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Implementation of the Forest Rights Act in the Western Ghats Region of Kerala

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This study of the implementation of the Forest Rights Act 2006 in the Western Ghats of Kerala identifies the main constraints to the working of the legislation. Community rights and conservation provisions seem to be ignored. The paper also highlights the importance of integrating the implementation of the FRA with the participatory forest management programmes for providing community rights to the use of forests products. It also recommends a need for sensitising communities to various provisions of the legislation.

The Forest Rights Act, 2006 (FRA), is considered an important landmark in the history of forest resource use and management in India. The Act aims at restoring traditional rights of forest dwellers on the one hand, and maintaining the ecological balance on the other with a view to provide sustainable livelihood options to forest dwelling scheduled tribes (STs) and providing other traditional forest dwellers, including those who were forced to relocate their dwellings due to state intervention. Thus, the underlying objective of the Act has been to strike a balance between the potentially conflicting interests of the forest dwelling communities and protecting forests and wildlife resources.

The Section 3 of the FRA recognises the traditional forest rights of the communities (who live in the forest) both at the individual and community levels. At the individual level, it recognises their rights, to hold a piece of forest land either for self-cultivation or for any other common occupation or habitation so as to ensure their livelihood. At the community level, it recognises their rights to access minor forest products other than timber, and to carry out fishing activities in water bodies besides traditional and seasonal access to pastoral communities and nomadic tribes for grazing, protecting community forests, accessing biodiversity and claiming intellectual property rights over traditional knowledge and cultural diversity.¹ The FRA also provides powers to the government for diverting forest land to build schools, dispensaries, anganwadies, fair price shops, electric and telecommunication lines, drinking water facilities, etc. However, the FRA makes it clear that the forest land, which can be diverted for other uses, is less than one hectare (for any single use) provided the felling of trees does not exceeds 75 trees per hectare.

Section 6 of the FRA gives the procedural details of implementation of this Act. Accordingly, the gram sabha is the authority to initiate the process of implementation by constituting a forest rights committee (FRC). Then the FRC decides the nature and extent of individual or community forest rights or both that may be given to the forest dwelling communities under their jurisdiction. These procedures are examined by a subdivisional level committee which forwards the same to district level committees for final decision-making. It is also mandatory to have a state level committee to monitor the process of recognition and vesting of forest rights. All committees consist of members from the departments of revenue, forest and tribal affairs as well as members from local bodies.

The government of Kerala initiated the implementation process by constituting a state level committee to fix a time frame to complete various activities under the FRA, 2006. Accordingly, the state level committee envisaged a target date, 30 April 2009, for

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the completion of the implementation process. However, recent data from the government departments show that it could not achieve the target due to various constraints and that the process is still on with difficulties being found in tackling those issues. In this context, this study tries to examine the implementation process, and the associated “action arena” of the FRA 2006 in Kerala. The main objective of the paper is to identify important constraints involved in implementing the Act at the ground level, so that the state can take appropriate steps to minimise these constraints in terms of taking the implementation process forward.

1 Data and Methodology

The data for this study were collected from government records and the tribal hamlets through focus group discussions and survey methods. We conducted focus group discussions in 18 tribal hamlets of Kerala forests. The distribution of these tribal hamlets across different forest circles is presented in Table 1. In addition, we interviewed key officials from different departments associated with FRA implementation.

1.2 Conceptual Framework

Participants, Positions and Action Situation:

The focal point of the analysis is the action arena of implementation of FRA that consists of “participants” and an “action situation”. Participants in an action situation are decision-making agents assigned to a position and capable of actions from a set of alternatives made available at nodes in a decision process (Ostrom 2005). Positions are the connecting links between participants and the action situation. The participants occupy different positions in the implementation process. Participants in many action situations are individual persons, or they may represent a team or composite actors. Here we have treated each government department as a group involved in the implementation of the FRA. In some situations participants in any position may be authorised to take any of the allowable actions in the given situation. However, in most “organised” situations, the capabilities to take particular actions are assigned to specific positions and not all positions. The nature of position assigned to participants in an action situation defines the standing of the participants in that situation (ibid: 40-41).

Therefore, while examining the action situation of FRA, it is important to take a look at the “standing” of each participant and how each participant is linked to the given action situation. In the present context, the participants involved in implementing the Act represent different government departments having a “common purpose” under the FRA that assigns individual and community rights to the forest dwelling communities. In a government set-up, they do not depend on the preferences of their own members and beneficiaries, and further, the activities are carried out by staff members whose own private preferences are supposed to be neutral. The important players in this process are

the departments of tribal, forest, revenue and local self-government. The tribal community also plays a vital role in terms of articulation of their rights over forest lands. The basic characteristics of these departments are as follows.

The nodal agency, for implementing the FRA, is the department of tribal affairs, government of India. At the state level, this responsibility lies with the department of STs and scheduled castes development in terms of carrying out various developmental schemes and monitoring of various plans related to tribal communities. It is also a major agency involved in the implementation of various other development programmes (meant for STs) that include educational concessions, scholarships to students, running schools and hostels, etc. In short, it has a relatively higher stake in the welfare of tribal communities.

The forest department is the second most important agency involved in implementing the FRA. Today, the “tribal welfare”,

as an important aspect of forest management, is reflected in the recent management and working plans of the department, mainly as part of the participatory forest management (PFM) programmes. The department has an additional principal chief conservator of forests, exclusively for managing the eco-development and welfare of the tribal communities under the PFM programmes. The forest department is also one of the important sources of employment generation for the tribal communities through its afforestation and other eco-development programmes. As a result, it appears that the forest department occupies an important position in implementing the FRA without making any compromises on its main objective of the protection of forest resources; particularly given the fact that the Act envisages a marginal role for the forest department. In a

sense, it is slightly different from the department of ST development as far as the implementation of the FRA is concerned.

The revenue department is one department that has a close interaction with the general public. Its main functions are related to maintenance of land records of the state and assignment of government lands to various categories of institutions and individuals. In the context of FRA implementation, it also takes on an equal responsibility along with forest and tribal development department. As per the FRA, the revenue department is expected to play an important role, after assigning forest rights to tribal communities, in terms of establishing revenue villages. It also carries out survey of lands to decide the size of land available to the tribal population. It plays not only a facilitating role in the implementation process, but also a future role in establishing forest villages.

With the decentralisation of political powers to local self-government institutions, local administration department has an important role to play in the formulation of policy and implementation of developmental works at the grass roots level. As mentioned earlier, the gram sabhas of the local self-governments

Table 1: Distribution of Sample Households across Forest Circles

Name of the Tribal Hamlets	Number of Households	Forest Circles
Avanipara	10	Southern Circle
Pottamav	15	Southern Circle
Kurumbanmuzy	25	Southern Circle
Achancoil	15	Southern Circle
Elapeedika	50	Northern Circle
Perincherimala	10	Northern Circle
Periya	15	Northern Circle
Kunchipara	10	Central Circle
Tamaravellachal	10	Central Circle
Manchery	10	Central Circle
Anapandam	10	Central Circle
Poovanchira	10	Central Circle
Malakapara	15	Central Circle
Nenmara	15	Eastern Circle
Moolakombu	10	Eastern Circle
Vaniyampuzha	15	Eastern Circle
Elamplasery	10	High Range Circle
Chikkanamkudi	10	High Range Circle
Kurathikudi	10	High Range Circle

Source: The Kerala Forest Department.

play a quasi judicial role in implementing the rights. Our discussions with some of the officials at the state level revealed that their role was also limited to a facilitator. Finally, the tribal communities who are the ultimate beneficiaries of the Act differ in terms of various aspects that we will be discussing later. Their benefits from the Act depend upon how effectively they articulate their forest rights over land and other forest products.

The above said participants make decisions with respect to the implementation of FRA through various committees constituted at different levels of state administration. At the bottom level, we have gram sabhas and FRCS which recommend the potentially eligible right holders. The gram sabha is the critical institution in identifying forest rights of STs in a transparent and participatory manner. Its objective is to ensure that the basic identification of the forest rights takes place in an inclusive manner with everyone having a say before taking any collective view on the matter. This institution of interactive democracy, assumes a quasi judicial character under the Act (GoK 2008). In Kerala, because of various structural and socio-political constraints, (and keeping in view the larger interest of the tribal population), the gram sabhas are constituted at the tribal hamlet level for the purpose of implementing FRA. It is also recommended that the official machinery put in sufficient efforts to ensure maximum attendance at the gram sabhas so that free elections can be conducted for selecting members to the FRCS.²

In the action situation, the second upper level committee is at the subdivisional level, headed by a subcollector or a revenue divisional officer. Its official members could be forest range officers, tribal extension officers, under the jurisdiction of the revenue division. Usually, the block panchayat nominates ST members to this committee. This committee verifies and forwards application related to forest rights to the divisional committees for taking a final decision. The divisional level committee is headed by a district collector with the divisional forest officer representing the forest department and officials from tribal department. The progress of the implementation process is monitored at the state level by a state level committee consisting of the additional chief secretary, the principal secretary to SC and ST development department; director, survey and land records; director, ST development department; and additional principal and the chief conservator for eco-development and tribal welfare.

Factors Influencing the Action Situation: The factors affecting the structure of an action arena include a cluster of three variables: (a) the attributes of biophysical world, (b) attributes of the community within which any particular arena is placed, and (c) the rules used by participants (Kiser and Ostrom 1982). The concept of rule is central to the analysis of institutions used in a different sense. For some institutional scholars, the important difference among rules relates to the system of property rights in use (Bromely et al 1992), e.g. government property, private property and non-property (open access). While a rule configuration affects all of an action situation, some of the variables of an action situation also affect attributes of the biophysical world being acted upon or transformed. The same set of rules may yield an entirely different type of action situation depending upon the type of events in the world being acted upon by participants. The

third set of variables that affect the structure of action arena relates to the concept of community within which any focal action arena is located. The attributes of the community that are considered important in terms of affecting action arena include the value of behaviour generally accepted in the community, the level of common understanding about the structure action participants generally share, the extent of homogeneity in the preferences of those living in a community, the size and composition of the relevant community and the inequality of basic assets among those affected (Ostrom 2005). Finally, the implementation of FRA may interact with the other acts, which are concerned with resource management, land use and tribal welfare. In this respect, the most important ones are the Acts related to forest conservation and protection such as the Wildlife Protection Act 1972 and the Forest Conservation Act 1980. Both these Acts are important in that they deal, not only with the conservation of forest land resources, but also empower the forest department as a guardian or a custodian of the natural ecosystem. Here we attempt a partial analysis of the possibilities of an interaction between these Acts, while highlighting the complementarities of FRA and other rules pertaining to forest administration. On the basis of this theoretical perception, the present action situation of implementing the FRA can be traced by explaining the role of biogeographical characteristics of the area (Western Ghats), various attributes of tribal communities living in the area, besides various rules applicable to the area, especially for the use and management of land.

2 Results and Discussions

The first part of this section explains the action situation of assigning individual and community rights to the forest dwelling communities under the FRA. The second part of this section deals with the factors that influence the action situation in terms of implementing FRA, with an objective to identifying the important constraints involved in implementing this Act. This part covers factors that relate to the biophysical and material conditions of the Western Ghats region, attributes of the tribal community that can affect the implementation procedure, and finally, the interaction of FRA with the Forest Conservation and Wildlife Protection Act and the department's attitude towards implementing the Act.

Lack of Common Interests and the Resultant Conflicts

We have already mentioned that the process of implementation starts from the bottom, namely, gram sabhas.³ The government permitted the gram panchayats to utilise up to Rs 5,000 towards the expenses involved in conducting elections to the FRCS. Following the recommendations of the FRCS, gram sabhas demarcate the land and forward the facts to the subdivisional and divisional level committees for taking the final decision. An estimate, as on March 2009, shows that 504 FRCS have been formed in Kerala (Table 2, p 68). The table shows that approximately 85.45% of the total claims were filled. These claims spread across 1,086 tribal settlements of the state in which 742 settlements filled all the claims. The available data show that the first step, constituting gram sabhas and filing claims, has progressed significantly in the state (Table 2).

Table 2: Details of Claims of Land Received under FRA

Name of District/ITDP	Total Claims to be Filed	Claims Filed So Far	Percentage of Claims Filed to Total Claims
Thiruvananthapuram	5,500	4,855	88.27
Kollam	1,056	1,056	100.00
Pathanamthitta	1,309	967	73.87
Kottayam	1,339	1,240	92.61
Idukki	12,300	10,083	81.98
Ernakulam	1,290	704	54.57
Thrissur	1,322	1,115	84.34
Malappuram	1,377	981	71.24
ITDP Attapadi	2,100	1,868	88.95
TDO, Palakkad	1,354	1,363	100.66
Kozhikkode	19	19	100.00
ITDP Wayanad	1,811	1,291	71.29
TDO Mananthawady	1,668	1,668	100.00
TDO Sulthanbathery	3,289	3,289	100.00
Kannur	1,266	1,117	88.23
Total	37,000	31,616	85.45

ITDP is integrated tribal development programme;
TDO is tribal development office.

Source: Department of Tribal Development, government of Kerala.

time of survey.⁴ It is reported that the department distributed a total 2.05 acres of land to a few tribal families. On an average, they received 30 cents of land per family. This data shows that tribal communities are given only small parcels of land which fall below the one acre norm. While issuing the legal titles (patta) to the forest dwelling communities of Wayanad, the government made it very clear that it was a "provisional patta". This happened due to delays in conducting meetings at the district and divisional levels with regard to issuing of pattas.

We have already motioned that the stake involved the implementation process of the FRA varies across different departments due to differences in their objectives and perceptions. Our discussions with officials from tribal, forest and revenue departments revealed that each department interpreted the provisions of FRA keeping in view of their own objective as a base. For example, the tribal department officials said that the FRA is an exclusive programme for the welfare of the communities. They expect the FRA to be implemented like any other tribal welfare programmes of the country. They also opine that the forest department should facilitate the implementation process without having to face any constraints. The revenue officials pointed out that one of the recent events that caused delay in survey operations due to the interference from the forest department. The survey operations of Wayanad district started with proper directions from the officials, but got delayed due to the interference of forest officials. Since its beginning, there were apprehensions from the forest department and environmentalists.

The forest department expects the implementation process to be a part and a continuation of the present national conservation policy (1988). The 1988 policy has assumed importance in the wake of widespread debates about conservation and development. The socio-economic role of the natural ecosystem has been unequivocally accepted in this policy. The role of forests in protecting the well-being of forest dependent communities has been recognised for the first time in the forest policy of India. It has also conceived people's involvement and some protection for customary access rights, though with some riders linking the access rights to the carrying capacity of the forest. There is also some

The second stage of implementation relates to proper verification of claims and survey of lands. This is the stage where all practical issues crop up. For example, the survey operations started in the settlements of Wayanad district in the first week of December 2008, did not progress satisfactorily due to unavailability of sufficient survey personnel and increase in the number of settlements at the

conception of capacity-building among forest communities and regenerating forest through silviculture (Sen and Lalhrietpui 2006). This policy has given rise to a concept called participatory forest management in Kerala since 1990. Therefore, it is argued that the FRA 2006 is a continuation and natural evolution of our conservation policy (Unnikrishnan 2009). Therefore, one may conclude that the potential reasons for these conflicting attitudes arise from the original policy framework of the respective departments. It is also very important to note how far the present action situation of implementing the FRA has been integrated with the forest rules and governing system. This will be an important aspect that will definitely help reduce the high coordination cost of implementing this programme. The slow response from other departments like revenue and local self-governments also sometimes, delay the action situation, further, resulting in inaction, (for example, slow survey process, difficulty in identifying land boundaries, etc). As a result, the process of implementation of FRA shows a slow progress in Kerala so far, lack of coordination between various departments at the operational level and conflicts.

Factors Influencing the Implementation Process – Biophysical

Factors: Any discussion on the implementation of FRA in the Western Ghats region without due reference to the biophysical and material conditions of the forest ecosystem may lack in rigour. The Western Ghats region of Kerala covers approximately an area of 21,861 sq km (56.25% of the total geographical area); administratively, the forest area covers about 9,400 sq km, with a maximum elevation of 2,670 mts (Nair 1991). Considering areas of 1,500 metres and above mean sea level, the Western Ghats region, has two major high elevations, namely, the Nilgiri plateau and the Anamalai high range. At present, the upper reaches of these mountains are thickly forested and the lower ranges fragmented with plantations specialised in the cultivation of varieties of plants such as teak, eucalyptus, etc, (Narayanan 1996). The forest area of this region also has high biodiversity values (Sathyapalan

2002). A summary of the basic biophysical characteristics of the Western Ghats region has been presented in Table 3.

There are approximately 37,000 families living in different tribal hamlets which are scattered across the Western Ghats region. Many of these hamlets are located quite far from the headquarters of their respective panchayats. Therefore, the first constraint the implementing agency faced was in terms of organising gram sabhas at the ward level for constituting FRCS.⁵ The tribal communities are not able to represent adequately the gram sabhas meetings due to hilly terrain and scattered nature of tribal hamlets and interior locations. In order to protect the larger interests of the tribal communities,

Table 3: Characteristics of Western Ghats Region, Kerala

Particulars	Explanation or Magnitude
Administrative forest area	9,400 sq km
Latitude	8° 30' N E to 12° 30' N E
Longitude	75° 15' E to 77° 45' E.
High elevation areas	Nilgiri and Anamalai
Maximum elevation	2,670 metre
Soil	Alluvial, red and lateritic soil
Climate	Monsoonal
Average rainfall	3106 mm
Total flowering species	3,500
Mammals	48 genera
Birds	275 genera
Reptiles	60 genera
Total tribal population	3,64,189

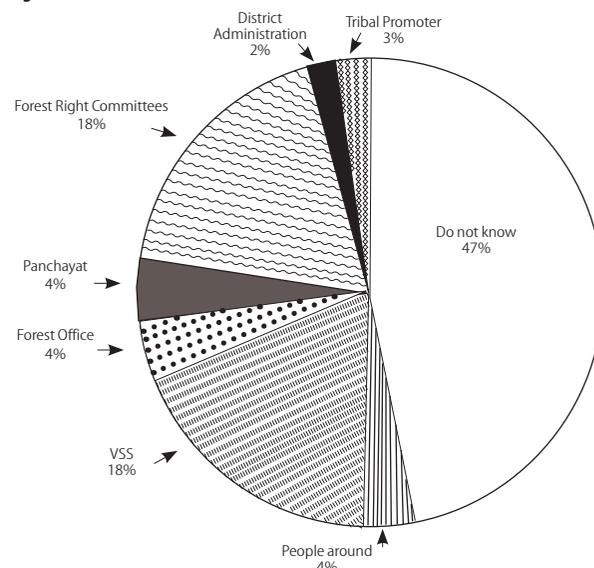
Source: Nair 1991 (Ramesh and Bawa 1997), Census of India 2001.

the government considered various options before finally deciding to organise gram sabhas at the hamlet level. The government issued an order in favour of constituting FRCs at the hamlet level.⁶ The issuing of government order was an important move in reaching out to tribal communities during the implementation process. Although there was a proper guideline in place for constituting the FRCs, we could not observe a properly constituted FRC in any of our sample hamlets during our field visits. We found practical problems existing in many of these hamlets, especially with regard to organising FRCs, e.g., passing information to people, inaccessible locations, etc. The picture is not different in cases of divisional and district committees as far as the functions and the process of implementation are concerned.

Second, information regarding the provisions of the Act has not been conveyed properly to many hamlets due to various location-specific disadvantages. For example, information regarding the filling up of claims did not reach many hamlets due to distance farther from panchayat headquarters. A survey conducted across the sample households showed that nearly 47% of the tribal households had never heard of this Act. Of the people who heard about the Act, a very few were found aware of the community rights related to the collection of minor forest products. Here comes into picture another important issue which is very much linked with their present livelihood system, that is, the collection of minor forest produce and right to sell these products. At present, the forest department takes up on itself the responsibility of assuring these rights through their PFM programmes. But, how far the PFM programme is integrated with the FRA is to be further analysed. Nonetheless, it is important to note that 18% of the tribal communities in our sample had heard about FRA from the vana samrakshana samities (vss) and 4% from the forest department. Other sources include FRCs (18%), panchayat (4%), district administration (2%) and tribal promoters (3%) which are given in Figure 1.

High Anthropogenic Pressure on Forest Land and Individual Land Rights: The high anthropogenic pressure on forest lands, in the past, was due to various reasons starting from post world war food insecurity which led to “grow more food” campaign to high immigration in forest areas. The conversion of forest lands to other land use purposes always ended up in deforestation. The literature related to deforestation in the area of Western Ghats shows that this area witnessed a high deforestation rate (Chattopadhyay 1985; Ramesh and Bawa 1997) in the past. Since the Western Ghats region lies in the high land and high range ecological zones of Kerala, the conversion of forest tracts took place mainly to grow cash crops⁷ like rubber, pepper, cardamom, etc. The negative impact of this historical process of deforestation was felt by the tribal population. They became vulnerable to poverty trap in the absence of the basic factor of production, land, and gradually, the subsistence base of the tribal community got further eroded. They began to migrate seasonally to urban areas in search of work. Many tribal people lost their rights to collect and sell minor forest products. Deforestation reduced their accessibility not only to forest sources of food, fuel and fodder, but also to certain things essential for daily life like twigs of neem for cleaning teeth, leaves for making disposable plates, bamboo for constructing huts, and

Figure 1: Source of FRA Information



weaving baskets, grass for making brooms and plants and their products for preparing herbal medicines. Tribal women are the worst sufferers (Kalathil 2004). This shows clearly that there is no sufficient biophysical base for the tribal communities to undertake self-cultivation or any other productive activities. We have already observed that in the recent individual allocation of land, the government could provide only 30 cents for each family. Although it provides a base for their living, it is very much doubtful, whether it can support the livelihood of a family. In such a case, how do we ensure the livelihood of the forest dwellers? The only hope lies in community rights over using minor forest produce.

Community Rights over Minor Forest Produce and the Duty of Right Holders: Our observations in the field show that the community rights have remained largely invisible in the implementation process due to various reasons. Assignment of community rights is very important in ensuring a sustainable livelihood for the forest dwellers since most of the tribal communities living inside and on the fringe of the forest area largely depends on minor forest produce for their livelihood. Today most of the communities, especially those who live in protected forest areas, do not have the legal rights over the use of forest, their de facto access rights lie with the community as a whole rather than individuals or households (Sathyapalan 2002). In many cases, community rights are considered as more equitable since all households within the community, including the poor and landless can have access to forest products. But, we found that this part of the FRA got relatively less importance in the implementation process.

In a similar fashion, the institutional process of executing FRA has diluted the implementation of “duties” provision in the Act. Our field observations show that none of the right holders is aware of the duty provision of the Act. Some of them opined that the community rights and duty provision had been already implemented through various PFM programmes. If that is the case, so far there is no attempt to find out whether it can be integrated with the present PFM activities. In a preliminary assessment, we

have come to know that there are chances of synergies if we considered the PFM programmes in an integrated manner, while implementing the FRA. This will also help communities use some provisions of the FRA to support conservation efforts and manage forests as a community activity. The assignment of community rights can be taken as the connecting link between PFM and FRA implementation; then the department of forest will handle more responsibility and an equal role with the tribal development department in implementing the FRA. This aspect has to be utilised for generating more synergies with respect to community rights and sustainable livelihood of the forest dwellers. An effective co-ordination between forest department and other government agencies is a must to achieve the objectives of the programmes more efficiently. This approach may also help us place the forest department in a proper “position” with more responsibilities while implementing the FRA. However, we have found that community rights and “conservation duty provisions” have been taken for granted and that no one has got a clear idea about the implementation of this aspect of FRA.

Attributes of the Community: The attributes of the community is another set of variables that affect the action arena of implementing the Act. The concept of community is one that has many definitions and contextual meanings across social sciences. The attributes of a community that generally affect the action arena are the size and composition of the relevant community, the extent of inequality of basic assets, common understanding of the action programme that is generally shared, behavioural issues, etc (Ostrom 2005). As far as the size of the community is concerned, we have 35 tribal communities, notified in the list of STs of Kerala accounting for about 1.10% of the total population. As per the Census 2001, the total population of tribal communities in Kerala stood at 3,64,189. The total population of the tribal community has grown 13.46% during 1991 and 2001. The ST population is mainly concentrated in the Western Ghats forest areas of Wayanad, Idukki, Palakkad and Kasaragode districts of Kerala. Approximately, 36% of the total tribal population of the state is concentrated in Wayanad district alone (Figure 2). The cultural practices of these populations vary across communities. From an occupational point of view, the tribal communities are classified into four categories: (1) hunters and gatherers, (2) agriculture labourers, (3) shifting cultivators, and (4) settled cultivators. However, today majority of the tribal population are landless agriculturists. A communitywise traditional occupation of the tribal population is presented in Table 4. It reveals that a majority of the tribal communities are engaged in traditional occupations like

minor forest produce collection and manual jobs. Considering the importance of minor forest produce for their livelihoods, it is very important to take appropriate steps for recognising the community rights, but unfortunately it has taken a back seat in the implementation process. The composition of communities also indicates that they are not a homogeneous group with many of them are belonging to primitive category.

In Kerala, Cholanaikan, Kattunaikans, Kurumbas, Kadars, Koranga, etc, are classified as primitive tribes. They constitute nearly 5% of the total ST population of the state. We have observed that as some of the primitive tribes like Kadar go to forest for many days, they are excluded at the time of filling forest rights claims. So the information did not reach to Kadar and Cholanaikan communities.

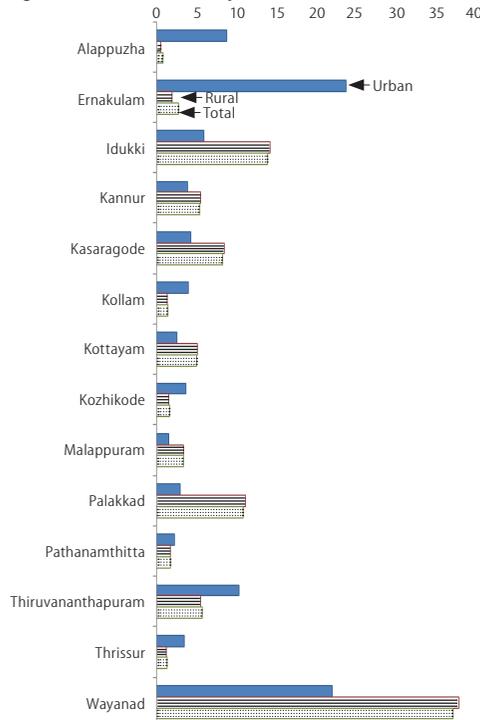
Another issue that cropped up during the focus group discussions was with respect to the forest rights of the communities who got married to non-tribal people. There were also queries regarding the transfer of rights to kin of the people who got married to other communities. In this regard, government had taken a stand that there was no provision in the Act to bar the registration of the forest rights conferred under the Act, jointly in the name of both the spouses, who belonged to different castes, provided the applicant should be a ST, if not a scheduled tribe fulfil the criteria of other traditional forest dwellers.⁸

Community Understanding about the FRA Implementation:

In order to sensitise the communities to the implementation programme of the FRA, tribal promoters were recruited to the FRCS. They were trained by the state government research and training institution called Kerala Institute for Research, Training and Development of Scheduled Castes and Scheduled Tribes (KIRTADS).⁹

But they could not reach out extensively to the entire tribal areas of the state to impart the information due to various reasons such as limited number of trained personals, hilly terrain, etc. The primary data collected for this study shows that many people are still unaware of the provisions of the Act and its potential benefits (Figure 1). We have found that only 2% of the sample tribal households got information from the tribal promoters. They generally passed on the information to them orally, with no communication found in writing form.¹⁰ The tribal communities also faced difficulties in communicating with one another. No interpersonal communication was found among primitive tribes regarding the provision of the Act. It is important to devise an effective mechanism to impart information about the FRA to the tribal communities so that communities will become more empowered to articulate their rights.

Figure 2: Distribution of ST Population across Districts (%)



Source: Census of India (2001).

Table 4: Communitywise Main Occupation of ST Population in Kerala

Tribal Community	Main Occupation
Adiyan	Traditionally slaves, but today labours.
Arandan	Traditionally nomadic hunters and gatherers
Iravallan	Traditionally agricultural labours
Hil pulaya	Agriculture labours and non-timber forest product collectors
Irular	Settled cultivators and agriculture labours
Kadar	Non-timber forest product collection
Kammara	Non-timber forest product collection
Kanikkaran	Settled cultivators and agriculture labours
Kattunayikkan	Non-timber forest product collection
Kochuvelan	Non-timber forest product collection
Kondakapus	Non-timber forest product collection
Kondereddi	Non-timber forest product collection
Koranga	Basket-making and agriculture labours
Koda	Non-timber forest product collection
Kudiya, Melakkudi	Settled cultivators and agriculture labours
Kurichiyar	Settled cultivators
Kuruman	Settled cultivators and labours
Kurumban	Non-timber forest product collection
Mahabalasar	Non-timber forest product collection
Malaarayan	Settled cultivators
Malapandaram	Non-timber forest product collection
Malavedan	Non-timber forest product collection
Malakkuravan	Non-timber forest product collection
Malayan	Non-timber forest product collection
Malayarayar	Non-timber forest product collection and agriculture
Mannan	Settled cultivators
Marati	Agriculture and labour
Mudhuvan	Non-timber forest product collection and farming
Pallayan	Labour
Palliyan	Labour
Palliyar	Labour
Paniyan	Agriculture labour
Ulladan	Non-timber forest product collection
Uruli	Hunters and gatherers

Source: Kerala Institute of Research Training and Development Studies (KIRTADS); and personal observations.

Behavioural and Other Political Issues: There are many studies and reports that provide a clear understanding of the behaviour, customs, religious beliefs of south Indian tribal population such as Luiz (1962) and Mathur (1977). These studies point out that many primitive tribes of south India depended in the past to a large extent on the minor forest products for sustaining themselves. Today, the forest department records show that a large number of the tribal population still depend on minor forest produce for their livelihoods. The practice of collecting these products varies across different communities. It is important to devise a mechanism to assign rights under the FRA. During our fieldwork we came across communities like Kurumbas, Korangas, Kadars, Kattunayikkans, and Cholanaikans, who have been classified as primitive tribes and illiterate people. In the process of implementing this Act, no serious thought was given as to how effectively their rights could be assigned. Here, it is important to point out an earlier argument (Sen and Lalhrietpui 2006) that in the implementation process, it should have taken into account the various cultural constructions of forest human interface and local specificities to ensure that FRA spreads its benefits evenly and adequately reaches the disadvantaged. Another important issue that we have come across is related to the behaviour of

landless tribes. In response to the injustice done to these tribal communities, adivasi movements were started in Kerala. The recent adivasi movements have organised strikes to get their lost land back. This has created immense political pressure in Kerala to implement the FRA in favour of them. As a result, the land rights of the landless tribes have become a crucial issue in government and bureaucracy deliberations. In our interviews with many government officials and politicians, we understood that earlier also this was an important issue from the political angle, but was difficult to resolve while implementing the FRA.

Other Rules and Regulations: The preamble of the FRA says the Act aims at strengthening the conservation regime of forests. There are many other Acts directly or indirectly linked to conservation. The most important of them is the Indian Wildlife Act 1972. This Act supports preservation of forest land with a well-defined objective, namely, preserving wild flora and fauna for protecting biodiversity.¹¹ In Kerala, the Indian Wildlife Act (1972) was implemented in 1973 through an order (GSR 293 E) of the central government. In addition to the rules of Indian Wildlife Act 1972, the government of Kerala enacted certain rules with respect to wildlife protection, called the Kerala Wildlife (Protection) Rules, 1978. The important policy changes in the subsequent years with respect to the conservation of forests relate to the Forest Conservation Act, 1980, the Kerala Preservation of Trees Act, 1986, and the Kerala Forest Produce (Fixation of Selling Price) Act, 1978. Moreover, the Supreme Court's ban on the clear felling of trees in 1982 and selective felling from 1987, also favoured conservation of forests in the Western Ghats of Kerala. As a result, more forest area has been brought under protection over a period of time in this region since 1950. But still many people are found living inside the forest areas which are reserved for the purpose of wildlife protection. An estimate based on the current management plans of the Kerala forest department shows that nearly 109 settlements are located in critical wildlife habitats having approximately 1,396 families (Table 5, p 72). The total area for these settlements comes around 1,208.77 hectares of land. This is an important issue, where the participation of forest department in implementing the Act is warranted. In this context, it is important to ask again: how much relative control ill communities and officials have? What customary rights and benefits would be ensured? What level of conservation will tribal communities have to ensure in return? (Kothari 1996). It is also important to remember that most of the communities living inside the protected areas are nomadic and primitive tribal groups, living completely cut off from the mainstream people. Considering the present geographical locations and characteristics of these communities, it is very important to devise a proper coordination between all government departments including the department of forest, to keep such critical wildlife areas out of bounds for all development activities in the true spirit of the FRA.

3 Conclusions

Of late there has been a growing realisation that without the active participation of the forest dwellers (particularly, forest dwelling STs and other traditional communities), it will be extremely difficult to achieve the main objective of biodiversity conservation.

Table 5: Distribution of Tribal Settlements and Families in Protected Areas

Protected Areas	Number of Settlement	Number of Families	Area of Settlement (ha)	Remarks about Data
Neyyar wildlife sanctuary	18	392	-	Extent not available in the Plan
Peppara wildlife sanctuary	13	192	-	Extent not available in the Plan
Agasthyavanam biological park range	-	-	-	Working Plan not available.
Shendurny wildlife sanctuary	0	0	0	No settlement as per Plan
Periyar tiger reserve	3	-	239.74	Family nos not available in the Plan
Idukki wildlife sanctuary	12	-	711.26	Family nos not available in the Plan
Thattekkad bird sanctuary	0	0	0	No settlements as per Plan
Eravikulam national park	1	40	-	Extent not available in the Plan
Chinnar wildlife sanctuary	11	417	-	Extent not available in the Plan
Parambikkulam wildlife sanctuary	6	277	34.27	
Peechi-vazhani	2	78	115.00	
Chimmony wildlife sanctuary	1	-	7.00	Family nos not available in the Plan
Wayanadu wildlife sanctuary	42	-	101.50	Appr 100 ha of leaseland with tribes
Silent valley national park	0	0	-	No settlements as per Plan
Aralam wildlife sanctuary	0	0	-	No settlements as per Plan
Total	109	1,396	1,208.77	

Data compiled from the present management plans of the protected areas in Kerala.
Source: Forest Department, Government of Kerala.

In addition, this issue assumes greater importance, in the context of globalisation. The government of India, realising the importance of recognising the forest dwellers rights over the forest land and minor forest products, enacted the Forest Rights Act in 2006, which aims at restoring the traditional rights of forest dwellers and maintaining ecological balance. Kerala happens to be one of the states which has begun the implementation process of FRA at

the expected time. Keeping in view the above-mentioned issues, this study has tried to identify the actual constraints involved in the implementation of the FRA in Kerala. The basic constraint to implementing the Act is a lack of co-ordination between government departments, because each department tries to take a “stand” that is based on its original mandate and objectives of the department and “set of rules” in a given action arena. For example, the forest department considers the implementation issue as a continuation of the Forest Conservation Policy 1988, while it is a tribal welfare issue for the department of tribal affairs. The local bodies and survey department perceive their role mainly as a facilitator. Although the gram sabhas are the most empowered authority in the implementation process, they seem to wait for directions from the higher authorities. Due to various biophysical and community-related factors, the process of implementation got delayed and the signs are that it may drag on in future also. The reasons for this slow-down can be attributed to unawareness of tribal community regarding the provisions of the Act and their inability to articulate their rights. Community rights and conservation duty provisions seem to be completely ignored in the process of implementation of FRA. The study also highlights the importance of integrating the implementation of FRA and PFM by providing community rights over the use of forests products. Our observations also reveal that there is a need for sensitising the communities to various provisions of the FRA.

NOTES

- For more details (of these rights) refer Section 3 of the Forest Rights Act, 2006.
- Details regarding the procedure of selecting members to the forest rights committee are available in the report of the working group for implementing the FRA in Kerala (GoK 2008).
- Gram sabha is the critical institution in identifying the forest rights of scheduled tribes and other forest dwellers in a transparent and participatory manner. Its objective is to ensure that the basic identification of forest rights is inclusive with everyone having a say before taking a collective view on the matter (GoK 2008).
- The reasons for increase in the number of settlements have to be further explored. The available data is not sufficient to explain this increase.
- In Kerala, gram sabhas are constituted at panchayat level.
- (G O(Ms)No 82/2008/SCSTDD Dated 26 July 2008).
- Kerala Agriculture University divides the agricultural land of Kerala into four different agro-ecological zones based on elevation, rainfall and temperature – each of these zones varies in terms of crops and production. The zones are lowland (elevation 0-7 metres), midland (elevation 7-75 metres), highland (elevation 75-750 metres) and high ranges with elevation above 750 metres. In the highland and high ranges the important crops grown are rubber, pepper, cardamom, cashew, etc (KAU 1989).
- Personal discussions with officials of the department of STs and SCs development.
- It is reported that training for 338 tribal promoters was organised by KIRTADS on various days from 19-28 November 2008. KIRTADS has also organised training for all officers of the STs development department at the Kerala institute of local administration on 22 December 2008.

- This is also due to illiteracy of tribal communities.
- Preservation means keeping the natural forest as it is to achieve certain well-defined conservation objectives sometimes combined with recreation activities, such as, national parks and wildlife sanctuaries.

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