

Policy Issues in NTFP Management

Introduction –

Among many of the recommendations of National Forestry Commission, 2006 is the recommendation that the term “Non-timber Forest Products” needs to be defined. This recommendation clearly explains the state of affairs regarding scientific management of this important natural resource in India. Even today, we in India do not have an accepted legal definition of NTFP. A synonymous term which is in vogue in India is MFP – the acronym for Minor Forest Produce. Our Constitution also uses this term only in addition to the National Forest Policy & acts like The Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. The term Non-timber Forest Products (NTFP) was coined by de Beer and Mcdermott in 1989 in their historic work on the economic value of NTFPs in South East Asia. Obviously, the authors were unhappy about the step-motherly treatment meted out to this natural resource of this region which was so very important especially for the vast majority of rural poor who were dependent on forests. Through their above cited research work, the authors convincingly established the fact that they (the NTFPs) are economically very important natural resources & hence do not deserve to be written off as “Minor” Forest Produce as they are not inferior to timber – the accepted Major Forest Produce – especially for the forest dwelling or forest dependent communities. Ever-since, the term has gained global recognition & this particular group of forest resources also attracted renewed interest of the researchers, forest managers & policy makers.

Relevance of NTFP in Indian context –

The report of the sub-group-ii on NTFP and their sustainable management in the 12th 5-year Plan estimated that 275 million poor rural people in India—27 percent of the total population— depend on NTFPs for at least part of their subsistence and cash livelihoods (Malhotra & Bhattacharya, 2010; Bhattacharya & Hayat, 2009). This dependency is particularly intense for half of India's 89 million tribal people, the most disadvantaged section of society, who live in forest fringe areas. According to an estimate the NTFP sector alone is able to create about 10 million workdays annually in the country. The report further highlights the importance or role of this natural resource in following manner –

- It is one of India's largest unorganized sectors having a dependent population of about 275 million, and with a business turnover of more than Rs.6000 crores per annum, the NTFP sector has however and unfortunately been neglected since the pre-independence period.
- Although NTFP accounts for about 68% of the export in the forestry sector, conventional approaches of forest management focused largely on timber with but secondary attention to NTFP development, and Working Plans remained confined at best to elaborate prescriptions for bamboo along with few tit bits on other NTFPs.
- NTFP contributes to about 20% to 40% of the annual income of forest dwellers who are mostly disadvantageous and landless communities with a dominant population of tribals.
- It provides them critical subsistence during the lean seasons, particularly for primitive tribal groups such as hunter gatherers, and the landless.
- Most of the NTFPs are collected and used/sold by women, so it has a strong linkage to women's financial empowerment in the forest-fringe areas.
- NTFPs have a tremendous potential to create large scale employment opportunity

thereby helping in reducing poverty and increasing empowerment of particularly tribal and poor people of the poorest and backward districts of the country.

- Fortunately, for natural reasons, India still remains No.1 in case of few items like lac because it is only here that the best quality lac is produced that too in substantial quantities.
- According to a study the Indian share of global medicinal plants trade is increasing at an annual growth rate of 23%, and India stood 3rd among the biggest exporters of medicinal plants during 2009 after China and Canada respectively.
- Herbal raw materials from NTFP source contribute to 90% of the supply for the industry, which are practically sourced from natural forests. Of the 7000 plants used in Indian System of Medicine, 960 have been recorded in trade and 178 are traded in high volumes in quantities exceeding 100 MT per year. According to a study, a total annual demand of botanical raw drugs in the country for the year 2005-06 has been estimated as 3,19,500 MT with corresponding trade value of Rs.1069 crores.

Thus, it can be easily concluded that it is the proverbial manna from the heaven for the poorest of the poor or the most vulnerable groups of India e.g. the tribals, the landless labourers & the women folks among the forest dependent communities. Ayurveda, the world's oldest healthcare system & India's heritage completely depends upon forests (read NTFP) as almost 85% of the raw herbs used in this system of medicine are sourced from this resource. Similar is the case with other systems of medicine included in AYUSH (Unani, Sidhha & Homoeopathy) also.

Defining NTFP (NTFP vis a vis MFP) -

de Beer and McDermot (1989), who coined the term NTFP, define it as "NTFP encompasses all biological materials, other than timber, which are extracted from forests for human use". This definition excludes minerals & includes fuel-wood, bamboo & animal products. It, also excludes non-forest woodlots & TOF (Trees Outside Forests).

According to the report of the sub-group-ii on NTFP and their sustainable management in the 12th 5-year plan, Non Timber Forest Products (NTFPs) refer to all biological materials other than timber extracted from natural forests for human and animal use and have both consumptive and exchange value. Globally NTFP / NWFP are defined as "forest products consisting of goods of biological origin other than wood, derived from forest, other wood land and trees outside forests".

UN-FAO prefers to use the term 'Non-wood Forest Produce' or NWFP. They define NWFP as "a product of biological origin other than wood derived from forests, other wooded land & trees outside forests that may be gathered from the wild or produced in forest plantations, agro-forestry schemes & from trees outside forests".

Some authors or researchers have tried to define NTFP as under –

Peters (1996) – "NTFPs are a collection of biological resources derived from both natural & managed forests & other wooded areas"

Shiva (2000) – All products obtained from plants of forest origin & host plant species in association with insects & animal & their parts & items of mineral origin except timber may be defined as Minor Forest Products (MFP) or Non Timber Forest Products (NTFP) or Non Wood Forest Products (NWFP).

But, as discussed earlier, India's Constitution or the central act - The Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 – still use the term Minor Forest Produce (MFP) for similar concept. The Forest Rights Act tries to define

MFP as “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 & herbs, roots tubers & the like”.

A closer scrutiny of this definition will reveal that in an attempt to define ‘MFP’ for the limited purpose of this act, it is taking support of the term ‘non-timber forest produce’. Further, trying to limit the scope of ‘NTPF’ also, it is adding the condition ‘of plant origin’. But, the inclusion clause, on one hand, mentions items like ‘stumps’ which essentially are woody & might have timber value also & on the other hand mentions items like tussar, cocoons, honey, wax & lac which essentially are animal products. So, obviously, this definition cannot be used as a proper definition of ‘MFP’ for wider applications. Some states opposed the inclusion of bamboo in this list arguing that bamboos are poor man’s timber & the bamboo coupes are being worked like timber coupes only with its own silvicultural system etc.

So, obviously, to have a proper definition of NTFP is the need of the hour. If we consciously decide to continue with the term ‘MFP’ (even at the cost of being labelled old fashioned or unscientific in the international community), even then we need to come up with a proper definition as the MFP definition of Forest Rights Act cannot serve the purpose because of the contradictions or problems discussed above.

On the issue of definition of MFP/NTFP, the author wants to recommend the readers reading a paper authored by B M Belcher titled “What isn’t an NTFP?” (International Forestry Review 5(2), 2003, pg 161-168) to develop a better understanding of the issues involved in defining ‘NTPF’.

Global scenario (The UN Forest Principles) –

One of the many outcomes of Rio Earth Summit of 1992 was the document called Forest Principles. It is a non-legally binding authoritative statement of principles for a global consensus on the management, conservation and sustainable development of all types of forests. If this document is scanned to find material directly related to NTFP, one will be rather disappointed. But, if one broadens the scope of the scanning & include matter remotely or indirectly related to NTFP, then, one comes across the following mentions -

- Preamble – (b) The guiding objective of these principles is to contribute to the management, conservation and sustainable development of forests and to provide for their multiple and complementary functions and uses.
- Principles/Elements - 2 (b) Forest resources and forest lands should be sustainably managed to meet the social, economic, ecological, cultural and spiritual needs of present and future generations. These needs are for forest products and services, such as wood and wood products, water, food, fodder, medicine, fuel, shelter, employment, recreation, habitats for wildlife, landscape diversity, carbon sinks and reservoirs, and for other forest products. Appropriate measures should be taken to protect forests against harmful effects of pollution, including air-borne pollution, fires, pests and diseases, in order to maintain their full multiple value.
- Vital Roles of Forests - 4. The vital role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater resources and as rich storehouses of biodiversity and biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognized.

- Guidelines for National Forest Policies - 5. (a) National forest policies should recognize and duly support the identity, culture and the rights of indigenous people, their communities and other communities and forest dwellers. Appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being, through, inter alia, those land tenure arrangements which serve as incentives for the sustainable management of forests.
- Sustainable Management - 6(e) Natural forests also constitute a source of goods and services, and their conservation, sustainable management and use should be promoted.
- 7(a) Efforts should be made to promote a supportive international economic climate conducive to sustained and environmentally sound development of forests in all countries, which include, inter alia, the promotion of sustainable patterns of production and consumption, the eradication of poverty and the promotion of food security.
- Access & Sharing of Bio-resources - 8(g) Access to biological resources, including genetic material, shall be with due regard to the sovereign rights of the countries where the forests are located and to the sharing on mutually agreed terms of technology and profits from biotechnology products that are derived from these resources.
- R & D - 12. (a) Scientific research, forest inventories and assessments carried out by national institutions which take into account, where relevant, biological, physical, social and economic variables, as well as technological development and its application in the field of sustainable forest management, conservation and development, should be strengthened through effective modalities, including international cooperation. In this context, attention should also be given to research and development of sustainably harvested non-wood products.

Thus, out of the total 15 principles of the document, one comes across a direct mention of "Non-wood products" in the 12th principle. This may be because of the fact that the research paper by de Beers & McDermot coining the term NTFP was published in the year 1989 which heralded the renewed interest of the researchers & managers towards this resource. But, the Rio Earth Summit took place within three years of the publication of the paper coining the term NTFP, & till then NTFP had not gained sufficient priority or importance in the books of the global policy makers, & hence, it did not merit a place of prominence in the document of Forest Principles. This, sidelining of NTFP in the global document is also indicative of the fact that in the subtropical & temperate regions of the globe (coterminous with the majority of the developed countries), NTFP actually was not such an important matter as it is for the countries of the tropical region with its vast biodiversity & considerable dependence of the poor of the region on this natural resource.

Indian Constitution & MFP –

Until 1992, there was no mention of the subject Minor Forest Produce in our constitution. It got inserted in the year 1992 via The Constitution (Seventy-Third Amendment) Act (20th April, 1993).

Article 243.G of the constitution is about Powers, authority and responsibilities of Panchayats. The complete text reads as under –

243G. Subject to the provisions of this Constitution, the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—

- (a) the preparation of plans for economic development and social justice;
- (b) the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule.

The 11th schedule is reproduced below –

1[ELEVENTH SCHEDULE

(Article 243G)

1. Agriculture, including agricultural extension.
2. Land improvement, implementation of land reforms, land consolidation and soil conservation.
3. Minor irrigation, water management and watershed development.
4. Animal husbandry, dairying and poultry.
5. Fisheries.
6. Social forestry and farm forestry.
7. Minor forest produce.
8. Small scale industries, including food processing industries.
9. Khadi, village and cottage industries.
10. Rural housing.
11. Drinking water.
12. Fuel and fodder.
13. Roads, culverts, bridges, ferries, waterways and other means of communication.
14. Rural electrification, including distribution of electricity.
15. Non-conventional energy sources.
16. Poverty alleviation programme.
17. Education, including primary and secondary schools.
18. Technical training and vocational education.
19. Adult and non-formal education.
20. Libraries.
21. Cultural activities.
22. Markets and fairs.
23. Health and sanitation, including hospitals, primary health centres and dispensaries.
24. Family welfare.
25. Women and child development.
26. Social welfare, including welfare of the handicapped and mentally retarded.
27. Welfare of the weaker sections, and in particular, of the Scheduled Castes and the Scheduled Tribes.
28. Public distribution system.
29. Maintenance of community assets.]

At serial number 7 of the 11th Schedule of article 243G, there is the mention of Minor forest produce.

Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) & MFP –

Through this act, the provisions of the 73rd Constitutional Amendments were applied to the Scheduled Areas also. The related excerpts of the act are as under –

THE PROVISIONS OF THE PANCHAYATS (EXTENSION TO THE SCHEDULED AREAS) ACT, 1996No.40 OF 1996 (24th December, 1996)

An Act to provide for the extension of the provisions of Part IX of the Constitution relating to the Panchayats to the Scheduled Areas.

Extension of part IX of The Constitution

3. The provision of Part IX of the Constitution relating to Panchayats are hereby extended to

the Scheduled Areas subject to such exceptions and modifications as are provided in section 4.

Exceptions and modifications to part IX of The Constitution

4. Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely:-

(m) 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-

(i) the power to enforce prohibition or to regulate or restrict the sale and consumption of any intoxicant;

(ii) the ownership of minor forest produce;

(iii) the power to prevent alienation of land in the Scheduled Areas and to take appropriate action to restore any unlawfully alienated land of a Scheduled Tribe;

(iv) the power to manage village markets by whatever name called;

(v) the power to exercise control over money lending to the Scheduled Tribes;

(vi) the power to exercise control over institutions and functionaries in all social sectors;

(vii) the power to control over local plans and resources for such plans including tribal sub-plans;

Thus, through section 4 of this Act, the states have been restricted from making any law which is inconsistent with the provisions of Scheduled Areas regarding 'the ownership of minor forest produce' among other things. In this Act, unless the context otherwise requires, "Scheduled Areas" means the Scheduled Areas as referred to in Clause (1) of Article 244 of the Constitution.

Article 244 provides for administration of Scheduled Areas and Tribal Areas. The relevant excerpts of Constitution are given below -

244. (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State 1*** other than 2[the States of Assam 3[,4[Meghalaya, Tripura and Mizoram]]].

(2) The provisions of the Sixth Schedule shall apply to the administration of the tribal areas in 2[the States of Assam 3[, 5[Meghalaya, Tripura and Mizoram]]].

FIFTH SCHEDULE

[Article 244(1)]

Provisions as to the Administration and Control of Scheduled Areas and Scheduled Tribes

PART A

GENERAL

1. Interpretation.—In this Schedule, unless the context otherwise requires, the expression "State" 1* * * does not include the 2[States of Assam 3[,4[Meghalaya, Tripura and Mizoram.]]]

SIXTH SCHEDULE

[Articles 244(2) and 275(1)]

Provisions as to the Administration of Tribal Areas in 1[the States of Assam, Meghalaya, Tripura and Mizoram]

India's National Forest Policy, 1988 & NTFP –

The NTFP related (directly & indirectly) objectives of our National Forest Policy are –

- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimize pressure on existing forests.

Under the heading ESSENTIALS OF FOREST MANAGEMENT, the policy gives a very clear-cut mandate for the management of Minor Forest Produce as quoted below -

3.5 Minor forest produce provides sustenance to tribal population and to other communities residing in and around the forests. Such produce should be protected, improved and their production enhanced with due regard to generation of employment and income.

Under the heading 'Rights and Concessions' the policy has clearly outlined the need for recognition of special rights & concessions for special groups or communities like the tribals, scheduled castes & also other poor people living in and around the forests. In no uncertain terms, the policy has declared that 'Their (tribals') domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce'. The relevant excerpts of the policy are quoted below -

4.3.4.3 The life of tribals and other poor living within and near forests revolves around forests. The rights and concessions enjoyed by them should be fully protected. Their domestic requirements of fuelwood, fodder, minor forest produce and construction timber should be the first charge on forest produce. These and substitute materials should be made available through conveniently located depots at reasonable prices.

4.3.4.4 Similar consideration should be given to scheduled castes and other poor living near forests. However, the area, which such consideration should cover, would be determined by the carrying capacity of the forests.

Under the title 'Tribal People and Forests', the policy states that while safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce.

What is surprising about this policy document is the fact that though it came into existence one year before the term NTFP was coined elsewhere & four years before the Rio Earth Summit, it included the mandate for the management of MFP in such clear cut terms fully appreciating the role of this natural resource in the lives of tribals, scheduled castes & other rural poor living in and around the forests.

What is even more surprising about these provisions regarding MFP is the fact that even after a quarter of a century, the field implementation of this mandate is grossly neglected & virtually unattended.

NFTP/MFP related Recommendations of Forestry Commission, 2006 –

The Forestry Commission headed by Justice Kripal undertook country wide stakeholder consultations & submitted its report in 2006. The NFTP/MFP related recommendations of the Forestry Commission are as under -

Chapter 4

- [6] The Indian Forest Act, 1927, needs revamping, taking into account current requirements, inter alia:
- (c) Non-timber Forest Products need to be defined.
- (e) There needs to be greater control over unsustainable biotic pressures - especially over grazing and tendu leaves, sal seed and fuelwood extraction.
- [11] In respect of the Biological Diversity Act, 2002, no agency has been identified for the implementation of this Act. The implementing agency may be the Forest Department (FD), in coordination with other agencies, in areas under the control of the FD.

Chapter 6

- [29] The medicinal plants growing in forest areas play a very important role in primary health care of neighboring communities who do not have access to hospitals or cannot afford to buy costly medicines. Besides, the knowledge of these medicinal plants is an intellectual property right of the forest dwellers, which must not be allowed to be lost. Special programmes should be undertaken by the State Forest Departments to conserve, manage, scientifically harvest and sustainably utilize medicinal plants found in forest areas. This endeavor, however, should not involve the removal of any forest cover, nor put at risk forests or forest ecology, either in propagation of medicinal plants or in their harvesting or removal.

Chapter 10

- [194] Propagation and sale of medicinal plants in the North-East would be a very promising proposition to provide to the land-owner in the region an alternative to jhuming. A special ecologically sustainable programme needs to be undertaken in this regard.

Chapter 12

- [218] The country's forests must now be looked upon as ecological entities – regulators of water regimes, watersheds and catchments, gene pools, habitats of wildlife, providers of the needs of the neighboring communities and as treasure troves of the nation's natural heritage. The country's needs of timber, fuelwood, fodder, industrial wood, and medicinal plants must mainly be met with plantation forestry and through agroforestry, which thus must receive much greater attention and support than now. This would also require a change in the role of forests, forestry and forest personnel, with corresponding change in recruitment, training, attitudes and mindset.
- [225] The need of medicinal plants cannot be met with from forests alone, even with their improved management. There is a great scope for growing medicinal plants on private agriculture holdings, which would require the supply of planting material, marketing assistance, and technical inputs at least in the initial stages, and this must come from the State agriculture departments with inputs from State forest departments as well.

Some State Forest Policies & NTFP –

Assam Forest Policy, 2004 has following NTFP Related Objectives –

- Conserving natural heritage of the state by preserving the natural forests & wetlands with vast variety of flora & fauna which represent the unique biodiversity & genetic resources of the state.
- Meeting the bonafide livelihood needs of fuelwood, fodder, bamboo, canes, small timber & other NTFPs of the rural poor & the tribals in particular, with due regard to the carrying capacity of the forest.
- Increasing forest productivity through shift of accent from major to minor forest produces, from top canopy to lower canopies & from flagship species to smaller denizens of the forest.
- Encouraging efficient utilisation of forest produce & maximising value addition to the timber & non-timber forest produce in the state. The use of non-durable secondary species as constructional timber is to be encouraged after inducing durability through wood preservation techniques.

Similarly, Madhya Pradesh came up with its State Forest Policy in the year 2005. The NTFP related objectives in this state policy are as under -

- 2.4 - Optimizing the use of timber, fuel wood, bamboo, fodder & minor forest produce, to maximize their production & creating atmosphere for regular availability of forest based alternative employment to forest dependent families.
- 2.6 - Increasing the production of non-timber forest produce, especially herbal medicines & making economic conditions of the forest dependent communities better by ensuring their sustainable harvesting, value addition & marketing.
- 2.14 – To develop Eco-tourism & Herbal Health Tourism in forest areas for the benefit of forest dependent communities & conservation of natural resources.

JFM & NTFP -

GOI directive dt. 01 June 1990 about Joint Forest Management clearly reiterated the mandate of National Forest Policy & said that tribals & other communities living around forests have first right over forest produce.

At state level, a state like Madhya Pradesh with the highest numbers of JFM committees came up with its first JFM related GR (Government Resolution) on 10 Dec. 1991. This GR was revised on 04 Jan 95, 07 Feb 2000 & 22 Oct 2001. The latest GR on JFM provided for the rights of the JFMCs in accordance with the decisions of the M.P. State Govt. over the provisions of PESA, 1996.

Uttar Pradesh Village Forests Joint Management Rules, 2002 has provision about Forest User Group (FUG). Such adult persons of the village who are basically dependent on village forest for their subsistence & livelihood, interested in the management of the forests & willing to become members of the Forest User Group constitute FUG. The JFMCs shall function & exercise the rights on behalf of the FUG over the village forest. The JFMCs working on behalf of the FUGs are authorized to exercise powers in the village forests to collect, use & sell the NTFP other than Tendu Leaves under these rules. In case of bamboo & Tendu Leaves the share of the JFMC would be 50% of the net income. In case of NTFP other than Tendu Patta, the JFMCs shall pay a fixed amount as royalty to the Forest Department.

The JFMCs are entitled to collect, store, process & market the NTFPs other than medicinal plants & Tendu Patta. Forest Corporation of UP has been authorized to supervise collection, storage & processing of medicinal plants through the JFMCs. The medicinal plants shall be marketed by the Uttar Pradesh Forest Corporation only. But, in the Northern part of the state (Terai region), the NTFP collection rights are auctioned by the DFO every year (for areas other than the village forests) & the highest bidder arranges his own labors for the NTFP collection including dung, fish & hides.

The Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 –

This act recognizes two types of rights of the Scheduled Tribes & Traditional Forest Dwellers - Personal & Community forest rights. The rights related to NTFP are recognized under the Community Rights. As mentioned before also, this act has tried to define the term Minor Forest Produce as "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 & herbs, roots tubers & the like". Among the rights that are recognised by this act, the right related to MFP is defined as "right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries".

The provisions for evidence for determination of community forest rights are as under –
13. Evidence for Determination of Forest Rights - (2) An evidence for Community Forest Rights shall, inter alia, include –

- (a) community rights such as *nistar* by whatever name called;
- (b) traditional grazing grounds; areas for collection of roots and tubers, fodder, wild edible fruits and other minor forest produce; fishing grounds; irrigation systems; sources of water for human or livestock use, medicinal plant collection territories of herbal practitioners;

Separate type of form (Form - B) has been prescribed under this act to claim community rights. The description goes as under -

FORM – B
CLAIM FORM FOR COMMUNITY RIGHTS
[See rule 11(1)(a) and (4)]

Nature of community rights enjoyed:

1. Community rights such as *nistar*, if any: (See Section 3(1)(b) of the Act)
2. Rights over minor forest produce, if any: (See Section 3(1)(c) of the Act)

One important thing which should be born in mind regarding the Forest Rights Act is that it has laid down the procedure through which the individuals & communities can claim their rights & the procedure in vesting of these rights in them. It does not automatically confer these rights to anybody at any place.

The Biological Diversity Act, 2002 & NTFP –

This act provides for conservation of biological diversity, sustainable use of its components & fair & equitable sharing of the benefits arising out of the use of biological resources, knowledge & for matters connected therewith or incidental thereto. This act defines 'Biological Resources' as "plants, animals & micro-organisms or parts thereof, their genetic material & by products (excluding value added products) with actual or potential use or

value, but does not include human genetic material". Thus, the entire basket of NTFP (depending upon the definition of NTFP) is covered under the term 'Biological Resources'. For non-Indians, approval of National Biodiversity Authority (NBA) is mandatory for obtaining bio-resource or associated knowledge for research or commercial use. For Indians, approval of National Biodiversity Authority (NBA) is mandatory for seeking Intellectual Property Rights on bio-resource or traditional knowledge. Section 7 of the act reads as "No person, who is a citizen of India or a body corporate, association or organization which is registered in India, shall obtain any biological resource for commercial utilization, or bio-survey and bio-utilization for commercial utilization except after giving prior intimation to the State Biodiversity Board concerned: Provided that the provisions of this section shall not apply to the local people and communities of the area, including growers and cultivators of biodiversity, and *vaids* and *hakims*, who have been practicing indigenous medicine." The MP Biological Diversity Rule 17 makes it mandatory to any Indian person or body to give prior intimation to the State Biodiversity Board for obtaining bio-resources for research or commercial use. Similar provisions must be there in other state rules as well. Such persons or bodies, who are earning profits out of the research or commercial use of such bio-resources are supposed to share the benefit with the local people through the State Biodiversity Board & the Biodiversity Management Committees. There are heavy punishments for contraventions of various provisions of this act & rules made thereunder.

Other NTFP related state acts –

Brief description about the NTFP related acts & rules enacted by some of the states is as under -

- (1) M. P. Tendu Patta (Vyapar Viniyaman) Adhiniyam – 1964
 - An act to to make provision for regulating in the public interest the Trade of Tendu Leaves by creation of State monopoly in such trade.
- (2) M. P. Tendu Patta (Vyapar Viniyaman) Niyamavali, 1966
- (3) M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam – 1969
 - An act to make provision for regulating in public interest the trade of certain forest produce by creation of state monopoly in such trade.
 - "Forest Produce" means Kashtha, Khair, Catechu (Katha), Catechin (Cutch), Kulu gum, Dhawara gum, Khair gum, Babool gum, Sal resin, Salai resin (Cheed gum), Rosha grass, Rosha grass oil, Lac in all forms, Shellac, Mahua flowers, Tori or gulli (Mahua seeds), Chironji Guthli, Chironji, Sal Seed, Harra & Cacharia, Mahul leaves & Mahul bark & phool bahari grass or phool bahari.
- (4) M.P. Van Upaj Other Than Timber (Vyapar Viniyaman) Niyam – 1969
 - They shall apply to all the specified forest produce other than timber.
- (5) Other state policy documents –
 - Madhya Pradesh Strategy for Development of Medicinal & Aromatic Plants 2009-10 to 2013-14.
 - Madhya Pradesh Bio-technology Policy 2003
- (6) M. P. Forest Produce (Biodiversity Conservation & Sustainable Harvesting) Rules, 2005 - Enacted by state govt. vide powers granted by clause 76(d) of Indian Forest Act, 1927
 - Authorised officer – Local DFO.
 - Authority to declare ban period.
 - Authority to declare closure of area.

- Authority to declare ceiling on quantity.
 - Authority to declare method of harvesting.
(Thus, a legal tool is available but not the species-wise proven models of sustainable harvesting. This field is wide open for research / studies.)
- (7) Chhattisgarh Medicinal Plants (Sustainable Collection & Disposal) Rules, 2009
- Formulated under sub-sections C & D of section 76 of Indian Forest Act, 1927.
 - In accordance with Forest Dwellers (Recognition of Forest Rights) Rules, 2007.
 - Empowers the DFO / Authorized Officer to proclaim the regulations such as declaration of period of closure, closed area & prescriptions of sustainable harvesting practices in all the villages within 5 Km of forest.
 - Provides for TP & registration of Growers, Traders, Manufacturers & Exporters.
 - Penalties under S-52 of IFA, 1927.

Institutionalization of NTFP Management Through Working Plans -

The National Working Plan Code, 2004 provides for survey of Non-Timber Forest Products in following terms -

37. The WPO does the survey of NTFP through old records, local enquiry, & assessment of quantity through sampling. Survey of medicinal plants is invariably done. Data collected by NGOs on NTFP may also be used. Summarised estimated quantities are recorded in the following format :

S. No.	Scientific Name	Local Name	Type of plant	Part Used	Area where found	Quantity per Ha.	Estimated Harvest/ Ha.	Remarks
1	2	3	4	5	6	7	8	9

The code also provides for mandatory working circles for NTFP in the following terms -

42. It is essential to include following (Overlapping) Working Circles in the working plan :

(ii) NTFP (For important NTFP like resin, tendu leaves etc., there will be separate Working Circles)

State monopolies of certain NTFPs/MFPs –

Two central Indian states – Madhya Pradesh & Chhattisgarh – have three tier federal structures of cooperative bodies handling the collection & trade of certain NTFPs like Tendu Leaves, Sal Seeds, Gum Karaya etc which have been monopolised by the state governments & the MFP Federations are carrying out the collection & trade of these NTFPs on behalf of the state governments as their authorised agents. A very unique feature regarding the benefit sharing of this trade in both these states is that the state governments are not claiming even a penny out of the profit earned from the trade of these monopolised NTFPs. The entire profit is divided in three parts. 60 to 70 % of the profit earned in a financial year is distributed among the primary collectors as dividend. The remaining part of the profit is divided into two halves & spent on the development of the forests & community development of the villages of the primary collectors. Apart from the trade of monopolised NTFP, both these MFP Cooperative federations are actively involved in the value addition & marketing of NTFPs & medicinal plants. Chhattisgarh MFP Federation is working through its NWFP Marts towards this end whereas MP MFP Federation is producing more than 300 Ayurvedic & herbal products under the brand name Vindhya Herbs & trying to popularise

& market these products through a chain of concept outlets called Sanjivani Ayurved Kendras.

Other types of bodies handling the NTFP related matters -

The Girijan Co-operative Corporation is a public Sector undertaking of Govt. of Andhra Pradesh established in the year 1956 for the Socio-economic upliftment of Tribals in the State of Andhra Pradesh. Its objectives are:

- a) To ensure procurement of Non-Timber Forest Produce (NTFP) collected by the tribals and also Agricultural Produce (AP) grown by the tribal farmers duly paying them remunerative prices.
- b) To ensure supply of Essential Commodities under the Public Distribution System (PDS) and other Daily Requirements (DRs) at reasonable prices to the tribal consumers through a network of Daily Requirement (DR) Sales Depots.
- c) To provide Short – Term Credit to the tribal farmers for their Seasonal Agricultural Operation (SAO). GCC also undertakes other activities which are conducive to the promotion of economic interests and welfare of the Scheduled Tribes and for the attainment of the above objectives.

Odisha Forest Corporation has been created in 1962 with the objective of exploiting the state's vast forest resources scientifically without sacrificing the apparent forest values, ensuring a fair wage to forest labour force and to provide sufficient non-tax revenue to the State exchequer, as well as to promote feasible forest based industries in the state. The OFDC is fully owned by Government of Odisha. Apart from working for plantation, timber & firewood, OFDC also works in the kendu leaves, bamboos, NTFP/miscellaneous products & marketing of NTFP & medicinal plants. Government of Orissa passed an order on 31st March 2000 vesting on the Gram Panchayats (GPs) the authority to regulate the purchase, procurement and trade so that the primary gatherers get a 'fair price for the NTFPs gathered by them'. Although kendu, bamboo and sal seeds continue to be under government monopoly, 68 other NTFPs, such as tamarind, honey, myrabolans, etc, have been kept under the control of Panchayats throughout the State. There would be no requirement of trade and transit permit, no levies and no royalties for these 68 items. The new policy abolished the 'leasing system' of the state monopolised NTFPs and Panchayats were given the power to register the traders at local level and to monitor their function especially with regard to price.

Gujarat State Forest Development Corporation Limited (GSFDC) was established in August 1976 and registered under the Companies Act 1956. In 1979 the Minor Forest Produce (MFP) trade came to be nationalized in Gujarat . The Corporation was entrusted with the task of its execution. This meant translating on the ground the State Policy of protecting economic interest of STs, SCs and other weaker sections, while justifying its corporate status. This corporation gets no grants and budgetary support from the Government. Corporation has completed 30 years of its existence in the service of the tribal. Besides MFP, it has since expanded into Ayurved, Plantations Woodworking, and recently the Wood-charcoal. From its initial authorized Share Capital of Rs.100 lakhs, the present authorized Share Capital of the Corporation is Rs. 700 lakhs. Its paid-up Share Capital is Rs. 631.65 lakhs of which the state's contribution is 62% and the balance 38% is the Government of India's contribution.

Main Objectives of this Corporation are -

- ▶ To undertake commercially viable and ecologically sustainable forest based enterprises.
- ▶ To eliminate exploitation from private trade of forest dwellers in general and the tribal in particular, who derive sustenance through collection of Minor & other Forest Produce (MFP).
- ▶ To maximize benefit percolation from such trade to the tribal.

Why state agencies do not monopolize all NTFPs ?

Some efforts were done to monopolize more NTFPs in some states. But, many of them incurred losses & failed. The losses incurred in similar attempts in cases of tamarind trade in Bastar (erstwhile MP, now in CG) & Lac monopoly in 10 districts of MP can be cited as some of the examples. A typical list of some of the reasons why the state agencies are hesitant to the idea of monopolizing more NTFPs is given below -

- Nobody wants to incur losses.
- Some bad experiences in the past.
- Forest Department staff not groomed for trade.
- Market fluctuations.
- Logistics problems.
- Too many NTFPs. So, too much of work.
- Market forces' resistance. Etc.

It is quite noticeable in the foregone paragraphs that all the bodies in all the states dealing with NTFP are anything but forest departments themselves. Why is it that NTFP matters are dealt by non-government bodies only? This question also can be answered to some extent by the above mentioned list of reasons.

Royalties, Transit Passes, Mandi Tax, Concessions & Tax holidays etc –

The issues & facts are as under -

- Many states are still charging royalties on NTFPs.
- Transit Passes (TPs) for transportation of some or all NTFPs are required in some states.
- Provisions of Herbal Mandies in some states like Uttara Khand.
- Mandi Tax / Handling Charges on NTFPs.
- In M. P. Industrial Policy NTFP based industries are given priority / special status & also Tax Holiday / Concessions.

National Medicinal Plants Board (NMPB) –

Though, NMPB's mandate is limited to medicinal plants only, but, Medicinal Plants itself constitute a large portion of the NTFP pie. The schemes being implemented by NMPB are as under -

- Subsidies on cultivation of some medicinal plants (through Horticulture Department).
- Grants/ Subsidies for conservation, plantation/resource augmentation & processing of Medicinal Plants.
- Marketing Assistance.
- Subsidy/grant for GMP, Testing Facilities & cluster development.

Some NTFP Related Issues –

Some of the important issues/questions regarding NTFP management are discussed below -

- **Do we (the forest managers &/or forest scientists) know enough about NTFPs? –** The obvious answer is 'No'. The knowledge base available with the forest managers &/or forest scientists is very limited both in terms of their siculture & variety.
- **Then who knows? –** The traditional gatherers & users (like the local healers) know much about this bounty of nature.
- **Should we proceed with or without them? –** Obviously, the answer is 'No'. In any meaningful attempt at sustainable management of NTFP cannot be undertaken without the primary stakeholders like the traditional gatherers & users.
- **After all, whose baby is this (NTFP)? –** This question is rather tricky to answer. On one hand, the Constitution says that "the Legislature of a State may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government" & "such law may contain provisions for the devolution of powers and responsibilities upon Panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to—
 - the preparation of plans for economic development and social justice;
 - the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule – Minor Forest Produce".
- Hence, the situation may vary from state to state in this regard. PESA has extended these rights to the Scheduled Areas.
- The all important issue in this regard is are the Panchayats or the Scheduled Area authorities or councils actively doing something towards "Sustainable NTFP Management". The answer is generally negative. Hence, the situation is like this – in some states the devolution of powers and responsibilities regarding MFP may have been done in favour of the Panchayats or other bodies of local self governance, but these bodies are not paying the desired attention to this baby. On the other hand, in these states there might be some other bodies like the MFP Federations, Forest Corporations etc which are not having the powers & responsibilities regarding the MFPs but are doing a good job by providing benefits to the forest dependent population.
- Similarly, till a time majority of the gatherers decide to claim their community rights (under Forest Rights Act) regarding the monopolised MFPs in those states & keep on selling the MFP like Tendu Leaves willingly to the Federations or Corporations, the status quo is going to continue.
- It will take a long time before panchayats become capable of handling the trade & sustainable development of these MFPs. Till such a time, the Federations & Corporations should keep on doing the good job for the benefit of the gatherers & should refrain from cornering the profit.
- **What is Forest Department's role in this? –** A close reading of the article 243G tells us that the the devolution of powers & responsibilities in favour of the panchayats is with respect to the preparation of plans for economic development and social justice & with respect to the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule like Minor Forest Produce. Clearly, the panchayats can utilise a type of harvest (i.e. MFP) for economic development & social justice if

the state act empowers them accordingly. But it does not absolve the forest departments from its responsibilities mandated in National Forest Policy as the objectives. The following objectives in particular are relevant in this context -

- Maintenance of environmental stability through preservation and, where necessary, restoration of the ecological balance that has been adversely disturbed by serious depletion of the forests of the country.
- Conserving the natural heritage of the country by preserving the remaining natural forests with the vast variety of flora and fauna, which represent the remarkable biological diversity and genetic resources of the country.
- Increasing substantially the forest/tree cover in the country through massive afforestation and social forestry programmes, especially on all denuded, degraded and unproductive lands.
- Meeting the requirements of fuel-wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- Increasing the productivity of forests to meet essential national needs.
- Encouraging efficient utilisation of forest produce and maximising substitution of wood.
- Creating a massive people's movement with the involvement of women, for achieving these objectives and to minimise pressure on existing forests.

Hence, the author is of the opinion that the 73rd amendment (especially the article 243G) hasn't changed the basic duties or responsibilities of the state forest departments. The only message that has to be taken from this constitutional amendment is that the NTFPs have to be managed "for economic development and social justice" of the primary stakeholders – the traditional gatherers or the forest dependent communities. The NTFP management has to be in an inclusive manner & not excluding the primary stakeholders.

Other stakeholder departments / agencies in NTFP matters –

It is important to note that, Forest Departments are not the highest stakeholders in NTFP management. An indicative list of some other departments & organizations will make this point amply clear -

- Rural Development Department.
- Deptt. of AYUSH / Health.
- Deptt. Of Industries & Employment Generation.
- NMPB
- Exports / International trade.
- Tribal Welfare Deptt./Sericulture
- TRIFED
- Co-operative Deptt.
- NCDC
- Deptt. of Biodiversity / Biotechnology. etc.

So, automatically, it becomes imperative for the Forest Departments to adopt an inclusive approach in NTFP management in this regard also.

Recommendations –

The report of the sub-group-ii on NTFP and their sustainable management in the 12th 5-year plan has done the gap analysis under following heads -

- **Gaps at policy level:** No national clarity, monopoly rights of the states questionable.
- **Gaps at production level:** unsustainable harvesting, degradation of the resource base.
- **Gaps at institutional level:** no central organization to coordinate, limited capacities of state agencies versus uncertain market.
- **Gaps at management level:** NTFP management protocols hardly available/ developed, dilemma regarding ownership of communities.
- **Gaps at market level:** mostly unorganized, uncertain, lack of market intelligence

Having done the gap analysis, the report has enlisted the issues & challenges as under -

- High exploitation and poor regeneration
- Inadequate NTFP baseline data and mapping, unclear demand supply scenario
- Poor attention to NTFP conservation
- Absence of sustainable harvesting protocols
- Unorganized sector
- Policy-level inconsistencies
- Inadequate infrastructure, and post-harvesting facilities/skills
- Volatile market
- Adapting to Climate change
- Incompatible tax structure
- Inadequate capacity and knowledge in NTFP management
- Poor progress in research & development
- Minimum Support Price (MSP) for NTFPs
- Absence of complimentary mechanism for NTFP crop failures
- Underperformance of public sector procurement & trade agencies
- Primary collectors losing interest in NTFP collection

The report has enlisted the immediate priorities (for the 12th plan) in the following manner -

- Depleting resource base and its conservation/regeneration
- Un-assessed resources and their inventorization
- Differential policy and its solution
- Inadequate skill & capacity at various levels on value chain development, and interventions for its solution
- Weak institutionalization, and its solution
- Poor R&D focus and its remedy
- Lack of special attention for critically dependent communities and areas
- Effective marketing linkages

The report has given recommendations under 5 headings as under -

1. Resource Management

1. Conservation of all genotypes including RET species, Development and Sustainable Harvesting with locally feasible models of community participation like People's Protected Areas in Chhattisgarh in deserving areas.
2. Resource augmentation and development
3. A zone wise GIS-based inventory of availability, cultivation status, demand and supply for NTFPs

- 4. Zone wise species prioritization and selection for conservation, development and harvesting (CDH) of important NTFP species
- 5. A cluster based approach after few successful pilot initiatives, for further development of NTFPs
- 6. SFM including revision of Working Plan Code, Certification and CBNRM.

2. Marketing

- 1. Minimum support price (MSP) for NTFPs.
- 2. Mechanism for market intelligence and information system.
- 3. Efficient Certification system for improved trade.
- 4. Revolving Fund or similar financial support to primary collectors and their institutions.
- 5. Value chain development by aggregation, primary processing, grading, branding and certification.
- 6. Eco- services of NTFP such as herbal ecotourism and local enterprise development.
- 7. Encourage corporate sector involvement- contract farming, infrastructure development, resource augmentation.

3. Capacity Building and IEC (Information, Education & Communication)

- 1. Formation and strengthening of local institutions-SHG, FPCs, VPs etc.
- 2. Special training of front line staff and ToT.
- 3. Strengthen & restructure existing institutions, particularly public sector procurement & marketing agencies.
- 4. Modular training for primary collector, grower, entrepreneurs and traders.
- 5. National and International exposure visits of relevant stakeholders.
- 6. User friendly IEC material.

4. Research and Development

- 1. Strengthening existing potential National/State R&D institutions.
- 2. Undertaking state of art research on NTFPs, including nationally coordinated projects, collaborative projects.
- 3. Prime focus on developing new/alternate marketability for single market NTFPs, low value high volume NTFPs, silviculture and conservation biology of NTFPs.
- 4. The concept of Payment for Ecosystem Services (PES) needs to be tapped in future.
- 5. Study on impact of non-anthropogenic factors like climate change.

5. Enabling Policy and Institutionalization

- 1. Adopt a national level comprehensive policy on NTFPs
- 2. Convergence of schemes implemented by different Ministries.
- 3. Establish an apex body such as NTFP Development Board like Rubber Board or Spice Board.
- 4. Empowerment and strengthening of local institutions such as Gram Sabha, JFMC, Van Panchayat, primary cooperative societies, LAMPs and other procurement agencies.
- 5. Ensure better Access and Benefit sharing mechanism with necessary legal provisions.
- 6. Introduce compatible and uniform tax structure & transit rule, exempt VAT and introduce cess system in deserving cases.
- 7. Provide special compensatory support like additional quota in PDS, for NTFP crop

- failure, particularly for primitive tribals, hunter gatherers, etc.
- 8. Introduce new schemes for NE region, mountain areas and Left Wing Extremism (LWE) affected states.
- 9. Ensure integrated and compatible policy environment for NTFP development (like, to promote eco-friendly sal- and siali plates, ban or heavily tax the market competitors of the same like thermocool and polythene coated plates which are not eco-friendly; mandate consumption of natural tan stuff like harra particularly along the bank of Ganga as a part of the Clean Ganga Project; allow cocoa butter equivalent from NTFPs in chocolate making; etc.)
- 10. Make scientific names of species mandatory in all official communications and reports so as to avoid confusion, overlapping, and repetition

Conclusion –

Despite the expert committee report, there is precious little by way of budget outlay in the 12th plan. Obviously, the sector of NTFP hasn't received the attention among the policy & decision makers that it is worthy of. Among the forest managers also, this has long been a much neglected subject. So, the changes have to start from within the forest departments. Despite all the gaps in this sector, there are quite a few good practices going on in many states. They need to be studied, analyzed & documented for larger learning.

The international community of forest managers has been working on the concept of Sustainable Forest Management (SFM) for a long time. There is very little movement in that direction in India. But, looking at the scale of below poverty line population in our country & their dependence on the NTFP resources, it is probably the topmost priority for us to start working on Sustainable NTFP Management in high earnest.

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