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The Persistent Adivasi Demand for Land Rights and the Forest Rights Act 2006 in Kerala, India

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Abstract: This paper asks whether the Forest Rights Act (FRA) passed by the Government of India in 2006 could provide effective access and ownership rights to land and forests for the adivasi communities of Kerala, thereby leading to an enhancement of their entitlements. The study was conducted in Wayanad district using qualitative methods of data collection. The FRA, it would seem, raised high expectations in the State Government circles and the Adivasi community. This was at a time when the Government of Kerala was grappling with a stalemate in the implementation of its own laws on adivasi land rights, due to the organized resistance from the settler-farmers and the non-adivasi workers employed in the plantations that were established to provide employment for adivasis. Our analysis shows that due to the inherent problems within the FRA as well as its complex and contested implementation, the FRA could not achieve the promised objectives of correcting historical injustice and provide effective land rights to the adivasis of Wayanad. The role played by the conservation lobby in thwarting the efforts of the Left government is discussed. While granting nominal possession rights (Record of Rights) to the dwelling sites of a small community of adivasis (Kattunaicker, who were traditional forest dwellers), the FRA has failed to provide them with substantive access and ownership rights to land and forests. The adivasis who were able to gain some rights to land have been those who were involved in land occupation struggles. The study reiterates the importance of struggles in gaining effective rights in land.

Keywords: Forest Rights Act; Kerala; adivasis; land struggle; Wayanad; land alienation; neoliberalism; conservation



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1. Introduction

The ancestral lands of the indigenous people of India (the adivasis)¹ have been appropriated by various means, including a series of legislations, for commercial, conservation and other purposes, since the early part of the nineteenth century. The Indian Forest Act of 1865 and that of 1878, followed by the Forest Rights Act of 1927 of the British colonial regime, paved the way for substantial statisation (nationalisation) and privatisation of forests. Independent India, essentially following the same line of policies, enacted the Wild Life Protection Act 1972 and the Forest Conservation Act 1980, with increasing dispossession and alienation of adivasis from forest land and resources. Kjosavik and Shanmugaratnam (2015, 2007, 2004) have documented and analysed the history of dispossession and displacement of the adivasi communities of Wayanad, Kerala, while at the same time highlighting the historically diverse nature of adivasi land claims in different regions of the country (Kjosavik and Shanmugaratnam 2015).

Viewed against this backdrop, the Forest Rights Act 2006² (FRA 2006) would seem to represent a remarkable shift in official policy. Contrary to the earlier forest legislations, this Act passed by the Government of India has recognized the historical injustice inflicted on the adivasis by the colonial and post-independence Indian state.³ The Act was expected to confer individual and community rights on forest land to adivasis and other forest dwellers who have been living in the forests historically. At the same time, as pointed out by some

scholars (see, for example, [Rangarajan 1996](#); [Gadgil 2007](#); [Datta 2016](#)), the FRA could be linked to the ongoing conservation debate in India and could possibly achieve both conservation and sustainable use outcomes. Researchers have hailed the Act as “historic” as far as the land rights of the adivasis are concerned. For instance, a Report by the Rights and Resources Initiative proclaims:

The recognition of CF/CFR Rights under the FRA provides the Indian state with a historic opportunity to implement the largest land reform ever in India. Through the FRA, at least 150 million forest dwelling people have gained the opportunity to have their rights recognized over a minimum of 40 million hectares (mha) of forest land that they have been managing, using, and interacting with in more than 170,000 villages.⁴

Going even further, [Menon and Bijoy \(2014\)](#) envisage that the FRA’s provision for community rights in forests, together with PESA (Panchayats Extension to Scheduled Areas Act 1996), has the potential to promote adivasi self-rule. However, such optimistic projections need to be examined with due consideration to changes in the macro policy and institutional environment in which the FRA was promulgated and to the more specific socioeconomic conditions of adivasi communities in different parts of India. In this paper, we briefly address some relevant aspects of the larger context before looking critically at some important provisions and their implementation with special reference to the adivasi communities in the State of Kerala.

In the current Indian context, the Forest Rights Act 2006 is generally seen as a response to the historical demands of adivasis and the competing claims backed by political mobilization of adivasis and activists. [Springate-Baginski et al. \(2009\)](#) argue that “institutional reform in favour of a particular group is likely to require mobilisation and concerted action by that group”, and that this is amply illustrated by the fact that the FRA emerged after a concerted campaign.⁵ However, in our view, it is important to note that it was enacted by the Government of India almost 15 years after the opening up of the Indian economy in tune with neoliberal policies. This policy context, which remains hegemonic, is defined by the introduction of property reforms that facilitate the availability of land and resources more readily to international and domestic capital. At the same time, the protracted struggles by the adivasis for land and forest rights cannot be ignored either, in the context of competitive politics for votes in a parliamentary democracy and in terms of the larger issue of the legitimacy of the state. The FRA could be seen as a legal intervention that could accommodate competing demands on the country’s forestlands and manage the conflicting interests behind these demands (see also [Kjosavik and Shanmugaratnam 2015](#)).

On the one hand, the FRA could be seen as a piece of legislation that addresses the development and rights questions of the adivasis in different parts of India. On the other hand, it could be interpreted as an innovative intervention serving the neoliberal project of freeing up the bulk of the ancestral land and forest resources of the adivasis, to be made available to domestic and international capital and to the conservation lobby, while providing the adivasis access to a minuscule fraction of the lands they have been claiming. The historical claims of the adivasis for their ancestral land and forests, which formed their habitat and means of livelihood, cover large tracts of land. However, the FRA provides legal rights limited to the areas they have been cultivating, those too with a ceiling of 4 hectares, irrespective of the actual area they have been cultivating when it exceeds 4 hectares per household. The forest areas that could be claimed under the provision of Community Forest Rights (CFR) are also circumscribed by various regulations and restrictions that potentially limit access and use rights, if and when Community Rights are assigned to adivasis in areas where such forests exist. The primary objective of the CFR seems to be to entrust responsibility for conservation to the adivasis.

With these provisions, the FRA, while legalising property rights to a limited extent of land for adivasis, could potentially take away or alienate large tracts of land and forests for other uses. This might therefore be seen as a reform that could once and for all limit the adivasis’ access to their traditional/ancestral land and deny any further claims under

the law. It could, thus be argued that in the name of addressing the land problems of the adivasis, the Act may serve the interests of the state and private sectors, while appeasing the conservation lobby. Moreover, questions of intergenerational claims, such as claims of future generations to their ancestral lands, are not addressed by the FRA. The Ministry of Tribal Affairs issued a set of rules to guide the implementation of the FRA at state and substate levels.⁶ It could be problematised that even though the FRA as a national legislation is enforceable in all states of India, there are wide variations in the applicability of the various provisions of the FRA across the states and even within states, as exemplified by the case of Kerala. The adivasis of India are not homogeneous in terms of their relations to forest and land, livelihood activities and cultural practices. Moreover, historically, there are differences across India in how adivasis responded to dispossession and marginalisation during colonial and postcolonial times.⁷ All these impinge on the extent to which the provisions of the FRA 2006 could benefit the adivasis in gaining access and ownership to their ancestral lands.

The objective of this paper is to examine whether the Forest Rights Act (FRA) passed by the Government of India in 2006 has provided effective access and ownership rights to land and forests for the adivasi communities of Wayanad district, Kerala, thereby leading to an enhancement of their entitlements. We critically examine some of the provisions of the FRA relevant to Kerala and how they are being implemented in Wayanad district. We would also highlight the point that the implementation of FRA is not a benign and neutral act, but a political act in the context of competing interests in the same land and forest resources.

In the following sections, we provide a brief description of the study area and methods. This is followed by a brief overview of the criticisms of the FRA in India and Kerala. Following this, the context of the implementation of the FRA in Kerala is set out. Some provisions of the FRA that are relevant for the Kerala context are then discussed. This is followed by an analysis of the implementation of the FRA based on the case of Wayanad District. Under this section, the nature of the rights granted to various sections of the adivasis located/and or dwelling on different types of lands and forests is analysed and discussed. We conclude with a discussion on whether the FRA has succeeded in providing access and ownership rights to the ancestral lands and forests of the adivasis of Wayanad.

2. Study Area and Methods

We selected Kerala for the study as the state has had sustained mobilization for adivasi land rights for more than four decades. The field study was conducted in the highland district Wayanad, which is part of the Western Ghats in northern Kerala. Wayanad has the highest percentage of adivasi population in Kerala—15 percent of the total district population and 35 percent of the total adivasi population of Kerala. This region was under direct British rule from 1805 to 1947. The incidence of adivasi land alienation is the highest in this district. The district is marked by decades of turbulent and protracted struggles for adivasi land rights, and it is the major site of the ongoing struggles for land. There are six different adivasi communities in Wayanad—*Kurumar*, *Kurichiyar*, *Paniyar*, *Adiyar*, *Kattunaicker* and *Oorali*. These communities had historically different relations to land and forests. *Kurumar* and *Kurichiyar* were traditionally agriculturists, *Paniyar* and *Adiyar* were agrestic slaves and bonded labourers, *Kattunaicker* were hunters and gatherers and *Uralis* were artisans. The study followed a qualitative approach for data collection and analysis. We undertake an analysis of the Forest Rights Act, 2006 with a view to identify and critically examine the provisions applicable to the different types of land inhabited by the adivasis in Kerala. Document analysis is a method in which the researcher undertakes systematic review and evaluation of written and electronic documents (Bowen 2009). Textual data in the documents are examined and interpreted in order to elicit meanings and understandings of the phenomenon being studied (Corbin and Strauss 2008; Rapley 2007). Field data were collected through qualitative interviews and focus group discussions (Kvale 1996; Bryman 2001; Yin 2003). We had interviews with adivasis, activists and local

political leaders. Focus group discussions were conducted with adivasis occupying the vested forest lands (state owned) as part of the adivasi land struggle. Repeated field visits were conducted in November 2010, December 2012, July 2013 and December 2013, as part of a larger study. Secondary sources, including published materials, were used in the study.

3. A Brief Overview of Criticisms of the FRA

There have been serious criticisms of the Act and its implementation. According to a countrywide survey in various states published in 2012, a majority of the claims (54 percent) were rejected on “frivolous” grounds and the land titles issued were vaguely worded and were often without a clear demarcation of boundaries. Furthermore, the same study noted that the high rate of rejection of the claims amounted to a “perpetuation of the historical injustices” on the intended beneficiaries ([Asian Indigenous and Tribal Peoples Network 2012](#), p. 4). Strongly voicing similar concerns in its “Guide to the Forest Rights Act”, the “Campaign for Survival and Dignity” (undated) states that “the Act that was finally passed was not the Act that had been fought for. The government is now trying further to damage it by including changes in the Rules to the Act that will undermine it more.”⁸ Indeed, the high rate of rejection means denial of land rights to large numbers of genuine claimants. The slack implementation of the FRA is discussed in terms of a “lack of political will” ([Oxfam India 2015](#)).

Based on a study on the implementation of the FRA in the Western Ghats region of Kerala, [Sathyapalan \(2010\)](#) argues that the basic constraint in implementing FRA has been a lack of coordination among the line departments of the state government, for example, the Forest Department and the Department of Tribal Affairs, who hold overlapping jurisdictions in the same geographical area. However, observations contrary to this have been made by the National Forest Rights Committee Team, which visited Kerala in July 2010. They reported the impressive cooperation between the line departments in Kerala in implementing the Act ([Sreedharan et al. 2010](#)). We discuss this in a later section in the paper. [Münster and Vishnudas \(2012\)](#) take the position that the FRA, though well intentioned, failed to successfully address the land rights of the adivasis of Kerala (see [Kjosavik and Shanmugaratnam 2007](#) for a historical-institutional analysis of the land rights of the adivasis of Kerala). Though Kerala is one of the states that initiated the early implementation of the FRA, the state is still stumbling forward as regards individual and community rights, according to [Anitha et al. \(2015\)](#). Their study, based on the implementation of the FRA among the Kadar community in Kerala, points to institutional inefficiencies as the major setback to FRA implementation.

4. The FRA in Kerala: The Context

We examine the FRA with reference to the long-standing historical claims and struggles for land and forest resources of the adivasis of Kerala. The historical evolution of land and forest rights in Wayanad in the colonial and post-colonial periods effectively alienated the ancestral lands of the adivasi communities and brought in new actors such as the state, commercial planters and settlers. ([Kjosavik and Shanmugaratnam 2007](#)).⁹

Taking cognisance of this fact, and in response to the demands of the adivasis, the government of Kerala enacted a Law in 1975 for the restitution of alienated adivasi land with retroactive effect from 1960. This Law has been controversial and contested in courts for several years, and the government has been forced to amend it several times and also enact new Laws. These Laws have not been implemented so far. A critical analysis of the legislative measures to restore adivasi land rights, the contested implementation, and the adivasis’ ongoing struggles to reclaim land rights is provided in [Kjosavik \(2010\)](#) and [Kjosavik and Shanmugaratnam \(2015\)](#).

The failure of the legislative measures has been due to flaws inherent in the laws themselves and due to the organised resistance of the settler-farmers who had migrated from the midlands and lowlands of Kerala. The response of the state highlighted that the state itself is a contested arena. The analysis showed that while the conservative

coalition governments led by the Congress party consistently adopted a settler-friendly approach, the Left coalition governments led by the CPI(M) took an ambivalent stance, caught between protecting the interests of the small peasants and the marginal farmers (who were also part of the proletariat) and the interests of the indigenous people.

However, in 1999, the Left government enacted a Law that potentially succeeded in taking account of the different historicities of the adivasis in terms of their relation to land and forests and the intersecting nature of class and indigeneity (Kjosavik 2011). This could not be implemented due to the organised resistance of the powerful landed classes. The struggles were further intensified and this enabled them to negotiate an agreement with the Congress coalition government in 2001, which was an improvement on the 1999 Law in the sense that it was outside the purview of the much-contested 1975 Law. However, the government did not honour this agreement and entered a new phase, which precipitated in the 2003 Muthanga struggle, where adivasis encroached on forest lands. The struggle ended in violent retaliation by the state. Following this, the struggle became widespread and adivasis forcefully entered and settled on government forestlands in several places in Wayanad and the rest of Kerala.¹⁰

In the 2006 elections, the people of Kerala returned the Left coalition to power. The new government began to explore options to get out of the stalemate as regards adivasi land rights. Meanwhile, the struggle continued in the form of more organised encroachments and forceful entry into state-owned forest lands and plantations. As of our last field visit in December 2013, there were about 19 such sites of encroachments in Wayanad district.

It was at this time that the Government of India passed the FRA 2006. Discussions with the activists in Wayanad revealed that the Left played a major role in lobbying for an extended cut-off date for claims of forest rights. The FRA provided a much needed break for the Government of Kerala, which was grappling with the stalemate in the implementation of its own laws regarding adivasi land rights. This was due to the organized resistance from the settler-farmers who held the land alienated from the adivasis, and the non-adivasi workers employed in the plantations that were meant to provide employment for adivasis.

5. Some Provisions of FRA Relevant for the Adivasis of Kerala

At first glance, the FRA appears to be a very radical document that would finally restore social justice and ensure the economic, social and political rights of the adivasis. For example, the preamble of The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Bill passed by Lok Sabha on 15th December 2006 (No. 158-C of 2005) states:

AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognized in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystems.

Chapter II of the FRA deals with Forest Rights. The Forest Rights that are relevant for the purpose of this study are as follows:

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

(a) right to hold and live in the forest land under the individual or common occupation for habitation or self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of *Pattas* or leases or grants issued by any local authority or any State Government on forest lands to titles.

Chapter III deals with “Recognition, Restoration and Vesting of Forest Rights and Related Matters”. The relevant section for this paper is:

4. (1) Notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act, the Central Government hereby recognises and vests forest rights in

(a) ‘the forest dwelling Scheduled Tribes in States or areas in States where they are declared as Scheduled Tribes in respect of all forest rights mentioned in Section 3.

Indeed, the general provisions of the FRA, such as the ones quoted above, sound fair and promising. However, the limitations become apparent when one reaches the details regarding restoring land rights and the restrictions on entitlement claims in terms of the extent of land and cut-off date. Moreover, so far, the implementation of the FRA has been not so effective to the detriment of adivasis due to legal and bureaucratic constraints, as shown by empirical studies covering different states.¹¹ The FRA is completely silent on the historical problem of large-scale displacements and the consequent landlessness and livelihood losses suffered by large sections of adivasis. However, it recognises the rights of adivasis who were occupying forestland before the cut-off date of December 2005. As mentioned earlier, the FRA has provisions for Community Forest Rights (CFR). As the State government had not embarked on its implementation at the time of this study, we do not discuss CFR in this paper.

6. Implementation of FRA: The Case of Wayanad

The rules for implementing the FRA were framed in 2007, as “the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007”, and published in January 2008. As mentioned earlier, the Left had successfully lobbied for extending the cut-off date for claims to December 2005, so that it would enable the adivasis who had occupied lands during the various struggles to be able to claim rights to those lands.

Chapter III, Section 4 (3) of FRA 2006 states:

The recognition and vesting of forest rights under this Act to the forest dwelling Scheduled Tribes and other traditional forest dwellers in relation to any State or Union territory in respect of forest land and their habitat shall be subject to the condition that such Scheduled Tribes or tribal communities or other traditional forest dwellers had occupied forest land before the 13th day of December, 2005.

There was euphoria among the adivasi activists and the Left government that this was an opportune moment to solve the adivasi land issue, once and for all. In their usual campaign mode, the Left began to mobilise the huge bureaucratic machinery and set up the decentralised institutions that were stipulated in the Rules for implementing the FRA.¹² The Left government had already laid the foundations of decentralised institutions and had been practising participatory planning for development including the adivasi communities and areas since 1996.¹³ This came in handy at this stage and the necessary additional institutions, procedures and processes were set in motion in order to implement the FRA. Discussions with Left activists belonging to the CPI (M) and adivasi communities gave the impression that they saw the implementation of the FRA as an opportunity to genuinely address the land rights issues of the adivasis, and hence they seized the moment. This is indeed evident from a report prepared by the National Forest Rights Committee Team after a visit to Kerala in early July 2010 (Sreedharan et al. 2010).¹⁴ In 2010, they found all the concerned Departments working in tandem to implement the Act. Steps were taken to provide training to the personnel of the Department of Tribal Welfare, Survey and Settlements, Forest and Revenue to undertake systematic implementation. “The State government had provided clear-cut schedule for the implementation of the Act to its officers. State government has issued a number of orders for facilitating smooth implementation.” (Sreedharan et al. 2010, p. 1).¹⁵ (See, for example, the Government Order Ms No 68/2008/SCSTDD dated 17 June 2008-Order-Time schedule for the implementation of the Act.)

According to the FRA, only those adivasis who had already occupied forest land before the cut-off date of 13 December 2005 are eligible for rights in that land. This provision has shut the door on those who were displaced from their forests and unable to occupy forest land anew before the cut-off date. We are referring to those pauperised adivasis of Wayanad who remain landless and without opportunities for enhancement of livelihood security and human development. The FRA has failed to deliver justice to a large section of the historically dispossessed adivasis. Access to land is a precondition for the socioeconomic stability and development of these adivasis who today are among the more seriously affected victims of the exclusionary forces of neoliberalism (Kjosavik and Shanmugaratnam 2015). Therefore, in the Kerala context, the FRA cannot be considered as an instrument to “right” historical wrongs by providing land to all landless adivasis, or for all those who lost access to land and forests historically.

While some academics (see, for example, Damodaran 2006), argue that the “development of tribal communities needs to be carried out in forest settings” (Damodaran 2006, p. 358), our position is that the adivasi aspiration for land as a means of production cannot be divorced from their claims on ancestral forest land and resources. The historical-material location of the adivasis at the class-indigeneity intersection, as theorised by Kjosavik (2011) and further nuanced and elaborated by Kjosavik and Shanmugaratnam (2015), is relevant in this context.

The applicability of the FRA to the land claims of the adivasis of Wayanad needs to be seen with reference to three categories of occupied land. (1) The state-owned forest plantations of coffee, pepper and cardamom initially set up for providing employment for adivasis. As part of the struggle, the adivasi workers had taken over the plantation lands, distributed the land among themselves and have been managing it since 2003; for example, Cheeyambam coffee plantation. (2) The Vested forest lands, that is, private forests that were vested with the state in 1970. These are mainly degraded teak and eucalyptus plantations. As part of the struggle, adivasis have occupied portions of these lands and created settlements, with each household occupying about half an acre to one acre of land, and have started subsistence cultivation. (3) The reserve forest lands, the fringes of which are occupied by adivasi communities, especially Kattunaicker. They were previously living in the forest interiors, and during the formation of Reserve forests and protected areas, they were resettled by the forest department in their current dwelling sites. Each household has a dwelling site and they have been cultivating about half an acre to 3 acres of land for the last several decades.

The provisions of the FRA mentioned earlier in this paper relate to the above three categories of land as follows:

FRA Section 3 (1) (a) and (f) and Section 4. (1) ‘Notwithstanding anything contained in any other law for the time being in force . . . ’ are applicable to the first category of occupied land provided it happened before the cut off date. Section 4. (1) is crucial in that the State’s attempts to distribute these lands to adivasi workers were earlier thwarted due to the organised resistance from non-adivasi workers who form part of the settler community. Moreover, as it was classified as Forest land, the State had to get concurrence from the Central government to distribute the land, which was not an easy task. However, FRA Section 4. (1) ‘Notwithstanding anything contained in any other law for the time being in force . . . ’ releases the State from that obligation as far as this type of land is concerned. FRA Section 3 (1) (a) and Section 4. (1) will enable the distribution of category 2 and 3 lands if the occupation happened before the cut-off date. However, there are a large number of cases where the occupation happened after the cut-off date. We discuss this issue later in the paper. During a visit by the National Forest Rights Committee Team to Kerala in July 2010, this issue was discussed with the local communities and the state government was asked to consider this issue (Sreedharan et al. 2010). FRA Section 3 (1) (g) ‘rights for conversion of *Pattas* or leases or grants issued by any local authority or any

State Government on forest lands to titles' applies mainly to non-*adivasis* in the Wayanad context.

The Left government began the implementation process in 2008 as soon as the FRA Rules were announced. We had interviews with *adivasis* occupying the three categories of land mentioned above, in addition to discussions and interviews with activists and local political leaders.

6.1. Occupied Plantations and the Adivasi Proletariat

The first group of people to receive the Record of Rights (possession certificate) was the *adivasi* households that occupied the forest plantations in which they were former employees. Four such plantations in Wayanad have now been distributed to the *adivasis*. These workers are also part of the larger trade union movement in Kerala. The account that follows is about the Cheeyambam plantation.

There were 62 workers employed in the plantation, of which the majority were *adivasis*. In 2003, inspired by the Muthanga struggle (see [Kjosavik 2010](#)), they organised themselves and formed a "samarasamithi", i.e., a struggle committee. Under the leadership of the samarasamithi, the workers agreed on a fair way of dividing up the land—two acres for the permanent employees and one acre for the temporary employees. They divided the plots as agreed, constructed small houses and started living there. Each household managed its coffee plot, harvested the produce and sold it for an income. In the first year, the plantation management tried to stop them but did not succeed. They continued living there tending to the coffee and cultivated food crops as well. In 2008, during the time of the Left government, they applied for titles to the land under the FRA, and were granted the "Record of Rights" for the plots of land they were occupying.

This is indeed hailed as a success, as they received record of rights over the entire land they occupied. They have now security of tenure; "no one can force us out of this land" as one young man put it. The FRA document is accepted for receiving electricity connection, registering for NREGA (National Rural Employment Guarantee Act), applying for a house number, etc. Discussions with those who received the Record of Rights revealed that their household incomes have increased and it has given them more livelihood security. These households have actually achieved a qualitative shift from being landless permanent and temporary workers in the plantation to market-oriented smallholders, i.e., petty commodity producers. "Earlier", said an *adivasi* activist, "we were always living in debt. Now the situation has changed. We get good income from coffee." Women and elders from many of these households were able to find employment in projects under the National Rural Employment Guarantee Act (NREGA). This was an additional source of income. Moreover, several households have also benefitted from the asset-building subsidy granted by the NREG programme. This subsidy is available only to those who have access to land or other assets. The children of Cheeyambam are able to continue schooling without dropping out before completing their secondary and higher secondary education. Some of the households have invested their savings in non-land-based assets such as autorickshaws, which are a source of additional income. The chances of social mobility for the younger generation seem to have increased for these households. Some of the young people managed to purchase motor bikes which help them with faster mobility to nearby villages and town centres for work and trade.

However, the "Record of Rights" is not a title. The land is heritable, but not transferable. They are not allowed to cut trees, not even the branches of the silver oak shade tree in the coffee plantation. This is clearly against the spirit of the FRA, which permits cutting up to 75 trees per hectare for constructing houses and related purposes. Banks and other financial institutions do not accept the Record of Rights as collateral either. This is a highly mobilised group of *adivasis*. They were determined to claim more rights step by step. An elderly *adivasi* said: "We are weary of the long struggles, but we still have to persist with our struggles to claim our legitimate rights."

6.2. *The Vested Forest Lands: The Conservation Lobby vs. Adivasis*

The Left government's eagerness and intention to resolve the protracted land issues of the adivasis and provide them with land that could serve as a means of production rather than mere dwelling sites was clear when they made the decision to distribute one acre of land per household to those occupying vested forests and reserve forestlands. An announcement to this effect was made by the Tribal Affairs Minister in consultation with the Revenue Minister and the Minister for Forests. However, it would seem that no policy could be that easily implemented when it comes to the land rights of adivasis. The villain of this piece appeared in the form of Wayanad Prakrithi Samrakshana Samiti—(Wayanad Nature Conservation Society), an environmental NGO with forest conservation interests.¹⁶ They filed a writ petition in the High Court of Kerala (WCP (C) No. 1034/2010 (S)) against this decision of the government. The High Court, in turn, issued an order of restraint and directed the state government not to grant Record of Rights to one acre of land to all. They were directed to distribute only the land area actually occupied by the adivasis, which in many cases varied from 10 cents to 50 cents (one acre is equal to 100 cents). We had discussions with adivasis who were occupying vested forest lands. They expressed disappointment, anger and frustration in this "twist of fate" as they put it. A vocal adivasi activist became emotional when we discussed this issue. He said: "Neither nature nor other people would have lost anything by us gaining rights in one acre of our own ancestral land. This has been very disappointing" (an adivasi activist). Those who occupied the vested forest lands before December 2005 received "Record of Rights" to their small dwelling site. However, the majority of the occupations in vested forestlands took place after the cut-off date in 2005. Currently, there are about 19 such samarabhoomi (struggle-land) in Wayanad district. However, none of them are eligible to receive Record of Rights under the FRA 2006.

It must also be noted that the occupation of vested forest lands took place at different points in time in the last two decades or more. These occupations have been politically potent and turbulent, and faced threats and forced evictions from the state governments at various times.¹⁷ Several adivasis had to face police repression. Given that situation and following various assurances from the government, several households who had occupied vested forest lands had returned to their colonies (settlements) hoping and waiting for action on the promises and assurances made by the government. Therefore, at the time of the FRA's implementation, they were not physically occupying the vested forest lands. Such households, it seems, do not fulfil the criterion of occupation before the cut-off date as stipulated in the FRA. There are a large number of such households in several parts of Wayanad. According to an adivasi activist we interviewed, "This is gross injustice, due to no fault of their own these households are denied land. The Central government has to reconsider this, and give freedom to the state government to consider such cases".

The adivasis we interviewed in the samarabhoomi said that they were hopeful that the government would, at some point in time, grant them rights. For example, in the Irulam samarabhoomi, there are about 3000 households. Ms Beena (28 years old), who we interviewed in December 2013, told us that her family (husband and four children) came to live in the samarabhoomi two years ago from a cramped colony with 15 households and no land for cultivation. "Here also we are suffering," she said. "Our old settlement was close to the forest and we were able to collect firewood from the forests for selling. In spite of all the problems we are living in the samarabhoomi for the sake of land, especially for our children. We have suffered anyway, but this land struggle is for the sake of our children. Our demand is to get the land we are occupying or one acre of land elsewhere in Wayanad. Only then will we stop our struggle," said Beena.

6.3. *Settlements in Reserve Forest Land—Sitting on the Fence*

These are households settled on the fringes of forests, mostly belonging to the Kattunaicker community, who were traditionally forest dwellers. They have been living in these forests for generations, settled and resettled by the forest department, but without any rights so far. Interviews with them showed that they did not have much awareness about

the Forest Rights Act. As in the case of the vested forests, the Left government's decision to grant them one acre of land surrounding their dwellings was thwarted by the actions of the conservation lobby. The irony of it is that the communities that had been historically protecting the forests are denied rights in order to serve the conservation interests of groups which have been collectively responsible for destroying large tracts of forests to subserve their socioeconomic interests. This is indeed an instantiation of the ongoing debate on preservation vs. conservation with access and use rights for the rural masses at the margins (see, for example, [Gadgil and Guha 1995](#); [Rangarajan 1996](#); [Madhusudan and Raman 2003](#); [Ghosal and Kjosavik 2015](#); [Datta 2016](#), among others). [Gadgil \(2007\)](#) expressed the hope that the FRA would pave the way for participatory management of forest resources, simultaneously benefiting livelihoods and conservation outcomes. However, the power of the conservation lobby cannot be underestimated as the Wayanad case shows. Several adivasis and settler-farmers we had discussions with were critical of this action by the conservation lobby. The negative intervention by the Wayanad Prakrithi Samrakshana Samiti was taken note of during the visit of the National Forest Rights Committee Team. The Team's Report states: "A number of persons who spoke later criticized the Wayanad Prakruthi Samrakshana Samiti for causing obstruction in implementation of the act as they want it to be." ([Sreedharan et al. 2010](#), p. 13).

These adivasis living on the forest fringes were the last group to receive the Record of Rights. By this time, the Left had lost power to the Congress coalition in the state. It is relevant to note that these communities were not fully mobilised in the larger adivasi struggle for land rights. These adivasis, mainly the forest-dependent community Kattunaicker, received Record of Rights to merely their miniscule dwelling sites of 3–5 cents, even though they were cultivating areas ranging from 50 cents to more than two acres. During our field visits to these settlements, we observed lush green fields of food crops and cash crops, including perennial crops surrounding their homes and settlements. Discussions with the households confirmed that each household in the settlement cultivated areas ranging from half an acre to 2 acres of land. On our request, the households let us take a look at their Record of Rights. We were indeed surprised to see that the land area mentioned in the document was a tiny fraction of what they had occupied and cultivated for several decades. They told us that the officials who went to their settlement and measured the lands did not explain much, but told them that according to the rules they were eligible to receive "paper" only for the house site. What they received as security of tenure was merely for their dwelling sites. Thus, in this case, they were denied rights to most of the land they had occupied and cultivated.

7. Has FRA Succeeded in Addressing the Adivasi Land Issues in Wayanad?

The preamble of the FRA 2006 (page 1) states:

"AND WHEREAS the forest rights on ancestral lands and their habitat were not adequately recognised in the consolidation of State forests during the colonial period as well as in independent India resulting in historical injustice to the forest dwelling Scheduled Tribes and other traditional forest dwellers who are integral to the very survival and sustainability of the forest ecosystem;"

We started out with the question whether the FRA 2006 has provided effective access and ownership rights to land and forests for the adivasi communities of Wayanad, Kerala. We analysed some of the provisions of the FRA relevant to the Kerala context and how this is being implemented in Wayanad district. Our study shows that the nature of rights granted to the adivasis is far from what is promised by the FRA 2006. A large section of the adivasis in Kerala still remain landless and are outside the ambit of the FRA 2006. This group of adivasis continue to see land as a basic need to build a more stable livelihood.¹⁸ The FRA so far has not been able to meet that need. Therefore, in Wayanad and the larger Kerala context, it is hard to consider the FRA as an effective instrument to "right" historical wrongs by providing land to all landless adivasis, or for all those who lost access to land and forests historically.

The progressive legislations passed in the last 35 years to provide rights to land for the adivasis are now de facto in a frozen state, and the struggles surrounding their implementation are almost forgotten with the arrival of the FRA 2006. All political alliances in Kerala put their faith in the FRA to resolve the adivasi land issue, which had hit a stalemate by 2005. It would seem that the FRA was considered as a silver bullet that would help find a way out of the situation without antagonising the landed interests—the private corporations, planters and the settlers. However, the conservation lobby stepped in this time and played a part in tying the hands of the state, contrary to the spirit of the FRA, which envisages a conservation role for the adivasis. We argue that the FRA by itself and as it is implemented in the Kerala context does not give substantive land and forest rights to the adivasis. It does not contribute much to their livelihoods either, except in the case of occupied plantations. Our analysis also shows that FRA is not implemented on neutral landscapes, but under politically charged and hostile circumstances characterised by resistance from the conservation lobby, ambivalence of the forest department, and opposition from non-adivasi plantation workers.

The adivasis of Wayanad have a long history of mobilization and struggle for land rights. They have achieved some degree of success in gaining land rights, particularly where they dared to occupy forestland or takeover state plantations in which they were workers. It is important to note that these struggles generally enjoyed the support of the Left movement of Kerala. However, the outcomes of such struggles have been constrained by the dual-purpose nature of the FRA and the actual practices of its implementation, as shown above. This takes us to the point that the adivasi land question cannot be seen in isolation from the ongoing capitalist transition of the Indian economy, in which redefining property rights and commodification of land characterise the dynamics of change. Additionally, neoliberalisation has intensified the processes of social differentiation in which pauperisation and proletarianisation are the dominant tendencies among adivasis and other rural underclasses.

Access to and ownership of land continues to be the persistent demand of the adivasi struggle, even though the political context of their deprivation has been changing due to neoliberalisation and the implementation of the FRA. In general, the landless adivasis' aspiration is to become land-owning cultivators, which they regard as a starting point for further advancement of their social and economic conditions. According to the adivasi activists in Wayanad, the "Record of Rights" granted under the FRA was less than satisfactory as it did not meet their demand for full ownership rights to the land. "We are planning to take forward our struggle," said adivasi activist C. K. Janu, "demanding freehold title to the land received under the FRA."¹⁹ In a situation of persistent livelihood insecurity and lack of regular employment, the struggle obviously is not to return to an "original" state but to move towards a state of greater social and economic security in modern Indian society. In 2016, the Left coalition was returned to power in Kerala. In our view, the time is ripe for the current government to take up the mantle once again to address the adivasi land issues, not merely focusing on the FRA, but also through some of the other existing progressive legislations.

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Notes

- ¹ Colonial anthropologists and administrators used the term “tribe” or “tribals” to refer to the indigenous people. The Government of India uses the term “Scheduled Tribes” (ST) in official documents. The indigenous people of India call themselves “adivasis”, meaning first inhabitants or original inhabitants. In this paper, we use the term adivasis to refer to the indigenous people of India. The term is widely used by researchers, activists and media persons in their writings and talks on indigenous peoples in India.
- ² The full name of the Act is: Scheduled Tribes and Other Traditional Forest Dwellers’ [Recognition of Forest Rights] Act.
- ³ See the Preamble of the FRA 2006.
- ⁴ <http://rightsandresources.org/en/publication/potential-for-recognition-of-community-forest-resource-rights-under-indias-forest-rights-act/> (accessed on 28 November 2017).
- ⁵ The resistance to the Bill, and the various revisions it was subjected to in the Parliament before it was passed into an Act on 18 December 2006, is discussed in detail by Bhullar (2008).
- ⁶ The rules are officially known as the “Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Rules, 2007”.
- ⁷ For instance, adivasis’ resistance has historically taken diverse forms ranging from peaceful demands and mobilisation-based campaigns to more militant direct action and armed struggle.
- ⁸ http://www.academia.edu/4506679/A_GUIDE_TO_THE_FOREST_RIGHTS_ACT_CAMPAIGN_FOR_SURVIVAL_AND_DIGNITY (accessed on 11 March 2019).
- ⁹ See also Chellattan Veettil et al. (2013) for a study of adivasis’ willingness to pay for modern individual property rights (titles) to prevent further alienation of their ancestral lands.
- ¹⁰ See Kjosavik (2010) for an account of the Muthanga struggle.
- ¹¹ A study by the Asian Indigenous and Tribal Peoples Network (2012) is highly critical of the actual implementing arrangements and process and the results of the claims made by members of Scheduled Tribes and Other Traditional Forest Dwellers.
- ¹² The FRA has been implemented through an elaborate network of decentralized governance structures. It is beyond the scope of this paper to provide an account of this. See Chemmencheri (2013) for an elaboration of the institutional arrangements for the implementation of FRA in Kerala.
- ¹³ See Kjosavik and Shanmugaratnam (2006) for a detailed account of the decentralised institutions and the procedures and processes set up to facilitate the participation of adivasi communities in planning and implementing development and welfare policies at Panchayat level.
- ¹⁴ Report of Visit of National Forest Rights Committee Team to Kerala, 2–5 July 2010.
- ¹⁵ <https://www.scribd.com/document/99409065/Kerala-Trip-Report-National-FRA-Committee> (accessed on 6 July 2017).
- ¹⁶ See Bhullar (2008) for an overview of the several legal challenges faced by the FRA in different regions in India.
- ¹⁷ See Kjosavik (2010) for a detailed analysis of the adivasi land struggles in Wayanad.
- ¹⁸ See also Kjosavik and Shanmugaratnam (2015).
- ¹⁹ Interview with C. K. Janu in December 2012.

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