 community)	34856.77
Kerala	37,535 (36,140 individual and 1,395 community)	23,167 (23,163 individual and 4 community)	32,104
Madhya Pradesh	4,81,128 (4,64,212 individual and 16,916 community)	1,79,526 (1,69,026 individual and 10,500 community)	10,74,024.34
Maharashtra	3,45,975 (3,40,927 individual and 5,048 community)	1,03,225 (1,01,356 individual and 1,869 community)	7,90,735.35
Orissa	5,41,800 (5,30,849 individual and 10,951 community)	3,24,130 (3,21,499 individual and 2,631 community)	6,62,089.11

	10,951 community)	community)	
Rajasthan	69,677 (69,140 individual and 537 community)	33,646 (33,586 individual and 60 community)	50,899.87
Tripura	1,82,617 (1,82,340 individual and 277 community)	1,20,473 (1,20,418 individual and 55 community)	4,16,555.58
Uttar Pradesh	92,433 (91,298 individual and 1,135 community)	17,705 (16,891 individual and 814 community)	1,39,778.04
West Bengal	1,37,278	29,852	16,648.88

Source: Ministry of Tribal Affairs