

**OPENING
GATES FOR
INDIA'S
KEEPERS OF
FORESTS**

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Opening Gates for India's Keepers of Forests

INTRODUCTION

We take care of our home precisely because it is our home. A stranger walking down the road may not know that leaving even a morsel of food in the kitchen will attract hundreds of ants. So when the government takes over the land that indigenous communities have safeguarded for centuries under the pretext of conservation, what kind of conservation can it actually execute?

Approximately 275 million people involved in the minor forest produce (MFP) economy ([World Bank 2005](#)), a significant portion of which is tribal population, struggle with this every day. Collection, processing, and sale of MFP comprises the backbone of the forest sector.¹ The government estimates the collection potential of MFP is INR 1900 crores and the production potential of INR 4000 crores ([TRIFED n.d.](#)). But what holds the sector back is a regulatory conflict at the Union and state-level.

In 2006, Parliament passed the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act (FRA) with the Ministry of Tribal Affairs (MoTA) as the nodal agency for its implementation. The FRA aimed to grant forest-dwelling communities ownership rights over the forest land they have lived on for generations. This was a part of the MoTA mandate to foster economic development for indigenous communities in the country. At the Union level, this is in competition with the interests of the Ministry of Environment, Forests and Climate Change (MoEF&CC) to conserve the environment. The MoEF&CC continues to implement the Indian Forest Act 1927, a colonial law that regulates forests for commercial purposes; such interests that seize control over forest land from original inhabitants do not lie fully aligned with the goals of conservation.

At the state level, most states follow archaic laws that legitimise practices such as permission to move produce out of forests or state monopoly over trade of MFP, directly contravening community rights outlined in the FRA ([Kukreti 2017](#); [Kukreti 2018](#)). For instance, in Gujarat, the government fully controls the trade of certain MFP, including the prices at which they are to be sold.

There are two issues at play here: (i) conflict of interest between MoEF&CC and MoTA; and (ii) existing state laws that exert government monopoly over forest produce.

In this paper, we examine FRA's approach to trade in minor forest produce and how state-level laws come into conflict with its provisions. In particular, we focus on the condition of a Transit Permit for moving produce out of the forest and state monopoly over certain MFP.

¹ MFP includes all non-timber forest produce of plant origin, including bamboo and kendu leaves (PIB Delhi 2020).



FOREST RIGHTS ACT 2006: AN ATTEMPT TO CORRECT PAST WRONGS

The FRA 2006 enshrines the key principle of property rights at the individual and community-level. It aims to do so by securing tenurial and access rights for forest dwellers and providing an empowered authority for conservation, the Gram Sabha. Chapter II of the FRA outlines the rights guaranteed to forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands. By ensuring those directly affected by a resource have a say in its management, this mechanism ensures proper conservation and care of that particular resource.

Section 3(1) of the FRA transfers ownership over MFP to forest-dwellers in India.

For the purposes of this Act, the following rights, which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest lands namely: ...

(i) rights to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;...

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

But the provisions of the FRA need to be read together with existing legislation. Section 13 of FRA spells out the following:

Save as otherwise provided in this Act and the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, 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.

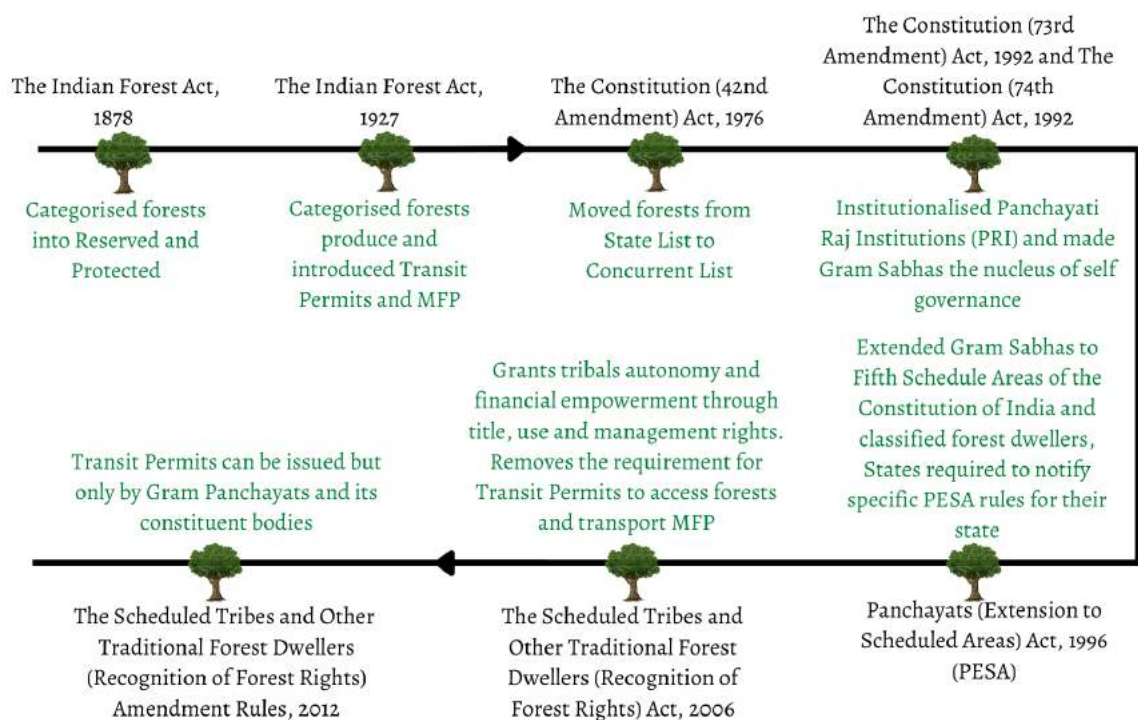


Forest dwellers collecting tendu leaves in Gadchiroli, Maharashtra
(Credits: Arogya Sathi, CC BY-SA 4.0, via Wikimedia Commons)

This creates challenges for forest-dwellers as prior to the FRA, forestry in India was mainly governed as per colonial systems. The Indian Forest Act of 1878 first outlined the state control over forests through their division between reserved forests (completely government controlled), protected forests (partly government controlled), and village forests (controlled by abutting villages). Villagers were prohibited access to the reserved forests, even for their personal use. This was done to regulate the collection of forest produce by forest-dwellers and offences were punishable by fines and imprisonment. Later, the Indian Forest Act 1927 perpetuated the gatekeeping regime by retaining the distinction between reserved and protected forests. Further, it delved into the categorisation of forest produce. It included bamboo under the category of trees, which was later categorised as an MFP under the Forest Rights Act, 2006.

Both the Indian Forests Act and the FRA sought to consolidate and reserve the areas having significant forest cover and wildlife, to regulate movement and transit of forest produce, and to levy duty on timber and other forest produce. The enforcement of these laws was enabled by a top-heavy bureaucracy, usurping rights of colonised forest dwellers by force ([Bandopadhyay 2010](#)).

Considering this colonial baggage, another milestone that the FRA achieved was recognising the Gram Sabha as the authority responsible for determining the nature and extent of individual or community forest rights that may be given to forest-dwellers. The institution of Gram Sabha represents the Gandhian ideal of self-sufficient village republics and grassroots-level governance. Gandhi formulated his idea of village swaraj as a ‘complete republic independent of its neighbours for its own vital needs and yet interdependent for many others in which dependency is a necessity’ ([Gandhi 1947](#)). This decentralisation of power brings about popular participation and accountability, thereby making public service more responsive to citizens’ needs and contextual demands ([Chattopadhyay 2013](#)).



The case of Transit Permits: permission to take what is on your own land

A crucial issue where the FRA sought to vest control in the hands of the Gram Sabha was that of Transit Permits. First initiated under British colonisation to prevent encroachment over forests, Transit Permits were introduced under the Indian Forest Act, 1927:

Section 41. Power to make rules to regulate transit of forest produce.—

(1) The control of all rivers and their banks as regards the floating of timber, as well as the control of all timber and other forest-produce in transit by land or water, is vested in the State Government, and it may make rules to regulate the transit of all timber and other forest-produce.

2(b) prohibit the import or export or moving of such timber or other produce without a pass from an officer duly authorised to issue the same, or otherwise than in accordance with the conditions of such pass;

A Transit Permit is a document that authorises a person to transport (in this case, minor forest produce) outside the forest area it is grown in. The prevalence of Transit Permits was an authoritarian and colonial vestige, symbolic of a guns-gates-guards approach.

Initially the FRA did not make a mention of the Transit Permit as forest-dwelling communities would gain rights to “dispose of minor forest produce” under Section 3(1)(c) of the Act. But, in blatant violation of the law, state Forest Departments continued to impose the requirement of Transit Permits under state laws to transport the produce outside the forest for trading ([Srivastava 2012](#)). A study on the livelihood of Gaddis in Himachal Pradesh revealed that 70% of the produce collectors could not obtain permits from the Forest Department ([Sharma and Butola 2008](#)). Recognising the same, MoTA amended Forest Rights Rules in 2012 to give Gram Sabhas or the Committees constituted by Gram Sabhas the power to grant Transit Permits.²

Even though the Gram Sabha was recognised as the valid legal entity to issue transit permits or authorise them, the Forest Department continued to control their issuance. For instance, in the case of Odisha, the Forest Department denied Transit Permits on multiple occasions citing reasons that were legally invalid ([Kukreti 2018](#)). As a result, in 2014, the MoTA released a notification for the effective implementation of FRA.³

ii) d) The State Governments should exempt movement of all MFPs from the purview of the transit rules of the State Government and, for this purpose, the transit rules be amended suitably. Even a transit permit from Gram Sabha should not be required. Imposition of any fee/charges/royalties on the processing, value addition, marketing of MFP collected individually or collectively by the cooperatives/federations of the rights holders would also be ultra vires of the Act.

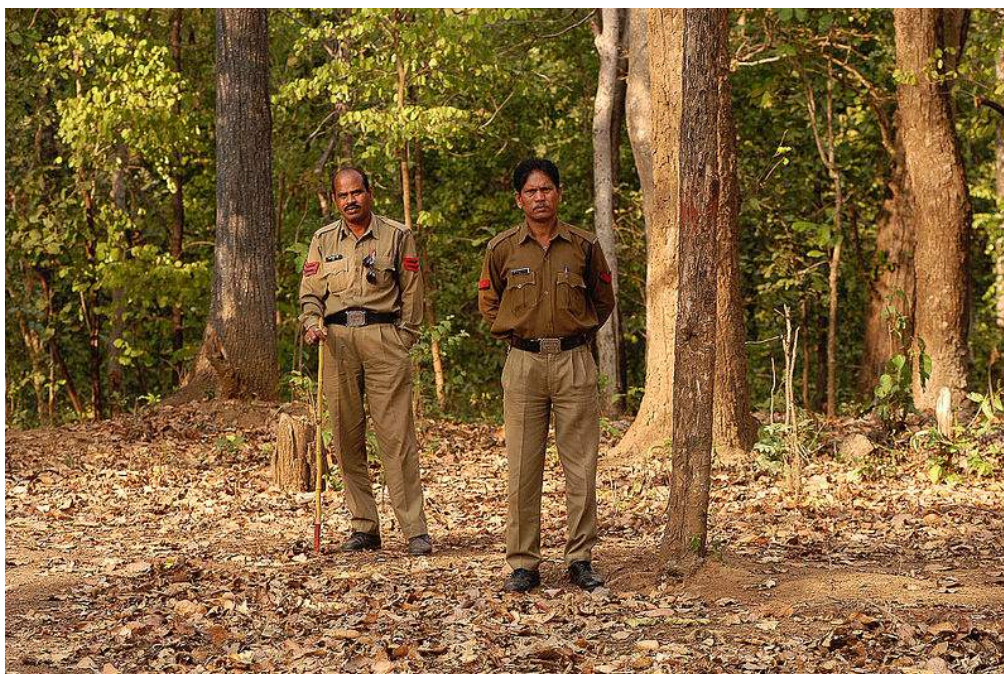
² Rule 4(1)(g) of the Forest Rights Rules 2007.

³ [F.No. 18/12/2013-CP&R](#)

In 2017, states such as Odisha announced deregulation of collection, sale and management of *kendu* leaves in six Gram Sabhas of Kalahandi. By 2021, the number of villages in the state with complete autonomy rose up to 29. The Gram Sabhas in these villages could then issue their own transit permits for the produce and no longer needed to depend on the Forest Department for the same (Prava 2021). However, the *de facto* transfer of this power did not occur in most states and a Transit Permit was still required (Sharma 2020).

In addition, there is no evidence with regards to the Transit Permit regime aiding forest conservation. There has only been a marginal increase in the green cover in the last 15 years, that too, largely outside forest areas. Within forest areas, dense forests have reduced and open forests have increased, implying a deterioration in quality (Forest Survey of India 2019).

First featured in governmentality literature of the 1990s, the concept of “responsibilization” captures the process by which individual citizens become responsible for erstwhile tasks of the state, or come to assume tasks that did not exist before (Mustalahti et al. 2020). This occurs when powerful actors maintain the status quo of domination, while interventions, such as the FRA, transfer tasks and duties to communities and local decision-makers without ensuring capacity building and enforcement of the same. The case of Transit Permits demonstrates the transfer of such responsibilities without the adequate transfer of powers and rights. This is because while the ownership and control of minor forest produce has been vested with forest dwellers, having to depend on the Forest Department for the issuance of Transit Permits hinder their control and autonomy. Gram Sabhas across the nation being empowered to materialise this right would represent the equitable sharing of power between bureaucracy and people’s representatives.



Forest Department officials
(Credits: Ekta Parishad via Wikimedia Commons)

State	State-level <i>de jure</i> provisions	<i>De facto</i> implementation
Odisha	<p>The Orissa Kendu Leaves (Control of Trade) Rules, 1962 and the Orissa Forest Produce (Control of Trade) Act, 1981 are still in place which authorise government control over <i>kendu</i> leaves and issuance of Transit Permits by the Divisional Forest Officer. Section 6 of the 1962 Act spells out the following:</p> <p>Transport Permit- (1) <i>An application for the issue of a permit...shall be made to the Divisional Forest Officer [or such other authority as may be specially authorised by Government in that behalf] who shall be the authority competent to grant the permit.</i></p>	<p>29 villages have obtained complete autonomy over the collection, transport and sale of minor forest produce, however 36 villages are still struggling to exercise their rights. The state government is yet to issue a circular that is applicable to the whole state, recognising complete autonomy of the Gram Sabhas in <i>kendu</i> leaf management (Prava 2021).</p>
Maharashtra	<p>The state law in this regard is the Maharashtra Forest Produce (Regulation of Trade) Act, 1969 that vests control with the state government under provision 12, “<i>Any forest produce purchased by the State Government or by its officer or agent, under this Act, shall be sold or otherwise disposed of in such manner as the State Government may direct</i>”.</p>	<p>Maharashtra has granted complete autonomy to Gram Sabhas over the management of minor forest produce, in accordance with FRA, especially in Vidarbha and Gadchiroli.</p>
Madhya Pradesh	<p>Madhya Pradesh Kendu Patta (Vyapar Viniyaman) Adhiniyam 1964 and the Madhya Pradesh Vanopaj (Vyapar Viniyaman) Adhiniyam, 1969 grant control of minor forest produce to the Madhya Pradesh State Minor Forest Produce (Trading & Development) Co-operative Federation. Section 9 of the 1964 Act specifies:</p> <p>State Government or agent to purchase <i>tendu</i> leaves. - (1) <i>The State Government or their authorised officer or agent shall be bound to purchase at the price fixed under Section 7.</i></p>	<p>Even as the ownership of MFP has been transferred to the Gram Sabhas, the Forest Department continues to exercise dominance through seizures and retention of funds (Jitendra and Kukreti 2017).</p>

WHAT IDEAL IMPLEMENTATION OF THE FRA WOULD LOOK LIKE

Vidarbha

Forest rights under the FRA can be grouped under Individual Forest Rights (IFR) and Community Forest Rights (CFR). While IFR pertain to rights of self-cultivation and habitation, CFR pertain to management of community forest resources for sustainable use (MoTA). A study on the Vidarbha region of Maharashtra highlights the best practices involved in the successful recognition of community forest rights in this region ([Sahu 2020](#)). This region houses 53% of the state's total forest cover, home to around 28% of the tribal population of the state ([Forest Survey of India 2017](#)). The study is based on case studies from 14 villages in three districts of the Vidarbha region—Gondia, Gadchiroli, and Chandrapur. It is based on household surveys and interviews with state and district level officers to assess the impact of the recognition of CFR on the socio-economic conditions of forest dwellers.

The study recognises that in most regions of India, Gram Sabhas with recognised CFR are not allowed to exercise exclusive ownership rights to MFP. This is primarily due to the lack of technical support extended by the nodal agency and district-level departments. Gram Sabhas require support in terms of funds and human capital in order to verify land records, claims filed and to undertake mapping of land. In addition, they need assistance in identifying contractors that enable them to sell MFP for better prices. The lack of support reduces the rate of processing claims and increases pendency. In contrast, Vidarbha constitutes 92% of all the CFR claims recognised in Maharashtra (of the 7,084 recognised claims in Maharashtra, 6,488 are from Vidarbha). The FRA transferred all powers related to the use and governance of MFP from the Forest Department to Gram Sabhas. However, while Forest Departments across the country continue to exercise their dominance, more than 1,500 villages in the Vidarbha region have exercised rights to MFP, especially *kendu* leaf and bamboo. This has resulted in a multi-faceted empowerment of the Gram Sabha. It has ensured upfront and timely payment for the collected MFP, in cash, ameliorating the delays in bank transfer in the previous arrangement. Timely payments have reduced the dependence of forest dwellers on the local landlords for exploitative credit instruments. Gram Sabha dealing directly with the private contractors has ensured that the contractors pay insurance coverage in the case of any mishap during the collection and transport of MFP. With regards to Transit Permits, villagers no longer need to wait for the Forest Department to issue the transit permit in order to sell the produce. For instance, the Dhiwrintola Gram Sabha in Gondia district has printed its own “transit permit book” ([Sahu 2020](#)).

Further, in a bid for collective action, several Gram Sabhas in Vidarbha have consolidated themselves into federations at the taluka level. This enables them to combat the dominance of the Forest Department and contractors whilst maintaining their autonomy and rights guaranteed under FRA. For instance, in the Korchi taluka of Gadchiroli, 87 villages formed a Gram Sabha federation in 2016 to increase their bargaining powers vis-à-vis the Forest Department and market agencies with regard to the disposal of MFP. These federations consist of two representatives from each Gram Sabha. Their primary function is to identify contractors, bargain over the price points and get involved with the district administration for conflict resolution (Sahu et al 2017).

To demonstrate the accrued economic benefits, the survey conducted as part of the 2020 study revealed a significant increase in the income of kendu leaf households compared to the regime led by the Forest Department. The tables below contrast the same.

Table 1: Price of Kendu Leaf in Auctions by the Forest Department and Korchi Gram Sabha Federation

Average Price Paid Per Standard Bag* of Kendu Leaf (₹)					
Forest Department Auction			Federation Auction		
2014	2015	2016	2017	2018	2019
2,173	1,691	4,459	7,303	4,614	5,700

*Each standard bag of kendu leaf consists of 1,000 bundles and each bundle has 70 leaves.
Source: Korchi Gram Sabha Federation (2019).

Table 2: Income from Kendu Leaf in the Vidarbha Region (2017-18)

District	Number of Villages	Income from Kendu Leaf (₹)
Gadchiroli	162	23.36 crore
Gondia	36	7.44 crore
Amaravati	28	1.13 crore
Yavatmal	17	57.73 lakh
Nagpur	3	47.32 lakh
	246	32.98 crore

Source: Information obtained by the author from the studied areas in the Vidarbha region.

The empowerment of Gram Sabha can be attributed to the support extended by the Rural Development Department and Governor's Office in the implementation of FRA.

For instance, a circular released in 2015 by the Rural Development Department reinforces the right of Gram Sabhas to issue transit permits, in the case of bamboo and kendu leaves.⁴ Further, a dedicated tribal cell was set up in the governor's office in 2013 to assess socio-economic indicators that can help ascertain the status of forest dwellers' rights to MFP. Vidarbha has a rich history of social movements pertaining to control over forest and land resources. From the Bhoodan and Gramdan Movements in the 1950s and 1960s, to those for rural employment guarantee in the 1970s, they have set a precedent for an empowering ecosystem for the recognition of forest dwellers' rights ([Amrutkar 2009](#)).



Forest-dwelling communities in Maharashtra striving for Community Forest Rights (CFR)
(Credits: Lok Sangharsh Morcha via Wikimedia Commons)

⁴ Resolution No - VIP2012/ CR37/D16, Dated - 23 January 2013, passed by Tribal Development Department, Government of Maharashtra.

Gadchiroli

The Gram Sabha has to determine individual and community forest rights, and it does so by accepting and processing claims filed under FRA. While most districts have a mere 0-33% compliance rate for processing CFRs claims, one district in Maharashtra stands out - Gadchiroli. In 2017, a report highlighted that the implementation rate here was over 66% ([CFR-LA 2017](#)). The speedy grassroots implementation has been credited to a strong Adivasi movement in the district. From land rights reforms to the state's first employment guarantee schemes, the district has a history of participative democracy resulting in greater administrative accountability. Following the FRA, a campaign for mass filing of claims was led in the district, reinforced with technical inputs from civil society groups. The first two villages in the country where community forest rights were granted from Gadchiroli - Mendha Lekha and Marda. As a result, in a state wherein auctions for MFP were primarily handled through the Forest Department tenders, around 1,200 villages in Gadchiroli managed to auction kendu leaves on their own. In 2017, villages were able to get as much as Rs 13,000 per bag of kendu leaves. This was coupled with the added assurance of payment within six months, as opposed to a year when auctions were being managed by the Forest Department ([Chari 2017](#)).



Forest dwellers collecting tendu leaves in Gadchiroli, Maharashtra
(Credits: Arogya Sathi via Wikimedia Commons)

To take the case of another MFP product, honey, Adivasis have employed sustainable honey extraction practices (without the traditional use of fire) to conserve the bees and biodiversity in this region. This has also enhanced the quality of honey produced, resulting in increased remuneration. With the demand for pure forest honey increasing, Gadchiroli alone has an annual potential of 1,000 quintals of honey. Realising its potential, the Salhe Gram Sabha proactively carries out the collection and sale of Minor Forest Products. From being paid Rs. 80-90 per kg of honey by the local traders, Gram Sabhas and affiliated NGOs have paid up to Rs. 250 per kg to the Adivasi honey collectors. Utilising the funds collected through auction of MFP as well as government assistance, this Gram Sabha set up a community centre or “Gotul”, symbolising the Gandhian ideal of self-reliant development. Other Gram Sabhas are following suit, with their profits being used for infrastructure development and employment generation.

While the setting up of processing units and effective market access are challenges that need to be periodically dealt with, the case of honey demonstrates the scope of reducing the rural population’s dependence on casual labour and migration for income ([Katkurwar 2021](#)).



Mahua seed collection in Korchi, Gadchiroli
(Credits: Arogya Sathi via Wikimedia Commons)

STATE MONOPOLY OVER FOREST PRODUCE: HUNGER FOR POWER

Most states have “nationalised” certain MFP items, such as mahua, sal seeds and flowers, kendu leaves and certain gums. Nationalised MFP refers to those items whose sale is monopolised by the government. Procurement of such items is only undertaken by state-authorised agencies. State governments derive the power to nationalise MFPs through pre-FRA state legislation on forest produce such as the Gujarat Minor Forest Produce (Regulation of Trade Act), 1979, Andhra Pradesh Minor Forest Produce (Regulation of Trade) Act, 1971.

Nationalisation was undertaken to ensure a stable supply of income to MFP collectors and to prevent leakages in the supply chain by bringing it under the ambit of governmental procedures. Most state Forest Departments earn more from MFP than timber. For example, in 2010, Andhra Pradesh, earned Rs 82 crore from MFP, while its earning from timber was Rs 43 crore ([Mahapatra et al 2010](#)). This can explain their reluctance to grant rights to forest-reliant communities. However, this nationalisation goes against the FRA since it retains control in governmental agencies rather than the forest dwellers.

State	State-level <i>de jure</i> provisions	<i>De facto</i> implementation
Gujarat	The Gujarat Minor Forest Produce Trade Nationalisation Act, 1979 nationalised the sale of most MFP items in Gujarat. However, the Panchayats (Extension to Scheduled Areas) Act, 1996, denationalised these MFPs.	Even after Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), the Gujarat State MFP Corporation trades in MFP from Scheduled areas “on behalf of Gram Panchayats/Sabhas” as per Gujarat State Forest Development Corporation Ltd. (GSFDCL). In the case of non-nationalised produce, control over Transit Permits by the forest department constitutes a dominant issue.
Madhya Pradesh	Madhya Pradesh kendu Patta (Vyapar Viniyaman) Adhiniyam 1964 and the Madhya Pradesh Vanopaj (Vyapar Viniyaman) Adhiniyam, 1969 grant control of minor forest produce to the Madhya Pradesh State Minor Forest Produce (Trading & Development) Co-operative Federation. Section 9 of the 1964 Act specifies: State Government or agent to purchase tendu leaves. - (1) The State Government or their authorised officer or agent shall be bound to purchase at the price fixed under Section 7.	Even as the ownership of MFP has been transferred to the Gram Sabhas, the Forest Department continues to exercise dominance through seizures and retention of funds (Jitendra and Kukreti 2017).

Gujarat

The **Gujarat Minor Forest Produce Trade Nationalisation Act, 1979** nationalised the sale of four MFP items: timru leaves, mahuda flowers, doli and all types of gums. Through this Act, the state government appointed the **GSFDCL** as the sole agent of the state government to purchase, sell and transport these MFPs.⁵

The State Government may, for the purpose of selling, purchasing or transporting any minor forest produce on its behalf, appoint any person as an agent in charge of any unit and it shall be lawful to appoint the same person as an agent for more than one unit.

Provided that nothing contained in this section shall prevent the State Government from appointing the Corporation as the sole agent for the purpose of selling, purchasing or transporting any minor forest produce and such appointment shall be on such terms and conditions as may be determined by the State Government.

Subsequently, taking recourse to **Article 19(I)(g)** of the Constitution,⁶ the High Court of Gujarat upheld the monopolistic position of the Corporation for the benefits of tribals. Further, it pointed out that the Article 46 of the Constitution enjoins the state to promote the economic interest of the weaker sections of the people, particularly the scheduled castes and scheduled tribes to protect them from social injustice and all forms of exploitation.

In 1996, the Panchayats (Extension to Scheduled Areas) Act, 1996 was passed, following the Bhuria Committee recommendations ([Pandey 2021](#)). In accordance, it extended Panchayati Raj Institutions, in particular the institution of Gram Sabha to Fifth Schedule Areas, or areas with dominant tribal population. It aimed at institutionalising participatory democracy by making Gram Sabha the nucleus for major decisions. It actualises the Adivasi spirit of 'Mava Nate Mava Raj' (Our Village Our Rule). In order to increase decentralisation, it called for the organisation of village-level Gram Sabhas for each individual village as opposed to panchayat level Gram Sabhas that have multiple villages under their ambit. Further, it classified forest dwellers into forest dwelling scheduled tribes (FDSTs) and other traditional forest dwellers (OTFDs). To be included within the latter, one has to be part of a community that has, for at least three generations prior to 2005, primarily resided in the forest and is dependent on it for bona fide livelihood needs. Most importantly, this Act granted the ownership of minor forest produce to Gram Sabhas and granted it the right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons.

⁵ Section 6(1) of the Gujarat Minor Forest Produce Trade Nationalisation Act, 1979.

⁶ All citizens shall have the right to (g) to practise any profession, or to carry on any occupation, trade or business. Nothing in the said sub clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to, (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

For the implementation of PESA, the state governments are supposed to enact corresponding state laws for their respective Scheduled Areas - however within no specified time frame, delaying its operationalisation indefinitely. In addition, all laws that were in conflict with PESA ought to have been repealed when PESA came into force. Even after 25 years of its enactment, the rules of the Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA), have not been enacted in the four states of Madhya Pradesh, Chhattisgarh, Odisha and Jharkhand (Jyoti 2021). Even in the states that have formulated the necessary rules, the de facto pivot of authority is the State government and its fiduciaries, not the Gram Sabha (Pandey 2021).

Post enactment of PESA, Gujarat denationalized all 4 nationalised MFPs on 24 May, 2017. Even after de-nationalisation, however, the dominance of the Corporation is intact. In wake of the 73rd constitutional amendment, Gujarat amended its **Gujarat Panchayat Act in 1998** to add PESA provisions to the state panchayat law. The Gujarat Panchayats (Amendment) Act, 1998 inserted section Article 278A, which resulted in application of Act to Scheduled Areas of State. In Section 4, it specified that a Gram Sabha would be constituted at the village level, to safeguard and preserve the community resources, amongst other functions. However, even after this amendment, the Corporation trades in MFP from Scheduled areas “on behalf of Gram Panchayats/Sabhas” on a no-profit no-loss principle, as per GSFDCCL.

Interview with an on-ground activist revealed that the old regime of State Forest Produce Acts pertaining to nationalisation are still being followed. While the need for Transit Permits has been relaxed in the case of most MFP items, in areas with low awareness, there are instances of bribery and corruption along administrative lines. In the case of non-nationalised produce such as honey, charoli, gundur (gum) and sal seeds, Transit Permits constitute a dominant issue at the regulatory level. The guidelines that should be issued by each state, following FRA, have not been issued yet - despite written and in person persuasion by their organisation. Further, the Forest Department notifies a far-munshi, who acts as a middleman in the issuance of forest permits. The Divisional Forest Officer in most cases refuses their issuance or lists multiple prerequisites, signifying heavy handedness on part of the Forest Department.

In 2019, tribals from six districts of Gujarat carried out a rally demanding implementation of the Forest Rights Act (FRA) at the Sabarmati riverfront of Ahmedabad. They sought land ownership entitled under FRA and submitted a memorandum to the District Collector for the same. In 2010, only about 17,000 claims (9%) from a total of 182,000 claims were approved by the SDLCs and DLCs, leading to a high rate of rejection (CFR 2016). According to Eklavya Sangathan, the rightful claims (under FRA) of as many as 1,08,948 others had been rejected on arbitrary grounds. These claims had already been verified by the Gram Sabha and submitted at block office, leaving no grounds for rejection. In addition, only 40% of the tribals had been given Jamin Adhikar Patras (land rights' certificates). The tardy resolution of claims filed under FRA demonstrates the relative powerlessness of the Gram Sabha - the focal point of forest rights.

Madhya Pradesh

Rich in MFP resources, 31% of the total land in the state is characterised as forest area. The nationalised MFP items are *kendu* leaves, *Sal* seeds and Kullu Gum. Non-nationalised MFP items include Chebulic Myrobalan or *Harra*, *Gum*, *Chironji*, *Mahua* flowers and seeds. Trade of nationalised MFP items is solely undertaken under the aegis of the Madhya Pradesh State Minor Forest Produce (Trading & Development) Co-operative Federation, as enlisted under the state law titled Madhya Pradesh Vanopaj (Vyapar Viniyaman) Adhiniyam, 1969. Section 9 of the Act outlines the following:

State Government or agent to purchase specified forest produce. - (1) The State Government or their authorised officer or agent shall be bound to purchase at the price fixed under Section 7 specified forest produce offered for sale at the depot during the hours of business.

Post-FRA, Madhya Pradesh was the first state to transfer ownership of MFP to the Gram Sabhas ([SAMARTHAN 2011](#)). The state government decided to transfer all the revenue from the trade of MFP to the Primary Forest Produce Societies.⁷ But in return, the societies were required to distribute the profits in a specified ratio. 60% of the total profit was to be given to the primary collector, 20% was earmarked for the regeneration of forests and MFP resources and the remaining 20% reserved for infrastructure development ([Madhya Pradesh State Minor Forest Produce Federation n.d.](#)).

To consider the *de facto* position of the state, it is worth noting that Madhya Pradesh is the biggest *kendu* leaves producing state in India, contributing 25% of the total *kendu* leaf production. In 2017, the anti-corruption ombudsman of the state, the MP Lokayukta registered a case against the State Minor Forest Produce (MFP) Co-operative Federation. It alleged that the federation had kept almost Rs 365 crore in state coffers for over 16 years till 2014 whereas it was supposed to disburse this amount to the MFP collectors. After this case came to light, Irfan Jafri, an activist associated with Bhopal-based non-profit, Kisan Jagriti Sangathan pitched the number to be almost Rs 500 crores up until 2017 ([Jitendra and Kukreti 2017](#)). In the same year, officials of the Madhya Pradesh Forest Department had seized *kendu* leaves collected by 24 tribal women in Barwaha village. It was alleged that the women were selling *kendu* leaves to buyers other than the Forest Department and the produce was thus seized under the Madhya Pradesh *kendu* Patta (Vyapar Viniyaman) Adhiniyam 1964. This seizure was in gross violation of the FRA ([Kukreti 2017](#)).

⁷ There is a three-tier cooperative structure comprising the MFP Federation, district unions and the forest produce cooperative societies. These societies are composed of MFP collectors and deposit the produce at collection centres managed by “Phad Munshis”, appointed from the societies itself.

⁸ We were unable to find the original case listing for the same.

Odisha

In 1981, via the Orissa Forest Produce (Control of Trade) Act, a state monopoly was created for the control and regulation of MFP trade. Section 12 of the Act lays down the following:

Disposal of Specified Forest Produce : Specified forest produce purchased or collected by the State Government or by its officers or agents under this Act, shall be sold by auction or by calling tenders or otherwise as the State Government may, in public interest, by general or special order.

Since MFP was not defined under this Act, state control over established not only specified forest products such as *kendu* leaves, *sal* seeds and bamboo but in fact over all minor forest produce that were identified over time. This came into practice through the granting of exclusive rights for collection to Tribal Development Co-operative Corporation of Odisha Ltd. (TDCCOL) and Odisha Forest Development Corporation. While this practice was profitable for the state revenue coffers, it yielded earnings seven times lesser than the minimum wage for the forest dwellers (Pallavi 2012). This scenario continued until 2000, when post-FRA, an MFP policy was released by the Government of Odisha on the procurement and trade of MFP. This policy recommended ownership rights of MFP to the Gram Panchayats. After the promulgation of PESA in 1996 and the subsequent state act titled Orissa Gram Panchayat Act in 1997, the formulation of the 2000 policy had been overdue. The policy aimed at abolishing the monopoly of state governments to ensure that primary gatherers get proper prices in the free market. It represented a political will to strike a balance between state revenue and recognising the forest dwellers' right to livelihood. It declared that the Government in respect of any MFP items shall grant no lease nor shall it levy any royalty on these items. It also abolished the transit permit system within the state previously sanctioned under the Orissa Timber and Other Forest Produce Transit Rules, 1980. In 2018, the Principal Chief Conservator of Forest (PCCF) responded to a Right to Information application to confirm that The Odisha Forest Act, 1972 and the Orissa Timber and Other Forest Produce Transit Rules, 1980 will not be applicable to the Gram Sabhas recognised under the Forest Rights Act (FRA) 2006 (Pani 2018). However, the 2000 policy did not grant the right of price determination to Gram Panchayats. This was brought about by the Orissa Gram Panchayats (Minor Forest Produce Administration) Rules, 2002. It extended the control of the Gram Panchayat to include reserved forest areas and granted it the powers of price fixation.

However, post the 2000 policy and Act passed in 2002, the Gram Panchayat was yet to be fully bestowed with the enshrined rights, responsibilities and duties. Often, the policy document either did not reach the Panchayats or was not aided by the district administration's efforts at an operational level.

The panchayats did not have avenues to generate revenue internally and had to depend on the state government's support for resource mobilisation. In the absence of adequate human and financial resources, political henchmen and state cooperatives continued control over the trade of MFP.

This can be witnessed in the case of Narigaon. As the first village in the state to undertake deregulated trade in *kendu* leaves, it failed to even recover the money it invested in procuring and processing the leaves due to the lack of buyers and market linkages. The state deregulated leaf trade just a month prior to the *kendu* leaf procurement season, on a pilot basis. This gave the Gram Sabha little or no time to come up with the working capital required to manage bids, tenders and contracts. This resulted in major unsold stockpiles of *kendu* leaves. A major factor cited by private contractors was the alleged invalidity of the Transit Permit issued by the Gram Sabha. Even as FRA made Gram Sabha the sole authority to issue transit permits, the contractors reported that these transit permits are challenged by the Forest Department of other states. Bidyut Mohanti, from the Koraput based non-profit organization, SPREAD, pointed out that the amended rules of FRA mandate the government to provide "post claim support and hand-holding to holders of forest rights", which was not implemented in Narigaon ([Shrivastava 2013](#)).

The deregulation of *kendu* leaves' trade is still a work in progress, as six villages in Odisha were granted ownership and trade rights in 2017. However, the Forest Department monopoly continues to exist in other states. Chitta Ranjan Pani, of Vasundhara, a non-profit organization, highlighted how it is a blatant violation of the Gram Sabhas rights on *kendu* leaves if a parallel structure in the shape of *kendu* leaves department operates in the same Gram Sabha jurisdiction. In the same year, six other villages had tried to assert their trade rights but were not allowed to do so by the Forest Department. In response, the Union Minister of Tribal Affairs, Jual Oram has written to the Odisha Chief Minister, urging him to look into the situation. The state ST/SC development department had also written to the state's Forest Department, bringing to light that "Any authority or an officer who contravenes with the provisions of the Forest Rights Act shall be liable to be proceeded against Section 7 of the Forest Rights Act" ([Kukreti 2017](#)).

In 2017, financial hardships for forest dwellers were compounded by the levying of Goods and Services Tax (GST) on *kendu* leaves. The 18 per cent GST comprised 9 per cent central GST (CGST) and 9 per cent state GST (SGST). Earlier, there was no central tax on the leaf and as a whole, GST was 7%. Kamendra Singh Rathore of Samrthak Samiti, Rajasthan reported that this massive hike in taxes will lead to a reduction in the funds given to the Gram Sabhas who are entitled to the profit made in the process of selling the leaves by the state corporation ([Kukreti 2017](#)).

CONCLUSION

In 2021, MoTA and MoEf&Cc acknowledged their conflict of interests and signed a “Joint Communication” for the effective implementation of the FRA. The Joint Communication acknowledges that even after a considerable time period after FRA’s enactment, rights have not been fully recognised. It emphasises upon greater synergy between the Ministry of Tribal Affairs and Ministry of Environment, Forests and Climate Change at the central level and between Forest and Tribal Welfare Departments of the State Governments ([PIB 2021](#)).

“As per the joint communication, the frontline staff of the State Forest Department should extend assistance to the institutions/committees under Rule 4(1)(e) and (f) of the Act for preparing conservation and management plan for community forest resources..”

- Joint Communication

Over 150 grassroot organisations protested this Joint Communication. They argued that this undermined the spirit of the FRA by allowing state Forest Departments a backdoor entry into regulating forest produce ([Desai 2021](#)).

Forests were originally under the State List of subjects, that is, only state governments could regulate these. But after the 42nd Amendment, the Parliament moved Forests to the Concurrent List. This meant that now forests could be regulated by both the Union and state governments, with the Union having overriding powers. Article 254 of the Indian Constitution provides that “in case of a conflict between a central and a state law on the same subject, the provisions of the central law will prevail over the conflicting provisions of the same law.” So in a conflict between the FRA and state-level legislation, the provisions of FRA will be held up. But so far, this has not been the case, especially with Transit Permits and state monopoly over MFP trade.

⁹ Resolution No - VIP2012/ CR37/D16, Dated - 23 January 2013, passed by Tribal Development Department, Government of Maharashtra.





When the British colonised India and its forests to undertake scientific management of such resources, the smokescreen of administrative efficiency percolated into independent India. Although the regulatory framework sought to place biodiversity conservation at the centre of the forest policy regime, it shifted the locus of control from the forest dwellers, the original custodians, towards more commercial interests. The framework of forest laws in India, post-Independence, has sought to represent the twin ideals of biodiversity conservation and economic development for forest-dependent communities. Although well-intentioned, they have not proved to be a panacea for the livelihood and subsistence of the tribal communities.

During the second wave of the pandemic, as many as 8 lakh people in Odisha who had lost their jobs attained self reliance through the collection and sale of *kendu* leaves, also called 'green diamonds'. Cumulatively, they could amass over 166 crores in one season without major expenses being incurred by the state government towards their welfare ([OrissaPost 2021](#)). This points towards the economic potential of biodiversity reserves in India, especially for those tribal dwellers that have inhabited these lands by tradition. Realising this economic potential for forest dwellers requires the implementation of forest laws and the vision they espouse. A major milestone towards the empowerment of MFP-dependent communities is removing obstructions in the MFP supply caused by the forest bureaucracy and the marginalization of Gram Sabha. Increasing access to forests by removing barriers such as Transit Permits, liberalising MFP trade, and ensuring congruence between Union and state laws would broaden the scope of autonomy for original keepers of forests.

BIBLIOGRAPHY

1. Amrutkar, Prashant. 2009. "The Backwardness And Demand For A Statehood Of Vidarbha". *The Indian Journal of Political Science* 70 (2): pp. 521-528. JSTOR. <https://www.jstor.org/stable/42743914>.
 2. Bag, Hemant, Nabaghan Ojha, and Bikash Rath. 2010. "NTFP Policy Regime after FRA: A study in select states of India." *Regional Centre for Development Cooperation*.
 3. Bandopadhyay, Arun. 2010. "The Colonial Legacy of Forest Policies in India". *Social Scientist* Vol. 38 (No. 1/2): pp. 53-76. JSTOR. <https://www.jstor.org/stable/25621956>.
 4. Banjata. "State Level Policies, Orissa." Accessed February 1, 2022. <http://www.banjata.org/state-level-policies.htm>
 5. Bijoy, C.R. 2021. "How a History of Broken Promises Has Let Down India's Scheduled Areas". *The Wire*. <https://thewire.in/rights/how-a-history-of-broken-promises-has-let-down-indias-scheduled-areas>.
 6. Butola, Jitendra Singh & Sharma, Sanjeev. 2008. "Role of Minor Forest Produce in the livelihoods of Gaddis: a Tribal Community in Bharmour region, Himachal Pradesh, India."
 7. Chari, Mridula. 2017. "Ten years of Forest Rights Act: Maharashtra tops in implementation – but credit goes to one district". *Scroll.in*. <https://scroll.in/article/843046/ten-years-of-forest-rights-act-maharashtra-tops-in-implementation-but-credit-goes-to-one-district>.
 8. Chattopadhyay, Soumyadip. 2013. "Decentralised Provision of Public Services in Developing Countries: A Review of Theoretical Discourses and Empirical Evidence". SAGE Journals. doi:<https://doi.org/10.1177%2F0049085713494300>. <https://journals.sagepub.com/doi/10.1177/0049085713494300>.
 9. CFR. *Promise and Performance of Forest Rights Act: The Tenth Anniversary Report*. https://www.fra.org.in/document/Promise%20and%20Performance%20of%20FRA_Gujarat%20Report.pdf.
 10. Desai, Darshan. 2021. "Over 150 organisations protest Centre's 'fresh bid' to surreptitiously dilute Forest Rights Act". *Free Press Journal*. <https://www.freepressjournal.in/india/over-150-organisations-protest-centres-fresh-bid-to-surreptitiously-dilute-forest-rights-act>.
 11. Forest Survey of India. 2017. "State of Forest Report 2017," <https://fsi.nic.in/forest-report-2017>.
 12. Gandhi, Mahatma. 1947. "Every Village A Republic | India of My Dreams by M.K. Gandhi". *Mkgandhi.org*. <https://www.mkgandhi.org/indiadreams/chap24.htm>.
 13. *Gujarat Forest Producers v. State of Gujarat*. (2004) 2 GLR 568.
 14. Jitendra & Kukreti, Ishan. 2017. "Why has tendu leaf revenue not reached forest dwellers even after 50 years?". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/forests/not-a-minor-lapse-58469>.
 15. Jyoti, Archana. 2021. "Rules of 25-yr-old PESA still not implemented in 4 States". *The Pioneer*. <https://www.dailypioneer.com/2021/india/rules-of-25-yr-old-pesa-still-not-implemented-in-4-states.html>.
 16. Katkurwar, Saurabh. 2021. "Sustainable honey extraction shows way to self-reliance in Maharashtra's tribal district". *Mongabay-India*. <https://india.mongabay.com/2021/08/sustainable-honey-extraction-shows-way-to-self-reliance-in-maharashtras-tribal-district/>.
 17. Kukreti, Ishan. 2017. "GST of 18% on tendu leaves: how it will impact tribals". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/economy/gst-of-18-on-tendu-leaves-how-it-impacts-tribals-58286>.
 18. Kukreti, Ishan. 2017. "Madhya Pradesh forest department violates FRA, seizes tendu leaves from tribals". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/forests/madhya-pradesh-forest-department-violates-fra-seizes-tendu-leaves-from-tribals-58017>.
-

19. Kukreti, Ishan. 2017. "Six villages in Odisha can now sell tendu leaves". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/forests/six-villages-in-odisha-can-now-sell-tendu-leaves-59206>.
 20. Kukreti, Ishan. 2018. "Despite having forest rights titles, two Kalahandi villages denied transit permit". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/forests/despite-forest-right-titles-2-kalahandi-villages-denied-transit-permit-60504>.
 21. Maharashtra CFR-LA. 2017. *Citizens' Report on Promise and Performance of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*. Promise and Performance: Ten Years of the Forest Rights Act in Maharashtra. CFR Learning and Advocacy Group Maharashtra. http://cfrla.org.in/uploads_acrvr/XK2RDMaharashtra%20Promise%20and%20Performance.pdf.
 22. Ministry of Environment, Forest and Climate Change. 2022. "Introduction | The Official Website of Ministry of Environment, Forest and Climate Change, Government of India". <https://moef.gov.in/en/about-the-ministry/introduction-8/>.
 23. Ministry of Tribal Affairs. 2022. "Ministry of Tribal Affairs, Government of India". *Tribal.nic.in*. <https://tribal.nic.in>.
 24. Ministry of Tribal Affairs. 2022. "Ministry of Tribal Affairs, Government of India". *Tribal.nic.in*. <https://tribal.nic.in/fra.aspx>.
 25. M.P. State Minor Forest Produce. "Minor Forest Produce FEDERATION - About us". *Mfpfederation.org*. http://www.mfpfederation.org/content/about_us.html.
 26. Mustalahti, Irmeli et al. 2020. "Responsibilization in natural resources governance: A romantic doxa?". *Forest Policy and Economics* 111: 102033. Elsevier BV. doi:10.1016/j.forpol.2019.102033.
 27. OrissaPOST. 2021. "Kendu leaf plucking provides livelihood to 8 lakh jobless". <https://www.orissapost.com/kendu-leaf-plucking-provides-livelihood-to-8-lakh-jobless/>.
 28. Pallavi, Aparna. 2012. "Tribals, forest department at loggerheads over tendu leaves". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/tribals-forest-department-at-loggerheads-over-tendu-leaves--38282>.
 29. Pallavi, Aparna et al. 2010. "How government is subverting Forest Rights Act". *Downtoearth.org.in*. <https://www.downtoearth.org.in/coverage/forests/how-government-is-subverting-forest-rights-act-2187>.
 30. Pandey, Kundan. 2021. "25 years on, many Indian states haven't implemented a law that empowers Adivasi communities". *Scroll.in*. <https://scroll.in/article/988729/25-years-on-many-indian-states-havent-implemented-the-law-that-empowers-adivasi-communities>.
 31. Pani, Chitta Ranjan. 2018. "In Odisha, state's monopoly on minor forest produce needs to end". *Downtoearth.org.in*. <https://www.downtoearth.org.in/blog/in-odisha-state-s-monopoly-on-minor-forest-produce-needs-to-end-61463>.
 32. PIB Delhi. 2020. "Record-breaking procurement of Minor Forest Produces (MFP) under Minimum Support Price for MFP scheme". *Pib.gov.in*. <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1633222>.
 33. PIB Delhi. 2021. "Press Information Bureau". *Pib.gov.in*. <https://pib.gov.in/PressReleaseDetail.aspx?PRID=1733177>.
 34. Prava, Pragati. 2021. "Kendu leaves: 29 Odisha villages win complete autonomy, but still a long way to go". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/forests/kendu-leaves-29-odisha-villages-win-complete-autonomy-but-still-a-long-way-to-go-78269>.
 35. Reporter Post. 2019. "Tribals protest in Ahmedabad demanding implementation of FRA, MNREGA". *Reporterpost.in*. <http://reporterpost.in/article/nation/2685/tribals-protest-in-ahmedabad-demanding-implementation-of-fra-mnrega>.
-

36. Sahu, Geetanjay. 2020. "Implementation of Community Forest Rights". *Economic and Political Weekly*. <https://www.epw.in/journal/2020/18/special-articles/implementation-community-forest-rights.html>.
37. Sahu, Geetanjay; Dash, Tushar & Dubey, Sanghamitra. 2017. "Political Economy of Community Forest Rights". *Economic and Political Weekly*. <https://www.epw.in/journal/2017/25-26/forest-rights-act/political-economy-community-forest-rights.html>.
38. SAMARTHAN - Centre for Development Support. 2011. *Recognition of Community Rights under Forest Rights Act in Madhya Pradesh and Chhattisgarh: Challenges and Way Forward*. India: UNDP.
39. Sharma, Jitendra Vir. 2020. "Opinion | To maintain sustainability, gram sabhas have to be empowered". *Livemint*. <https://www.livemint.com/opinion/online-views/opinion-to-maintain-sustainability-gram-sabhas-have-to-be-empowered-11579631218057.html>.
40. Shrivastava, Kumar Sambhav. 2012. "Amended Forest Rights Act rules notified; more powers to gram sabha". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/amended-forest-rights-act-rules-notified-more-powers-to-gram-sabha-39064>.
41. Shrivastava, Kumar Sambhav. 2013. "Odisha village takes up tendu trade, but finds no buyers". *Downtoearth.org.in*. <https://www.downtoearth.org.in/news/odisha-village-takes-up-tendu-trade-but-finds-no-buyers-41950>.
42. TRIFED. 2022. "Important Minor Forest Produces (MFPs) | TRIFED - Tribes India | PMVDY". *Trifed.tribal.gov.in*. <https://trifed.tribal.gov.in/non/timber/mfp-mfp>.
43. World Bank. 2005. "India: Unlocking Opportunities for Forest-Dependent People in India" Volume 1, Main Report. <https://openknowledge.worldbank.org/handle/10986/8416>.
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