

RGICS



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RGICS LEGISLATIVE BRIEF

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**The Indian Forest (Amendment) Ordinance,
2017**

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KEY MESSAGES

1. **The new classification of bamboo under the Ordinance will perpetuate state monopoly over forest produce :** The Ordinance amends the Indian Forest Act 1927 by exempting bamboo from the definition of a tree. However, this restriction applies only to bamboo grown in non-reserved forest areas whereas; bamboo grown on forestlands shall still be treated as a tree and stay under the control of state forest departments, perpetuating a state monopolistic control over forest produce.
2. **The fight for land ownership for tribes to be able to grow and harvest valuable tree species still continues:** This proposed ordinance continues to deny them legal rights to use, manage and conserve forest resources and to hold forest lands that they have been residing on and cultivating, which was granted to them as per the provisions of the Forest Rights Act 2006. Instead of helping forest dwellers regain and benefit from their traditional rights, this arbitrary distinction between bamboo grown in forest and non-forest areas perpetuates the discrepancy between Indian Forest Act and Forest Rights Act and will impact them adversely.
3. **The ordinance will encourage bamboo cultivation in non forest areas and will benefit industry rather than the beneficiaries like Adivas's and other forest dwellers:** With industry gaining easier access to bamboo outside forest areas, the prices of bamboo on forestlands owned by tribal's and other forest dwellers will drop over time.

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PART I. INTRODUCTION

The vast natural resources of India's forests, including non-timber forest products (NTFPs), such as medicinal and aromatic plants, leaves, fruits, seeds, resins, gums, bamboos, and canes, offer employment that provides up to half the income of about 25 per cent of the country's rural labor force. Where across the world, taxonomists have classified bamboo (an important raw material and a major source of income for tribal communities in India) as a grass, as per the Indian law, it has been treated as a tree until now. According to the Forest Survey of India's 2011 report¹, only 6% of India's bamboo stock, which is a total of 10.2 million tonnes is grown outside forestlands. By contrast, 170 million tonnes of bamboo grows in recorded forest areas. Different forest acts have provided different definitions for a bamboo and so does this recent ordinance. However an analysis of these acts and rule has shown state monopolistic control over forest produce. As per the Indian Forest (Amendment) Ordinance, 2017 exempts bamboo from the definition of the tree as described under the Indian Forest Act of 1927 following which bamboo growing in non-forest areas will be waived off the requirement of permission for its felling or transportation for economic use. However, bamboo grown in forest areas will, however, continue to be protected under the Forest Conservation Act, 1980.

- A. **The Indian Forest Act, 1927:** Laws and forest governance systems inherited from the colonial era have, for long, deprived people from using their forest resources, thus condemning them to extreme poverty and vulnerability and this Act one among them. It was largely based on previous Indian Forest Acts implemented under the British. The Indian Forest Act, 1927², defined bamboo as a tree, regardless of where it grew. The growing, cutting, transporting and selling of all tree species listed in the law are the monopoly of state forest departments. The act or its state variations also regulated bamboo grown outside designated forestlands.
- B. **The Forest Rights Act 2006:** The FRA was the result of a battle fought by adivasis and others to reclaim their forests from the tentacles of state-run forest departments in 2006, in a move intended to radically alter control over bamboo, by the Congress-led government which classified bamboo as “minor forest produce”. The Act recognizes the rights of individuals over forest land they occupy, and most importantly, rights of tribal communities over the use and management of forests they inhabit and the resources therein³. It came about as a result of intense tribal movements which claimed that forests were either taken over by the government to earn revenue or people were evicted from forests for

¹ Forest Survey of India's 2011 report, Chapter 7, “Socio Economic contribution of Forests” available at http://fsi.nic.in/cover_2011/chapter7.pdf accessed on 5 December 2017

² The Indian Forest Act, 1927, available online at

<http://nbaindia.org/uploaded/Biodiversityindia/Legal/3.%20Indian%20forest%20act.pdf> accessed on 4 December 2017

³ The Forest Rights Act 2006 online available at <http://ektaparishad.com/Portals/0/Forest%20Rights%20Act.pdf> accessed on 4 December 2017

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environmental conservation purposes. Either way, people who lived in, and off, dense jungles for generations were denied their rights to the woodland.

However, no amendments were made to the Indian Forest Act, 1972, which continued to classify bamboo as a tree and gave forest departments' full control over the resource. This contradiction in the law perpetuated the monopolistic control of forest departments over bamboo.

- C. **The Indian Forest (Amendment) Ordinance 2017:** President Ram Nath Kovind promulgated an Ordinance, amending the Indian Forest Act, 1927 which exempts bamboo grown in non-forest areas from the requirement of felling/transit permit. With this move, the government aims to encourage bamboo plantation by farmers and help enhance their income. However on the one hand where the government claims that “the measure will go a long way in enhancing the agricultural income of farmers and tribals, especially in North East and Central India”, in reality, experts claim that wood-based industries will derive greater benefits from the move than tribals and forest dwellers.

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PART II. THE [PROPOSED] BILL

As per the Indian Forest (Amendment) Ordinance, 2017⁴-

- The Indian Forest (Amendment) Ordinance, 2017 was promulgated on November 23, 2017. It amends the Indian Forest Act, 1927. Under the Act, the definition of tree includes palms, bamboos, stumps, brush-wood and canes.
- The Ordinance amends this definition to remove the word bamboos. Following this, bamboo growing in non-forest areas will be waived off the requirement of permission for its felling or transportation for economic use.

A major objective of the amendment is to promote cultivation of bamboo in non-forest areas to achieve the twin objectives of increasing the income of farmers and increasing the green cover of the country", said the environment minister Harsh Vardhan. However, the bamboo grown in forest areas will, however, continue to be protected under the Forest Conservation Act, 1980. The exemption will be meant only for those grown on non-forest land.

⁴ The Indian Forest (Amendment) Ordinance 2017 available at <http://ektaparishad.com/Portals/0/Forest%20Rights%20Act.pdf> accessed on 30 November 2017

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PART III: KEY ISSUES

The new classification of bamboo under the Ordinance is limited and unclear: The Indian Forest (Amendment) Ordinance, 2017 amends the Indian Forest Act, 1927 under which the definition of a tree includes palms, bamboos, stumps, brush-wood and canes and thus attracted the requirement of transit permit under the law even if it was grown on private land. The Ordinance aims to amend this definition to remove the word bamboos. Following this, bamboo growing in non-forest areas will be waived off the requirement of permission for its felling or transportation for economic use. However, this restriction implies only to non-reserved forest areas whereas, bamboo grown on forestlands shall to be treated as a tree and stay under the control of state forest departments. This means that more than 170 million tonnes of bamboo that grows in recorded forest areas will still be under monopolistic control of the State in contrast to the 10.2 million tones grown outside the forest area that will now be open to all.

- a) Firstly, while this ordinance that could be seen as a sign of relief for those who fought for bamboo cultivation on private lands, according to Shankar Gopalakrishnan of Campaign for Survival and Dignity, the ordinance doesn't address the most fundamental issue of the status of bamboo in forest areas, and the fact that from 2006 that has been the property of forest dwellers. By restricting state control over forest areas, the Centre clearly ignores the provisions of the 2006 Act that clearly gave tribals and other forest-dwellers the right to grow the grass on their traditional forestlands, to harvest and sell it without the interference of forest departments.
- b) Secondly, declaring bamboo as non-timber from non-forest areas will not benefit northeastern states where bamboo is highly concentrated, constituting 28 per cent of the area, and 66 per cent of the growing stock. According to Kamesh Salam, Former Member of the Apex Committee of National Bamboo Mission of India, this form of colonial order needs to be removed from all areas, both in non-forest and forest, where farmers and communities are engaged in bamboo cultivation as a source of livelihood.
- c) It is unclear even after the amendment, how the Centre is going to distinguish bamboo from non-forest and forest areas.

The fight for land ownership for tribes to be able to grow and harvest valuable tree species still continues: This ordinance encapsulates the disparities between the two earlier acts mentioned above that have shown least interest in giving ownership rights to the tribal communities who form a large section of the population dependent on non timber produce for its survival. This proposed government policy thus continues to deny them legal rights to use, manage and conserve forest resources and to hold forest lands that they have been residing on and cultivating, perpetuating the monopolistic control of forest departments over bamboo. Many tribal communities believe the ordinance continues to treat bamboo as the department's property, completely ignoring the country's poorest people and their rights. Further, by making a totally arbitrary distinction between forest and non-forest areas, the ordinance ensures this injustice will continue. Therefore, the ordinance clearly does not state as to how it proves to be beneficial for the farmers and the forest dwellers if, the

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government continues to control the usage and access of forest resources that by right belongs to India's Adivasi community and other forest dwellers.

An ordinance to encourage bamboo cultivation in non forest areas will end up benefiting industry rather than the targeted beneficiaries, Aadiwasi's and other forest dwellers: Like the tribals and other forest dwellers who are directly dependent on forests, industries, mostly wood based and biofuel industries have also demanded the right to grow and harvest bamboo on both forestland and plantations. With now industry gaining easier access to bamboo outside forest areas, the prices of bamboo on forestlands owned by tribals and other forest dwellers will drop over time. While the proposed ordinance seems to have further limited the rights of the tribals and the forest dwellers, bamboo grown outside reserved forest areas will no longer be subject to the strict regulatory control of forest departments. This implies that wood-based industries, biofuel industries, etc can now start their own bamboo plantations or engage farmers to grow the resource for them. This could provide a boost to agro-forestry. However, one major implication of this could be that with industry gaining easier access to bamboo outside forest areas, the prices of bamboo on forestlands owned by tribals and other forest dwellers will drop over time, especially in the north eastern states where large tracts of greens in the region are not demarcated as reserved forests.

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PART IV. BACKGROUND INFORMATION/REFERENCE DOCUMENTS

- i. Vishwa Mohani, “Centre promulgates Ordinance to encourage bamboo cultivation in non-forest areas”, *Times of India*, available at <https://timesofindia.indiatimes.com/india/centre-promulgates-ordinance-to-encourage-bamboo-cultivation-in-non-forest-areas/articleshow/61771269.cms>
- ii. Nitin Seth, “Grass or tree? : A rule reclassifying bamboo claims to benefit tribals – but industry will gain more, *Scroll*, available at <https://scroll.in/article/859327/why-a-new-ordinance-reclassifying-bamboo-as-grass-will-help-industry-more-than-the-tribals>
- iii. Deepa Sinha, 2015, “Implementing the Indian Forest Act 2006: A lack of political will? available online at <https://www.oxfamindia.org/sites/default/files/PB-implementing-forest-rights-act-lack-of-political-will-261115-en.pdf>
- iv. The Indian Forest (Amendment) Ordinance 2017 PRS Ordinance Summary available at [http://www.prsindia.org/uploads/media/Ordinances/Ordinance%20Summary-%20Indian%20Forest%20\(A\)%20Ordinance,%202017.pdf](http://www.prsindia.org/uploads/media/Ordinances/Ordinance%20Summary-%20Indian%20Forest%20(A)%20Ordinance,%202017.pdf)
- v. Swapna Merlin, “Everyone’s cheering bamboo’s no longer a tree in India, except in northeast India” *The Print* available at <https://theprint.in/2017/11/25/bamboo-not-a-tree-anymore/>