

FOREST RIGHTS ACT OF 2006 AND NOMADIC MALAIPANDARAMS IN KERALA

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Abstract

The paper tried to juxtapose the life of a nomadic tribal group and Forest Rights Act, 2006. How did this act help Malaipandarams and what are the steps to be taken to materialise the benefits of the act is a matter of discussion. A critical view has been articulated on the question of imaging homogenous life experiences of tribal group in India while formulating a policy and subsequent making of act or bills. This paper examines how far it encompasses the life world of tribal groups contextualising Malaipandarams in Kerala context and argues that cultural specificities of each group and their relationship with the forest ecology is venerated in multiform and thus an Act that addresses all tribal group as a single community mislead policy directions. This study conducted among the forest nomadic and settled tribal peoples of Malaipandarams in the forests extending from the Periyar Tiger Reserve in the south to Thenmala forest region in the foothills and valleys of the Western Ghats Forest Mountains in Kerala. Primary Data was collected through ethnographic fieldwork and participant observation with an emphasis on facts generated from the ground.

Keywords: Tribal communities, forest rights act, nomadic tribes, Malaipandarams.

Introduction

In this paper, we tried to analyse the forest rights Act of 2006 in such a way to draw its implication upon tribal communities in general to situate the Malaipandaram in particular to understand the specificities of their life patterns as forest nomadic group. This is a group whose existence depends on the forest's ecosystem. The scheduled tribes and other traditional forest residents have coexisted with the forest nature for a very long time, even before the market economy intervened in their life. Those traditional forest dwelling communities once enjoyed individual and community ownership of forest recourses, which were not mere economic products at that time. A significant change occurred during the colonial era from the forest being a state resource for commercial interests and the development of land for agriculture to a resource base for the maintenance of traditional local populations. When taking into account the rights to forests, laws and

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policies like the three Indian Forest Acts of 1856, 1894, and 1927 of the Central Government as well as some state forest acts had restricted the scheduled tribes' and other traditional forest dwellers' centuries-old customary forest use rights. After independence, this practice persisted until much later, when the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, was passed. In this essay, we attempt to examine how forest regulations affect the forest ecology on the one hand, and how they affect the Malaipandarams, an indigenous tribal group that lives in the forests on the other.

Recognising Forest Rights for Scheduled Tribes and Other Traditional Forest Dwellers Act of 2006

Diverse academics and indigenous people have differing perspectives and opinions regarding the Forest Rights Act of 2006's implementation. Some of them advocate the advantages they see from their own perspective and world-view. The worldview can be a set of belief and practice for the basic survival of the individual as well as the community as a whole. Dealing with the notion of Scheduled Tribe, it can be stated that it is merely to represent a group of people sharing some common way of living. There are many definition of the concept of tribe but the concept Scheduled Tribe is the classification of the British Government for administrative purpose as we commonly understood. After independence, the government followed most of the administrative concept and procedures without questioning the terms and categories implied. This is implicated in to various forest laws of India.

Under the 2006 Forest Rights Act (FRA, 2006), it is stated that:

“An act to recognise and vest the forest rights act occupation in forest land in forest dwelling scheduled tribes and other traditional forest dwellers who have been residing in such forest for generations but whose rights could not be recorded; to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forestlands”.

According to the act, it acknowledges and grants the scheduled tribe and other traditional forest inhabitants the legal authority to exercise their rights to the forest and to occupy its territories. It makes the following claims concerning the rights of forests and clarifies them:

“It includes the responsibilities and authority for sustainable use, conservation of bio-diversity and maintenance of ecological balance and thereby strengthening the conservation regime of the forests while

ensuring livelihood and food security of the forest scheduled tribes and other traditional forest dwellers”.

The FRA, 2006 addressed the significant information that was already known about Scheduled Tribes and other Traditional Forest Dwelling Communities in the act's preamble. The statute states that, taking into account the current laws and governance procedures,

“Whereas it has become necessary to address the long-standing insecurity of tenurial and access rights of Forest Dwelling Scheduled Tribes and other Traditional Forest Dwellers is including those who were forced to relocate their dwelling due to State Development Interventions”.

The above key points of the FRA, 2006 looks promising for those advocated the law. One important fact which can be drawn from the FRA, 2006 as noted by Dandekar, (2016) that “the rules write away the future rights of the community over forests and their management and control over minor forest produce in perpetuity”.

Taking into account the intervening historical process, the state of pre-colonial India declined to assert exclusive rights over its forest resources. In addition, the pre-colonial state acknowledged the underlying notion of community rights and was prepared to engage in negotiations with forest inhabitants in order to establish control over the forests. As a result, the pre-colonial state was aware of its limitations, eager to cooperate with the locals, and did not doubt the fundamental basis of the mutually beneficial relationship between the communities and the forests (Dandekar, 2016: 12). Conversely, the state began limiting the usage of the forest during the colonial era, questioning the fundamental foundation of the rights system as upheld by the communities (Dandekar, 2016: 12).

Forest Rights Act (FRA) 2006

It is important to discuss and draw basic elements of the FRA, 2006 to get a general idea of the issue of tribal question concerned through it. The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 consists of six papers and Paper I or the preliminary deals with abbreviations, concepts and preliminary elements of the Act. Paper II of the Act includes matters regarding the forest rights of scheduled tribes and other traditional forest dwellers. Paper III is the recognition, restoration and vesting of forest rights and related matters. Paper IV describes authorities and procedure for vesting of forest rights. Paper V of the FRA, 2006 consists of offences and penalties to deal with the issues and mismanagement of act done by the authority who have been vested for the successful implementation of the act. Paper VI of the act deals with the miscellaneous elements of it, importantly it describes (clause, 11) the nodal agency of the act for the implementation of the provisions of this act. It

states that the nodal agency for carrying out the provisions of this act will be the ministry of central government responsible for tribal affairs or any person or authority designated by the central government in this regard.

The Preliminary clause 1 (c) defines “forest dwelling scheduled tribe as the members or community of the scheduled tribes who primarily reside in and who depend on the forests or forest lands, reserved forests, sanctuaries and national parks”. In Paper I, clause 1 of the act describes “Other traditional forest dwellers as any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs”. For the purpose of this clause, generation “means a period comprising of twenty-five years”. Thus the law states that generations who have lived in the forests for at least 75 years will get protection under this law.

As per the law all the two identified groups i.e., the scheduled tribes and other traditional forest dwellers will get a written document proclaiming their rights over forest land. According to the rules, once the FRA, 2006 came into force, the owners would have freedom over their forest lands specified by the law considering some parameters of the old rules i.e., the Wild Life (Protection) Act, 1972; Forest (Conservation) Act, 1980; PESA (Panchayath Extension to Scheduled Area Act) 1996; Biological Diversity Act, 2002.

The Bhoomi Keralam, or "the land of Kerala," is a special programme for "the completion of survey programme of forestland in 12 districts of the state to allot land to the tribal families under the FRA," which was started by the Kerala survey department in order to handle the massive bureaucratic effort involved in the FRA (Munster & Vishnudas, 2012). The Bhoomi Keralam conducted their survey with limited support from the communities of scheduled tribes and other traditional forest dwellers. Actually, they have only had a small number of Forest Rights Committee (FRC) members and the backing of tribal boosters. The process of drawing the area, dividing plots for each applicant, verifying claims, and demarcating the land is carried out without the actual permission of the local residents. Many individual claims under the FRI were denied as indicated since there was no official census of who had been inhabiting what land (Munster and Vishnudas 2012).

When the FRA, 2006 was implemented in Kerala it is important to discuss the land struggle movements which were held in Kerala during the same decades. Acts from 1971 and 1975 gave the adivasis a legal foundation on which to begin their extensive land rights campaign in the 1990s. On October 16, 2001, all landless Adivasis in the state would receive five acres of land from the United Democratic Front government. During those years Adivasi Kshema Samiti (AKS) of the left wing of the CPI (M) also done organise encroachments on estate lands with legally insecure titles in various locations of Wayanad. In those events protesters were forcibly evicted from the squatted lands,

despite though such action continues. The government's commitment to distribute land was still pending a year later. Afterwards, on January 4, 2003, a highly reported and forceful incursion into the Muthanga Range of the Wayanad Wildlife Sanctuary was carried out by C K Janu and over a thousand Adiyar and Paniyar adivasis from Thirunelli. Stating these struggles as encroachments to state's property, it was brutally attacked and the event is remembered as 'Muthanga incidents' (Munster & Vishnudas 2016: 41-42). When the act was implemented it becomes a huge bureaucratic project not that easy to implement due to the ambiguous legal clauses related with previous laws which resulted in departmental disharmony. As Bandi (2013) considering FRA, 2006 noted that the sufferings experienced by the people depended on the nature of forest. Earlier laws and acts are also in force. The introduction of forestry under the British, the logic of the conservation of forest became an integral part of the regimes of the forest.

Forest Rights and Tribal Communities

The FRA, 2006 stipulates forest rights of Scheduled Tribe and other Traditional Forest Dwellers in such a manner considering individual and community rights of specified communities. Forest rights include series of rights of tribal communities and traditional forest dwellers considering their way of life and survival in the forest ecology. The act also considers those tribes lives outside the forest ecology but the basic limitation of the rights is that it neglects the heterogeneous nature of various tribal communities and their hierarchical orders even within the tribal life.

For the purpose of analysis we call them forest dependent people but when we look into the landless tribal groups like Adiya, and Paniya community of Wayanad; they were agricultural labourers of Mullu Kuruma and Kurichyar Community. After the invasion of local people or new settlers into the forest land, the community living of the tribal people have affected and new forms of heterogeneous social organisations have been evolved which led to new social relationships. As a result, Adiya, and Paniya communities become bonded labourers of the new settlers. And when the land reformation act was passed those tribal communities previously occupied land were not distributed to Adiya and Paniya Community because there were not considered tenants. Thus dealing with historical injustice of forest laws and state laws the Adiya and Paniya Community were mostly neglected tribal groups in case of land distribution. As mentioned by Munster and Vishnudas (2016) drawing from the Census of 2011 historically, tribal communities of Wayanad i.e., Paniyar (44.77), mullu Kurumar (17.51), Kurichyar (17.38), Kattunaikar (2.69), Adiyar (7.10) and Urali Kurumar (2.69) were heterogeneous in nature. And these groups lived in economic and ritual interdependence with each other and with castes groups. These sorts of changes and formation of new dependencies of the tribal and other social groups shall be a concern of the FRA. It means that those who are plainsmen having long association of life with the tribal and their habitat have also secured rights within FRA, 2006.

Paper III of the FRA, 2006 in clause 3 (1) discussed about the forest rights of the addressed community i.e., the rights ensure individual and community ownership of forest lands to both scheduled tribe and other traditional forest dwellers. It involves the freedom to possess and occupy forest land for personal or communal use, as well as for self-cultivation as a means of subsistence. The ownership right encompasses the ability to gather, utilise, and discard small-scale forest products that are customarily gathered either inside or outside the village limits. In the FRA, 2006 clause 2 (f) defines:

“forest village as settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand holdings, all types of taungya settlements by, whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government”.

One of the bottlenecks which faced for the implementation of FRA, 2006 was the interdepartmental conflicts, bureaucratic and legal confusion as noted by Sathyapalam (2010) and lack of provision of information about who is eligible for rights under the act (Sathyapalan, 2010; Kothari 2011). The department of tribal welfare, forest officers, revenue officials, were those part of bureaucratic disintegration for the implementation of the rights of the tribal communities.

The FRA paper IV includes authorities and procedure for vesting of forest rights. In it Section 6 (1) explains that:

“The Grama Sabha shall be the authority to initiate the process for determining the nature and extent of individual or community forest rights or both that may be given to the forest dwelling scheduled tribes and other traditional forest dwellers within the local limits of its jurisdiction under this act by receiving claims, consolidating and verifying them and preparing a map delineating the area of each recommended claim in such manner as may be prescribed for exercise of such rights and the Grama Sabha shall, then pass a resolution to that effect and thereafter forward a copy of the same to the Sub-Divisional Committee”.

For the preparation of forest rights, it is done by grama sabha at the grass root level. The record of forest rights and resolutions adopted by the grama sabha are included before it is sent to the sub-divisional committee. After that, send it to the district level committee

via the sub-divisional committee. The sub-divisional level's record of forest rights is evaluated and ultimately approved by a committee at the district level. Only as specified by the statute may the petitions filed by the scheduled tribe and traditional forest inhabitants be considered in opposition to the grama sabha's resolution. Every petition must be filed within sixty days of the grama sabha's resolution being passed, according to clause 6(2) of the FRA, 2006. The act and authority of the grama sabha is crucial to get this act done for the benefit of tribal as well as other traditional dwelling communities. How do it do and what are the formalities to fulfil etc. are the concerns of the grama sabha and Oorukoottam can intervene in the decision. How far it is effectively implemented with the voices of the tribal people heard is a concern of anxiety of the tribal community with respect to the implementation of this act³.

FRA and Forest Nomadic Malaipandarams

Worldview can be a set of belief, way of life and perspectives of people in different class or social order. In our analysis about the ethnic tribe and non-tribe or forest people or country people, the notion of worldview is important in order to classify them into two broad sections. As humans are social beings, the social practices are different among different social groups whether country people or forest people. For the purpose of analysis we make two basic distinctions to differentiate different worldview in general i.e., Kattukar representing tribal people and Nattukar representing country people. As the concept indicates Kattukar are those people living in forest lands and Nattukar are those people living in country or village. We suppose that tribal people having indigenous worldview and country people having western worldview. In order to analyse the impact of intervention of Government and its agencies and most importantly the intervention of market economy on the life-world of tribal people our tool of analysis is the notion of world-view. Again the field-observation helps us to differentiate two world-views among nomadic, sedentary and semi-nomadic Malaipandarams. And on the basis of different worldviews we consider the impact of FRA, 2006 and previous laws among the Malaipandarams.

Morris work starts with a classification of forest people and country people in order to distinguish the two. As he states:

“An important folk- category distinction made in the hill areas of Kerala is that between the *katu* or forest and *natu* or country. This is a fundamental distinction for the Hill-pandaram, since they regard themselves as people of the forest, and refer to members of other caste communities as “Nattukaran” - Country men. According to earlier writers, the Hill Pandaram was known as Kattumanushyar (forest people) but this term is now infrequently used” (Morris, 1982: 3).

³ See FRA, 2006, for all other relevant clauses and modalities.

His work primarily focused on contractual system existed between the Malaipandarams and the forest traders like Chettiars.

Morris claims that government organisations rather than village life have been the external elements that have shaped Hill Pandaram Society.

“It is the contractual system associated with urban traders which has, during the past hundred years or more, been of primary sociological significance. The collection of marketable forest produce, undertaken under the auspices of the forest department has been geared less to local village needs than to a wider urban market- economy. More recently, the attempts of the State Welfare Department to colonise the Hill Pandaram have also had important cultural implications”
(Morris, 1982: 3)

The Malaipandarams had maintained little or no connection with the outside world. And probably, after the intervention of market economy among the Malaipandarams and consequent historical process associated with government and non-government agencies made changes in the life-world of the nomadic Malaipandarams. Now the classification of Malaipandarams includes nomadic, sedentary or settled and semi-nomadic types. Given the peculiarity of the Malaipandarams, let us now move to discuss about how far FRA would touch the lives of the Malaipandarams.

- (a) As FRA state that it focuses a traditional dwelling community or a tribal group to protect their right to forest, the internal classifications among Malaipandarams as nomadic, semi-nomadic and sedentary makes complexities to address the problem of this group. The social and cultural realities of these groups within a tribal category is not been adequately addressed in the Act. Therefore, it is difficult for the Malaipandarams, especially of the nomadic one to prepare administrative papers to claim their right enshrined in the act.
- (b) Semi-nomadic group among the Malaipandarams are also a floating group within forest but at the surveillance of the forest department and the state. This group is yet to join in settlement life prepared by the state. Moreover, most of the individuals in these groups are illiterate and not aware of any governmental schemes which are to ensure their welfare and development.
- (c) Settled or sedentary Malaipandarams have possibilities to access the right to forest use and claim their traditional and customary rights. It is possible because they are colonised (sedentariness) through the discourse of developmental modernity. These sections of the group have a permanent residency and often hold many identity cards etc. But, the problem is that this group is traditionally

not the Malaipandarams because plainsmen and members of other caste groups have joined with them through kinship ties.

- (d) What we have observed from the field about the nature of life patterns of the Malaipandarams are important to locate in the context of FRA. The tendency to go to the forest and lead a nomadic life could be possible from all these groups of Malaipandarams. Three distinctions of life patterns have no permanency that they could stay in the group. A floating group and a transition of life patterns are barrier for them to avail the benefits of FRA.
- (e) Grama sabha and Oorukoottam is an important agency to articulate the rights. As we have seen in the preceding papers that they have less role in the sabha or Oorukoottam even if they follow a sedentary life. They have less interest to intermingle with other tribal or caste groups outside of them. This won't help them to claim a right in the collective sense of the term.
- (f) If they were not nomadic or semi nomadic but continues a life pattern of settlement of their own as in other cases of tribal life, the Kottakayattam could have been a right to claim forest use of the mountains they climb as part of the ritual practices of kottakayattam. It needs a collective effort of the Malaipandarams to claim such a right enshrined in FRA, 2006.
- (g) FRA focuses only on a tribal group settlement and the negation of the rights due to the modernisation process. This is applicable in general in case of Indian tribal life. But, the recognition of heterogeneous groups within the larger groups of tribal life shall be a point of inclusion to make FRA an inclusive act that include all heterogamous groups and sub-group even within a tribe.

The essential first step of this right is to make the tribal groups aware of the law. Scheduled Tribe promoters have to fulfil this task. Scheduled Tribe promoters are important advisors to the Forest Rights Committee. Only if there are promoters, who have proper awareness about forest rights and the law it will be possible to bring the law to the tribal society without losing its essence. However, the promoters are not able to find the nomadic and semi-nomadic Malaipandarams in different forests and teach them about this law. The Malaipandarams continue this way of life as individual families. This communication is possible only if we can see them together in the forest.

The Gram Sabha/Oorukoottam is the first committee to complete and implement forest rights step by step. In a transparent and participatory manner, the group is able to ascertain the forest rights of the Scheduled Tribes. The community needs to understand the rights of every Scheduled tribe living in the interior forest region. Teams of Scheduled Castes promoters appointed for the purpose have to go to every village and hut, visit every Adivasi from house to house, and involve each tribal in the village group. At least two-thirds of the members must be present in this village group which the

secretary of the Gram Panchayat convenes. All the rights, responsibilities, powers, and the Forest Rights Committee are explained here.

Moreover, its committee members are also selected here. Oorukoottam is the primary platform for the implementation of forest rights. However, it must be said that a community that continues to live a nomadic and semi-nomadic lifestyle does not have this primary platform because the reality is that the Malaipandarams do not have Ooru, Kudi or Oorumooppa system in their nomadic and semi-nomadic way of life.

Accepting the forest rights application is an actual formality. According to the public notice issued by the Gram Panchayat Secretary, the forest rights application should be submitted to the Forest Rights Committee within three months of receiving the notification. Regarding nomadic-semi-nomadic Malaipandarams, it is impossible to receive such notifications accurately or submit applications within three months. Additionally, two pieces of evidence under Rule 13 to prove the forest rights under this Act must be produced before the committee. Nevertheless, the truth is that this nomadic community can never produce evidence under Rule 13. Because the Malaipandarams have had an unstable life in forest or forest areas since prehistoric times, this is due to the fact that this community does not have permanent interventions in the forest land, such as slash-and-burn cultivation or shifting cultivation. Similarly, they did not have the habit of building or living in houses made of mud blocks or bamboo. Therefore, the reality is that they cannot present even a single piece of evidence mentioned in Rule 13 before the committee under the Forest Rights Act.

For the tribal people forest was not just means of income source, it is the present social system which compels them to act as agents of the government. Constructing concrete houses at the forest fringes alone is not tribal development. The Government and Tribal Welfare Department, the nodal agencies of the FRA, 2006 and further amendments lack development perspective of the tribal in general. Their heterogeneity is a part of anthropological enquiry as well as social transformation process. Thus the rules and laws of the government from a point of view of the state alone won't serve the purpose. FRA shall be critically evacuated contextualising similar tribal groups across Indian and Kerala to identify the real life issues of the tribal community. The long history of coloniality of development, mainstreaming logic of the state and bureaucratic view the government department have created sub groups of tribal groups even within them. This process of formation of various life patterns and identities are to be located while introducing any projects and acts concerning tribal groups in India and elsewhere.

Conclusion

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